COMPREHENSIVE DEVELOPMENT AGREEMENT FOR A CONCESSION

NORTH TARRANT EXPRESS FACILITY

Between

Texas Department of Transportation

and

NTE Mobility Partners LLC,
a Delaware Limited Liability Company

Dated as of June 23, 2009

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COMPREHENSIVE DEVELOPMENT AGREEMENT FOR A CONCESSION

NORTH TARRANT EXPRESS FACILITY

This Comprehensive Development Agreement (this "Agreement") is entered into and effective as of June 23, 2009 by and between the Texas Department of Transportation, a public agency of the State of Texas ("TxDOT"), and NTE Mobility Partners LLC, a Delaware limited liability company ("Developer").

RECITALS

A. The State of Texas desires to facilitate private sector investment and participation in the development of the State's transportation system via public-private partnership agreements, and the Texas Legislature has enacted Transportation Code, Chapter 223, Subchapter E (the "Code"), and TxDOT has adopted Sections 27.1-27.9 of Title 43, Texas Administrative Code (the "Rules"), to accomplish that purpose.

B. The Code grants TxDOT the authority to enter into agreements with private entities to develop, design, construct, finance, operate and maintain transportation facilities.

C. Pursuant to the provisions of the Code and the Rules, TxDOT issued a Request for Qualifications on December 8, 2006, as amended.

D. TxDOT received seven responsive qualification submittals by March 15, 2007, and subsequently shortlisted four responsive proposers.

E. On March 3, 2008, TxDOT issued to the shortlisted proposers a Request for Proposals to Develop, Design, Construct, Finance, Operate and Maintain the North Tarrant Express Project (as subsequently amended by addenda, the "RFP").

F. As part of the RFP, TxDOT required that shortlisted proposers commit to entering into a CDA to Develop, Design, Construct, Finance, Operate and Maintain, at a minimum, Segment 1 and such other portions of Segment 2 of the North Tarrant Express Project as are set forth in the Proposal (the "Facility") and a CDA for the remaining portions of the North Tarrant Express Segments 2, 3A, 3B, 3C and 4 (the "CDA for Segments 2-4").

G. On December 1, 2008, TxDOT received responses to the RFP, including the response of Meridiam Infrastructure (SCA) SICAR and Cintra Concesiones de Infraestructuras de Transporte, S.A. on behalf of Developer (the "Proposal").

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

I. On January 29, 2009, the Texas Transportation Commission accepted the recommendation of the Texas Turnpike Authority Director and the RFP evaluation committee and authorized TxDOT staff to negotiate this Agreement.

J. This Agreement, the other CDA Documents, the Facility Trust and Security Instruments, the Intellectual Property Escrows and the Lease Escrow Agreement collectively

constitute a comprehensive development agreement as contemplated under the Code and the Rules, and are entered into in accordance with the provisions of the RFP.

K. The Executive Director has been authorized to enter into this Agreement pursuant to the Code, the Rules and the Texas Transportation Commission Minute Order 111661.

L. Simultaneously with execution of this CDA, TxDOT and NTE Mobility Partners Segments 2-4 LLC are entering into a Comprehensive Development Agreement for Segments 2-4 of the North Tarrant Express Project.

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

ARTICLE 1. DEFINITIONS; CDA DOCUMENTS; ORDER OF PRECEDENCE; PRINCIPAL FACILITY DOCUMENTS

1.1 Definitions

Definitions for the terms used in this Agreement and the other CDA Documents are contained in Exhibit 1.

1.2 CDA Documents; Order of Precedence

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

1.2.1 Subject to Section 1.2.2, in the event of any conflict, ambiguity or inconsistency among the CDA Documents, the order of precedence, from highest to lowest, shall be as follows:

1.2.1.1 Change Orders, Agreement amendments and Lease amendments, and all exhibits and attachments thereto;

1.2.1.2 Book 1 (this Agreement, including all exhibits and the executed originals of exhibits that are contracts, except Exhibit 2 and the executed original of Exhibit 23);

1.2.1.3 Book 2 (Technical Provisions) amendments, and all exhibits and attachments to such amendments;

1.2.1.4 Book 2 (Technical Provisions), and all exhibits and attachments to the Technical Provisions;

1.2.1.5 Book 3 General Provisions (Technical Provisions) amendments, and all exhibits and attachments to such amendments;

1.2.1.6 Book 3 General Provisions (Technical Provisions), and all exhibits and attachments;

1.2.1.7 Book 3 Manuals (Technical Documents) amendments; provided that TxDOT in its sole discretion may designate that such amendments or portions thereof take precedence over the Technical Provisions to the extent provided in Sections 7.2.6 and 8.1.2.2;

1.2.1.8 Book 3 Manuals (Technical Documents);

1.2.1.9 Developer's Proposal commitments set forth in Exhibit 2, including Developer's schematic plan of the Facility; provided that, to the extent specified in Exhibit 2, certain provisions therein shall supersede the specified provisions of the other CDA Documents. Moreover, if the Proposal, including Developer's schematic plan, includes statements, offers, terms, concepts or designs that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the other CDA Documents or to perform services or meet standards in addition to or better than those otherwise required, or otherwise contains terms or designs which are more advantageous to TxDOT than the requirements of the other CDA Documents, as reasonably determined by TxDOT, then Developer's obligations hereunder shall include compliance with all such statements, offers, terms, concepts and designs, which shall have the priority of Agreement amendments and Technical Provisions amendments, as applicable.

1.2.2 If the CDA Documents contain differing provisions on the same subject matter, the provisions that establish the higher quality, manner or method of performing the Work, establish better Good Industry Practice or use more stringent standards will prevail. Additional details in a lower priority CDA Document shall be given effect except to the extent they irreconcilably conflict with requirements, provisions and practices contained in the higher priority CDA Document. If the CDA Documents contain differing provisions on the same subject matter that cannot be reconciled by applying the foregoing rules, then the provisions (whether setting forth performance or prescriptive requirements) contained in the document of higher order of precedence shall prevail over the provisions (whether setting forth performance or prescriptive requirements) contained in the document of lower order of precedence.

1.2.3 Where there is an irreconcilable conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Facility set forth in one or more manual(s) or publication(s) referenced within a CDA Document or set of CDA Documents with the same order of priority (including within documents referenced therein), the standard, criterion, requirement, condition, procedure, specification or other provision offering higher quality or better performance will apply, unless TxDOT in its sole discretion approves otherwise in writing. If there is an irreconcilable conflict between manuals or publications referenced in CDA Documents of differing priorities, the order of precedence set forth in Section 1.2.1 will apply. If either Party becomes aware of any such conflict, it shall promptly notify the other party of the conflict. TxDOT shall issue a written determination respecting which of the conflicting items is to apply promptly after it becomes aware of any such conflict.

1.3 Order of Precedence of Facility Management Plan

In the event of any conflict, ambiguity or inconsistency between the Facility Management Plan and any of the CDA Documents, the latter shall take precedence and control.

1.4 Principal Facility Documents; Facility Trust and Security Instruments

1.4.1 Concurrently with the Effective Date, Developer has entered into the Facility Trust Agreement and the other Facility Trust and Security Instruments. TxDOT is either a party thereto or an express, intended third party beneficiary thereof. Developer at its expense shall

be solely responsible for posting any indemnity bond or other security the trustee may require in connection with its services under the Facility Trust Agreement.

1.4.2 If TxDOT is not a signatory thereto, then except with TxDOT's prior written approval in its sole discretion, Developer shall not during the Term (a) terminate or permit termination of the Facility Trust Agreement, (b) appoint or approve a substitute or replacement trustee thereunder, (c) agree to any amendment of any provisions of the Facility Trust Agreement, (d) in any material respect waive, or fail to enforce, any provision of the Facility Trust Agreement or (e) oppose or interfere with TxDOT's exercise of its third party beneficiary rights against the trustee thereunder.

1.4.3 TxDOT and Developer covenant and agree to perform all of their respective obligations under or in connection with the Facility Trust and Security Instruments, including any custodial arrangement that may be put into effect pursuant to Section 8.7.8 or 19.10.4.

1.5 Reference Information Documents

1.5.1 TxDOT has provided and disclosed to Developer the Reference Information Documents. The Reference Information Documents are not mandatory or binding on Developer. Developer is not entitled to rely on the Reference Information Documents as presenting design, engineering, operating or maintenance solutions or other direction, means or methods for complying with the requirements of the CDA Documents, Governmental Approvals or Law.

1.5.2 TxDOT shall not be responsible or liable in any respect for any causes of action, claims or Losses whatsoever suffered by any Developer-Related Entity by reason of any use of information contained in, or any action or forbearance in reliance on, the Reference Information Documents.

1.5.3 TxDOT does not represent or warrant that the information contained in the Reference Information Documents is complete or accurate or that such information is in conformity with the requirements of the CDA Documents, Governmental Approvals or Laws. Except as expressly set forth herein, Developer shall have no right to additional compensation or time extension based on any incompleteness or inaccuracy in the Reference Information Documents.

ARTICLE 2. GRANT OF CONCESSION; TERM

2.1 Grant of Concession

2.1.1 Pursuant to the provisions of the Code and the Rules and subject to the terms and conditions of the CDA Documents, TxDOT hereby grants to Developer the exclusive right, and Developer accepts the obligation, to finance, develop, design and construct the Facility described in Section 1 of the Technical Provisions, and to enter into the Lease in the form attached as Exhibit 3 for the Facility and Facility Right of Way.

2.1.2 From and after issuance of NTP1, Developer and its authorized Developer-Related Entities shall have the right and license to enter onto Facility Right of Way and other lands owned by TxDOT for purposes of carrying out its obligations under this Agreement.

2.1.3 TxDOT and Developer acknowledge that they have executed two counterparts of the Lease and one counter part of the Memorandum of Lease and placed them in a neutral escrow for safekeeping pursuant to the Lease Escrow Agreement. Upon the Operating

Commencement Date, but not before then, and as a ministerial act, TxDOT and Developer shall date the Lease and Memorandum of Lease, obtain acknowledgment of their signatures on the Memorandum of Lease by a Texas notary public, attach all legal descriptions pertaining to the Facility and each Party shall deliver to the other Party, and the other Party shall accept, the Lease and Memorandum of Lease, whereupon the Lease shall take effect and the right of entry under Section 2.1.2 shall automatically cease to have effect. Developer, at its expense, shall have the right to record the Memorandum of Lease upon its delivery to Developer, and shall promptly deliver to TxDOT a conformed copy of the Memorandum of Lease bearing all recording information.

2.1.4 Developer shall have the exclusive right and obligation, during the Operating Period, to use, manage, operate, maintain and repair the Facility, and to perform Renewal Work and Upgrades, pursuant to the terms of the Lease, this Agreement, the other CDA Documents and the Principal Facility Documents.

2.1.5 Developer shall have the exclusive right and obligation, for each Facility Segment, commencing on the Service Commencement Date for such Facility Segment and ending at the end of the Term, to toll the Managed Lanes of the Facility Segment pursuant to the terms of this Agreement, the other CDA Documents and the Principal Facility Documents.

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

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

2.1.6.2 TxDOT's sole ownership of fee simple title to the Facility and Facility Right of Way and all improvements constructed thereon, subject to Developer's Interest, including Developer's leasehold estate under the Lease.

2.2 Term of Concession

2.2.1 This Agreement shall take effect on the Effective Date, and shall remain in effect until expiration of the Lease or earlier termination of this Agreement and (if in effect) the Lease (the "Term"). The term of the Lease shall commence upon the Operating Commencement Date that first occurs and shall continue until the date that is 52 years after the Effective Date; provided that the Lease shall be subject to earlier termination in accordance with the terms of this Agreement and the Lease shall be subject to extension under Section 13.1.4.

2.2.2 TxDOT and Developer acknowledge their mutual intent that, despite TxDOT's retention of fee title to the Facility and the Facility Right of Way, despite Developer's leasehold estate and interest therein, and despite the payment by Developer of 100% of the total capital improvement costs of the Facility, Developer be treated, to the maximum extent permitted by Law, as the owner for federal income tax purposes of such portion of the Facility for which Developer is not reimbursed its total capital improvement costs for the Facility by the Public Funds Amount. TxDOT and Developer acknowledge their mutual intent that, despite the payment by Developer of 100% of the total capital improvement costs of the Facility, the payment of the Public Funds Amount by TxDOT to Developer is a reimbursement of the portion of Developer's total capital improvement costs of the Facility that are expended by Developer on behalf of, and for the benefit of, TxDOT and shall not be treated as compensation or consideration of any kind paid by TxDOT to Developer for federal income tax purposes. TxDOT will not file any documentation with the U.S. government inconsistent with this intention. (This

provision is not intended to have any bearing on ownership status under Environmental Laws regarding Hazardous Materials or on allocation of risk and liability under the CDA Documents.)

2.2.3 The Parties acknowledge that Developer's rights and obligations to finance and pay for development of the Facility, manage, operate, maintain and repair the Facility, toll the Managed Lanes and perform Renewal Work and Upgrades commence on the Effective Date notwithstanding the later commencement of the Lease, subject to, among other conditions, issuance of NTP1, NTP2, and, if applicable, NTP GP, NTP IC, and NTP ML and satisfaction of the conditions precedent to Service Commencement set forth in this Agreement.

ARTICLE 3. TOLLS

3.1 Authorization to Toll

3.1.1 Except as provided in Section 3.1.3, Developer shall have the exclusive right to (a) impose tolls upon the Users of the Managed Lanes, (b) establish, modify and adjust the rate of such tolls, and (c) enforce and collect tolls from the Users of the Managed Lanes, all in accordance with and subject to the terms and conditions contained in this Agreement, including those set forth in this Article 3 and in Exhibit 4.

3.1.2 The foregoing authorization includes the right, to the extent permitted by applicable Law, and subject to the terms and conditions set forth in Exhibit 4 and the terms, rules and regulations that may be established for uniform account maintenance and reconciliation among operators of electronically tolled facilities in the State, to fix, charge, enforce and collect Incidental Charges with respect to electronic tolling accounts managed by Developer or its Contractor, and Video Transaction Toll Premiums. Except for toll violation penalties and Incidental Charges in effect under Exhibit 4, the amount of any Incidental Charges shall not exceed the amount reasonably necessary for Developer to recover its reasonable out-of-pocket and documented costs and expenses directly incurred with respect to the items, services and work for which they are levied; provided that whenever the NTTA Tolling Services Agreement or any TxDOT Tolling Services Agreement is in effect, the provisions thereof shall govern the amount of any toll violation penalties and Incidental Charges imposed by the NTTA or TxDOT.

3.1.3 Developer has no authority or right to impose any toll, fee, charge or other amount (a) on any Managed Lanes of a Facility Segment until the Service Commencement Date for such Facility Segment or (b) for use of any portion of the Facility other than the Managed Lanes. Developer has no authority or right to impose any fee, charge or other amount for use of the Facility other than the tolls, including Video Transaction Toll Premiums, and Incidental Charges specifically authorized by this Article 3.

3.1.4 Developer shall implement toll collection systems that charge, debit and collect tolls only at or through the electronic tolling facilities physically located on the Facility Right of Way or through global positioning system technologies or other remote sensing technologies that charge, debit and collect tolls only for actual vehicular use of the Managed Lanes provided that such toll collection method is in compliance with the requirements of Section 8.7.

3.1.5 Except as provided otherwise in Sections 3.1.7, 3.3 and 3.4 and Exhibit 4, and except for toll violations not reasonably collectible, Developer shall require payment of tolls for use of the Managed Lanes.

3.1.6 Except as otherwise provided in Section 19.10, nothing in this Agreement shall obligate or be construed as obligating TxDOT to continue or cease tolls after the end of the Term.

3.1.7 With TxDOT's consent, Developer may allow for the use of the Managed Lanes or any portion thereof for a limited period of time after the applicable Service Commencement Date without imposing any fee or charge, provided Developer complies with measures to ensure that the Facility or such portion thereof is not deemed under State Law to be the conversion of a free facility to a tolled facility at the end of the free period. At Developer's request, TxDOT will confer with Developer to help identify measures to prevent conversion.

3.2 Changes in User Classifications

3.2.1 Developer has irrevocably selected a User Classification system as set forth in Exhibit 4. Developer may not change from the system selected, and may not change, add to or delete any of the User Classifications within the selected system as set forth in Exhibit 4, without TxDOT's express prior written consent pursuant to this Section 3.2.

3.2.2 If Developer desires to change from the system selected, or change, add to or delete any of the User Classifications within the selected system, Developer shall apply to TxDOT for permission to implement such change, addition or deletion at least 210 days prior to the proposed effective date of such change. Such application shall set forth:

3.2.2.1 Each proposed change, addition or deletion;

3.2.2.2 The date each change, addition or deletion shall become effective;

3.2.2.3 The length of time each change, addition or deletion shall be in effect;

3.2.2.4 The reason Developer requests each change, addition or deletion;

3.2.2.5 The effect each change, addition or deletion is likely to have upon Users and traffic patterns;

3.2.2.6 A thorough report and analysis of the effect each change, addition or deletion is anticipated to have on Developer's internal rate of return (determined using the Financial Model Formulas), including the effects on the Base Case Financial Model Update (or, if there has been no Base Case Financial Model Update, on the Base Case Financial Model) and on the assumptions and data therein; and

3.2.2.7 Such other information and data as TxDOT may reasonably request.

3.2.3 Developer's application shall be deemed granted without conditions unless within 120 days after receipt of a completed application TxDOT advises Developer that it has granted Developer's application with conditions or denied Developer's application. TxDOT may deny an application or impose conditions to granting an application in its sole discretion, including conditioning approval on new or an adjustment of compensation for TxDOT under this Agreement. TxDOT's decision shall not be subject to dispute resolution. If Developer finds TxDOT's conditions to the grant of an application to be unacceptable, Developer may withdraw the application and continue with the then-existing User Classifications. If Developer resubmits

an application after rejection or imposition of conditions, the above procedures shall apply to the resubmitted application.

3.2.4 If Developer's application is deemed granted without conditions or is granted subject to conditions acceptable to Developer, then:

3.2.4.1 Developer may implement such change in User Classification on the effective date set forth in the application, subject to such conditions, if any, imposed by TxDOT, and subject to first giving notice to the public of the change, addition or deletion in the same manner as provided in Sections D.2.a and D.2.b of Exhibit 4; and

3.2.4.2 The Parties shall promptly amend (a) Exhibit 4 to incorporate the change, addition or deletion and (b) this Agreement as necessary, in accordance with the accepted conditions.

3.3 Exempt Vehicles

3.3.1 Developer shall not levy or impose a toll, including Video Transaction Toll Premiums, or Incidental Charges, and shall not permit a toll, including Video Transaction Toll Premiums, or Incidental Charges to be levied or imposed, for or in connection with use of the Facility by any Exempt Vehicle.

3.3.2 Developer shall implement means to accurately identify and track Exempt Vehicles in order to comply with their exemption from tolls, including Video Transaction Toll Premiums, and Incidental Charges.

3.4 Emergency Suspension of Tolls

3.4.1 In the event TxDOT designates the Facility or a portion of the Facility (a) for immediate use as an Emergency evacuation route or (b) as a route to respond to a disaster proclaimed by the Governor of Texas or his/her designee, TxDOT shall have the right to order immediate suspension of tolling of the Managed Lanes or any portion of the Managed Lanes. TxDOT shall have no liability to Developer for the loss of Toll Revenues or the increase in costs and expenses attributable to such order, provided that during any period for which tolling has been suspended, TxDOT:

3.4.1.1 Concurrently suspends tolling on all other TxDOT-operated tolled facilities that are situated to directly facilitate travel from the area designated for evacuation or from the proclaimed disaster area;

3.4.1.2 Concurrently orders suspension of tolling on all other tolled facilities operated by others that are situated to directly facilitate travel from the area designated for evacuation or from the proclaimed disaster area and over which TxDOT has the authority to order such suspension; and

3.4.1.3 Lifts such order as soon as the need for Emergency evacuation or disaster response ceases.

3.4.2 TxDOT shall have no liability to Developer for the loss of Toll Revenues or the increase in costs and expenses attributable to any order to suspend tolling by any federal or State agency or instrumentality other than TxDOT to facilitate Emergency evacuation issued pursuant to applicable Law or to respond to a disaster proclaimed by the Governor of Texas or his/her designee.

3.4.3 In any time of a declared Emergency or natural disaster, as determined by the Executive Director, TxDOT shall have the right to order immediate suspension of tolling of the Managed Lanes or any portion of the Managed Lanes, as TxDOT deems appropriate. TxDOT shall have no liability to Developer for the loss of Toll Revenues or the increase in costs and expenses attributable to the hours that such order is in effect, except that TxDOT shall compensate Developer for the impact on Toll Revenues for the period that such order is in effect based on the average net Toll Revenues received during the comparable days and times over the shorter of (a) the previous six months or (b) the period commencing on the Service Commencement Date applicable to the affected Managed Lanes. Such compensation shall exclude Video Transaction Toll Premiums and shall be reduced by all avoided processing and collection fees, charges and costs, including Transaction fees and charges. In the event TxDOT has the right to suspend tolling under Sections 3.4.1 and 3.4.3, TxDOT may elect to suspend tolling under either Section 3.4.1 or 3.4.3.

3.5 Toll Revenues

3.5.1 Except as otherwise provided in this Agreement, at all times during the Term, Developer shall have the exclusive right, title, entitlement and interest in and to the Toll Revenues, subject to the terms and conditions of the CDA Documents (including TxDOT's rights to compensation in accordance with this Agreement) and the security interests therein under the Security Documents. For the avoidance of doubt, except as otherwise provided in this Agreement, the foregoing shall include the exclusive right, title, entitlement and interest in and to all tolls and other charges permitted hereunder as they accrue with respect to Transactions occurring during the Term.

3.5.2 Developer may use Toll Revenues to make any Distribution or to pay non-competitive fees and charges of Affiliates, provided Developer first pays (a) all current and delinquent amounts due to TxDOT under this Agreement or the Lease, including any compensation due under Article 5, (b) all current and delinquent costs and expenses of O&M Work or of otherwise operating and maintaining the Facility (including premiums for insurance, bonds and other performance security, and including Safety Compliance work and Handback Requirements work), (c) current and delinquent debt service, and other current and delinquent amounts, due under any Funding Agreement or Security Document, (d) all currently required or delinquent deposits to the Handback Requirements Reserve, (e) all Taxes currently due and payable or delinquent (except to the extent being contested in good faith and appropriate reserves have been established consistent with U.S. GAAP), and (f) all current and delinquent costs and expenses of Renewal Work. If Developer makes any Distribution or makes any payment to an Affiliate in violation of this provision, the same shall be deemed to be held in trust by the recipient for the benefit of TxDOT and the Collateral Agent under the senior Security Documents, and shall be payable to TxDOT or the Collateral Agent on demand. If TxDOT collects any such amounts held in trust, it shall make them available for any of the purposes set forth above and, at the request of the Collateral Agent, deliver them to the Collateral Agent net of any amounts under clause (a) above.

3.5.3 Toll Revenues shall be used first to pay all due and payable operations and maintenance costs, specifically including all amounts due to TxDOT under Sections 5.1 and 5.3, before they may be used and applied for any other purpose.

3.5.4 Developer shall have no right to use Toll Revenues to pay any debt, obligation or liability unrelated to this Agreement, the Lease, the Facility, the Work, or Developer's services under this Agreement. The foregoing does not apply to or affect Developer's right to make Distributions in accordance with Developer's governing instruments and subject to the

limitations in Section 3.5.2. For the avoidance of doubt, Developer shall have the right to use Toll Revenues to service debt required for the Facility.

3.5.5 Developer acknowledges and agrees that it shall not be entitled to receive any compensation, return on investment or other profit for providing the services contemplated by this Agreement and the Lease other than those resulting from cost savings, Toll Revenues, those items of income identified in the exclusions from the definition of Toll Revenues, Compensation Amounts and Termination Compensation in accordance with the provisions of this Agreement, and earnings thereon. The Parties acknowledge that this Agreement and the Lease contain commercially reasonable provisions and allow Developer no more than a reasonable rate of return and compensation commensurate with risk.

3.5.6 Toll Revenues shall be deposited in the appropriate account under the Facility Trust Agreement established for the purposes of holding Toll Revenues.

ARTICLE 4. FINANCING; REFINANCING

4.1 Developer Right and Responsibility to Finance

4.1.1 Developer may grant security interests in or assign the entire Developer's Interest (but not less than the entire Developer's Interest) to Lenders for purposes of securing the Facility Debt, subject to the terms and conditions contained in this Agreement and the Lease. Developer is strictly prohibited from pledging or encumbering the Developer's Interest, or any portion thereof, to secure any indebtedness of any Person other than (a) Developer, (b) any special purpose entity that owns Developer but no other assets and has powers limited to Developer, the Facility and Work, (c) a special purpose entity subsidiary owned by Developer or an entity described in clause (b) above, or (d) the PABs Issuer.

4.1.2 Developer is solely responsible for obtaining and repaying all financing, at its own cost and risk and without recourse to TxDOT, necessary for the acquisition, design, permitting, development, construction, equipping, operation, maintenance, modification, reconstruction, rehabilitation, restoration, renewal and replacement of the Facility and for the Utility Adjustment Work. Developer will pursue the necessary financing in accordance with the Facility Plan of Finance, the portions of which are or upon Financial Close will be deposited in an Intellectual Property Escrow and the remaining portions of which are attached as Exhibit 5.

4.1.3 As of Financial Close, Developer warrants and represents that it has delivered to TxDOT or to an Intellectual Property Escrow true, correct and complete copies of the Initial Funding Agreements and Initial Security Documents (other than minor ancillary documents normally delivered after financial closing and containing no new material commercial terms) and that as of the Financial Close there exists no breach or default by Developer or any Affiliate thereunder or events which with notice or the passage of time, or both, would constitute a breach or default thereunder.

4.1.4 If Developer has not entered into the Initial Funding Agreements and Initial Security Documents, on or before the Effective Date, then the following provisions shall apply:

4.1.4.1 Unless Developer or TxDOT elects to terminate this Agreement pursuant to Section 4.1.4.4, Developer shall be unconditionally obligated to enter into the Initial Funding Agreements and Initial Security Documents and complete closing for all the Initial Facility Debt (including any sub-debt), in a total amount, which when combined with all unconditional equity commitments acceptable to the Collateral Agent and any Public Funds

Amount, is sufficient to fund all capital requirements described in Exhibit 5, by not later than the Facility Financing Deadline, which may only be extended in accordance with this Section 4.1.4.1.

(a) Developer shall have the option to extend the Facility Financing Deadline under this Agreement for an additional 180 days by delivering to TxDOT not less than ten days prior to the initial Facility Financing Deadline (i) written notification of the extension and (ii) increased Financial Option Security in the total amount of $100 million, meeting the requirements of Section 5.12.6 of Volume I of the RFP (Instructions to Proposers). If Developer does not timely exercise this option, it will expire, and Developer shall be obligated to achieve Financial Close by the initial Facility Financing Deadline.

(b) The Facility Financing Deadline will not be extended on account of any Relief Event (notwithstanding any other provision of this Agreement to the contrary), except that such deadline may be extended by the period of delay in Developer's ability to achieve Financial Close directly caused by TxDOT-Caused Delay, TxDOT Change or Discriminatory Action.

4.1.4.2 Except to the extent expressly permitted in writing by TxDOT, Developer shall not be deemed to have achieved Financial Close until all of the following conditions have been satisfied:

(a) Developer has satisfied all of the conditions for commercial close delineated in Volume I of the RFP (Instructions to Proposers);

(b) Developer has delivered to TxDOT, or made available to TxDOT via an Intellectual Property Escrow, for review and comment under Section 6.3.7.1, except clause (b) thereof, drafts of those proposed Initial Funding Agreements and Initial Security Documents that will contain the material commercial terms relating to the Initial Facility Debt not later than ten days prior to the proposed date for Financial Close;

(c) TxDOT has received an update of the audit and opinion obtained from the independent model auditor that provided to TxDOT an opinion on suitability of the Base Case Financial Model, which update shall be in accordance with the provisions of Section 5.2.4;

(d) Developer has delivered to TxDOT true and complete executed copies of the direct lender agreement under Section 20.9.4, if any;

(e) All applicable parties have entered into and delivered the Initial Funding Agreements and Initial Security Documents (except to the extent that such documents are not required to be executed on such date) meeting the requirements of Section 4.1.4.1 and Developer has delivered to TxDOT or to an Intellectual Property Escrow true and complete copies of the executed Initial Funding Agreements and Initial Security Documents (other than minor ancillary documents normally delivered after financial closing and containing no new material commercial terms); and

(f) Developer has provided TxDOT with written notice of Developer's satisfaction of all the conditions of this Section 4.1.4.2.

4.1.4.3 If for any reason Developer fails to achieve Financial Close by the Facility Financing Deadline, then TxDOT shall have the liquidated damage and termination remedies set forth in Sections 17.4.4 and 19.3.4, after delivering written notice of such

Developer Default to Developer and Developer's failure to cure the same within the cure period set forth in Section 17.1.2.1; provided, however, that Developer shall not be deemed to be in Developer Default and TxDOT will not be entitled to such liquidated damage remedies (but nevertheless shall be entitled to terminate this Agreement in accordance with the terms hereof) if such failure is directly attributable to:

(a) TxDOT's failure to obtain NEPA Approval for Segment 1 and, if applicable, Segment 2 prior to the deadline for Financial Close, or litigation challenging a NEPA Approval that is filed before lapse of the applicable statute of limitations and remains pending on the Facility Financing Deadline;

(b) A drop in the State's credit rating below A+ from Standard & Poor's and A2 from Moody's;

(c) If PABs are part of the initial financing under Developer's Facility Plan of Finance, any delay in identifying the PABs Issuer or any delay by or refusal of the PABs Issuer to issue bonds in the amount that Developer's underwriters are prepared to underwrite, provided that such refusal or delay is not due to any fault or less than diligent efforts of Developer, including Developer's failure to satisfy all requirements that it is obligated to satisfy under the PABs Agreement. If the Developer's financing schedule does not include normal and customary time periods for carrying out the ordinary and necessary functions of a conduit issuer of tax-exempt bonds, failure of the PABs Issuer to meet that schedule shall not be considered a delay;

(d) If PABs are part of the initial financing under Developer's Facility Plan of Finance, (i) the refusal of the PABs Issuer's counsel to authorize closing of the PABs where the bond counsel is ready to give an unqualified opinion regarding the validity of the issuance of the PABs and the tax exempt status of interest paid on the PABs, unless the basis for such refusal is that it would be unreasonable for bond counsel to deliver the opinion or (ii) the delay of the PABs Issuer's counsel in authorizing closing of the PABs. If the Developer's financing schedule does not include normal and customary time periods for carrying out the ordinary and necessary functions of such counsel to a conduit issuer of tax-exempt bonds, failure of the PABs Issuer's counsel to meet that schedule shall not be considered a delay;

(e) If PABs are part of the initial financing under Developer's Facility Plan of Finance, the failure of the PABs Issuer or TxDOT to comply with the terms of the PABs Agreement or the withdrawal, recission or revocation of the PABS allocation by the USDOT Secretary in the amount approved by the USDOT Secretary where such failure directly causes inability to achieve Financial Close by the deadline therefor.

(f) If TIFIA credit assistance is part of the initial financing under Developer's Facility Plan of Finance, the failure of the TIFIA Joint Program Office to close financing or provide financing on or prior to the deadline for Financial Close despite commercially reasonable efforts by Developer to do so (including making reasonable financial and commercial concessions as necessary and appropriate under the circumstances); provided, however, that the following shall be deemed not to be a failure by TIFIA to close financing by the relevant deadline for purposes of this paragraph (i) the lack of TIFIA contract and budget authority with respect to the Facility for amounts in excess of $70 million (with the failure of TIFIA to provide financing due to the lack of TIFIA contract and budget authority with respect to the Facility for an amount at least equal to $70 million constituting such a failure) or (ii) the failure of Developer, prior to the expiration of the TIFIA conditional commitment, to satisfy any of the conditions precedent for the TIFIA financing set forth in the conditional term sheet and/or conditional credit agreement provided to TxDOT pursuant to the early

development agreement between TxDOT and the TIFIA Joint Program Office, as amended by the letter to TxDOT by the Director, TIFIA Credit Program, and as further modified by the terms and conditions set forth in or appended to the letter of support from TIFIA submitted with the Proposal; or

(g) The issuance of a temporary restraining order or other form of injunction by a court with jurisdiction that prohibits prosecution of any portion of the Work that remains pending on the Facility Financing Deadline.

4.1.4.4 Developer or TxDOT may terminate this Agreement without fault, Claim or penalty if Financial Close does not occur by the Facility Financing Deadline and such failure is directly attributable to any of the contingencies set forth in Section 4.1.4.3; provided, however, if such failure is directly attributable to the contingency set forth in Section 4.1.4.3(a), notice of termination under this Section 4.1.4.4 shall obligate TxDOT and Developer to engage in good faith negotiations for a minimum period of 30 days before such termination is effective. In the event of such a termination, all the CDA Documents and the Independent Engineer Agreement shall be deemed rescinded, and TxDOT shall promptly return to Developer the original of the Financial Option Security.

4.1.4.5 TxDOT will bear the risk and have the benefit of changes in market interest rates (either positive or negative) for the period beginning at 10:00 a.m. on November 24, 2008 and ending on the earlier of (a) 10:00 a.m. on the date of Financial Close or (b) 10:00 a.m. on December 26, 2009 (the "last date of the market interest rate protection period"). The interest rate adjustment will be based on the movement, if any, in the benchmark bond(s) or SWAP rates underlying the financing contained in Part C of Exhibit 5 (the "Benchmark Rate(s)"). Based on a reading taken from the sources provided in Part C of Exhibit 5 on the last date of the market interest rate protection period, Developer and TxDOT shall both adjust the Base Case Financial Model as of such date to reflect the changes (if any) in the Benchmark Rate(s) and any revisions approved by the Parties but not any potential errors identified as part of the updated audit opinion provided pursuant to Section 5.2.4 and not any planned or actual changes to the Facility Plan of Finance. TxDOT and Developer will use the Base Case Financial Model, as so adjusted, to calculate the change, positive or negative, in the Public Funds Amount, and will apply such change on a pro rata basis. For the avoidance of doubt, the Base Case Financial Model shall not be adjusted for the terms and conditions included in the Initial Funding Agreements and Initial Security Documents.

4.1.4.6 The Parties shall complete Exhibit 6 at Financial Close.

4.1.5 Within two Business Days after the date of Financial Close, TxDOT shall return to Developer the original of the Financial Option Security.

4.1.6 Developer shall deliver copies of any ancillary supporting documents (e.g., UCC filing statements) to TxDOT within 30 days after the date of Financial Close.

4.1.7 Except as otherwise provided in Section 4.1.4.5, Developer exclusively bears the risk of any changes in the interest rate, payment provisions or the other terms of its financing.

4.1.8 Notwithstanding the foreclosure or other enforcement of any security interest created by a Security Document, Developer shall remain liable to TxDOT for the payment of all sums owing to TxDOT under this Agreement and the Lease and the performance and observance of all of Developer's covenants and obligations under this Agreement and the Lease.

4.2 No TxDOT Liability

4.2.1 TxDOT shall have no obligation to pay debt service on any debt issued or incurred in connection with the Facility or this Agreement. TxDOT shall have no obligation to join in, execute or guarantee any note or other evidence of indebtedness incurred in connection with the Facility or this Agreement, any other Funding Agreement or any Security Document.

4.2.2 None of the State, TxDOT, the Texas Transportation Commission or any other agency, instrumentality or political subdivision of the State, and no board member, director, officer, employee, agent or representative of any of them, has any liability whatsoever for payment of the principal sum of any Facility Debt, any other obligations issued or incurred by any Person described in Section 4.3.2 in connection with this Agreement, the Lease or the Facility, or any interest accrued thereon or any other sum secured by or accruing under any Funding Agreement or Security Document. Except for a violation by TxDOT of its express obligations to Lenders set forth in Article 20 and except as set forth in Section 3.5.2, no Lender is entitled to seek any damages or other amounts from TxDOT, whether for Facility Debt or any other amount. TxDOT's review of any Funding Agreements or Security Documents or other Facility financing documents is not a guarantee or endorsement of the Facility Debt, any other obligations issued or incurred by any Person described in Section 4.3.2 in connection with this Agreement, the Lease or the Facility, or any traffic and revenue study, and is not a representation, warranty or other assurance as to the ability of any such Person to perform its obligations with respect to the Facility Debt or any other obligations issued or incurred by such Person in connection with this Agreement, the Lease or the Facility, or as to the adequacy of the Toll Revenues to provide for payment of the Facility Debt or any other obligations issued or incurred by such Person in connection with this Agreement, the Lease or the Facility. For the avoidance of doubt, the foregoing does not affect TxDOT's liability to Developer under Article 19 and Exhibit 20 for Termination Compensation that is measured in whole or in part by outstanding Facility Debt.

4.2.3 TxDOT shall not have any obligation to any Lender pursuant to this Agreement, except, if the Collateral Agent has notified TxDOT of the existence of its Security Documents, for the express obligations to Lenders set forth in Article 20 and Section 3.5.2 or in any direct lender agreement pursuant to Section 20.9.4. The foregoing does not preclude Lender enforcement of this Agreement against TxDOT where the Lender has succeeded to the rights, title and interests of Developer under the CDA Documents, whether by way of assignment or subrogation.

4.3 Mandatory Terms of Facility Debt, Funding Agreements and Security Documents

Facility Debt, Funding Agreements and Security Documents and any amendments or supplements thereto, shall comply with the following terms and conditions.

4.3.1 The Security Documents may only secure Facility Debt the proceeds of which are obligated to be used exclusively for the purposes of (a) acquiring, designing, permitting, building, constructing, improving, equipping, modifying, operating, maintaining, reconstructing, restoring, rehabilitating, renewing or replacing the Facility, performing the Utility Adjustment Work or the Renewal Work, or performing other Work, (b) paying interest on such Facility Debt and principal and interest on other existing Facility Debt, (c) paying reasonable development fees to Developer-Related Entities or to the Design-Build Contractor or its affiliates for services related to the Facility, (d) paying fees and premiums to any Lender of the Facility Debt or such Lender's agents, (e) paying costs and fees in connection with the closing of any permitted Facility Debt, (f) making payments due under the CDA Documents to TxDOT or any other Person, (g) funding reserves required under this Agreement, Funding Agreements or Security

Documents, applicable securities laws, or Environmental Laws, (h) making Distributions, but only from the proceeds of Refinancings permitted under this Agreement, and (i) refinancing any Facility Debt under clauses (a) through (h) above.

4.3.2 The Security Documents may only secure Facility Debt and Funding Agreements issued and executed by (a) Developer, (b) its permitted successors and assigns, (c) a special purpose entity that owns Developer but no other assets and has purposes and powers limited to the Facility and the Work, (d) any special purpose subsidiary wholly owned by Developer or such entity, or (e) the PABs Issuer.

4.3.3 Facility Debt under a Funding Agreement and secured by a Security Document must be issued and held only by Institutional Lenders who qualify as such at the date the Security Document is executed and delivered (or, if later, at the date any such Institutional Lender becomes a party to the Security Document), except that (a) qualified investors other than Institutional Lenders may acquire and hold interests in Facility Debt in connection with the securitization or syndication of Facility Debt through a public or private offering, but only if an Institutional Lender acts as Collateral Agent for such Facility Debt, (b) PABs may be issued, acquired and held by parties other than Institutional Lenders but only if an Institutional Lender acts as indenture trustee for the PABs and (c) Subordinate Debt is not subject to this provision.

4.3.4 The Security Documents as a whole securing each separate issuance of debt shall encumber the entire Developer's Interest, provided that the foregoing does not preclude subordinate Security Documents or equipment lease financing.

4.3.5 No Security Document or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against Developer's Interest shall extend to or affect the fee simple interest of TxDOT in the Facility or the Facility Right of Way or TxDOT's rights or interests under the CDA Documents.

4.3.6 Each note, bond or other negotiable or non-negotiable instrument evidencing Facility Debt, or evidencing any other obligations issued or incurred by any Person described in Section 4.3.2 in connection with this Agreement, the Lease or the Facility must include or refer to a document controlling or relating to the foregoing that includes a conspicuous recital to the effect that payment of the principal thereof and interest thereon is a valid claim only as against the obligor and the security pledged by Developer or the obligor therefor, is not an obligation, moral or otherwise, of the State, TxDOT, the Texas Transportation Commission, any other agency, instrumentality or political subdivision of the State, or any elected official, board member, director, officer, employee, agent or representative of any of them, and neither the full faith and credit nor the taxing power of the State, TxDOT, the Texas Transportation Commission or any other agency, instrumentality or political subdivision of the State is pledged to the payment of the principal thereof and interest thereon.

4.3.7 Each Funding Agreement and Security Document containing provisions regarding default by Developer shall require, or incorporate a requirement by reference to another Funding Agreement or Security Document that requires, that if Developer is in default thereunder and the Collateral Agent gives notice of such default to Developer, then the Collateral Agent shall also give concurrent notice of such default to TxDOT. Each Funding Agreement and Security Document that provides Lender remedies for default by Developer or the borrower shall require that the Collateral Agent deliver to TxDOT, concurrently with delivery to Developer or any other Person, every notice of election to sell, notice of sale or other notice required by Law or by the Security Document in connection with the exercise of remedies under the Funding Agreement or Security Document.

4.3.8 No Funding Agreement or Security Document that may be in effect during any part of the period that the Handback Requirements apply shall grant to the Lender any right to apply funds in the Handback Requirements Reserve or to apply proceeds from any Handback Requirements Letter of Credit to the repayment of Facility Debt, to any other obligation owing the Lender or to any other use except the uses set forth in Section 8.11.3, and any provision purporting to grant such right shall be null and void, provided, however, that (a) any Lender or Substituted Entity shall, following foreclosure or transfer in lieu of foreclosure, automatically succeed to all rights, claims and interests of Developer in and to the Handback Requirements Reserve, and (b) an exception may be made for excess funds described in Section 8.11.4.2.

4.3.9 Each relevant Funding Agreement and Security Document that may be in effect during any part of the period that the Handback Requirements apply shall expressly permit, without condition or qualification, or incorporate permission by reference to another Funding Agreement or Security Document that expressly permits, without condition or qualification, Developer to (a) use and apply funds in the Handback Requirements Reserve in the manner contemplated by the CDA Documents and (b) issue additional Facility Debt, secured by the Developer's Interest, for the added limited purposes of funding work pursuant to Handback Requirements and Safety Compliance as set forth in Section 12.4 and (c) otherwise comply with its obligations in the CDA Documents regarding Renewal Work, the Renewal Work Schedule, the Handback Requirements and the Handback Requirements Reserve. Subject to the foregoing, any protocols, procedures, limitations and conditions concerning draws from the Handback Requirements Reserve set forth in any Funding Agreement or Security Document or the issuance of additional Facility Debt as described in clause (b) above shall be consistent with the permitted uses of the Handback Requirements Reserve, and shall not constrain Developer's or TxDOT's access thereto for such permitted uses, even during the pendency of a default under the Funding Agreement or Security Document. For the avoidance of doubt, (i) the Lenders then holding Facility Debt may reasonably limit additional Facility Debt if other funds are then readily available to Developer for the purpose of funding the Work; (ii) no Lender then holding Facility Debt is required hereby to grant *pari passu* lien or payment status to any such additional Facility Debt; and (iii) the Lenders then holding Facility Debt may impose reasonable, customary requirements as to performance and supervision of the Work.

4.3.10 Each Funding Agreement and Security Document shall expressly state, or incorporate a statement by reference to another Funding Agreement or Security Document that expressly states, that the Lender shall not name or join TxDOT, the Texas Transportation Commission, any other agency, instrumentality or political subdivision of the State, or any elected official, board member, director, officer, employee, agent or representative of any of them in any legal proceeding seeking collection of the Facility Debt or other obligations secured thereby or the foreclosure or other enforcement of the Funding Agreement or Security Document, unless and except to the extent that (a) joinder of TxDOT as a necessary party is required by applicable Law in order to confer jurisdiction on the court over the dispute with Developer or to enforce Lender remedies against Developer and (b) the complaint against TxDOT states no claim or cause of action for a lien or security interest on, or to foreclose against, TxDOT's right, title and interest in and to the Facility and Facility Right of Way, or for any liability of TxDOT on the indebtedness.

4.3.11 Each Funding Agreement and Security Document shall expressly state, or incorporate a statement by reference to another Funding Agreement or Security Document that expressly states, that the Lender shall not seek any damages or other amounts from TxDOT, the Texas Transportation Commission, any other agency, instrumentality or political subdivision of the State, or any elected official, board member, director, officer, employee, agent or representative of any of them, whether for Facility Debt or any other amount, except (a) damages from TxDOT for a violation by TxDOT of its express obligations to Lenders set forth in

Section 3.5.2 and Article 20 or in any direct lender agreement pursuant to Section 20.9.4 and (b) amounts due from TxDOT under this Agreement where the Lender has succeeded to the rights, title and interests of Developer under the CDA Documents, whether by way of assignment or subrogation.

4.3.12 Each Funding Agreement and Security Document shall be consistent with Section 3.5.3.

4.3.13 Each Funding Agreement and Security Document shall expressly state, or incorporate a statement by reference to another Funding Agreement or Security Document that expressly states, that the Lender and the Collateral Agent shall respond to any request from TxDOT or Developer for consent to a modification or amendment of this Agreement within a reasonable period of time.

4.3.14 Each Funding Agreement and Security Document shall expressly state, or incorporate a statement by reference to another Funding Agreement or Security Document that expressly states, that the Lender agrees to exclusive jurisdiction and venue in the federal and State courts in Travis County in any action by or against TxDOT or its successors and assigns.

4.4 Refinancing

4.4.1 Right of Refinancing

Developer from time to time may consummate Refinancings under the Funding Agreements on terms and conditions acceptable to Developer. TxDOT shall have no obligations or liabilities in connection with any Refinancing except for the rights, benefits and protections set forth in Article 20 (but only if the Refinancing satisfies the conditions and limitations set forth in Section 20.1).

4.4.2 Notice of Refinancing

4.4.2.1 In connection with any Refinancing except an Exempt Refinancing under clause (b), (c) or (d) of the definition of Exempt Refinancing, Developer shall deliver, not later than 14 days prior to the proposed date for closing the Refinancing, either to TxDOT or to an Intellectual Property Escrow for access and review by TxDOT, the following:

(a) Draft proposed Funding Agreements and Security Documents (other than minor ancillary documents normally delivered after financial closing and containing no new material commercial terms); and

(b) The Pre-Refinancing Data.

4.4.2.2 In connection with any Refinancing except an Exempt Refinancing under clause (b), (c) or (d) of the definition of Exempt Refinancing, Developer shall deliver, not later than 30 days after close of the Refinancing, either to TxDOT or to an Intellectual Property Escrow for access and review by TxDOT the following.

(a) Copies of all signed Funding Agreements and Security Documents in connection with the Refinancing; and

(b) The Refinancing Data.

4.4.3 Refinancing Limitations, Requirements and Conditions

4.4.3.1 If TxDOT renders any assistance or performs any requested activity in connection with a Refinancing apart from delivering a consent and estoppel certificate under Section 20.9 or any direct lender agreement pursuant to Section 20.9.4, then Developer shall reimburse TxDOT all TxDOT's Recoverable Costs and other fees, costs and expenses TxDOT incurs in connection with rendering any such assistance or performing any such activity. Developer also shall reimburse TxDOT's Recoverable Costs of assessing the Refinancing Gain and TxDOT's share thereof, if any. If TxDOT delivers to Developer a written invoice therefor at least two Business Days prior to the scheduled date of closing, then Developer shall reimburse such costs at closing. If TxDOT does not deliver a written invoice at least two Business Days prior to closing, then it may deliver such invoice within 30 days after receiving notice of closing and Developer shall reimburse TxDOT for such costs within ten days after TxDOT delivered the invoice to Developer. If for any reason the Refinancing does not close, Developer shall reimburse such TxDOT's Recoverable Costs and such other fees, costs and expenses within ten days after TxDOT delivers to Developer a written invoice therefor.

4.4.3.2 The Refinancing Gain shall be calculated after deducting payment of such TxDOT's Recoverable Costs and such other fees and expenses, as well as Developer's reasonable professional costs and expenses directly associated with the Refinancing.

ARTICLE 5. TXDOT COMPENSATION; FINANCIAL MODEL UPDATES; PAYMENT OF PUBLIC FUNDS; APPROPRIATIONS

5.1 Revenue Payments

TxDOT's rights to payment related to Toll Revenues for the Facility are set forth in Part A of Exhibit 7. Developer agrees to pay TxDOT such amounts as compensation to TxDOT in exchange for TxDOT's grant to Developer of rights to impose and receive tolls pursuant to this Agreement and as rent for the use and operation of the Facility pursuant to the Lease. For federal income tax purposes, the Revenue Payment Amount is allocated as set forth in Part A of Exhibit 7.

5.2 Financial Model and Model Audit Updates

5.2.1 Developer shall run new projections and calculations under the Financial Model Formulas to establish a Base Case Financial Model Update:

5.2.1.1 Whenever there occurs a Compensation Event;

5.2.1.2 Whenever there occurs a Refinancing with Refinancing Gain in which TxDOT participates;

5.2.1.3 Whenever the CDA Documents are amended and the Parties agree that the amendment has a material effect on future costs or Toll Revenues;

5.2.1.4 Whenever a Relief Event extends the Term; and

5.2.1.5 If and when there occurs an initial financing with PABs or TIFIA for which TxDOT receives compensation under Part B, Section 5 of Exhibit 7.

5.2.2 Base Case Financial Model Updates pursuant to Section 5.2.1.3 require the mutual written approval of the Parties. Where the Base Case Financial Model Update is

pursuant to Section 5.2.1.1, TxDOT shall have the right to challenge, according to the Dispute Resolution Procedures, the validity, accuracy or reasonableness of any Base Case Financial Model Update or the related updated and revised assumptions and data. TxDOT shall have 90 days after receiving written notice from Developer that the Base Case Financial Model Update has been deposited in an Intellectual Property Escrow to commence action under the Dispute Resolution Procedures. In the event of a challenge, the immediately preceding Base Case Financial Model Update that has not been challenged (or, if there has been no unchallenged Base Case Financial Model Update, the Base Case Financial Model) shall remain in effect pending the outcome of the challenge or until a new Base Case Financial Model Update is issued and unchallenged.

5.2.3 In no event shall the Financial Model Formulas be changed except with the prior written approval of both Parties, each in its sole discretion.

5.2.4 Within two Business Days after the Effective Date, and within two Business Days after the last date of the market interest rate protection period under Section 4.1.4.5, Developer shall deliver to TxDOT an update of the audit and opinion obtained from the independent model auditor that provided to TxDOT an opinion on suitability of the Base Case Financial Model. Each updated audit and opinion shall (a) be co-addressed to TxDOT, and (b) expressly identify TxDOT as an entity entitled to rely thereon. The updated audit and opinion to be delivered within two Business Days after the last date of the market interest rate protection period shall take into account only the adjustments identified in Section 4.1.4.5.

5.2.5 If TxDOT issues NTP GP, NTP IC, or NTP ML the Parties shall automatically be deemed to have adopted a Base Case Financial Model Update based on the respective assumptions in the Ultimate Scope Financial Model reflecting the General Purpose Lane Capacity Improvement, Interchange Capacity Improvement, or Managed Lane Capacity Improvement, as appropriate. If any Base Case Financial Model Updates have been approved prior to issuing any of NTP GP, NTP IC, or NTP ML, then the Base Case Financial Model Update that reflects the impact of those issuances of the NTP's shall be based on all such prior approved Base Case Financial Model Updates.

5.2.6 If a Base Case Financial Model Update occurs prior to the Base Case Financial Model adjustment under Section 4.1.4.5, then concurrently with such adjustment the then Base Case Financial Model Update shall be revised to incorporate the effect of such adjustment.

5.3 Refinancing Gain

TxDOT's rights to a portion of any Refinancing Gain, and to gain from an initial financing, including with PABs or TIFIA where not indicated in the Facility Plan of Finance, are set forth in Part B of Exhibit 7. Developer agrees to pay TxDOT such amount as compensation to TxDOT in exchange for TxDOT's grant to Developer of rights to impose and receive tolls pursuant to this Agreement and as rent for the use and operation of the Facility pursuant to the Lease. For federal income tax purposes, the payment to TxDOT of Refinancing Gain or gain from such an initial financing is allocated as set forth in Part B of Exhibit 7.

5.4 Payment of Public Funds

Developer's rights to receive payment of the Public Funds Amount, as reimbursement pursuant to Section 2.2.2, are set forth in Part C of Exhibit 7.

5.5 Payment of HOV Discount

Developer's rights to receive payment of the HOV discount are set forth in Part D of Exhibit 7.

5.6 Interoperability Fee Adjustments

Adjustments associated with the Interoperability Fee are set forth in Part E of Exhibit 7.

5.7 TxDOT Monetary Obligations

All TxDOT monetary obligations under the CDA Documents are subject to appropriation by the Texas Legislature; however, in the absence of such appropriation, such monetary obligations shall be payable solely from other unencumbered lawfully available funds of TxDOT (whether available at such time or in the future) that are not funds appropriated by the Texas Legislature. TxDOT shall submit a request in accordance with applicable Law to obtain an appropriation from the Texas Legislature, or shall perform actions permitted by Law to obtain, designate, or use any other lawfully available funds that are not funds appropriated by the Texas Legislature. This Section 5.7 applies to all monetary obligations of TxDOT set forth in the CDA Documents, notwithstanding any contrary provisions of the CDA Documents. The CDA Documents do not create a debt under the Texas Constitution.

ARTICLE 6. FACILITY PLANNING AND APPROVALS; REVIEW AND OVERSIGHT; PUBLIC INFORMATION

6.1 Preliminary Planning and Engineering Activities; Site Conditions

6.1.1 Developer shall perform or cause to be performed all engineering activities appropriate for development of the Facility and the Utility Adjustments in accordance with the CDA Documents and Good Industry Practice, including (a) technical studies and analyses; (b) geotechnical investigations; (c) right-of-way mapping, surveying and appraisals; (d) Utility subsurface investigations and mapping; (e) Hazardous Materials investigations; and (f) design and construction surveys.

6.1.2 Except to the extent that Developer is entitled to relief under this Agreement for Relief Events, is entitled to compensation under clause (i) or (q) of the definition of Compensation Event or under Section 7.9.3, or is entitled to the Hazardous Material risk allocation terms of Exhibit 11, and except to the extent TxDOT is required to serve as the generator and arranger of Pre-existing Hazardous Materials under Section 7.9.5, Developer shall bear the risk of any incorrect or incomplete review, examination and investigation by it of the Site or the Existing Improvements and surrounding locations, and of any incorrect or incomplete information resulting from preliminary engineering activities conducted by Developer, TxDOT or any other Person. TxDOT makes no warranties or representations as to any surveys, data, reports or other information provided by TxDOT or other Persons concerning surface conditions and subsurface conditions, including the presence of Utilities, Hazardous Materials, contaminated groundwater, archeological, paleontological and cultural resources, and Threatened or Endangered Species, affecting the Site, the Existing Improvements or surrounding locations. Developer acknowledges that such information is for Developer's reference only and has not been verified.

6.1.3 Except to the extent that Developer is entitled to relief under this Agreement for Relief Events, is entitled to compensation under clause (i) or (q) of the definition of Compensation Event or under Section 7.9.3, or is entitled to the Hazardous Material risk allocation terms of Exhibit 11, and except to the extent TxDOT is required to serve as the generator and arranger of Pre-existing Hazardous Materials under Section 7.9.5, Developer shall bear the risk of all conditions occurring on, under or at the Site and the Existing Improvements, including (a) physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area, (b) changes in surface topography, (c) variations in subsurface moisture content, (d) Utility facilities, (e) the presence or discovery of Hazardous Materials, including contaminated groundwater, (f) the discovery at, near or on the Facility Right of Way of any archeological, paleontological or cultural resources, and (g) the discovery at, near or on the Facility Right of Way of any Threatened or Endangered Species.

6.2 Governmental Approvals and Third Party Agreements

6.2.1 As of the Effective Date, TxDOT has obtained certain of the TxDOT-Provided Approvals based on the schematic contained in the Reference Information Documents. TxDOT retains responsibility for processing all other TxDOT-Provided Approvals based on the schematic contained in the Reference Information Documents that it has not obtained as of the Effective Date. Developer shall obtain all other Governmental Approvals and, except to the extent the CDA Documents expressly provide TxDOT is responsible therefor, all third party approvals and agreements required in connection with the Facility, the Facility Right of Way or the Work, including any modifications, renewals and extensions of the TxDOT-Provided Approvals, including those required in connection with a Compensation Event. Developer shall deliver to TxDOT true and complete copies of all new or amended Governmental Approvals and third party approvals and agreements.

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

6.2.3 In the event Developer's design differs from the schematic contained in the Reference Information Documents upon which the TxDOT-Provided Approvals were based, including differences due to any alternative technical concepts approved by TxDOT and described in Exhibit 2, as between TxDOT and Developer, Developer shall be fully responsible for all necessary actions, and shall bear all risk of delay and all risk of increased cost, resulting from or arising out of any associated change in the Facility location and design, including (a) conducting all necessary environmental studies and preparing all necessary environmental documents in compliance with applicable Environmental Laws, (b) obtaining and complying with all necessary new Governmental Approvals (including any modifications, renewals and extensions of the TxDOT-Provided Approvals, and other existing Governmental Approvals), and (c) bearing all risk and cost of litigation. The foregoing provision shall not apply, however, in the case of a Compensation Event under clause (l) of the definition of Compensation Event and a Relief Event under clause (p) of the definition of Relief Event. TxDOT and FHWA will independently evaluate all environmental studies and documents and fulfill the other responsibilities assigned to them by 23 CFR Part 771.

6.2.4 In the event Developer is unable to obtain necessary Governmental Approvals for any design that differs from the schematic contained in the Reference Information Documents upon which TxDOT-Provided Approvals were based, including differences due to any alternative technical concepts approved by TxDOT and described in Exhibit 2, Developer

shall be obligated to design and construct the Facility according to the design described in the Reference Information Documents upon which the TxDOT-Provided Approvals were based, and no such circumstance shall constitute a TxDOT-Caused Delay, TxDOT Change, Relief Event, Compensation Event or other basis for any Claim.

6.2.5 If Developer pursues Additional Properties outside the Facility Right of Way, or any other modification of or Deviation from any Governmental Approvals, including TxDOT-Provided Approvals, Developer shall first comply with, and obtain any consent or waiver required pursuant to, then-existing agreements between TxDOT and other Governmental Entities. These agreements include the following:

6.2.5.1 Memorandum of Understanding between the Office of the Governor, Economic Development and Tourism Division and TxDOT, the Texas Parks and Wildlife Department, the Texas Commission on the Arts and the Texas Historical Commission (December 2003 – to promote tourism in Texas);

6.2.5.2 Memorandum of Agreement between TxDOT and Texas Parks and Wildlife Department for Finalization of 1998 MOU, Concerning Habitat Descriptions and Mitigation (August 2, 2001);

6.2.5.3 Memorandum of Agreement Between the Texas Department of Transportation and the Texas Natural Resource Conservation Commission (applicable to its successor agency the Texas Commission on Environmental Quality) (May 2, 2002);

6.2.5.4 First Amended Programmatic Agreement among the Federal Highway Administration, Texas State Historic Preservation Officer, Advisory Council on Historic Preservation and the Texas Department of Transportation (December 28, 2005);

6.2.5.5 Memorandum of Understanding between the Texas Department of Transportation and the Texas Parks and Wildlife Department Regarding Mitigation Banking (December 7, 2005); and

6.2.5.6 Program Level Agreement for Biological Evaluations and for the Development of Further Endangered Species Act Programmatic Agreement among the Texas Department of Transportation, FHWA and U.S. Fish and Wildlife Service (August 26, 2005).

Upon Developer's request, TxDOT will cooperate with Developer in updating the foregoing list and providing Developer with copies of the applicable agreements between TxDOT and other Governmental Entities.

6.2.6 At Developer's request, TxDOT shall reasonably assist and cooperate with Developer in obtaining from Governmental Entities the Governmental Approvals (including any modifications, renewals and extensions of existing Governmental Approvals from Governmental Entities) required to be obtained by Developer under the CDA Documents. TxDOT and Developer shall work jointly to establish a scope of work and budget for TxDOT's Recoverable Costs related to the assistance and cooperation TxDOT will provide. Subject to any agreed scope of work and budget and to any rights of Developer in the case of a Compensation Event, Developer shall fully reimburse TxDOT for all costs and expenses, including TxDOT's Recoverable Costs, it incurs in providing such cooperation and assistance, including those incurred to conduct further or supplemental environmental studies. Without limiting the foregoing, subject to any agreed scope of work and budget and to any rights of Developer in the case of a Compensation Event, Developer shall fully reimburse TxDOT for all costs and expenses, including TxDOT's Recoverable Costs, it incurs in carrying out the TxDOT actions.

6.2.7 Developer shall comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect all Governmental Approvals, including performance of all environmental mitigation measures required by the CDA Documents or Governmental Approvals, except to the extent that responsibility for performance of such measures is expressly assigned to TxDOT in the CDA Documents.

6.2.8 In the event that any Governmental Approvals required to be obtained by Developer must formally be issued in TxDOT's name, Developer shall undertake necessary efforts to obtain such approvals subject to TxDOT's reasonable cooperation with Developer, at Developer's expense (except in connection with a Compensation Event), in accordance with Section 6.2.6, including execution and delivery of appropriate applications and other documentation in form approved by TxDOT. Refer to Section 4.2 of the Technical Provisions for more specific provisions on applications in TxDOT's name for Environmental Approvals.

6.2.9 In the event that TxDOT or FHWA must act as the lead agency and directly coordinate with a Governmental Entity in connection with obtaining Governmental Approvals which are the responsibility of Developer, Developer shall provide all necessary support to facilitate the approval, mitigation or compliance process. Such support shall include conducting necessary field investigations, surveys, and preparation of any required reports, documents and applications.

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

6.2.11 Developer shall not enter into any agreement with any Governmental Entity, Utility Owner, railroad, property owner or other third party having regulatory jurisdiction over any aspect of the Facility or Work or having any property interest affected by the Facility or the Work that in any way purports to obligate TxDOT, or states or implies that TxDOT has an obligation, to the third party to carry out any installation, design, construction, maintenance, repair, operation, control, supervision, regulation or other activity after the end of the Term, unless TxDOT otherwise approves in writing in its sole discretion. Developer has no power or authority to enter into any such agreement with a third party in the name or on behalf of TxDOT.

6.3 Submittal, Review and Approval Terms and Procedures

6.3.1 General

6.3.1.1 Wherever in the CDA Documents Developer is obligated to make a Submittal to TxDOT, Developer shall also concurrently submit a duplicate thereof to the Independent Engineer. Wherever in the CDA Documents Developer is obligated to make a submittal to the Independent Engineer, Developer shall also concurrently submit a duplicate thereof to TxDOT. The foregoing provision shall not apply wherever a provision of the CDA Documents expressly states that no duplicate or copy is required to be submitted to TxDOT or the Independent Engineer.

6.3.1.2 This Section 6.3 sets forth uniform terms and procedures that shall govern all Submittals to TxDOT pursuant to the CDA Documents or Facility Management Plan and component plans thereunder. In the event of any irreconcilable conflict between the provisions of this Section 6.3 and any other provisions of the CDA Documents or Facility Management Plan and component plans thereunder concerning submission, review and

approval procedures, this Section 6.3 shall exclusively govern and control, except to the extent that the conflicting provision expressly states that it supersedes this Section 6.3.

6.3.2 Time Periods

6.3.2.1 Whenever TxDOT is entitled to review and comment on, or to affirmatively approve, a Submittal, TxDOT shall have a period of 14 days to act after the date it receives an accurate and complete Submittal, together with a completed transmittal form in form to be mutually agreed and all necessary information and documentation concerning the subject matter, except as otherwise provided below.

6.3.2.2 The time periods for the Independent Engineer to review and comment on a Submittal shall be as set forth in the Independent Engineer Agreement, and except as specifically provided otherwise in the Independent Engineer Agreement, shall be several days shorter than the time periods available to TxDOT, to enable TxDOT to take into consideration the comments and recommendations of the Independent Engineer before TxDOT delivers its own responses.

6.3.2.3 If any provision of the CDA Documents expressly provides a longer or shorter period for TxDOT or the Independent Engineer to act, such period shall control over the foregoing time periods.

6.3.2.4 If at any given time TxDOT or the Independent Engineer is in receipt of more than (a) ten concurrent Submittals in the aggregate (or other number of aggregate concurrent Submittals mutually agreed in writing by TxDOT and Developer) that are subject to TxDOT's review and comment or approval or (b) the maximum number of concurrent Submittals of any particular type set forth in any other provision of the CDA Documents, TxDOT may extend the applicable period for it and the Independent Engineer to act to that period in which TxDOT and the Independent Engineer can reasonably accommodate the Submittals under the circumstances, or such other period of extension set forth in any other provision of the CDA Documents, and no such extension shall constitute a TxDOT-Caused Delay, TxDOT Change, Relief Event, Compensation Event or other basis for any Claim. However, if at any time TxDOT or the Independent Engineer is in receipt of some Submittals subject to clause (a) above and some Submittals subject to clause (b) above, then the higher number of Submittals shall be used to determine whether TxDOT may extend the applicable period. Submittals are deemed to be concurrent to the extent the review time periods available to TxDOT under this Section 6.3.2 regarding such Submittals overlap. Whenever TxDOT is in receipt of excess concurrent Submittals, Developer may establish by written notice to TxDOT and the Independent Engineer an order of priority for processing such Submittals; and TxDOT and the Independent Engineer shall comply with such order of priority. Refer to Sections 6.5.1, 7.2.4 and 7.3.1 of the Technical Provisions for maximum concurrent Utility Submittals, Submittals of Acquisition Packages and Submittals of Facility ROW maps, and for extensions of time in the case of Utility Submittals, Acquisition Packages and Facility ROW maps in excess of the maximum.

6.3.2.5 All time periods for TxDOT or the Independent Engineer to act shall be extended by the period of any delay caused by any Relief Event set forth in clauses (a), (b), (c), (e), (n) and (o) of the definition of Relief Event (for this purpose modified where applicable to refer to Developer acts rather than TxDOT) or caused by delay of any Developer-Related Entity.

6.3.2.6 During any time that TxDOT is entitled under Section 18.5 to increase the level of its and the Independent Engineer's auditing, monitoring, inspection,

sampling, measuring, testing and oversight of the Facility, the Utility Adjustments and Developer's compliance with its obligations under this Agreement, the applicable period for TxDOT and the Independent Engineer to act on any Submittals received during such time and not related to curing the Developer Default(s) that instigated the Section 18.5 action shall automatically be extended by 14 days.

6.3.2.7 TxDOT shall endeavor to reasonably accommodate a written request from Developer for expedited action on a specific Submittal, within the practical limitations on availability of TxDOT and the Independent Engineer personnel appropriate for acting on the types of Submittal in question; provided Developer sets forth in its request specific, abnormal circumstances demonstrating the need for expedited action. This provision shall not apply, however, during any time described in Section 6.3.2.5 or 6.3.2.6.

6.3.3 TxDOT Discretionary Approvals

If the Submittal is one where the CDA Documents indicate approval or consent or acceptance is required from TxDOT in its sole discretion, absolute discretion, unfettered discretion or good faith discretion, then TxDOT's lack of approval, determination, decision or other action within the applicable time period under Section 6.3.2 shall be deemed disapproval. If approval is subject to the sole, absolute or unfettered discretion of TxDOT, then its decision shall be final, binding and not subject to dispute resolution, and such decision shall not constitute a TxDOT-Caused Delay, TxDOT Change, Relief Event, Compensation Event or other basis for any Claim. If the approval is subject to the good faith discretion of TxDOT, then its decision shall be binding unless it is finally determined by clear and convincing evidence that such decision was arbitrary or capricious. For avoidance of doubt, if the decision is determined to be arbitrary and capricious and causes delay, it will constitute and be treated as a TxDOT-Caused Delay.

6.3.4 Other TxDOT Approvals

6.3.4.1 Whenever the CDA Documents indicate that a Submittal or other matter is subject to TxDOT's approval or consent and no particular standard therefor is stated, then the standard shall be reasonableness.

6.3.4.2 If the reasonableness standard applies to TxDOT's right of approval of or consent to a Submittal, and TxDOT delivers no approval, consent, determination, decision or other action within the applicable time period under Section 6.3.2, then Developer may deliver to TxDOT a written notice stating the date within which TxDOT was to have decided or acted and that if TxDOT does not decide or act within five Business Days after receipt of the notice, delay from and after lapse of the applicable time period under Section 6.3.2 may constitute TxDOT-Caused Delay for which Developer may be entitled to issue a Relief Event Notice and Compensation Event Notice under Sections 13.1 and 13.2.

6.3.5 TxDOT Review and Comment

Whenever the CDA Documents indicate that a Submittal or other matter is subject to TxDOT's review, comment, review and comment, disapproval or similar action not entailing a prior approval and TxDOT delivers no comments, exceptions, objections, rejections or disapprovals within the applicable time period under Section 6.3.2, then Developer may proceed thereafter at its election and risk, without prejudice to TxDOT's rights to later object or disapprove in accordance with Section 6.3.7.1. No such failure or delay by TxDOT in delivering comments, exceptions, objections, rejections or disapprovals within the applicable time period under Section 6.3.2 shall constitute a TxDOT-Caused Delay, TxDOT Change, Relief Event,

Compensation Event or other basis for any Claim. When used in the CDA Documents, the phrase "completion of the review and comment process" or similar terminology means either (a) TxDOT has reviewed, provided comments, exceptions, objections, rejections or disapprovals, and all the same have been resolved, or (b) the applicable time period has passed without TxDOT providing any comments, exceptions, objections, rejections or disapprovals.

6.3.6 Submittals Not Subject to Prior Review, Comment or Approval

Whenever the CDA Documents indicate that Developer is to deliver a Submittal to TxDOT but express no requirement for TxDOT review, comment, disapproval, prior approval or other TxDOT action, then Developer is under no obligation to provide TxDOT any period of time to review the Submittal or obtain approval of it before proceeding with further Work, and TxDOT shall have the right, but is not obligated, to at any time review, comment on, take exception to, object to, reject or disapprove the Submittal in accordance with Section 6.3.7.1. No failure or delay by TxDOT in delivering comments, exceptions, objections, rejections or disapprovals with respect to the Submittal shall constitute a TxDOT-Caused Delay, TxDOT Change, Relief Event, Compensation Event or other basis for any Claim.

6.3.7 Resolution of TxDOT Comments and Objections

6.3.7.1 If the Submittal is one not governed by Section 6.3.3, TxDOT's exception, objection, rejection or disapproval shall be deemed reasonable, valid and binding if based on any of the following grounds:

(a) The Submittal or subject provision thereof fails to comply with any applicable covenant, condition, requirement, term or provision of the CDA Documents or Facility Management Plan and component plans thereunder;

(b) The Submittal or subject provision thereof is not to a standard equal to or better than the requirements of Good Industry Practice;

(c) Developer has not provided all content or information required in respect of the Submittal or subject provisions thereof, provided that TxDOT assumes no duty, obligation or liability regarding completeness or correctness of any Submittal, including a Submittal that is to be delivered to a Governmental Entity as a proposed Governmental Approval, or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval;

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

(e) In the case of a Submittal that is to be delivered to a Governmental Entity as a proposed Governmental Approval, or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval, it proposes commitments, requirements, actions, terms or conditions that are not usual and customary arrangements that TxDOT offers or accepts for addressing similar circumstances affecting its own projects.

6.3.7.2 Developer shall respond to all of TxDOT's and the Independent Engineer's comments and objections to a Submittal and, except as provided below, make modifications to the Submittal as necessary to fully reflect and resolve all such comments and objections, in accordance with the review processes set forth in this Section 6.3. Developer

acknowledges that TxDOT or the Independent Engineer may provide comments and objections which reflect concerns regarding interpretation or preferences of the commenter or which otherwise do not directly relate to grounds set forth in Section 6.3.7.1. Developer agrees to undertake reasonable efforts to accommodate or otherwise resolve any such comments or objections through the review processes described in this Section 6.3. However, if the Submittal is not governed by Section 6.3.3, the foregoing shall in no way be deemed to obligate Developer to incorporate any comments or resolve objections that are not on any of the grounds set forth in Section 6.3.7.1 and would result in a delay to a Critical Path on the Facility Schedule, in an increase in Developer's costs or a decrease in Toll Revenues, except pursuant to a TxDOT Change. If, however, Developer does not accommodate or otherwise resolve any comment or objection, Developer shall deliver to TxDOT within a reasonable time period, not to exceed 30 days after receipt of TxDOT's and the Independent Engineer's comments or objections, a written explanation why modifications based on such comment or objection are not required. The explanation shall include the facts, analyses and reasons that support the conclusion.

6.3.7.3 The foregoing shall in no way be deemed to obligate Developer to incorporate any comments or resolve objections that would render the Submittal erroneous, defective or less than Good Industry Practice, except pursuant to a TxDOT Change.

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

6.3.7.5 After TxDOT receives Developer's explanation as to why the modifications are not required as provided in Sections 6.3.7.2, 6.3.7.3 and 6.3.7.4, the Parties shall attempt in good faith to resolve the dispute. If they are unable to resolve the dispute, it shall be resolved according to the Dispute Resolution Procedures except (a) as provided otherwise in Section 6.3.3, and (b) if TxDOT elects to issue a Directive Letter pursuant to Section 14.3 with respect to the disputed matter, Developer shall proceed in accordance with TxDOT's directive while retaining any Claim as to the disputed matter.

6.3.8 Limitations on Developer's Right to Rely

6.3.8.1 No review, comment, objection, rejection, approval, disapproval, acceptance, certification (including certificates of Substantial Completion, Service Commencement and Final Acceptance), concurrence, monitoring, testing, inspection, spot checking, auditing or other oversight by or on behalf of TxDOT or the Independent Engineer, and no lack thereof by TxDOT or the Independent Engineer, shall constitute acceptance of materials or Work or waiver of any legal or equitable right under the CDA Documents, at Law, or in equity. TxDOT shall be entitled to remedies for unapproved Deviations and Nonconforming Work and to identify additional Work which must be done to bring the Work and Facility into compliance with requirements of the CDA Documents, regardless of whether previous review, comment, objection, rejection, approval, disapproval, acceptance, certification, concurrence, monitoring, testing, inspection, spot checking, auditing or other oversight were conducted or given by TxDOT or the Independent Engineer. Regardless of any such activity or failure to conduct any such activity by TxDOT or the Independent Engineer, Developer at all times shall have an independent duty and obligation to fulfill the requirements of the CDA

Documents. Developer agrees and acknowledges that any such activity or failure to conduct any such activity by TxDOT or the Independent Engineer:

(a) Is solely for the benefit and protection of TxDOT;

(b) Does not relieve Developer of its responsibility for the selection and the competent performance of all Developer-Related Entities (other than NTTA);

(c) Does not create or impose upon TxDOT any duty or obligation toward Developer to cause it to fulfill the requirements of the CDA Documents;

(d) Shall not be deemed or construed as any kind of warranty, express or implied, by TxDOT;

(e) May not be relied upon by Developer or used as evidence in determining whether Developer has fulfilled the requirements of the CDA Documents; and

(f) May not be asserted by Developer against TxDOT as a defense, legal or equitable, to, or as a waiver of or relief from, Developer's obligation to fulfill the requirements of the CDA Documents.

6.3.8.2 Developer shall not be relieved or entitled to reduction of its obligations to perform the Work in accordance with the CDA Documents, or any of its other liabilities and obligations, including its indemnity obligations, as the result of any activity identified in Section 6.3.8.1 or failure to conduct any such activity by TxDOT or the Independent Engineer. Such activity by TxDOT or the Independent Engineer shall not relieve Developer from liability for, and responsibility to cure and correct, any unapproved Deviations, Nonconforming Work or Developer Defaults.

6.3.8.3 To the maximum extent permitted by Law, Developer hereby releases and discharges TxDOT and the Independent Engineer from any and all duty and obligation to cause Developer's Work or the Facility to satisfy the standards and requirements of the CDA Documents. The Independent Engineer is an intended third party beneficiary of this provision.

6.3.8.4 Notwithstanding the provisions of Sections 6.3.8.1, 6.3.8.2 and 6.3.8.3:

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

(b) Developer shall be entitled to rely on specific written Deviations TxDOT approves under Section 7.2.3 or 8.1.2.10;

(c) Developer shall be entitled to rely on the certificates of Substantial Completion, Service Commencement and Final Acceptance from TxDOT for the limited purpose of establishing that Substantial Completion, Service Commencement and Final Acceptance, as applicable, have occurred, and the respective dates thereof;

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

(e) TxDOT is not relieved from performance of its express responsibilities under the CDA Documents in accordance with all standards applicable thereto.

6.4 Community Outreach and Public Information

Developer shall provide ongoing information to the public concerning the development, operation, tolling and maintenance of the Facility, in accordance with the Public Information and Communications Plan prepared by Developer pursuant to Section 3 of the Technical Provisions.

6.5 Software Compatibility

Unless otherwise specifically stated in the CDA Documents, Developer is responsible for assuring that all software it uses for any aspect of the Facility is compatible with software used by TxDOT. Prior to using any software or version of software not then in use by TxDOT, Developer must obtain written approval from TxDOT. In addition, Developer shall provide to TxDOT staff, at Developer's cost, any software, licenses and training reasonably necessary to assure that TxDOT is able to implement compatible usage of all software utilized by Developer. Compatible, as used in this Section 6.5, shall mean that the Developer-provided electronic file(s) may be loaded or imported and manipulated by TxDOT using its software with no modifications, preparation or adjustments. All electronic information submitted to TxDOT shall be in native format or, if not available, legible.

ARTICLE 7. DEVELOPMENT OF THE FACILITY

7.1 General Obligations of Developer

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

7.1.1 Furnish all design and other services, provide all materials, equipment and labor and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts which the CDA Documents expressly specify will be undertaken by TxDOT or other Persons) to construct the Facility and maintain it during construction, so as to achieve Service Commencement and Final Acceptance by the applicable Milestone Schedule Deadlines;

7.1.2 At all times provide a Facility Manager approved by TxDOT who (a) will have full responsibility for the prosecution of the Work, including Design Work, Construction Work and O&M Work, (b) will act as agent and be a single point of contact in all matters on behalf of Developer, (c) will be present (or his/her designee approved by TxDOT will be present) at the Site at all times that Design Work or Construction Work is performed, and (d) will be available to respond to the Independent Engineer, TxDOT or its Authorized Representatives;

7.1.3 Comply with, and require that all Contractors (other than NTTA) comply with, all requirements of all applicable Laws, including Environmental Laws and the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*), as amended;

7.1.4 Cooperate with TxDOT, the Independent Engineer, and Governmental Entities with jurisdiction in all matters relating to the Work, including Design Work, Construction Work

and O&M Work, including their review, inspection and oversight of the design, construction, operations and maintenance of the Facility and the design and construction of the Utility Adjustments; and

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

7.2 Performance, Design and Construction Standards; Deviations

7.2.1 Developer shall furnish all aspects of the Design Work and all Design Documents, including design required in connection with the operation and maintenance of the Facility, Renewal Work or Upgrades, and shall construct the Facility and the Utility Adjustments included in the Construction Work as designed, free from Defects, and in accordance with (a) Good Industry Practice, (b) the requirements, terms and conditions set forth in the CDA Documents (including the Technical Provisions and Technical Documents), (c) the Milestone Schedule and Facility Schedule, (d) all Laws, (e) the requirements, terms and conditions set forth in all Governmental Approvals, and (f) the approved Facility Management Plan and all component plans prepared or to be prepared thereunder, in each case taking into account the Facility Right of Way limits and other constraints affecting the Facility. Developer also shall construct the Facility and the Utility Adjustments included in the Construction Work in accordance with (i) the Final Design Documents, and (ii) the Construction Documents, in each case taking into account the Facility Right of Way limits and other constraints affecting the Facility.

7.2.2 The Facility design and construction shall be subject to the requirements of the approved Quality Management Plan.

7.2.3 Developer may apply for TxDOT approval of Deviations from applicable Technical Provisions or Technical Documents regarding design or construction. All applications shall be in writing. Where Developer requests a Deviation as part of the submittal of a component plan of the Facility Management Plan, Developer shall specifically identify and label the proposed Deviation. TxDOT shall consider in its sole discretion, but have no obligation to approve, any such application. Without limiting such discretion, Developer shall bear the burden of persuading TxDOT that the Deviation sought constitutes sound and safe engineering consistent with Good Industry Practice and achieves or substantially achieves TxDOT's applicable Safety Standards and criteria. No Deviation shall be deemed approved or be effective unless and until stated in writing signed by TxDOT's Authorized Representative. TxDOT's affirmative written approval of a component plan of the Facility Management Plan shall constitute (a) approval of the Deviations expressly identified and labeled as Deviations therein, unless TxDOT takes exception to any such Deviation and (b) disapproval of any Deviations not expressly identified and labeled as Deviations therein. TxDOT's lack of issuance of a written Deviation within 14 days after Developer applies therefor in writing shall be deemed a disapproval of such application. TxDOT's denial or disapproval of a requested Deviation shall be final and not subject to the Dispute Resolution Procedures. TxDOT may elect to process the application as a Change Request under Section 14.2 rather than as an application for a Deviation.

7.2.4 Developer acknowledges that prior to the Effective Date it had the opportunity to identify any provisions of the Technical Provisions or Technical Documents that are erroneous or create a potentially unsafe condition, and the opportunity and duty to notify TxDOT and the Independent Engineer in writing of such fact and of the changes to the

provision that Developer believed were the minimum necessary to render it correct and safe. If it is reasonable or necessary to adopt changes to the Technical Provisions or Technical Documents after the Effective Date to make the provisions correct and safe, such changes shall not be grounds for a Relief Event, Compensation Event or other Claim, unless (a) Developer neither knew nor had reason to know prior to the Effective Date that the provision was erroneous or created a potentially unsafe condition or (b) Developer knew of and reported to TxDOT the erroneous or potentially unsafe provision prior to the Effective Date and TxDOT did not adopt reasonable and necessary changes. If Developer commences or continues any Design Work or Construction Work affected by such a change after the need for the change was discovered or suspected, or should have been discovered or suspected through the exercise of reasonable care, Developer shall bear any additional costs associated with redoing the Work already performed. Inconsistent or conflicting provisions of the CDA Documents shall not be treated as erroneous provisions under this Section 7.2.4, but instead shall be governed by Section 1.2.

7.2.5 References in the Technical Provisions or Technical Documents to manuals or other publications governing the Design Work or Construction Work prior to the Service Commencement Date shall mean the most recent editions in effect as of the Proposal Due Date, unless expressly provided otherwise. Any changes to the Technical Provisions and Technical Documents, including Safety Standards, respecting Design Work or Construction Work prior to the Service Commencement Date shall be subject to the Change Order process for a TxDOT Change in accordance with Article 14. Safety Compliance changes shall be in accordance with Section 12.4.

7.2.6 The Parties anticipate that from time to time after the Proposal Due Date TxDOT will adopt, through revisions to existing manuals and publications or new manuals and publications, changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, relating to Design Work and Construction Work of general application to Comparable Limited Access Highways that are or become tolled or the subject of concession or public-private partnership agreements. TxDOT shall have the right to add such changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, to Book 3 by notice to Developer, whereupon they shall constitute amendments, and become part, of the Technical Documents. If such changed, added or replacement Technical Documents or Safety Standards encompass matters that are addressed in the Technical Provisions or Technical Documents as of the Proposal Due Date, they may, upon inclusion in Book 3, replace and supersede inconsistent provisions of the Technical Provisions and Technical Documents to the extent designated by TxDOT in its sole discretion. TxDOT will identify the superseded provisions in its notice to Developer. Notwithstanding the foregoing, in the absence of a TxDOT Change and except as provided otherwise in Section 7.2.7 with respect to a Change in Law and Section 7.5.3 with respect to Adjustment Standards, if TxDOT adopts the changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including changed, added or replacement Safety Standards, prior to the Service Commencement Date, Developer shall not be obligated to (but may) incorporate the same into its design and construction of the Facility prior to the Service Commencement Date.

7.2.7 New or revised statutes or regulations adopted after the Proposal Due Date that change, add to or replace applicable standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, related to the Design Work and Construction Work, as well as revisions to Technical Provisions and Technical Documents to conform to such new or revised statutes or regulations, shall be treated as Changes in Law (including, to the extent expressly provided under other sections of

this Agreement, Discriminatory Change in Law) rather than a TxDOT Change; however, the foregoing shall not apply to new or revised statutes or regulations that also cause or constitute changes in Adjustment Standards.

7.2.8 Refer to Section 12.4 for the timing by which Developer must implement Safety Compliance.

7.3 Design Implementation and Submittals

7.3.1 Developer, through the appropriately qualified and licensed design professionals identified in Developer's Facility Management Plan in accordance with Section 2 of the Technical Provisions, shall prepare designs, plans and specifications in accordance with the CDA Documents. Developer shall cause the engineer of record for the Facility to sign and seal all Released for Construction Documents.

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

7.4 Facility Right of Way Acquisition

7.4.1 Developer shall undertake and complete the acquisition of Facility Right of Way, in accordance with Section 7 of the Technical Provisions, except for that Facility Right of Way that has been purchased by TxDOT prior to the Execution Date.

7.4.2 All Facility Right of Way, including Additional Properties other than temporary interests in property for Facility Specific Locations, shall be acquired in the name of the State. Developer shall undertake and complete the acquisition of Facility Right of Way, including Additional Properties, in accordance with Section 7 of the Technical Provisions, the approved Right of Way Acquisition Plan and all applicable Laws relating to such acquisition, including the Uniform Act.

7.4.3 Developer shall be responsible for all costs and expenses associated with acquiring all Facility Right of Way, including Additional Properties, incurred following NTP1 including (a) the cost of acquisition services and document preparation, (b) the cost of condemnation proceedings required by the Office of the Attorney General, from special commissioner's hearings through jury trials and appeals, including attorneys' and expert witness fees, and all fees and expenses for exhibits, transcripts, photos and other documents and materials production, (c) the purchase prices, court awards or judgments, and special commissioner's awards for all parcels required for the Facility or the Work, whether within or outside of the Facility Right of Way, (d) the cost of permanent or temporary acquisition of leases, easement and other interests in real property, including for drainage, temporary work space, lay down areas, material storage areas, earthwork borrow sites, and any other convenience of Developer, (e) the cost of permitting, (f) closing costs associated with parcel purchases, in accordance with the Uniform Act and TxDOT policies, and (g) relocation assistance payments and costs, in accordance with the Uniform Act. If TxDOT incurs any such costs and expenses on Developer's behalf, TxDOT may submit any invoices for such costs and expenses to Developer, in which case Developer shall pay the invoices prior to delinquency. If TxDOT pays any such costs and expenses on Developer's behalf, Developer shall reimburse TxDOT within 30 days of TxDOT's submittal to Developer of an invoice therefor.

7.4.4 TxDOT shall (a) provide review and approval or disapproval of Acquisition Packages for the Facility Right of Way, including Additional Properties, and (b) except as provided below, undertake eminent domain proceedings, if necessary, for the Facility Right of Way, including Additional Properties in accordance with the procedures and time frames established in Section 7 of the Technical Provisions and the approved Right of Way Acquisition Plan.

7.4.5 Except as otherwise authorized by Law for temporary Facility Specific Locations, (a) TxDOT shall not be obligated to exercise its power of eminent domain in connection with Developer's acquisition of any such temporary right or interest, (b) TxDOT shall have no obligations or responsibilities with respect to the acquisition, maintenance or disposition of such temporary rights or interests, and (c) Developer shall have no obligation to submit Acquisition Packages to TxDOT for, or obtain TxDOT's approval of Developer's acquisition of, any such temporary right or interest.

7.4.6 Developer's designated Right of Way Acquisition Manager, referred to herein as the ROW AM, shall be entitled to undertake the right-of-way acquisition services for Facility Right of Way, including Additional Properties, described in Section 7 of the Technical Provisions on behalf of TxDOT as its agent for such limited purpose, subject to the conditions and limitations of this Section 7.4.6.

7.4.6.1 In performing such activities, the ROW AM shall at all times follow the standard of care and conduct and be subject to the Laws applicable to a licensed real estate broker in the State, and shall at all times conform with applicable Law (including, to the extent applicable, the Uniform Act) in all communications and interactions with the owners or occupants of the real property in which Developer seeks to obtain any right or interest.

7.4.6.2 Developer shall not be entitled to a Change Order or Claim as a result of the actions or omissions of the ROW AM in connection with the ROW AM's activities in carrying out the limited agency provided herein.

7.5 Utility Adjustments

7.5.1 Developer's Responsibility

Developer is responsible for causing, in accordance with the Facility Schedule, all Utility Adjustments necessary to accommodate construction, operation, maintenance and/or use of the Facility. When used in the CDA Documents with respect to Utilities, the phrase "accommodation of the Facility" or similar terminology refers to accommodation of the Facility in its initial configuration and in its Ultimate Configuration (including in those locations where only the initial configuration of the Facility is being constructed as part of the current phase), except as may be otherwise provided in Section 6.1 of the Technical Provisions. All Utility Adjustment Work performed by Developer shall comply with the CDA Documents. Developer shall coordinate, monitor, and otherwise undertake the necessary efforts to cause Utility Owners performing Utility Adjustment Work to perform such work timely, in coordination with the Work, and in compliance with the standards of design and construction and other applicable requirements specified in the CDA Documents. However, regardless of the arrangements made with the Utility Owners and except as otherwise provided in Article 13, Developer shall continue to be the responsible party to TxDOT for timely performance of all Utility Adjustment Work so that upon completion of the Work, all Utilities that might impact the Facility or be impacted by it (whether located within or outside the Facility Right of Way) are compatible with the Facility. TxDOT shall provide to Developer the benefit of any provisions in recorded utility or other easements affecting the Facility which require the easement holders to relocate at their

own expense, subject, however, to any provisions of applicable Law affecting the easement holder's payment obligations for Utility Adjustments.

7.5.2 Utility Agreements

7.5.2.1 As described in Section 6 of the Technical Provisions, Developer is responsible for preparing, negotiating and entering into Utility Agreements with the Utility Owners, using the standard Utility Agreement forms specified in Section 6.1 of the Technical Provisions. If Developer proposes to make any revisions to a standard Utility Agreement form (i.e., revisions to the basic form for Developer's purposes as opposed to those resulting from Developer's negotiations with an individual Utility Owner), Developer shall obtain TxDOT's approval of such revisions as a Deviation in accordance with Section 7.2.3, prior to submitting the revised Utility Agreement form to any Utility Owner for review. TxDOT is not providing any assurances to Developer that the Utility Owners will accept the standard Utility Agreement forms (with or without Developer revisions approved by TxDOT) without negotiating modifications thereto. Any modifications to individual Utility Agreements negotiated by Developer with Utility Owners shall be consistent with the requirements of the CDA Documents and acceptable to the Utility Owner, Developer and (subject to the requirements of the CDA Documents, including Section 6.1.4 of the Technical Provisions) TxDOT. All Utility Agreements shall incorporate by reference 23 CFR Part 645 Subpart A.

7.5.2.2 TxDOT agrees to cooperate as reasonably requested by Developer in pursuing Utility Agreements, including attendance at negotiation sessions, providing information reasonably requested by Developer that is within TxDOT's possession, and review of Utility Agreements; provided, however, that such cooperation shall not require TxDOT: (a) to take a position which it believes to be inconsistent with the CDA Documents, the Facility Management Plan (and component plans thereunder), applicable Law or Governmental Approval(s), the requirements of Good Industry Practice, or TxDOT policy, or (b) to refrain from taking a position concurring with that of a Utility Owner, if TxDOT believes that position to be correct. Although TxDOT will not be a party to the Utility Agreements, Developer shall cause the Utility Agreements to designate TxDOT as an intended third-party beneficiary thereof and to permit assignment of Developer's right, title and interest thereunder to TxDOT without necessity for Utility Owner consent. Developer shall not enter into any agreement with a Utility Owner that purports to bind TxDOT in any way, unless TxDOT has executed such agreement as a party thereto (TxDOT's signature indicating approval or review of an agreement between Developer and a Utility Owner, or its status as a third-party beneficiary, shall not satisfy this requirement).

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

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

7.5.3 Requirements

Each Utility Adjustment (whether performed by Developer or by the Utility Owner) shall comply with the Adjustment Standards in effect as of the Proposal Due Date, together with any subsequent amendments and additions to those standards that (a) are necessary to conform to

applicable Law, or (b) are adopted by the Utility Owner and affect the Utility Adjustment pursuant to the applicable Utility Agreement(s). In addition, all Utility Adjustment Work shall comply with all applicable Laws, the applicable Utility Agreement(s), and all other requirements specified in Section 6 of the Technical Provisions.

7.5.4 Utility Adjustment Costs

7.5.4.1 Subject to Section 7.5.4.2, Developer is responsible for all costs of the Utility Adjustment Work, whether incurred by Developer or by the Utility Owner, including costs of acquiring Replacement Utility Property Interests and costs with respect to relinquishment or acquisition of Existing Utility Property Interests, and excluding (a) costs attributable to Betterment and (b) any other costs for which the Utility Owner is responsible under applicable Law at the time of Adjustment. The Parties agree that as of the Proposal Due Date, under Transportation Code, Section 203.092 the Utility Owner is responsible for 50% of the costs of Utility Adjustment Work, except for (i) Adjustments required for any portion of the Facility that is being constructed as part of an interstate highway, (ii) Adjustments as to which the Utility Owner has a compensable property interest in the land occupied by the Utility to be Adjusted, and (iii) Adjustments completed on or after September 1, 2013 which do not fall within either of the previous two exceptions. As of the Proposal Due Date, Transportation Code, Section 203.092 further provides that for the exceptions under clauses (i) and (ii) above, the Utility Owner is responsible for none of the costs of the Utility Adjustment Work and for the exception under clause (iii) above, the Utility Owner is responsible for 100% of the costs of the Utility Adjustment Work. Developer shall fulfill its responsibility for all or part of the costs of Utility Adjustment Work either by performing the Utility Adjustment Work itself at its own cost (although Developer may seek reimbursement from the Utility Owner for its share, if any, of such costs and except that any assistance provided by any Developer-Related Entity to the Utility Owner in acquiring Replacement Utility Property Interests shall be provided outside of the Work, in compliance with Section 6.2.4.2 of the Technical Provisions), or by reimbursing the Utility Owner for Developer's share of the Utility Owner's eligible costs of performing Utility Adjustment Work (however, Developer has no obligation to reimburse Utility Adjustment costs for any Service Line Adjustment for which the affected property owner has been compensated pursuant to Section 7.4). Developer shall collect direct from the Utility Owner any reimbursement due to Developer for Betterment costs or for other costs that are the Utility Owner's responsibility under applicable Law.

7.5.4.2 For each Utility Adjustment, the eligibility of particular Utility Owner costs (both indirect and direct) for reimbursement by Developer and any credits due against those costs (e.g., for Betterment), as well as the determination of any Betterment or other costs due to Developer from a Utility Owner, shall be established in accordance with applicable Law and the applicable Utility Agreement(s).

7.5.4.3 For each Utility Adjustment, Developer shall compensate the Utility Owner for the fair market value of each Existing Utility Property Interest relinquished pursuant to Section 6.2.4.3 of the Technical Provisions, to the extent TxDOT would be required to do so by applicable Law and provided that TxDOT has approved the Utility Owner's claim. Developer is advised that in some cases reimbursement of the Utility Owner's acquisition costs for a Replacement Utility Property Interest will satisfy this requirement. Developer shall pay any compensation due to the Utility Owner and all costs and expenses associated therewith (including any incurred by TxDOT on Developer's behalf for eminent domain proceedings or otherwise) in accordance with Section 7.4. Developer shall carry out the same duties for acquisition of an Existing Utility Property Interest, as are assigned to Developer in Section 7.4 and Section 7 of the Technical Provisions for the acquisition of any other necessary real property interests.

7.5.4.4 Developer is solely responsible for collecting directly from the Utility Owner any amounts owed to Developer by the Utility Owner. If for any reason Developer is unable to collect any amounts due to Developer from any Utility Owner, then (a) TxDOT shall have no liability for such amounts, (b) Developer shall have no right to collect such amounts from TxDOT or to offset such amounts against amounts otherwise owing from Developer to TxDOT, and (c) Developer shall have no right to stop Work or to exercise any other remedies against TxDOT on account of such failure to pay.

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

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

7.5.4.7 Under no circumstances will Developer be entitled to any additional compensation or time extension hereunder as the result of any Utility Adjustment, whether performed by Developer or by the Utility Owner, except as provided in Article 13.

7.5.5 FHWA Utility Requirements

Unless TxDOT advises Developer otherwise, the following provisions apply to Utility Adjustments:

7.5.5.1 The Facility will be subject to 23 CFR Part 645 Subpart A (including its requirements as to plans, specifications, estimates, charges, tracking of costs, credits, billings, records retention, and audit) and FHWA's associated policies. Developer shall comply (and shall require the Utility Owners to comply) with 23 CFR Part 645 Subpart A as necessary for any Utility Adjustment costs to be eligible for FHWA reimbursement (or for any other federal financing or funding). Developer acknowledges, however, that without regard to whether such compliance is required, (a) it is not anticipated that Developer will be eligible for FHWA reimbursement of any Utility Adjustment outlays (unless from the Public Funds Amount or TIFIA financing, if any), and (b) Developer will not have any share in any reimbursement from FHWA or other federal financing or funding that TxDOT may receive on account of Utility Adjustments.

7.5.5.2 Developer shall prepare and deliver to TxDOT the Alternate Procedure List in appropriate format for submittal to FHWA, together with all other documentation required by FHWA for compliance with the FHWA Alternate Procedure. If applicable, TxDOT will submit the Alternate Procedure List and other documentation to FHWA.

7.5.5.3 Promptly upon determining that any Utility Owner not referenced on the Alternate Procedure List is impacted by the Facility, Developer shall submit to TxDOT all documentation required by FHWA to add these Utilities to the Alternate Procedure List. If applicable, TxDOT will transmit the additional documentation to FHWA for approval.

7.5.5.4 Promptly upon receiving FHWA's approval of the initial or any amended Alternate Procedure List, TxDOT will forward the approved list to Developer.

7.5.6 Utility Enhancements

Developer shall be responsible for addressing any requests by Utility Owners that Developer design and/or construct a Betterment or Utility Owner Project (collectively, "Utility Enhancement"). Any Betterment performed as part of a Utility Adjustment, whether by Developer or by the Utility Owner, shall be subject to the same standards and requirements as if it were a necessary Utility Adjustment, and shall be addressed in the appropriate Utility Agreement. Developer shall perform any work on a Utility Owner Project only by separate contract outside of the Work, and such work shall be subject to Section 7.5.8. Under no circumstances shall Developer proceed with any Utility Enhancement that is incompatible with the Facility or is not in compliance with applicable Law, the Governmental Approvals or the CDA Documents, including the Milestone Schedule Deadlines. Under no circumstances will Developer be entitled to any additional compensation or time extension hereunder as the result of any Utility Enhancement, whether performed by Developer or by the Utility Owner. Developer may, but is not obligated to, design and construct Utility Enhancements.

7.5.7 Failure of Utility Owners to Cooperate

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

7.5.7.2 If Developer requests TxDOT's assistance pursuant to Section 7.5.7.1, Developer shall provide evidence reasonably satisfactory to TxDOT that (a) the subject Utility Adjustment is necessary, (b) the time for completion of the Utility Adjustment in the Facility Schedule was, in its inception, a reasonable amount of time for completion of such work, (c) Developer's position in the dispute is otherwise reasonable, (d) Developer has made diligent efforts to obtain the Utility Owner's cooperation, and (e) the Utility Owner is not cooperating (the foregoing clauses (a) through (e) are referred to herein as the "conditions to assistance"). Following TxDOT's receipt of satisfactory evidence, TxDOT shall take such reasonable steps as may be requested by Developer to obtain the cooperation of the Utility Owner or resolve the dispute; however, TxDOT shall have no obligation to prosecute eminent domain or other legal proceedings, or to exercise any other remedy available to it under applicable Law or existing contract, unless TxDOT elects to do so in its sole discretion. If TxDOT holds contractual rights that might be used to enforce the Utility Owner's obligation to cooperate and TxDOT elects in its sole discretion not to exercise those rights, then TxDOT shall assign those rights to Developer upon Developer's request; however, such assignment shall be without any representation or warranty as to either the assignability or the enforceability of such rights. Developer shall reimburse TxDOT for TxDOT's Recoverable Costs in connection with providing such assistance to Developer. Any assistance TxDOT provides shall not relieve Developer of its sole responsibility for satisfactory compliance with its obligations and timely

completion of all Utility Adjustment Work, except as otherwise expressly set forth herein. If the reason for the Utility Owner's alleged lack of cooperation is a disagreement with modifications made by Developer to a standard form Utility Agreement in accordance with Section 7.5.2.1, TxDOT's approval of the Deviation shall not be construed as confirmation that Developer's position in the dispute is reasonable. In no event shall TxDOT's obligations pursuant to this Section 7.5.7.2 require TxDOT: (i) to take a position which it believes to be inconsistent with the CDA Documents, the Facility Management Plan (and component plans thereunder), applicable Law or Governmental Approval(s), the requirements of Good Industry Practice, or TxDOT policy, or (ii) to refrain from taking a position concurring with that of a Utility Owner, if TxDOT believes that position to be correct.

7.5.7.3 If TxDOT objects in writing to a request for assistance pursuant to Section 7.5.7.1, based on Developer's failure to satisfy one or more of the conditions to assistance described in Sections 7.5.7.2(a), (b) and (c), then Developer shall take such action as is appropriate to satisfy the condition(s) and shall then have the right to submit another request for assistance on the same subject matter. If TxDOT objects in writing to a request for assistance pursuant to Section 7.5.7.1 based on Developer's failure to satisfy one or both of the conditions to assistance described in Sections 7.5.7.2(d) and (e), then Developer shall take such action as Developer deems advisable during the next ten days to obtain the Utility Owner's cooperation and shall then have the right to submit another request for assistance on the same subject matter. Notwithstanding the foregoing, no resubmittal will be accepted unless all TxDOT objections have been addressed in accordance with the preceding two sentences. This process shall be followed until Developer succeeds in obtaining the Utility Owner's cooperation or in otherwise resolving the dispute or until TxDOT determines, based on evidence Developer presents, that the conditions to assistance have been satisfied. Developer shall have the right to submit the question of the reasonableness of TxDOT's determination for resolution according to the Dispute Resolution Procedures.

7.5.7.4 In certain cases where a Utility Owner is not cooperating with Developer or TxDOT, TxDOT may, in its sole discretion and where applicable Law authorizes TxDOT to take unilateral action, issue a Directive Letter directing Developer to proceed with a Utility Adjustment without an agreement or other written consent by the Utility Owner. If TxDOT directs Developer to perform work pursuant to this Section 7.5.7.4, then Developer, without cost to TxDOT, shall proceed with such work as if Developer has entered into a Utility Agreement providing for Developer to perform such work, and shall perform such work in accordance with the requirements of the CDA Documents otherwise applicable to Developer's performance of Utility Adjustment Work.

7.5.8 Applications for Utility Permits

7.5.8.1 It is anticipated that during the design and construction phases of the Work, from time to time Utility Owners will apply for utility permits to install new Utilities that would cross or longitudinally occupy the Facility Right of Way, or to modify, upgrade, repair, relocate or expand existing Utilities within the Facility Right of Way for reasons other than accommodation of the Facility. The provisions of Sections 7.5.8.2 through 7.5.8.4 shall apply to all such permit applications, except as otherwise provided in Section 7.5.8.5. Except as otherwise provided in Section 7.5.8.4(b) or in Section 11.2, no accommodation of new Utilities or of modifications, upgrades, repairs, relocations or expansions of existing Utilities pursuant hereto shall entitle Developer to additional compensation or time extension hereunder.

7.5.8.2 For all such utility permit applications pending as of or submitted after the Effective Date, Developer shall furnish the most recent Facility design information and/or as-built plans, as applicable, to the applicants, and shall assist each applicant with

information regarding the location of other proposed and existing Utilities. Developer shall keep records of its costs related to new Utilities separate from other costs.

7.5.8.3 Developer shall assist TxDOT in deciding whether to approve a permit described in Section 7.5.8.2. Within a time period that will enable TxDOT to timely respond to the application, Developer shall analyze each application and provide to TxDOT a recommendation (together with supporting analysis) as to whether the permit should be approved, denied, or approved subject to conditions. As part of the recommendation process, Developer shall furnish to TxDOT Utility No-Conflict Sign-Off Forms, signed by both Developer's Utility Design Coordinator (UDC) and Developer's Utility Manager, using the standard forms included in Book 2. Developer shall limit the grounds for its recommendation to the grounds (as TxDOT communicates to Developer from time to time) on which TxDOT is legally entitled to approve or deny the application or to impose conditions on its approval.

7.5.8.4 If Developer and TxDOT disagree on the response to a permit application described in Section 7.5.8.2, such disagreement shall be resolved according to the Dispute Resolution Procedures; provided that if Developer recommends against issuance of the permit and TxDOT determines issuance is appropriate or required, then:

(a) TxDOT's determination shall control unless it is arbitrary and capricious;

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

(c) If TxDOT elects to delay issuance of a utility permit pending final resolution of the Dispute, Developer's indemnities under Sections 16.5.1.2 and 16.5.1.4 shall be deemed to apply with respect to any applicant claim of wrongful delay or denial.

7.5.8.5 Where TxDOT is pursuing a Business Opportunity involving a Utility in the Facility Right of Way, (a) TxDOT shall have the right to issue utility permits in its sole discretion, (b) any decision by TxDOT to issue utility permits shall be final, binding and not subject to the Dispute Resolution Procedures, (c) Sections 7.5.8.2 through 7.5.8.4 shall not apply, and (d) instead, Section 11.2 shall apply.

7.5.9 Security for Utility Adjustment Costs; Insurance

7.5.9.1 Upon request from a Utility Owner entitled to reimbursement of Utility Adjustment costs, Developer shall provide security for such reimbursement by way of a payment bond, letter of credit or retention account, in such amount and on such terms as are negotiated in good faith between Developer and the Utility Owner.

7.5.9.2 Developer may satisfy a Utility Owner's requirement that Developer provide liability insurance by naming such Utility Owner as an additional insured on the insurance provided by Developer or any Contractor pursuant to Article 16.

7.5.10 Early Adjustments

If any Adjustments are designated as Early Adjustments in Section 6 of the Technical Provisions, such Adjustments are anticipated to be completed by TxDOT prior to the deadline therefor set forth in Section 6.1.2.2 of the Technical Provisions. Developer's obligation to

provide Protection in Place for Utilities includes any Early Adjustments, whether or not timely completed. Developer shall coordinate with TxDOT and the Utility Owner as may be necessary for orderly completion of any Early Adjustments, and Developer shall conduct its Work without interfering with or hindering the progress or completion of any Early Adjustments. Subject to the provisions of this Section 7.5.10 but notwithstanding any contrary provision of the CDA Documents, the Work excludes all efforts necessary for completion of any Early Adjustments.

7.6 Conditions to Commencement of Construction Work and Operating Period

7.6.1 Construction Work and Operating Period Generally

Except to the extent expressly permitted in writing by TxDOT, Developer shall not commence or permit or suffer commencement of construction of the Facility or applicable portion thereof until TxDOT issues NTP2 (and, (i) with respect to the General Purpose Lane Capacity Improvement, until TxDOT issues NTP GP or the occurrence of the General Purpose Capacity Improvement Trigger Event, (ii) with respect to the Managed Lane Capacity Improvement, until TxDOT issues NTP ML or the occurrence of the Managed Lanes Capacity Improvement Trigger Event, and (iii) with respect to the Interchange Capacity Improvement, until TxDOT issues NTP IC) and all of the following conditions have been satisfied:

7.6.1.1 All Governmental Approvals necessary to begin Construction Work in the applicable portion of the Facility have been obtained, and Developer has furnished to TxDOT fully executed copies of such Governmental Approvals;

7.6.1.2 Fee simple title or other property rights acceptable to TxDOT in its sole discretion for the Facility Right of Way necessary for commencement of construction of the applicable portion of the Facility and Utility Adjustments included in the Construction Work have been identified, conveyed to and recorded in favor of TxDOT, TxDOT has obtained possession thereof through eminent domain, or all necessary parties have validly executed and delivered a possession and use agreement therefor on terms acceptable to TxDOT;

7.6.1.3 Developer has satisfied for the applicable portion of the Facility all applicable pre-construction requirements contained in the NEPA Approval and other Governmental Approvals;

7.6.1.4 Developer has delivered to TxDOT either the original of each P&P Letter of Credit or, if the original has been delivered to the Collateral Agent, a certified and conformed copy of each original including the related documentation required under Section 16.2.2.4 and Section 16.2.2.5;

7.6.1.5 The guarantees in favor of TxDOT, if any, required under Section 16.4 have been obtained and delivered to TxDOT;

7.6.1.6 All Insurance Policies required under Section 16.1 for construction have been obtained and are in full force and effect, and Developer has delivered to TxDOT written binding verifications of coverage from the relevant issuers of such Insurance Policies;

7.6.1.7 Developer has caused to be developed and delivered to TxDOT and TxDOT has approved, in accordance with Section 9.1 of this Agreement and Section 2 of the Technical Provisions, the component parts, plans and documentation of the Facility Management Plan that are labeled "A" and "B" in the column titled "Required By" in Attachment 2-1 to the Technical Provisions;

7.6.1.8 Developer has delivered to TxDOT and the Independent Engineer all Submittals relating to the Construction Work required by the Facility Management Plan or CDA Documents, in the form and content required by the Facility Management Plan or CDA Documents;

7.6.1.9 Developer demonstrates to TxDOT's reasonable satisfaction that Developer has completed training of operations and maintenance personnel, which demonstration shall consist of (a) delivery to TxDOT of a written certificate, in form acceptable to TxDOT, executed by Developer that it and its Contractors (other than NTTA) are fully staffed with such trained personnel and are ready, willing and able to operate and maintain the Facility in accordance with the terms and conditions of the CDA Documents and Facility Management Plan pertaining to the Operating Period, (b) delivery to TxDOT of training records and course completion certificates issued to each of the subject personnel and (c) TxDOT's verification that the training program and number of trained personnel meet the standards in the Hazardous Material Management Plan and Section 4.3.4 of the Technical Provisions;

7.6.1.10 All component parts, plans and documentation of the Facility Management Plan required to be prepared, submitted and approved prior to the Operating Period have been so prepared, submitted and approved, including all operations and maintenance plans, procedures, rules, schedules and manuals, and including manuals and procedures respecting safety, security, Emergency response and Incident response, as identified in the Facility Management Plan;

7.6.1.11 All Submittals required by the Facility Management Plan or CDA Documents to be submitted to TxDOT and the Independent Engineer and approved by TxDOT or the Independent Engineer prior to the Operating Period have been submitted to and approved by TxDOT and the Independent Engineer, in the form and content required by the Facility Management Plan or CDA Documents;

7.6.1.12 Developer has received, and paid all associated fees for, all applicable Governmental Approvals and other third party approvals required for use and operation, and there exists no uncured material violation of the terms and conditions of any such Governmental Approval or other third party approvals;

7.6.1.13 All Insurance Policies required under this Agreement during the Operating Period have been obtained and Developer has delivered to TxDOT verification thereof as required under Section 16.1.2.4;

7.6.1.14 Any Payment and Performance Bonds, including dual obligee riders in favor of TxDOT, required under Section 16.2 during the Operating Period have been obtained and Developer has delivered the same to TxDOT;

7.6.1.15 Any other guaranty of payment or performance required pursuant to Section 16.4 during the Operating Period has been delivered to TxDOT;

7.6.1.16 All representations and warranties of Developer set forth in Section 15.1 shall be and remain true and correct in all material respects;

7.6.1.17 Developer has adopted written policies establishing ethical standards of conduct for all Developer-Related Entities (other than NTTA), including Developer's supervisory and management personnel in dealing with (a) TxDOT and the Independent Engineer and (b) employment relations, in accordance with Section 10.7.1;

7.6.1.18 There exists no uncured Developer Default for which Developer has received written notice from TxDOT, unless, (a) with respect to a monetary default that Developer has disputed in writing, Developer is current in its deposit of funds into the TxDOT Claims Account in accordance with the Facility Trust Agreement regarding the amount in dispute, or (b) with respect to a non-monetary default, Developer has a right to cure and is diligently pursuing cure within the applicable cure period; and

7.6.1.19 Developer has provided to TxDOT and the Independent Engineer at least 14 days advance written notification of the date Developer determines that it will satisfy all of the conditions set forth in this Section 7.6.1.

7.6.2 Utility Adjustments

Developer shall not commence or permit or suffer commencement of construction of a Utility Adjustment included in the Construction Work until TxDOT issues NTP2 (and, with respect to construction of a Utility Adjustment included in the Construction Work with respect to the General Purpose Lane Capacity Improvement, Interchange Capacity Improvement, or Managed Lane Capacity Improvement, until TxDOT issues NTP GP, NTP IC, or NTP ML (respectively)), all of the conditions set forth in Section 7.6.1 that are applicable to the Utility Adjustment (reading such provisions as if they referred to the Utility Adjustment) have been satisfied, and the following additional requirements have been satisfied:

7.6.2.1 If applicable, the Alternate Procedure List has been approved by FHWA, and either the affected Utility or the Utility Owner is on the approved Alternate Procedure List, as supplemented;

7.6.2.2 Except as otherwise provided in Section 7.5.7.4, the Utility Adjustment is covered by an executed Utility Agreement; and

7.6.2.3 The review and comment process has been completed and any required approvals have been obtained for the Utility Assembly covering the Utility Adjustment.

7.7 Schedule, Notices to Proceed and Milestone Schedule Deadlines

7.7.1 As a material consideration for entering into this Agreement, Developer hereby commits, and TxDOT is relying upon Developer's commitment, to develop the Facility in accordance with the milestones and time periods set forth in this Agreement, Section 2.1.1 of the Technical Provisions, the Facility Schedule and the Milestone Schedule, subject only to delays caused by Relief Events specifically provided hereunder. Except where this Agreement expressly provides for extension of time due to a Relief Event or allows delay subject to payment of liquidated damages or other compensation to TxDOT, the time limitations set forth in the CDA Documents, including the Milestone Schedule, for Developer's performance of its covenants, conditions and obligations are of the essence, and Developer waives any right at law or in equity to tender or complete performance beyond the applicable time period, or to require TxDOT to accept such performance.

7.7.2 Authorization allowing Developer to proceed with Work hereunder shall be provided through TxDOT's issuance of NTP1, NTP2 and NTP IC and to proceed with acceleration of certain Work through NTP GP and NTP ML.

7.7.2.1 TxDOT anticipates issuing NTP1 concurrently with execution and delivery of this Agreement. Issuance of NTP1 authorizes Developer to perform (or, after conditional award, continue performance of) the portion of the Work necessary to obtain

TxDOT's approval of the component parts, plans and documentation of the Facility Management Plan that are labeled "A" in the column titled "Required By" in Attachment 2-1 to the Technical Provisions. It also authorizes Developer to enter the Facility Right of Way TxDOT owns, after coordinating with TxDOT's Area Office, in order to conduct surveys and site investigations, including geotechnical, Hazardous Materials and Utilities investigations, and to engage in the other activities anticipated to be performed after NTP1 referenced in the Technical Provisions, including satisfying the conditions to issuance of NTP2 under Section 7.7.2.2.

7.7.2.2 TxDOT anticipates issuing NTP2 concurrently with TxDOT's approval, in accordance with Section 9.1 of this Agreement and Section 2 of the Technical Provisions, of all the component parts, plans and documentation of the Facility Management Plan that are labeled "A" in the column titled "Required By" in Attachment 2-1 to the Technical Provisions and achievement of the following conditions to issuance of NTP2:

(a) Submittal by Developer to TxDOT and approval by TxDOT of Developer's design schematic of the Facility under Section 1.2 of the Technical Provisions;

(b) Submittal by Developer to TxDOT and approval by TxDOT of Developer's modified WBS and Facility Baseline Schedule under Section 2.1.1 of the Technical Provisions;

(c) Submittal by Developer to TxDOT and approval by TxDOT of the Traffic Management Plan pursuant to Attachment 2-1 to the Technical Provisions;

(d) Submittal by Developer to TxDOT and approval by TxDOT of the Public Information and Communications Plan (PICP) under Section 3.2.1 of the Technical Provisions;

(e) Submittal by Developer to TxDOT and approval by TxDOT of the Comprehensive Environmental Protection Plan (CEPP) under Section 4.3 of the Technical Provisions;

(f) Joint inspection of the existing facilities, structures and environmentally sensitive areas in the vicinity of the Site but not included as part of the Work under Section 4.3.5 of the Technical Provisions;

(g) Submittal by Developer to TxDOT and approval by TxDOT of the Demolition and Abandonment Plan under Section 10.5.1 of the Technical Provisions;

(h) Submittal by Developer to TxDOT and approval by TxDOT of the Aesthetics and Landscape Plan under Section 15.5 of the Technical Provisions;

(i) Submittal by Developer to TxDOT and approval by TxDOT of the Maintenance Management Plan (MMP) under Section 19.2 of the Technical Provisions;

(j) Occurrence of Financial Close or submittal by Developer of a written request to TxDOT to issue NTP2 notwithstanding the fact that Financial Close has not occurred.

Issuance of NTP2 authorizes Developer to perform all other Work and activities pertaining to the Facility.

7.7.2.3 At TxDOT's sole discretion, TxDOT may issue NTP GP at any time on or after issuance of NTP2 through the date the General Purpose Capacity Improvement Trigger Event occurs. In the event TxDOT issues NTP GP, the following shall apply:

(a) If issuance of NTP GP is prior to 36 months after issuance of NTP2, then Developer shall complete the following preliminary Work by the NTP GP Preliminary Work Deadline: (i) submittal by Developer to TxDOT and approval by TxDOT of a revised WBS for the General Purpose Lane Capacity Improvement under Section 2.1.1.1 of Book 2 and (ii) submittal by Developer to TxDOT and approval by TxDOT of an update to the Facility Baseline Schedule for the General Purpose Lane Capacity Improvement under Section 2.1.1.2 of Book 2. In such event, Developer shall not commence any Work pertaining to the General Purpose Capacity Improvement other than the preliminary Work described above until the revised WBS and update to the Facility Baseline Schedule are approved by TxDOT. If TxDOT issues NTP GP prior to 24 months after issuance of NTP2, the Milestone Schedule Deadlines shall not be extended. If TxDOT issues NTP GP 24 months after issuance of NTP2 or later but prior to 36 months after issuance of NTP2, the Milestone Schedule Deadlines shall be extended in accordance with Exhibit 9. For the avoidance of doubt, the provisions of Section 12.1 shall not apply.

(b) If issuance of NTP GP is 36 months after issuance of NTP2 or later, then the provisions of Sections 12.1.1.2 and 12.1.1.3 shall apply to the Work for the General Purpose Capacity Improvement. In such event, the Milestone Schedule Deadlines shall not be extended and the Service Commencement Deadline for the General Purpose Capacity Improvement shall be 18 months after the later of (i) the Service Commencement Date for the last Facility Segment and (ii) issuance of NTP GP.

(c) Issuance of NTP GP authorizes Developer to perform all Work and activities pertaining to the General Purpose Lane Capacity Improvement.

7.7.2.4 At TxDOT's sole discretion, TxDOT may issue NTP IC at any time on or after issuance of NTP2 and prior to 24 months after issuance of NTP2. If TxDOT does not issue NTP IC prior to 24 months after issuance of NTP2, TxDOT shall have no further right to issue NTP IC under this Section 7.7.2.4. However, if the Parties mutually agree, TxDOT may issue NTP IC 24 months after issuance of NTP2 or later, using the Change Order process. If TxDOT issues NTP IC under this Section 7.7.2.4, then Developer shall complete the following preliminary Work by the NTP IC Preliminary Work Deadline: (a) submittal by Developer to TxDOT and approval by TxDOT of a revised WBS for the Interchange Capacity Improvement under Section 2.1.1.1 of Book 2 and (b) submittal by Developer to TxDOT and approval by TxDOT of an update to the Facility Baseline Schedule for the Interchange Capacity Improvement under Section 2.1.1.2 of Book 2. If TxDOT issues NTP IC, the Service Commencement Deadline shall be extended by 200 days or such longer period as set forth in Exhibit 9. Issuance of NTP IC authorizes Developer to perform all Work and activities pertaining to the Interchange Capacity Improvement Segment; provided however, Developer shall not commence any Work pertaining to the Interchange Capacity Improvement other than the preliminary Work described above until the revised WBS and update to the Facility Baseline Schedule are approved by TxDOT.

7.7.2.5 At TxDOT's sole discretion, TxDOT may issue NTP ML at any time on or after issuance of NTP2 through the date the Managed Lane Capacity Improvement Trigger Event occurs. In the event TxDOT issues NTP ML, the following shall apply:

(a) If issuance of NTP ML is prior to 36 months after issuance of NTP2, then Developer shall complete the following preliminary Work by the NTP ML

Preliminary Work Deadline: (i) submittal by Developer to TxDOT and approval by TxDOT of a revised WBS for the Managed Lane Capacity Improvement Segment under Section 2.1.1.1 of Book 2A and (ii) submittal by Developer to TxDOT and approval by TxDOT of an update to the Facility Baseline Schedule for the Managed Lane Capacity Improvement Segment under Section 2.1.1.2 of Book 2. In such event, Developer shall not commence any Work pertaining to the Managed Lane Capacity Improvement other than the preliminary Work described above until the revised WBS and update to the Facility Baseline Schedule are approved by TxDOT. If TxDOT issues NTP ML 24 months after issuance of NTP2 or later, the Milestone Schedule Deadlines shall not be extended. If TxDOT issues NTP ML 24 months after issuance of NTP2 or later but prior to 36 months after issuance of NTP2, the Milestone Schedule Deadlines shall be extended in accordance with Exhibit 9. For the avoidance of doubt, the provisions of Section 12.1 shall not apply.

(b) If issuance of NTP ML is 36 months after issuance of NTP2 or later, then the provisions of Sections 12.1.1.2 and 12.1.1.3 shall apply to the Work for the Managed Lane Capacity Improvement. In such event, the Milestone Schedule Deadlines shall not be extended and the Service Commencement Deadline for the Managed Lane Capacity Improvement shall be 18 months after the later of (i) the Service Commencement Date for the last Facility Segment and (ii) issuance of NTP ML.

(c) Issuance of NTP ML authorizes Developer to perform all Work and activities pertaining to the Managed Lane Capacity Improvement Segment.

7.7.3 Developer shall satisfy all conditions to issuance of NTP2 by the NTP2 Conditions Deadline. Developer shall satisfy all conditions to commencement of the Construction Work generally and with respect to the NTP Capacity Improvements and commence such Construction Work with diligence and continuity, by the deadline therefor set forth in Exhibit 9, as the same may be extended pursuant to this Agreement.

7.7.4 Developer shall achieve Substantial Completion, Service Commencement and Final Acceptance in accordance with the procedures, requirements and conditions set forth in Section 7.8, and shall achieve Service Commencement and Final Acceptance by the applicable Milestone Schedule Deadline.

7.7.5 Developer hereby represents and warrants that the Preliminary Baseline Schedule attached to this Agreement as Exhibit 10 is in the form described in the Technical Provisions, conforms to the Work Breakdown Structure required under Section 2.1.1.1 of the Technical Provisions, and is consistent with the Milestone Schedule. Developer shall use the Preliminary Baseline Schedule as a foundation to prepare a Facility Baseline Schedule for TxDOT's review and approval prior to issuance of NTP2, as set forth in Section 2.1.1.2 of the Technical Provisions. The Parties shall use the Facility Baseline Schedule for planning and monitoring the progress of the Work. The Facility Baseline Schedule shall include the originally scheduled target for Service Commencement set forth in the Preliminary Baseline Schedule.

7.7.6 All Float contained in the Facility Schedule, as shown in the initial Facility Baseline Schedule or as generated thereafter, shall be considered a shared resource among TxDOT, Developer and the Design-Build Contractor available to any or all such parties as needed to absorb delay caused by Relief Events or other events, achieve interim completion dates and achieve Milestone Schedule Deadlines, except that Float shall not be available to TxDOT to absorb delays caused by the Relief Events set forth in clauses (d) through (i) and (r) of the definition of Relief Events. As for such Relief Events, extensions of time shall be determined as if no Float then exists. All Float shall be shown as such in the Facility Schedule on each affected schedule path. TxDOT shall have the right to examine the identification of (or

failure to identify) Float on the Facility Schedule in determining whether to approve the Facility Schedule. Once identified, Developer shall monitor, account for and maintain Float in accordance with critical path methodology.

7.8 Substantial Completion, Punch List, Service Commencement, Final Acceptance and Early Openings

7.8.1 Substantial Completion

7.8.1.1 TxDOT will issue a written certificate of Substantial Completion at such time as Substantial Completion occurs for each Facility Segment.

7.8.1.2 Substantial Completion shall occur for a Facility Segment upon satisfaction of the following criteria:

(a) All major safety features are installed and functional, such major safety features to include shoulders, guard rails, striping and delineations, concrete traffic barriers, bridge railings, cable safety systems, metal beam guard fences, safety end treatments, terminal anchor sections and crash attenuators;

(b) All required illumination is installed and functional in accordance with the CDA Documents;

(c) All required signs and signals are installed and functional in accordance with the CDA Documents;

(d) The need for temporary traffic controls or for lane closures at any time has ceased (except for any then required for routine maintenance, and except for temporary lane closures during hours of low traffic volume in accordance with and as permitted by the Traffic Management Plan solely in order to complete Punch List items);

(e) All lanes of traffic (including ramps, interchanges, overpasses, underpasses, other crossings and frontage roads) set forth in the Design Documents are in their final configuration and available for normal and safe use and operation;

(f) The Electronic Toll Collection System is completed, has passed all demonstration and performance testing in accordance with the Facility Management Plan, including demonstration of interoperability with the CSC Host as provided in the Technical Documents, and is ready for normal operation. As part of fulfilling such condition, Developer shall deliver to TxDOT and the Independent Engineer all reports, data and documentation relating to such demonstration testing, and such testing shall demonstrate that the Electronic Toll Collection System meets the minimum threshold performance standards and requirements set forth in the Facility Management Plan, and the minimum interoperability performance standards set forth in the Technical Documents, for commencing normal, live use and operation. (TxDOT and Developer recognize that such threshold performance standards and requirements may be at lower levels, consistent with Good Industry Practice, than the performance standards and requirements set forth in the Performance and Measurement Table Baseline because of normal need for ramp-up and optimization of performance at the beginning of regular operations);

(g) The ITS and safety features for ITS components are installed and functional;

(h) Completion of all Work necessary to provide full integration with the other Facility Segment that has previously achieved Substantial Completion, if any, and demonstration of continuity of all Elements of the Facility Segment that extend into any other Facility Segment that has previously achieved Substantial Completion, if any; and

(i) Developer has otherwise completed the Construction Work in accordance with the CDA Documents, Design Documents and Construction Documents, such that the applicable Facility Segment is in a condition that it can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit, with a fully operable Electronic Toll Collection System meeting the Technical Provisions, subject only to Punch List items and other items of work that do not affect the ability to safely open for such normal use by the traveling public and for normal tolling operation.

7.8.1.3 The Parties shall disregard the status of the landscaping and aesthetic features included in the Design Documents in determining whether Substantial Completion has occurred, except to the extent that its later completion will affect public safety or satisfaction of the criterion in Section 7.8.1.2(d).

7.8.1.4 Developer shall provide TxDOT and the Independent Engineer with not less than 20 days' prior written notification of the date Developer determines it will achieve Substantial Completion for a Facility Segment. During such notice period, Developer, TxDOT and the Independent Engineer shall meet and confer and exchange information on a regular cooperative basis with the goal being TxDOT's and the Independent Engineer's orderly, timely inspection and review of the applicable Facility Segment and the applicable Final Design Documents and Construction Documents, and TxDOT's issuance of a written certificate of Substantial Completion.

7.8.1.5 During the period specified in Section 7.8.1.4, the Independent Engineer shall conduct an inspection of the applicable Facility Segment and its components, a review of the applicable Final Design Documents and Construction Documents and such other investigation as may be necessary to evaluate whether Substantial Completion is achieved. The Independent Engineer shall deliver a written report of findings and recommendations to TxDOT and Developer following such inspection, review and investigation and within five days after the end of the period specified in Section 7.8.1.4. TxDOT may, but is not obligated to, jointly with the Independent Engineer or independently conduct such inspection, review and investigation within the period specified in Section 7.8.1.4.

7.8.1.6 Developer shall provide TxDOT and the Independent Engineer a second written notification when Developer determines it has achieved Substantial Completion. Within five days after expiration of the period specified in Section 7.8.1.4, TxDOT's and the Independent Engineer's receipt of the second notification and TxDOT's receipt of the Independent Engineer's report of findings and recommendations, TxDOT shall either (a) issue the written certificate of Substantial Completion or (b) notify Developer in writing setting forth, as applicable, why the applicable Facility Segment has not reached Substantial Completion. If TxDOT and Developer cannot agree as to the date of Substantial Completion, such Dispute shall be resolved according to the Dispute Resolution Procedures.

7.8.1.7 If a Facility Segment reaches Substantial Completion, Developer shall fulfill all conditions to Service Commencement and open the Facility Segment within 60 days after receipt of the certificate of Substantial Completion.

7.8.2 Punch List

7.8.2.1 The Facility Management Plan shall establish procedures and schedules for preparing for each Facility Segment a Punch List and completing Punch List work. Such procedures and schedules shall conform to the following provisions.

7.8.2.2 The schedule for preparation of the Punch List either shall be consistent and coordinated with the inspections regarding Substantial Completion, or shall follow such inspections.

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

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

7.8.3 Conditions to Service Commencement

7.8.3.1 Developer shall not initiate, permit or suffer Service Commencement for any Facility Segment until TxDOT issues a written certificate that all of the following conditions have been satisfied. TxDOT will issue such a written certificate immediately upon satisfaction of all the following conditions for the applicable Facility Segment:

(a) TxDOT has issued a certificate of Substantial Completion, or the Disputes Board has determined that TxDOT should have issued such certificate (regardless of whether TxDOT subsequently contests such determination);

(b) All component parts, plans and documentation of the Facility Management Plan required to be prepared, submitted and approved prior to Service Commencement have been so prepared, submitted and approved, including all operations and maintenance plans, procedures, rules, schedules and manuals, and including manuals and procedures respecting safety, security, Emergency response and Incident response, as identified in the Facility Management Plan;

(c) All Submittals required by the Facility Management Plan or CDA Documents to be submitted to and approved by TxDOT or the Independent Engineer prior to Service Commencement have been submitted to and approved by TxDOT and the Independent Engineer, in the form and content required by the Facility Management Plan or CDA Documents;

(d) Developer has received, and paid all associated fees for, all applicable Governmental Approvals and other third party approvals required for use and operation of the Facility Segment, and there exists no uncured material violation of the terms and conditions of any such Governmental Approval or other third party approvals;

(e) Developer, and, if applicable, TxDOT and the Independent Engineer have completed preparation of the Punch List in accordance with Section 7.8.2;

(f) All Insurance Policies required under this Agreement during the Operating Period have been obtained and Developer has delivered to TxDOT verification thereof as required under Section 16.1.2.4;

(g) Any payment and performance security in favor of TxDOT required under Section 16.2 during the Operating Period has been obtained and Developer has delivered the same to TxDOT;

(h) Any other guaranty of payment or performance required pursuant to Section 16.4 during the Operating Period has been delivered to TxDOT;

(i) Developer has made all deposits to the Intellectual Property Escrow(s) required at or prior to Service Commencement pursuant to Section 22.5; and

(j) There exists no uncured Developer Default that is the subject of a Warning Notice, unless (i) Service Commencement will effect its cure, (ii) with respect to a monetary default that Developer has disputed in writing, Developer is current in its deposit of funds into the TxDOT Claims Account in accordance with the Facility Trust Agreement and has delivered to TxDOT any letter of credit required pursuant to Section 17.3.5.3(b) regarding the amount in dispute, or (iii) with respect to a non-monetary default, Developer has a right to cure and is diligently pursuing cure within the applicable cure period.

7.8.3.2 Developer shall provide TxDOT and the Independent Engineer with not less than 20 days prior written notification of the date Developer determines that it will satisfy all of the foregoing conditions (other than in Section 7.8.3.1(a), which is governed by the separate notice provisions under Section 7.8.1.4). During such notice period, Developer, TxDOT and the Independent Engineer shall meet and confer and exchange information on a regular cooperative basis, with the goal being TxDOT's and the Independent Engineer's orderly, timely inspection and review of the applicable Facility Segment and the data and documentation submitted by Developer, and TxDOT's issuance of a written certificate authorizing Service Commencement of the Facility Segment when all the conditions set forth in Section 7.8.3.1 are satisfied.

7.8.3.3 During the period specified in Section 7.8.3.2, the Independent Engineer shall conduct an inspection of the Facility Segment and such other review of reports, data and documentation as may be necessary to evaluate whether all of the conditions to Service Commencement have been satisfied. The Independent Engineer shall deliver a written report of findings and recommendations to TxDOT and Developer following such inspection and review and within five days after the end of the period specified in Section 7.8.3.2. TxDOT may, but is not obligated to, jointly with the Independent Engineer or independently conduct such inspection and review within the period specified in Section 7.8.3.2.

7.8.3.4 Developer shall provide TxDOT and the Independent Engineer a second written notification when Developer determines that it has satisfied all of the foregoing conditions (other than in Section 7.8.3.1(a)). Within five days after expiration of the period

specified in Section 7.8.3.2, TxDOT's and the Independent Engineer's receipt of the second notification and TxDOT's receipt of the Independent Engineer's report of findings and recommendations, and provided the condition precedent set forth in Section 7.8.3.1(a) is satisfied, TxDOT shall either (a) issue a certificate authorizing Service Commencement for the Facility Segment or (b) notify Developer in writing setting forth, as applicable, why the conditions to Service Commencement have not been satisfied. If at the time the foregoing conditions (other than in Section 7.8.3.1(a)) are satisfied Developer has not yet achieved Substantial Completion for a Facility Segment, then as a condition to TxDOT's issuance of a certificate authorizing Service Commencement for such Facility Segment TxDOT shall have the right to verify that at the time of Substantial Completion the condition precedent set forth in Section 7.8.3.1(j) remains satisfied. If TxDOT and Developer cannot agree as to the date of Service Commencement, such Dispute shall be resolved according to the Dispute Resolution Procedures.

7.8.4 Final Acceptance

7.8.4.1 Promptly after achieving Substantial Completion for both Facility Segments, Developer shall perform all remaining Construction Work for the Facility, including completion of all Punch List items, all landscaping other than vegetative ground cover and aesthetic features. Developer shall prepare and adhere to a timetable for planting and establishing the vegetative ground cover landscaping, taking into account weather conditions necessary for successful planting and growth, which timetable shall in any event provide for vegetative ground cover landscaping to be planted and established by 12 months after Substantial Completion for both Facility Segments.

7.8.4.2 TxDOT will issue a written certificate of Final Acceptance at such time as all of the following have occurred for the entire Facility:

(a) All requirements for Substantial Completion and Service Commencement for both Facility Segments have been satisfied;

(b) All Punch List items have been completed and delivered to the reasonable satisfaction of TxDOT;

(c) All aesthetic and landscaping features (other than vegetative ground cover landscaping) have been completed in accordance with Section 15 of the Technical Provisions and the plans and designs prepared in accordance therewith;

(d) TxDOT has received a complete set of the Record Drawings in form and content required by Section 2.2.7.2 of the Technical Provisions;

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

(f) Developer has made all deposits to the Intellectual Property Escrow(s) required at or prior to Final Acceptance pursuant to Section 22.5;

(g) Developer has paid in full all liquidated damages that are owing to TxDOT pursuant to this Agreement and are not in Dispute, and has provided to TxDOT reasonable security for the full amount of liquidated damages that may then be the subject of an unresolved Dispute; and

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

7.8.4.3 Developer shall provide TxDOT and the Independent Engineer with written notification when Developer determines it has achieved Final Acceptance. During the 15-day period following receipt of such notification, Developer, TxDOT and the Independent Engineer shall meet and confer and exchange information on a regular cooperative basis with the goal being TxDOT's and the Independent Engineer's orderly, timely inspection and review of the Facility and the Record Drawings, and TxDOT's issuance of a written certificate of Final Acceptance.

7.8.4.4 During such 15-day period, the Independent Engineer shall conduct an inspection of the Punch List items, a review of the Record Drawings and such other investigation as may be necessary to evaluate whether the conditions to Final Acceptance are satisfied. The Independent Engineer shall deliver a written report of findings and recommendations to TxDOT and Developer following such inspection, review and investigation and in any case by the end of such 15-day period. TxDOT may, but is not obligated to, jointly with the Independent Engineer or independently conduct such inspection, review and investigation within such 15-day period.

7.8.4.5 Within five days after expiration of such 15-day period and TxDOT's receipt of the Independent Engineer's report of findings and recommendations, TxDOT shall either (a) issue a certificate of Final Acceptance or (b) notify Developer in writing setting forth, as applicable, why Final Acceptance has not been achieved. If TxDOT and Developer cannot agree as to the date of Final Acceptance, such Dispute shall be resolved according to the Dispute Resolution Procedures.

7.8.5 Early Opening and Operation

7.8.5.1 In addition to Developer's obligations under Section 18 of the Technical Provisions, prior to the Service Commencement Date for a Facility Segment, and consistent with Section 8.3.3, Developer shall (a) have the right and obligation to open to traffic, operate and maintain portions of the Facility crossing the Facility Right of Way that Developer completes where such opening is safe and necessary or advisable for crossing traffic circulation and (b) have the right to open to traffic, operate and maintain discrete portions of the Facility that Developer completes to the extent safe and necessary or advisable to enable orderly traffic management on the Facility during construction of other portions of the Facility. If the portion opened is to be tolled, no tolling shall commence thereon until the Service Commencement Date therefor, but the portion shall first be adequately posted with signs informing the public that it is a tolled roadway and of the estimated date when tolls will commence.

7.8.5.2 Developer shall not undertake any early openings until all Insurance Policies required under the CDA Documents in connection with operations and maintenance are in effect. Developer shall undertake early openings consistently with and in accordance with the TxDOT-approved Traffic Management Plan. No early openings shall be relevant for determining Substantial Completion, Service Commencement or Final Acceptance, or determining whether Milestone Schedule Deadlines are satisfied.

7.9 Hazardous Materials Management

7.9.1 Without limiting TxDOT's role or responsibilities set forth in Sections 7.9.3 and 7.9.5 and except as provided otherwise in Exhibit 11, Developer shall manage, treat, handle, store, remediate, remove, transport (where applicable) and dispose of all Hazardous Materials and Recognized Environmental Conditions, including contaminated groundwater, in accordance with applicable Law, Governmental Approvals, the Hazardous Materials Management Plan, and all applicable provisions of the CDA Documents. If during the course of the Work, Developer encounters Hazardous Materials or a Recognized Environmental Condition in connection with the Facility, Facility Right of Way or Work, in an amount, type, quality or location that would require reporting or notification to any Governmental Entity or other Person or taking any preventive or remedial action, in each case under applicable Law, Governmental Approvals, the Hazardous Materials Management Plan or any applicable provision of the CDA Documents, Developer shall (a) promptly notify TxDOT in writing and advise TxDOT of any obligation to notify State or federal agencies under applicable Law; (b) notify any such State or federal agencies required to be notified under applicable Law; and (c) take reasonable steps, including design modifications and/or construction techniques, to avoid excavation or dewatering in areas with Hazardous Materials or Recognized Environmental Conditions. If during the Term TxDOT discovers Hazardous Materials or a Recognized Environmental Condition in connection with the Facility, Facility Right of Way or Work, TxDOT shall promptly notify Developer in writing of such fact. Where excavation or dewatering of Hazardous Materials or Recognized Environmental Conditions is unavoidable or is required by applicable Law, Developer shall utilize appropriately trained Contractors or personnel to conduct the Hazardous Materials Management activities. Wherever feasible and consistent with applicable Law and Good Industry Practice, Developer shall not dispose of contaminated soil and groundwater off-site.

7.9.2 Either Party, at its election and expense, or both Parties by joint election and at equal expense, shall have the right to conduct and complete (a) a Phase 1 Hazardous Materials Investigation of each parcel of the Facility Right of Way, and (b) a Phase 1 Hazardous Materials Investigation of each parcel of Additional Properties to be added to the Facility Right of Way due to TxDOT Changes, in each case not later than 90 days after the date TxDOT makes available to Developer such parcel. (For this purpose "makes available" has the meaning set forth in the definition of Pre-Existing Hazardous Materials.) Any such update shall supplement the Phase 1 Hazardous Materials Investigation conducted for TxDOT prior to the Effective Date as identified in the definition of Pre-existing Hazardous Materials. The Party causing any such updated or original Phase 1 Hazardous Materials Investigation to be prepared shall deliver to the other Party for review and comment a draft written report of the Phase 1 Hazardous Materials Investigation. After receiving the other Party's comments, if any, the preparing Party shall complete and deliver to the other Party a final written report of the Phase 1 Hazardous Materials Investigation within five days after the final written report is issued and within the foregoing applicable time period.

7.9.3 The right of one Party to step in to carry out remedial action obligations of the other Party are as follows:

7.9.3.1 If, within a reasonable time after discovery of Hazardous Materials or a Recognized Environmental Condition, taking into consideration the nature and extent of the contamination, the type and extent of remedial action required and the potential impact upon Developer's schedule for use of and operations on the Facility Right of Way, Developer has not undertaken remedial action required of it under Section 7.9.1, TxDOT may provide Developer with written notice that it will undertake the remedial action itself. TxDOT thereafter may undertake action to remediate in compliance with a remediation plan approved by applicable Governmental Entities and in compliance with applicable Laws. Without limiting TxDOT's role

or responsibilities set forth in Section 7.9.5, Developer shall reimburse to TxDOT on a current basis the reasonable costs, including TxDOT's Recoverable Costs, TxDOT incurs in carrying out such remediation plan.

7.9.3.2 If, within a reasonable time after discovery of Hazardous Materials or a Recognized Environmental Condition, taking into consideration the nature and extent of the contamination, the type and extent of remedial action required and the potential impact upon Developer's schedule for use of and operations on the Facility Right of Way, TxDOT has not undertaken remedial action required of it under Exhibit 11, Developer may provide TxDOT with written notice that it will undertake the remedial action itself. Developer thereafter may undertake action to remediate in compliance with a remediation plan approved by applicable Governmental Entities and in compliance with applicable Laws. TxDOT shall reimburse to Developer on a current basis the reasonable costs Developer incurs in carrying out such remediation plan.

7.9.3.3 Notwithstanding the foregoing, if either Party notifies the other that it desires to preserve claims against other potentially responsible parties, then the Party undertaking the remedial act shall take all commercially reasonable efforts to preserve such claims consistently with either the National Contingency Plan or comparable State regulations and standards; and a reasonable period of time for Developer or TxDOT, as the case may be, to perform the remedial work shall include a sufficient period for Developer or TxDOT, as the case may be, to comply with the National Contingency Plan or such comparable State regulations and standards.

7.9.4 Except for TxDOT Release(s) of Hazardous Materials, except as set forth in Section 7.9.3 and Exhibit 11, and without limiting TxDOT's role or responsibilities set forth in Section 7.9.5, Developer shall not be entitled to any compensation due to increased costs or delays associated with the discovery, handling, storage, removal, remediation, transport, treatment or disposal of Hazardous Materials, including contaminated groundwater, encountered in construction of the Facility or Utility Adjustments, but may be entitled to schedule relief under Article 13 to the extent such event constitutes a Relief Event and to other relief under Section 19.2 to the extent such event constitutes an Extended Relief Event.

7.9.5 Off-site disposal of Pre-existing Hazardous Materials and Hazardous Materials from TxDOT Release(s) of Hazardous Material is subject to the following provisions.

7.9.5.1 As between Developer, Design-Build Contractor and TxDOT, TxDOT shall be considered the generator and arranger solely for Pre-existing Hazardous Materials and TxDOT Release(s) of Hazardous Material. Such assumption of generator and arranger status does not relieve Developer from its scope of responsibilities under Section 7.9.1. Whenever TxDOT has such arranger liability, Developer's Site Investigation Report and remediation plans shall be subject to the prior written approval of TxDOT.

7.9.5.2 TxDOT has exclusive decision-making authority regarding selection of the destination facility to which the Pre-existing Hazardous Materials or Hazardous Materials from TxDOT Release(s) of Hazardous Material will be transported. With regard to Pre-existing Hazardous Materials and TxDOT Release(s) of Hazardous Material, TxDOT shall comply with the applicable standards for generators and arrangers including those found at 40 CFR Part 262, including the responsibility to sign manifests for the transport of hazardous wastes. The foregoing shall not preclude or limit any rights, remedies or defenses that TxDOT or Developer may have against any Governmental Entity or other third parties, including prior owners, lessees, licensees and occupants of any parcel of land that is or becomes part of the Facility Right of Way.

7.9.5.3 Notwithstanding any contrary provision of the CDA Documents, under no circumstances whatsoever shall any TxDOT-Caused Delay arising out of or relating to (a) its review and approval or disapproval of remediation plans for removal and off-Site disposal of Pre-existing Hazardous Materials or Hazardous Materials that any Person claims to be Pre-existing Hazardous Materials, (b) any other act or failure to act by TxDOT in its capacity as generator and arranger for off-Site disposal of Pre-existing Hazardous Materials, or (c) any Dispute over whether Hazardous Materials are Pre-existing Hazardous Materials constitute a Compensation Event or otherwise entitle Developer to any compensation from TxDOT or other remedy against TxDOT, other than remedies available where any of the foregoing constitutes a Relief Event or Extended Relief Event.

7.9.5.4 To the extent permitted by applicable Law, TxDOT shall indemnify, save, protect and defend Developer and the Design-Build Contractor from Third Party Claims and Third Party Losses arising out of or related to generator or arranger liability for the Pre-existing Hazardous Materials and Hazardous Materials from TxDOT Release(s) of Hazardous Material for which TxDOT is considered the generator and arranger pursuant to this Section, specifically excluding generator and arranger liability for actual and threatened Developer Releases of Hazardous Materials.

7.9.6 As between Developer and TxDOT, Developer shall be considered the generator and arranger and assume generator and arranger responsibility solely for Hazardous Materials that are other than Pre-existing Hazardous Materials and TxDOT Release(s) of Hazardous Materials. For such Hazardous Materials, TxDOT will assist Developer in identifying potentially responsible parties, provided Developer reimburses TxDOT for reasonable costs, including TxDOT's Recoverable Costs, incurred in providing such assistance. The foregoing shall not preclude or limit any rights or remedies that Developer may have against any Governmental Entity or any other third parties, including prior owners, lessees, licensees and occupants of any parcel of land that is or becomes part of the Facility Right of Way, excluding, however, TxDOT and the Texas Transportation Commission and their respective agents. To the extent permitted by applicable Law, Developer shall indemnify, save, protect and defend TxDOT from Third Party Claims and Third Party Losses arising out of or related to generator or arranger liability for such Hazardous Materials for which Developer is considered the generator and arranger pursuant to this Section.

7.10 Environmental Compliance

Throughout the course of the Design Work and Construction Work, Developer shall perform or cause to be performed all environmental mitigation measures required under the Environmental Approvals, including the NEPA Approval and any other Governmental Approvals for the Facility, or under the CDA Documents, and shall comply with all other conditions and requirements of the Environmental Approvals in accordance with Section 4 of the Technical Provisions.

7.11 Oversight, Inspection and Testing; Meetings

7.11.1 Oversight by Independent Engineer

The Independent Engineer will perform oversight, inspection, testing and auditing respecting the Design Work and Construction Work in accordance with Section 9.3 and the Independent Engineer Agreement.

7.11.2 Oversight by TxDOT

TxDOT's rights of oversight, inspection, testing and auditing respecting the Design Work and Construction Work are set forth in Sections 9.3 and 22.2.

7.11.3 Meetings

7.11.3.1 Developer shall conduct regular progress meetings with TxDOT at least once a month during the course of design and construction. At TxDOT's request, Developer will require the Design-Build Contractor to attend the progress meetings and other meetings concerning matters pertaining to the Design-Build Contractor, its work or the coordination of its work with other Contractors.

7.11.3.2 In addition, TxDOT and Developer, through their respective Authorized Representatives, shall meet from time to time at the other Party's request to discuss and resolve matters relating to the Design Work, Construction Work or Facility.

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

7.12 Contractor Warranties

7.12.1 If and to the extent Developer obtains general or limited warranties from any Contractor in favor of Developer with respect to design, materials, workmanship, equipment, tools, supplies, software or services, Developer also shall cause such warranty to be expressly extended to TxDOT and any third parties for whom Work is being performed or equipment, tools, supplies or software is being supplied by such Contractor; provided that the foregoing requirement shall not apply to standard, pre-specified manufacturer warranties of mass-marketed materials, products (including software products), equipment or supplies where the warranty cannot be extended to TxDOT using commercially reasonable efforts. TxDOT agrees to forebear from exercising remedies under any such warranty so long as Developer or a Lender is diligently pursuing remedies thereunder. To the extent that any Contractor warranty would be voided by reason of Developer's negligence in incorporating material or equipment into the Work, Developer shall be responsible for correcting such defect.

7.12.2 Contractor warranties (if any) are in addition to all rights and remedies available under the CDA Documents or applicable Law or in equity, and shall not limit Developer's liability or responsibility imposed by the CDA Documents or applicable Law or in equity with respect to the Work, including liability for design Defects, latent construction Defects, strict liability, breach, negligence, willful misconduct or fraud.

7.13 Existing Improvements

TxDOT is delivering the Existing Improvements to Developer as is, with all faults, known and unknown, suspected and unsuspected, and without any TxDOT obligation to reconstruct, rehabilitate, renew, replace, renovate, or repair. Beginning on NTP2, Developer assumes all responsibility and liability associated with Existing Improvements, including inter alia any improvements constructed by TxDOT or by third parties, any impacts upon initial design and construction, and defects affecting operations, maintenance, renewal and replacement requirements. TxDOT does not provide, and hereby expressly disclaims, any and all warranties of any kind, whether express or implied, with respect to the Existing Improvements.

ARTICLE 8. OPERATIONS AND MAINTENANCE

8.1 General

8.1.1 Developer and TxDOT Obligations; Transition of Operations

At all times during the Operating Period, Developer shall carry out the O&M Work in accordance with (a) Good Industry Practice, as it evolves from time to time, (b) the requirements, terms and conditions set forth in the CDA Documents (including the Technical Provisions and Technical Documents), as the same may change from time to time, (c) all Laws, (d) the requirements, terms and conditions set forth in all Governmental Approvals, (e) the approved Facility Management Plan and all component parts, plans and documentation prepared or to be prepared thereunder, and (f) all other applicable safety, environmental and other requirements, taking into account the Facility Right of Way limits and other constraints affecting the Facility. Developer is responsible for keeping itself informed of current Good Industry Practice.

8.1.2 Performance, Operation and Maintenance Standards

8.1.2.1 Developer, at its sole cost and expense unless expressly provided otherwise in this Agreement, shall comply with all Technical Provisions and Technical Documents, including Safety Standards, during the Operating Period.

8.1.2.2 TxDOT shall have the right to adopt at any time, and Developer acknowledges it must comply with all, changes and additions to, and replacements of, Technical Documents and Safety Standards relating to the O&M Work, whether of general application or Discriminatory. Refer to Section 13.2 for Developer's rights to compensation regarding Discriminatory changes and additions to, and replacements of, such Technical Documents or Safety Standards. TxDOT shall provide Developer with prompt written notice of changes and additions to, and replacements of, such Technical Documents or Safety Standards. Without limiting the foregoing, the Parties anticipate that from time to time after the Proposal Due Date TxDOT will adopt, through revisions to existing manuals and publications or new manuals and publications, changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, relating to O&M Work of general application to Comparable Limited Access Highways that are or become tolled or the subject of concession or public-private partnership agreements. TxDOT shall have the right to add such changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, to Book 3 by notice to Developer, whereupon they shall constitute amendments, and become part, of the Technical Documents. If such changed, added or replacement Technical Documents or Safety Standards encompass matters that are addressed in the Technical Provisions as of the Proposal Due Date, they may, upon inclusion in Book 3, replace and supersede inconsistent provisions of the Technical Provisions to the extent designated by TxDOT in its sole discretion. TxDOT will identify the superseded provisions in its notice to Developer.

8.1.2.3 If compliance with a non-Discriminatory changed, added or replacement Technical Document or Safety Standard relating to the O&M Work requires major repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element or other component of the Facility, Developer shall commence performance of the major repair, reconstruction, rehabilitation, restoration, renewal or replacement not later than the first to occur of (a) any deadline recommended or prescribed in the changed or added Technical Document or Safety Standard, (b) the date when Developer first performs or (if earlier) is first obligated to

perform Renewal Work on such Element or other component and (c) the date TxDOT first applies the change, addition or replacement to any other Comparable Limited Access Highways that TxDOT manages or operates, as determined pursuant to Section 8.1.2.8. If, however, TxDOT adopts the changed, added or replacement Technical Document or Safety Standard prior to the Service Commencement Date for a Facility Segment (other than Upgrades), in the absence of a TxDOT Change clauses (a) and (c) above shall not apply in determining when Developer must implement the changed, added or replacement Technical Document or Safety Standard with respect to such Facility Segment.

8.1.2.4 If compliance with a non-Discriminatory changed, added or replacement Technical Document or Safety Standard relating to the O&M Work requires construction or installation of new improvements at, for or on the Facility, Developer shall complete construction and installation of the new improvements according to the implementation period recommended or prescribed by the changed, added or replacement Technical Document or Safety Standard. If no such implementation period is recommended or prescribed, Developer shall submit to the Independent Engineer and TxDOT for TxDOT's approval, within 90 days after adoption of the changed, added or replacement Technical Document or Safety Standard, a proposed schedule for completing the new improvements. The proposed schedule shall be reasonable and conform to Good Industry Practice, taking into account the scope, complexity and financial impacts of the work required. Any Dispute regarding the proposed schedule shall be resolved according to the Dispute Resolution Procedures. Developer shall diligently prosecute the Work until completion in accordance with the approved schedule.

8.1.2.5 Developer shall be obligated to implement a Discriminatory changed, added or replacement Technical Document or Safety Standard related to the O&M Work only after TxDOT issues a Change Order or Directive Letter therefor pursuant to Article 14. If a Discriminatory changed, added or replacement Technical Document or Safety Standard relating to the O&M Work requires major repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element or other component of the Facility during the Operating Period, or requires construction or installation of new improvements, Developer shall perform the major repair, reconstruction, rehabilitation, restoration, renewal or replacement or the new improvement work according to the schedule therefor adopted in the Change Order for such work. If Discriminatory changed, added or replacement Technical Document or Safety Standard requires implementation not entailing such work, Developer shall implement it from and after the date TxDOT issues the Change Order.

8.1.2.6 Section 12.4 establishes the timing by which Developer must implement Safety Compliance during the Operating Period.

8.1.2.7 In the case of any other changed, added or replacement Technical Document or Safety Standard, Developer shall be obligated to comply from and after the date it becomes effective and Developer is notified or otherwise obtains knowledge of the change or addition. For the avoidance of doubt, Developer shall comply with all changes or additions to such Technical Documents that are in effect and noticed or known to Developer on or prior to the date Developer commences maintenance, routine repair or routine replacement of damaged, worn or obsolete Facility components or materials.

8.1.2.8 For purposes of Section 8.1.2.3(c), a change, addition or replacement shall be deemed to have been first applied by TxDOT if and when TxDOT commences implementing actions on other Comparable Limited Access Highways that TxDOT manages or operates. Developer shall not be entitled to delay commencement or completion of

its work on grounds that TxDOT is delayed in commencing or completing implementing actions on Comparable Limited Access Highways where:

(a) TxDOT is delayed due to the extensive system of Comparable Limited Access Highways for which TxDOT is responsible; or

(b) The changed, added or replacement Technical Document or Safety Standard applies only upon the occurrence of a condition or circumstance that has not yet occurred in respect of a Comparable Limited Access Highway that TxDOT manages or operates.

8.1.2.9 New or revised statutes or regulations adopted after the Proposal Due Date that change, add to or replace applicable standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, relating to the O&M Work, as well as revisions to Technical Provisions and Technical Documents to conform to such new or revised statutes or regulations, shall be treated as Changes in Law (including, to the extent expressly provided under other sections of this Agreement, Discriminatory Change in Law) rather than a TxDOT Change; however, the foregoing shall not apply to new or revised statutes or regulations that also cause or constitute changes in Adjustment Standards.

8.1.2.10 Developer may apply for TxDOT approval of Deviations from applicable Technical Provisions or Technical Documents regarding O&M Work. All applications shall be in writing. Where Developer requests a Deviation as part of the submittal of a component plan of the Facility Management Plan, Developer shall specifically identify and label the Deviation. TxDOT shall consider in its sole discretion, but have no obligation to approve, any such application, and Developer shall bear the burden of persuading TxDOT that the Deviation sought constitutes sound and safe practices consistent with Good Industry Practice and achieves or substantially achieves TxDOT's applicable Safety Standards and criteria. No Deviation shall be deemed approved or be effective unless and until stated in writing signed by TxDOT's Authorized Representative. TxDOT's affirmative written approval of a component plan of the Facility Management Plan shall constitute (a) approval of the Deviations expressly identified and labeled as Deviations therein, unless TxDOT takes exception to any such Deviation and (b) disapproval of any Deviations not expressly identified and labeled as Deviations therein. TxDOT's lack of issuance of a written Deviation within 14 days after Developer applies therefor in writing shall be deemed a disapproval of such application. TxDOT's denial or disapproval of a requested Deviation shall be final and not subject to the Dispute Resolution Procedures. TxDOT may elect to process the application as a Change Request under Section 14.2 rather than as an application for a Deviation.

8.1.3 Hazardous Materials Management

Without limiting TxDOT's role or responsibilities as set forth in Sections 7.9.3 and 7.9.5 and except as provided otherwise in Exhibit 11, during the Operating Period, Developer shall manage, treat, handle, store, remediate, remove, transport (where applicable) and dispose of all Hazardous Materials and Recognized Environmental Conditions, including contaminated groundwater, for which Developer is responsible under Section 7.9, to the extent required by and in accordance with applicable Law, Governmental Approvals, the Hazardous Materials Management Plan, and all applicable provisions of the CDA Documents. The provisions of Section 7.9 and Exhibit 11 shall apply throughout the Operating Period.

8.1.4 Environmental Compliance

Throughout the Operating Period, Developer shall perform or cause to be performed all environmental mitigation measures required under the Environmental Approvals, including the NEPA Approval and similar Governmental Approvals for the Facility, or under the CDA Documents, and shall comply with all other conditions and requirements of the Environmental Approvals. Refer to Section 4 of the Technical Provisions for further provisions, requirements and obligations regarding environmental compliance.

8.1.5 Utility Accommodation

8.1.5.1 It is anticipated that during the course of the Operating Period, from time to time Utility Owners will apply for additional utility permits to install new Utilities that would cross or longitudinally occupy the Facility Right of Way, or to modify, repair, upgrade, relocate or expand existing Utilities within the Facility Right of Way. In such circumstances, the provisions of Section 7.5.8 shall apply, including the application of Section 11.2 to those circumstances where TxDOT is pursuing a Business Opportunity involving a Utility in the Facility Right of Way.

8.1.5.2 Throughout the Operating Period, Developer shall monitor Utilities and Utility Owners within the Facility Right of Way for compliance with applicable utility permits, Utility Joint Use Acknowledgments/Utility Joint Use Agreements, easements, the Utility Accommodation Rules and other applicable Law, and shall use diligent efforts to obtain the cooperation of each Utility Owner having Utilities within the Facility Right of Way. If (a) Developer reasonably believes that any Utility Owner is not complying with the terms of a utility permit, Utility Joint Use Acknowledgment/Utility Joint Use Agreement, easement, the Utility Accommodation Rules or other applicable Law affecting a Utility within the Facility Right of Way, or (b) any other dispute arises between Developer and a Utility Owner with respect to a Utility within the Facility Right of Way, despite Developer having exercised its diligent efforts to obtain the Utility Owner's cooperation, Developer shall promptly notify TxDOT, and TxDOT and Developer shall work together in the manner described in Section 7.5.7, including Developer's obligation to reimburse TxDOT for TxDOT's Recoverable Costs in connection with providing assistance to Developer; provided, however, that the "conditions to assistance" (as that term is used in Section 7.5.7) are that Developer shall provide evidence reasonably satisfactory to TxDOT that (i) Developer's position in the dispute is reasonable, (ii) Developer has made diligent efforts to obtain the Utility Owner's cooperation, and (iii) the Utility Owner is not cooperating. With respect to the Parties' rights and obligations described in Section 7.5.7.3, for purposes of this Section 8.1.5.2 the conditions to assistance described in clause (i) of the preceding sentence shall be treated in the same manner as those described in Sections 7.5.7.2(a), (b) and (c), and the conditions to assistance described in clauses (ii) and (iii) of the preceding sentence shall be treated in the same manner as those described in Sections 7.5.7.2(d) and (e).

8.1.6 Frontage Roads Access

TxDOT shall be solely responsible, at its expense, for handling requests and permitting for adjacent property access to frontage roads of the Facility. Nothing in the CDA Documents shall restrict TxDOT from granting access permits or determining the terms and conditions of such permits. TxDOT will keep Developer regularly informed of access permit applications and will deliver to Developer a copy of each issued access permit within five days after it is issued. TxDOT will follow its standard procedures in connection with the consideration of applications and issuance of such permits. Developer shall have no claim for a Relief Event, Extended Relief Event or Compensation Event by reason of TxDOT's grant of access permits, the terms

and conditions thereof, or the actions of permit holders or their employees, agents, representatives and invitees. Developer at its expense shall cooperate and coordinate with permit holders to enable them to safely construct, repair and maintain access improvements allowed under their access permits.

8.1.7 Speed Studies and Speed Limits

8.1.7.1 TxDOT at its expense will conduct a speed study of the Managed Lanes, General Purpose Lanes and Frontage Roads in the Facility between six to eight weeks after the Service Commencement Date for the Facility (to allow time for traffic patterns to stabilize). TxDOT will conduct the speed study in accordance with applicable Law and TxDOT's standards, procedures and methodology applicable to speed studies of frontage roads and main lanes, including those set forth in TxDOT's manual entitled "Procedures for Establishing Speed Zones," as the same may be revised, updated or replaced from time to time (collectively the "TxDOT speed study standards"). TxDOT will work with local governments on ordinances enacting the appropriate posted speeds based on the study. TxDOT will keep Developer informed of study schedules and provide Developer a copy of the study results.

8.1.7.2 Thereafter, in lieu of speed studies by TxDOT, Developer shall have the right and obligation to conduct, at its expense, further speed studies of the Managed Lanes, General Purpose Lanes and Frontage Roads in the Facility. Developer shall conduct such studies at the three-year intervals provided by applicable Law. In addition, Developer will have the right to conduct a speed study of the Managed Lanes, General Purpose Lanes and Frontage Roads in the Facility earlier than the three-year interval, but in no event sooner than 18 months after completion of the immediately preceding speed study for the same portion of the Managed Lanes, General Purpose Lanes or Frontage Roads, if Developer in good faith believes that significant changes have occurred in the interim that will or may affect posted speed limits. Developer shall conduct the studies according to the TxDOT speed study standards. Each speed study shall be subject to TxDOT approval to verify compliance with the TxDOT speed study standards. TxDOT at its expense will process each such approved speed study, including working with local governments as described above. TxDOT will coordinate such processing with Developer where Developer also desires to work with local governments on speed ordinances.

8.1.7.3 Nothing in the CDA Documents authorizes Developer to adjust posted speed limits on the Managed Lanes, General Purpose Lanes, Frontage Roads or other lanes of the Facility, except temporary reductions during construction with TxDOT's prior written approval, as set forth in Section 18.3.1 of the Technical Provisions. Such authority is reserved solely to TxDOT and applicable Governmental Entities.

8.1.7.4 The requirements for speed studies set forth in this subsection shall be in addition to the monitoring for compliance with the minimum speed requirements established for Managed Lanes pursuant to Exhibit 4.

8.1.8 Updates of Record Drawings

Within 30 days after undertaking any O&M Work that results in a significant change to the Facility, Developer shall update the Record Drawings to reflect such change.

8.2 O&M Contracts

8.2.1 General

8.2.1.1 If Developer elects not to self-perform any aspect of the operations and maintenance of the Facility, including toll operations, it shall enter into an O&M Contract for such O&M Work. Each O&M Contract will be a Principal Facility Document.

8.2.1.2 Each O&M Contractor, if any, shall have the expertise, qualifications, experience, competence, skills and know-how to perform the O&M Work and related obligations of Developer in accordance with this Agreement. NTTA is deemed to meet this requirement so long as Developer is obligated to contract with NTTA under applicable Law.

8.2.2 NTTA

8.2.2.1 Developer warrants and represents that (a) on the Effective Date it and NTTA entered into the NTTA Tolling Services Agreement for customer service and other toll collection and enforcement services for the Facility, (b) on the Effective Date it delivered to TxDOT a true and complete copy of the NTTA Tolling Services Agreement, (c) as of the Effective Date the NTTA Tolling Services Agreement was duly executed and delivered by Developer and is in full force and effect as to Developer, and (d) from December 10, 2007 through the Effective Date, it has not had any communications with the NTTA regarding the Facility, including the procurement and services potentially to be provided by NTTA, except as expressly authorized by and in accordance with the procedures set forth in Section 2.2.3 of Volume I of the RFP (Instructions to Proposers).

8.2.2.2 Developer shall provide TxDOT with at least five Business Days advance written notice of all meetings and negotiations between Developer and NTTA concerning (a) extensions of, amendments, supplements and revisions to the NTTA Tolling Services Agreement and (b) any other proposed agreement providing for NTTA to furnish customer service and other toll collection and enforcement services, or other services of any kind, for the Facility. TxDOT shall be afforded an opportunity to attend, observe and participate in such meetings and negotiations.

8.2.2.3 Amendments, supplements and revisions to the NTTA Tolling Services Agreement shall be subject to the following TxDOT rights of consent.

(a) Regardless of whether TxDOT is obligated to assist Developer with stepping in or intervening as provided in Section 8.7.5 or 8.7.6, amendments, supplements and revisions to any provision of the NTTA Tolling Services Agreement (i) that expressly require a consent or approval of TxDOT or state specific rights in favor of TxDOT shall be subject to TxDOT prior written approval in its sole discretion, or (ii) that pertains to performance security provided by or on behalf of the NTTA shall be subject to TxDOT's prior reasonable written approval.

(b) So long as TxDOT is obligated to assist Developer with stepping in or intervening as provided in Section 8.7.5 or Section 8.7.6, any amendment, supplement and revision to the NTTA Tolling Services Agreement that pertains to Developer's right to step in or intervene to take over interim performance of NTTA's obligations thereunder shall be subject to TxDOT prior written approval in its sole discretion.

(c) So long as TxDOT is obligated to assist Developer with stepping in or intervening as provided in Section 8.7.5 or Section 8.7.6, any amendments,

supplements and revisions to the NTTA Tolling Services Agreement not governed by clause (a) or (b) above, and adjustments to the rates or terms of NTTA's compensation, shall be subject to TxDOT's prior reasonable written approval unless determined by final, non-appealable decision under any dispute resolution procedures set forth in the NTTA Tolling Services Agreement or, in the absence thereof, by final, non-appealable decision under applicable Law.

(d) If TxDOT is no longer obligated to assist Developer with stepping in or intervening as provided in Section 8.7.5 or Section 8.7.6, any amendments, supplements and revisions to the NTTA Tolling Services Agreement not governed by clause (a) above shall be subject to TxDOT's prior written approval for consistency with the CDA Documents and to confirm they do not adversely affect Developer's ability to carry out its duties under the CDA Documents, increase TxDOT's liability or materially adversely affect TxDOT's step-in rights.

8.2.2.4 Developer shall deliver to TxDOT, within five days after executed, delivered, created or received by Developer, true and complete copies of all agreements, revisions, amendments, supplements and other documentation relating to the NTTA Tolling Services Agreement or any other proposed agreement providing for NTTA to furnish customer service and other toll collection and enforcement services, or other services of any kind, for the Facility.

8.2.2.5 Developer acknowledges that Developer is responsible for the performance of all O&M Work, including the O&M Work within the scope of the NTTA Tolling Services Agreement.

8.3 Transition of Operations and Maintenance Responsibilities

8.3.1 TxDOT will be responsible for operation and maintenance for the Facility until the Operating Commencement Date. During the period TxDOT retains operation and maintenance responsibility for the Facility, TxDOT shall maintain the Facility in accordance with current TxDOT maintenance standards and conduct traffic management activities in accordance with TxDOT's standard traffic management practices and procedures.

8.3.2 Upon the Operating Commencement Date, Developer shall assume full responsibility for operation and maintenance for the Facility and shall keep all General Purpose Lanes and the Frontage Roads open for normal and continuous operations and use by the traveling public, except to the extent provided in the TxDOT-approved Traffic Management Plan.

8.3.3 The Parties shall carry out transition of operation and maintenance responsibilities in accordance with the Traffic Management Plan and other applicable portions of the Facility Management Plan.

8.4 Oversight, Inspection and Testing; Meetings

8.4.1 By Independent Engineer

The Independent Engineer will perform oversight, inspection, testing and auditing respecting the O&M Work in accordance with Section 9.3 and the Independent Engineer Agreement.

8.4.2 By TxDOT

TxDOT's rights of oversight, inspection, testing and auditing with respect to the O&M Work are set forth in Sections 9.3 and 22.2.

8.4.3 Inspections

During the Operating Period, Developer shall carry out inspections in accordance with the Maintenance Management Plan. Developer shall use the results of inspections to develop and update the Renewal Work Schedule, to maintain asset condition and service levels, and to develop programs of maintenance and Renewal Work to minimize the effect of O&M Work on Users.

8.4.4 Meetings

8.4.4.1 At TxDOT's request, Developer shall conduct regular quarterly meetings with TxDOT during the Operating Period. At TxDOT's request, Developer will require each O&M Contractor (other than NTTA), if any, to attend the quarterly meetings and any other meetings concerning matters pertaining to the O&M Contractor (other than NTTA), its work or the coordination of its work with other Contractors. Such meetings shall be in addition to any meetings required by Section 7.11.3 during the Operating Period.

8.4.4.2 In addition, TxDOT and Developer, through their respective Authorized Representatives, shall meet from time to time at the other Party's request to discuss and resolve matters relating to the O&M Work or Facility.

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

8.5 Renewal Work

8.5.1 The Performance Requirements for the Elements of the Facility are set forth in the Performance and Measurement Table Baseline and related provisions of the Technical Provisions. Developer shall diligently perform Renewal Work as and when necessary to maintain compliance with such Performance Requirements. Developer also shall perform Renewal Work according to the other applicable terms of the Technical Provisions, including, when applicable, the Handback Requirements. Developer shall use the Renewal Work Schedule, as updated from time to time, as the principal guide for scheduling and performing Renewal Work.

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

8.6 Renewal Work Schedule

8.6.1 Not later than 90 days before the first Service Commencement Date to occur, Developer shall prepare and submit to the Independent Engineer and TxDOT for their review and comment a Renewal Work Schedule. Using the results of its Facility inspections under Sections 19.1 and 19.2 of the Technical Provisions, Developer shall set forth in the Renewal Work Schedule, by Element, (a) the estimated Useful Life, (b) the estimated Residual Life, (c) a brief description of the type of Renewal Work anticipated to be performed at the end of the Element's Residual Life, (d) a brief description of any Renewal Work anticipated to be performed before the end of the Element's Residual Life, including reasons why this work should be performed at the proposed time, (e) the estimated cost of such Renewal Work and (f) the total estimated cost of Renewal Work in each of the years Renewal Work is anticipated to be performed under the Renewal Work Schedule.

8.6.2 Developer shall estimate the Useful Life of each Element within the Renewal Work Schedule based on (a) Developer's reasonable expectations respecting the manner of use, levels of traffic, and wear and tear and (b) the assumption that, when subject to routine maintenance of a type which is normally included as an annually recurring cost in highway maintenance and repair budgets, the Element will comply throughout its Useful Life with each applicable Performance Requirement. Developer shall estimate the Residual Life of each Element within the Renewal Work Schedule based on its Age and whether (i) the Element has performed in service in the manner and with the levels of traffic and wear and tear originally expected by Developer (ii) Developer has performed the type of routine maintenance of the Element which is normally included as an annually recurring cost in highway maintenance and repair budgets, and (iii) the Element has complied throughout its Age with each applicable Performance Requirement.

8.6.3 Not later than 90 days before the beginning of each calendar year thereafter, Developer shall prepare and submit to the Independent Engineer and TxDOT for their review and comment either (a) a revised Renewal Work Schedule or (b) the then-existing Renewal Work Schedule accompanied by a statement that Developer intends to continue in effect the then-existing Renewal Work Schedule without revision (in either case, referred to as the "updated Renewal Work Schedule"). Developer shall make revisions as reasonably indicated by experience and then-existing conditions respecting the Facility, the factors described in Section 8.6.2, changes in estimated costs of Renewal Work, changes in technology, changes in Developer's planned means and methods of performing Renewal Work, and other relevant factors. The updated Renewal Work Schedule shall show the revisions, if any, to the prior Renewal Work Schedule and include an explanation of reasons for revisions. If no revisions are proposed, Developer shall include an explanation of the reasons no revisions are necessary. During the period the Handback Requirements Reserve is in effect, the updated Renewal Work Schedule also shall set forth, by Element, Developer's planned draws from the Handback Requirements Reserve during the forthcoming calendar year.

8.6.4 At TxDOT's or the Independent Engineer's request, Developer and its O&M Contractor(s), if any, shall promptly meet and confer with TxDOT or the Independent Engineer to review and discuss the original or updated Renewal Work Schedule.

8.6.5 The Independent Engineer's duties shall include delivering to TxDOT and Developer, within 30 days after receipt of the original and each updated Renewal Work Schedule, comments, objections and recommendations with respect thereto. Within 30 days after receiving such comments, objections and recommendations, TxDOT shall have the right to object to or disapprove the original or updated Renewal Work Schedule or any elements thereof. In addition to the grounds for disapproval set forth in Section 6.3.7.1, comments,

objections and disapprovals by the Independent Engineer or TxDOT shall be based on whether the original or updated Renewal Work Schedule and underlying assumptions are reasonable, realistic and consistent with Good Industry Practice, Facility experience and condition, applicable Technical Provisions, Governmental Approvals, and Laws.

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

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

8.7 Toll Handling, Collection and Enforcement

8.7.1 Commencing on the Service Commencement Date for each Facility Segment and continuing throughout the Term, Developer shall be responsible for toll collection, violation processing, enforcement, revenue handling and accounting, and customer service and support for the Managed Lanes. Developer shall conduct its violation processing and enforcement activities in compliance with applicable Laws. If Developer retains a public agency (including NTTA) to perform toll violation processing and enforcement, the Laws applicable to such agency's violation processing and enforcement activities, including those pertaining to fees, costs and penalties it may charge to Users, shall apply.

8.7.2 Commencing on the Service Commencement Date for each Facility Segment and continuing throughout the Term, Developer shall provide all Electronic Toll Collection Systems and related services for the Managed Lanes in accordance with the requirements set forth in Section 21 of the Technical Provisions. Commencing on the Service Commencement Date for each Facility Segment and continuing throughout the Term, Developer shall maintain and operate an Electronic Toll Collection System for the Managed Lanes. Such Electronic Toll Collection System and any transponders Developer or its Affiliate issues shall meet all applicable TxDOT statewide interoperability and compatibility standards, requirements and protocols, if any, including any pertaining to any clearinghouse system TxDOT participates in, implements or operates. Interoperability is required as to (a) functionality, enabling use of a single transponder across all highways, (b) customer account maintenance, management and reconciliation, and (c) funds transfers among all participants, enabling a customer to have a single transponder to pay for tolled travel on all highways.

8.7.3 If TxDOT is a party to any agreement or memorandum of understanding with any other public agency or private party operating tolled highway facilities within the State for interoperability with TxDOT's electronic toll collection system, then Developer's Electronic Toll

Collection System also shall be interoperable with the electronic toll collection system and violation enforcement system and protocols utilized or to be utilized on such other highway facilities, to the extent such systems and protocols are in common with or substantially similar to TxDOT's. TxDOT will promptly provide to Developer a copy of any such agreement or memorandum of understanding.

8.7.4 If prior to commencement of toll operations TxDOT has in place statewide interoperability and compatibility standards, requirements and protocols for electronic tolling, then Developer shall demonstrate or cause to be demonstrated interoperability of its Electronic Toll Collection System prior to commencement of the toll operations. Developer shall make such demonstration by submitting to TxDOT and the Independent Engineer test results from a qualified testing facility, verifying compliance with the interoperability standards described in Sections 8.7.2 and 8.7.3, and by reasonable field verification and testing in compliance with Good Industry Practice.

8.7.5 If (a) the NTTA Tolling Services Agreement provides to Developer the remedy of stepping in or intervening to take over interim performance of NTTA's obligations thereunder due to an uncured NTTA default or other specified trigger event, (b) Developer validly exercises or determines that it will exercise such a remedy, and (c) at such time the Facility remains subject to an obligation under applicable Law to use NTTA to provide such services, then at Developer's option TxDOT will act as Developer's designated agent for the purpose of performing customer service and other toll collection and enforcement services for the Facility for the period of time such stepping in or intervention is authorized under the NTTA Tolling Services Agreement, subject to the following terms and conditions.

8.7.5.1 Developer may exercise this option only by delivering to TxDOT (a) written notice requesting TxDOT's services and affirmatively stating that Developer has the right to step in or intervene under the NTTA Tolling Services Agreement, (b) correspondence, documents and other evidence establishing Developer's right to step in or intervene, including factual evidence that the circumstances under which such action may be taken have occurred, (c) two sets of a fully executed TxDOT Tolling Services Agreement, in the form attached as Exhibit 23, with the date left blank, with the date in Recitial E thereof completed, with Section 27 thereof completed with Developer's address and contact information, and with Attachment 7 thereto completed with designation of Developer's authorized representative, and (d) complete information on the communications protocols and procedures established and in place for interconnection between the Electronic Toll Collection System and TxDOT's CSC Host.

8.7.5.2 If TxDOT is reasonably satisfied that under the then-existing facts and circumstances Developer has the present right to step in or intervene and if Developer has otherwise validly exercised this option, then:

(a) Within five Business Days thereafter, TxDOT shall date and execute both sets of the TxDOT Tolling Services Agreement and deliver one executed set to Developer, with Section 27 thereof completed with TxDOT's address and contact information, with TxDOT's then-existing Interface Control Document added as Attachment 3 thereto, with TxDOT's most recent list of transponder models establishing benchmark transponder performance added as Attachment 4 thereto, and with Attachment 7 thereto completed with designation of Developer's authorized representative; and

(b) TxDOT and Developer shall immediately and continuously cooperate and coordinate to transition customer service and other toll collection and enforcement services from NTTA to TxDOT's customer service center and CSC Host as expeditiously as possible, in accordance with the transition plan adopted by Developer and

NTTA under the NTTA Tolling Services Agreement and consistent with TxDOT's systems and procedures, in order to avoid interruption of toll collection and enforcement for the Facility.

8.7.5.3 Subject to Section 8.7.5.4, if (a) TxDOT is reasonably satisfied that under the then-existing facts and circumstances Developer has the present right to step in or intervene, (b) Developer has otherwise validly exercised this option, (c) Developer immediately and continuously cooperates and coordinates with TxDOT as provided in Section 8.7.5.2(b), and (d) the NTTA-Developer transition plan is consistent with TxDOT's systems and procedures, then TxDOT will commence provision of customer service and other toll collection and enforcement services for Developer within five Business Days after receiving the written notice and documentation set forth in Section 8.7.5.1.

8.7.5.4 As between TxDOT and Developer, Developer shall have sole responsibility for the design, capacity and efficacy of the communications protocols and procedures. In the event interconnection between the Electronic Toll Collection System and TxDOT's CSC Host is not established or does not function according to TxDOT's standards and requirements, including TxDOT's Interface Control Document, within the five Business Days period referred to in Section 8.7.5.3 due to problems with the design, capacity or efficacy of the communications protocols and procedures, the five Business Day time period shall be extended until the problems are rectified by Developer, and TxDOT shall have no responsibility or liability to Developer for resulting delay in commencement of TxDOT's services under the TxDOT Tolling Services Agreement.

8.7.5.5 If NTTA brings any suit or proceeding against TxDOT arising out of TxDOT's acting or attempting to act as Developer's designee, TxDOT shall have the right to interplead Developer into such suit or proceeding, and, as a condition to acting or continuing to act as Developer's designee, to require security for Developer's indemnification obligation, in form and amount acceptable to TxDOT in its good faith discretion.

8.7.5.6 TxDOT shall have no obligation to post any letter of credit or other security for TxDOT's obligations to Developer as its designee. At either Party's request, the Parties shall negotiate in good faith a written agreement setting forth additional and supplemental terms and conditions pertaining to TxDOT's services as designee. Except as provided otherwise in Section 17.5.1.1, no default or failure to perform by either Party under the TxDOT Tolling Services Agreement or any related agreement shall constitute a default by such Party under the CDA Documents.

8.7.6 If (a) the right to terminate the NTTA Tolling Services Agreement vests in Developer in accordance with the terms thereof, (b) the NTTA Tolling Services Agreement provides to Developer the remedy of terminating the NTTA Tolling Services Agreement by reason of an NTTA default, (c) Developer validly exercises such termination remedy within the later of (i) two years following the date such termination right vested or (ii) the end of the Service Period as defined in the NTTA Tolling Services Agreement in effect on the date such termination right vested, and (d) Developer did not, at any time after the date such termination right vested, contract with another entity to provide such services, then at Developer's option TxDOT will perform such services for a period of two years following transition of such services to TxDOT, subject to the following terms and conditions.

8.7.6.1 Developer may exercise this option only by delivering to TxDOT (a) written notice requesting TxDOT's services and affirmatively stating that Developer has the right to terminate the NTTA Tolling Services Agreement, (b) correspondence, documents and other evidence establishing Developer's right to terminate, including factual evidence that the circumstances under which such action may be taken have occurred, (c) two sets of a fully

executed TxDOT Tolling Services Agreement, in the form attached as Exhibit 23, with the date left blank, with the date in Recitial E thereof completed, with Section 27 thereof completed with Developer's address and contact information, and with Attachment 7 thereto completed with designation of Developer's authorized representative, and (d) complete information on the communications protocols and procedures established and in place for interconnection between the Electronic Toll Collection System and TxDOT's CSC Host.

8.7.6.2 If Developer asserts the present right to terminate the NTTA Tolling Services Agreement and NTTA admits in writing such present right or agrees in writing not to dispute such termination, or if TxDOT receives from legal counsel to Developer acceptable to TxDOT an unqualified legal opinion, addressed to and for the benefit of TxDOT, that under the then-existing facts and circumstances Developer has the present right to terminate the NTTA Tolling Services Agreement, and if Developer has otherwise validly exercised this option, then:

(a) Within five Business Days thereafter, TxDOT shall date and execute both sets of the TxDOT Tolling Services Agreement and deliver one executed set to Developer, with Section 27 thereof completed with TxDOT's address and contact information, with TxDOT's then-existing Interface Control Document added as Attachment 3 thereto, with TxDOT's most recent list of transponder models establishing benchmark transponder performance added as Attachment 4 thereto, and with Attachment 7 thereto completed with designation of Developer's authorized representative; and

(b) TxDOT and Developer shall immediately and continuously cooperate and coordinate to transition customer service and other toll collection and enforcement services from NTTA to TxDOT's customer service center and CSC Host as expeditiously as possible, in accordance with the transition plan adopted by Developer and NTTA under the NTTA Tolling Services Agreement and consistent with TxDOT's systems and procedures, in order to avoid interruption of toll collection and enforcement for the Facility.

8.7.6.3 Subject to Section 8.7.6.4, if (a) Developer has validly exercised this option, (b) TxDOT has received an NTTA admission or agreement or legal opinion set forth in Section 8.7.6.2, (c) Developer immediately and continuously cooperates and coordinates with TxDOT as provided in Section 8.7.6.2(b), and (d) the NTTA-Developer transition plan is consistent with TxDOT's systems and procedures, then TxDOT will commence provision of customer service and other toll collection and enforcement services for Developer within five Business Days after receiving the written notice and documentation set forth in Section 8.7.6.1 together with such NTTA admission or agreement or such legal opinion.

8.7.6.4 As between TxDOT and Developer, Developer shall have sole responsibility for the design, capacity and efficacy of the communications protocols and procedures. In the event interconnection between the Electronic Toll Collection System and TxDOT's CSC Host is not established or does not function according to TxDOT's standards and requirements, including TxDOT's Interface Control Document, within the five Business Days period referred to in Section 8.7.6.3 due to problems with the design, capacity or efficacy of the communications protocols and procedures, the five Business Day time period shall be extended until the problems are rectified by Developer, and TxDOT shall have no responsibility or liability to Developer for resulting delay in commencement of TxDOT's services under the TxDOT Tolling Services Agreement.

8.7.6.5 If NTTA brings any suit or proceeding against TxDOT arising out of TxDOT's performing or attempting to perform customer service and other toll collection and enforcement services, TxDOT shall have the right to interplead Developer into such suit or proceeding, and, as a condition to performing customer service and other toll collection and

enforcement services for the Facility, to require security for Developer's indemnification obligation under Section 16.5.3, in form and amount acceptable to TxDOT in its good faith discretion.

8.7.6.6 TxDOT shall have no obligation to post any letter of credit or other security for TxDOT's obligations to Developer. At either Party's request, the Parties shall negotiate in good faith a written agreement setting forth additional and supplemental terms and conditions pertaining to TxDOT's services hereunder. Except as provided otherwise in Section 17.5.1.1, no default or failure to perform by either Party under the TxDOT Tolling Services Agreement or any related agreement shall constitute a default by such Party under the CDA Documents.

8.7.7 Subject to Sections 8.7.5.4 and 8.7.6.4, TxDOT shall (a) cooperate and coordinate with Developer in its preparation of the Developer-NTTA transition plan and updates thereto under Section 3(c) of the NTTA Tolling Services Agreement; (b) cooperate and coordinate with Developer's demonstration and performance testing, both prior to and/or within a reasonable time after the Cutover Date (as defined in the TxDOT Tolling Services Agreement), of the communications protocols and procedures and of interoperability between the ETCS and TxDOT's CSC Host; and (c) conduct testing of its information technology and management systems prior to and/or within a reasonable time after the Cutover Date, pursuant to such transition plan and consistent with TxDOT's systems and procedures.

8.7.8 If the existing custodial agreement (as defined in Section 19.10.4) is in effect when TxDOT's obligation under Section 8.7.5 or 8.7.6 arises, then within five Business Days after TxDOT receives Developer's written request TxDOT, Developer and the custodian thereunder shall execute a joinder agreement substantially in the form of Exhibit 24, modified to refer to this Section 8.7.8 and to provide for termination when TxDOT completes performance of the services and payment in full of amounts due under the TxDOT Tolling Services Agreement. If the existing custodial agreement is not in effect when TxDOT's obligation under Section 8.7.5 or 8.7.6 arises, then at Developer's written request TxDOT shall diligently procure and enter into an agreement with a custodian on substantially similar terms to the existing custodial agreement, and TxDOT, Developer and the custodian thereunder shall enter into a joinder agreement on substantially similar terms to Exhibit 24, modified to refer to this Section 8.7.8 and to provide for termination when TxDOT completes performance of the services and payment in full of amounts due under the TxDOT Tolling Services Agreement. Notwithstanding anything herein to the contrary, if the existing custodial agreement is not in effect when TxDOT's obligation under Section 8.7.5 or 8.7.6 arises, (a) TxDOT shall have no obligation to have the new custodial agreement in place within the five Business Day transition period, so long as TxDOT is diligently proceeding to procure the agreement, and (b) Developer, at its option, but without liability to TxDOT, may extend such transition period until the new custodial agreement is in place. When TxDOT completes performance of the services and payment in full of amounts due under the TxDOT Tolling Services Agreement, TxDOT and Developer, promptly upon the other Party's request, shall execute a written confirmation of termination of any joinder agreement entered into pursuant to this Section 8.7.8.

8.7.9 TxDOT, in its capacity as a Transponder Issuer, will electronically remit payments to Developer or its tolling services Contractor for Transponder Transactions by TxDOT transponder customers within the earlier of (a) five Business Days after the Transponder Transaction is received at TxDOT's CSC Host or (b) the period for such remittances provided in TxDOT's interoperability and compatibility standards, requirements, protocols, agreements or memoranda of understanding, except where the account has insufficient funds or TxDOT does not receive any necessary data in accordance with its Interface Control Document. If the account lacks sufficient funds, TxDOT will resubmit the

Transaction for settlement once per day until the first to occur of (i) the date it is settled, (ii) the date TxDOT closes the account or (iii) 30 days after the first debit is attempted.

8.7.10 The following provisions shall apply only during any portion of the period commencing on the Service Commencement Date and ending at the end of the Term (an "applicable period") in which (a) Transportation Code, Section 228.055, as the same may be amended from time to time, or any statute of similar import ("Section 228.055"), is in effect, (b) Developer lacks statutory authority comparable to that available to TxDOT under Section 228.055 and (c) Developer has no agreement in effect for customer services and other toll collection and enforcement services for the Facility with TxDOT or a Governmental Entity that has statutory authority under or comparable to that under Section 228.055 (which is deemed to include NTTA), or Developer has such an agreement in effect but is exercising rights to step in or intervene in performance of such agreement and is using a service provider lacking such statutory authority. If any Transaction occurring during an applicable period remains in processing, enforcement and collection after the applicable period as a Video Transaction (a "tail period Video Transaction"), the following provisions also apply to the tail period Transactions for a period up to but not exceeding one year after the end of the applicable period (the "tail period").

8.7.10.1 TxDOT appoints Developer as TxDOT's agent during the applicable period, and during the tail period as to tail period Video Transactions, for the sole and limited purpose of (a) delivering notices of nonpayment to Video Transaction Users under Section 228.055, (b) imposing an administrative fee under Section 228.055, (c) using and approving automated enforcement technology under Section 228.058, (d) pursuing any misdemeanor offenses against Video Transaction Users under Section 228.055, and (e) instructing all courts and public officials to deliver all tolls and Incidental Charges, including administrative fees, recovered under Section 228.055 with respect to Video Transactions to the trustee under the Facility Trust Agreement for deposit into the Toll Revenue Account. Such appointment shall be exclusive and irrevocable during the applicable period, and during the tail period as to tail period Video Transactions, provided that such appointment is deemed automatically suspended during any period that TxDOT exercises step-in rights under Section 17.3.4 involving TxDOT's performance of toll operations, and except for tail period Video Transactions is deemed automatically revoked upon termination of this Agreement.

8.7.10.2 At Developer's request, TxDOT shall cooperate with Developer in connection with (a) confirming in writing to courts and public officials Developer's authority as TxDOT's agent under Section 8.7.10.1, and (b) any proceedings Developer initiates under Section 228.055. At Developer's request, TxDOT will deliver instructions to such public officials and courts as reasonably necessary for them to deliver tolls and Incidental Charges, including administrative fees, recovered under Section 228.055 with respect to Video Transactions to the trustee under the Facility Trust Agreement for deposit into the Toll Revenue Account. Developer shall reimburse TxDOT for all costs, including TxDOT's Recoverable Costs, it incurs in connection with such cooperation.

8.7.10.3 TxDOT will promptly deliver to Developer a copy of all notices, other communications and documentation from Video Transaction Users that TxDOT receives in response to notices of violation Developer issues under Section 228.055; provided that TxDOT shall have no liability to Developer for compensation or other damages if it does not promptly deliver such notices, communications or documentation.

8.7.10.4 If any court or public official remits to TxDOT any tolls or Incidental Charges collected via proceedings brought under Section 228.055, or if any Video Transaction User in response to or settlement of a violation notice or any such proceeding remits to TxDOT

any such tolls or Incidental Charges, then the amounts so remitted to TxDOT shall constitute Developer's property, shall be deemed received by TxDOT merely as a bailee or agent, and shall not constitute funds or property of TxDOT or the State; and TxDOT shall forthwith remit such payments to the trustee under the Facility Trust Agreement for deposit into the Toll Revenue Account.

8.7.11 For the sole purpose of enabling processing and collection of Transactions, so long as it is authorized under Transportation Code, Section 730.007(a)(2)(J), as the same may be amended from time to time, or any other statute of similar import, TxDOT will cause its Vehicle Titles and Registration Division to (a) provide Developer with electronic access to all vehicle registration records and information maintained by the Vehicle Titles and Registration Division, and (b) provide Developer with the same access that TxDOT has to vehicle registration records and information for vehicles that are not registered in Texas. The foregoing rights of access shall survive until 90 days after expiration or earlier termination of the Term solely for the purpose of processing and collecting Transactions occurring during the Term. As conditions to receiving access to such records and information, Developer shall (i) submit any request form and enter into any form agreement that the Vehicle Titles and Registration Division may require for obtaining access and (ii) pay all fees, costs and charges that the Vehicle Titles and Registration Division customarily imposes from time to time for providing access. Developer acknowledges that all such records and information constitute Patron Confidential Information subject to Section 8.8.

8.8 User Privacy

8.8.1 Developer shall provide an Electronic Toll Collection System and procedures designed to maintain the toll account and travel records of Users as confidential information and in compliance with applicable Laws on notice of privacy practices. In addition, unless otherwise approved in writing by TxDOT, if Developer, its Affiliate or any private entity under Contract with Developer to provide customer service and other toll collection and enforcement services issues transponders and manages transponder customer accounts, Developer shall provide, and cause its Affiliate or such private entity Contractor to provide, to such customers who request it, as an option, anonymous accounts and/or other techniques that enhance motorists' privacy, consistent with applicable Laws. Developer shall not, however, be required to maintain account anonymity when providing information as necessary to others to process tolls for Video Transactions or toll violations or attempting to resolve customer disputes regarding toll charges, or when the intrinsic nature of the technology requires establishment of customer identity (e.g. cellular telephones), provided customers requesting anonymity are clearly advised of the circumstances under which Developer, its Affiliate or such private entity Contractor is not required to maintain account anonymity.

8.8.2 Developer acknowledges that the data generated by, or accumulated or collected in connection with, operation of Developer's Electronic Toll Collection System or Developer's toll collection and enforcement activities, including customer lists, customer identification numbers, customer contact information, customer account information and billing records and other customer specific information, including use and enforcement data, origin and destination information, system performance statistics, and real time traffic flow information may consist of or include information that identifies an individual who is a patron of the Facility and that is exempt from disclosure to the public or other unauthorized persons under applicable Law ("Patron Confidential Information"). Patron Confidential Information includes names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, vehicle registration information, medical data, law enforcement records, agency Source Code or object code, agency security data, or other information that relates to any of these types of information.

8.8.3 Developer shall comply with all applicable Laws, Technical Provisions and TxDOT statewide interoperability and compatibility standards, requirements and protocols limiting, restricting or pertaining to collection, use, confidentiality, privacy, handling, retention, reporting, disclosure or dissemination of Patron Confidential Information.

8.8.4 Developer agrees to hold Patron Confidential Information in strictest confidence and not to make use of Patron Confidential Information for any purpose other than the performance of this Agreement, including toll violation processing and collection. Developer shall release Patron Confidential Information only to (a) TxDOT if requested, (b) the Independent Engineer if requested in connection with its auditing functions, (c) authorized employees or Contractors requiring such information for the purpose of carrying out obligations under this Agreement, (d) authorized collection agencies as necessary to assist their collection of toll violations, (e) the Texas Department of Public Safety as necessary to assist its enforcement of toll violation traffic infractions, and (f) any Lender or Substituted Entity that succeeds to Developer's Interest. Developer shall not release, divulge, publish, transfer, sell or disclose Patron Confidential Information, or otherwise make it known, to any other Person without TxDOT's express prior written consent in its sole discretion except as required by applicable Laws. Developer may provide such information and material only to employees of Developer-Related Entities who have signed a nondisclosure agreement, the terms of which have been previously approved by TxDOT in its good faith discretion. Developer agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to Patron Confidential Information and to implement destruction of records containing Patron Confidential Information in accordance with the records retention provisions of the Technical Provisions and Technical Documents. Developer shall maintain all Patron Confidential Information solely in the State.

8.8.5 Immediately upon expiration or termination of this Agreement, Developer shall, at TxDOT's option, (a) certify to TxDOT that Developer has destroyed all Patron Confidential Information, (b) return all Patron Confidential Information to TxDOT or (c) take whatever other steps TxDOT reasonably requires of Developer to protect Patron Confidential Information. This provision shall not apply to Patron Confidential Information needed to bill, enforce and collect a Video Transaction occurring prior to expiration or termination of this Agreement until the earlier of (i) payment of the applicable tolls or (ii) one year after the date the Video Transaction occurs.

8.8.6 Developer shall describe in the Operations Management Plan or operating manual or procedures prepared thereunder (a) the Patron Confidential Information received in the performance of this Agreement, (b) the purpose(s) for which the Patron Confidential Information is received, (c) who receives, maintains and uses the Patron Confidential Information and (d) the final disposition of the Patron Confidential Information.

8.8.7 The rights of TxDOT and the Independent Engineer to audit and inspect under this Agreement shall include the right to monitor, audit and investigate Developer's books and records and Developer's systems, practices and procedures concerning Patron Confidential Information. If the Independent Engineer requests access to Patron Confidential Information, Developer may require the Independent Engineer to execute and deliver an appropriate confidentiality agreement consistent with the provisions of this Section 8.8.

8.8.8 Developer shall disclose in writing to each User for whom Developer holds Patron Confidential Information Developer's policies regarding privacy of Patron Confidential Information, consistent with this Section 8.8. For each User having an account with Developer or its Affiliate for automatic payment of tolls, Developer shall deliver such written disclosure within 30 days after any User first opens the account. In addition, for all Users, Developer shall maintain such disclosure on the Facility web site. Developer shall comply with the provisions of

any applicable Law prescribing disclosure of Developer's privacy policies, including provisions on the content of disclosures and when disclosure must be given, as deemed compliance with the disclosure requirements of this Section 8.8.8. Provided that the NTTA Tolling Services Agreement is not in effect, the content of the form of disclosure, and any changes thereto that Developer may make from time to time, shall be subject to TxDOT's prior written approval.

8.8.9 In the event Developer retains any Governmental Entity to provide customer service and other toll collection and enforcement services, Developer shall have no obligation or liability regarding such Governmental Entity's handling of Patron Confidential Information. Developer shall, however, use commercially reasonable efforts to include in its Contract with such Governmental Entity covenants by the Governmental Entity comparable to those in this Section 8.8, other than the anonymous account provisions.

8.9 Policing, Security and Incident Response

8.9.1 Police Services

8.9.1.1 Developer, without expense to TxDOT, shall permit the Texas Department of Public Safety and any other public law enforcement agency with jurisdiction to provide traffic patrol, traffic law enforcement and the other police and public safety services in accordance with applicable Laws and agreements with State and local agencies, including permitting at least the type and level of service that the Texas Department of Public Safety provides on Comparable Limited Access Highways owned and operated by TxDOT. In addition, Developer, without expense to TxDOT, shall engage, on mutually acceptable reasonable terms and conditions, either the Texas Department of Public Safety or another qualified public law enforcement agency with jurisdiction to provide enhanced levels of traffic patrol, traffic law enforcement services, special traffic operations services, accident assistance and investigation, and other enhanced police and Emergency services as needed due to any Developer-Related Entity's construction, operation, maintenance or other activities on or affecting the Facility.

8.9.1.2 Developer shall not engage, or otherwise permit the engagement of, private security services to provide traffic patrol or traffic law enforcement services on the Facility unless otherwise approved by TxDOT in its sole discretion. Notwithstanding the foregoing, Developer may engage private security firms or employ passive security devices or technology to protect, collect, accumulate, transfer and deposit tolls and Incidental Charges or to identify toll violators; provided, however, that services to physically apprehend toll violators may be performed only by the Texas Department of Public Safety unless otherwise approved in writing by TxDOT in its sole discretion. In providing such policing services through a private security firm, Developer shall comply and cause the firm to comply with applicable Laws, including the regulations of the Texas Department of Public Safety. The foregoing does not in any way limit Developer's enforcement of private rights and civil remedies respecting toll violations.

8.9.1.3 At Developer's request and expense, TxDOT shall assist Developer in securing the agreement of the Texas Department of Public Safety to perform enhanced services. Such assistance may include accompanying Developer to meetings with the Texas Department of Public Safety, requesting the involvement of the director of TxDOT and taking any other reasonable action within its powers.

8.9.1.4 Nothing in this Section 8.9.1 shall be construed as conferring upon TxDOT in any way responsibility for funding policing services.

8.9.1.5 Developer acknowledges that the Texas Department of Public Safety is empowered to enforce all applicable Laws and to enter the Facility at any and all times to carry out its law enforcement duties. No provision of this Agreement is intended to surrender, waive or limit any police powers of the Texas Department of Public Safety or any other Governmental Entity, and all such police powers are hereby expressly reserved.

8.9.1.6 TxDOT shall not have any liability or obligation to Developer resulting from, arising out of or relating to the failure of the Texas Department of Public Safety or any other public law enforcement agency to provide services, or its negligence or misconduct in providing services.

8.9.1.7 TxDOT and third parties with responsibility for traffic regulation and enforcement shall have the right to install, operate, maintain and replace cameras or other equipment on the Facility that relate to traffic regulation or enforcement. Developer, at its expense, shall coordinate and cooperate, and require its Contractors (other than NTTA) to coordinate and cooperate, with any such installation, maintenance and replacement activities.

8.9.2 Security and Incident Response

8.9.2.1 Developer is responsible for the safety and security of the Facility and the workers and public thereon during all construction, operation and maintenance activities under the control of any Developer-Related Entity.

8.9.2.2 Developer shall comply with all rules, directives and guidance of the U.S. Department of Homeland Security and comparable State agency, and shall coordinate and cooperate with all Governmental Entities providing security, first responder and other public emergency response services. Without limiting the foregoing, whenever the Homeland Security Advisory System (HSAS) or successor system is raised to "orange" or "red" or comparable level of threat or alert for any region in which the Facility is located or which the Facility serves, Developer, at its expense, shall assign management personnel with decision-making authority to be personally present at the relevant emergency operations center serving the region. Developer shall provide such service 24 hours a day, seven days a week, until such level or threat or alert is reduced below the "orange", "red" or comparable level, or until the lead agency at the operations center determines such staffing level is no longer necessary.

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

8.9.2.4 Developer shall implement all Incident response, safety and security procedures, protocols and requirements set forth in the Incident Management Plan (a component of the Facility Management Plan).

8.10 Handback Requirements

8.10.1 Handback Condition; Developer Option

8.10.1.1 Subject to Sections 8.10.1.2 and 8.10.3.2, on the Termination Date Developer shall transfer the Facility, including all Upgrades, to TxDOT, at no charge to TxDOT, in the condition and meeting all of the requirements for Residual Life at Handback specified in the Handback Requirements.

8.10.1.2 For each Element of the Facility with a Required Residual Life equal to or less than 20 years and that has a Residual Life that is less than the Required Residual

Life, Developer shall have the option, in lieu of performing the Work necessary to ensure that the Residual Life at Handback of the Element equals or exceeds the Required Residual Life for the Element, to pay for Developer's pro-rata share of future Renewal Work that will be necessary for TxDOT to perform after the end of the Term. Developer shall pay such amount by making the deposits in the Handback Requirements Reserve in accordance with Section 2(a) of Exhibit 12, for transfer and release to TxDOT at the end of the Term under Section 8.11.4.1. Developer shall deliver written notice to TxDOT prior to the first day of the fifth full calendar year before the end of the Term setting forth its election for each applicable Element of the Facility. Failure by the Developer to deliver such written notice to TxDOT by such deadline or failure of the Developer to include any Element in the written notice shall be deemed an election by Developer to perform all Work necessary to ensure that the Residual Life at Handback of the Element meets or exceeds the Required Residual Life for the Element.

8.10.2 Handback Inspections

The Parties shall conduct inspections of the Facility at the times and according to the terms and procedures specified in the Handback Requirements and the approved Handback Plan pursuant to Section 19.3 of the Technical Provisions for the purposes of (a) determining and verifying the condition of all Elements and their Residual Lives, (b) adjusting, to the extent necessary based on inspection and analysis, Element Useful Lives, Ages, Residual Lives, estimated costs of Renewal Work and timing of Renewal Work, (c) revising and updating the Renewal Work Schedule to incorporate such adjustments, (d) determining the Renewal Work required to be performed and completed prior to reversion of the Facility to TxDOT, based on (i) the requirements for Residual Life at Handback specified in the Handback Requirements and Section 8.10.1, (ii) the foregoing adjustments and (iii) the foregoing changes to the Renewal Work Schedule, (e) verifying that such Renewal Work has been properly performed and completed in accordance with the Handback Requirements, and (f) adjusting Developer's funding of the Handback Requirements Reserve so that it is funded according to the schedule and amounts required under Exhibit 12. Developer shall reimburse TxDOT all TxDOT's Recoverable Costs and other fees, costs and expenses TxDOT incurs in connection with such Residual Life Inspections.

8.10.3 Renewal Work under Handback Requirements

Developer shall diligently perform and complete all Renewal Work required to be performed and completed prior to reversion of the Facility to TxDOT, based on the required adjustments and changes to the Renewal Work Schedule resulting from the inspections and analysis under the Handback Requirements. Developer shall complete all such work:

8.10.3.1 Prior to the Termination Date, if transfer of the Facility is to occur at the expiration of the full Term; or

8.10.3.2 As close as possible to the Early Termination Date. If Developer, despite diligent efforts, is unable to complete such work prior to the Early Termination Date, then in lieu of completion of such work any applicable measure of Termination Compensation based on (a) Fair Market Value shall take into consideration such non-completion as provided in Section B.4(e) of Exhibit 20 and (b) other than Fair Market Value shall be adjusted as provided in Section B.3(f) and comparable provisions of Exhibit 20.

8.11 Handback Requirements Reserve

8.11.1 Establishment

8.11.1.1 On or before the last day of the first calendar quarter of the fifth full calendar year before the end of the Term, Developer shall establish and fund a reserve account (the "Handback Requirements Reserve") exclusively available for the uses set forth in Section 8.11.3. The Handback Requirements Reserve shall be established under the Facility Trust Agreement or other similar arrangements that, to the maximum extent practicable, preclude it from being an asset of Developer or TxDOT, so that it will be available to TxDOT or Lenders (subject to Section 4.3.8) regardless of any bankruptcy event. Such other arrangements shall be subject to TxDOT's and Developer's prior written approval each in its good faith discretion. If such arrangements are not pursuant to the Facility Trust Agreement, then such arrangements shall include the holding of the Handback Requirements Reserve in an account with a financial institution nominated by Developer and approved by TxDOT, which institution may include any Lender that is and continues to qualify as an Institutional Lender.

8.11.1.2 Developer shall provide to TxDOT the details regarding the account, including the name, address and contact information for the depository institution and the account number. Developer shall inform the depository institution of all TxDOT's rights and interests with respect to the Handback Requirements Reserve, including TxDOT's right to draw on the Handback Requirements Reserve as provided in Section 17.3.7. Developer shall deliver such notices to the depository institution and execute such documents as may be required to establish and perfect TxDOT's interest in the Handback Requirements Reserve under the Uniform Commercial Code as adopted in the State, including TxDOT's right to make direct draws against the Handback Requirements Reserve as provided in Section 17.3.7.

8.11.1.3 In lieu of establishing the Handback Requirements Reserve, Developer may deliver to TxDOT Handback Requirements Letters of Credit, on the terms and conditions set forth in Section 8.11.5.

8.11.2 Funding

8.11.2.1 Developer shall make deposits to the Handback Requirements Reserve at the times and in the amounts set forth in Exhibit 12.

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

8.11.3 Use

8.11.3.1 Developer will have the right to payments from the Handback Requirements Reserve to be used only for the following purposes, provided the Handback Requirements Reserve is not at any time reduced below the amount of funds then required under Exhibit 12:

(a) Costs of Renewal Work performed prior to the end of the Term pursuant to Section 8.5 in order to deliver Elements with Residual Lives at Handback that

meet the Required Residual Lives, except with respect to the Elements for which Developer exercises its option pursuant to Section 8.10.1.2; and

(b) Costs of Safety Compliance work.

8.11.3.2 Not later than five years before the end of the Term, the Parties shall establish reasonable written protocols and procedures for requesting and funding draws from the Handback Requirements Reserve.

8.11.4 Disposition at End of Term

8.11.4.1 At the expiration or any earlier termination of the Term for any reason, including termination due to TxDOT Default, all funds in the Handback Requirements Reserve (except as provided in Section 8.11.4.2) shall automatically be and become the sole property of TxDOT, free and clear of all liens, pledges and encumbrances. Thereupon, Developer shall deliver such transfers, assignments and other documents, and take such other actions, as TxDOT or the depository institution for the Handback Requirements Reserve shall require to confirm transfer to TxDOT of the Handback Requirements Reserve and funds therein, free and clear of all liens, pledges and encumbrances.

8.11.4.2 In the event the Handback Requirements Reserve at such time is different from the amount then required pursuant to Exhibit 12, Developer shall be obligated to pay any shortfall to TxDOT upon demand, or TxDOT shall authorize release to Developer of any excess, as the case may be. TxDOT at its election may offset any Termination Compensation owing to Developer by the amount of the Handback Requirements Reserve owing to TxDOT. TxDOT at its election also may offset any excess to be released to Developer by any amount Developer still owes TxDOT for the cost of the inspections conducted pursuant to the Handback Requirements. For the avoidance of doubt, if at the expiration of the Term Developer has completed and paid in full all Renewal Work required on all Elements other than Elements for which the Developer has exercised its option pursuant to Section 8.10.1.2 and funds in the Handback Requirements Reserve exceed the total amount required under Section 2(a) of Exhibit 12 and the 10% contingency thereon required under Section 2(c) of Exhibit 12, then TxDOT shall authorize release of such excess to Developer or, at Developer's direction, the Collateral Agent, subject to the foregoing offset rights.

8.11.5 Handback Requirements Letters of Credit

8.11.5.1 In lieu of establishing the Handback Requirements Reserve, Developer may deliver to TxDOT one or more letters of credit (each, a "Handback Requirements Letter of Credit"), on the terms and conditions set forth in this Section 8.11.5 and Section 16.3. If the Handback Requirements Reserve has been previously established, Developer at any time thereafter may substitute one or more Handback Requirements Letters of Credit for all or any portion of the amounts required to be on deposit in the Handback Requirements Reserve, on the terms and conditions set forth in this Section 8.11.5 and Section 16.3. Upon receipt of the required substitute Handback Requirements Letter of Credit, TxDOT shall authorize the release to Developer of amounts in the Handback Requirements Reserve equal to the face amount of the substitute Handback Requirements Letter of Credit, such released funds to be applied as set forth in Section 3.5.2. If the face amount of any Handback Requirements Letter of Credit falls below the total amount required to be funded to the Handback Requirements Reserve prior to expiry of the Handback Requirements Letter of Credit, Developer shall be obligated to pay, when due, the shortfall into the Handback Requirements Reserve. Alternately, Developer may deliver a Handback Requirements Letter of Credit with a face amount equal to at least the total amount required to be funded to the

Handback Requirements Reserve during the period up to the expiry of the Handback Requirements Letter of Credit, or may deliver additional Handback Requirements Letters of Credit or cause the existing Handback Requirements Letter of Credit to be amended to cover the shortfall before deposits of the shortfall to the Handback Requirements Reserve are due.

8.11.5.2 At the beginning of each year, Developer shall have the right and obligation (in lieu of funding the Handback Requirements Reserve) to adjust the amount of the Handback Requirements Letter of Credit to equal the maximum amount required to be funded in the Handback Requirements Reserve during the forthcoming year under Exhibit 12, taking into account the most recent Renewal Work Schedule and Renewal Work performed to date under the Handback Requirements.

8.11.5.3 The Handback Requirements Letter(s) of Credit last issued before the end of the Term shall have an expiration date not earlier than 90 days after the end of the Term.

8.11.5.4 TxDOT shall have the right to draw on the Handback Requirements Letter of Credit (a) as provided in Section 16.3.1.2 or (b) upon or after expiration or earlier termination of the Term for any reason, including termination due to TxDOT Default, as necessary to obtain the Handback Requirements Reserve funds to which TxDOT is then entitled under Section 8.11.4.

8.11.5.5 If TxDOT draws on the Handback Requirements Letter of Credit due to Developer's failure for any reason to deliver to TxDOT a new or replacement Handback Requirements Letter of Credit, on the same terms, or at least a one year extension of the expiration date of the existing Handback Requirements Letter of Credit, not later than 45 days before such expiration date, TxDOT shall deposit the proceeds from drawing on the expiring Handback Requirements Letter of Credit into the Handback Requirements Reserve.

ARTICLE 9. MANAGEMENT SYSTEMS AND OVERSIGHT

9.1 Facility Management Plan

9.1.1 Developer is responsible for all quality assurance and quality control activities necessary to manage the Work, including the Utility Adjustment Work. Developer shall undertake all aspects of quality assurance and quality control for the Facility and Work in accordance with the approved Facility Management Plan and Good Industry Practice.

9.1.2 Developer shall develop the Facility Management Plan and its component parts, plans and other documentation in accordance with the Proposal, the requirements set forth in Section 2 of the Technical Provisions and Good Industry Practice.

9.1.3 Developer shall submit to TxDOT for approval in its good faith discretion in accordance with the procedures described in Section 6.3 of this Agreement and the time line set forth in Attachment 2-1 to the Technical Provisions each component part, plan and other documentation of the Facility Management Plan and any proposed changes or additions to or revisions of any such component part, plan or other documentation. Each component part, plan and other documentation of the Facility Management Plan and each proposed change or addition to or revision of any such component part, plan or other documentation shall constitute a separate Submittal for purposes of Section 6.3. TxDOT shall have a period of 15 Business Days to review WBS and Facility Baseline Schedule Submittals prior to NTP2. TxDOT may

propose any change required to comply with Good Industry Practice or to reflect a change in working practice to be implemented by Developer.

9.1.4 Developer shall not commence or permit the commencement of any aspect of the design, construction, tolling, operation or maintenance before the relevant component parts, plans and other documentation of the Facility Management Plan applicable to such Work have been submitted to and approved by TxDOT.

9.1.5 If any part, plan or other documentation of the Facility Management Plan refers to, relies on or incorporates any manual, plan, procedure or like document then all such referenced or incorporated materials shall be submitted to TxDOT for approval in its good faith discretion at the time that the relevant part, plan or other documentation of the Facility Management Plan or change, addition or revision to the Facility Management Plan is submitted to TxDOT.

9.1.6 Developer shall carry out internal audits of the Facility Management Plan at the times prescribed in the Facility Management Plan.

9.1.7 Developer shall cause each of its Contractors (other than NTTA) at every level to comply with the applicable requirements of the approved Facility Management Plan.

9.1.8 The Quality Manager shall, irrespective of his other responsibilities, have defined authority for ensuring the establishment and maintenance of the Facility Management Plan and reporting to TxDOT and the Independent Engineer on the performance of the Facility Management Plan.

9.2 Traffic Management

9.2.1 During the Operating Period, Developer shall be responsible for the general management of traffic on the Facility. Developer shall manage traffic so as to preserve and protect safety of traffic on the Facility and Related Transportation Facilities and, to the maximum extent practicable, to avoid disruption, interruption or other adverse effects on traffic flow, throughput or level of service on the Facility and Related Transportation Facilities. Developer shall conduct traffic management in accordance with all applicable Technical Provisions, Technical Documents, Laws and Governmental Approvals, and in accordance with the Traffic Management Plan.

9.2.2 Developer shall prepare and submit to TxDOT and the Independent Engineer for TxDOT approval a Traffic Management Plan for managing traffic on the Facility and Related Transportation Facilities after NTP2, addressing (a) orderly and safe movement and diversion of traffic on the Facility and Related Transportation Facilities during Facility construction (b) orderly and safe diversion of traffic on the Facility and Related Transportation Facilities necessary in connection with field maintenance and repair work or Renewal Work or in response to Incidents, Emergencies and lane closures; and (c) orderly and safe movement of traffic on the Facility at all other times during the Operating Period. Developer shall prepare the Traffic Management Plan according to the schedule set forth in the Technical Provisions. The Traffic Management Plan shall comply with the Technical Provisions and Technical Documents concerning traffic management and traffic operations. Developer shall carry out all traffic management during the Term in accordance with the approved Traffic Management Plan.

9.2.3 Developer shall implement the Traffic Management Plan to promote safe and efficient operation of the Facility and Related Transportation Facilities at all times during the course of any construction or operation of the Facility and during the Utility Adjustment Work.

9.2.4 TxDOT shall have at all times, without obligation or liability to Developer, the right to:

9.2.4.1 Issue Directive Letters to Developer regarding traffic management and control (with which Developer shall comply), or directly assume traffic management and control, of the Facility during any period that (a) TxDOT designates the Facility or portion of the Facility for immediate use as an emergency evacuation route or a route to respond to a disaster proclaimed by the Governor of Texas or his/her designee, including reversing the direction of traffic flow during such period, (b) tolling is suspended to facilitate emergency evacuation by any federal or State agency or instrumentality other than TxDOT, (c) TxDOT designates the Facility or a portion of the Facility for immediate use as an alternate route for diversion of traffic from any interstate or Highway or frontage road temporarily closed to all lanes in one or both directions due to incident or emergency or (d) the Executive Director determines such action will be in the public interest as a result of an emergency or natural disaster; and

9.2.4.2 Provide on the Facility, via message signs or other means consistent with Good Industry Practice, non-Discriminatory traveler and driver information, and other public information (e.g. amber alerts), provided that the means to disseminate such information does not materially interfere with the functioning of the ETCS.

9.3 Oversight, Inspection and Testing

9.3.1 Oversight by Independent Engineer

9.3.1.1 From and after the Effective Date, the Independent Engineer shall have the right and responsibility to conduct the monitoring, reviewing, inspection, testing, reporting, auditing and other oversight functions set forth in the CDA Documents and the Independent Engineer Agreement. The Parties shall cause the Independent Engineer Agreement to include all the rights and responsibilities of the Independent Engineer set forth in the CDA Documents.

9.3.1.2 The Independent Engineer's rights and responsibilities shall include throughout the Term the following:

(a) Monitoring and auditing Developer and its books and records to determine compliance with requirements of the CDA Documents and the approved Facility Management Plan, including (i) audit review of Design Documents, Plans, Construction Documents and other Submittals and (ii) audit review regarding Patron Confidential Information; as provided in Section 8.8.7;

(b) Conducting field monitoring and inspections on an audit basis as indicated in the CDA Documents and Independent Engineer Agreement, including in connection with TxDOT's certifications of Substantial Completion, Service Commencement and Final Acceptance;

(c) Conducting Owner Verification Tests ("OVT") to verify Developer's compliance with all testing frequencies and requirements, including performance and acceptance testing, set forth in the CDA Documents and the approved Facility Management Plan. The Independent Engineer's OVT effort during construction will focus on materials, components, systems and Elements where Nonconforming Work, Deviations, Defects or other non-compliance could affect safety, compliance with Governmental Approvals or the Residual Life at Handback. Notwithstanding any contrary provisions hereof, the Independent Engineer will perform OVT as the express agent of TxDOT, under TxDOT's

exclusive direction and control, and TxDOT will pay for all costs of the Independent Engineer's OVT services;

(d) Providing simultaneously to Developer, TxDOT and the Collateral Agent reports, quality reports, regular audit reports, reports on Performance Requirements, Targets and Defects, other reports, and findings, opinions, evaluations, comments, objections and recommendations, all as more particularly set forth in the CDA Documents and the Independent Engineer Agreement;

(e) Reviewing and commenting on all Submittals for which TxDOT review and comment or approval is required under the CDA Documents, unless expressly provided otherwise in the CDA Documents or Independent Engineer Agreement, or unless waived in writing by the Parties for a specific Submittal or type of Submittal;

(f) Reviewing, commenting on and giving recommendations, objections or disapprovals regarding the Renewal Work Schedule and revisions thereto, as provided in Section 8.6.5;

(g) Selecting Auditable Sections, accompanying Developer on physical inspections associated with Developer's Audit Inspections, conducting its own Audit Inspections, assessing and scoring Developer's O&M Records, and assessing and scoring the condition of Elements, as provided in the Maintenance Management Plan and Table 19-2 of the Technical Provisions;

(h) Attending and witnessing Developer's other tests and inspections;

(i) Auditing the books and records of Key Contractors to confirm compliance with the CDA Documents and applicable Law;

(j) Investigating, analyzing and reporting on Safety Compliance and performance of Safety Compliance Orders;

(k) Making recommendations on Relief Event Determinations;

(l) Evaluating and reporting to TxDOT on Developer's estimates of cost impacts attributable to Compensation Events, Relief Events, Developer's projected impacts of proposed TxDOT Changes on the Facility Schedule and Milestone Schedule, and Change Requests;

(m) Recommending suspension of work if circumstances exist that would entitle TxDOT to order suspension of work under Section 17.3.8;

(n) Notifying TxDOT of any Developer breach or failure specified in Exhibit 18, recommending assessment of Noncompliance Points, and reporting on Developer's cure or failure to cure, as provided in Section 18.2; and

(o) Reviewing, commenting on and giving recommendations, objections or disapprovals regarding the Facility Payment Request and revisions thereto, as provided in Exhibit 7.

9.3.1.3 Developer at all times shall coordinate and cooperate with the Independent Engineer to facilitate the full, efficient, effective and timely performance by the

Independent Engineer of his or her monitoring, inspection, sampling, measuring, testing, reporting, auditing, and other oversight functions. Without limiting the foregoing, Developer shall afford the Independent Engineer safe access to the Facility and Developer's Facility offices, operations buildings and data respecting the Facility design, construction, operations and maintenance, and the Utility Adjustment Work, and shall deliver to the Independent Engineer upon request accurate and complete books, records, data and information regarding Work, the Facility and the Utility Adjustment Work, in the format required by the Technical Provisions.

9.3.1.4 The Independent Engineer shall be required to report and give notices to TxDOT, Developer and Lenders in accordance with the terms of the Independent Engineer Agreement.

9.3.1.5 Except as provided in Section 9.3.1.2(c), costs and expenses for the Independent Engineer shall be allocated equally between Developer and TxDOT, as set forth in the Independent Engineer Agreement.

9.3.1.6 Wherever in the CDA Documents it is stated that the Independent Engineer shall or may perform an action, function or task, it means that the Parties agree that the Independent Engineer has been or will be given the right and obligation to perform the same under the Independent Engineer Agreement.

9.3.1.7 The Independent Engineer is procured by TxDOT, with input from Developer, to assist them with fair and objective oversight and administration of this Agreement and the Work. Nothing in this Agreement, the Technical Provisions or the Independent Engineer Agreement is intended or shall be construed as vesting in the Independent Engineer any powers or authority to:

(a) Arbitrate or render binding decisions or judgments;

(b) Approve or disapprove Submittals or Work (unless expressly provided otherwise in the CDA Documents or Independent Engineer Agreement for specific Submittals);

(c) Conduct "over-the-shoulder" reviews of Design Documents or other Submittals;

(d) Conduct formal prior reviews of Design Documents except to the extent necessary or advisable to comply with FHWA, U.S. Army Corps of Engineers or other applicable federal agency requirements or unless TxDOT chooses to have the Independent Engineer do so pursuant to Section 18.5;

(e) Direct design, construction, operations or maintenance of the Facility, or order suspensions of Work, except to give such direction or order or take such action as in its opinion is necessary to remove an immediate and present threat to the safety of life or property;

(f) Undertake Developer's primary responsibility for quality assurance and quality control; or

(g) Act as an agent of TxDOT or Developer, except as provided in Section 9.3.1.2(c).

9.3.1.8 In the event the Parties determine that the Independent Engineer Agreement for any reason is inconsistent with the provisions of the CDA Documents on the scope of work, roles, responsibilities or compensation of the Independent Engineer, or fails to include any such scope of work, role, responsibility or compensation terms, the Parties shall use diligent efforts to amend the Independent Engineer Agreement to correct the inconsistency or failure.

9.3.2 Oversight by TxDOT, FHWA

9.3.2.1 TxDOT and its Authorized Representative shall have the right at all times to monitor, inspect, sample, measure, attend, observe or conduct tests and investigations, and conduct any other oversight respecting any part or aspect of the Facility or the Work, to the extent necessary or advisable (a) to comply with FHWA, U.S. Army Corps of Engineers or other applicable federal agency requirements, (b) to verify on an audit basis Developer's compliance with the CDA Documents and Facility Management Plan as provided in Section 22.2 and (c) to verify the Independent Engineer's proper performance of its responsibilities and obligations. TxDOT shall conduct such activity in accordance with Developer's safety procedures and manuals, and in a manner that does not unreasonably interfere with normal construction activity or normal operation and maintenance of the Facility.

9.3.2.2 Refer to Section 22.2 for TxDOT's rights to audit Developer and its Contractors. Developer acknowledges and agrees that TxDOT will have the right to audit, monitor and inspect the Independent Engineer and its compliance with Good Industry Practice and its responsibilities and obligations under the Independent Engineer Agreement.

9.3.2.3 TxDOT will not conduct formal prior reviews of Design Documents except to the extent necessary or advisable to comply with FHWA, U.S. Army Corps of Engineers or other applicable federal agency requirements or unless TxDOT chooses to do so pursuant to Section 18.5. TxDOT does not intend to conduct "over-the-shoulder" reviews of Design Documents or other Submittals but reserves the right to do so pursuant to Section 18.5. TxDOT shall have no obligation to conduct "over-the-shoulder" reviews.

9.3.2.4 Nothing in the CDA Documents shall preclude, and Developer shall not interfere with, any review or oversight of Submittals or of Work that the FHWA may desire to conduct.

9.3.3 Rights of Cooperation and Access; Increased Oversight

9.3.3.1 Developer at all times shall coordinate and cooperate, and require its Contractors (other than NTTA) to coordinate and cooperate, with the Independent Engineer to facilitate the full, efficient, effective and timely performance by the Independent Engineer of his or her monitoring, inspection, sampling, measuring, testing, reporting, auditing, and other oversight functions.

9.3.3.2 Developer at all times shall coordinate and cooperate, and require its Contractors (other than NTTA) to coordinate and cooperate, with TxDOT and its Authorized Representative to facilitate TxDOT's oversight activities. Developer shall cause its representatives to be available at all reasonable times for consultation with TxDOT and the Independent Engineer.

9.3.3.3 Without limiting the foregoing, Developer shall afford TxDOT, its Authorized Representative and the Independent Engineer (a) safe and unrestricted access to the Facility at all times, (b) safe access during normal business hours to Developer's Facility

offices and operations buildings and (c) unrestricted access to data respecting the Facility design, construction, operations and maintenance, and the Utility Adjustment Work. Without limiting the foregoing, Developer shall deliver to TxDOT and the Independent Engineer upon request accurate and complete books, records, data and information regarding Work, the Facility and the Utility Adjustment Work, in the format required by the Technical Provisions.

9.3.3.4 TxDOT and the Independent Engineer shall have the right to increase the type and level of their oversight as provided in Section 18.5.

9.3.4 Testing and Test Results

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

ARTICLE 10. CONTRACTING AND LABOR PRACTICES

10.1 Disclosure of Contracts and Contractors

10.1.1 Developer shall provide TxDOT and the Independent Engineer a monthly report listing (a) all Key Contracts in effect, (b) all Contracts in effect to which Developer is a party and (c) where Developer is a party to a Contract in effect with an Affiliate, all Contracts in effect to which such Affiliate is a party and under which all or a substantial portion of the Affiliate's responsibilities or obligations under its Contract with Developer are delegated to the Contractor. Developer also shall list in the monthly report the Contractors under such Contracts, guarantees of Key Contracts in effect and the guarantors thereunder. Developer shall allow TxDOT and the Independent Engineer ready access to all Contracts and records regarding Contracts, including amendments and supplements to Contracts and guarantees thereof, provided, however, that Developer may provide access thereto by depositing unredacted copies in an Intellectual Property Escrow as provided in Section 22.5.

10.1.2 As soon as Developer identifies a potential Contractor for a potential Contract described in the first sentence of Section 10.1.1, but in no event later than five days after Contract execution, Developer shall notify TxDOT in writing of the name, address, phone number and authorized representative of such Contractor.

10.2 Responsibility for Work, Contractors and Employees

10.2.1 Developer shall retain or cause to be retained only Contractors (other than NTTA) that are qualified, experienced and capable in the performance of the portion of the Work assigned. Developer shall assure that each Contractor (other than NTTA) has at the time of execution of the Contract, and maintains at all times during performance of the assigned Work, all licenses required by applicable Laws.

10.2.2 The retention of Contractors (other than NTTA) by Developer will not relieve Developer of its responsibilities hereunder or for the quality of the Work or materials or services provided by it.

10.2.3 Each Contract shall include terms and conditions sufficient to ensure compliance by the Contractor (other than NTTA) with the requirements of the CDA Documents, and shall include those terms that are specifically required by the CDA Documents to be

included therein, including, to the extent applicable, those set forth in Exhibit 8 and any other applicable federal requirements.

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

10.2.5 Developer shall supervise and be fully responsible for the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any Developer-Related Entity (other than NTTA) or by any member or employee of Developer or any Developer-Related Entity (other than NTTA), as though Developer directly employed all such individuals.

10.3 Key Contracts; Contractor Qualifications

10.3.1 Use of and Change in Key Contractors

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

10.3.2 Key Contract Provisions

Each Key Contract shall:

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

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

10.3.2.3 Include an agreement by the Key Contractor to give evidence in any dispute resolution proceeding pursuant to Section 17.8, if such participation is requested by either TxDOT or Developer;

10.3.2.4 Without cost to Developer or TxDOT, and subject to the rights of the Collateral Agent set forth in Article 20, expressly permit assignment to TxDOT or its successor, assign or designee of all Developer's rights under the Key Contract, contingent only upon delivery of written request from TxDOT following termination or expiration of this Agreement, allowing TxDOT or its successor, assign or designee to assume the benefit of Developer's rights with liability only for those remaining obligations of Developer accruing after the date of assumption, such assignment to include the benefit of all Key Contractor warranties, indemnities, guarantees and professional responsibility;

10.3.2.5 Expressly state that any acceptance of assignment of the Key Contract to TxDOT or its successor, assign or designee shall not operate to make the assignee responsible or liable for any breach of the Key Contract by Developer or for any amounts due and owing under the Key Contract for work or services rendered prior to assumption (but without restriction on the Key Contractor's rights to suspend work or demobilize due to Developer's breach);

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

10.3.2.7 Expressly include a covenant, expressly stated to survive termination of the Key Contract, to promptly execute and deliver to TxDOT a new contract between the Key Contractor and TxDOT on the same terms and conditions as the Key Contract, in the event (a) the Key Contract is rejected by Developer in bankruptcy or otherwise wrongfully terminated by Developer and (b) TxDOT delivers written request for such new contract following termination or expiration of this Agreement. The Key Contract also shall include a covenant, expressly stated to survive termination of the Key Contract, to the effect that if the Key Contractor was a party to an escrow agreement for an Intellectual Property Escrow and Developer terminates it, then the Key Contractor also shall execute and deliver to TxDOT, concurrently with such new contract, a new escrow agreement on the same terms and conditions as the terminated escrow agreement, and shall concurrently make the same deposits to the new Intellectual Property Escrow as made or provided under the terminated escrow agreement. This Section shall not apply to Key Contracts with TxDOT or Governmental Entities;

10.3.2.8 Expressly include requirements that: the Key Contractor (a) will maintain usual and customary books and records for the type and scope of operations of business in which it is engaged (e.g., constructor, equipment Supplier, designer, service provider), (b) permit audit thereof with respect to the Facility or Work by each of Developer, TxDOT and the Independent Engineer in accordance with Section 22.2 and (c) provide progress reports to Developer appropriate for the type of work it is performing sufficient to enable Developer to provide the reports it is required to furnish TxDOT or the Independent Engineer under this Agreement;

10.3.2.9 Include the right of Developer to terminate the Key Contract in whole or in part upon any Termination for Convenience of this Agreement and the Lease or any termination of this Agreement and the Lease due to Force Majeure Event or TxDOT Default, in each case without liability of Developer or TxDOT for the Key Contractor's lost profits or business opportunity; and

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

10.3.3 Additional Requirements for Design-Build and O&M Contracts

10.3.3.1 Before entering into a Design-Build Contract or O&M Contract or any supplement or amendment thereto, Developer shall submit a true and complete copy of the proposed Design-Build Contract or O&M Contract to TxDOT for review and comment. TxDOT may disapprove only if the Design-Build Contract or O&M Contract (a) does not comply, or is

inconsistent, in any material respect with the applicable requirements of the CDA Documents, including that it does not comply or is inconsistent with this Article 10 or with the applicable requirements of Section 22.1 regarding maintenance of books and records, does not incorporate the applicable federal requirements set forth in Exhibit 8, or is inconsistent with the requirements of the relevant scope of Work, (b) increases TxDOT's liability or (c) adversely affects TxDOT's step-in rights.

10.3.3.2 The Design-Build Contract and each O&M Contract also shall expressly require the personal services of and not be assignable by the Design-Build Contractor or O&M Contractor without Developer's and TxDOT's prior written consent each in its sole discretion, provided that this provision shall not prohibit the subcontracting of portions of the Work. The provision included pursuant to Section 10.3.2.10 shall apply to such express provisions on personal services and non-assignment.

10.4 Key Personnel

10.4.1 Developer shall retain, employ and utilize the individuals specifically listed in Exhibit 2 to fill the corresponding Key Personnel positions listed therein. Developer shall not change or substitute any such individuals except due to retirement, death, disability, incapacity, or voluntary or involuntary termination of employment, or as otherwise approved by TxDOT pursuant to Section 10.4.2. In such circumstances, Developer shall promptly propose a replacement for such position.

10.4.2 Developer shall notify TxDOT in writing of any proposed replacement for any Key Personnel position. TxDOT shall have the right to review the qualifications and character of each individual to be appointed to a Key Personnel position (including personnel employed by Contractors to fill any such position) and to approve or disapprove use of such individual in such position prior to the commencement of any Work by such individual. If Developer fails to provide a proposed replacement that is sufficiently qualified to TxDOT within 90 days for any Key Personnel position, then the Developer shall be subject to Non-Compliance Points as provided in Article 18.

10.4.3 Developer shall cause each individual filling a Key Personnel position to dedicate the full amount of time necessary for the proper prosecution and performance of the Work.

10.4.4 Developer shall provide TxDOT and the Independent Engineer phone and pager numbers and email addresses for all Key Personnel. TxDOT and the Independent Engineer require the ability to contact Key Personnel 24 hours per day, seven days per week.

10.5 Contracts with Affiliates

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

10.5.1.1 Developer shall execute a written Contract with the Affiliate;

10.5.1.2 The Contract shall comply with all applicable provisions of this Article 10, be consistent with Good Industry Practice, and be in form and substance substantially similar to Contracts then being used by Developer or Affiliates for similar Work or services with unaffiliated Contractors;

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

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

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

10.5.2 Before entering into a written Contract with an Affiliate or any supplement or amendment thereto, Developer shall submit a true and complete copy of the proposed Contract to TxDOT for review and comment. TxDOT shall have 20 days after receipt to deliver its comments to Developer. If the Contract with the Affiliate is a Key Contract and such Affiliate's selection as a Key Contractor is not known as of the Effective Date, the Affiliate shall be subject to TxDOT's approval as provided in Section 10.3.1.

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

10.6 Labor Standards

10.6.1 In the performance of its obligations under the CDA Documents, Developer at all times shall comply, and require by contract that all Contractors (other than NTTA) and vendors comply, with all applicable federal and State labor, occupational safety and health standards, rules, regulations and federal and State orders.

10.6.2 All individuals performing the Work shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them.

10.6.3 If any individual employed by Developer or any Contractor (other than NTTA) is not performing the Work in a proper, safe and skillful manner, then Developer shall, or shall cause such Contractor (other than NTTA) to, remove such individual and such individual shall not be re-employed on the Work. If, after notice and reasonable opportunity to cure, such individual is not removed or if Developer fails to ensure that skilled and experienced personnel are furnished for the proper performance of the Work, then TxDOT may suspend the affected portion of the Work by delivering to Developer written notice of such suspension. Such suspension shall in no way relieve Developer of any obligation contained in the CDA Documents or entitle Developer to any additional compensation or time extension hereunder.

10.7 Ethical Standards

10.7.1 Within 90 days after the Effective Date, Developer shall adopt written policies establishing ethical standards of conduct for all Developer-Related Entities (other than NTTA), including Developer's supervisory and management personnel, in dealing with (a) TxDOT and

the Independent Engineer and (b) employment relations. Such policy shall be subject to review and comment by TxDOT prior to adoption. Such policy shall include standards of ethical conduct concerning the following:

10.7.1.1 Restrictions on gifts and contributions to, and lobbying of, TxDOT, the Texas Transportation Commission, the Independent Engineer and any of their respective commissioners, directors, officers and employees;

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

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

10.7.1.4 Restrictions on directors, members, officers or supervisory or management personnel of any Developer-Related Entity (other than NTTA) engaging in any transaction or activity, including receiving or offering a financial incentive, benefit, loan or other financial interest, that is, or to a reasonable person appears to be, in conflict with or incompatible with the proper discharge of duties or independence of judgment or action in the performance of duties, or adverse to the interests of the Facility or employees;

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

10.7.1.6 Restrictions on directors, members, officers or employees of any Developer-Related Entity (other than NTTA) performing any of the Work if the performance of such services would be prohibited under TxDOT's published conflict of interest rules and policies applicable to TxDOT's comprehensive development agreement program, or would be prohibited under Texas Government Code, Section 572.054.

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

10.8 Non-Discrimination; Equal Employment Opportunity

10.8.1 Developer shall not, and shall cause the Contractors to not, discriminate on the basis of race, color, national origin, sex, age, religion or handicap in the performance of the Work under the CDA Documents. Developer shall carry out, and shall cause the Contractors to carry out, applicable requirements of 49 CFR Part 26. Failure by Developer to carry out these requirements is a material breach of this Agreement, which may result in a Default Termination Event and the termination of this Agreement and the Lease or such other remedy permitted hereunder as TxDOT deems appropriate (subject to Developer's and Lenders' rights to notice and opportunity to cure set forth in this Agreement).

10.8.2 Developer shall include the immediately preceding paragraph in every Contract (including purchase orders and in every Contract of any Developer-Related Entity for Work), and shall require that they be included in all Contracts at lower tiers, so that such provisions will be binding upon each Contractor.

10.8.3 Developer confirms for itself and all Contractors that Developer and each Contractor has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap; and that Developer and each Contractor maintains no employee facilities segregated on the basis of race, color, national origin, sex, age, religion or handicap. Developer shall comply with all applicable Equal Employment Opportunity and nondiscrimination provisions, including those set forth in Exhibit 8, and shall require its Contractors to comply with such provisions.

10.9 Disadvantaged Business Enterprise

10.9.1 General

10.9.1.1 TxDOT's Disadvantaged Business Enterprise (DBE) Special Provisions applicable to the Facility are set forth in Exhibit 13. The purpose of the DBE Special Provisions is to ensure that DBEs shall have an equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Developer shall comply with all applicable requirements set forth in the DBE Special Provisions and TxDOT's Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26, and the provisions in Developer's approved DBE Performance Plan, set forth in Exhibit 14.

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

10.9.2 DBE Participation Goals

10.9.2.1 The goal for DBE participation in the Work required under this Agreement for professional services and construction of the Facility shall be 12.12%.

10.9.2.2 Developer shall exercise good faith efforts to achieve such DBE participation goal for the Facility through implementation of Developer's approved DBE Performance Plan.

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

10.9.3 Cancellation of DBE Contracts

Developer shall not cancel or terminate any Contract with a DBE firm except in accordance with all requirements and provisions applicable to cancellation or termination of Contracts with DBE firms set forth in the DBE Special Provisions in Exhibit 13.

10.10 Job Training and Small Business Mentoring Plan

10.10.1 Developer's Job Training and Small Business Mentoring Plan applicable to the Facility is set forth in Exhibit 15. The purpose of the Job Training and Small Business

Mentoring Plan is to ensure that inexperienced and untrained workers have a substantial opportunity to participate in the performance of the Work through apprenticeships, training and similar measures to maintain and grow a diverse, skilled work force. Developer shall perform and comply with all requirements set forth in of the Job Training and Small Business Mentoring Plan.

10.10.2 Developer shall include provisions to effectuate the Job Training and Small Business Mentoring Plan in every Contract to which it is a party (including purchase orders and task orders for Work), and shall require that they be included in all Contracts at lower tiers (including purchase orders and task orders for Work), except for Contracts with TxDOT or Governmental Entities, so that such provisions will be binding upon each Contractor. The foregoing shall not apply to Contracts at any tier with TxDOT or Governmental Entities.

10.11 State Use Program

10.11.1 Developer shall comply with the provisions of the Texas Human Resources Code, Chapter 122 that are placed on TxDOT with respect to O&M Work. The use of Community Rehabilitation Programs (CRPs) is outlined in Chapter 122 and 40 Texas Administrative Code §189 and is strongly encouraged by TxDOT. Specifically, Section 122.008 (Procurement at Determined Prices) states: "A suitable product or service that meets applicable specifications established by the state or its political subdivisions and that is available within the time specified must be procured from a CRP at the price determined by the council to be the fair market price."

10.11.2 Developer will make a good faith effort to negotiate with CRPs and the Texas Industries for the Blind and Handicapped (TIBH) for subcontracts at a fair market price. TxDOT reserves the right to facilitate disputes involving subcontracts or potential subcontracts with CRPs and TIBH.

10.12 Prevailing Wages

10.12.1 Developer shall pay or cause to be paid to all applicable workers employed by it or its Contractors to perform the Work not less than the prevailing rates of wages, as provided in the statutes and regulations applicable to public work contracts, including Texas Government Code, Chapter 2258 and the Davis-Bacon Act, and as provided in Exhibit 8. Developer shall comply and cause its Contractors to comply with all Laws pertaining to prevailing wages. For the purpose of applying such Laws, the Facility shall be treated as a public work paid for in whole or in part with public funds (regardless of whether public funds are actually used to pay for the Facility). The foregoing shall not apply to Contracts at any tier with TxDOT or Governmental Entities.

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

10.12.3 Any issue between Developer or a Contractor, other than TxDOT or a Governmental Entity acting as a Contractor, and any affected worker relating to any alleged violation of Texas Government Code, Section 2258.023 that is not resolved before the 15th day after the date TxDOT makes its initial determination under Texas Government Code,

Section 2258.052 (as to whether good cause exists to believe that a violation occurred) shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act, Civil Practice and Remedies Code, Chapter 171.

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

10.13 Prompt Payment to Contractors

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

10.13.1 The Design-Build Contractor shall pay each subcontractor for Work satisfactorily performed within ten days after receiving payment from Developer for the Work satisfactorily performed by the subcontractor, and shall pay any retainage on a subcontractor's Work within ten days after satisfactory completion of all of the subcontractor's Work. Completed subcontractor work includes vegetative establishment, test, maintenance, performance, and other similar periods that are the responsibility of the subcontractor. For the purpose of this Section 10.13, satisfactory completion is accomplished when:

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

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

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

10.14 Suspension and Debarment

Developer shall deliver to TxDOT, not later than January 31 of each year through Final Acceptance, and upon Final Acceptance, signed certifications regarding suspension, debarment, ineligibility, voluntary exclusion, convictions and civil judgments from Developer, from each affiliate of Developer (as "affiliate" is defined in 29 CFR 105 or successor regulation of similar import), and from each Contractor whose Contract amount equals or exceeds $100,000. The annual certification shall be substantially in the form of paragraphs 1.a through 1.d of Attachment 6 to Exhibit 8 (Federal Requirements).

10.15 Uniforms

Any uniforms, badges, logos and other identification worn by personnel of Developer-Related Entities (other than NTTA) shall bear colors, lettering, design or other features to assure clear differentiation from those of TxDOT and its employees.

ARTICLE 11. RELATED AND OTHER FACILITIES

11.1 Integration with Related Transportation Facilities

11.1.1 Developer shall locate, configure, design, operate and maintain the termini, interchanges, entrances and exits of the Facility so that the Facility will be compatible and integrated with the location, configuration, design, operation and maintenance of, and provide a smooth, safe transition of traffic to and from, Related Transportation Facilities, as set forth in Section 1 of the Technical Provisions. The design and Right of Way Acquisition Plan for the Facility shall include and provide for such compatibility, integration and transition. The design, construction, operation and maintenance of the Facility shall satisfy all provisions of the Technical Provisions and Facility Management Plan relating to compatibility, integration and transition with or at Related Transportation Facilities, including those concerning signage, signaling and communications with Users. Developer shall not block or restrict, partially or wholly, access to or from the Facility from or to any Related Transportation Facility without the prior express written consent of, and on such terms and conditions as may be specified by, TxDOT and the applicable local agency or other party, as the case may be.

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

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

11.1.4 TxDOT shall provide reasonable assistance to Developer, upon its request and at its expense, in obtaining cooperation and coordination from third parties that own, manage, operate or maintain Related Transportation Facilities and in enforcing rights, remedies and warranties that Developer may have against any such third parties. Such assistance may include TxDOT's participation in meetings and discussions. In no event shall TxDOT be required to bring any legal action or proceeding against any such third party.

11.1.5 TxDOT shall have at all times, without obligation or liability to Developer, the right to conduct traffic management activities on TxDOT's Related Transportation Facilities and all other facilities of the State transportation network in the area of the Facility in accordance with its standard traffic management practices and procedures in effect from time to time.

11.2 Reserved Airspace and Business Opportunities

11.2.1 Developer's rights and interests in the Facility and Facility Right of Way are and shall remain specifically limited only to such real and personal property rights and interests that are necessary or required for developing, permitting, designing, financing, constructing, installing, equipping, operating, maintaining, tolling, repairing, reconstructing, rehabilitating, restoring, renewing or replacing the Facility and Developer's timely fulfillment of its obligations under the CDA Documents. Developer's rights and interests specifically exclude any and all

Airspace and any and all improvements and personal property above, on or below the surface of the Facility Right of Way which are not necessary and required for such purposes.

11.2.2 TxDOT reserves to itself, and Developer hereby relinquishes, all right and opportunity to develop and pursue anywhere in the world entrepreneurial, commercial and business activities that are ancillary or collateral to (a) the use, enjoyment and operation of the Facility and Facility Right of Way as provided in this Agreement and the Lease and (b) the collection, use and enjoyment of Toll Revenues as provided in this Agreement and the Lease ("Business Opportunities"). Unless expressly authorized by TxDOT in its sole discretion, Developer will not grant permission for any Person (other than TxDOT) to use or occupy the Facility for any ancillary or collateral purpose, whether through a sublease or otherwise. The foregoing reservation in no way precludes Developer or any Affiliate, Contractor or other Developer-Related Entity from (i) carrying out the Facility Plan of Finance, (ii) arranging and consummating Refinancings, (iii) creating and using brochures and other promotional and marketing material, responses to requests for qualifications or proposals, and similar communications that include descriptions, presentations and images of the Facility or the Work for the purpose of promoting its business of developing, financing and operating transportation projects, or (iv) proposing to TxDOT joint Business Opportunities, including expected financial and other terms, for TxDOT's consideration, provided that TxDOT will not consider any proposal to permit outdoor advertising and has no obligation to pursue Business Opportunities jointly with Developer.

11.2.3 The Business Opportunities reserved to TxDOT include all the following:

11.2.3.1 All rights to finance, design, construct, operate and maintain any passenger or freight rail facility, roads and highways or other mode of transportation in the Airspace, including tunnels, flyovers, frontage roads, local roads, interchanges and fixed guide-ways, and to grant to others such rights, subject to the provisions of Sections 11.2.4 and 11.3.2;

11.2.3.2 All rights to install, use, lease, grant indefeasible rights of use, sell and derive revenues from electrical and fiber optic conduit, cable, capacity, towers, antennas and associated equipment or other telecommunications equipment, hardware and capacity, existing over, on, under or adjacent to any portion of the Facility Right of Way installed by anyone, whether before or after the Effective Date, and all software which executes such equipment and hardware and related documentation, except for the capacity of any such improvement installed by Developer that is necessary for and devoted exclusively to the operation of the Facility. For avoidance of doubt, if Developer installs any such improvements, all use and capacity thereof not necessary for operation of the Facility is reserved to, and shall be the sole property of, TxDOT;

11.2.3.3 All rights to use, sell and derive revenues from traffic data and other data generated from operation of the Facility or any Electronic Toll Collection System except use of such data as required solely for operation of the Facility and enforcement and collection of tolls;

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

11.2.3.5 All rights to install, use and derive information, services, capabilities and revenues from Intelligent Transportation Systems and applications, except installation and use of any such systems and applications by Developer as required solely for operation of the

Facility. For avoidance of doubt, if Developer installs any such systems or applications, all use and capacity thereof not necessary for operation of the Facility is reserved to, and shall be the sole property of, TxDOT;

11.2.3.6 All rights to market, distribute, sell and derive revenues from any goods, products or merchandise depicting, utilizing or exploiting any name, image, logo, caricature or other representation, in any form or medium, of TxDOT or the Facility, or that may be confused with those of TxDOT or the Facility;

11.2.3.7 All rights and opportunities to grant to others sponsorship, advertising and naming rights with respect to the Facility or any portion thereof, provided that in any sponsorship or naming rights transaction, TxDOT shall cause to be granted to Developer a non-exclusive license to use the name in connection with Facility operations;

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

11.2.3.9 Any other commercial or noncommercial development or use of the Airspace or electronic toll collection technology for other than operation of the Facility; and

11.2.3.10 All ownership, possession and control of, and all rights to develop, use, lease, sell and derive revenues from, carbon credits or other environmental benefits generated by or arising out of development, use, operation or maintenance of the Facility.

11.2.4 If the development, use or operation of the Airspace by TxDOT or anyone claiming under or through TxDOT, or if the development or operation of a Business Opportunity in the Airspace, prevents Developer from performing its fundamental obligations under this Agreement or materially adversely affects its costs or Toll Revenues, such impacts will be treated as a Relief Event under Section 13.1 and a Compensation Event under Section 13.2; provided, however, that:

11.2.4.1 If the Airspace is used for construction, operation, maintenance, repair, reconstruction, renewal, replacement and expansion of Related Transportation Facilities, then TxDOT shall have no liability, as a Compensation Event or otherwise, for any loss of Toll Revenues or increase in Developer's costs;

11.2.4.2 If the development, use or operation of the Airspace involves an Unplanned Revenue Impacting Facility, Section 11.3 applies; and

11.2.4.3 If the development, use or operation of the Airspace involves a transportation facility other than as set forth in Sections 11.2.4.1 and 11.2.4.2, the Compensation Amount shall be limited to (a) the loss of Toll Revenues due to traffic disruption during, and directly caused by, construction activities and (b) the increase in Developer's costs directly caused by construction or operating activities, and shall not include loss of Toll Revenues (if any) caused by the operation of such transportation facility.

11.2.5 Prior to deciding whether to develop, use or operate the Airspace, TxDOT may call on Developer to provide analysis of the impacts thereof on Developer's costs, schedule and revenues, as if it were a Request for Change Proposal, in which case the Parties shall follow the procedures under Sections 14.1.2 through 14.1.8.

11.2.6 In the event a Developer Default concerns a breach of the provisions of this Section 11.2, in addition to any other remedies, TxDOT shall be entitled to Developer's disgorgement of all profits from the prohibited activity, together with interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of collection until the date disgorged, and to sole title to and ownership of the prohibited assets and improvements and revenues derived therefrom.

11.2.7 Developer is prohibited by Law and this Section 11.2 from placing or permitting any outdoor advertising within the boundaries of the Facility Right of Way.

11.3 Unplanned Revenue Impacting Facilities

11.3.1 TxDOT Rights

11.3.1.1 Except for the limited rights to compensation provided to Developer under Section 11.3.2, TxDOT will have the right in its sole discretion, at any time and without liability, regardless of impacts on Toll Revenues, to finance, develop, approve, expand, improve, modify, upgrade, add capacity to, reconstruct, rehabilitate, restore, renew and replace any existing and new transportation or other facilities (including, without limitation, free roads, connecting roads, service roads, frontage roads, turnpikes, managed lanes, HOT/HOV lanes, light rail, freight rail, bus lanes, etc.). Such right extends to facilities both within the Airspace and outside the Facility Right of Way, whether identified or not identified in transportation plans, and whether adjacent to, nearby or otherwise located as to affect the Facility, its operation and maintenance (including the costs and expenses thereof), its vehicular traffic and/or its revenues.

11.3.1.2 The foregoing facilities include those (a) owned or operated by TxDOT, including those owned or operated by a private entity pursuant to a contract with TxDOT; (b) owned or operated by a joint powers authority or similar entity to which TxDOT is a member, (c) owned or operated by a Governmental Entity pursuant to a contract with TxDOT, including regional mobility authorities, joint powers authorities, counties and municipalities, and (d) owned or operated by a Governmental Entity (including regional mobility authorities, joint powers authorities, counties and municipalities) with respect to which TxDOT has contributed funds, in-kind contributions or other financial or administrative support. The foregoing rights include the ability to institute, increase or decrease tolls on such facilities or modify, change or institute new or different operation and maintenance procedures.

11.3.1.3 TxDOT will have the right, without liability, to make discretionary and non-discretionary distributions of federal and other funds for any transportation projects, programs and planning, to analyze revenue impacts of potential transportation projects, and to exercise all its authority to advise and recommend on transportation planning, development and funding.

11.3.2 Exclusive Covenants and Remedies Regarding Unplanned Revenue Impacting Facilities

This Section 11.3.2 sets forth Developer's sole and exclusive rights and remedies with respect to Unplanned Revenue Impacting Facilities, and supersedes any provisions of the CDA Documents to the contrary. Such rights and remedies are subject to Section 11.3.3.

11.3.2.1 The Compensation Amount, if any, owing from TxDOT to Developer on account of the Unplanned Revenue Impacting Facility shall be equal to the loss of Toll Revenues, if any, attributable to the Unplanned Revenue Impacting Facility less the increase in

Toll Revenues, if any, attributable to (a) the Unplanned Revenue Impacting Facilities, and (b) future additions or expansions of access points to the Managed Lanes by TxDOT or a Governmental Entity that are not included as part of the Work, if such Unplanned Revenue Impacting Facilities or future additions or expansions are under construction or in operation at the time Developer first delivers its Claim for compensation to TxDOT. The Compensation Amount also shall include (i) the loss of Toll Revenues due to traffic disruption during, and directly caused by, construction, reconstruction, renewal, replacement or expansion activities for the Unplanned Revenue Impacting Facility and (ii) the increase or decrease, as the case may be, in Developer's costs directly caused by construction or operating activities for the Unplanned Revenue Impacting Facility. The foregoing Compensation Amount, if any, shall be determined in the same manner, and subject to the same conditions and limitations, as for a Compensation Event under Section 13.2; as well as the procedures in this Section.

11.3.2.2 Each Party may, but is not obligated to, deliver to the other Party a notice of potential Unplanned Revenue Impacting Facility at any time from and after the selection thereof as the preferred alternative under a NEPA decision or local project decision and prior to opening of the potential Unplanned Revenue Impacting Facility to traffic. If TxDOT provides such notice, TxDOT shall include in it, to the extent available or known to TxDOT, (a) a reasonable description of the Unplanned Revenue Impacting Facility, including any right of way alignments, number of lanes, location and other pertinent features, (b) a statement whether the potential Unplanned Revenue Impacting Facility will be tolled, and if so the intended tolling requirements, including, if applicable, toll rate schedule by vehicle classification, and (c) any traffic and revenue studies and analyses that constitute public information under the Public Information Act available to TxDOT for the potential Unplanned Revenue Impacting Facility. If Developer provides such notice, then within 30 days after TxDOT receives the notice it shall deliver to Developer either the foregoing documentation (to the extent available or known to TxDOT) or a notice that commencement of procedures under this Section 11.3.2.2 is premature because there is no reasonable expectation of commencing construction of the potential Unplanned Revenue Impacting Facility within the next two years. If TxDOT delivers notice that commencement of procedures is premature, Developer shall have the right to deliver a new notice of the potential Unplanned Revenue Impacting Facility no earlier than one year after its prior notice, in which case the foregoing provisions shall again apply.

11.3.2.3 Within 90 days after TxDOT delivers to Developer the documentation described in Section 11.3.2.2, Developer shall deliver to TxDOT a written notice of Claim stating whether Developer believes the potential Unplanned Revenue Impacting Facility will have an adverse effect on the amount of Toll Revenues and, if so, a true and complete copy of a preliminary traffic and revenue study and analysis showing the projected effects and a reasonably detailed statement quantifying the adverse effect on Toll Revenues and the positive effect on costs. Such analysis and quantification shall include data on past Toll Revenues and projected future Toll Revenues with and without the potential Unplanned Revenue Impacting Facility. At Developer's request within such 90-day period, TxDOT shall grant reasonable extensions of time for Developer to deliver the written notice of Claim, so long as Developer is making good faith, diligent progress in completing its traffic and revenue analysis and Toll Revenue impact analysis, provided that in no event shall TxDOT be obligated to grant extensions aggregating more than 60 days.

11.3.2.4 If for any reason Developer fails to deliver such written notice of Claim and related information within the foregoing time period (as it may be extended), Developer shall be deemed to have irrevocably and forever waived and released any Claim or right to compensation for any adverse effect on Toll Revenues attributable to the construction, operation and use of the subject potential Unplanned Revenue Impacting Facility or any Unplanned Revenue Impacting Facility that is not substantially different from the potential

Unplanned Revenue Impacting Facility. For this purpose, an Unplanned Revenue Impacting Facility ultimately constructed and operated shall be considered substantially different from the subject potential Unplanned Revenue Impacting Facility if (a) the route is substantially different, (b) the number of lanes is different, (c) the number of HOV, HOT, truck or other special purpose or restricted use lanes is different or their length is substantially different, (d) the total length is substantially different, (e) TxDOT stated in its written notice that the potential Unplanned Revenue Impacting Facility would be tolled and the actual Unplanned Revenue Impacting Facility is not tolled or is tolled at materially lower toll rates for the predominant classifications of vehicles than the rates described in TxDOT's notice (if applicable), (f) the means for collecting tolls is substantially different (e.g. barrier only vs. barrier-free or open lane tolling), (g) the number of access points to the Unplanned Revenue Impacting Facility is different or the design capacity of access points to the Unplanned Revenue Impacting Facility is substantially different or (h) there are other differences similar in scale or effect to the foregoing differences.

11.3.2.5 If Developer timely delivers its written notice of Claim and related information, then at TxDOT's request Developer shall engage in good faith, diligent negotiations with TxDOT to mutually determine and settle the Compensation Amount owing from TxDOT to Developer on account of the potential Unplanned Revenue Impacting Facility. As part of such negotiations, the Parties shall continue to refine and exchange, on an Open Book Basis, plans, drawings, configurations and other information on the potential Unplanned Revenue Impacting Facility, traffic and revenue data, information, analyses and studies, and financial modeling and quantifications of projected Toll Revenue loss, if any. At the request of either Party, the Parties shall engage a neutral facilitator to assist with the negotiations.

11.3.2.6 If, despite such good faith, diligent negotiations (including exchange of information on an Open Book Basis), the Parties are unable to agree upon the Compensation Amount within 90 days after commencement of such negotiations, then either Party may terminate the negotiations upon written notice to the other Party. If the Parties are successful in the negotiations, they shall execute and deliver written agreements and, if necessary, amendments to this Agreement, setting forth all the terms and conditions of settlement, which shall thereafter be final and binding and constitute a full settlement and release of any and all Claims, causes of action, suits, demands and Losses of Developer arising out of the Unplanned Revenue Impacting Facility or any similar substitute Unplanned Revenue Impacting Facility. Neither Party thereafter shall have the right to rescind or cancel the settlement for any reason, including differences between the amounts of actual future Toll Revenues and the amount that were previously projected.

11.3.2.7 If any Unplanned Revenue Impacting Facility is opened for traffic operations and is not the subject of compensation settlement under Section 11.3.2.6 or upon opening is substantially different from the Unplanned Revenue Impacting Facility that is the subject of compensation settlement (as described in Section 11.3.2.4), then Developer shall be entitled to pursue its Claim for the Compensation Amount on and subject to the following terms and conditions:

(a) Developer shall have a period of up to four years following the opening for traffic operations of the Unplanned Revenue Impacting Facility to make a Claim for the Compensation Amount (which may include both past and future adverse effects on the amount of Toll Revenues). Developer shall make a Claim by delivering to TxDOT written notice of the Claim together with the same related information and materials as described in Section 11.3.2.3. The written notice shall state the claimed Compensation Amount and Developer's proposed Base Case Financial Model Update. If for any reason Developer fails to deliver such written notice of Claim and related information within the foregoing time period,

Developer shall be deemed to have irrevocably and forever waived and released any Claim or other right to compensation for any adverse effect, past or future, on Toll Revenues attributable to the Unplanned Revenue Impacting Facility.

(b) If Developer timely delivers its written notice of Claim and related information, then at TxDOT's request Developer shall deliver to TxDOT, on an Open Book Basis, any other information, studies, analyses and documentation used by or available to Developer in support of its Claim or otherwise relevant to the determination of the Compensation Amount (if any), and the Parties shall seek to settle the Claim in good faith. Any unresolved Dispute regarding whether Developer is entitled to any compensation and the amount thereof shall be resolved according to the Dispute Resolution Procedures.

(c) Developer shall bear the burden of proving its Claim.

11.3.2.8 If any Unplanned Revenue Impacting Facility for which compensation is paid or payable pursuant to Section 11.3.2.6 or 11.3.2.7 is modified physically or operationally after opening for traffic operations so that it is substantially different from the original Unplanned Revenue Impacting Facility (as described in Section 11.3.2.4) and as a result thereof Developer experiences a further adverse effect on the amount of Toll Revenues, then Developer shall be entitled to further compensation for such impact, offset by any further gain in Toll Revenues, if any, attributable to other future additions or expansions of access points to the Managed Lanes by TxDOT or a Governmental Entity that are not included as part of the Work and that are in operation at the time Developer first delivers its Claim for further compensation to TxDOT. The foregoing right to further compensation shall be subject to the same terms and conditions as set forth in Section 11.3.2.7, with the deadline for making Claim running from the date the changes in the original Unplanned Revenue Impacting Facility are substantially completed.

11.3.3 Waiver of Rights and Remedies Regarding Unplanned Revenue Impacting Facilities

Developer acknowledges that TxDOT has a paramount public interest and duty to develop and operate whatever transportation facilities it deems to be in the best interests of the State, and that the compensation to which Developer is entitled on account of Unplanned Revenue Impacting Facilities is a fair and adequate remedy. Accordingly, Developer shall not have, and irrevocably waives and relinquishes, any and all rights to institute, seek or obtain any injunctive relief or pursue any action, order or decree to restrain, preclude, prohibit or interfere with TxDOT's rights to plan, finance, develop, operate, maintain, toll or not toll, repair, improve, modify, upgrade, reconstruct, rehabilitate, restore, renew or replace Unplanned Revenue Impacting Facilities; provided, however, that the foregoing shall not preclude Developer from enforcing its rights to compensation regarding Unplanned Revenue Impacting Facilities under Section 11.3.2 (or rights to compensation regarding other Compensation Events). The filing of any such action seeking to restrain preclude, prohibit or interfere with TxDOT's rights shall automatically entitle TxDOT to recover all costs and expenses, including attorneys' fees, of defending such action and any appeals.

11.3.4 Positive Impact of Unplanned Revenue Impacting Facilities

If it is determined that operation of an Unplanned Revenue Impacting Facility will have a net positive financial impact to Developer, whether through increased Toll Revenues to Developer, decreased operating and maintenance costs, or an increase in Toll Revenues net of increased operating and maintenance costs, TxDOT shall be entitled to receive from Developer the full positive financial impact attributable to such Unplanned Revenue Impacting Facility (if

any). Any Dispute regarding such amount shall be resolved according to the Dispute Resolution Procedures. For the purpose of any discounting, the provisions of Section 13.2.4.3 shall apply.

ARTICLE 12. UPGRADES, TECHNOLOGY ENHANCEMENTS AND SAFETY COMPLIANCE

12.1 Conditions Requiring Mandatory Upgrades and Technology Enhancements

12.1.1 Required Capacity Improvements

12.1.1.1 If not previously obligated pursuant to Section 7.7.2.3 or Section 7.7.2.5, Developer shall be obligated to make Capacity Improvements as and when provided in Exhibit 16. Responsibility for the cost of such Capacity Improvements is set forth in Exhibit 16.

12.1.1.2 Except as provided in Section 12.1.1.3 and Exhibit 16, and except for TxDOT's right of review and comment on proposed Capacity Improvements, all the provisions of the CDA Documents, including all Technical Provisions and Technical Documents, concerning permitting, Facility Right of Way acquisition, design, construction, insurance, security, Utility Adjustments, Substantial Completion, Service Commencement, Final Acceptance, tolling, operation, maintenance, Renewal Work and Handback Requirements for the Facility shall apply, mutatis mutandis, to Capacity Improvements; provided that the Technical Provisions and Technical Documents in effect on the date Developer first submits to TxDOT and the Independent Engineer preliminary designs and drawings for the Capacity Improvements shall apply to the design and construction of the Capacity Improvements.

12.1.1.3 Before Developer enters into any design-build Contract or other Contract or amendment of an existing design-build Contract or other Contract for the construction of Capacity Improvements, it shall submit to TxDOT and the Independent Engineer a proposed reasonable, logic-driven preliminary schedule for performing and completing the Capacity Improvements, including deadlines for Service Commencement and Final Acceptance, per diem liquidated damages to TxDOT for failure to achieve the deadline for Service Commencement or Final Acceptance, a Long Stop Date and proposed amounts of payment and performance bonds or letters of credit. Such schedule, the deadlines for Service Commencement and Final Acceptance, the liquidated damages, the Long Stop Date and the amounts of the payment and performance bonds or letters of credit shall be subject to review, analysis and recommendation by the Independent Engineer and to TxDOT's prior written approval; and any Dispute regarding the same shall be resolved according to the Dispute Resolution Procedures. The opinion of the Independent Engineer shall be given substantial weight in resolving any Dispute, except with respect to the appropriate measure of liquidated damages and amount of payment and performance bonds or letters of credit. For the avoidance of doubt, the Milestone Schedule does not apply to Capacity Improvements undertaken pursuant to this Section 12.1.1.

12.1.2 Facility Extensions

12.1.2.1 Developer shall be obligated to add a Facility Extension as and when provided in Exhibit 16. Developer shall have no right to add a Facility Extension unless expressly provided otherwise in Exhibit 16. Responsibility for the cost of Facility Extensions is set forth in Exhibit 16.

12.1.2.2 Except to the extent otherwise provided in Section 12.1.2.3 and Exhibit 16, all the provisions of the CDA Documents concerning permitting, Facility Right of Way acquisition, design, construction, insurance, Utility Adjustments, Substantial Completion, Service Commencement, Final Acceptance, tolling, operation, maintenance, Renewal Work and Handback Requirements for the Facility shall apply, *mutatis mutandis*, to Facility Extensions; provided that the Technical Provisions and Technical Documents in effect on the date Developer first submits to TxDOT and the Independent Engineer preliminary designs and drawings for a Facility Extension shall apply to the design and construction of the Facility Extension.

12.1.2.3 Before Developer enters into any design-build or other contract for the construction of a Facility Extension, it shall submit to TxDOT and the Independent Engineer a proposed reasonable, logic-driven preliminary schedule for performing and completing the Facility Extension, deadlines for Service Commencement and Final Acceptance, per diem liquidated damages to TxDOT for failure to achieve the deadline for Service Commencement or Final Acceptance, a Long Stop Date and proposed amounts of payment and performance bonds or letters of credit. Such schedule, the deadlines for Service Commencement and Final Acceptance, the liquidated damages, the Long Stop Date and the amounts of the payment and performance bonds or letters of credit shall be subject to review, analysis and recommendation by the Independent Engineer and to TxDOT's prior written approval; and any Dispute regarding the same shall be resolved according to the Dispute Resolution Procedures. The proposed amounts of payment and performance bonds shall be consistent with Section 16.2. The opinion of the Independent Engineer shall be given substantial weight in resolving any Dispute, except with respect to the appropriate measure of liquidated damages and amount of payment and performance bonds or letters of credit.

12.1.3 Technology Enhancements

Except as provided otherwise in Exhibit 16, Developer at its expense shall be obligated to make Technology Enhancements on the systems it provides as and when necessary (a) to correct Defects, (b) under the Renewal Work Schedule or (c) to maintain interoperability in accordance with Section 8.7.2 and Section 8.7.3 and other applicable provisions of the CDA Documents.

12.2 Cost and Financing of Mandatory Upgrades

Developer acknowledges and represents that the cost of mandatory Upgrades and future financing therefor are incorporated into the Base Case Financial Model. Accordingly, no mandatory Upgrade shall be treated as a Compensation Event or otherwise entitle Developer to any Claim against TxDOT.

12.3 Discretionary Upgrades

12.3.1 Developer shall have the right to propose Capacity Improvements that are not required pursuant to Section 12.1 or 12.3.3. Any such proposed Capacity Improvements shall be treated as a Change Request subject to Section 14.2. To the extent proposed Capacity Improvements require further environmental review under NEPA, Developer shall provide all needed studies and analyses and shall reimburse TxDOT for all costs, including TxDOT's Recoverable Costs, that TxDOT incurs in connection with the NEPA process and any litigation arising therefrom. The provisions of Sections 12.1.1.2 and 12.1.1.3 shall apply to Developer's discretionary Capacity Improvements.

12.3.2 Except for mandatory Facility Extensions and Facility Extensions pursuant to Section 12.3.3, Developer shall have no right to, and shall not, construct any Facility Extension without TxDOT's prior written approval in its sole discretion. Developer may initiate request for approval of a discretionary Facility Extension by submitting to TxDOT and the Independent Engineer a Change Request setting forth all the relevant particulars supporting the request, including sources and method of financing. Any approved discretionary Facility Extension shall comply with the Technical Provisions and Technical Documents in effect as of the date TxDOT issues its approval. If any proposed discretionary Facility Extension requires further environmental review under NEPA, Developer shall reimburse TxDOT for all costs, including TxDOT's Recoverable Costs, it incurs in connection with the NEPA process, including litigation costs. The provisions of Sections 12.1.2.2 and 12.1.2.3 shall apply to Developer's discretionary Facility Extensions.

12.3.3 TxDOT may at any time issue a Directive Letter or Change Order for Developer to undertake Upgrades, subject to compensation in accordance with the change provisions of this Agreement for non-mandatory Upgrades. Developer shall diligently carry out any such Directive Letter or Change Order in accordance with its terms and conditions and the CDA Documents.

12.4 Safety Compliance

12.4.1 Safety Compliance Orders

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

12.4.1.2 The Independent Engineer's duties shall include monitoring and inspecting for the purpose of determining whether any circumstances exist that warrant issuance of a Safety Compliance Order, and giving reports and recommendations to TxDOT and Developer with respect thereto.

12.4.1.3 Subject to conducting such prior consultation, TxDOT may issue Safety Compliance Orders to Developer at any time from and after the Effective Date.

12.4.2 Duty to Comply

12.4.2.1 Subject to Section 12.4.1, Developer shall implement all Safety Compliance as expeditiously as reasonably possible following issuance of the Safety Compliance Order. Developer shall diligently prosecute the work necessary to achieve such Safety Compliance until completion.

12.4.2.2 Developer shall perform all work required to implement Safety Compliance at Developer's sole cost and expense. Without limiting the foregoing and for the avoidance of doubt, in no event shall Developer be entitled to (a) issue a Change Request or, except as provided in Section 12.4.3, claim that a Compensation Event has occurred as a result of the existence of a Safety Compliance Order, (b) claim that a Force Majeure Event, Extended Relief Event or, except as provided in Section 12.4.3, that a Relief Event has occurred or resulted from the existence of a Safety Compliance Order or (c) in the absence of any

agreement to the contrary, claim that any Force Majeure Event, Relief Event or Extended Relief Event relieves Developer from compliance with any Safety Compliance Order.

12.4.3 Contesting Safety Compliance Orders

Developer may contest a Safety Compliance Order by delivering to TxDOT written notice setting forth (a) Developer's claim that no Safety Compliance conditions exist to justify the Safety Compliance Order, (b) Developer's explanation of its claim in reasonable detail and (c) Developer's estimate of impacts on costs, Toll Revenues and schedule attributable to the contested Safety Compliance Order. If TxDOT does not receive such written notice prior to issuance of a Safety Compliance Order, or within 15 days after TxDOT issues an emergency Safety Compliance Order, then Developer thereafter shall have no right to contest. If Developer timely contests a Safety Compliance Order, Developer nevertheless shall implement the Safety Compliance Order, but if it is finally determined under the Dispute Resolution Procedures that Safety Compliance conditions did not exist, then the Safety Compliance Order shall be treated as a Directive Letter for a TxDOT Change.

ARTICLE 13. RELIEF EVENTS; COMPENSATION EVENTS

13.1 Relief Events

13.1.1 Relief Event Notice

13.1.1.1 If at any time Developer determines that a Relief Event has occurred or is imminent, Developer shall submit a written Relief Event Notice to TxDOT. TxDOT shall promptly acknowledge receipt of each Relief Event Notice.

13.1.1.2 The Relief Event Notice shall include (a) a statement of the Relief Event upon which the claim of delay or inability to perform is based; (b) to the extent then known, a reasonably detailed description of the circumstances from which the delay or inability to perform arises; and (c) an estimate of the delay in performance of any obligations under this Agreement attributable to the Relief Event. If a single Relief Event is a continuing cause of delay, only one Relief Event Notice shall be necessary.

13.1.2 Relief Request

13.1.2.1 Developer shall, within a further 30 days after the date of the Relief Event Notice, submit to TxDOT a Relief Request containing such further information as is then available to Developer relating to the Relief Event, and any delay in performance or failure to perform. TxDOT shall promptly acknowledge receipt of each Relief Request. Developer shall include in the Relief Request the following:

(a) Full details of the Relief Event, including its nature, the date of its occurrence and its duration;

(b) The effect of the Relief Event on Developer's ability to perform any of its obligations under this Agreement, including details of the relevant obligations, the precise effect on each such obligation, an impacted delay analysis indicating all affected activities on any Critical Path (with activity durations, predecessor and successor activities and resources, including Float available pursuant to Section 7.7.6), and the likely duration of that effect; and

(c) An explanation of the measures that Developer proposes to undertake to mitigate the delay and other consequences of the Relief Event.

13.1.2.2 If, following issuance of any Relief Request, Developer receives or becomes aware of any further information relating to the Relief Event and/or any delay in performance or failure to perform, it shall submit such further information to TxDOT as soon as possible. TxDOT may request from Developer any further information that TxDOT may reasonably require, and Developer shall supply the same within a reasonable period after such request.

13.1.3 Waiver

Time is of the essence in Developer's delivery of its written Relief Event Notice and Relief Request. Accordingly:

13.1.3.1 If for any reason Developer fails to deliver such written Relief Event Notice:

(a) Within 30 days following the date (herein the "starting date") on which Developer first became aware (or should have been aware, using all reasonable due diligence) of the Relief Event, Developer shall be deemed to have irrevocably and forever waived and released the portion of any Claim or right to relief (including extension of the Term) for adverse effect attributable to the Relief Event accruing after such 30-day deadline and until the date Developer submits the written Relief Event Notice; and

(b) Within 180 days following the starting date, Developer shall be deemed to have irrevocably and forever waived and released any and all Claim or right to relief (including extension of the Term) for any adverse effect attributable to such Relief Event; and

13.1.3.2 If for any reason Developer fails to deliver such written Relief Request within 30 days after the date of the Relief Event Notice, Developer shall be deemed to have irrevocably and forever waived and released any and all Claim or right to relief (including extension of the Term) for any adverse effect attributable to such Relief Event.

13.1.4 Extension of Lease Term for Certain Relief Events

13.1.4.1 Developer shall be entitled to an extension of the term of the Lease in (and only in) the following circumstances:

(a) Developer submits its Relief Event Notice and Relief Request within the applicable time periods;

(b) The Relief Event causes delay in performance that continues for a consecutive period of at least 180 days, or there occurs a cumulative period of delay in performance of at least 180 days in any consecutive 36-month period due only to Relief Events causing delays in performance that continue for a consecutive period of at least 60 days each (and for these purposes there shall not be counted any time period of delay in performance between 30 days after the starting date and the date Developer submits the written Relief Event Notice);

(c) The Relief Event is not also a Compensation Event; and

(d) The Relief Event adversely affects the collection of Toll Revenues (of the type described in clauses (a) through (d) of the definition of Toll Revenues) or increases Developer's costs that are not insured and not required to be insured under this Agreement.

13.1.4.2 Any extension of the term of the Lease shall be limited to the extra period of time reasonably required to recover from the impact of the loss of Toll Revenues (of the type described in clauses (a) through (d) of the definition of Toll Revenues), and the impact of the increase in uninsurable and nonreimburseable costs attributable to such Relief Event, minus any cost-savings realized by the Developer due to such Relief Event, provided that under no circumstances shall the cumulative extensions of the term of the Lease under this Section 13.1.4 exceed ten years or the maximum extension then possible under applicable Laws, whichever is less. For the purpose of determining impacts and the length of the term of the Lease extension, the Parties shall use the same present value methodology for calculating the weighted average cost of capital and the value of future Toll Revenues as incorporated into the Base Case Financial Model Update (or, if there has been no Base Case Financial Model Update, into the Base Case Financial Model).

13.1.4.3 In addition to providing information pursuant to Section 13.1.2.2, Developer shall deliver to TxDOT a written notice and analysis within 30 days after occurrence of cumulative periods of delay due to Relief Events that Developer determines entitle it to an extension of the term of the Lease under this Section 13.1.4 (a "Relief Request update"). The Relief Request update shall state such facts and the expected period that the Relief Event(s) will continue, include an update of the information described in Section 13.1.2.1, and include a financial analysis of the period of term of the Lease extension necessary to recover the impacts set forth in Section 13.1.4.2. Developer shall provide further Relief Request updates monthly until the subject Relief Event(s) ceases.

13.1.5 Relief Event Determination

13.1.5.1 If Developer complies with the notice and information requirements in Sections 13.1 and 13.2, then within 30 days after receiving the Relief Event Notice and Relief Request (and, if applicable a final Relief Request update) TxDOT, acting reasonably and with consideration given to recommendations made by the Independent Engineer, shall issue a Relief Event Determination. TxDOT shall specify in the Relief Event Determination (a) the relevant obligations for which relief is given, (b) the period of time Facility Schedule or Milestone Schedule deadlines will be extended based on the number of days of delay affecting a Critical Path, after consumption of Float available pursuant to Section 7.7.6, that is directly attributable to the Relief Event and that cannot be avoided through reasonable mitigation measures and (c) if applicable, the period of time, if any, that the Term will be extended. Developer shall be relieved from the performance of obligations to the extent specified in the Relief Event Determination, and Noncompliance Points shall not be assessed against Developer as a result of inability to perform its obligations due solely and directly to, and during, the Relief Event period.

13.1.5.2 Developer shall not be excused from timely payment of monetary obligations under this Agreement due to the occurrence of a Relief Event. Developer shall not be excused from compliance with applicable Laws, Technical Provisions or Technical Documents due to the occurrence of a Relief Event, except temporary inability to comply as a direct result of a Relief Event.

13.1.5.3 If TxDOT is obligated to but does not provide a Relief Event Determination within such 30-day period, Developer shall have the right to assert a Claim

against TxDOT for the relevant Relief Event and have such Claim determined according to the Dispute Resolution Procedures. Any Dispute regarding the occurrence of a Relief Event, the terms of the Relief Event Determination or waiver of Developer's Claim or right to relief shall be resolved according to the Dispute Resolution Procedures.

13.2 Compensation Events; Determination of Compensation Amount

13.2.1 Except as otherwise provided in this Agreement, if at any time Developer determines that a Compensation Event has occurred or is imminent, Developer shall submit a written Compensation Event Notice to TxDOT. The Compensation Event Notice shall identify the Compensation Event and its date of occurrence in reasonable detail, describe Developer's current estimate of the anticipated adverse and beneficial effects of the Compensation Event, and include written analysis and calculation of Developer's current estimate of the estimated increase or decrease in costs and estimated loss of or increase in Toll Revenues, to the extent applicable to the Compensation Event.

13.2.2 Time is of the essence in Developer's delivery of its written Compensation Event Notice. Accordingly, if for any reason Developer fails to deliver such written Compensation Event Notice:

13.2.2.1 Within 60 days following the date (herein the "starting date") on which Developer first became aware (or should have been aware, using all reasonable due diligence) of the occurrence of such Compensation Event, Developer shall be deemed to have irrevocably and forever waived and released the portion of any Claim or right to compensation for adverse effect on Toll Revenues and costs attributable to such Compensation Event accruing after such 60-day deadline and until the date Developer submits the written Compensation Event Notice; and

13.2.2.2 Within 180 days following the starting date, Developer shall be deemed to have irrevocably and forever waived and released any and all Claim or right to compensation for any adverse effect on Toll Revenues or costs attributable to such Compensation Event.

13.2.3 TxDOT shall promptly acknowledge receipt of each Compensation Event Notice and update. After receiving Developer's Compensation Event Notice, TxDOT shall be entitled to obtain (a) from the Independent Engineer a comprehensive report as to Developer's estimate of the cost impacts attributable to the Compensation Event and (b) from a traffic and revenue consultant TxDOT selects, a traffic and revenue study, prepared in accordance with Good Industry Practice, analyzing and calculating the estimated impact on Toll Revenues attributable to the Compensation Event. Within 90 days after receiving Developer's Compensation Event Notice, TxDOT shall provide to Developer a true and complete copy of the traffic and revenue study and the report prepared by the Independent Engineer. If Developer complies with the notice and information requirements in Sections 13.2.1 and 13.2.2, but TxDOT does not provide Developer copies of such study and report within such 90-day period, then Developer shall have the right to assert a Claim against TxDOT for the relevant Compensation Amount (if any) and have such Claim determined according to the Dispute Resolution Procedures.

13.2.4 If Developer complies with the notice and information requirements in Sections 13.2.1 and 13.2.2, then within 30 days after TxDOT and Developer receive the report and study from the Independent Engineer and traffic and revenue consultant, TxDOT and Developer shall commence good faith negotiations to determine the Compensation Amount, if any, to which Developer is entitled. If Developer stands ready to commence good faith

negotiations to determine the Compensation Amount within the foregoing time period but for any reason TxDOT does not commence to engage therein within the foregoing time period, then, subject to compliance with the notice and information requirements in Sections 13.2.1 and 13.2.2, Developer shall have the right to assert a Claim against TxDOT for the relevant Compensation Amount (if any) and have such Claim determined according to the Dispute Resolution Procedures. The Compensation Amount shall be determined by applying the following provisions.

13.2.4.1 Cost impacts shall:

(a) Exclude (i) third-party entertainment costs, lobbying and political activity costs, costs of alcoholic beverages, costs for first class travel in excess of prevailing economy travel costs, and costs of club memberships, in each case to the extent that such costs would not be reimbursed to an employee of TxDOT in the regular course of business, and (ii) unallowable costs under the following provisions of the federal Contract Cost Principles, 48 CFR 31.205: 31.205-8 (contributions or donations), 31.205-13 (employee morale, health, welfare, food service, and dormitory costs and credits), 31.205-14 (entertainment costs), 31.205-15 (fines, penalties, and mischarging costs), 31.205-27 (organization costs), 31.205-34 (recruitment costs), 31.205-35 (relocation costs), 31.205-43 (trade, business, technical and professional activity costs), 31.205-44 (training and education costs), and 31.205-47 (costs related to legal and other proceedings);

(b) Exclude amounts paid or to be paid to Affiliates in excess of the pricing Developer could reasonably obtain in an arms' length, competitive transaction with an unaffiliated Contractor;

(c) Exclude those costs incurred in asserting, pursuing or enforcing any Claim or Dispute;

(d) Take into account any savings in costs resulting from the Compensation Event; and

(e) Be subject to Developer's obligation to mitigate cost increases and augment cost decreases in accordance with Section 13.3.

13.2.4.2 Toll Revenue impacts shall:

(a) Take into account any increase in Toll Revenue attributable to the Compensation Event; and

(b) Be subject to Developer's obligation to mitigate loss of Toll Revenues in accordance with Section 13.3.

13.2.4.3 For the purpose of any discounting, the Parties shall use the same present value methodology for calculating the weighted average cost of capital as incorporated into the Base Case Financial Model Update (or, if there has been no Base Case Financial Model Update, into the Base Case Financial Model).

13.2.4.4 In all cases the Compensation Amount shall be net of all insurance available to Developer, or deemed to be self-insured by Developer under Section 16.1.4.3, with respect to cost or revenue impacts of the Compensation Event.

13.2.4.5 If the Compensation Amount includes amounts subject to federal income tax or State margin tax and TxDOT chooses under Section 13.2.9 to pay any portion of such taxable amounts in a lump sum, then the Compensation Amount shall also include, and TxDOT shall pay, the amount necessary to cover the incremental increase, if any, in the federal income tax liability of Developer (or, if it is a pass-through entity for income tax purposes, its members or partners) or State margin tax liability of Developer due to such lump sum payment over the Base Tax Liability. TxDOT shall pay such amount within 30 days after Developer delivers to TxDOT proof of the actual tax liability incurred and the amount by which it exceeds the Base Tax Liability. The Compensation Amount shall not include, and TxDOT shall have no liability for, any incremental increase in federal income tax and margin tax liability where the Compensation Amount is paid in quarterly or other periodic payments.

13.2.5 If, following issuance of any Compensation Event Notice and during the period of analysis and negotiation under Sections 13.2.3 and 13.2.4, Developer receives or becomes aware of any further information relating to the Compensation Event and/or actual or anticipated adverse and beneficial effects thereof, it shall submit such further information to TxDOT and the Independent Engineer as soon as possible. TxDOT may request from Developer any further information that TxDOT may reasonably require, and Developer shall supply the same within a reasonable period after such request.

13.2.6 If the Compensation Event is:

13.2.6.1 Under clause (h) of the definition of Compensation Event, then the Compensation Amount shall be limited to that set forth in Section 3.4.3;

13.2.6.2 The development, use or operation of an Unplanned Revenue Impacting Facility, the Compensation Amount shall be as set forth in Section 11.3.2.1 and, if applicable, Section 11.3.2.8;

13.2.6.3 Under clause (f) of the definition of Compensation Event, then the Compensation Amount shall be limited as set forth in Section 11.2.4;

13.2.6.4 Under clause (k) of the definition of Compensation Event, then the Compensation Amount shall be limited to the incremental increase in costs of initial design and construction due to delay and disruption directly attributable to the court order, plus interest on Facility Debt other than Subordinate Debt for the period of delay in initial design and construction directly attributable to the court order, plus loss of Toll Revenues directly attributable to a court order prohibiting imposition of tolls during a time period when Developer otherwise would be charging tolls under this Agreement, and shall not include any compensation for other impacts on return on equity; or

13.2.7 Developer shall conduct all discussions and negotiations to determine any Compensation Amount, and shall share with TxDOT all data, documents and information pertaining thereto, on an Open Book Basis.

13.2.8 If TxDOT and Developer are unable to agree on the Compensation Amount within 30 days after commencing good faith negotiations, or if Developer asserts a Claim against TxDOT for the Compensation Amount pursuant to Section 13.2.3 or 13.2.4, TxDOT shall prepare a good faith estimate of the Compensation Amount, and shall pay the full undisputed portion of the Compensation Amount to Developer within 30 days or in accordance with any other arrangement mutually agreed upon within such 30-day period. Any Dispute regarding occurrence of a Compensation Event, determination of the Compensation Amount or waiver of Developer's Claim or right to compensation shall be resolved according to the Dispute

Resolution Procedures. The dispute resolution body(ies) shall apply the provisions of Section 13.2.4 in determining the Compensation Amount.

13.2.9 Following a determination of the Compensation Amount by mutual agreement or the Dispute Resolution Procedures, TxDOT shall pay such Compensation Amount (a) through quarterly or other periodic payments of the Compensation Amount in accordance with a written payment schedule determined by mutual agreement or through the Dispute Resolution Procedures corresponding to when the cost and Toll Revenue impacts that make up the Compensation Amount are anticipated to occur, (b) in a lump sum, payable as determined by mutual agreement or through the Dispute Resolution Procedures, (c) by adjustment to the revenue payment formula set forth in Part A of Exhibit 7 so as to make up all or any portion of the Compensation Amount or (d) in such other manner as agreed upon by the Parties. TxDOT, in its sole discretion, shall be entitled to select one or any combination of the methods of compensation under clauses (a), (b) and (c) above, subject to the following terms and conditions.

13.2.9.1 No method may be chosen if it will not yield the amount necessary to restore Developer to the same economic position it would have been in if the Compensation Event had not occurred, except as specifically provided otherwise in this Agreement.

13.2.9.2 If any portion of the Compensation Amount is to pay for prior capital expenditures, TxDOT shall pay such portion in a lump sum, unless previously funded by Developer with non-callable Facility Debt or unless otherwise approved in writing by Developer.

13.2.9.3 If any portion of the Compensation Amount is to pay for costs of design or construction to be performed, or for other future capital expenditures, then TxDOT shall have no obligation to make advance payments and shall have the right to pay such portion of the Compensation Amount in quarterly progress payments in arrears and otherwise according to TxDOT's standard practices and procedures for paying its contractors and applicable Laws.

13.2.9.4 If any portion of the Compensation Amount is to pay for future non-capital costs or future Toll Revenue impacts, any periodic payments TxDOT chooses shall in no event be made less often than quarterly.

13.2.9.5 If TxDOT elects to make quarterly or other periodic payments, at any later time it may choose to complete compensation through a lump sum payment of the present value of the remaining Compensation Amount (plus any incremental federal income tax and State margin tax liability as provided in Section 13.2.4.5).

13.2.9.6 Any election by TxDOT to pay all or a portion of the Compensation Amount pursuant to Section 13.2.9(c) shall be subject to (a) determination that Developer will have the continuing ability to satisfy debt coverage ratios then binding on Developer under its Funding Agreements and Security Documents if such method is used, and (b) the ability of Developer, using diligent efforts, to raise additional Facility Debt or equity to the extent necessary to currently fund the cost impacts of the Compensation Event.

13.2.9.7 If TxDOT does not make any lump sum or periodic payment of the Compensation Amount when due, it shall thereafter bear interest, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, until the date the amount due is paid; provided, however, that if any portion of the Compensation Amount is to pay for costs of design or construction to be performed or for other future capital expenditures, such portion

shall bear interest in accordance with the Texas Prompt Payment Act, Texas Government Code, Chapter 2251.

13.2.10 Without limiting Developer's rights with respect to non-monetary relief for Relief Events and Extended Relief Events, the Compensation Amount shall represent the sole right to compensation and damages for the adverse financial effects of a Compensation Event. As a condition precedent to TxDOT's obligation to pay any portion of the Compensation Amount, Developer shall execute a full, unconditional, irrevocable release, in form reasonably acceptable to TxDOT, of any Claims, Losses or other rights to compensation or other monetary relief associated with such Compensation Event, except for the Claim and right to the subject Compensation Amount, Developer's right to non-monetary relief for a Relief Event or Extended Relief Event, and the right to terminate this Agreement in accordance with Section 19.4 and to receive any applicable Termination Compensation.

13.2.11 Developer shall run new projections and calculations under the Financial Model Formulas to establish a Base Case Financial Model Update whenever there occurs a Compensation Event. TxDOT shall have the right to challenge, according to the Dispute Resolution Procedures, the validity, accuracy or reasonableness of any Base Case Financial Model Update or the related updated and revised assumptions and data. TxDOT shall have 60 days after receiving written notice from Developer that the Base Case Financial Model Update has been deposited in an Intellectual Property Escrow to commence action under the Dispute Resolution Procedures. In the event of a challenge, the immediately preceding Base Case Financial Model Update that has not been challenged (or, if there has been no unchallenged Base Case Financial Model Update, the Base Case Financial Model) shall remain in effect pending the outcome of the challenge or until a new Base Case Financial Model Update is issued and unchallenged. In no event shall the Financial Model Formulas be changed except with the prior written approval of both Parties, each in its sole discretion.

13.3 Mitigation

Developer shall take all steps reasonably necessary to mitigate the consequences of any Relief Event, Extended Relief Event or Compensation Event, including all steps that would generally be taken in accordance with Good Industry Practice.

ARTICLE 14. TXDOT CHANGES; DEVELOPER CHANGES; DIRECTIVE LETTERS

This Article 14 sets forth the requirements for obtaining all Change Orders under this Agreement. Developer hereby acknowledges and agrees that the assumptions contained in the Base Case Financial Model provide for full compensation for performance of all of the Work, subject only to those exceptions specified in this Article 14. Developer unconditionally and irrevocably waives the right to any claim for any monetary compensation or other relief in addition to that specifically provided under the terms of this Agreement, except in accordance with this Article 14. The foregoing waiver encompasses all theories of liability, whether in contract, tort (including negligence), equity, quantum meruit or otherwise, and encompasses all theories to extinguish contractual obligations, including impracticability, mutual mistake and frustration of purpose. Nothing in the Technical Provisions or Technical Documents shall have the intent or effect or shall be construed to create any right of Developer to any Change Order or other Claim for additional monetary compensation or other relief, any provision in the Technical Provisions or Technical Documents to the contrary notwithstanding.

14.1 TxDOT Changes

This Section 14.1 concerns (a) Change Orders unilaterally issued by TxDOT and (b) Change Orders issued by TxDOT following a Request for Change Proposal.

14.1.1 TxDOT Right to Issue Change Order

TxDOT may, at any time and from time to time, without notice to any Lender or Surety, authorize and/or require, pursuant to a Change Order, changes in the Work, including additions or deletions, or in terms and conditions of the Technical Provisions or Technical Documents (including changes in the standards applicable to the Work); except TxDOT has no right to require any change that:

(a) Is not in compliance with applicable Laws;

(b) Would contravene an existing Governmental Approval and such contravention could not be corrected by the issuance of a further or revised Governmental Approval;

(c) Constitutes a fundamental change in the nature or scope of the Facility;

(d) Would cause an insured risk to become uninsurable;

(e) Would materially adversely affect the health or safety of users of the Facility;

(f) Is fundamentally incompatible with the Facility design; or

(g) Is not technically feasible to construct.

Developer shall have no obligation to perform any work within any such exception unless on terms mutually acceptable to TxDOT and Developer.

In addition, TxDOT shall have the right, at its option, without notice to any Lender or Surety, to obtain pricing, in accordance with Section 14.1.3, for NTP Capacity Improvements by Change Order issued by TxDOT unilaterally or following a Request for Change Proposal. In such case, the pricing shall be determined using the Milestone Deadlines for the NTP Capacity Improvements. Such pricing shall prevail if it is lower than the price for the NTP Capacity Improvement under Part C, Section 7 of Exhibit 7.

14.1.2 Request for Change Proposal

14.1.2.1 If TxDOT desires to initiate a TxDOT Change or to evaluate whether to initiate such a change, then TxDOT may, at its discretion, issue a Request for Change Proposal. The Request for Change Proposal shall set forth the nature, extent and details of the proposed TxDOT Change.

14.1.2.2 Within five Business Days after Developer receives a Request for Change Proposal, or such longer period to which the Parties may mutually agree, TxDOT and Developer shall consult to define the proposed scope of the change. Within five days after the initial consultation, or such longer period to which the Parties may mutually agree, TxDOT and Developer shall consult concerning the estimated financial and schedule impacts.

14.1.3 Within 60 days following TxDOT's delivery to Developer of the Request for Change Proposal, Developer shall provide TxDOT with a written response as to whether, in Developer's opinion, the proposed change constitutes a TxDOT Change, will impact the Developer's costs or Toll Revenues and/or will impact the Developer's schedule, and if so, a detailed assessment of the cost, Toll Revenue and schedule impact of the proposed TxDOT Change, including the following:

14.1.3.1 Developer's detailed estimate of the impacts on costs and Toll Revenues of carrying out the proposed TxDOT Change;

14.1.3.2 If the Change Notice is issued prior to Final Acceptance, the effect of the proposed TxDOT Change on the Facility Schedule and Milestone Schedule, including achievement of the Milestone Schedule Deadlines, taking into consideration Developer's duty to mitigate any delay to the extent reasonably practicable;

14.1.3.3 The effect (if any) of the proposed TxDOT Change upon traffic flow and traffic volume on the Facility during the Operating Period; and

14.1.3.4 Any other relevant information related to carrying out the proposed TxDOT Change.

14.1.4 TxDOT shall be entitled to obtain (a) from the Independent Engineer a comprehensive report as to the proposed TxDOT Change, including the Independent Engineer's comments concerning Developer's estimate of the cost impacts and projected impact on the Facility Schedule and Milestone Schedule, and (b) from a traffic and revenue consultant that Developer retains and TxDOT reasonably approves a traffic and revenue study, prepared in accordance with Good Industry Practice, analyzing and calculating the estimated impacts on Toll Revenues. TxDOT shall pay for the work of the traffic and revenue consultant. Both Parties shall pay for the work of the Independent Engineer as provided in Section 9.3.1.5.

14.1.5 Following TxDOT's receipt of the Independent Engineer's report on the proposed TxDOT Change and the traffic and revenue consultant's study on the estimated impacts on Toll Revenues, TxDOT and Developer, giving due consideration to such report and study, shall exercise good faith efforts to negotiate a mutually acceptable Change Order, including adjustment of the Facility Schedule and Milestone Schedule Deadlines, any Compensation Amount to which Developer is entitled, and the timing and method for payment of any Compensation Amount, in accordance with Section 13.2.

14.1.6 If TxDOT and Developer are unable to reach agreement on a Change Order, TxDOT may, in its sole discretion, deliver to Developer a Directive Letter pursuant to Section 14.3.1 directing Developer to proceed with the performance of the Work in question notwithstanding such disagreement. Upon receipt of such Directive Letter, pending final resolution of the relevant Change Order according to the Dispute Resolution Procedures, (a) Developer shall implement and perform the Work in question as directed by TxDOT and (b) TxDOT will make interim payment(s) to Developer on a monthly basis for the reasonable documented costs of the Work in question, subject to subsequent adjustment through the Dispute Resolution Procedures.

14.1.7 TxDOT shall be responsible for payment of the Compensation Amount agreed upon or determined through the Dispute Resolution Procedures, through one of the payment mechanisms set forth in Section 13.2.9, and the Facility Schedule and Milestone Schedule shall be adjusted as agreed upon or determined through the Dispute Resolution Procedures, and in accordance with Section 13.1, to reflect the effects of the Change Order.

14.1.8 If TxDOT elects to apply to Developer during the period before the Service Commencement Date changes in the Technical Documents or Safety Standards and such changes have a material adverse impact on the Milestone Schedule or Developer's costs or Toll Revenues, such changes shall be considered TxDOT Changes and handled pursuant to the Change Order procedures in this Section 14.1. Developer shall implement changes to the Technical Documents or Safety Standards on or after the Service Commencement Date for a Facility Segment (other than Discriminatory Actions) at its sole cost and expense.

14.2 Developer Changes

14.2.1 Developer may request TxDOT to approve modifications to the Technical Provisions or Technical Documents by submittal of a written Change Request using a form approved by TxDOT. The Change Request shall set forth Developer's detailed estimate of impacts on costs, Toll Revenues and schedule attributable to the requested change.

14.2.2 TxDOT, in its sole discretion (and, if it so elects, after receiving a comprehensive report from the Independent Engineer regarding the proposed Change Request), may accept or reject any Change Request proposed by Developer, provided that TxDOT will accept a Change Request necessary to bring the Technical Provisions or Technical Documents into compliance with applicable Law. TxDOT may condition its approval on new or a modification of compensation for TxDOT under this Agreement in order to share equally in the estimated net cost savings and revenue benefit, if any, attributable to the proposed change. If TxDOT accepts such change, Developer shall execute a Change Order and shall implement such change in accordance with all the Change Order, applicable Technical Provisions, Technical Documents, the Facility Management Plan, Good Industry Practice, and all applicable Laws.

14.2.3 Developer shall be solely responsible for payment of any increased costs, for any revenue losses and for any Facility Schedule and Milestone Schedule delays or other impacts resulting from a Change Request accepted by TxDOT.

14.2.4 Developer may implement and permit a Utility Owner to implement, without a Change Request or Change Order, changes to a Utility Adjustment design that do not vary from the Technical Provisions or Technical Documents, but such changes are subject either to TxDOT's approval as part of a Utility Assembly as provided in Section 6.3.4.5 of the Technical Provisions, or, if the changes are Utility Adjustment Field Modifications, to TxDOT's review and comment as provided in Section 6.4.7 of the Technical Provisions.

14.2.5 No Change Request shall be required to implement any change to the Work that is not a Deviation and is not specifically regulated or addressed by the CDA Documents or applicable Law.

14.2.6 Certain minor changes without significant cost savings or revenue benefits may be approved in writing by TxDOT as Deviations, as described in Sections 7.2.2 and 8.1.2.10, and in such event shall not require a Change Order. Any other change in the requirements of the CDA Documents shall require a Change Order.

14.3 Directive Letters

14.3.1 TxDOT may at any time issue a Directive Letter to Developer regarding any matter for which a Change Order can be issued or in the event of any Dispute regarding the scope of the Work or whether Developer has performed in accordance with the requirements of the CDA Documents. The Directive Letter will state that it is issued under this Section 14.3, will

describe the Work in question and will state the basis for determining compensation, if any. Subject to Section 14.1.6, Developer shall proceed immediately as directed in the letter, pending the execution of a formal Change Order (or, if the letter states that the Work is within Developer's original scope of Work or is necessary to comply with the requirements of the CDA Documents, Developer shall proceed with the Work as directed but shall have the right to assert a Claim that a TxDOT Change has occurred).

14.3.2 The fact that a Directive Letter was issued by TxDOT shall not be considered evidence that in fact a TxDOT Change occurred. The determination whether a TxDOT Change in fact occurred shall be based on an analysis of the original requirements of the CDA Documents and a determination as to whether the Directive Letter in fact constituted a change in those requirements.

ARTICLE 15. REPRESENTATIONS AND WARRANTIES

15.1 Developer Representations and Warranties

Developer hereby represents and warrants to TxDOT as follows:

15.1.1 The Financial Model Formulas (a) were prepared by or on behalf of Developer in good faith, (b) are the same financial formulas that Developer utilized and is utilizing in the Base Case Financial Model, in making its decision to enter into this Agreement and, if Developer has included only approved financing commitments in its Proposal, in making disclosures to Lenders under the Initial Funding Agreements, and (c) as of the Effective Date are mathematically correct and suitable for making reasonable projections. (For the avoidance of doubt, this Section 15.1.1 does not apply to assumptions used in the Base Case Financial Model, which are addressed in Section 15.1.2.)

15.1.2 The Base Case Financial Model (a) was prepared by or on behalf of Developer in good faith, (b) was audited and verified by an independent recognized model auditor immediately prior to the Effective Date and will be audited and verified by an independent recognized model auditor within two Business Days after Financial Close, (c) fully discloses all cost, revenue and other financial assumptions and projections that Developer has used or is using in making its decision to enter into this Agreement and, if Developer has included only approved financing commitments in its Proposal, in making disclosures to Lenders under the Initial Funding Agreements and (d) as of the Effective Date represents the projections that Developer believes in good faith are the most realistic and reasonable for the Facility; provided, however, that such projections (i) are based upon a number of estimates and assumptions, (ii) are subject to significant business, economic and competitive uncertainties and contingencies and (iii) accordingly are not a representation or warranty that any of the assumptions are correct, that such projections will be achieved or that the forward-looking statements expressed in such projections will correspond to actual results.

15.1.3 During all periods necessary for the performance of the Work, Developer and its Contractor(s) will maintain all required authority, license status, professional ability, skills and capacity to perform the Work.

15.1.4 As of the Effective Date, Developer has evaluated the constraints affecting design and construction of the Facility, including the Facility Right of Way limits as well as the conditions of the NEPA Approval, and has reasonable grounds for believing and does believe that the Facility can be designed and built within such constraints.

15.1.5 Except as to parcels that TxDOT lacked title or access to prior to the Proposal Due Date, prior to the Proposal Due Date Developer, in accordance with Good Industry Practice, examined the Site and surrounding locations, performed appropriate field studies and geotechnical investigations of the Site, investigated and reviewed available public and private records, and undertook other activities sufficient to familiarize itself with surface conditions and subsurface conditions, including the presence of Utilities, Hazardous Materials, contaminated groundwater, archeological, paleontological and cultural resources, and Threatened or Endangered Species, affecting the Site or surrounding locations; and as a result of such review, inspection, examination and other activities Developer is familiar with and accepts the physical requirements of the Work, subject to TxDOT's obligations regarding Hazardous Materials under Section 7.9 and Exhibit 11 and Developer's rights to seek relief under Article 13.

15.1.6 Developer has familiarized itself with the requirements of any and all applicable Laws and the conditions of any required Governmental Approvals prior to entering into this Agreement. Except as specifically permitted under Article 13 or 14, Developer shall be responsible for complying with the foregoing at its sole cost and without any additional compensation or time extension on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the CDA Documents. As of the Effective Date, Developer has no reason to believe that any Governmental Approval required to be obtained by Developer will not be granted in due course and thereafter remain in effect so as to enable the Work to proceed in accordance with the CDA Documents.

15.1.7 All Work furnished by Developer will be performed by or under the supervision of Persons who hold all necessary, valid licenses to practice in the State, by personnel who are skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the CDA Documents and who shall assume professional responsibility for the accuracy and completeness of the Design Documents, Construction Documents and other documents prepared or checked by them.

15.1.8 As of the Effective Date, Developer is a limited liability company duly organized and validly existing under the laws of Delaware, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver the CDA Documents, the PABs Agreement and the Principal Facility Documents to which Developer is a party and to perform each and all of the obligations of Developer provided for herein and therein. Developer is duly qualified to do business, and is in good standing, in the State as of the Effective Date, and will remain duly qualified and in good standing throughout the Term and for as long thereafter as any obligations remain outstanding under the CDA Documents.

15.1.9 The execution, delivery and performance of the CDA Documents, the PABs Agreement and the Principal Facility Documents to which Developer is (or will be) a party have been (or will be) duly authorized by all necessary corporate action of Developer; each person executing the CDA Documents, the PABs Agreement and such Principal Facility Documents on behalf of Developer has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of Developer; and the CDA Documents, the PABs Agreement and such Principal Facility Documents have been (or will be) duly executed and delivered by Developer.

15.1.10 Neither the execution and delivery by Developer of the CDA Documents, the PABs Agreement and the Principal Facility Documents to which Developer is (or will be) a party, nor the consummation of the transactions contemplated hereby or thereby, is (or at the time of

execution will be) in conflict with or has resulted or will result in a default under or a violation of the governing instruments of Developer.

15.1.11 As of the Effective Date, each of the CDA Documents, the PABs Agreement and the Principal Facility Documents to which Developer is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid and binding obligation of Developer, enforceable against Developer and, if applicable, each member of Developer, in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

15.1.12 As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on Developer which challenges Developer's authority to execute, deliver or perform, or the validity or enforceability of, the CDA Documents, the PABs Agreement and the Principal Facility Documents to which Developer is a party, or which challenges the authority of the Developer official executing the CDA Documents, the PABs Agreement or such Principal Facility Documents; and Developer has disclosed to TxDOT prior to the Effective Date any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Developer is aware.

15.1.13 As of the Proposal Due Date Developer disclosed to TxDOT in writing all organizational conflicts of interest of Developer and its Contractors (other than NTTA) of which Developer was actually aware; and between the Proposal Due Date and the Effective Date Developer has not obtained knowledge of any additional organizational conflict of interest, and there have been no organizational changes to Developer or its Contractors (other than NTTA) identified in its Proposal, which have not been approved in writing by TxDOT. For this purpose, organizational conflict of interest has the meaning set forth in the instructions to proposers under which Developer submitted its Proposal.

15.1.14 To the extent the Design-Build Contractor is not Developer, Developer represents and warrants, as of the effective date of the Design-Build Contract, as follows: (a) the Design-Build Contractor is duly organized, validly existing and in good standing under the laws of the state of its organization; (b) with respect to Persons that individually hold more that 10% of the capital stock of the Design-Build Contractor (including options, warrants and other rights to acquire capital stock), such stock is owned by the Persons whom Developer has set forth in a written certification delivered to TxDOT prior to the Effective Date; (c) the Design-Build Contractor has the power and authority to do all acts and things and execute and deliver all other documents as are required to be done, observed or performed by it in connection with its engagement by Developer; (d) the Design-Build Contractor has all necessary expertise, qualifications, experience, competence, skills and know-how to perform the design and construction of the Facility in accordance with the CDA Documents; and (e) the Design-Build Contractor is not in breach of any applicable Law that would have a material adverse effect on the design and construction of the Facility.

15.1.15 To the extent any O&M Contractor, other than NTTA, is not Developer, Developer represents and warrants as to each such O&M Contractor, as of the effective date of its O&M Contract, as follows: (a) the O&M Contractor is duly organized, validly existing and in good standing under the laws of the state of its organization; (b) the capital stock of the O&M Contractor (including options, warrants and other rights to acquire capital stock) is owned by the Persons who Developer has or will set forth in a written certification delivered to TxDOT prior to the execution of the O&M Contract; (c) the O&M Contractor has the power and authority to do all acts and things and execute and deliver all other documents as are required to be done, observed or performed by it in connection with its engagement by Developer; (d) the O&M

Contractor has all necessary expertise, qualifications, experience, competence, skills and know-how to perform the operation and maintenance of the Facility in accordance with the CDA Documents; and (e) the O&M Contractor is not in breach of any applicable Law that would have a material adverse effect on the operations of the Facility.

15.1.16 The execution and delivery by Developer of this Agreement, the Lease and the Principal Facility Documents to which Developer is a party will not result, at the time of execution, in a default under any other agreement or instrument to which it is a party or by which it is bound.

15.1.17 The execution and delivery by Developer of the CDA Documents and performance by Developer of its obligations thereunder will not conflict with any Laws applicable to Developer that are valid and in effect on the Effective Date.

15.2 TxDOT Representations and Warranties

TxDOT hereby represents and warrants to Developer as follows:

15.2.1 As of the Effective Date, TxDOT has full power, right and authority to execute, deliver and perform the CDA Documents and the Principal Facility Documents to which TxDOT is a party and to perform each and all of the obligations of TxDOT provided for herein and therein.

15.2.2 Each person executing the CDA Documents, the PABs Agreement and such Principal Facility Documents on behalf of TxDOT has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of TxDOT; and the CDA Documents, the PABs Agreement and such Principal Facility Documents have been (or will be) duly executed and delivered by TxDOT.

15.2.3 As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on TxDOT which challenges TxDOT's authority to execute, deliver or perform, or the validity or enforceability of, the CDA Documents, the PABs Agreement and the Principal Facility Documents to which TxDOT is a party or which challenges the authority of the TxDOT official executing the CDA Documents, the PABs Agreement and such Principal Facility Documents; and TxDOT has disclosed to Developer prior to the Effective Date any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which TxDOT is aware.

15.2.4 As of the Effective Date, each of the CDA Documents, the PABs Agreement and the Principal Facility Documents to which TxDOT is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid and binding obligation of TxDOT, enforceable against TxDOT in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

15.2.5 The execution and delivery by TxDOT of this Agreement, the Lease, the PABs Agreement and the Principal Facility Documents to which TxDOT is a party will not result, at the time of execution, in a default under any other agreement or instrument to which it is a party or by which it is bound.

15.2.6 The execution and delivery by TxDOT of the CDA Documents and the PABs Agreement and performance by TxDOT of its obligations thereunder will not conflict with any Laws applicable to TxDOT that are valid and in effect on the Effective Date.

15.3 Survival of Representations and Warranties

The representations and warranties of Developer and TxDOT contained herein shall survive expiration or earlier termination of this Agreement and the Lease.

15.4 Special Remedies for Mutual Breach of Warranty

Notwithstanding any other provision of this Agreement, if there exists or occurs any circumstance or event that constitutes or results in a concurrent breach of any of the warranties set forth in this Article 15 by both Developer and TxDOT but does not also constitute or result in any other breach or default by either Party, then such breaches shall not form the basis for a Compensation Event or damage claim by TxDOT against Developer. Instead, the only remedies shall be for the Parties to take action to rectify or mitigate the effects of such circumstance or event, to pursue severance and reformation of the CDA Documents and Principal Facility Documents as set forth in Section 24.14, or Termination by Court Ruling as set forth in Section 19.12 and Exhibit 20.

ARTICLE 16. INSURANCE; PERFORMANCE SECURITY; INDEMNITY

16.1 Insurance

16.1.1 Insurance Policies and Coverage

At minimum Developer shall procure and keep in effect the Insurance Policies, or cause them to be procured and kept in effect, and in each case satisfy the requirements therefor set forth in this Section 16.1 and Exhibit 17. Developer shall also procure or cause to be procured and kept in effect the Contractors' (other than NTTA) insurance coverages as required in Section 16.1.2.5 and Exhibit 17.

16.1.2 General Insurance Requirements

16.1.2.1 Qualified Insurers

Each of the Insurance Policies required hereunder shall be procured from an insurance carrier or company that, at the time coverage under the applicable policy commences is:

(a) Licensed or, in the case of Lloyd's of London authorized, to do business in the State and has a current policyholder's management and financial size category rating of not less that "A – VII" according to A.M. Best's Insurance Reports Key Rating Guide; or

(b) Otherwise approved in writing by TxDOT.

16.1.2.2 Deductibles and Self-Insured Retentions

TxDOT shall have no liability for deductibles, self-insured retentions and amounts in excess of the coverage provided, unless part of a Compensation Amount or Termination Compensation. In the event that any required coverage is provided under a self-insured retention, the entity responsible for the self-insured retention shall have an authorized representative issue a letter to TxDOT, at the same time the Insurance Policy is to be procured, stating that it shall protect and defend TxDOT to the same extent as if a commercial insurer provided coverage for TxDOT.

16.1.2.3 Primary Coverage

Each Insurance Policy shall provide that the coverage thereof is primary and noncontributory coverage with respect to all named or additional insureds, except for coverage that by its nature cannot be written as primary. Any insurance or self-insurance beyond that specified in this Agreement that is maintained by an insured or any such additional insured shall be excess of such insurance and shall not contribute with it.

16.1.2.4 Verification of Coverage

(a) At each time Developer is required to initially obtain or cause to be obtained each Insurance Policy, including insurance coverage required of Contractors (other than NTTA), and thereafter not later than 30 days prior to the expiration date of each Insurance Policy, Developer shall deliver to TxDOT a certificate of insurance and a written evidence of insurance. The certificate and evidence must be consistent in all respects. The evidence of insurance shall be on the most recent ACORD form, without disclaimer. Each required certificate must be in standard form, state the identity of all carriers, named insureds and additional insureds, state the type and limits of coverage, deductibles and termination provisions of the policy, include as attachments all additional insured endorsements, include a statement of non-cancellation consistent with Section 16.1.2.8(a), and be signed by an authorized representative of the insurance company shown on the certificate or its agent or broker. Each required evidence must be personally and manually signed by a representative or agent of the insurance company shown on the evidence with proof that he/she is an authorized representative or agent of such insurance company and is authorized to bind it to the coverage, limits and termination provisions shown on the evidence. The evidence must be original, state the signer's company affiliation, title and phone number, state the identity of all carriers, named insureds and additional insureds, state the type and limits of coverage, deductibles, subrogation waiver, termination provisions of the policy and other essential policy terms, list and describe all endorsements, include as attachments all additional insured endorsements, and include a statement of non-cancellation consistent with Section 16.1.2.8(a), and otherwise must be in form reasonably satisfactory to TxDOT.

(b) In addition, within a reasonable time after availability (but not to exceed 15 days), Developer shall deliver to TxDOT (i) a complete certified copy of each such Insurance Policy or modification, or renewal or replacement Insurance Policy and all endorsements thereto and (ii) satisfactory evidence of payment of the premium therefor.

(c) If Developer has not provided TxDOT with the foregoing proof of coverage and payment within five days after TxDOT delivers to Developer written notice of a Developer Default under Section 17.1.1.9 and demand for the foregoing proof of coverage, TxDOT may, in addition to any other available remedy, without obligation or liability and without further inquiry as to whether such insurance is actually in force, (i) obtain such an Insurance Policy; and Developer shall reimburse TxDOT for the cost thereof upon demand, and (ii) suspend all or any portion of Work and close the Facility until TxDOT receives from Developer such proofs of coverage in compliance with this Section 16.1 (or until TxDOT obtains an Insurance Policy, if it elects to do so).

16.1.2.5 Contractor Insurance Requirements

(a) Developer's obligations regarding Contractors' (other than NTTA) insurance are contained in Exhibit 17.

(b) If any Contractor (other than NTTA) fails to procure and keep in effect the insurance required of it under Exhibit 17 and TxDOT asserts the same as a Developer Default hereunder, Developer may, within the applicable cure period, cure such Developer Default by (i) causing such Contractor (other than NTTA) to obtain the requisite insurance and providing to TxDOT proof of insurance, (ii) procuring the requisite insurance for such Contractor (other than NTTA) and providing to TxDOT proof of insurance or (iii) terminating the Contractor (other than NTTA) and removing its personnel from the Site.

16.1.2.6 Facility -Specific Insurance

Except as expressly provided otherwise in Exhibit 17, all Insurance Policies required hereunder shall be purchased specifically and exclusively for the Facility with coverage limits devoted solely to the Facility.

16.1.2.7 Policies with Insureds in Addition to Developer

All Insurance Policies that are required to insure Persons (whether as named or additional insureds) in addition to Developer shall comply or be endorsed to comply with the following provisions.

(a) The Insurance Policy shall be written or endorsed so that no acts or omissions of an insured shall vitiate coverage of the other insureds. Without limiting the foregoing, any failure on the part of a named insured to comply with reporting provisions or other conditions of the Insurance Policies, any breach of warranty, any action or inaction of a named insured or others, or any change in ownership of all or any portion of the Facility or Developer's Interest shall not affect coverage provided to the other named insureds or additional insureds (and their respective members, directors, officers, employees, agents and Facility consultants).

(b) The insurance shall apply separately to each named insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(c) All endorsements adding additional insureds to required Insurance Policies shall contain no limitations, conditions, restrictions or exceptions to coverage in addition to those that apply under the Insurance Policy generally, and shall state that the interests and protections of each additional insured shall not be affected by any misrepresentation, act or omission of a named insured or any breach by a named insured of any provision in the policy which would otherwise result in forfeiture or reduction of coverage. Additional insured endorsements may exclude liability due to the sole negligence of the additional insured party. The commercial general liability and builders third party liability insurance shall include completed operations coverage.

16.1.2.8 Additional Terms and Conditions

(a) Each Insurance Policy shall be endorsed to state that coverage cannot be canceled, voided, suspended, adversely modified, or reduced in coverage or in limits (including for non-payment of premium) except after 30 days' prior written notice (or ten days in the case of cancellation for non-payment of premium) by registered or certified mail, return receipt requested, has been given to TxDOT and each other insured or additional insured party; provided that Developer may obtain as comparable an endorsement as possible if it establishes unavailability of this endorsement as set forth in Section 16.1.2.13. Such

endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

(b) The commercial general liability Insurance Policy and any builder's third party liability Insurance Policy shall cover liability arising out of the acts or omissions of Developer's employees engaged in the Work and employees of Contractors (other than NTTA) that are enrolled and provided coverage under such liability policy.

(c) If Developer's or any Contractor's (other than NTTA) activities involve transportation of Hazardous Materials, the automobile liability Insurance Policy for Developer or such Contractor (other than NTTA) shall be endorsed to include for private, non-commercial vehicles Motor Carrier Act Endorsement-Hazardous Materials Clean up (MCS-90).

(d) Each Insurance Policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of any professional liability and pollution liability Insurance Policies).

16.1.2.9 Waivers of Subrogation

TxDOT waives all rights against the Developer-Related Entities, and Developer waives all rights against the Indemnified Parties, for any claims to the extent covered by valid and collectible insurance obtained pursuant to this Section 16.1, except such rights as they may have to the proceeds of such insurance. If Developer is deemed to self-insure a claim or loss under Section 16.1.4.3, then Developer's waiver shall apply as if it carried the required insurance. Developer shall require all Contractors (other than NTTA) to provide similar waivers in writing each in favor of all other parties enumerated above. Subject to Section 16.1.2.13, each Insurance Policy, including workers' compensation if permitted under the applicable worker's compensation insurance Laws, shall include a waiver of any right of subrogation against the Indemnified Parties or a consent to the insured's waiver of recovery in advance of loss; provided that with respect to auto liability policies that Developer is to cause non-Key Contractors to obtain pursuant to Exhibit 17, Developer's obligation is limited to using diligent efforts to cause each such Contractor (other than NTTA) to include in the policy an agreement of the insurer to waive any subrogation rights the insurer may have against the Indemnified Parties or the insurer's consent to the insured's waiver of recovery in advance of loss.

16.1.2.10 No Recourse

There shall be no recourse against TxDOT or the Independent Engineer for payment of premiums or other amounts with respect to the Insurance Policies required hereunder, except to the extent of increased premium costs recoverable under Section 13.2 or 14.1.

16.1.2.11 Support of Indemnifications

The Insurance Policies shall support but are not intended to limit Developer's indemnification obligations under the CDA Documents.

16.1.2.12 Adjustments in Coverage Amounts

(a) At least once every five years during the Term, TxDOT and Developer shall review and increase, as appropriate, the per occurrence and aggregate limits or combined single limits for the Insurance Policies that have stated dollar amounts set forth in Exhibit 17 for per occurrence, aggregate or combined single limits. At the same frequency

TxDOT and Developer shall review and adjust, as appropriate, the deductibles or self-insured retentions for the Insurance Policies.

(b) Developer shall retain a qualified and reputable insurance broker or advisor, experienced in insurance brokerage and underwriting practices for major highway projects, to analyze and recommend increases, if any, in such limits and adjustments to deductibles or self-insured retentions. Developer shall deliver to TxDOT, not later than 120 days before each fifth year anniversary of the Effective Date, a written report including such analysis and recommendations for TxDOT's approval. TxDOT shall have 45 days after receiving such report to approve or disapprove the proposed increases in limits and adjustments to deductibles or self-insured retentions.

(c) In determining increases in limits and adjustments to deductibles or self-insured retentions, Developer and TxDOT shall take into account (i) claims and loss experience for the Facility, provided that premium increases due to adverse claims experience shall not be a basis for justifying increased deductibles or self-insured retentions; (ii) the condition of the Facility, (iii) the Safety Compliance and Noncompliance Points record for the Facility; (iv) then-prevailing Good Industry Practice for insuring comparable transportation projects; and (v) the provisions regarding unavailability of increased coverage set forth in Section 16.1.2.13.

(d) Any Dispute regarding increases in limits or adjustments to deductibles or self-insured retentions shall be resolved according to the Dispute Resolution Procedures.

16.1.2.13 Inadequacy and Unavailability of Required Coverages

(a) TxDOT makes no representation that the limits of liability specified for any Insurance Policy to be carried pursuant to this Agreement or approved variances therefrom are adequate to protect Developer against its undertakings under this Agreement, to TxDOT, or any third party. No such limits of liability or approved variances therefrom shall preclude TxDOT from taking any actions as are available to it under the CDA Documents or the Lease, or otherwise at Law.

(b) If Developer demonstrates to TxDOT's reasonable satisfaction that it has used diligent efforts in the global insurance and reinsurance markets to place the insurance coverages it is required to provide hereunder, and if despite such diligent efforts and through no fault of Developer any of such coverages (or any of the required terms of such coverages, including Insurance Policy limits) are or become unavailable on commercially reasonable terms, TxDOT will grant Developer an interim written variance from such requirements under which Developer shall obtain and maintain or cause to be obtained and maintained alternative insurance packages and programs that provide risk coverage as comparable to that contemplated in this Section 16.1 as is commercially reasonable under then-existing insurance market conditions.

(c) Developer shall not be excused from satisfying the insurance requirements of this Section 16.1 merely because premiums for such insurance are higher than anticipated. To establish that the required coverages (or required terms of such coverages, including Insurance Policy limits) are not available on commercially reasonable terms, Developer shall bear the burden of proving either that (i) the same is not available at all in the global insurance and reinsurance markets or (ii) the premiums for the same have so materially increased over those previously paid for the same coverage that no reasonable and prudent risk manager for a Person seeking to insure comparable risks would conclude that such

increased premiums are justified by the risk protection afforded. For the purpose of clause (ii), the only increases in premiums that may be considered are those caused by changes in general market conditions in the insurance industry affecting insurance for project-financed highway facilities, and Developer shall bear the burden of proving that premium increases are the result of such changes in general market conditions. For the avoidance of doubt, no increase in insurance premiums attributable to particular conditions of the Facility or Facility Right of Way, or to claims or loss experience of any Developer-Related Entity or Affiliate, whether under an Insurance Policy required by this Section 16.1 or in connection with any unrelated work or activity of Developer-Related Entities or Affiliates, shall be considered in determining whether required insurance is commercially unavailable.

16.1.2.14 Defense Costs

No defense costs shall be included within or erode the limits of coverage of any of the Insurance Policies, except that litigation and mediation defense costs may be included within the limits of coverage of professional and pollution liability policies.

16.1.2.15 Contesting Denial of Coverage

If any insurance carrier under an Insurance Policy denies coverage with respect to any claims reported to such carrier, upon Developer's request, TxDOT and, to the extent necessary, the other Indemnified Parties shall cooperate in good faith to establish whether and to what extent to contest, and how to fund the cost of contesting, the denial of coverage; provided that if the reported claim is a matter covered by an indemnity in favor of an Indemnified Party, then Developer shall bear all costs of contesting the denial of coverage.

16.1.3 Lender Insurance Requirements; Additional Insurance Policies

16.1.3.1 If under the terms of any Funding Agreement or Security Document Developer is obligated to, and does, carry insurance coverage with higher limits, lower deductibles or self-insured retentions, or broader coverage than required under this Agreement, Developer's provision of such insurance shall satisfy the applicable requirements of this Agreement provided such Insurance Policy meets all the other applicable requirements of this Section 16.1.

16.1.3.2 If Developer carries insurance coverage in addition to that required under this Agreement, then Developer shall include TxDOT, the Independent Engineer and their respective members, directors, officers, employees, agents and Facility consultants as additional insureds thereunder, if and to the extent they have an insurable interest. The additional insured endorsements shall be as described in Section 16.1.2.7(c); and Developer shall provide to TxDOT the proofs of coverage and copy of the policy described in Section 16.1.2.4. If, however, Developer demonstrates to TxDOT that inclusion of such Persons as additional insureds will increase the premium, TxDOT shall elect either to pay the increase in premium or forego additional insured coverage. The provisions of Sections 16.1.2.4, 16.1.2.7, 16.1.2.9, 16.1.2.10, 16.1.2.15 and 16.1.4 shall apply to all such policies of insurance coverage, as if they were within the definition of Insurance Policies.

16.1.4 Prosecution of Claims

16.1.4.1 Unless otherwise directed by TxDOT in writing with respect to TxDOT's insurance claims, Developer shall be responsible for reporting and processing all potential claims by TxDOT or Developer against the Insurance Policies required hereunder. Developer agrees to report timely to the insurer(s) under such Insurance Policies any and all

matters which may give rise to an insurance claim by Developer or TxDOT or another Indemnified Party and to promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such Insurance Policies, whether for defense or indemnity or both. Developer shall enforce all legal rights against the insurer under the applicable Insurance Policies and applicable Laws in order to collect thereon, including pursuing necessary litigation and enforcement of judgments, provided that Developer shall be deemed to have satisfied this obligation if a judgment is not collectible through the exercise of lawful and diligent means.

16.1.4.2 TxDOT agrees to promptly notify Developer of TxDOT's incidents, potential claims against TxDOT, and matters which may give rise to an insurance claim against TxDOT, to tender to the insurer TxDOT's defense of the claim under such Insurance Policies, and to cooperate with Developer as necessary for Developer to fulfill its duties hereunder.

16.1.4.3 If in any instance Developer has not performed its obligations respecting insurance coverage set forth in this Agreement or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the Insurance Policies or to prosecute claims diligently, then for purposes of determining Developer's liability and the limits thereon or determining reductions in compensation due from TxDOT to Developer on account of available insurance, Developer shall be treated as if it has elected to self-insure up to the full amount of insurance coverage which would have been available had Developer performed such obligations and not committed such failure. Nothing in this Section 16.1.4 or elsewhere in this Section 16.1 shall be construed to treat Developer as electing to self-insure where Developer is unable to collect due to the bankruptcy or insolvency of any insurer which at the time the Insurance Policy is written meets the rating qualifications set forth in this Section 16.1.

16.1.4.4 If in any instance Developer has not promptly performed its obligation to report to applicable insurers and process any potential insurance claim tendered by TxDOT or another Indemnified Party, then TxDOT or the other Indemnified Party may, but is not obligated to, (a) notify Developer in writing of TxDOT's intent to report the claim directly with the insurer and thereafter process the claim, and (b) proceed with reporting and processing the claim if TxDOT or the other Indemnified Party does not receive from Developer, within ten days after so notifying Developer, written proof that Developer has reported the claim directly to the insurer. TxDOT or the other Indemnified Party may dispense with such notice to Developer if TxDOT or the other Indemnified Party has a good faith belief that more rapid reporting is needed to preserve the claim.

16.1.5 Umbrella and Excess Policies

Developer shall have the right to satisfy the requisite insurance coverage amounts for liability insurance through a combination of primary policies and umbrella or excess policies. Umbrella and excess policies shall comply with all insurance requirements, terms and provisions set forth in this Agreement for the applicable type of coverage.

16.2 Payment and Performance Security

16.2.1 P&P Letter of Credit

16.2.1.1 Developer shall obtain and deliver, either to TxDOT or the Collateral Agent with a certified and conformed copy to TxDOT:

(a) A P&P Letter of Credit in an amount equal to $250,000,000, identifying the Developer as the P&P Obligor, securing Developer's obligations to perform the original Secured Work (under clause (a) of the definition thereof) and to ensure that payments owing to Claimants are made with respect to such Secured Work, and a separate P&P Letter of Credit for each undertaking of subsequent Secured Work, in an amount equal to the lesser of $250,000,000 or 100% of the contracted cost, as security for Developer's obligations to perform the Secured Work and to ensure that payments owing to Claimants are made with respect thereto; or

(b) P&P Letters of Credit each identifying the Design-Build Contractor and prime Contractors, respectively, securing the Design-Build Contractor's and each other prime Contractor's obligations to perform under its respective Contract for Secured Work and to ensure that payments owing to Claimants are made with respect to such Secured Work thereunder. The P&P Letter of Credit from the Design-Build Contractor shall be in the amount of $250,000,000, and the P&P Letter of Credit from any other prime Contractor shall be in an amount equal to the lesser of $250,000,000 or 100% of the amount of the Secured Work to be performed by such Contractor.

16.2.1.2 In the event TxDOT issues NTP GP, NTP IC or NTP ML for the General Purpose Capacity Improvement, the Interchange Capacity Improvement, or the Managed Lane Capacity Improvement (respectively), Developer shall either: (a) amend the P&P Letter of Credit or Letter(s) of Credit, as applicable, to include the additional Secured Work under the applicable NTP, should such Letter(s) of Credit then be outstanding; or (b) obtain and deliver a separate P&P Letter of Credit or Letters of Credit, as applicable, from the Design-Build Contractor and from any other prime contractor performing additional Secured Work under the applicable NTP, each in an amount equal to the lesser of $250,000,000 or 100% of the amount of the contracted cost for the additional Secured Work under the applicable NTP.

16.2.1.3 Each P&P Letter of Credit shall name either TxDOT as beneficiary or the Collateral Agent as beneficiary. If the Collateral Agent is the named beneficiary, the P&P Letter of Credit shall provide for automatic transfer of rights to TxDOT as transferee beneficiary in compliance with Section 16.2.2.1 and Section 16.2.2.2.

16.2.1.4 If the P&P Obligor is Developer, the P&P Letter of Credit shall be delivered prior to commencement of the original Secured Work. If the P&P Obligor is the Design-Build Contractor or any other prime Contractor, the P&P Letter of Credit shall be delivered prior to Developer's issuance of a notice to proceed to such Contractor pursuant to the terms of the Design-Build Contract or other relevant contract for Secured Work. Any P&P Letter of Credit required for subsequent Secured Work shall be delivered prior to the commencement of such Secured Work.

16.2.1.5 Each P&P Letter of Credit shall comply with the provisions and requirements of Section 16.3.1 except as permitted or required otherwise under Section 16.2. Each P&P Letter of Credit shall be maintained (through extensions or replacements as provided in Section 16.3.1.2), in full force and effect at all times from the date of delivery until (a) if provided by Developer, at least one year and 90 days after the date of Final Acceptance (as to the original Secured Work) or one year and 90 days after final acceptance of the Construction Work related to the subsequent Secured Work, as applicable, or (b) if provided by the Design-Build Contractor or a prime Contractor, as provided in clause (a) above plus completion of any warranty period.

16.2.1.6 TxDOT has determined, as permitted by Transportation Code, Section 223.205, that (a) the P&P Letter(s) of Credit identified in this Section 16.2 constitute

security sufficient to (i) ensure the proper performance of the Developer's obligations for carrying out and completing the public work included in the Concession CDA; and (ii) protect TxDOT and Claimants with respect thereto, and (b) it is impracticable for a private entity to provide security in the amount described by subsection (b) of Transportation Code, Section 223.205.

16.2.2 Collateral Agent as P&P Letter of Credit Beneficiary

Notwithstanding Section 16.3.1.1(g), the Collateral Agent may be named as the beneficiary of any P&P Letter of Credit, but only if the following terms and conditions are satisfied.

16.2.2.1 The P&P Letter of Credit shall expressly authorize assignment and transfer of the beneficiary rights thereunder from the Collateral Agent to TxDOT without condition or limitation and shall expressly permit TxDOT, as beneficiary, to draw without presentation of the original P&P Letter of Credit. Developer (or, if applicable, the Design-Build Contractor and other prime Contractor) shall bear any fees charged by the issuer of the P&P Letter of Credit for transferring the beneficiary rights thereunder.

16.2.2.2 The P&P Letter of Credit also shall name TxDOT as automatic and exclusive transferee beneficiary upon Final Acceptance, and upon final acceptance of the Construction Work related to subsequent Secured Work (or, if applicable, Developer's final acceptance of the work under the Design-Build Contract or the Contract with any other prime Contractor for the original or subsequent Secured Work).

16.2.2.3 The Collateral Agent may draw on the P&P Letter of Credit solely for the following purposes:

(a) Making payments owing to Claimants or reimbursing a Lender (or, where the P&P Obligor is the Design-Build Contractor or other prime Contractor, reimbursing Developer) for making payments owing to Claimants, but only where circumstances set forth in Section 16.2.5.2 exist for using the P&P Letter of Credit for such payments;

(b) Paying or reimbursing its costs of curing Developer's failure to perform its obligations under the Concession CDA Documents respecting the Secured Work (or, if applicable, paying or reimbursing Developer or itself for costs of curing the Design-Build Contractor's or other prime Contractor's failure to perform its performance obligations under its respective Contract(s)), or

(c) Depositing the proceeds as cash security in a cash collateral account for the benefit of the Collateral Agent and TxDOT, useable only for the purposes specified in clauses (a) and (b) above, where the P&P Letter of Credit will expire within 50 days and has not been replaced or extended pursuant to Section 16.3.1.2, provided that the terms of the cash collateral account shall unconditionally entitle TxDOT to draw thereon whenever, and to the extent that, TxDOT would have the right to draw on the P&P Letter of Credit under this Section 16.2 had it not expired.

16.2.2.4 The Collateral Agent first commits in writing to TxDOT to provide written notice to TxDOT within two Business Days after making a draw on the P&P Letter of Credit, indicating the date, amount and purpose of the draw in reasonable detail.

16.2.2.5 Developer has delivered to TxDOT, concurrently with the issuance of such P&P Letter of Credit, a certified copy of the P&P Letter of Credit and a present, executed transfer and assignment of the beneficiary rights from the Collateral Agent to TxDOT and documents reasonably satisfactory to TxDOT that permit TxDOT to exercise its rights as the transferee beneficiary under such P&P Letter of Credit and to make drawings thereunder as and when set forth in Section 16.2.5:

16.2.2.6 Developer (or, if applicable, the Design-Build Contractor and other prime Contractor) shall bear any fees charged by the issuer of the P&P Letter of Credit for transferring the beneficiary rights thereunder.

16.2.3 Increase in P&P Letter of Credit Amount

If TxDOT does not receive any certificate, release, certified payroll or affidavit of wages paid as required by Exhibit 7 or Section 16.2.6.2, it may require Developer to immediately increase (or, if applicable, cause the Design-Build Contractor and any other prime Contractor to immediately increase) the amount of the P&P Letter of Credit to such amount as TxDOT determines is appropriate to protect its interests and the Project, provided that the amount of any such increase shall not exceed the value of work for which TxDOT did not receive any such certificate, release, certified payroll or affidavit of wages paid.

16.2.4 Payment Claims Against P&P Letter of Credit

Payment claims against the P&P Letter of Credit shall be governed by this Section 16.2.4. To ensure that all potential Claimants receive notice of the procedures set forth in this Section 16.2.4, Developer shall require that Sections 16.2.4.1 through 16.2.4.6 be restated, with the blanks filled in, in each Contract that includes Secured Work and in all subcontracts thereunder (including contracts with Suppliers) that include Secured Work. In addition, each such Contract and subcontract shall include a provision requiring the Contractor or subcontractor to provide formal notice regarding the claims procedures under this Section 16.2.4 to each employee performing public work labor (as such term is defined in the Texas Government Code, Section 2253.001) under the Contract or subcontract, in the same manner in which equal opportunity notices are required to be given to employees.

16.2.4.1 This contract concerns a public works project (the "Project") for which a letter of credit has been posted to secure obligations that would otherwise be secured by a payment bond provided by _____ (the "Prime Contractor") pursuant to Transportation Code, Section 223.205. Each person or entity that would have the right under said statute to make a claim against a payment bond provided thereunder (a "Claimant") will instead have the right to make a claim under said letter of credit, as described below. Such alternative security is authorized by and provided in accordance with Transportation Code, Section 223.205, and no Claimant will have any right to make a claim against TxDOT for failure to obtain a payment bond under Transportation Code, Section 223.205.

16.2.4.2 All claims made pursuant to this Section 16.2.4 must:

(a) Be in writing, signed, and sworn by the Claimant or the Claimant's agent;

(b) Provide a general description of the labor, services, equipment or material furnished or agreed to be furnished, including the approximate dates and place of delivery or performance, in a manner that reasonably identifies the labor, services, equipment or material;

(c) State the Claimant's name and address;

(d) State the name of the person or entity to or for whom the work or items were done or furnished, including the name and address of the party with whom the Claimant contracted;

(e) State the total amount claimed, and that such amount is just and correct;

(f) State the value of the work already performed or items furnished, and that all known just and lawful offsets, payments, and credits have been allowed; and

(g) State the amount of any retainage that has not yet become due. A claim for retainage must include the amount of the contract, any amount paid, and the outstanding balance. However, to the extent that any prior claim made under this Section 16.2.4 included retainage, a separate subsequent claim for retainage need not be made.

16.2.4.3 The notices of claim must be delivered by certified or registered mail to the Prime Contractor at the following address: _____, with a copy to the Collateral Agent at the following address: _____, with a copy to [Developer if the Developer is separate from the Prime Contractor] at the following address: _____, and a copy to the Texas Department of Transportation at the following address: _____. In addition, if the Claimant does not have a direct contract with the Prime Contractor, a copy must be delivered to _____ [the party with whom the Claimant has entered into a contract] at the following address:_____ _____.

16.2.4.4 A subcontractor who has a direct contractual relationship with the Prime Contractor shall make its claim, except for claims for payment of retainage, no later than the 15th day of the third month after each month in which any of the claimed labor was performed or any of the claimed material was delivered. A subcontractor who does not have a direct contractual relationship with the Prime Contractor shall make its claim, except for claims for payment of retainage, no later than the 15th day of the second month after each month in which any of the claimed labor was performed or any of the claimed material was delivered. Claims for payment of retainage shall be made no later than the 90th day after the date of final completion of the Project.

16.2.4.5 Any lawsuit filed by a Claimant to enforce its claim must be filed no earlier than the 61st day after the date the notice was mailed to all recipients identified above and no later than one year after such mailing date.

16.2.4.6 To the maximum extent permitted by law, any claim not made within the specified deadline is forever waived and extinguished, and any lawsuit not filed within the specified deadline is forever barred.

16.2.5 Draws on the P&P Letter of Credit

16.2.5.1 Each P&P Letter of Credit shall be subject to draw by TxDOT where it will expire within 45 days, TxDOT has not received a certified copy of a replacement or extension of the P&P Letter of Credit pursuant to Section 16.3.1.2 with required transfer documents, and, if Section 16.2.2 applies, TxDOT has no actual knowledge of a prior, full draw on the expiring P&P Letter of Credit by the Collateral Agent.

16.2.5.2 Each P&P Letter of Credit shall be subject to draw by TxDOT for the purpose of disbursement of funds owing to a Claimant under any one of the following circumstances:

(a) TxDOT has received a copy of a claim that complies on its face with Section 16.2.4.2, together with a proof of delivery thereof to the Prime Contractor and the Collateral Agent, (ii) TxDOT has not received from the Prime Contractor, within 30 days after service of the notice of claim, a sworn notice stating (A) that the Prime Contractor contests the claim, (B) whether the claim is contested in whole or in part, and if in part, the portion of the claim amount being contested, (C) the grounds for contesting the claim and (D) that the Prime Contractor is acting in good faith in contesting the claim, and (iii) if Section 16.2.2 applies, TxDOT has not received, within five days after expiration of such 30-day period, written notice from the Collateral Agent certifying that it has drawn on the P&P Letter of Credit and paid the uncontested portion of the claim;

(b) Upon TxDOT's receipt of a settlement agreement signed by all parties with competing interests to the funds that specifically provides that settlement funds are to be paid from the P&P Letter of Credit, in which case, such funds shall be disbursed according to the express terms of the settlement agreement;

(c) Upon TxDOT's receipt of an entered court order providing for payment of a claim from draw on the P&P Letter of Credit, in which case funds drawn shall be disbursed according to the terms of such court order; or

(d) A claim has been made and notice thereof given in accordance with Section 16.2.4, (ii) and at that time, or at any other time during the pendency of the claim, the P&P Obligor is or becomes, voluntarily or involuntarily, a debtor in any bankruptcy proceeding under applicable Law, and (iii) if Section 16.2.2 applies, TxDOT has not received, within five days thereafter, written notice from the Collateral Agent certifying that it has drawn on the P&P Letter of Credit and paid the claim in full.

No beneficiary of a P&P Letter of Credit shall have any obligation to investigate, verify or ascertain the eligibility of the person making a claim as a Claimant, the validity of any claim, notice of contest of claim, settlement agreement or court order or whether the Claimant has timely provided notice of claim. Rather, for the purpose of determining whether the P&P Letter of Credit is subject to draw, the beneficiary may, without liability, conclusively assume eligibility of the person making a claim as a Claimant and timely notice of a claim, and may conclusively assume the truthfulness and validity of, and may rely on, the claim, notice of contest of claim, settlement agreement, court order or any other information submitted under this Section 16.2.

16.2.5.3 If provided for Developer as the P&P Obligor, the P&P Letter of Credit shall be subject to draw by TxDOT due to the failure of Developer to perform its obligations under the Concession CDA Documents respecting the Secured Work. Any draw by TxDOT is subject to Section 17.3.7. If Section 16.2.2 applies, TxDOT shall provide the Collateral Agent 30 days prior written notice of TxDOT's right to draw (which may be included in

the notice of Developer Default), and shall not draw on the P&P Letter of Credit if within such 30-day period or the applicable cure period for the Developer Default, whichever is longer, TxDOT receives written notice from the Collateral Agent certifying that it is exercising step-in rights to cure the breach and has drawn on the P&P Letter of Credit for the purpose of paying or reimbursing its costs of curing Developer's failure to perform, as provided in Section 16.2.2.3.

16.2.5.4 If provided for the Design-Build Contractor or other prime Contractor as the P&P Obligor, the P&P Letter of Credit shall be subject to draw due to breach of such account party's performance obligations under its Contract. TxDOT shall have the conclusive right to rely on any declaration or other determination that Developer makes of the Design-Build Contractor's or other prime Contractor's breach or failure to perform its obligations. If Section 16.2.2 applies, TxDOT shall provide the Collateral Agent 30 days prior written notice of TxDOT's right to draw, and shall not draw on the P&P Letter of Credit if within such 30-day period TxDOT receives written notice from the Collateral Agent certifying that it has drawn on the P&P Letter of Credit for the purpose of paying or reimbursing Developer or itself for costs of curing the Design-Build Contractor's or other prime Contractor's failure to perform, as provided in Section 16.2.2.3.

16.2.5.5 If provided for Developer as the P&P Obligor, the P&P Letter of Credit shall also constitute security in favor of TxDOT for payment and performance of Developer's obligation to defend and indemnify TxDOT under Section 16.5.1.6, and accordingly will be subject to draw by TxDOT as provided in Section 17.3.7. If the P&P Letter of Credit is provided by the Design-Build Contractor or other prime Contractor as the P&P Obligor, then, without limiting any other remedies, TxDOT may exercise its rights under Section 17.3.5 if Developer fails to defend and indemnify TxDOT under Section 16.5.1.6.

16.2.5.6 Developer shall deliver to TxDOT written notice at least five days before it draws on any P&P Letter of Credit provided by the Design-Build Contractor or any other prime Contractor. Each such notice shall set forth the intended amount and purpose of the draw in reasonable detail. Developer shall deliver to TxDOT written notice of any draw on a P&P Letter of Credit by the Collateral Agent within five days after Developer obtains knowledge of any such draw. Each such notice shall set forth, to Developer's knowledge, the date, amount and purpose of the draw in reasonable detail.

16.2.6 Applicability to Secured Work

16.2.6.1 The requirements of this Section 16.2 shall apply in connection with Upgrades, new improvements, and reconstruction or rehabilitation during the Term (i.e. subsequent Secured Work).

16.2.6.2 Whenever Developer is performing subsequent Secured Work, Developer shall deliver to TxDOT, within 20 days after the end of each calendar month until final acceptance of the Construction Work related to such subsequent Secured Work, written certificates regarding payment and affidavits of wages paid equivalent to those described in paragraphs 9, 11(a) and 11(c) of the form of certificate in Attachment 2 to Exhibit 7.

16.2.7 Security from O&M Contractors

In the event Developer obtains payment or performance security from any O&M Contractor, Developer shall cause TxDOT to be named at issuance of such payment and performance security as an additional obligee or beneficiary thereunder, and shall deliver a

certified copy thereof, with the multiple obligee rider or other comparable documentation, to TxDOT within ten days after issuance.

16.3 Letters of Credit

16.3.1 General Provisions

Wherever in the CDA Documents Developer has the option or obligation to deliver to TxDOT a letter of credit, the following provisions shall apply except to the extent expressly provided otherwise in the CDA Documents:

16.3.1.1 The letter of credit shall:

(a) Be a standby letter of credit;

(b) Be issued by a financial institution with a credit rating of "A" or better according to Standard & Poors Rating Services, a division of The McGraw-Hill Companies, Inc. and with an office in Austin, Dallas, Houston, Fort Worth, or San Antonio at which the letter of credit can be presented for payment;

(c) Be in form approved by TxDOT in its good faith discretion. (For the avoidance of doubt, TxDOT will accept a form substantially similar to the form TxDOT included in the Reference Information Documents (if any));

(d) Be payable immediately, conditioned only on written presentment from TxDOT to the issuer of a sight draft drawn on the letter of credit and a certificate stating that TxDOT has the right to draw under the letter of credit in the amount of the sight draft, up to the amount due to TxDOT, without requirement to present the original letter of credit;

(e) Provide an expiration date not earlier than one year from date of issue;

(f) Allow for multiple draws; and

(g) Name TxDOT beneficiary.

16.3.1.2 TxDOT shall have the right to draw on the letter of credit after not less than two Business Days' prior written notice to Developer for draws under clause (a) below and without prior notice to Developer for draws under clause (b) below, unless otherwise expressly provided in the CDA Documents with respect to the letter of credit if (a) Developer has failed to pay or perform when due the duty, obligation or liability under the CDA Documents for which the letter of credit is held or (b) Developer for any reason fails to deliver to TxDOT a new or replacement letter of credit, on the same terms, or at least a one year extension of the expiration date of the existing letter of credit, by not later than 45 days before such expiration date, unless the applicable terms of the CDA Documents expressly require no further letter of credit with respect to the duty, obligation or liability in question. For all draws conditioned on prior written notice from TxDOT to Developer, no such notice shall be required if it would preclude draw before the expiration date of the letter of credit. Draw on the letter of credit shall not be conditioned on prior resort to any other security or Developer. If TxDOT draws on the letter of credit under clause (a) above, TxDOT shall use and apply the proceeds as provided in the CDA Documents for such letter of credit. If TxDOT draws on the letter of credit under clause (b) above, TxDOT shall be entitled to draw on the full face amount of the letter of credit

and shall retain such amount as cash security to secure the obligations under the letter of credit without payment of interest to Developer.

16.3.1.3 TxDOT shall use and apply draws on letters of credit toward satisfying the relevant obligation of Developer (or, if applicable, any other Person for which the letter of credit is performance security). If TxDOT receives proceeds of a draw in excess of the relevant obligation, TxDOT shall promptly refund the excess to Developer (or such other Person) after all relevant obligations are satisfied in full.

16.3.1.4 Developer's sole remedy in connection with the improper presentment or payment of sight drafts drawn under letters of credit shall be to obtain from TxDOT a refund of the proceeds which are misapplied, interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of improper draw until repaid, and subject to Section 17.6.4, reimbursement of the reasonable costs Developer incurs as a result of such misapplication; provided that at the time of such refund Developer increases the amount of the letter of credit to the amount (if any) then required under applicable provisions of this Agreement. Developer acknowledges that the presentment of sight drafts drawn upon a letter of credit could not under any circumstances cause Developer injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy. Accordingly, Developer covenants (a) not to request or instruct the issuer of any letter of credit to refrain from paying any sight draft drawn under the letter of credit and (b) not to commence or pursue any legal proceeding seeking, and Developer irrevocably waives and relinquishes any right, to enjoin, restrain, prevent, stop or delay any draw on any letter of credit.

16.3.1.5 Developer shall obtain and furnish all letters of credit and replacements thereof at its sole cost and expense, and shall pay all charges imposed in connection with TxDOT's presentment of sight drafts and drawing against letters of credit or replacements thereof.

16.3.1.6 In the event TxDOT makes a permitted assignment of its rights and interests under this Agreement, Developer shall cooperate so that concurrently with the effectiveness of such assignment, either replacement letters of credit for, or appropriate amendments to, the outstanding letters of credit shall be delivered to the assignee naming the assignee as beneficiary, at no cost to Developer.

16.3.1.7 TxDOT acknowledges that if the letter of credit is performance security for a Person other than Developer (e.g., a Key Contractor), TxDOT's draw may only be based on the underlying obligations of such Person.

16.3.2 Special Letter of Credit Provisions

Any terms and conditions applicable to a particular letter of credit which Developer or a Lender is required to or may provide under this Agreement are set forth in the provisions of this Agreement describing such letter of credit.

16.4 Guarantees

16.4.1 In the event Developer, any Affiliate or any Lender receives from any Person a guaranty of payment or performance of any obligation(s) of a Key Contractor, Developer shall cause such Person to (a) expressly include TxDOT as a guaranteed party under such guaranty, with the same protections and rights of notice, enforcement and collection as are available to any other guaranteed party, and (b) deliver to TxDOT a duplicate original of such guaranty.

Such guaranty shall provide that the rights and protections of TxDOT shall not be reduced, waived, released or adversely affected by the acts or omissions of any other guaranteed party, other than through the rendering of payment and performance to another guaranteed party.

16.4.2 TxDOT agrees to forebear from exercising remedies under any such guaranty so long as Developer or a Lender is diligently pursuing remedies thereunder.

16.5 Indemnity by Developer

16.5.1 Subject to Section 16.5.4, Developer shall release, protect, defend, indemnify and hold harmless the Indemnified Parties from and against any and all Third Party Claims and Third Party Losses, in each case if asserted or incurred by or awarded to any third party, arising out of, relating to or resulting from:

16.5.1.1 The breach or alleged breach of the CDA Documents by Developer;

16.5.1.2 The failure or alleged failure by any Developer-Related Entity (other than NTTA) to comply with the Governmental Approvals, any applicable Environmental Laws or other Laws (including Laws regarding Hazardous Materials Management);

16.5.1.3 Any alleged patent or copyright infringement or other allegedly improper appropriation or use by any Developer-Related Entity (other than NTTA) of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the Work, or arising out of any use in connection with the Facility of methods, processes, designs, information, or other items furnished or communicated to TxDOT or another Indemnified Party pursuant to the CDA Documents; provided that this indemnity shall not apply to any infringement resulting from TxDOT's failure to comply with specific written instructions regarding use provided to TxDOT by Developer;

16.5.1.4 The actual or alleged culpable act, culpable error or misconduct of any Developer-Related Entity (other than NTTA) in or associated with performance of the Work;

16.5.1.5 Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any Developer-Related Entity (other than NTTA) with respect to any payment for the Work made to or earned by any Developer-Related Entity (other than NTTA);

16.5.1.6 Any and all stop notices, liens and claims filed in connection with the Work, including all expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop notice, lien or claim, and any other liability to Contractors (other than NTTA), laborers and Suppliers for failure to pay sums due for their work, services, materials, goods, equipment or supplies, provided that TxDOT is not in default in payments owing (if any) to Developer with respect to such Work;

16.5.1.7 Any actual or threatened Developer Release of Hazardous Materials;

16.5.1.8 The claim or assertion by any other developer or contractor that any Developer-Related Entity (other than NTTA) interfered with or hindered the progress or completion of work being performed by the other contractor or developer, or failed to cooperate reasonably with the other developer or contractor, so as to cause inconvenience, disruption, delay or loss, except where the Developer-Related Entity (other than NTTA) was not in any manner engaged in performance of the Work;

16.5.1.9 Any dispute between Developer and a Utility Owner, or any Developer-Related Entity's (other than NTTA) performance of, or failure to perform, the obligations under any Utility Agreement;

16.5.1.10 (a) Any Developer-Related Entity's (other than NTTA) breach of or failure to perform an obligation that TxDOT owes to a third Person, including Governmental Entities, under Law or under any agreement between TxDOT and a third Person, where TxDOT has delegated performance of the obligation to Developer pursuant to the terms of the CDA Documents or (b) the acts or omissions of any Developer-Related Entity (other than NTTA) which render TxDOT unable to perform or abide by an obligation that TxDOT owes to a third Person, including Governmental Entities, under any agreement between TxDOT and a third Person, where the agreement is previously disclosed or known to Developer;

16.5.1.11 The fraud, bad faith, arbitrary or capricious acts, willful misconduct, negligence or violation of Law or contract by any Developer-Related Entity (other than NTTA) in connection with Developer's performance of real property acquisition services under the CDA Documents;

16.5.1.12 Inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of (a) the failure of any Developer-Related Entity (other than NTTA) to comply with Good Industry Practice, requirements of the CDA Documents, Facility Management Plan or Governmental Approvals respecting control and mitigation of construction activities and construction impacts, (b) the intentional misconduct or negligence of any Developer-Related Entity (other than NTTA), or (c) the actual physical entry onto or encroachment upon another's property by any Developer-Related Entity (other than NTTA); or

16.5.1.13 If applicable, any violation of any federal or state securities or similar law by any Developer-Related Entity (other than NTTA), or Developer's failure to comply with any requirement necessary to preserve the tax exempt status of interest paid on the PABs.

16.5.2 Subject to Section 16.5.4, Developer shall release, protect, defend, indemnify and hold harmless the Indemnified Parties from and against any and all Third Party Claims and Third Party Losses arising out of, relating to or resulting from errors, inconsistencies or other Defects in the design or construction of the Facility and/or of Utility Adjustments included in the Design Work and/or Construction Work.

16.5.3 Subject to Section 16.5.4, Developer shall release, protect, defend, indemnify and hold harmless TxDOT from and against any and all Third Party Claims and Third Party Losses, in each case if asserted or incurred by or awarded to NTTA, arising out of, relating to or resulting from TxDOT entering into the TxDOT Tolling Services Agreement under Section 8.7.5 or 8.7.6.

16.5.4 Subject to the releases and disclaimers herein, including all the provisions set forth in Section 6.3.8, Developer's indemnity obligation shall not extend to any Third Party Claims and Third Party Losses to the extent caused or contributed to by:

16.5.4.1 The negligence, recklessness or willful misconduct, bad faith or fraud of the Indemnified Party;

16.5.4.2 TxDOT's breach of any of its obligations under the CDA Documents;

16.5.4.3 An Indemnified Party's violation of any Laws or Governmental Approvals; or

16.5.4.4 Any material defect inherent in a prescriptive design, construction, operations or maintenance specification included in the Technical Provisions or Technical Documents, but only where prior to occurrence of the Third Party Loss Developer complied with such specification and did not actually know, or would not reasonably have known, while exercising reasonable diligence, that it was deficient or, if Developer actually knew of the deficiency, unsuccessfully sought TxDOT's waiver or approval of a Deviation from such specification.

16.5.5 In claims by an employee of Developer, a Contractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 16.5 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Developer or a Contractor under workers' compensation, disability benefit or other employee benefits laws.

16.5.6 For purposes of this Section 16.5, "Third Party Claim" includes a claim, dispute, disagreement, cause of action, demand, suit, action, judgment, investigation, or legal or administrative proceeding which (a) is asserted, initiated or brought by any Indemnified Party's employee, agent or contractor against an Indemnified Party, (b) is within the scope of the indemnities and (c) is not covered by the Indemnified Party's worker's compensation program. For purposes of this Section 16.5, "Third Party Loss" includes any actual or alleged Loss sustained or incurred by such employee, agent or contractor.

16.6 Defense and Indemnification Procedures

16.6.1 If any of the Indemnified Parties 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 16.5, TXDOT shall by writing as soon as practicable after receipt of the claim, (a) inform Developer of the claim, (b) send to Developer a copy of all written materials TXDOT has received asserting such claim and (c) notify Developer that should no insurer accept defense of the claim, the Indemnified Party will conduct its own defense unless Developer accepts the tender of the claim in accordance with Section 16.6.3. As soon as practicable after Developer receives notice of a claim or otherwise has actual knowledge of a claim, it shall tender the claim in writing to the insurers under all potentially applicable Insurance Policies. TXDOT and other Indemnified Parties also shall have the right to tender such claims to such insurers.

16.6.2 If the insurer under any applicable Insurance Policy accepts the tender of defense, TXDOT and Developer shall cooperate in the defense as required by the Insurance Policy. If no insurer under potentially applicable Insurance Policies provides defense, then Section 16.6.3 shall apply.

16.6.3 If the defense is tendered to Developer, then within 30 days after receipt of the tender it shall notify the Indemnified Party whether it has tendered the matter to an insurer and (if not tendered to an insurer or if the insurer has rejected the tender) shall deliver a written notice stating that Developer:

16.6.3.1 Accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter;

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

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

16.6.4 If Developer accepts the tender of defense under Section 16.6.3.1, Developer shall have the right to select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and Developer shall otherwise control the defense of such claim, including settlement, and bear the fees and costs of defending and settling such claim. During such defense:

16.6.4.1 Developer shall fully and regularly inform the Indemnified Party of the progress of the defense and of any settlement discussions; and

16.6.4.2 The Indemnified Party shall fully cooperate in said defense, provide to Developer all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to the Indemnified Party, and maintain the confidentiality of all communications between it and Developer concerning such defense.

16.6.5 If Developer responds to the tender of defense as specified in Section 16.6.3.2 or 16.6.3.3, the Indemnified Party shall be entitled to select its own legal counsel and otherwise control the defense of such claim, including settlement.

16.6.6 The Indemnified Party may assume its own defense by delivering to Developer written notice of such election and the reasons therefor, if the Indemnified Party, at the time it gives notice of the claim or at any time thereafter, reasonably determines that:

16.6.6.1 A conflict exists between it and Developer which prevents or potentially prevents Developer from presenting a full and effective defense;

16.6.6.2 Developer is otherwise not providing an effective defense in connection with the claim; or

16.6.6.3 Developer lacks the financial capacity to satisfy potential liability or to provide an effective defense.

16.6.7 If the Indemnified Party is entitled and elects to conduct its own defense pursuant hereto of a claim for which it is entitled to indemnification, Developer shall reimburse on a current basis all reasonable costs and expenses the Indemnified Party incurs in investigating and defending. In the event the Indemnified Party is entitled to and elects to conduct its own defense, then:

16.6.7.1 In the case of a defense conducted under Section 16.6.3.1, it shall have the right to settle or compromise the claim with Developer's prior written consent, which shall not be unreasonably withheld or delayed;

16.6.7.2 In the case of a defense conducted under Section 16.6.3.2, it shall have the right to settle or compromise the claim with Developer's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court or arbitrator following reasonable notice to Developer and opportunity to be heard and without prejudice to the Indemnified Party's rights to be indemnified by Developer; and

16.6.7.3 In the case of a defense conducted under Section 16.6.3.3, it shall have the right to settle or compromise the claim without Developer's prior written consent and without prejudice to its rights to be indemnified by Developer.

16.6.8 A refusal of, or failure to accept, a tender of defense, as well as any Dispute over whether an Indemnified Party which has assumed control of defense is entitled to do so under Section 16.6.6, shall be resolved according to the Dispute Resolution Procedures. Developer shall be entitled to contest an indemnification claim and pursue, through the Dispute Resolution Procedures, recovery of defense and indemnity payments it has made to or on behalf of the Indemnified Party.

16.6.9 The Parties acknowledge that while Section 16.5 contemplates that Developer will have responsibility for certain claims and liabilities arising out of its obligations to indemnify, circumstances may arise in which there may be shared liability of the Parties with respect to such claims and liabilities. In such case, where either Party believes a claim or liability may entail shared responsibility and that principles of comparative negligence and indemnity are applicable, it shall confer with the other Party on management of the claim or liability in question. If the Parties cannot agree on an approach to representation in the matter in question, each shall arrange to represent itself and to bear its own costs in connection therewith pending the outcome of such matter. Within 30 days subsequent to the final, non-appealable resolution of the matter in question, whether by arbitration or by judicial proceedings, the Parties shall adjust the costs of defense, including reimbursement of reasonable attorneys' fees and other litigation and defense costs, in accordance with the indemnification arrangements of Section 16.5, and consistent with the outcome of such proceedings concerning the respective liabilities of the Parties on the third party claim.

16.6.10 In determining responsibilities and obligations for defending suits pursuant to this Section 16.6, specific consideration shall be given to the following factors: (a) the party performing the activity in question; (b) the location of the activity and incident; (c) contractual arrangements then governing the performance of the activity; and (d) allegations of respective fault contained in the claim.

ARTICLE 17. DEFAULT; REMEDIES; DISPUTE RESOLUTION

17.1 Default by Developer; Cure Periods

17.1.1 Developer Default

Subject to relief from its performance obligations pursuant to Sections 13.1.5.1 and 13.1.5.2, Developer shall be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions (each a "Developer Default"):

17.1.1.1 Developer (a) fails to begin the applicable Work within 30 days following issuance of NTP1; (b) fails to satisfy all conditions to issuance of NTP2 under Section 7.7.2.2 by the NTP2 Conditions Deadline; (c) fails to complete all preliminary work after issuance of NTP GP under Section 7.7.2.3 by the NTP GP Preliminary Work Deadline; (d) fails to complete all preliminary work after issuance of NTP IC under Section 7.7.2.4 by the NTP IC Preliminary Work Deadline; (e) fails to complete all preliminary work after issuance of NTP ML under Section 7.7.2.5 by the NTP ML Preliminary Work Deadline, (f) fails to begin applicable O&M Work with diligence and continuity upon issuance of NTP2, NTP GP, NTP IC or NTP ML; (g) fails to satisfy all conditions to commencement of the applicable Construction Work, and commence such Construction Work with diligence and continuity, by the deadline therefor set

forth in Exhibit 9, as the same may be extended pursuant to this Agreement, or (h) fails to achieve Final Acceptance by the Final Acceptance Deadline;

17.1.1.2 An Abandonment;

17.1.1.3 Developer fails to achieve Service Commencement for either Facility Segment by the Service Commencement Deadline, as the same may be extended pursuant to this Agreement;

17.1.1.4 Any failure comparable to a failure described in Section 17.1.1.1 through 17.1.1.3 and Section 17.1.1.11 occurs with respect to any Upgrade that Developer is obligated to perform under this Agreement;

17.1.1.5 Developer fails to make any payment due TxDOT under the CDA Documents or Independent Engineer Agreement when due, or fails to deposit funds to any reserve or account in the amount and within the time period required by this Agreement;

17.1.1.6 There occurs any use of the Facility or Airspace or any portion thereof in violation of this Agreement, the Technical Provisions, Technical Documents, Governmental Approvals or Laws (except violations of Law by Persons other than Developer-Related Entities and violations by Governmental Entities asserting governmental authority);

17.1.1.7 There occurs any closure of the Facility or any portion thereof, or any lane closure, except as expressly permitted otherwise or expressly excused under this Agreement, the Technical Provisions and the TxDOT-approved Traffic Management Plan;

17.1.1.8 Any representation or warranty in the CDA Documents made by Developer, or any certificate, schedule, report, instrument or other document delivered by or on behalf of Developer to TxDOT pursuant to the CDA Documents is false or materially misleading or materially inaccurate when made or omits material information when made;

17.1.1.9 Developer fails to obtain, provide and maintain any insurance, bonds, guarantees, letters of credit or other performance security as and when required under this Agreement or the Lease for the benefit of relevant parties, or fails to comply with any requirement of this Agreement pertaining to the amount, terms or coverage of the same;

17.1.1.10 Developer makes or attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of this Agreement, the Lease, the Facility or Developer's Interest, or there occurs a Change of Control, in violation of Article 21;

17.1.1.11 Developer materially fails to timely observe or perform or cause to be observed or performed any other material covenant, agreement, obligation, term or condition required to be observed or performed by Developer under the CDA Documents, including material failure to perform the Design Work, Construction Work, O&M Work or any material portion thereof in accordance with the CDA Documents;

17.1.1.12 After exhaustion of all rights of appeal, there occurs any suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, from bidding, proposing or contracting with any federal or State department or agency of (a) Developer, (b) any member of Developer with a material financial obligation owing to Developer for equity or shareholder loan contributions, (c) any affiliate of Developer for whom transfer of ownership would constitute a Change of Control, or (d) any Key Contractor whose work is not completed;

17.1.1.13 There occurs any Persistent Developer Default, TxDOT delivers to Developer written notice of the Persistent Developer Default, and either (a) Developer fails to deliver to TxDOT, within 45 days after such notice is delivered, a remedial plan meeting the requirements for approval set forth in Section 17.3.6 or (b) Developer fails to fully comply with the schedule or specific elements of, or actions required under, the approved remedial plan;

17.1.1.14 Developer commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect, seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; becomes insolvent, or generally does not pay its debts as they become due; admits in writing its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;

17.1.1.15 An involuntary case is commenced against Developer seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to Developer or Developer's debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of Developer or any substantial part of Developer's assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by Developer in good faith or shall remain undismissed and unstayed for a period of 60 days;

17.1.1.16 Any voluntary or involuntary case or other act or event described in Sections 17.1.1.14 and 17.1.1.15 shall occur (and in the case of an involuntary case shall not be contested in good faith or shall remain undismissed and unstayed for a period of 60 days) with respect to (a) any member of Developer with a material financial obligation owing to Developer for equity or shareholder loan contributions, (b) any member of Developer for whom transfer of ownership would constitute a Change of Control, or (c) any Guarantor of material Developer obligations to TxDOT under the CDA Documents, unless another Guarantor of the same material Developer obligations then exists, is solvent, is not and has not been the debtor in any such voluntary or involuntary case, has not repudiated its guaranty and is not in breach of its guaranty; or

17.1.1.17 Developer fails to timely satisfy its financing obligation under Section 4.1.4, unless such failure is excused as more specifically set forth in Section 4.1.4.3.

17.1.2 Cure Periods

Subject to Section 17.2.2, for Developer breaches or failures listed in Attachment 1 to Exhibit 18, the cure periods set forth therein shall exclusively govern for the sole purpose of assessing Noncompliance Points. For Category "A" breaches or failures listed in Attachment 1 to Exhibit 18, the cure period set forth therein shall exclusively govern for the sole purpose of accumulation under clause (b) of the definition of Persistent Developer Default. For the purpose of TxDOT's exercise of other remedies, subject to Section 17.2.2 and subject to remedies that this Article 17 expressly states may be exercised before lapse of a cure period, Developer shall have the following cure periods with respect to the following Developer Defaults:

17.1.2.1 Respecting a Developer Default under Section 17.1.1.13(a) or 17.1.1.17, a period of five days after TxDOT delivers to Developer written notice of the Developer Default;

17.1.2.2 Respecting a Developer Default under Section 17.1.1.1, 17.1.1.7, 17.1.1.9 or 17.1.1.10, a period of 15 days after TxDOT delivers to Developer written notice of the Developer Default; provided that (a) as to a Developer Default under Section 17.1.1.1, such cure period shall not preclude or delay TxDOT's immediate exercise, without notice or demand, of its right, but not the obligation, to effect cure, at Developer's expense, (b) as to a Developer Default under Section 17.1.1.7 such cure period shall not preclude or delay TxDOT's immediate exercise, without notice or demand, of its remedy set forth in Section 17.3.2, and (c) TxDOT shall have the right, but not the obligation, to effect cure, at Developer's expense, if a Developer Default under Section 17.1.1.9 continues beyond five days after such notice is delivered;

17.1.2.3 Respecting a Developer Default under Section 17.1.1.2, 17.1.1.5, 17.1.1.6 or 17.1.1.13(b), a period of 30 days after TxDOT delivers to Developer written notice of the Developer Default;

17.1.2.4 Respecting a Developer Default under Section 17.1.1.8, 17.1.1.11 or 17.1.1.12, a period of 30 days after TxDOT delivers to Developer written notice of the Developer Default; provided that (a) if the Developer Default is of such a nature that the cure cannot with diligence be completed within such time period and Developer has commenced meaningful steps to cure immediately after receiving the default notice, Developer shall have such additional period of time, up to a maximum cure period of 120 days, as is reasonably necessary to diligently effect cure, (b) as to Section 17.1.1.8, cure will be regarded as complete when the adverse effects of the breach are cured, and (c) as to Section 17.1.1.12, if the debarred or suspended Person is a managing member, general partner or controlling investor of Developer, cure will be regarded as complete when Developer proves it has removed such Person from any position or ability to manage, direct or control the decisions of Developer or to perform Work, and if the debarred or suspended Person is a Key Contractor cure will be regarded as complete when Developer replaces the Key Contractor with TxDOT's prior written approval in its good faith discretion as provided in Section 10.3.1;

17.1.2.5 Respecting a Developer Default under Section 17.1.1.3, the period up to the Long Stop Date, as the same may be extended pursuant to this Agreement, regardless of when TxDOT delivers written notice of the Developer Default;

17.1.2.6 Respecting a Developer Default under Section 17.1.1.14 or 17.1.1.15, no cure period, and there shall be no right to notice of a Developer Default under Section 17.1.1.14 or 17.1.1.15;

17.1.2.7 Respecting a Developer Default under Section 17.1.1.16, a period of ten days from the date of the Developer Default to commence diligent efforts to cure, and 30 days to effect cure of such default by providing a letter of credit or payment to TxDOT or the Collateral Agent for the benefit of the Facility, in the amount of, as applicable, (a) the member's financial obligation for equity or shareholder loan contributions to or for the benefit of Developer or (b) the Guarantor's specified sum or specified maximum liability under its guaranty, or if none is specified, the reasonably estimated maximum liability of the Guarantor; and

17.1.2.8 Respecting a Developer Default under Section 17.1.1.4, the cure period shall be the same as the cure period for a comparable Developer Default under Sections 17.1.1.1, 17.1.1.2, 17.1.1.3 or 17.1.1.11, as applicable.

17.1.3 Certain Curative Actions; Status Report

17.1.3.1 If the Developer Default consists of imposing tolls in excess of that permitted under this Agreement, such Developer Default shall be curable only by (a) reinstating

the tolls in effect immediately prior to the impermissible raise in tolls, unless waived by TxDOT, and (b) disgorging to TxDOT any and all increases in Toll Revenues that would not have been realized in the absence of such Developer Default, together with interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of collection until the date disgorged.

17.1.3.2 If the Developer Default consists of failure to give TxDOT a required prior notice and opportunity to complete an applicable review and comment or approval procedure under Section 6.3 before action is taken by Developer, such Developer Default shall be curable only by (a) reversing or suspending the action until the notice and review and comment or approval procedures are followed and completed, unless Developer finished the action before receiving the notice of Developer Default or unless waived by TxDOT, and (b) disgorging to TxDOT any and all increases in Toll Revenues that would not have been realized in the absence of such Developer Default.

17.1.3.3 If the Developer Default consists of any Developer activity or failure to act which constitutes a change from Developer's activities immediately prior to the Developer Default, such Developer Default shall be curable only by (a) reinstating the activity as it was being performed immediately prior to the Developer Default and (b) disgorging to TxDOT any and all increases in Toll Revenues that would not have been realized in the absence of such Developer Default.

17.1.3.4 For any Developer Default for which a Warning Notice has been delivered by TxDOT to Developer, Developer may request from TxDOT a status report as to Developer's progress in effecting a cure, by delivering to TxDOT a written request accompanied by Developer's own report as to its progress in effecting a cure. TxDOT shall provide its response within ten Business Days after receipt of Developer's written request and report. The response shall be provided solely for purposes of informing Developer as to TxDOT's view of the progress in effecting a cure for the Developer Default, shall not constitute an admission of any fact, shall not be admissible in evidence for any purpose, shall not form the basis for any Dispute or Claim, and shall not limit in any way TxDOT's right to terminate this Agreement in accordance with Section 19.3 should cure not be effected within the relevant period.

17.1.4 Certain Provisions Regarding the NTTA Tolling Services Agreement and TxDOT Tolling Services Agreement

17.1.4.1 Compliance by NTTA under the NTTA Tolling Services Agreement and any amendments to the NTTA Tolling Services Agreement approved in writing by TxDOT and compliance by TxDOT under the TxDOT Tolling Services Agreement (if applicable) shall be deemed to satisfy any directly corresponding but inconsistent requirements under the CDA Documents. TxDOT agrees that performance by NTTA of the NTTA Tolling Services Agreement and performance by TxDOT of the TxDOT Tolling Services Agreement (if applicable) will satisfy Developer's obligations under Section 3.1.

17.1.4.2 If a breach by NTTA under the NTTA Tolling Services Agreement also constitutes a breach by Developer under this Agreement, then such breach by Developer under this Agreement shall not be deemed to constitute a Developer Default or result in the assessment of Noncompliance Points so long as Developer diligently pursues cure under the NTTA Tolling Services Agreement. If a breach by TxDOT under the TxDOT Tolling Services Agreement (if applicable) also constitutes a breach by Developer under this Agreement, then such breach by Developer under this Agreement shall not be deemed to constitute a Developer Default or result in the assessment of Noncompliance Points. For the avoidance of doubt, any breach by NTTA under the NTTA Tolling Services Agreement or by TxDOT under the TxDOT

Tolling Services Agreement (if applicable) shall not excuse any other breach by Developer under this Agreement.

17.2 Warning Notices

17.2.1 Warning Notice Events

Without prejudice to any other right or remedy available to TxDOT, TxDOT may deliver a written notice (a "Warning Notice") to Developer, with a copy to the Collateral Agent for the senior and first tier subordinate Security Documents, stating explicitly that it is a "Warning Notice" and stating in reasonable detail the matter or matters giving rise to the notice and, if applicable, amounts due from Developer, and reminding Developer of the implications of such notice, whenever there occurs any of the following:

17.2.1.1 Any Developer Default under Section 17.1.1.1, 17.1.1.2, 17.1.1.4 (but only if it concerns a mandatory Capacity Improvement and is of the same type and nature as a Developer Default under Section 17.1.1.1 or 17.1.1.2), 17.1.1.5 (but only for a material failure to pay or deposit), 17.1.1.6 (but only if material), 17.1.1.7 (but only if it affects a material portion of the Facility), 17.1.1.10, 17.1.1.11, 17.1.1.13, or 17.1.1.16;

17.2.1.2 Delay in achieving Service Commencement for any Facility Segment that extends beyond the Service Commencement Deadline, as the same may be extended pursuant to this Agreement, by more than 90 days; or

17.2.1.3 Any other material Developer Default.

17.2.2 Effect of Warning Notice on Developer Cure Period

17.2.2.1 Any notice of a Developer Default issued under Section 17.1 may, if it concerns a matter under Section 17.2.1, also be issued as a Warning Notice. In such case, the cure period available to Developer, if any, shall be as set forth in Section 17.1.2.

17.2.2.2 If TxDOT issues a Warning Notice under Section 17.2.1 for any Developer Default after it issues a notice of such Developer Default, then the cure period available to Developer, if any, for such Developer Default before TxDOT may seek to appoint a receiver for Developer, remove Developer or terminate this Agreement and the Lease on account of such Developer Default shall be extended by the time period between the date the notice of such Developer Default was issued and the date the Warning Notice is issued. No later issuance of a Warning Notice shall extend the time when TxDOT may exercise any other remedy respecting such Developer Default.

17.2.3 Other Effects of Warning Notice

17.2.3.1 The issuance of a Warning Notice shall entitle TxDOT and the Independent Engineer to increase the level of oversight as provided in Section 18.5.

17.2.3.2 The issuance of a Warning Notice may trigger a Default Termination Event as provided in Section 19.3.

17.3 TxDOT Remedies for Developer Default

17.3.1 Termination

In the event of any Developer Default that is or becomes a Default Termination Event set forth in Section 19.3.1, TxDOT may terminate this Agreement and the Lease and thereupon enter and take possession and control of the Facility by summary proceeding available to landlords under applicable Law, which termination shall, among other things, automatically terminate all of Developer's rights under Articles 2 and 3, whereupon Developer shall take all action required to be taken by Developer under Section 19.5.

17.3.2 Immediate TxDOT Entry and Cure of Wrongful Closure

Without notice and without awaiting lapse of the period to cure, in the event of any Developer Default under Section 17.1.1.7 (closure of the Facility or lane closure in violation of the CDA Documents), TxDOT may enter and take control of the Facility to the extent TxDOT finds it necessary to reopen and continue operations for the benefit of Developer and the public, until such time as such breach is cured, or TxDOT terminates this Agreement and the Lease. Developer shall pay to TxDOT on demand TxDOT's Recoverable Costs in connection with such action. So long as TxDOT undertakes such action in good faith, even if under a mistaken belief in the occurrence of such a Developer Default, such action shall not be deemed unlawful or a breach of this Agreement, shall not expose TxDOT to any liability to Developer and shall not entitle Developer to any other remedy, it being acknowledged that TxDOT has a high priority, paramount public interest in providing and maintaining continuous public access to the Facility. The foregoing shall not, however, protect TxDOT from Developer's lawful claims to indemnity or contribution for third party bodily injury or property damage arising out of any such TxDOT action, if and to the extent (a) TxDOT was mistaken in believing such a Developer Default occurred, (b) the third party liability is not insured and not required to be insured under this Agreement and (c) such injury or property damage was caused by TxDOT's negligence, recklessness or intentional misconduct. Immediately following rectification of such Developer Default, as determined by TxDOT, acting reasonably, TxDOT shall relinquish control and possession of the Facility back to Developer.

17.3.3 Remedies for Failure to Meet Safety Standards or Perform Safety Compliance

17.3.3.1 Subject to Section 17.3.3.4, if at any time Developer fails to meet any Safety Standard or timely perform Safety Compliance or TxDOT and Developer cannot reach an agreement regarding the interpretation or application of a Safety Standard or the valid issuance of a Safety Compliance Order within a period of time acceptable to TxDOT, acting reasonably, TxDOT shall have the absolute right and entitlement to undertake or direct Developer to undertake any work required to ensure implementation of and compliance with Safety Standards as interpreted or applied by TxDOT or with the Safety Compliance Order.

17.3.3.2 To the extent that any work done pursuant to Section 17.3.3.1 is undertaken by TxDOT and is reasonably necessary to comply with Safety Standards or perform validly issued Safety Compliance Orders, Developer shall pay to TxDOT on demand TxDOT's Recoverable Costs in connection with such work, and TxDOT (whether it undertakes the work or has directed Developer to undertake the work) shall have no obligation or liability to compensate Developer for any Losses Developer suffers or incurs as a result thereof.

17.3.3.3 To the extent that any work done pursuant to Section 17.3.3.1 is undertaken by TxDOT and is not reasonably necessary to comply with Safety Standards or

perform validly issued Safety Compliance Orders, TxDOT shall compensate Developer only for Losses Developer suffers or incurs as a direct result thereof.

17.3.3.4 To the extent that any Safety Compliance Order work pursuant to Section 17.3.3.1 is undertaken by Developer under written protest delivered prior to starting the work and it is finally determined that the Safety Compliance work was not necessary, the unnecessary work under the Safety Compliance Order shall be treated as a TxDOT Change.

17.3.3.5 Notwithstanding anything to the contrary contained in this Agreement, if in the good faith judgment of TxDOT Developer has failed to meet any Safety Standards or perform Safety Compliance and the failure results in an Emergency or danger to persons or property, and if Developer is not then diligently taking all necessary steps to rectify or deal with such Emergency or danger, TxDOT may, without notice and without awaiting lapse of the period to cure any breach, and in addition and without prejudice to its other remedies, (but is not obligated to) (a) immediately take such action as may be reasonably necessary to rectify the Emergency or danger, in which event Developer shall pay to TxDOT on demand the cost of such action, including TxDOT's Recoverable Costs, or (b) suspend Construction Work and/or close or cause to be closed any and all portions of the Facility affected by the Emergency or danger. So long as TxDOT undertakes such action in good faith, even if under a mistaken belief in the occurrence of such failure or existence of an Emergency or danger as a result thereof, such action shall not be deemed unlawful or a breach of this Agreement, shall not expose TxDOT to any liability to Developer and shall not entitle Developer to any other remedy, it being acknowledged that TxDOT has a high priority, paramount public interest in protecting public and worker safety at the Facility and adjacent and connecting areas. TxDOT's good faith determination of the existence of such a failure, Emergency or danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary. Immediately following rectification of such Emergency or danger, as determined by TxDOT, acting reasonably, TxDOT shall allow the Construction Work to continue or such portions of the Facility to reopen, as the case may be. The foregoing shall not, however, protect TxDOT from Developer's lawful claims to indemnity or contribution for third party bodily injury or property damage arising out of any such TxDOT action, if and to the extent (i) TxDOT was mistaken in believing such a Developer Default occurred, (ii) the third party liability is not insured and not required to be insured under this Agreement and (iii) such injury or property damage was caused by TxDOT's negligence, recklessness or intentional misconduct.

17.3.4 TxDOT Step-in Rights

Upon the occurrence of a Developer Default and expiration, without full and complete cure, of the cure period, if any, available to Developer, without necessity for a Warning Notice, and without waiving or releasing Developer from any obligations, TxDOT shall have the right, but not the obligation, for so long as such Developer Default remains uncured by TxDOT or Developer, to pay and perform all or any portion of Developer's obligations and the Work that are the subject of such Developer Defaults, as well as any other then-existing breaches or failures to perform for which Developer received prior written notice from TxDOT but has not commenced diligent efforts to cure.

17.3.4.1 In connection with such action, TxDOT may, to the extent and only to the extent reasonably required for or incident to curing the Developer Default or such other breaches or failures to perform for which Developer received prior written notice from TxDOT but has not commenced and continued diligent efforts to cure:

(a) Employ security guards and other safeguards to protect the Facility;

(b) Spend such sums as are reasonably necessary to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required, without obligation or liability to Developer or any Contractors for loss of opportunity to perform the same Work or supply the same materials and equipment;

(c) Draw on and use proceeds from payment and performance bonds, letters of credit and other performance security to the extent available under the terms thereof to pay such sums;

(d) Execute all applications, certificates and other documents as may be required;

(e) Make decisions respecting, assume control over and continue Work as may be reasonably required;

(f) Meet with, coordinate with, direct and instruct contractors and suppliers, process invoices and applications for payment from contractors and suppliers, pay contractors and suppliers, and resolve claims of contractors, subcontractors and suppliers, and for this purpose Developer irrevocably appoints TxDOT as its attorney-in-fact will full power and authority to act for and bind Developer in its place and stead;

(g) Take any and all other actions as may be reasonably required or incident to curing; and

(h) Prosecute and defend any action or proceeding incident to the Work undertaken.

17.3.4.2 Developer shall reimburse TxDOT on demand TxDOT's Recoverable Costs in connection with the performance of any act or Work authorized by this Section 17.3.4.

17.3.4.3 TxDOT shall have and is hereby granted a perpetual, non-rescindable right of entry by TxDOT and its Authorized Representatives, contractors, subcontractors, vendors and employees onto the Facility, the Facility Right of Way and any construction, lay down, staging, borrow and similar areas, exercisable at any time or times without notice, for the purpose of carrying out TxDOT's step-in rights under this Section 17.3.4. Neither TxDOT nor any of its Authorized Representatives, contractors, subcontractors, vendor and employees shall be liable to Developer in any manner for any inconvenience or disturbance arising out of its entry onto the Facility, the Facility Right of Way or Facility Specific Locations in order to perform under this Section 17.3.4, unless caused by the gross negligence, recklessness, willful misconduct or bad faith of such Person. If any Person exercises any right to pay or perform under this Section 17.3.4, it nevertheless shall have no liability to Developer for the sufficiency or adequacy of any such payment or performance, or for the manner or quality of design, construction, operation or maintenance, unless caused by the gross negligence, recklessness, willful misconduct or bad faith of such Person.

17.3.4.4 TxDOT's rights under this Section 17.3.4 are subject to the right of any Surety under payment and performance bonds to assume performance and completion of all bonded work.

17.3.4.5 In the case of a Developer Default which would either immediately or, following the applicable cure period or the giving of notice or both, constitute a Default Termination Event enabling TxDOT to terminate or suspend its obligations under this

Agreement, TxDOT's rights under this Section 17.3.4 are subject to Lender rights to cure under Section 20.4; provided that TxDOT may continue exercise of its step-in rights until the Lender obtains possession and notifies TxDOT that it stands ready to commence good faith, diligent curative action. In the case of any other Developer Default, TxDOT's rights under this Section 17.3.4 are subject to the exercise of step-in rights by the Collateral Agent under the senior Security Documents, provided that the Collateral Agent (a) delivers to TxDOT written notice of the Collateral Agent's decision to exercise step-in rights, and commences the good faith, diligent exercise of such step-in rights, within the cure period available to Developer with respect to the Developer Default in question, and (b) thereafter continues such good faith, diligent exercise of remedies until the Developer Default is fully and completely cured.

17.3.4.6 In the event TxDOT takes action described in this Section 17.3.4 and it is later finally determined that TxDOT lacked the right to do so because there did not occur a Developer Default and expiration, without full and complete cure, of the cure period, if any, available to Developer, then TxDOT's action shall be treated as a Directive Letter for a TxDOT Change.

17.3.5 Damages; Offset

17.3.5.1 Subject to Sections 17.3.10 and 17.3.11 and the provisions on liquidated damages set forth in Section 17.4, TxDOT shall be entitled to recover any and all damages available at Law (subject to the duty at Law to mitigate damages and without duplicate recovery) on account of the occurrence of a Developer Default, including, to the extent available at Law, (a) loss of any compensation due TxDOT under this Agreement proximately caused by the Developer Default, (b) actual and projected costs to remedy any defective part of the Work, (c) actual and projected costs to rectify any breach or failure to perform by Developer and/or to bring the condition of the Facility to the standard it would have been in if Developer had complied with its obligations to carry out and complete the Work in accordance with the CDA Documents, (d) actual and projected costs to TxDOT to terminate, take over the Facility, re-procure and replace Developer, (e) actual and projected delay costs and (f) actual and projected increases in costs to TxDOT to complete the Facility if not completed, together with interest thereon from and after the date any amount becomes due to TxDOT until paid at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points or other rate specified therefor in this Agreement. Developer shall owe any such damages that accrue after the occurrence of the Developer Default and the delivery of notice thereof, if any, required by this Agreement regardless of whether the Developer Default is subsequently cured.

17.3.5.2 TxDOT may deduct and offset any Claim amount owing to it, provided such Claim amount has been liquidated through Dispute Resolution Procedures or otherwise, from and against any amounts TxDOT may owe to Developer or any Affiliate, including any payment of the Public Funds Amount; provided that TxDOT shall first draw on all amounts held in respect of the Claim in the TxDOT Claims Account under the Facility Trust Agreement.

17.3.5.3 If the Claim amount is not liquidated, TxDOT shall have the following rights:

(a) TxDOT may elect to exercise its rights pursuant to the Facility Trust Agreement and direct the transfer of funds from the Toll Revenue Account to the TxDOT Claims Account up to the disputed portion of the Claim in accordance with the provisions of the Facility Trust Agreement. Upon liquidation, the disputed portion of the Claim shall be satisfied

first from the amounts held in the TxDOT Claims Account, and then through TxDOT's right of offset with respect to the liquidated Claim amounts.

(b) TxDOT may elect, by written notice to Developer, to require from Developer a letter of credit in any amount TxDOT designates in its notice, up to the lesser of (a) the disputed portion of the Claim less the amount of funds, if any, held in the TxDOT Claims Account for such Claim or (b) the letter of credit cap. For purposes of this clause (b), (i) the "letter of credit cap" shall initially be $20 million, (ii) on January 1 of every year following the Effective Date, the letter of credit cap shall be adjusted by a percentage equal to the percentage increase in the CPI between the CPI for the second to last December before the date of the increase and the CPI for the last December before the date of the increase and (iii) in addition to the adjustment in clause (ii), on the date that is five years prior to the end of the Term, the "letter of credit cap" shall double from the amount immediately prior to such date. Developer shall deliver such letter of credit to TxDOT within 15 days after TxDOT delivers such notice to Developer. If a Developer Default occurs because Developer for any reason does not deliver such letter of credit as and when required and fails to cure such Developer Default within the cure period therefor, TxDOT shall have the right, without further notice or demand, and in addition to any other remedies, to deliver a certificate to Developer and the trustee under the Facility Trust Agreement stating that Developer has failed to deliver the letter of credit on the terms and within the time required hereunder, in which case daily transfers of funds from the Toll Revenue Account to the TxDOT Claims Account shall be as provided in Section 2.05(b)(ii) of the Facility Trust Agreement. TxDOT shall have the right to draw on such letter of credit as provided in Section 16.3.1.2, except that draw under Section 16.3.1.2(a) shall be conditioned upon liquidation of the disputed Claim through Dispute Resolution Procedures or otherwise and failure of Developer to pay the Claim, together with interest thereon, within 30 days after final determination of the Claim. In the event the amount of the disputed Claim as finally determined, through Dispute Resolution Procedures or otherwise, is less than the amount of the letter of credit, TxDOT shall reimburse Developer for a portion of the fees charged for the letter of credit in the same ratio that the face amount of the letter of credit in excess of the finally determined amount of the Claim bears to the full face amount of the letter of credit. Reimbursement shall be due 30 days after TxDOT receives from Developer documentation of the letter of credit fees Developer has paid. If TxDOT receives such documentation by not later than 14 days before it draws on the letter of credit, TxDOT shall reduce its draw on the letter of credit by the portion of the fees to be reimbursed, in satisfaction of its obligation to reimburse.

17.3.6 Remedial Plan Delivery and Implementation

17.3.6.1 Upon the occurrence of a Persistent Developer Default, Developer shall, within 45 days after written notice of the Persistent Developer Default, be required to prepare and submit a remedial plan for TxDOT approval. The remedial plan shall set forth a schedule and specific actions to be taken by Developer to improve its performance and reduce (a) Developer's cumulative number of Noncompliance Points assessed under Section 18.3 and cumulative number of breaches and failures to perform to the point that such Persistent Developer Default will not continue and (b) the cumulative number of Uncured Noncompliance Points outstanding by at least 50%. Such actions may include improvements to Developer's quality management practices, plans and procedures, revising and restating components of the Management Plans, changes in organizational and management structure, increased monitoring and inspections, changes in Key Personnel and other important personnel, replacement of Contractors, and delivery of security to TxDOT.

17.3.6.2 If Developer (a) complies in all material respects with the schedule and specific elements of, and actions required under, the approved remedial plan, (b) as a

result thereof achieves the requirements set forth in Sections 17.3.6.1(a) and (b), and (c) as of the date it achieves such requirements there exist no other uncured Developer Defaults for which a Warning Notice was given, then TxDOT shall reduce the number of cured Noncompliance Points that would otherwise then be counted toward Persistent Developer Default by 25%. Such reduction shall be taken from the earliest assessed Noncompliance Points that would otherwise then be counted toward Persistent Developer Default.

17.3.6.3 Developer's failure to deliver to TxDOT the required remedial plan within such 45 day period shall constitute a material Developer Default, which may result in issuance of a Warning Notice triggering a five-day cure period. Failure to comply in any material respect with the schedule or specific elements of, or actions required under, the remedial plan shall constitute a material Developer Default which may result in issuance of a Warning Notice triggering a 30-day cure period. Developer's failure to cure the Developer Default within the applicable cure period after the Warning Notice may trigger a Default Termination Event under Article 19.

17.3.7 Performance Security

Upon the occurrence of a Developer Default and expiration, without full and complete cure, of the applicable cure period, if any, under Section 17.1.2, without necessity for a Warning Notice, and without waiving or releasing Developer from any obligations, and subject to Section 16.2.5 if applicable, TxDOT shall be entitled to make demand upon and enforce any bond, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security available to TxDOT under this Agreement with respect to the Developer Default in question in any order in TxDOT's sole discretion. Where access to a bond, letter of credit or other payment or performance security is to satisfy damages owing, TxDOT shall be entitled to make demand, draw, enforce and collect regardless of whether the Developer Default is subsequently cured. TxDOT will apply the proceeds of any such action to the satisfaction of Developer's obligations under this Agreement, including payment of amounts due TxDOT. The foregoing does not limit or affect any other right of TxDOT to make demand upon and enforce any bond, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security, immediately after TxDOT is entitled to do so under the bond, letter of credit, guaranty or other payment or performance security.

17.3.8 Suspension of Work

17.3.8.1 Upon TxDOT's delivery of notice of Developer Default for any of the following breaches or failures to perform and Developer's failure to fully cure and correct, within the applicable cure period, if any, available to Developer under Section 17.1.2, TxDOT shall have the right and authority to suspend any affected portion of the Work by written order to Developer:

(a) Performance of Nonconforming Work;

(b) Failure to comply with any Law or Governmental Approval (including failure to handle, preserve and protect archeological, paleontological or historic resources, or failure to handle Hazardous Materials, in accordance with applicable Laws and Governmental Approvals);

(c) Certain failures to remove and replace personnel as set forth in Section 10.6.3;

(d) Failure to provide proof of required insurance coverage as set forth in Section 16.1.2.4(c);

(e) Failure to carry out and comply with Directive Letters;

(f) Failure to satisfy any condition to commencement of construction set forth in Section 7.6.1; and.

(g) Failure to maintain, extend or replace any P&P Letter of Credit, unless a drawing has been made under the P&P Letter of Credit in the amount of the required coverage provided for in Section 16.2 and the proceeds of such drawing are either held by TxDOT or deposited by the Collateral Agent into a cash collateral account for the benefit of the Collateral Agent and TxDOT as required under Section 16.2.2.3(c).

TxDOT will lift the suspension order promptly after Developer fully cures and corrects the applicable breach or failure to perform.

17.3.8.2 In addition, TxDOT shall have the right and authority to suspend any affected portion of the Work by written notice to Developer for the following reasons:

(a) To comply with any court order or judgment (although it may qualify as a Compensation Event under clause (k) of the definition of "Compensation Event" or a Relief Event under clause (n) of the definition of "Relief Event");

(b) TxDOT's performance of data recovery respecting archeological, paleontological or cultural resources (although it may qualify as a Relief Event under clause (j) of the definition of "Relief Event");

(c) The existence of conditions unsafe for workers, other Facility personnel or the general public, including certain failures to comply with Safety Standards or perform Safety Compliance as set forth in Section 17.3.3.5; or

(d) Developer has failed to (i) pay in full when due sums owing any Contractor for services, materials or equipment, except only for retainage provided in the relevant Contract and amounts in dispute, or (ii) deliver any certificate, release, certified payroll or affidavit of wages paid required with any Payment Request or required under Section 16.2.6.2.

17.3.8.3 Developer shall promptly comply with any such written suspension order, even if Developer disputes the grounds for suspension. Developer shall promptly recommence the Work upon receipt of written notice from TxDOT directing Developer to resume work.

17.3.8.4 In addition to the protections from liability under Section 17.3.3.5, TxDOT shall have no liability to Developer, and Developer shall have no right to a Relief Event, Extended Relief Event or Compensation Event, in connection with any suspension properly founded on any of the other grounds set forth in this Section 17.3.8 (except potential Relief Events, Extended Relief Events or Compensation Events in the case of suspensions under Sections 17.3.8.2(a) and (b)). If TxDOT orders suspension of Work on one of the foregoing grounds but it is finally determined under the Dispute Resolution Procedures that such grounds did not exist, or if TxDOT orders suspension of Work for any other reason, it shall be treated as a Directive Letter for a TxDOT Change, except as provided in Section 17.3.3.5.

17.3.9 Other Rights and Remedies

Subject to Sections 17.3.11, 17.4.7.2 and 19.9, TxDOT shall also be entitled to exercise any other rights and remedies available under this Agreement or the Lease, or available at law or in equity.

17.3.10 Cumulative, Non-Exclusive Remedies

Subject to Sections 17.3.11, 17.4.7.2 and 19.9, and subject to the stipulated remedial measures for the breaches and failures to perform for which Noncompliance Points may be assessed, each right and remedy of TxDOT hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at Law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by TxDOT of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by TxDOT of any or all other such rights or remedies.

17.3.11 Limitation on Consequential Damages

17.3.11.1 Notwithstanding any other provision of the CDA Documents and except as set forth in Section 17.3.11.2, to the extent permitted by applicable Law, Developer shall not be liable for punitive damages or special, indirect or incidental consequential damages, whether arising out of breach of this Agreement or the Lease, tort (including negligence) or any other theory of liability, and TxDOT releases Developer from any such liability.

17.3.11.2 The foregoing limitation on Developer's liability for consequential damages shall not apply to or limit any right of recovery TxDOT may have respecting the following:

(a) Losses (including defense costs) to the extent (i) covered by the proceeds of insurance required to be carried pursuant to Section 16.1, (ii) covered by the proceeds of insurance actually carried by or insuring Developer under policies solely with respect to the Facility and the Work, regardless of whether required to be carried pursuant to Section 16.1, or (iii) Developer is deemed to have self-insured the Loss pursuant to Section 16.1.4.3;

(b) Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional Developer Default), recklessness, bad faith or gross negligence on the part of any Developer-Related Entity (other than NTTA);

(c) Developer's indemnities set forth in Sections 7.9.5 and 16.5 or elsewhere in the CDA Documents;

(d) Developer's obligation to pay liquidated damages in accordance with Section 17.4 or any other provision of the CDA Documents;

(e) Losses arising out of Developer Releases of Hazardous Materials;

(f) Developer's obligation to pay compensation to TxDOT as provided in Section 5.1 and Part A of Exhibit 7 (except any such compensation attributable to any period after the Early Termination Date);

(g) Amounts Developer may owe or be obligated to reimburse to TxDOT under the express provisions of the CDA Documents, including TxDOT's Recoverable Costs;

(h) Interest, late charges, fees, transaction fees and charges, penalties and similar charges that the CDA Documents expressly state are due from Developer to TxDOT; and

(i) Any credits, deductions or offsets that the CDA Documents expressly provide to TxDOT against amounts owing Developer.

17.4 Liquidated Damages

17.4.1 Liquidated Damages for Delayed Service Commencement or Final Acceptance

17.4.1.1 Developer shall be liable for and pay to TxDOT liquidated damages with respect to any failure to achieve Service Commencement for either Facility Segment by the Service Commencement Deadline, or any failure to achieve Final Acceptance by the Final Acceptance Deadline, as the same may be extended pursuant to this Agreement. Such liability shall apply even though (a) a cure period remains available to Developer or any Lender under Section 17.1.2.5 or 20.4 or (b) cure occurs. The amounts of such liquidated damages are set forth in Exhibit 18. Such liquidated damages shall commence on the Service Commencement Deadline or the Final Acceptance Deadline, as applicable, as the same may be extended pursuant to this Agreement, and shall continue to accrue until the date of Service Commencement for the Facility Segment or the date of Final Acceptance, as applicable, or until termination of this Agreement, except that no such liquidated damages shall accrue during the period a Lender has extended the Long Stop Date in accordance with Section 20.4.9.Such liquidated damages shall constitute TxDOT's sole right to damages for such delay.

17.4.1.2 Developer acknowledges that such liquidated damages are reasonable in order to compensate TxDOT for damages it will incur as a result of late Service Commencement for either Facility Segment or late Final Acceptance. Such damages include loss of potential revenue payment for TxDOT due to late Service Commencement for either Facility Segment, loss of use, enjoyment and benefit of the Facility and connecting TxDOT transportation facilities by the general public, injury to the credibility and reputation of TxDOT's transportation improvement program with policy makers and with the general public who depend on and expect availability of service by the Service Commencement Deadline, which injury to credibility and reputation may directly result in loss of ridership on the Facility and connecting TxDOT transportation facilities and further loss of TxDOT's revenue payment under this Agreement and/or toll revenues on such connecting facilities, and additional costs of administering this Agreement (including engineering, legal, accounting, overhead and other administrative costs). Developer further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Facility and the unavailability of a substitute for it.

17.4.2 Liquidated Damages Respecting Noncompliance Points

17.4.2.1 Developer shall be liable for and pay to TxDOT liquidated damages for each Noncompliance Point assessed against Developer in the amount set forth in Exhibit 18.

17.4.2.2 In addition, Developer shall be liable for and pay to TxDOT liquidated damages with respect to accumulation of assessed Uncured Noncompliance Points. The trigger points for commencement of such liquidated damages and the measure of such liquidated damages shall be as set forth in Exhibit 18. Such liquidated damages shall continue to accrue until (a) Developer reduces the number of Uncured Noncompliance Points by 25%, (b) the number of Uncured Noncompliance Points is reduced below the trigger points and (c) Developer cures all Developer Defaults that are the subject of Warning Notices.

17.4.2.3 Developer acknowledges that such liquidated damages are reasonable in order to compensate TxDOT (a) for its increased costs of administering this Agreement, for its potential loss of revenue payment, and for potential harm to the credibility and reputation of TxDOT's transportation improvement program, including the CDA program, with policy makers and with the general public, and (b) for potential harm and detriment to Users, by reason of the matters that result in accumulated Uncured Noncompliance Points. TxDOT's increased costs include the increased costs of monitoring and oversight under Section 18.5, and could also include obligations to pay or reimburse Governmental Entities with regulatory jurisdiction over the Facility for their increased costs of monitoring and enforcing Developer compliance with applicable Governmental Approvals. Detriment to the public may include additional wear and tear on vehicles and increased costs of congestion, travel time and accidents. In addition, the events and circumstances that result in the trigger of these liquidated damages are likely to reduce the quality of the Facility so as to adversely affect the experience of Users and their desire to continue using the Facility and connecting TxDOT transportation facilities. This loss of patronage and demand in turn will cause loss of Toll Revenues or suppress the ability to increase Toll Revenues, to the detriment of TxDOT's potential revenue payment, and loss of toll revenues from connecting TxDOT transportation facilities. Developer further acknowledges that such increased costs and loss of revenue payment, and harm and detriment to Users, would be difficult and impracticable to measure and prove, because, among other things, the costs of monitoring and oversight prior to increases in the level thereof will be variable and extremely difficult to quantify; the nature and level of increased monitoring and oversight will be variable depending on the circumstances; and the variety of factors that influence use of and demand for the Facility make it difficult to sort out causation and quantify the precise Toll Revenue loss attributable to the matters that will trigger these liquidated damages.

17.4.2.4 For the avoidance of doubt, the liquidated damages provided for under this Section 17.4.2 are not intended to compensate TxDOT, or liquidate Developer's liabilities, for any other costs or damages, including costs of repair, renewal or replacement, costs to correct Nonconforming Work or failure to meet Safety Standards, costs of Safety Compliance work, damages related to failure to establish or fund the Handback Requirements Reserve, or Third Party Claims.

17.4.3 Liquidated Damages Respecting Lane Rental Charges

17.4.3.1 Developer shall be liable for and pay to TxDOT liquidated damages for Lane Rental Charges assessed against Developer in the amounts set forth in Exhibit 18.

17.4.3.2 Developer acknowledges that such liquidated damages are reasonable in order to compensate TxDOT for damages it will incur by reason of the matters that result in Lane Rental Charges. Such damages include loss of potential revenue payment for TxDOT, loss of use, enjoyment and benefit of the Facility and connecting TxDOT transportation facilities by the general public, injury to the credibility and reputation of TxDOT's transportation improvement program with policy makers and with the general public who depend on and expect availability of service, which injury to credibility and reputation may

directly result in loss of ridership on the Facility and connecting TxDOT transportation facilities and further loss of TxDOT's revenue payment under this Agreement and/or toll revenues on such connecting facilities, and additional costs of administering this Agreement (including engineering, legal, accounting, overhead and other administrative costs). Developer further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Facility and the unavailability of a substitute for it.

17.4.4 Liquidated Damages for Failure to Achieve Financial Close

17.4.4.1 Developer shall be liable for and pay to TxDOT liquidated damages if (a) Developer for any reason fails to timely satisfy its financing obligations under Section 4.1.4, (b) Developer's failure is not excused in accordance with Sections 4.1.4.3(a) through (e) and (c) as a result thereof TxDOT terminates this Agreement and the Lease pursuant to Section 19.3.4. The amount of such liquidated damages shall equal $75,000,000. Such liquidated damages shall constitute TxDOT's sole right to damages on account of such failure.

17.4.4.2 If Developer has not entered into the Initial Funding Agreements and Initial Security Documents on or before the Effective Date, then concurrently with execution of this Agreement, Developer shall deliver, or has delivered, to TxDOT the Financial Option Security in the cumulative original amount of $75,000,000. TxDOT shall be entitled to collect the liquidated damages owing under this Section 17.4.4 through a draw on the Financial Option Security or a forfeiture of the Financial Option Security, as applicable, as and when such liquidated damages are payable pursuant to Section 17.4.4.1 without prior notice to or demand upon Developer for such liquidated damages.

17.4.4.3 Developer acknowledges that the time period TxDOT has provided to Developer to close the Initial Facility Debt is ample and reasonable, and that such liquidated damages are reasonable in order to compensate TxDOT for damages it will incur as a result of the lost opportunity to TxDOT represented by the CDA Documents. Such damages include the harm from the difficulty, and substantial additional expense, to TxDOT, to procure and deliver, operate and maintain the Facility through other means, loss of or substantial delay in use, enjoyment and benefit of the Facility by the general public, and injury to the credibility and reputation of TxDOT's transportation improvement program, with policy makers and with the general public who depend on and expect availability of service. Developer further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Facility and the unavailability of a substitute for it.

17.4.5 Acknowledgements Regarding Liquidated Damages

Developer further agrees and acknowledges that:

17.4.5.1 In the event that Developer fails to achieve Service Commencement for either Facility Segment by the Service Commencement Deadline or Final Acceptance by the Final Acceptance Deadline, commits breaches and failures resulting in Noncompliance Points or Lane Rental Charges, or fails to satisfy its financing obligations under Section 4.1.4, TxDOT will incur substantial damages;

17.4.5.2 Such damages are incapable of accurate measurement and difficult to prove for the reasons stated in Sections 17.4.1.2, 17.4.2.3, 17.4.3.2, and 17.4.4.3;

17.4.5.3 As of the Effective Date, the amounts of liquidated damages under Sections 17.4.1, 17.4.2, 17.4.3, and 17.4.4 represent good faith estimates and evaluations by

the Parties as to the actual potential damages that TxDOT would incur as a result of late Service Commencement for either Facility Segment or late Final Acceptance, or breaches and failures resulting in Noncompliance Points or Lane Rental Charges or failure to finance, and do not constitute a penalty;

17.4.5.4 The Parties have agreed to such liquidated damages in order to fix and limit Developer's costs and to avoid later Disputes over what amounts of damages are properly chargeable to Developer;

17.4.5.5 Such sums are reasonable in light of the anticipated or actual harm caused by delayed Service Commencement for either Facility Segment or delayed Final Acceptance, breaches and failures resulting in Noncompliance Points or Lane Rental Charges, or failure to finance, the difficulties of the proof of loss, and the inconvenience or infeasibility of otherwise obtaining an adequate remedy; and

17.4.5.6 Such liquidated damages are not intended to, and do not, liquidate Developer's liability under the indemnification provisions of Section 16.5, even though third party claims against Indemnified Parties may arise out of the same event, breach or failure that gives rise to such liquidated damages.

17.4.6 Payment; Satisfaction; Waiver

17.4.6.1 Developer shall pay any liquidated damages owing under this Section 17.4 within 20 days after TxDOT delivers to Developer TxDOT's invoice or demand therefor, such invoice or demand to be issued not more often than monthly. Liquidated damages shall be due and payable to TxDOT without right of offset, deduction, reduction or other charge, except as provided in Section 17.6.3.

17.4.6.2 TxDOT shall return to Developer any amounts received as liquidated damages on account of the assessment of a Noncompliance Point if the Noncompliance Point is subsequently cancelled pursuant to Section 18.4.5.

17.4.6.3 TxDOT shall have the right to deduct and offset liquidated damages from any amounts owing Developer to the extent provided in Section 17.3.5. TxDOT also shall have the right to draw on any bond, certificate of deposit, letter of credit or other security provided by Developer pursuant to this Agreement, except any Handback Requirements Letter of Credit, to satisfy liquidated damages not paid when due.

17.4.6.4 Permitting or requiring Developer to continue and finish the Work or any part thereof after the Service Commencement Deadline or Final Acceptance Deadline shall not act as a waiver of TxDOT's right to receive liquidated damages hereunder or any rights or remedies otherwise available to TxDOT.

17.4.7 Non-Exclusive Remedy

17.4.7.1 Each item of liquidated damages provided under this Section 17.4 is in addition to, and not in substitution for, any other item of liquidated damages assessed under this Section 17.4.

17.4.7.2 TxDOT's right to, and imposition of, liquidated damages are in addition, and without prejudice, to any other rights and remedies available to TxDOT under this Agreement, at law or in equity respecting the breach, failure to perform or Developer Default that is the basis for the liquidated damages or any other breach, failure to perform or Developer

Default, except for recovery of the monetary damage that the liquidated damages are intended to compensate.

17.5 Default by TxDOT; Cure Periods

17.5.1 TxDOT Default

TxDOT shall be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions (each a "TxDOT Default"):

17.5.1.1 TxDOT fails to make any payment due Developer under this Agreement when due or TxDOT fails to make any payment due Developer under the TxDOT Tolling Services Agreement (if any) when due;

17.5.1.2 Any representation or warranty made by TxDOT in this Agreement is false or materially misleading or materially inaccurate when made or omits material information when made;

17.5.1.3 TxDOT fails to commence provision of customer service and other toll collection and enforcement services for Developer in accordance with Section 8.7.5 or 8.7.6;

17.5.1.4 TxDOT fails to observe or perform any other covenant, agreement, term or condition required to be observed or performed by TxDOT under this Agreement;

17.5.1.5 An event of default by TxDOT occurs under the Lease; or

17.5.1.6 TxDOT confiscates or appropriates the Facility or any other material part of the Developer's Interest, excluding a Termination for Convenience or any other exercise of a right of termination set forth in this Agreement.

17.5.2 Cure Periods

TxDOT shall have the following cure periods with respect to the following TxDOT Defaults:

17.5.2.1 Respecting a TxDOT Default under Section 17.5.1.1 or 17.5.1.6, a period of 30 days after Developer delivers to TxDOT written notice of the TxDOT Default; and

17.5.2.2 Respecting a TxDOT Default under Section 17.5.1.2, 17.5.1.4, or 17.5.1.5, a period of 60 days after Developer delivers to TxDOT written notice of the TxDOT Default; provided that (a) if the TxDOT Default is of such a nature that the cure cannot with diligence be completed within such time period and TxDOT has commenced meaningful steps to cure immediately after receiving the default notice, TxDOT shall have such additional period of time, up to a maximum cure period of 180 days, as is reasonably necessary to diligently effect cure, and (b) as to Section 17.5.1.2, cure will be regarded as complete when the adverse effects of the breach are cured.

17.5.2.3 Respecting a TxDOT Default under Section 17.5.1.3, no cure period.

17.6 Developer Remedies for TxDOT Default

17.6.1 Termination

Subject to Section 19.9, Developer will have the right to terminate this Agreement and the Lease and recover termination damages as more particularly set forth in, and subject to the terms and conditions of, Section 19.4.

17.6.2 Damages and Other Remedies

Developer shall have and may exercise the following remedies upon the occurrence of a TxDOT Default and expiration, without cure, of the applicable cure period:

17.6.2.1 If Developer does not terminate this Agreement, then, subject to Section 17.6.4, Developer may treat the TxDOT Default as a Compensation Event on the terms and conditions set forth in Section 13.2 and TxDOT shall pay the full Compensation Amount and interest in accordance with Sections 13.2.8 and 13.2.9;

17.6.2.2 If the TxDOT Default is a failure to pay when due any undisputed portion of a progress payment owing under a Change Order and TxDOT fails to cure such TxDOT Default within 30 days after receiving from Developer written notice thereof, Developer shall be entitled to suspend the Work under the Change Order until the default is cured; and

17.6.2.3 Subject to Sections 17.6.4 and 19.9, Developer also shall be entitled to exercise any other remedies available under this Agreement or the Lease or at Law or in equity, including offset rights to the extent and only to the extent available under Section 17.6.3. Subject to Sections 17.6.4 and 19.9, each right and remedy of Developer hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at Law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Developer of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by Developer of any or all other such rights or remedies.

17.6.3 Offset Rights

Developer may deduct and offset any Claim amount owing to it, provided such Claim amount has been liquidated through Dispute Resolution Procedures or otherwise, from and against any amounts Developer may owe to TxDOT. If the Claim amount is not liquidated, Developer may elect to exercise its rights pursuant to the Facility Trust and Security Instruments and direct the transfer of Revenue Payment Amounts from the Toll Revenue Account to the Developer Claims Account up to the amount of the disputed portion of the Claim, in accordance with the provisions of the Facility Trust Agreement. Upon liquidation, the disputed portion of the Claim may be satisfied first from the amounts held in the Developer Claims Account, and then through Developer's offset right with respect to liquidated Claim amounts.

17.6.4 Limitations on Remedies

17.6.4.1 Notwithstanding any other provision of the CDA Documents and except as forth in Section 17.6.4.2, to the extent permitted by applicable Law, TxDOT shall not be liable for punitive damages or any indirect, incidental or consequential damages, whether arising out of breach of this Agreement or the Lease, tort (including negligence) or any other theory of liability, and Developer releases TxDOT from any such liability.

17.6.4.2 The foregoing limitation on TxDOT's liability for consequential damages shall not apply to or limit any right of recovery Developer may have respecting the following:

(a) Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional TxDOT Default), recklessness, bad faith or gross negligence on the part of TxDOT;

(b) TxDOT's indemnities set forth in Section 7.9.5.4;

(c) Losses arising out of releases of Hazardous Materials caused by TxDOT;

(d) Any amounts TxDOT may owe or be obligated to reimburse under the express provisions of this Agreement for Compensation Events or events of termination;

(e) Any other specified amounts TxDOT may owe or be obligated to reimburse to Developer under the express provisions of the CDA Documents;

(f) Interest and charges that the CDA Documents expressly state are due from TxDOT to Developer; and

(g) Any credits, deductions or offsets that the CDA Documents expressly provide to Developer against amounts owing TxDOT.

17.6.4.3 The measure of compensation available to Developer as set forth in this Agreement for a Compensation Event or an event of termination shall constitute the sole and exclusive monetary relief and damages available to Developer from the State or TxDOT arising out of or relating to such event; and Developer irrevocably waives and releases any right to any other or additional damages or compensation from the State or TxDOT. No award of compensation or damages shall be duplicative.

17.6.4.4 Developer shall have no right to seek, and irrevocably waives and relinquishes any right to, non-monetary relief against TxDOT, except (a) for any sustainable action in mandamus, (b) for any sustainable action to stop, restrain or enjoin use, reproduction, duplication, modification, adaptation or disclosure of Proprietary Intellectual Property in violation of the licenses granted under Section 22.4, or to specifically enforce TxDOT's duty of confidentiality under Section 22.4.6, (c) for declaratory relief pursuant to the Dispute Resolution Procedures declaring the rights and obligations of the Parties under the CDA Documents, or (d) declaratory relief pursuant to the Dispute Resolution Procedures declaring specific terms and conditions that shall bind the Parties, but only where this Agreement expressly calls for such a method of resolving a Dispute.

17.6.4.5 Without limiting the effect of Section 17.6.4.3, in the event TxDOT wrongfully withholds an approval or consent required under this Agreement, or wrongfully issues an objection to or disapproval of a Submittal or other matter under this Agreement, Developer's sole remedies against TxDOT shall be extensions of time to the extent provided in Section 13.1 for a Relief Event and damages to the extent provided in Section 13.2 for a Compensation Event.

17.6.5 Procedure for Payment of Judgments

Promptly after any final, non-appealable order or judgment awarding compensation or damages to Developer, TxDOT shall institute payment procedures as set forth in applicable Law and use best efforts to obtain from the Legislature an appropriation for the full amount due. TxDOT shall not hinder or oppose Developer's own efforts to obtain an appropriation for the full amount due.

17.7 Partnering

17.7.1 The provisions of this Section 17.7 are not part of the Informal Resolution Procedures or the Dispute Resolution Procedures contemplated under this Agreement, Transportation Code, Section 201.112 or 223.208 or the Commercial Rules established thereunder. Compliance with the provisions of this Section 17.7 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 Issue under the relevant procedures specified in Section 17.8.

17.7.2 TxDOT and Developer have developed and intend to continue fostering a cohesive relationship to carry out their respective responsibilities under this Agreement through a voluntary, non-binding "partnering" process drawing upon the strengths of each organization to identify and achieve reciprocal goals.

17.7.3 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 CDA Documents, and (d) to create mutual trust and respect for each Party's respective roles and interests in the Facility while recognizing the respective risks inherent in those roles.

17.7.4 In continuance of their existing partnering process, within 90 days after the Effective Date TxDOT and Developer shall attend a team building workshop and through such workshop negotiate and sign a mutually acceptable non-binding partnering charter to govern the process of partnering for the Facility. The charter shall include non-binding rules and guidelines for engaging in free and open communications, discussions and partnering meetings between them, in order to further the goals of the partnering process. The charter shall call for the formation and meetings of a partnering panel, identify the Key Personnel of Developer and key representatives of TxDOT who shall serve on the partnering panel, and set the location for meetings. The charter also shall include non-binding rules and guidelines on whether and under what circumstances to select and use the services of a facilitator, where and when to conduct partnering panel meetings, who should attend such meetings, and, subject to Section 17.8.9, exchange of statements, materials and communications during partnering panel meetings. In any event, the partnering charter shall recognize and be consistent with the obligations of TxDOT and Developer contained in this Agreement with respect to communications, cooperation, coordination and procedures for resolving Claims and Disputes.

17.7.5 Under the non-binding procedures, rules and guidelines of the partnering charter, the Parties will address at partnering meetings specific interface issues, oversight interface issues, division of responsibilities, communication channels, application of alternative resolution principles and other matters.

17.7.6 If Developer and TxDOT succeed in resolving a Claim or Dispute through the partnering procedures, they shall memorialize the resolution in writing, including execution of

Change Orders as appropriate, and promptly perform their respective obligations in accordance therewith.

17.8 Dispute Resolution Procedures

17.8.1 General Provisions

17.8.1.1 Disputes Governed by These Procedures

(a) If partnering fails to resolve an issue and Developer elects to pursue a formal Claim or Dispute with TxDOT, the Claim or Dispute shall be resolved pursuant to Transportation Code, Section 201.112, the TxDOT contract claims rules (43 Texas Administrative Code Part 1) and the Dispute Resolution Procedures established thereunder, as the same may be amended from time to time. The Dispute Resolution Procedures are set forth in this Section 17.8. The Parties agree that the Dispute Resolution Procedures constitute contract claim procedures authorized and governed by Title 43, Texas Administrative Code, Section 9.6, and that the CDA Documents shall not be subject to the contract claim procedures set forth in Title 43, Texas Administrative Code, Section 9.2.

(b) All Disputes arising under the CDA Documents shall be resolved exclusively pursuant to the Informal Resolution Procedures described in Section 17.8.3 and, if not resolved thereby, the remaining Dispute Resolution Procedures, except any matter identified in Section 17.8.1.5.

(c) Any disagreement between the Parties as to whether the Dispute Resolution Procedures apply to a particular Dispute under the CDA Documents, and any disagreement as to whether there has been an adverse Change in Law as described in Section 17.8.1.3 or whether particular procedures apply to a Dispute shall be treated as a Dispute for resolution in accordance with this Section 17.8.

(d) Resolutions of Claims and Disputes pursuant to this Section 17.8 shall be final, binding, conclusive and enforceable.

17.8.1.2 Jurisdiction of Travis County, Texas District Courts

(a) None of the Dispute Resolution Procedures established by this Section 17.8 shall be enforced or interpreted in a way that curtails Developer's right to seek mandamus relief in Travis County, Texas district court pursuant to Transportation Code, Section 223.208(e) or that curtails Developer's right to seek mandamus relief from the Supreme Court of Texas pursuant to Texas Government Code, Section 22.002 in accordance with Section 17.8.5.3(e).

(b) TxDOT may invoke the jurisdiction of the district courts of Travis County, Texas to petition for equitable relief against Developer, including temporary restraining orders, injunctions, other interim or final declaratory relief or the appointment of a receiver, to the extent allowed by Law.

17.8.1.3 Adverse Change in Law Governing Dispute Resolution Procedures

TxDOT and Developer agree that (a) their procedural rights and remedies under this Section 17.8 are material, substantive, vested contract rights and (b) any change in the Code or the Texas Administrative Code, or the enactment or amendment of any other Law,

after the Proposal Due Date that would have a material adverse effect on TxDOT's or Developer's procedural rights or remedies under this Section 17.8 shall constitute a retroactive application of Law impairing vested contract rights and would be unconstitutional under Article I, Section 16, of the Texas Constitution. Therefore, such change shall not be given effect or be applicable to the CDA Documents. If, however, such a Change in Law renders it impossible to effectuate the Dispute Resolution Procedures, then the provisions of Section 24.14 will apply; provided that for the purpose of seeking an interpretation or reformation under Section 24.14.3, either Party can refer such question to the Disputes Board or the appropriate court, if any, that declared any portion of the CDA Documents invalid. This provision shall prevail over any contrary provision of the CDA Documents.

17.8.1.4 Change in Law Authorizing Binding Arbitration

(a) If there is any Change in Law that authorizes TxDOT to enter into binding arbitration to resolve Disputes, the Parties may mutually agree in writing to adopt that procedure as a substitute for the Dispute Resolution Procedures set forth in this Section 17.8.

(b) If the Parties do not attain the mutual agreement described in clause (a) above, then Disputes arising under the CDA Documents shall continue to be resolved in accordance with the procedures set forth in this Section 17.8.

17.8.1.5 Matters Ineligible for Dispute Resolution Procedures

The Dispute Resolution Procedures and the authority of the Disputes Board shall not apply to the following, provided that with respect to clauses (c), (d), (i) and (j) below, the Party bringing the Claim or Dispute may elect, at its option, to invoke the Informal Resolution Procedures prior to taking other action:

(a) Any matters that the CDA Documents expressly state are final, binding or not subject to dispute resolution;

(b) Any claim or dispute that does not arise under the CDA Documents;

(c) Any equitable relief sought in Travis County, Texas district court that TxDOT is permitted to bring against Developer under Section 17.8.1.2;

(d) Any Claim or Dispute arising solely in tort;

(e) Any claim to interplead a Party into an action brought by a third Person against the other Party or by the other Party against a third Person;

(f) Claims and Disputes that are not actionable against TxDOT by Developer on its own behalf;

(g) Any claim by a Contractor, including any such claim against Developer that gives rise to an independent but related claim by Developer against TxDOT (but the Dispute Resolution Procedures will apply to any such independent related claim by Developer against TxDOT);

(h) Any claims or disputes against insurance companies;

(i) Any Claims and Disputes based on remedies expressly created by statute; and

(j) Any mandamus action that Developer is permitted to bring against TxDOT under Section 17.8.1.2.

17.8.1.6 Burden of Proof

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

17.8.2 Informal Resolution As Condition Precedent

The claiming Party must first attempt to resolve the Dispute directly with the responding Party through the Informal Resolution Procedures described in Section 17.8.3, as a condition precedent to the right to have any Dispute (other than those set forth in Section 17.8.1.5) resolved pursuant to the remaining Dispute Resolution Procedures. 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.

17.8.3 Informal Resolution Procedures

17.8.3.1 Notice of Dispute to Designated Agent

(a) A Party desiring to pursue a Dispute against the other Party shall initiate the informal resolution procedures by serving a written notice on the other Party's designated agent. Unless otherwise indicated by written notice from one Party to the other Party, each Party's designated agent shall be its Authorized Representative. The notice shall contain a concise statement describing:

(i) If the Parties have mutually agreed that the Dispute is a Fast-Track Dispute;

(ii) The date of the act, inaction or omission giving rise to the Dispute;

(iii) An explanation of the Dispute, including a description of its nature, circumstances and cause;

(iv) A reference to any pertinent provision(s) from the CDA Documents;

(v) 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);

(vi) If applicable, an analysis of the Facility Schedule and Milestone Schedule Deadlines showing any changes or disruptions (including an impacted delay analysis reflecting the disruption in the manner and sequence of performance that has

been or will be caused, delivery schedules, staging, and adjusted Milestone Schedule Deadlines);

(vii) If applicable, the claiming Party's plan for mitigating the amount claimed and the delay claimed;

(viii) The claiming Party's desired resolution of the Dispute; and

(ix) Any other information the claiming Party considers relevant.

(b) The notice shall be signed by the Authorized Representative of the claiming Party, and shall contain a written certification by the claiming Party that:

(i) The notice of Dispute is served in good faith;

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

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

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

(c) If the responding Party agrees with the claiming Party's position and desired resolution of the Dispute, it shall so state in a written response. The notice of the Dispute and such response shall suffice to evidence the Parties' resolution of the subject Dispute unless either Party requests further documentation. Upon either Party's request, within five Business Days after the claiming Party's receipt of the responding Party's response in agreement, the Parties' designated representatives shall state the resolution of the Dispute in writing.

17.8.3.2 CEO / Executive Director Meetings

If the Dispute is not resolved pursuant to Section 17.8.3.1(c), then commencing within ten Business Days (five Business Days for Fast-Track Disputes) after the notice of Dispute is served and concluding ten Business Days thereafter, the Chief Executive Officer of Developer and the Executive Director or the Executive Director's designate whose rank is not lower than Assistant Executive Director, shall meet and confer, in good faith, to seek to resolve the Dispute raised in the claiming Party's notice of Dispute. If they succeed in resolving the Dispute, Developer and TxDOT shall memorialize the resolution in writing.

17.8.3.3 Failure to Resolve Dispute With Informal Resolution Procedures

(a) If a Dispute is submitted to but not timely resolved under the Informal Resolution Procedures, then the Parties may mutually agree to initiate mediation or other alternative dispute resolution process in accordance with Section 17.8.7.

(b) If a Dispute is submitted to but not timely resolved under the Informal Resolution Procedures or by mediation or other alternative dispute resolution process, or the Parties do not mutually agree to initiate mediation or other alternative dispute resolution process, either Party may:

(i) Refer the Dispute to the Disputes Board for resolution pursuant to Section 17.8.4.2; or

(ii) Pursue any other relief that may be available in a Travis County, Texas district court in accordance with Section 17.8.1.2.

17.8.4 Disputes Board; Finality of Disputes Board Decision

17.8.4.1 Disputes Board Agreement

(a) The Disputes Board Agreement is Exhibit 19. It governs the establishment and membership of the Disputes Board and matters of evidence and procedure that are not otherwise addressed in this Section 17.8.

(b) If the composition of either Party's qualified candidate list for the Disputes Board has not been finalized prior to the Effective Date, that Party shall promptly appoint the members in accordance with the requirements and procedures of the Disputes Board Agreement.

(c) The Disputes Board shall conduct proceedings and, upon completion of its proceedings, issue written findings of fact, written conclusions of law, and a written decision to TxDOT and Developer.

(d) The Disputes Board shall have the authority to resolve any Dispute other than those identified in Section 17.8.1.5.

(e) The Disputes Board shall have no authority to order that one Party compensate the other Party for attorneys' fees and expenses, except for attorneys' fees and expenses payable to TxDOT under Sections 7.4.3, 16.5.1.6 and 22.3.3 and except for defense costs payable pursuant to an indemnity obligation under this Agreement.

(f) If a Disputes Board Decision awards an amount payable by one Party to the other, it is due and payable on the date required for payment in accordance with the CDA Documents. If the date of payment is not specified in the CDA Documents, the payment shall be due ten Business Days after the date the Disputes Board Decision becomes final and binding.

17.8.4.2 Submission of Dispute to Disputes Board

Within 15 days after the end of the CEO / Executive Director meetings described in Section 17.8.3.2 or the end of any mediation conducted pursuant to Sections 17.8.3.3(a) and 17.8.7, whichever is later, either Party may refer a Dispute to the Disputes Board for resolution by serving written notice on the other Party. The notice shall include the same information as a notice of Dispute issued under Section 17.8.3.1(a). Within 15 days (seven days for Fast-Track Disputes) after a Party refers a Dispute to the Disputes Board, the responding Party shall serve a written response upon the claiming Party's designated agent. The response shall be signed by the Authorized Representative of the responding Party, and shall include certifications that (a) the response is served in good faith,

(b) if any supporting information is included in the response, it is reasonably believed by the responding Party to be accurate and complete, except as to specific matters unknown or subject to discovery, and (c) the Authorized Representative is duly authorized to execute and deliver the response and such certification on behalf of the responding Party. Thereafter, the Parties shall proceed under the Disputes Board Agreement to obtain a Disputes Board Decision pursuant to Section 5.5 of the Disputes Board Agreement (Exhibit 19).

17.8.4.3 Failure of Notice to Meet Certification Requirements

If the notice of Dispute fails to meet the certification requirements under Section 17.8.3.1(b), on motion of the responding Party the Disputes Board shall suspend proceedings on the Dispute until a correct and complete written certification is delivered, and shall have the discretionary authority to dismiss the Dispute for lack of a correct certification if it is not delivered within a reasonable time as set by the Disputes Board. Prior to the entry by the Disputes Board of a final decision on a Dispute, the Disputes Board shall require a defective certification to be corrected.

17.8.5 SOAH Administrative Hearings and Final Orders

17.8.5.1 Appeal of Disputes Board Decision

(a) If either Party believes that Grounds for Appeal affected a Disputes Board Decision, then within 20 days after the Disputes Board's issuance to TxDOT and Developer of the subject Disputes Board Decision that Party may request the Executive Director to seek a formal administrative hearing before the State Office of Administrative Hearings ("SOAH") pursuant to Texas Government Code, Chapter 2001, and Transportation Code, Section 201.112. Grounds for Appeal shall be the sole basis for appeal of a Disputes Board Decision. Within ten Business Days of a request for a formal administrative hearing before SOAH, the Executive Director shall refer the matter to SOAH.

(b) If there is not a timely request for a formal administrative hearing before SOAH based on Ground for Appeal, then within ten Business Days after the expiration of the deadline for such a request, the Executive Director shall issue a final order that implements the Disputes Board Decision. If the Executive Director does not issue the final order implementing the Disputes Board Decision within such ten Business Days, the Disputes Board Decision shall become effective as the final order of the Executive Director effective on the next Business Day.

17.8.5.2 SOAH Proceeding and ALJ Proposal for Decision

Upon referral to SOAH of the question of whether Grounds for Appeal affected the Disputes Board Decision, the Administrative Law Judge ("ALJ") shall conduct a hearing in accordance with the SOAH regulations solely on the question of whether Grounds for Appeal affected the subject Disputes Board Decision. The Disputes Board's findings of fact, conclusions of law and Disputes Board decision; any dissenting findings, recommendations or opinions of a minority Disputes Board member; and all submissions to the Disputes Board by the Parties shall be admissible in the SOAH proceeding, along with all other evidence the ALJ determines to be relevant. After timely closing of the record of the SOAH proceeding, the ALJ shall timely issue its written proposal for decision in accordance with SOAH Regulations to the Executive Director and Developer. A Party may file exceptions to the proposal for decision no later than seven days after issuance of the proposal for decision. A Party may file a reply to exceptions no later than 14 days after issuance of the proposal for decision. The ALJ may

comment on the exceptions and replies no later than 21 days after issuance of the proposal for decision.

17.8.5.3 Final Orders of Executive Director

(a) Within 28 days after receipt of the ALJ's proposal for decision the Executive Director shall issue a final order.

(b) If the Executive Director concludes that Grounds for Appeal prejudiced the rights of a party or affected the Disputes Board Decision, the Executive Director shall rule that the Disputes Board Decision is invalid and shall remand the Dispute to the Disputes Board for reconsideration; provided that if the Grounds for Appeal is that the claim, demand, dispute, disagreement or controversy is a matter identified in Section 17.8.1.5 as beyond the Disputes Board's authority, then the Executive Director shall vacate the Disputes Board Decision and dismiss the matter, without remand and without prejudice to the claiming Party's right to pursue the claim, demand, dispute, disagreement or controversy in the proper jurisdiction. If the nature of the Grounds for Appeal was a Disputes Board Member Conflict of Interest or Disputes Board Member Misconduct, then a reconstituted Disputes Board that does not include that Disputes Board member must reconsider the remanded Dispute.

(c) If the Executive Director concludes that Grounds for Appeal did not affect the Disputes Board Decision, the Executive Director shall affirm the Disputes Board Decision and order its implementation.

(d) If the Executive Director fails to issue a final order within the 28-day time period, then on the next Business Day, the proposal for decision is deemed accepted by the Executive Director as the correct decision and becomes the final order in the Dispute. In such event:

(i) If the ALJ determined that Grounds for Appeal prejudiced the rights of a party or affected the Disputes Board Decision, the Disputes Board Decision shall be deemed invalid, and the Dispute shall be remanded to the Disputes Board for reconsideration; provided that if the Grounds for Appeal is that the claim, demand, dispute, disagreement or controversy is a matter identified in Section 17.8.1.5 as beyond the Disputes Board's authority, then the Disputes Board Decision shall be deemed vacated and the matter shall be deemed dismissed, without remand and without prejudice to the claiming Party's right to pursue the claim, demand, dispute, disagreement or controversy in the proper jurisdiction. If the nature of the Grounds for Appeal was a Disputes Board Member Conflict of Interest or Disputes Board Member Misconduct, then a reconstituted Disputes Board that does not include that Disputes Board member must reconsider the remanded Dispute.

(ii) If the ALJ determined that the decision of the Disputes Board was not affected by Grounds for Appeal, the ALJ's proposal for decision shall be deemed adopted and the Disputes Board Decision shall be deemed affirmed by the Executive Director and the Parties shall implement the decision of the Disputes Board.

(e) The Parties agree and acknowledge that the Executive Director's issuance of a final order under this Section 17.8.5.3 is a purely ministerial act. Accordingly, notwithstanding any other provision in this Agreement, Developer shall be entitled to seek mandamus relief pursuant to Texas Government Code, Section 22.002(c), if the Executive Director fails to timely seek an administrative hearing before SOAH under Section 17.8.5.1(a), issue a final order under Section 17.8.5.1(b), or issue a final order under this Section 17.8.5.3.

17.8.6 Judicial Appeal of Final Orders Under Substantial Evidence Rule

17.8.6.1 A final order under Section 17.8.5.3 shall be a final order subject to judicial appeal under Transportation Code, Section 201.112(d).

17.8.6.2 Pursuant to Texas Government Code, Section 2001.144(a)(4), TxDOT and Developer hereby agree that the date of issuance for any final order under Section 17.8.5.3 shall be the actual date of issuance by the Executive Director or the date the ALJ's proposal for decision becomes the final order in the Dispute, so that the filing of a motion for rehearing shall not be a prerequisite for appeal, as provided in Texas Government Code, Section 2001.145(a).

17.8.7 Mediation or Other Alternative Dispute Resolution

Developer and TxDOT, by mutual agreement, may refer a Dispute (as well as any dispute with a Utility Owner relating to any Utility Adjustment) to mediation or other alternative dispute resolution process for resolution. The Parties shall use diligent efforts to convene and conclude mediation proceedings within 30 days after they agree to refer the Dispute to mediation or other alternative dispute resolution process. Developer and TxDOT shall share equally the expenses of the mediation or other alternative dispute resolution process. If any Dispute has been referred to mediation or other alternative dispute resolution process for resolution by mutual agreement of the Parties, but the Dispute is not resolved within the foregoing 30-day period, then either Party shall have the right, on or after the 31st day, to cease participating in such mediation or other alternative dispute resolution process. A Party shall give written notice to the other Party that it will no longer participate. The deadlines in this Section 17.8 for processing a Dispute are tolled, day for day, during mediation or other alternative dispute resolution.

17.8.8 Independent Engineer Evidence

17.8.8.1 The Independent Engineer's written evaluations, opinions, findings, reports, recommendations, objections, decisions, certifications or other determinations shall be treated as part of the record under review, shall be admissible in any proceeding before the Disputes Board or any court and shall be accorded substantial weight by the Disputes Board. No Party shall have any right to unilaterally seek, order or obtain from the Independent Engineer and introduce into evidence any further written evaluations, opinions, reports, recommendations, objections, decisions, certifications or other determinations respecting a Dispute after it is first asserted, whether in support or defense of the Party's position on such Dispute. However, either Party and/or the Disputes Board shall have the right to call the Independent Engineer to give oral or written testimony to explain or clarify the Independent Engineer's written evaluations, opinions, findings, reports, recommendations, objections, decisions, certifications or other determinations.

17.8.8.2 Wherever in this Agreement or the Technical Provisions it is stated that the Independent Engineer's written evaluations, opinions, findings, reports, recommendations, objections, decisions, certifications or other determinations are to be given substantial weight in resolving Disputes, such provision does not preempt or substitute for the exercise of independent judgment by the Disputes Board or court and does not affect each Parties' right to discovery and presentation of other or contradictory evidence, including evidence relevant to the credibility of the Independent Engineer or error, omission, inconsistency, inaccuracy or deficiency by the Independent Engineer in applying the relevant requirements and provisions of the CDA Documents to the matter that is the subject of the Dispute.

17.8.9 Settlement Negotiations Confidential

17.8.9.1 All discussions, negotiations and Informal Resolution Procedures described in Section 17.8.3 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, or Informal Resolution Procedures, shall be considered confidential and not subject to disclosure by either Party.

17.8.9.2 During any Disputes Board, SOAH or judicial proceeding regarding a Dispute, all information that has been deposited in an Intellectual Property Escrow pursuant to Section 22.5 shall be available as evidence but treated as confidential and subject to a protective order issued by the Disputes Board, ALJ or court to protect the information from public disclosure.

17.8.9.3 The Parties may also request a protective order in any Disputes Board, SOAH or judicial proceeding to prohibit the public disclosure of any other information they believe is confidential. Determinations of such requests by the Disputes Board, ALJ or court shall be governed by the standards in the Texas Rules of Evidence and Texas Rules of Civil Procedure.

17.8.10 Venue and Jurisdiction

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 CDA Documents shall be the district courts of Travis County, Texas.

17.8.11 Continuation of Disputed Work

At all times during Dispute Resolution Procedures (including Informal Resolution Procedures), Developer and all Contractors shall continue with the performance of the Work and their obligations, including any disputed Work or obligations, diligently and without delay, in accordance with this Agreement, except to the extent enjoined by order of a court or otherwise approved by TxDOT in its sole discretion. Developer acknowledges that it shall be solely responsible for the results of any delaying actions or inactions taken during the pendency of resolution of a Dispute relating to the Work under the Dispute Resolution Procedures even if Developer's position in connection with the Dispute ultimately prevails. In addition, during the pendency of resolution of a Dispute relating to the Work under the Dispute Resolution Procedures, the Parties shall continue to comply with all provisions of the CDA Documents, the Facility Management Plan, the Governmental Approvals and applicable Law. Throughout the course of any Work that is the subject of any Dispute that is the subject of Dispute Resolution Procedures, Developer shall keep separate and complete records of any extra costs, expenses, loss of Toll Revenues and/or other monetary effects relating to the disputed Work and/or its resolution under the Dispute Resolution Procedures, and shall permit TxDOT access to these and any other records needed for evaluating the Dispute. The Disputes Board shall have similar access to all such records. These records shall be retained for a period of not less than one year after the date of resolution of the Dispute pertaining to such disputed Work (or for any longer period required under any other applicable provision of the CDA Documents).

17.9 Waiver of Consumer Rights

TXDOT AND DEVELOPER HAVE ASSESSED THEIR RESPECTIVE RIGHTS, LIABILITIES AND OBLIGATIONS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT, BUSINESS & COMMERCE CODE, SECTION 17.41 ET

SEQ. (THE "DTPA"). TXDOT AND DEVELOPER AGREE THAT THE DTPA DOES NOT APPLY TO ANY CLAIM OR DISPUTE UNDER ANY CDA DOCUMENT SINCE THE TRANSACTIONS EVIDENCED BY THE CDA DOCUMENTS INVOLVE A TOTAL CONSIDERATION BY EACH OF TXDOT AND DEVELOPER IN EXCESS OF $500,000. HOWEVER, IN THE EVENT THE DTPA IS DEEMED TO BE APPLICABLE BY A COURT OF COMPETENT JURISDICTION, TXDOT AND DEVELOPER HEREBY WAIVE THEIR RIGHTS AGAINST ONE ANOTHER AND AGAINST THEIR RESPECTIVE DEVELOPER-RELATED ENTITIES AND INDEMNIFIED PARTIES UNDER THE DTPA, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH ATTORNEYS OF THEIR OWN SELECTION, TXDOT AND DEVELOPER VOLUNTARILY CONSENT TO THIS WAIVER. THE PARTIES AGREE THAT THIS SECTION 17.9 CONSTITUTES A CONSPICUOUS LEGEND.

ARTICLE 18. NONCOMPLIANCE POINTS

18.1 Noncompliance Points System

Attachment 1 to Exhibit 18 sets forth a table for the identification of Developer breaches or failures in performance of obligations under the CDA Documents that may result in the assessment of Noncompliance Points. Noncompliance Points are a system to measure Developer performance levels and trigger the remedies set forth or referenced in this Article 18. The inclusion in Attachment 1 to Exhibit 18 of a breach or failure to perform bears no implication as to whether the breach or failure is material.

18.2 Assessment Notification and Cure Process

18.2.1 Notification

18.2.1.1 Developer shall notify TxDOT and the Independent Engineer in writing of the occurrence of any breach or failure specified in Attachment 1 to Exhibit 18. Developer shall deliver such notice in writing as soon as reasonably practicable, and in any event within 48 hours, after Developer first obtains knowledge of or first reasonably suspects the breach or failure. The notice shall describe the breach or failure in reasonable detail. Within ten days of receiving the notice, the Independent Engineer shall deliver to both Parties written notice setting forth his or her recommendation whether to assess Noncompliance Points, and reasoning and analysis in support thereof. Thereafter, TxDOT shall deliver to Developer a written notice setting forth TxDOT's determination whether to assess Noncompliance Points (a "notice of determination"). This Section 18.2.1.1 shall not apply where Developer first obtains knowledge and reasonable suspicion through a notice from the Independent Engineer or TxDOT under Sections 18.2.1.2 or 18.2.1.3.

18.2.1.2 The Independent Engineer's duties shall include delivering written notice to TxDOT and Developer immediately upon discovery of the occurrence of any breach or failure specified in Attachment 1 to Exhibit 18, and of the cure period and Noncompliance Points to be assessed with respect thereto. Such discovery shall include matters raised with the Independent Engineer following the compliance monitoring and reporting procedures as set forth in the Facility Management Plan. No such notification from the Independent Engineer, standing alone, shall be effective to impose Noncompliance Points, which right is reserved exclusively to TxDOT. The notice also shall set forth the Independent Engineer's recommendation whether to assess Noncompliance Points, and reasoning and analysis in support thereof. Thereafter, TxDOT shall deliver to Developer a written notice of determination.

18.2.1.3 If TxDOT believes there has occurred any breach or failure to perform specified in Attachment 1 to Exhibit 18, TxDOT may deliver to Developer and the Independent Engineer written notice thereof setting forth the breach or failure, the applicable cure period and the Noncompliance Points to be assessed with respect thereto. Within ten days of receiving the notice, the Independent Engineer shall deliver to both Parties written notice setting forth his or her recommendation whether to assess Noncompliance Points, and reasoning and analysis in support thereof. Thereafter, TxDOT shall deliver to Developer a written notice of determination.

18.2.2 Cure Periods

18.2.2.1 Developer shall have the cure period (if any) for each breach or failure set forth in Attachment 1 to Exhibit 18.

18.2.2.2 For breaches or failures identified by the assessment category "A" in Attachment 1 to Exhibit 18, Developer's cure period (if any) with respect to such breach or failure shall be deemed to start upon the date Developer first obtained knowledge or reason to know of the breach or failure. For this purpose, Developer shall be deemed to first obtain knowledge or reason to know of the breach or failure not later than the date of delivery of the initial notice to Developer.

18.2.2.3 For breaches or failures identified by the assessment category "B" in Attachment 1 to Exhibit 18, Developer's cure period shall be deemed to start upon the date that the breach or failure occurred, regardless of whether an initial notice has been delivered to Developer.

18.2.2.4 Each of the cure periods set forth in Attachment 1 to Exhibit 18 shall be the only cure period for Developer applicable to the breach or failure; and in the event it differs from any cure period set forth in Section 17.1.2 that might otherwise apply to the breach or failure, it shall control.

18.2.3 Notification of Cure

When Developer determines that it has completed cure of any breach or failure for which it is being assessed Noncompliance Points, Developer shall deliver written notice to TxDOT and the Independent Engineer identifying the breach or failure, stating that Developer has completed cure and briefly describing the cure, including any modifications to the Facility Management Plan to protect against future similar breaches or failures. Thereafter, the Independent Engineer shall promptly inspect to verify completion of the cure and, if satisfied that the breach or failure is fully cured, shall deliver to TxDOT and Developer a written certification of cure. TxDOT may independently inspect and may accept or reject such written certification. If the Independent Engineer fails to deliver a certification of cure within 30 days, or if TxDOT rejects the certification, any Dispute shall be resolved according to the Dispute Resolution Procedures.

18.3 Assessment of Noncompliance Points

18.3.1 If at any time TxDOT serves notice of determination under Section 18.2 or notice of Developer breach or failure to perform under this Agreement, then, without prejudice to any other right or remedy available to TxDOT, TxDOT may assess Noncompliance Points in accordance with Exhibit 18, subject to the following terms and conditions.

18.3.1.1 The date of assessment shall be deemed to be the date of the initial notification under Section 18.2.

18.3.1.2 TxDOT shall not be entitled to assess Noncompliance Points under more than one category for any particular event or circumstance that is a breach or failure. Except as provided in Section 18.3.1.3, where a single act or omission gives rise to more than one breach or failure, it shall be treated as a single breach or failure for the purpose of assessing Noncompliance Points, and the highest amount of Noncompliance Points under the relevant breaches or failures shall apply.

18.3.1.3 A failure by Developer to report to TxDOT and the Independent Engineer a breach or failure to perform as and when required under Section 18.2.1.1, on the one hand, and the subject breach or failure to perform, on the other hand, constitute separate and distinct breaches and failures to perform for the purpose of assessing Noncompliance Points.

18.3.1.4 The number of points listed in Attachment 1 to Exhibit 18 for any particular breach or failure is the maximum number of Noncompliance Points that may be assessed for each event or circumstance that is a breach or failure, and TxDOT may, but is not obligated to, assess less than the maximum.

18.3.1.5 If a breach or failure for which a cure period is provided in Attachment 1 to Exhibit 18 is not fully and completely cured within the applicable cure period, then continuation of such breach or failure beyond such cure period shall be treated as a new and separate breach or failure, without necessity for further notice, for the purpose of assessing Noncompliance Points. Accordingly, a new cure period equal to the prior cure period shall commence upon expiration of the prior cure period, without further notice; and, if applicable, payment of a further amount of liquidated damages under Sections 17.4.1.1 and 17.4.1.2 shall be required. Regardless of the continuing assessment of Noncompliance Points under this Section 18.3.1, TxDOT shall be entitled to exercise its step-in rights under Section 17.3.4 and, if applicable, its work suspension rights under Section 17.3.8, after expiration of the initial cure period available to Developer. However, if and when TxDOT commences to exercise its step-in rights (after any prior opportunity of Lenders to exercise their step-in rights has expired without exercise), assessment of Noncompliance Points shall cease to continue with regard to the subject breach or failure.

18.3.1.6 For breaches or failures identified by the assessment category "A" in Attachment 1 to Exhibit 18, provided that the breach or failure is not cured, the Noncompliance Points shall first be assessed at the end of the first cure period, and shall be assessed again at the end of each subsequent cure period, as described in Section 18.3.1.5.

18.3.1.7 For breaches or failures identified by the assessment category "B" in Attachment 1 to Exhibit 18, the Noncompliance Points shall first be assessed on the date of the initial notification under Section 18.2 (the start of the first cure period). Provided that the breach or failure is not then cured, Noncompliance Points shall be assessed again at the end of the first and each subsequent cure period, as described in Section 18.3.1.5.

18.3.1.8 For breaches or failures identified by the assessment category "C" in Attachment 1 to Exhibit 18 (no applicable cure period), the Noncompliance Points shall first be assessed on the date of the initial notification under Section 18.2 (the start of the first cure period). Continuation of such a breach or failure shall not be treated as a new or separate breach or failure.

18.3.2 The Independent Engineer's responsibilities shall include keeping current records of the number of assessed Noncompliance Points and Uncured Noncompliance Points, and the date of each assessment and each cure. The Independent Engineer's responsibilities shall include reporting such information to TxDOT and Developer in writing at frequencies specified in the Independent Engineer Agreement and otherwise upon written request from TxDOT or Developer.

18.4 Provisions Regarding Dispute Resolution

18.4.1 Developer may object to the assessment of Noncompliance Points or the starting point for the cure period respecting any breach or failure listed in Exhibit 18, by delivering to TxDOT and the Independent Engineer written notice of such objection not later than five days after the Independent Engineer or TxDOT delivers its written notice of such breach or failure.

18.4.2 Developer may object to TxDOT's rejection of any certification of completion of a cure given pursuant to Section 18.2.3 by delivering to TxDOT and the Independent Engineer written notice of such objection not later than 15 days after TxDOT delivers its written notice of rejection.

18.4.3 If for any reason Developer fails to deliver its written notice of objection within the applicable time period, Developer shall be conclusively deemed to have accepted the matters set forth in the applicable TxDOT or Independent Engineer notice, and shall be forever barred from challenging them.

18.4.4 If Developer gives timely notice of objection and the Parties are unable to reach agreement on any matter in Dispute within ten days of such objection, either Party may refer the matter for resolution according to the Dispute Resolution Procedures.

18.4.5 Pending the resolution of any Dispute arising under this Section 18.4, the provisions of this Article shall take effect as if the matter were not in Dispute, provided that if the final decision regarding the Dispute is that (a) the Noncompliance Points should not have been assessed, (b) the number of Noncompliance Points must be adjusted, (c) the starting point or duration of the cure period must be adjusted, or (d) a breach or failure has been cured, then the number of Noncompliance Points assigned or assessed, the Uncured Noncompliance Points balance and the related liabilities of Developer shall be adjusted to reflect such decision.

18.4.6 Pending the resolution of any Dispute arising under this Section 18.4, the number of Noncompliance Points in Dispute shall not be counted for the purpose of determining whether TxDOT may issue a Warning Notice under Section 17.2.1 for failure to timely submit or comply with the remedial plan.

18.4.7 The opinion of the Independent Engineer shall receive substantial weight in resolving any Dispute arising under this Section 18.4.

18.5 Increased Oversight, Testing and Inspection

18.5.1 If at any time (a) Developer is assessed Uncured Noncompliance Points in excess of any trigger point set forth in Exhibit 18 for liquidated damages under Section 17.4.1.2, (b) there exists a Persistent Developer Default or (c) Developer receives one or more Warning Notices, then in addition to other remedies available under this Agreement, the Lease and the Principal Facility Documents, TxDOT shall be entitled upon written notice to Developer to increase the level of its and the Independent Engineer's monitoring, inspection, sampling,

measuring, testing, auditing and oversight of the Facility and Developer's compliance with its obligations under the CDA Documents, to such level as TxDOT sees fit, until such time as Developer has demonstrated to the reasonable satisfaction of TxDOT that Developer:

18.5.1.1 Has reduced the number of Uncured Noncompliance Points below the threshold triggering such heightened scrutiny;

18.5.1.2 Has reduced by 50% the number of Uncured Noncompliance Points outstanding on the date TxDOT delivers the written notice invoking such heightened scrutiny;

18.5.1.3 Has fully and completely cured the breaches and failures that are the basis for any Warning Notices; and

18.5.1.4 Has completed delivery and performance of an approved remedial plan, if at any time during which TxDOT is so entitled to increase the level of oversight TxDOT also requires Developer to prepare and implement a remedial plan pursuant to Section 17.3.6.

18.5.2 If TxDOT increases the level of its and/or the Independent Engineer's monitoring, inspection, sampling, measuring, testing, auditing and oversight under Section 18.5.1 and liquidated damages are not provided for under this Agreement in connection with such action, then Developer shall pay and reimburse TxDOT within 30 days after receipt of written demand and reasonable supporting documentation for all increased costs and fees TxDOT incurs in connection with such action, including TxDOT's Recoverable Costs and TxDOT's share of the increased costs and fees of the Independent Engineer.

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

ARTICLE 19. TERMINATION

19.1 Termination for Convenience

19.1.1 TxDOT may terminate this Agreement and the Lease in whole, but not in part, if TxDOT determines, in its sole discretion, that a termination is in TxDOT's best interest (a "Termination for Convenience"). Termination of this Agreement and the Lease shall not relieve Developer or any Guarantor or Surety of its obligation for any claims arising prior to termination.

19.1.2 TxDOT may exercise Termination for Convenience by delivering to Developer a written Notice of Termination for Convenience specifying the election to terminate. Termination for Convenience shall be effective as and when provided in Section G.1 of Exhibit 20.

19.1.3 In the event of a Termination for Convenience, Developer will be entitled to compensation determined in accordance with Exhibit 20. Payment will be due and payable as and when provided in Exhibit 20.

19.1.4 If TxDOT terminates this Agreement and the Lease on grounds or in circumstances beyond TxDOT's termination rights specifically set forth in this Agreement, such termination shall be deemed a Termination for Convenience for the purpose of determining the Termination Compensation due.

19.2 Termination for Force Majeure Event

19.2.1 Notice of Conditional Election to Terminate

Either Party may deliver to the other Party written notice of its conditional election to terminate this Agreement and the Lease under the following circumstances:

19.2.1.1 A Force Majeure Event or Extended Relief Event has occurred;

19.2.1.2 With respect to a Force Majeure Event, either:

(a) Such notice is delivered before the Service Commencement Date, the period of delay that is directly attributable to the Force Majeure Event and affects a Critical Path for performance and completion of the Construction Work, after consumption of Float available pursuant to Section 7.7.6, is 270 consecutive days (or such fewer number of days as mutually agreed to by the parties) or more, and such delay is not attributable to another concurrent delay; or

(b) Such notice is delivered on or after the Service Commencement Date, as a direct result of the Force Majeure Event all or substantially all of the Facility becomes and remains inoperable for a period of 270 consecutive days (or such fewer number of days as mutually agreed to by the parties) or more, and such suspension of operations is not attributable to another concurrent delay;

19.2.1.3 With respect to an Extended Relief Event that is not also a Force Majeure Event, the performance that is delayed for the period set forth in Section 13.1.4.1 is performance of a significant obligation of Developer such that Developer has been unable to realize the material benefits provided by this Agreement due to such delay, and such delay is not attributable to another concurrent delay;

19.2.1.4 Developer could not have mitigated or cured such result through the exercise of reasonably diligent efforts;

19.2.1.5 Such result is continuing at the time of delivery of the written notice;

19.2.1.6 With respect to (a) a Force Majeure Event, an extension of the Term required to provide full recovery under Section 13.1.4 is not available or (b) an Extended Relief Event that is not also a Force Majeure Event, an extension of the Term required to provide full recovery under Section 13.1.4 is not available due solely to limitations on the length of the Term under applicable Law; and

19.2.1.7 The written notice sets forth in reasonable detail the Force Majeure Event or Extended Relief Event, a description of the direct result and its duration, and the notifying Party's intent to terminate this Agreement and the Lease.

19.2.2 Developer Options Upon TxDOT Notice

If TxDOT gives written notice of conditional election to terminate, Developer shall have the option either to accept such notice or to continue this Agreement and the Lease in effect by delivering to TxDOT written notice of Developer's choice not later than 30 days after TxDOT delivers its notice. If Developer does not deliver such written notice within such 30-day period, then it shall be conclusively deemed to have accepted TxDOT's election to terminate this

Agreement and the Lease. If Developer delivers timely written notice choosing to continue this Agreement and the Lease in effect, then:

19.2.2.1 TxDOT shall have no obligation to compensate Developer for any costs of restoration and repair, for any loss of Toll Revenues or for any other Losses arising out of the Force Majeure Event or Extended Relief Event;

19.2.2.2 If the Force Majeure Event or Extended Relief Event occurred prior to the Service Commencement Date, there shall be no further extension of the Service Commencement Deadline, the Long Stop Date or any other schedule milestone on account of the Force Majeure Event or Extended Relief Event, notwithstanding any contrary provision of Article 13, and TxDOT may require delivery and implementation of a logic-based critical path recovery schedule for avoiding further delay in the Design Work and Construction Work;

19.2.2.3 This Agreement and the Lease shall continue in full force and effect and TxDOT's election to terminate shall not take effect; and

19.2.2.4 If either of the effects from the Force Majeure Event or Extended Relief Event described in Section 19.2.1.2 continues for 30 months or more from its inception, Developer may deliver to TxDOT a new written notice of its unconditional election to terminate this Agreement and the Lease, in which case neither Party shall have any further option to continue this Agreement and the Lease in effect.

19.2.3 TxDOT Options Upon Developer Notice

If Developer gives written notice of conditional election to terminate, TxDOT shall have the option either to accept such notice or to continue this Agreement and the Lease in effect by delivering to Developer written notice of TxDOT's choice not later than 30 days after Developer delivers its notice. If TxDOT does not deliver such written notice within such 30-day period, then it shall be conclusively deemed to have accepted Developer's election to terminate this Agreement and the Lease. If TxDOT delivers timely written notice choosing to continue this Agreement and the Lease in effect, then:

19.2.3.1 TxDOT shall be obligated to pay or reimburse Developer an amount equal to:

(a) The incremental increase in Developer's reasonable out-of-pocket costs and expenses to repair and restore any physical damage or destruction to the Facility directly caused by the Force Majeure Event or Extended Relief Event, which shall include, if applicable, any incremental increase in amounts Developer may owe to the Design-Build Contractor under the terms of the Design-Build Contract for (i) costs of repair and restoration and (ii) delay and disruption damages for the period of delay directly caused by the Force Majeure Event or Extended Relief Event after the date Developer delivers its written notice of conditional election to terminate; plus

(b) Developer's reasonable extended overhead and administrative expenses for the period of any delay in achieving the Service Commencement Date from and after the date Developer delivers its written notice of conditional election to terminate; plus

(c) The lesser of (i) loss of Toll Revenues from and after the date Developer delivers its written notice of conditional election to terminate directly resulting from the Force Majeure Event or Extended Relief Event, determined in the same manner, and

subject to the same conditions and limitations, as for a Compensation Event under Section 13.2, and (ii) an amount equal to (A) regularly scheduled debt service on Facility Debt, other than Subordinate Debt, accrued during the period of delay due to the Force Majeure Event after the date Developer delivers its written notice of conditional election to terminate, plus (B) Developer's unavoidable, reasonable operating and maintenance costs during such period, minus (C) Toll Revenues during such period; minus

(d) The sum of (i) the greater of (A) the proceeds of insurance (including casualty insurance and business interruption insurance) that is required to be carried pursuant to Section 16.1 and provides coverage to pay, reimburse or provide for any of the foregoing costs and losses, and (B) the proceeds of insurance (including casualty insurance and business interruption insurance) that is actually carried by or insuring Developer under policies solely with respect to the Facility and the Work, regardless of whether required to be carried pursuant to Section 16.1, and that provides coverage to pay, reimburse or provide for any of the foregoing costs and losses, plus (ii) the foregoing costs and losses that Developer is deemed to have self-insured pursuant to Section 16.1.4.3.

19.2.3.2 Developer's rights to delay and relief from performance obligations under Section 13.1 shall continue to apply to the Force Majeure Event or Extended Relief Event;

19.2.3.3 This Agreement and the Lease shall continue in full force and effect and Developer's election to terminate shall not take effect; and

19.2.3.4 If either of the effects from the Force Majeure Event or Extended Relief Event described in Section 19.2.1.2 continues for 30 months or more from its inception, TxDOT may deliver to Developer a new written notice of its unconditional election to terminate this Agreement and the Lease, in which case neither Party shall have any further option to continue this Agreement and the Lease in effect.

19.2.4 No Waiver

No election by TxDOT under Section 19.2.3 to continue this Agreement and the Lease in effect shall prejudice or waive TxDOT's right to thereafter give a written notice of conditional election to terminate with respect to the same or any other Force Majeure Event.

19.2.5 Concurrent Notices

In the event TxDOT and Developer deliver concurrent written notices of conditional election to terminate, Developer's notice shall prevail. Notices shall be deemed to be concurrent if each Party sends its written notice before actually receiving the written notice from the other Party. Knowledge of the other Party's written notice obtained prior to actual receipt of the notice shall have no effect on determining whether concurrent notice has occurred.

19.2.6 Early Termination Date and Amount

If either Party accepts the other Party's conditional election to terminate, or if TxDOT delivers written notice of its unconditional election to terminate under Section 19.2.3.4, then this Agreement and the Lease shall be deemed terminated on an Early Termination Date as described in Section G.2 of Exhibit 20; and Developer will be entitled to compensation determined in accordance with Exhibit 20. Payment will be due and payable as and when provided in Exhibit 20.

19.3 Termination for Developer Default

19.3.1 Developer Defaults Triggering TxDOT Termination Rights

The following Developer Defaults (each a "Default Termination Event"), and no other Developer Defaults, shall entitle TxDOT, at its sole election, to terminate this Agreement and the Lease, effective immediately upon delivery of written notice of termination to Developer and the Collateral Agent under the Security Documents other than the Subordinated Security Documents. Developer agrees and acknowledges and stipulates that any of the following Developer Defaults would result in material and substantial harm to TxDOT's rights and interests under this Agreement and therefore constitute a material Developer Default justifying termination if not cured within the applicable cure period, if any.

19.3.1.1 Developer fails to achieve Service Commencement for any Facility Segment by the latter of (a) the end of the 90-day Warning Notice period set forth in Section 17.2.1.2 or (b) the Long Stop Date, as the same may be extended pursuant to this Agreement;

19.3.1.2 There occurs any other Developer Default for which TxDOT issues a Warning Notice under Section 17.2 and such Developer Default is not fully and completely cured within the applicable cure period, if any, set forth in Section 17.2.2 or available to Lenders under Section 20.4 (or, with respect to a remedial plan resulting from Persistent Developer Default, within the applicable cure period available to Developer under Section 17.3.6 after delivery of a Warning Notice); or

19.3.1.3 There occurs any Developer Default under Section 17.1.1.14 or 17.1.1.15.

19.3.2 Compensation to Developer

If TxDOT issues notice of termination of this Agreement and the Lease due to a Default Termination Event, or if Developer terminates this Agreement and the Lease on grounds or in circumstances beyond Developer's termination rights specifically set forth in this Agreement, Developer will be entitled to compensation to the extent, and only to the extent, provided in Section D of Exhibit 20; provided that in no event shall compensation be due for termination on account of or incident to a Developer Default under Section 17.1.1.14 or 17.1.1.15. Payment shall be due and payable as and when provided in Section F of Exhibit 20.

19.3.3 Finality

If TxDOT issues notice of termination of this Agreement and the Lease due to a Default Termination Event, termination shall be effective and final immediately upon delivery of written notice as provided in Section 19.3.1 regardless of whether TxDOT is correct in determining that it has the right to terminate for Developer Default. In the event it is determined that TxDOT lacked such right, then such termination shall be treated as a Termination for Convenience as provided in Section 19.1.4 for the purpose of determining the Termination Compensation due.

19.3.4 Special Provision Regarding Financing Default

As an additional Default Termination Event, TxDOT, at its sole election, shall be entitled to terminate this Agreement and the Lease, if there occurs a Developer Default under Section 17.1.1.17 and such Developer Default is not fully and completely cured through completion of Financial Close within the cure period set forth in Section 17.1.2.1, without need

for Warning Notice or any other notice and without any additional cure period. Upon such termination, TxDOT shall be entitled to draw on the Financial Option Security or forfeiture of the Financial Option Security, as applicable, for the liquidated damages owing to TxDOT under Section 17.4.4.1. For termination rights for failure to achieve Financial Close in the absence of a Developer Default under Section 17.1.1.17, refer to Section 4.1.4.4.

19.4 Termination for TxDOT Default, Suspension of Work or Delayed Notice to Proceed

19.4.1 In the event of a material TxDOT Default under Section 17.5.1.1 (failure to pay money due) that remains uncured following notice and expiration of the applicable cure period under Section 17.5.2, Developer may deliver to TxDOT a further written notice setting forth such TxDOT Default and warning TxDOT that Developer may elect to terminate this Agreement and the Lease if TxDOT does not cure such TxDOT Default within 60 days after the delivery of such notice. TxDOT may avoid termination by effecting cure within such 60-day period. Failing such cure, Developer shall have the right to terminate this Agreement and the Lease, effective immediately upon delivery of written notice of termination to TxDOT. In the event of such termination, Developer will be entitled to compensation determined in accordance with Section B of Exhibit 20. Payment shall be due and payable as and when provided in Section G.3 of Exhibit 20. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures, subject to Sections 17.8.1.1(b) and 17.8.1.5.

19.4.2 In the event TxDOT orders Developer to suspend Work on all or any material portion of the Facility for a reason other than those set forth in Section 17.3.8.1 and such suspension of Work continues for a period of 365 days or more, Developer shall have the right to terminate this Agreement and the Lease, effective immediately upon delivery of written notice of termination to TxDOT. In the event of such termination, Developer will be entitled to compensation determined in accordance with Section B of Exhibit 20. Payment shall be due and payable as and when provided in Section G.3 of Exhibit 20. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures, subject to Sections 17.8.1.1(b) and 17.8.1.5.

19.4.3 In the event TxDOT, for any reason other than because the NEPA Finality Date has not occurred, does not issue NTP1 or NTP2 within 365 days after the anticipated issuance date set forth in Section 7.7, Developer shall have the right to terminate this Agreement and the Lease, effective immediately upon delivery of written notice of termination to TxDOT. In the event of such termination, Developer will be entitled to compensation determined in accordance with Section E of Exhibit 20. Payment shall be due and payable as and when provided in Section G.5 of Exhibit 20. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures, subject to Sections 17.8.1.1(b) and 17.8.1.5.

19.4.4 If Developer issues notice of termination of this Agreement and the Lease due to a material TxDOT Default under Section 17.5.1.1, termination shall be effective and final immediately upon delivery as provided in Section 19.4.1 regardless of whether Developer is correct in determining that it has the right to terminate for such TxDOT Default. In the event it is determined that Developer lacked such right, then such termination shall be treated as a termination due to material Developer Default and Section 19.3.2 shall govern the measure of the Termination Compensation.

19.5 Termination Procedures and Duties

Upon expiration of the Term or any earlier termination of this Agreement and the Lease for any reason, including due to TxDOT Default, the provisions of this Section 19.5 shall apply. Developer shall timely comply with such provisions independently of, and without regard to, the timing for determining, adjusting, settling and paying any amounts due Developer or TxDOT on account of termination.

19.5.1 In any case where notice of termination precedes the effective Early Termination Date:

19.5.1.1 Developer shall continue performing the Work in accordance with, and without excuse from, all the standards, requirements and provisions of the CDA Documents, and without curtailment of services, quality and performance;

19.5.1.2 Not later than 30 days after notice of termination is delivered, and annually thereafter within 30 days after the beginning of each Fiscal Year until the effective Early Termination Date (or rescission or expiration of the notice of termination), Developer shall deliver to an Intellectual Property Escrow for access and review by TxDOT an annual budget for the Facility for the current Fiscal Year in at least as much detail as any budget required by Lenders and Good Industry Practice, together with its annual budgets for the immediately preceding three Fiscal Years and detailed itemization of all costs and expenses for the immediately preceding three Fiscal Years organized by the line items in the budgets;

19.5.1.3 Each current budget shall provide for operating and maintenance expenditures at least sufficient to continue services and operations at the levels experienced in years prior to notice of termination, taking into account inflationary effects, and in any case consistent with continuing performance to the requirements of the CDA Documents.

19.5.1.4 At TxDOT's option, it may increase and direct the Independent Engineer to increase the level of its and the Independent Engineer's monitoring, inspection, sampling, measuring, testing, auditing and oversight of the Facility and Developer's compliance with the obligations under this Agreement, to such level as TxDOT reasonably sees fit to protect against curtailment of services, quality and performance. Developer and TxDOT shall share equally the extra costs of the Independent Engineer.

19.5.2 Within three days after receipt of a notice of termination, Developer shall meet and confer with TxDOT for the purpose of developing an interim transition plan for the orderly transition of Work, demobilization and transfer of the Facility and Facility Right of Way control to TxDOT. The Parties shall use diligent efforts to complete preparation of the interim transition plan within 15 days after the date Developer receives the notice of termination. The Parties shall use diligent efforts to complete a final transition plan within 30 days after such date. The transition plan shall be in form and substance acceptable to TxDOT in its good faith discretion and shall include and be consistent with the other provisions and procedures set forth in this Section 19.5, all of which procedures Developer shall immediately follow, regardless of any delay in preparation or acceptance of the transition plan or:

19.5.3 From and after the Termination Date, even though Developer may be continuing services temporarily pursuant to a transition plan, Developer shall cease to own or have rights to Toll Revenues, except to the extent of any continuing pledge and security interest pursuant to Section 19.10 or the Facility Trust and Security Instruments. On the Termination Date, or as soon thereafter as is possible, Developer shall relinquish and surrender full control and possession of the Facility and Facility Right of Way to TxDOT or TxDOT's Authorized

Representative, and shall cause all persons and entities claiming under or through Developer to do likewise, in at least the condition required by the Handback Requirements.

19.5.4 On the later of the Termination Date or the date Developer relinquishes full control and possession, TxDOT shall assume responsibility, at its expense, for the Facility and the Facility Right of Way, subject to any rights to damages against Developer where the termination is due to a Default Termination Event.

19.5.5 If as of the Termination Date Developer has not completed construction of all or part of the Facility and Utility Adjustments that are part of the Construction Work, TxDOT may elect, by written notice to Developer and the Design-Build Contractor delivered within 90 days after the Termination Date, to continue in effect the Design-Build Contract or to require its termination. If TxDOT does not deliver written notice of election within such time period, TxDOT shall be deemed to elect to require termination of the Design-Build Contract. If TxDOT elects to continue the Design-Build Contract in effect, then Developer shall execute and deliver to TxDOT a written assignment, in form and substance acceptable to TxDOT, acting reasonably, of all Developer's right, title and interest in and to the Design-Build Contract, and TxDOT shall assume in writing Developer's obligations thereunder that arise from and after the Termination Date. If TxDOT elects (or is deemed to elect) to require termination of the Design-Build Contract, then Developer shall:

19.5.5.1 Unless TxDOT has granted New Agreements to a Lender or its Substituted Entity, take such steps as are necessary to terminate the Design-Build Contract, including notifying the Design-Build Contractor that the Design-Build Contract is being terminated and that the Design-Build Contractor is to immediately stop work and stop and cancel orders for materials, services or facilities unless otherwise authorized in writing by TxDOT;

19.5.5.2 Immediately safely demobilize and secure construction, staging, lay down and storage areas for the Facility and Utility Adjustments included in the Construction Work in a manner satisfactory to TxDOT, and remove all debris and waste materials except as otherwise approved by TxDOT in writing;

19.5.5.3 Take such other actions as are necessary or appropriate to mitigate further cost;

19.5.5.4 Subject to the prior written approval of TxDOT, settle all outstanding liabilities and all claims arising out of the Design-Build Contract;

19.5.5.5 Cause the Design-Build Contractor to execute and deliver to TxDOT a written assignment, in form and substance acceptable to TxDOT, acting reasonably, of all the Design-Build Contractor's right, title and interest in and to (a) all Utility Agreements, assignable agreements with railroads and other third party agreements and permits, except subcontracts for performance of the Design and Construction Work, provided TxDOT assumes in writing all of the Design-Build Contractor's obligations thereunder that arise after the Termination Date, and (b) all assignable warranties, claims and causes of action held by the Design-Build Contractor against subcontractors and other third parties in connection with the Facility or the Work, to the extent the Facility or the Work is adversely affected by any subcontractor or other third party breach of warranty, contract or other legal obligation; and

19.5.5.6 Carry out such other directions as TxDOT may give for termination of Design Work and Construction Work.

19.5.6 If as of the Termination Date Developer has entered into any other contract for the design, construction, permitting, installation and equipping of the Facility or for Utility Adjustments, excluding the Independent Engineer Agreement, TxDOT shall elect, by written notice to Developer, to continue in effect such contract or to require its termination. If TxDOT elects to continue the contract in effect, then Developer shall execute and deliver to TxDOT a written assignment, in form and substance acceptable to TxDOT, acting reasonably, of all Developer's right, title and interest in and to the contract, and TxDOT shall assume in writing Developer's obligations thereunder that arise from and after the Termination Date. If TxDOT elects to require termination of the contract, then Developer shall take actions comparable to those set forth in Section 19.5.5 with respect to the contract.

19.5.7 If as of the Termination Date Developer has entered into any O&M Contract, TxDOT shall elect, by written notice to Developer, to continue it in effect or require its termination; provided that if a Lender is entitled to New Agreements following termination, TxDOT shall not elect to terminate any such Contract until the Lender's right to New Agreements expires without exercise. If TxDOT elects to continue any such Contract in effect, then on or about the Termination Date (or promptly after any later election to terminate) Developer shall execute and deliver to TxDOT a written assignment, in form and substance acceptable to TxDOT, acting reasonably, of all Developer's right, title and interest in and to the Contract, and TxDOT shall assume in writing Developer's obligations thereunder that arise from and after the Termination Date.

19.5.8 On or about the Termination Date Developer shall execute and deliver to TxDOT a written assignment, in form and substance acceptable to TxDOT, acting reasonably, of all Developer's right, title and interest in and to the Independent Engineer Agreement, and TxDOT shall assume in writing Developer's obligations thereunder that arise from and after the date of assignment.

19.5.9 Within 30 days after notice of termination is delivered, Developer shall provide TxDOT with true and complete list of all materials, goods, machinery, equipment, parts, supplies and other property in inventory or storage (whether held by Developer or any person or entity on behalf of or for the account of Developer) for use in or respecting the Work or the Facility, or on order or previously completed but not yet delivered from Suppliers for use in or respecting the Work or the Facility. In addition, on or about the Termination Date, Developer shall transfer title and deliver to TxDOT or TxDOT's Authorized Representative, through bills of sale or other documents of title, as directed by TxDOT, all such materials, goods, machinery, equipment, parts, supplies and other property, provided TxDOT assumes in writing all of Developer's obligations under any contracts relating to the foregoing that arise after the Termination Date.

19.5.10 Developer shall take all action that may be necessary, or that TxDOT may direct, for the protection and preservation of the Facility, the Work and such materials, goods, machinery, equipment, parts, supplies and other property.

19.5.11 At TxDOT's request, Developer shall assist TxDOT, for a reasonable period, with its hiring and training of personnel for operation of the Electronic Toll Collection System and with training of personnel in the use and operation of any other software or computer programs Developer uses in connection with the Facility. Such assistance, if requested, shall include training and instruction on system features and operations, explanation and instruction regarding operating plans, rules, manuals and procedures, on-the-job training and other reasonable measures to enable the personnel being trained to properly and efficiently operate such system.

19.5.12 On the Termination Date, Developer shall execute, acknowledge and deliver to TxDOT a quitclaim deed, in form and substance acceptable to TxDOT, acting reasonably, quitclaiming all of Developer's right, title, interest and estate in and to the Facility and Facility Right of Way, including that set forth in the recorded Memorandum of Lease, as amended by each recorded Amendment to Memorandum of Lease and (b) record a termination of the Memorandum of Lease.

19.5.13 If applicable, on the Termination Date, Developer shall assign, transfer and set over to TxDOT the Handback Requirements Reserve and funds therein in accordance with Section 8.11.4.1.

19.5.14 On or about the Termination Date, Developer shall execute and deliver to TxDOT the following, together with an executed bill of sale or other written instrument, in form and substance acceptable to TxDOT, acting reasonably, assigning and transferring to TxDOT all of Developer's right, title and interest in and to the following:

19.5.14.1 All completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, designs, design documents, as-built and record plans, surveys, and other documents and information pertaining to the design or construction of the Facility or the Utility Adjustments;

19.5.14.2 All samples, borings, boring logs, geotechnical data and similar data and information relating to the Facility or Facility Right of Way;

19.5.14.3 All books, records, reports, test reports, studies and other documents of a similar nature relating to the Work, the Facility or the Facility Right of Way;

19.5.14.4 All data and information relating to the use of the Facility by the traveling public or Toll Revenues, including (a) all data compiled or maintained by the Electronic Toll Collection System, whether then maintained on the system or in archives or storage, (b) all customer account information and (c) all studies, reports, projections, estimates and other market research or analysis relating to use of the Facility by the traveling public provided that the transfer of any Intellectual Property shall be subject to Sections 22.4 and 22.5; and

19.5.14.5 All other work product and Intellectual Property used or owned by Developer or any Affiliate relating to the Work, the Facility or the Facility Right of Way, provided that the transfer of any Intellectual Property shall be subject to Sections 22.4 and 22.5.

19.5.15 Effective as of the Termination Date, Developer shall assign and transfer to TxDOT all of Developer's right, title and interest in and to customer accounts relating to the Facility and funds credited thereto; provided that:

19.5.15.1 As soon as reasonably practicable after the Termination Date, the Parties shall adjust and prorate the funds in such accounts, and any other funds collected from Facility customers, as follows:

(a) There shall be credited to Developer any debits to an account for customer use of the Facility prior to the Termination Date, to the extent there were sufficient funds in the account as of the Termination Date to cover the debited amount;

(b) There shall be credited to Developer any sums collected by or on behalf of TxDOT after the Termination Date from a customer respecting a toll violation

that occurred prior to the Termination Date, but only net of the application of any sums collected to tolls owing for use of the Facility from and after the Termination Date; and

(c) Any debits to an account for customer use of the Facility from and after the Termination Date, if collected by Developer, shall be remitted to TxDOT.

19.5.15.2 TxDOT, by written notice to Developer, may elect not to take over customer accounts of Developer (if any) if TxDOT intends to cease tolls on the Facility following expiration or earlier termination of this Agreement. In such case, Developer shall promptly inform its account customers of the cessation of tolls and of the customer's choice either to cancel the account and receive refund of all unexpended funds or to transfer the account to the custody and control of another operator of any toll Facility that has account interoperability with the Facility. The notice shall identify each such other Facility and provide contact information for the operators thereof The notice shall give customers a reasonable period to respond, and shall state that the account will be closed and funds returned unless the customer timely responds with a request to transfer the account. Developer shall thereafter conclude disposition of accounts and account funds in accordance with customer directions.

19.5.16 Within 90 days after the Termination Date, the Parties shall adjust and prorate costs of operation and maintenance of the Facility, including utility costs and deposits, as of the Termination Date. If the Parties do not have complete or accurate information by such date, they shall make the adjustment and proration using a good faith estimate, and thereafter promptly readjust when the complete and accurate information is obtained. The Parties acknowledge that certain adjustments or readjustments may depend on receipt of bills, invoices or other information from a third party, and that the third party may delay in providing such information. Any readjustment necessary only because of error in calculation and not due to lack of complete and accurate information shall be irrevocably waived unless the Party seeking readjustment delivers written request therefor to the other Party not later than 180 days following the Termination Date.

19.5.17 On or about the Termination Date, Developer shall execute and deliver to TxDOT a written assignment, in form and substance acceptable to TxDOT, acting reasonably, all of Developer's right, title and interest in and to any Intellectual Property Escrows or similar arrangements for the protection of Intellectual Property, Source Code or Source Code Documentation of others used for or relating to the Facility or the Work.

19.5.18 If Developer holds any lease or rental agreement for any customer service center or customer service outlet serving customers of the Facility, at TxDOT's request, Developer shall execute and deliver to TxDOT on or about the Termination Date a written assignment, in form and substance acceptable to TxDOT, acting reasonably, of such lease or rental agreement and Developer's right, title and interest thereunder, and TxDOT shall assume Developer's obligations thereunder arising from and after the date of assignment. Developer shall assist and cooperate with TxDOT in connection with its investigation and decision regarding any such lease or rental agreement, including providing TxDOT access to the premises for inspection and seeking any consent to assignment required by the landlord.

19.5.19 On or about the Termination Date, Developer shall execute and deliver to TxDOT a written assignment, in form and substance acceptable to TxDOT, acting reasonably, of all Developer's right, title and interest in and to all warranties, claims and causes of action held by Developer against third parties in connection with the Facility or the Work, including claims under casualty and business interruption insurance, but excluding any such Insurance Policy claims to the extent made prior to the Valuation Date and taken into account as a reduction in the appraisal and determination of Fair Market Value.

19.5.20 Developer shall otherwise assist TxDOT in such manner as TxDOT may require prior to and for a reasonable period following the Termination Date to ensure the orderly transition of the Facility and its management to TxDOT, and shall, if appropriate and if requested by TxDOT, take all steps as may be necessary to enforce the provisions of the Key Contracts pertaining to the surrender of the Facility.

19.6 No Separate Terminations of Agreement and Lease

If for any reason this Agreement is terminated before the Lease is granted, then all right to obtain the Lease shall concurrently cease and terminate. TxDOT and Developer further agree and expressly intend that after the Lease is granted neither this Agreement nor the Lease shall continue in full force and effect without the other. Accordingly, (a) any termination of this Agreement according to its terms shall also automatically constitute a termination of the Lease, even if the notice of termination fails to declare a termination of the Lease, and (b) any termination of the Lease shall also automatically constitute a termination of this Agreement, even if the notice of termination fails to declare a termination of this Agreement.

19.7 Effect of Termination

19.7.1 Cessation of Developer's Interest and Liens and Encumbrances

Except as provided in Section 19.10 and the Facility Trust and Security Instruments, termination of this Agreement and the Lease under any provision of this Article 19 shall automatically cause, as of the Termination Date, the cessation of any and all property interest of Developer, real and personal, tangible and intangible, in or with respect to the Facility, the Facility Right of Way, the Toll Revenues and the Handback Requirements Reserve, which thereupon shall be and remain free and clear of any lien or encumbrance created, permitted or suffered by Developer or anyone claiming by, through or under Developer, including but not limited to the liens, pledges, assignments, collateral assignments, security interests and encumbrances of any and all Funding Agreements and Security Documents. In order to confirm the foregoing, at TxDOT's request, Developer shall promptly obtain and deliver to TxDOT recordable reconveyances, releases and discharges of all Security Documents, executed by the Lenders, but no such reconveyances, releases and discharges shall be necessary to the effectiveness of the foregoing.

19.7.2 Facility Trust Agreement

Except as provided otherwise in Section 19.10 and the Facility Trust and Security Instruments, the Facility Trust Fund and Developer's security interests in the Revenue Payment Amount, the Developer Claims Account and the Post-Termination Revenue Account, shall cease and terminate at the end of the Term, at which time the trustee under the Facility Trust Agreement shall distribute to the Party entitled thereto all funds remaining in each account.

19.7.3 Contracts and Agreements

Regardless of TxDOT's prior actual or constructive knowledge thereof, and except for the Facility Trust Agreement and any joinder agreement entered into pursuant to Section 19.10.4 should they survive the Termination Date, no contract or agreement to which Developer is a party (unless TxDOT is also a party thereto) as of the Termination Date shall bind TxDOT, unless TxDOT elects to assume such contract or agreement in writing. Except in the case of TxDOT's express written assumption, no such contract or agreement shall entitle the contracting party to continue performance of work or services respecting the Facility following

Developer's relinquishment to TxDOT of possession and control of the Facility, or to any claim, legal or equitable, against TxDOT.

19.8 Liability After Termination; Final Release

19.8.1 No termination of this Agreement or the Lease shall excuse either Party from any liability arising out of any default as provided in this Agreement or the Lease that occurred prior to termination. Notwithstanding the foregoing, any termination of this Agreement shall automatically extinguish any Claim of Developer to payment of Compensation Amounts for adverse cost and revenue impacts accruing after the Early Termination Date from Compensation Events that occurred prior to termination.

19.8.2 Subject to Sections 19.5.15 and 19.5.16, if this Agreement is terminated under Section 19.1, 19.2, 19.3.1, 19.4, 19.12 or 19.13, then TxDOT's payment to Developer of the amounts required thereunder (if any) shall constitute full and final satisfaction of, and upon payment TxDOT shall be forever released and discharged from, any and all Claims, causes of action, suits, demands and Losses, known or unknown, suspected or unsuspected, that Developer may have against TxDOT arising out of or relating to this Agreement or the Lease or termination thereof, or the Facility, except for specific Claims and Disputes that are asserted by Developer in accordance with Section 17.8.3.1 not later than 30 days after the effective date of termination, are unresolved at the time of such payment and are not related to termination or Termination Compensation. Upon such payment, Developer shall execute and deliver to TxDOT all such releases and discharges as TxDOT may reasonably require to confirm the foregoing, but no such written release and discharge shall be necessary to give effect to the foregoing satisfaction and release.

19.9 Exclusive Termination Rights

This Article 19, together with the express provisions on termination set forth in Sections 17.3.1, 17.6.1 and Article 20 and in the Lease, contain the entire and exclusive provisions and rights of TxDOT and Developer regarding termination of this Agreement and the Lease, and any and all other rights to terminate at law or in equity are hereby waived to the maximum extent permitted by Law. TxDOT irrevocably waives and relinquishes any right it may have under applicable Law (including any Change in Law) to take or expropriate any shares, partnership interests, membership interests or other equity interests in Developer.

19.10 Covenant to Continue Tolling Facility

In the event there exists as of the expiration of the Term or an Early Termination Date any outstanding unpaid amount owing from TxDOT to Developer, or any outstanding, unsatisfied Claim for sums owing from TxDOT to Developer, including any unpaid Termination Compensation, the terms and conditions of this Section 19.10 shall apply, and shall survive termination.

19.10.1 TxDOT shall continue to operate and maintain the Facility, or cause it to be operated and maintained, as a tolled facility to the same or substantially equivalent standards as required of Developer under this Agreement.

19.10.2 TxDOT shall set, adjust, impose and collect tolls and charges in accordance with Exhibit 4.

19.10.3 TxDOT shall cause all tolls and Video Transaction Toll Premiums (but not Incidental Charges) to be transferred into the Post-Termination Revenue Account under the

Facility Trust Agreement; and Developer shall have and retain a continuing perfected lien on, pledge of and security interest in the Post-Termination Revenue Account and the funds therein pursuant to the Facility Trust and Security Instruments, until all amounts due are paid in full.

19.10.4 TxDOT shall put in place and maintain in effect an agreement between TxDOT and a financial institution to act as custodian, for TxDOT and designated beneficiaries, of customer accounts for TxDOT-issued Transponders and of toll revenues received from toll transactions TxDOT processes for collection and enforcement, including Transactions from the Facility, and to name Developer as a designated beneficiary with respect to lockbox and custodial accounts established thereunder for holding and disposition of toll revenues from the Facility. TxDOT and Developer acknowledge that as of the Effective Date TxDOT has contracted for such custodial arrangements pursuant to a certain Master Lockbox and Custodial Agreement with The Bank of New York Trust Company, N.A., as custodian, dated November 9, 2007 (the "existing custodial agreement"). If the existing custodial agreement is in effect when TxDOT's obligation under this Section 19.10.4 arises, TxDOT, Developer and the custodian shall execute a joinder agreement substantially in the form of Exhibit 24. If the existing custodial agreement is not in effect when TxDOT's obligation under this Section 19.10.4 arises, TxDOT shall enter into an agreement with a custodian on substantially similar terms to the existing custodial agreement, and TxDOT, Developer and the custodian shall enter into a joinder agreement on substantially similar terms to Exhibit 24.

19.10.5 TxDOT shall maintain account holder funds separate and apart from State funds and shall cause all debits to the accounts of transponder holders for Transponder Transactions to be transferred via the custodial accounts to the Facility Trust Fund for deposit into the Post-Termination Revenue Account; provided that if TxDOT's customary non-Discriminatory rules and procedures for its toll processing or clearinghouse functions include deducting its transaction fee for such functions, then TxDOT may reduce the amount of each such transfer to the Facility Trust Fund by the transaction fee amount.

19.10.6 TxDOT's billing statements to Video Transaction Users shall instruct the User to make payments in the name of and to the address of either the trustee of the Facility Trust Fund or the custodian under the custodial agreement described in Section 19.10.4.

19.10.7 If for any reason TxDOT receives any payment for a Transponder Transaction or Video Transaction, all Toll Revenues that are part of such payment shall be deemed received by TxDOT merely as a bailee or agent and shall not constitute funds of TxDOT or the State; and TxDOT shall forthwith remit such payments to the trustee under the Facility Trust Agreement for deposit into the Post-Termination Revenue Account.

19.10.8 Pursuant to the terms of the Facility Trust Agreement, TxDOT shall have the right to (a) draw from the revenues deposited in the Post-Termination Revenue Account under the Facility Trust Agreement to pay as and when incurred TxDOT's reasonable and documented operating and maintenance costs and expenses respecting the Facility, (b) fund subaccounts of the Facility Trust Fund for reasonable reserves for costs of reconstruction, rehabilitation, renewal and replacement of the Facility; and (c) draw from the revenues deposited into such subaccounts TxDOT's reasonable documented costs of reconstruction, rehabilitation, renewal and replacement of the Facility.

19.10.9 Pursuant to the terms of the Facility Trust Agreement, for undisputed amounts due Developer, Developer shall be entitled to monthly distributions of all revenues held under the Facility Trust Agreement net of TxDOT's permitted draws for such costs and expenses and net of such permitted reasonable reserves, until the undisputed amounts are paid in full.

19.10.10 For disputed amounts due Developer, such net revenues shall continue to be held in trust under the Facility Trust Agreement until final, non-appealable decisions are rendered on all disputed amounts. TxDOT may apply, through the Dispute Resolution Procedures, for limitations on the amount so held in trust to the extent the Disputes Board or other applicable decision making body decides that any disputed portion of the Claim has no reasonable likelihood of award. The amounts of any final, non-appealable awards shall be funded in the same manner as undisputed amounts under Section 19.10.9 until paid in full.

19.10.11 At such time as all amounts due Developer are paid in full, or at any earlier date that the funds held in trust, net of such costs, expenses and reserves, are sufficient to pay disputed and undisputed amounts that are outstanding, (a) TxDOT's obligation to operate the Facility as a tolled facility shall cease, (b) pursuant to the terms of the Facility Trust and Security Instruments TxDOT's right to make withdrawals from the Post-Termination Revenue Account shall be restricted (subject to Section 19.10.10) to preserve the disputed or undisputed amounts that are outstanding, (c) tolls or additional charges to Users thereafter collected by TxDOT shall not be subject to the provisions of this Section 19.10 nor subject to any pledge, lien, security interest or encumbrance in favor of Developer or any Lender, and (d) TxDOT and Developer, promptly upon the other Party's request, shall execute such certificates, releases and other documents, including written confirmation of termination of any joinder agreement entered into pursuant to Section 19.10.4, as the other Party reasonably requests to confirm the foregoing.

19.10.12 At such time as all amounts payable to Developer are paid in full to Developer, the balance held under the Facility Trust Agreement, if any, shall be immediately distributed to TxDOT and the Facility Trust and Security Instruments, Facility Trust Fund and Developer's security interests in the Post-Termination Revenue Account, together with any joinder agreement entered into pursuant to Section 19.10.4, shall cease and terminate.

19.11 Access to Information

Developer shall conduct all discussions and negotiations to determine any Termination Compensation, and shall share with TxDOT all data, documents and information pertaining thereto, on an Open Book Basis.

19.12 Termination by Court Ruling

19.12.1 Except in the circumstances described in Section E.3 or E.4 of Exhibit 20, Termination by Court Ruling means, and becomes effective upon, (a) issuance of a final order by a court of competent jurisdiction to the effect that this Agreement and/or the Lease are void and/or unenforceable or impossible to perform in their entirety, (b) issuance of a final order by a court of competent jurisdiction upholding the binding effect on Developer or TxDOT of a Change in Law that causes impossibility of performance of a fundamental obligation by Developer or TxDOT under the CDA Documents or impossibility of exercising a fundamental right of Developer or TxDOT under the CDA Documents, or (c) occurrence of the circumstances described in Section 24.14.2 or 24.14.4. The final court order shall be treated as the notice of termination.

19.12.2 Once Termination by Court Ruling becomes effective, TxDOT and Developer shall cooperate to implement Sections 19.5, 19.6, 19.7, 19.8, 19.9 and 19.10.

19.12.3 Notwithstanding Section 19.12.2, if a Termination by Court Ruling occurs, Developer shall be entitled to compensation to the extent, and only to the extent, provided in Section E of Exhibit 20. Payment shall be due and payable as and when provided in

Section G.5 of Exhibit 20. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

19.13 Termination for Lack of NEPA Finality

19.13.1 In the event the NEPA Finality Date has not occurred by the date that is five years after the Effective Date, or any extension thereof mutually agreed to in writing by the Parties, each Party, at its sole election, may thereafter terminate this Agreement and the Lease, effective immediately upon delivery of written notice of termination to the other Party and the Collateral Agent under the Security Documents other than the Subordinated Security Documents. However, if the NEPA Finality Date occurs before written notice of termination is delivered, then no such notice shall be effective and neither Party shall have a right to terminate under this Section 19.13.

19.13.2 Once termination due to lack of occurrence of the NEPA Finality Date becomes effective, TxDOT and Developer shall cooperate to implement Sections 19.5, 19.6, 19.7, 19.8, 19.9 and 19.10.

19.13.3 Notwithstanding Section 19.13.2, if either Party elects to terminate due to lack of occurrence of the NEPA Finality Date, Developer shall be entitled to compensation to the extent, and only to the extent, provided in Section E of Exhibit 20. Payment shall be due and payable as and when provided in Section G.5 of Exhibit 20. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

ARTICLE 20. LENDERS' RIGHTS

20.1 Conditions and Limitations Respecting Lenders' Rights

20.1.1 No Security Document (including those respecting a Refinancing) shall be valid or effective, and no Lender shall be entitled to the rights, benefits and protections of this Article 20, unless the Security Document, other related Security Documents and related Funding Agreements strictly comply with Section 4.3.

20.1.2 No Security Document relating to any Refinancing (except Exempt Refinancings) shall be valid or effective, and no Lender shall be entitled to the rights, benefits and protections of this Article 20, unless the Refinancing is in compliance with Section 4.4.

20.1.3 No Funding Agreement or Security Document shall be binding upon TxDOT in the enforcement of its rights and remedies as provided herein and by Law, and no Lender shall be entitled to the rights, benefits and protections of this Article 20, unless and until (i) a copy (certified as true and correct by the Collateral Agent) of the original thereof bearing, if applicable, the date and instrument number or book and page of recordation or filing thereof, including a copy of a specimen bond, note or other obligation (certified as true and correct by the Collateral Agent) secured by such Security Document, has been deposited into an Intellectual Property Escrow and (ii) TxDOT has received written notice of the address of the Collateral Agent to which notices may be sent. In the event of an assignment of any such Funding Agreement or Security Document, such assignment shall not be binding upon TxDOT unless and until TxDOT has received a certified copy thereof, which copy shall, if required to be recorded, bear the date and instrument number or book and page of recordation thereof, has been deposited into an Intellectual Property Escrow and TxDOT has received written notice of the assignee thereof to which notices may be sent. In the event of any change in the identity of

the Collateral Agent, such change shall not be binding upon TxDOT unless and until TxDOT has received a written notice thereof signed by the replaced and substitute Collateral Agent and setting forth the address of the substitute Collateral Agent to which notices may be sent.

20.1.4 No Lender shall be entitled to the rights, benefits and protections of this Article 20 unless the Funding Agreements in favor of the Lender are secured by senior or first tier subordinate Security Documents. For avoidance of doubt, no Lender holding Facility Debt secured by a Subordinated Security Document shall have any rights, benefits or protections under this Article 20.

20.1.5 A Lender shall not, by virtue of its Funding Agreement or Security Document, acquire any greater rights to or interest in the Facility, the Lease or Toll Revenues than Developer has at any applicable time under this Agreement, other than the provisions in this Article 20 for the specific protection of Lenders.

20.1.6 All rights acquired by Lenders under any Funding Agreement or Security Document shall be subject to the provisions of this Agreement and the Lease and to the rights of TxDOT hereunder and thereunder.

20.1.7 The following provisions of this Article 20 shall apply only to Security Documents, and the Lenders thereunder, that comply with Sections 20.1.1, 20.1.2, 20.1.3 and 20.1.4. None of the following provisions of this Article 20 shall be construed inconsistently with the provisions of this Section 20.1. The provisions of this Article 20 that are binding on TxDOT shall inure only to the benefit of such Lenders, and create no rights in favor of Developer.

20.2 Effect of Amendments

While any Security Document is in effect, no agreement between TxDOT and Developer for the modification or amendment of this Agreement or the Lease shall be binding without the Collateral Agent's consent, except to the extent expressly provided otherwise in this Agreement (e.g. Sections 14.1, 14.2, 14.3).

20.3 Notices to Collateral Agent

As long as any Security Document shall remain unsatisfied of record, TxDOT shall promptly provide the Collateral Agent with a copy of any notice it sends to Developer concerning an actual or potential breach of this Agreement or the Lease or an actual or potential Developer Default, including any Warning Notice, and any notice it sends to Developer, the Design-Build Contractor or any O&M Contractor of default by the Design-Build Contractor or any O&M Contractor under the Design-Build Contract or O&M Contract.

20.4 Opportunity to Cure and Step-In

As long as any Security Document shall remain unsatisfied of record, the following provisions shall apply with respect to any such Security Document and the related Lender or Lenders and Funding Agreements. None of the following provisions shall apply, however, with respect to a Developer Default under Section 17.1.1.17 or termination of this Agreement and the Lease as a result thereof.

20.4.1 Should any Developer Default occur which would either immediately or, following the applicable cure period or the giving of notice or both, constitute a Default Termination Event enabling TxDOT to terminate this Agreement, TxDOT shall not terminate this Agreement or the Lease until it first delivers to the Collateral Agent a copy of the Warning

Notice given to Developer and provides the Collateral Agent a reasonable opportunity to cure such Developer Default, as provided below, provided that no opportunity to cure beyond that afforded Developer shall be required for failure of Developer to timely deliver or perform any remedial plan required under Section 17.3.6, and neither a Warning Notice nor opportunity to cure shall be required for a Developer Default under Section 17.1.1.14 or 17.1.1.15. Commencing on the date the applicable cure period available to Developer expires, the Lender shall have the right (but not the obligation) to remedy such Developer Default or cause the same to be remedied by its Substituted Entity; and from and after such date TxDOT shall accept such performance by or at the instigation of the Lender or Substituted Entity as if Developer had done the same. TxDOT shall have no obligation to accept any Lender's tender of a cure prior to such date.

20.4.2 If such Developer Default consists of Developer's failure to pay a monetary obligation, the Collateral Agent may cure such Developer Default by paying all amounts due within 60 days after TxDOT delivers a copy of the Warning Notice to the Collateral Agent. If cure is not effected within such 60-day period, TxDOT may proceed to terminate this Agreement and the Lease without further notice to, or opportunity to cure by, the Lender.

20.4.3 If Developer fails to achieve Service Commencement for either Facility Segment by the Service Commencement Deadline, as the same may be extended pursuant to this Agreement, then the Collateral Agent shall have until the later of (a) the end of the 90-day Warning Notice period set forth in Section 17.2.1.2 and (b) the Long Stop Date, as the same may be extended pursuant to this Agreement (including extension pursuant to Section 20.4.9), to achieve or cause Developer to achieve Service Commencement for the Facility Segment. If Service Commencement for the Facility Segment is not achieved by such date, then it shall constitute a material Developer Default and TxDOT may proceed to terminate this Agreement and the Lease without further notice to, or opportunity to cure by, the Lender.

20.4.4 As to such Developer Default, other than (a) the failure to pay a monetary obligation, (b) the failure to achieve Service Commencement for either Facility Segment by the deadline set forth in Section 20.4.3 and (c) Developer Defaults governed by Section 20.4.7, the Collateral Agent shall have a cure period ending 30 days after the later of (i) the date Developer's cure period expires and (ii) the date of delivery of a copy of the Warning Notice to the Collateral Agent. If no cure period is available to Developer, then the Collateral Agent's cure period shall be 60 days, commencing with the date of delivery of a copy of the Warning Notice to the Collateral Agent. However, such period to cure shall be extended if the default is capable of being corrected without having possession of the Facility (e.g. cure of Developer Defaults under Sections 17.1.1.9 and 17.1.1.16) but cannot reasonably be corrected within such cure period and the Collateral Agent or the Substituted Entity begins meaningful steps to correct such matter within the later of (A) 30 days after the date Developer's cure period expires and (B) 60 days after TxDOT delivers a copy of the Warning Notice and thereafter prosecutes the cure to completion with good faith, diligence and continuity, in any event not to exceed a cure period ending on the later of 180 days after (I) the date Developer's cure period expires and (II) the date of delivery of a copy of the Warning Notice to the Collateral Agent, unless extended pursuant to Section 20.4.10.

20.4.5 The Collateral Agent shall have the right to postpone and extend the time to cure any Developer Default governed by Section 20.4.4 capable of being cured only through possession of the Facility if the Collateral Agent shall:

20.4.5.1 Within the cure period available therefor under Section 20.4.2, cure all Developer Defaults which may be cured by the payment of a sum of money, and within the cure period available therefor under Section 20.4.4, undertake to cure any other Developer

Default governed by Section 20.4.4 then existing or thereafter occurring and capable of being cured without possession;

20.4.5.2 Continue to pay or cause to be paid when due all fees, rent and other amounts due from Developer under this Agreement or the Lease;

20.4.5.3 Not later than 30 days after receiving a copy of the Warning Notice, initiate and thereafter pursue with good faith, diligence and continuity lawful processes and steps to obtain possession, custody and control of the Facility; and

20.4.5.4 Promptly execute all documents reasonably requested by TxDOT affecting the transactions contemplated by this Section and this Agreement.

20.4.6 The Collateral Agent shall exercise the right provided in Section 20.4.5 by giving TxDOT written notice of the exercise of the same 30 days after TxDOT delivers to the Collateral Agent a copy of the Warning Notice. If the Collateral Agent or its Substituted Entity shall have succeeded to the Developer's Interest and obtained possession diligently and with continuity, and in any event within 210 days after TxDOT delivers to the Collateral Agent a copy of the Warning Notice, shall have delivered to TxDOT within 15 days after obtaining possession an assumption in writing of all duties, obligations and liabilities of Developer under this Agreement and the Lease, and shall have thereafter diligently and with continuity cured all Developer Defaults which are capable of being cured through possession, then the Developer Default shall be removed and this Agreement and the Lease shall not be terminated. In connection with any Developer Default or any condition imposed upon Developer to exercise any rights contained in this Agreement which cannot be cured or performed until the Collateral Agent or its Substituted Entity obtains possession, the Collateral Agent or its Substituted Entity shall have a time after it obtains possession as may be necessary with exercise of good faith, diligence and continuity to cure such Developer Default or perform such condition, in any event not to exceed 180 days after the date it obtains possession, unless extended pursuant to Section 20.4.10.

20.4.7 If the Developer Default is peculiar to Developer and is not curable by the Collateral Agent regardless of whether it obtains possession or control of the Facility, such as a Developer Default under Section 17.1.1.10, 17.1.1.14 or 17.1.1.15, or if the Developer Default is a failure to timely deliver and perform a remedial plan required under Section 17.3.6, then TxDOT may terminate this Agreement and the Lease without providing a cure period to any Lender.

20.4.8 If TxDOT terminates this Agreement and the Lease under Section 20.4.6 for inability of the Collateral Agent, despite diligent, continuous efforts, to obtain possession within 210 days after TxDOT delivers to the Collateral Agent a copy of the Warning Notice, or under Section 20.4.7, then TxDOT shall promptly deliver to the Collateral Agent pursuant to the notice provisions of this Agreement written notice of the termination and a statement of any and all sums which would at that time be due under this Agreement and the Lease then known to TxDOT. Thereafter the Collateral Agent or its Substituted Entity, to the extent then permitted by Law, shall have the option to obtain a new comprehensive development agreement, new Facility lease, other new CDA Documents, new Facility trust agreement and, to the extent necessary new ancillary agreements (e.g. lease escrow agreement, Intellectual Property escrow agreements) (together the "New Agreements") in accordance with and upon the following terms and conditions:

20.4.8.1 In order to exercise such option, the Collateral Agent must deliver to TxDOT, within 60 days after TxDOT delivers its written notice of termination, (a) a request for

New Agreements, (b) a written commitment that the Collateral Agent (or its Substituted Entity) will enter into the New Agreements and pay all the amounts described in Section 20.4.8.4, and (c) originals of such New Agreements, duly executed and acknowledged by the Collateral Agent (or its Substituted Entity). If any of the foregoing is not delivered within such 60-day period, the option in favor of the Collateral Agent (and all related Lenders) shall automatically expire;

20.4.8.2 Within 30 days after timely receipt of the written notice, written commitment and New Agreements duly executed, TxDOT shall enter into the New Agreements to which TxDOT is a party with the Collateral Agent or its Substituted Entity, subject to any extension of such 30-day period as TxDOT deems necessary to clear any claims of Developer to continued rights and possession;

20.4.8.3 The New Agreements shall be effective as of the date of termination of this Agreement and the Lease and shall be for the remainder of the term of this Agreement and the Lease, at the rent and upon the terms, covenants, and conditions contained in this Agreement and the Lease; and

20.4.8.4 Upon the execution by all parties and as conditions to the effectiveness of the New Agreements, the Collateral Agent or its Substituted Entity shall perform all of the following:

(a) Pay to TxDOT any and all sums which would, at the time of the execution of the New Agreements, be due under this Agreement or the Lease but for such termination;

(b) Otherwise fully remedy any existing Developer Defaults under this Agreement or the Lease (provided, however, that with respect to any Developer Default which cannot be cured until the Collateral Agent or its Substituted Entity obtains possession, it shall have such time, after it obtains possession, as is necessary with the exercise of good faith, diligence and continuity to cure such default, in any event not to exceed 180 days after the date it obtains possession, unless extended pursuant to Section 20.4.10);

(c) Without duplication of amounts previously paid by Developer, pay to TxDOT all reasonable costs and expenses, including TxDOT's Recoverable Costs, incurred by TxDOT in connection with (i) such default and termination, (ii) the assertion of rights, interests and defenses in any bankruptcy proceeding, (iii) the recovery of possession of the Facility, (iv) all TxDOT activities during its period of possession of, and respecting, the Facility, including permitting, design, acquisition, construction, equipping, maintenance, operation and management activities, and (v) the preparation, execution, and delivery of such New Agreements. Upon request of the Collateral Agent or Substituted Entity, TxDOT will provide a written, documented statement of such costs and expenses; and

(d) Deliver to TxDOT new Payment and Performance Bonds and new letters of credit and guarantees to the extent required under this Agreement.

20.4.8.5 Upon execution of the New Agreements and payment of all sums due TxDOT, TxDOT shall (a) assign and deliver to the Collateral Agent or its Substituted Entity, without warranty or representation, all the property, contracts, documents and information that Developer may have assigned and delivered to TxDOT upon termination of this Agreement pursuant to Section 19.5, and (b) if applicable, transfer into a new Handback Requirements Reserve established by the Collateral Agent or Substituted Entity in accordance with this Agreement, all funds TxDOT received from the Handback Requirements Reserve pursuant to Section 8.11.4.1 (or from draw on a Handback Requirements Letter of Credit) less so much

thereof that TxDOT spent or is entitled to as reimbursement for costs of Renewal Work TxDOT performed prior to the effectiveness of the New Agreements.

20.4.8.6 The New Agreements shall run for the remainder of the term of this Agreement and the Lease. The New Agreements shall otherwise contain the same covenants, terms and conditions and limitations as this Agreement, the Lease and other corresponding CDA Documents and ancillary agreements and documents that were binding on TxDOT and Developer (except for any requirements which have been fulfilled by Developer prior to termination and except that Section 15.1 (and any equivalent provisions of the Lease) shall be revised to be particular to the Collateral Agent or its Substituted Entity).

20.4.8.7 If the holders of more than one Security Document make written requests upon TxDOT for New Agreements in accordance with this Section 20.4.8, TxDOT shall grant the New Agreements to, as applicable, the holder whose leasehold mortgage has the most senior priority of record. Priority shall be established as follows.

(a) TxDOT shall submit a written request to the Collateral Agent to designate the leasehold mortgage having the most senior priority of record. TxDOT shall have the right to conclusively rely on the Collateral Agent's written designation, without duty of further inquiry by TxDOT and without liability to any Lender; and thereupon the written requests of each holder of any other leasehold mortgage shall be deemed to be void.

(b) If TxDOT does not receive the Collateral Agent's written designation within ten days after delivering written request, then TxDOT may conclusively rely, without further inquiry and without liability to any Lender, on the seniority indicated by a then-current title report that TxDOT obtains from one of the four largest title insurance companies doing business in Texas (unless otherwise agreed in writing by the most senior holder so indicated); and thereupon the written requests of each holder of any other leasehold mortgage shall be deemed to be void.

(c) In the event the holders of more than one leasehold mortgage share pari passu senior lien priority as indicated pursuant to clause (a) or (b) above and make written requests upon TxDOT for New Agreements in accordance with this Section 20.4.8, TxDOT shall grant the New Agreement to such holders jointly (unless otherwise agreed in writing by such holders); and thereupon the written requests of each holder of any other leasehold mortgage shall be deemed to be void.

20.4.8.8 The provisions of this Section 20.4.8 shall survive the termination of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section were a separate and independent contract made by TxDOT and the Lender.

20.4.9 The Collateral Agent shall have the option to extend a Long Stop Date by two additional 90-day periods, provided all the following terms and conditions have been satisfied by not later than 15 days before the Long Stop Date to be extended:

20.4.9.1 The Collateral Agent has delivered to TxDOT (a) written notice identifying the Long Stop Date that is the subject of the notice and stating the election to exercise the option to extend and (b) concurrently with such written notice a payment in good funds in the amount set forth in Exhibit 21. Such payment is due for each 90-day extension of each Long Stop Date. Such payment shall be fully earned and non-refundable when paid, as consideration for the option to extend;

20.4.9.2 The Collateral Agent or its Substituted Entity has obtained ownership of the Developer's Interest and full possession, custody and control of the Facility to the exclusion of Developer; and

20.4.9.3 If any other Warning Notices are then outstanding, the Collateral Agent has demonstrated to TxDOT that it or its Substituted Entity has undertaken and continues and will continue to undertake meaningful steps to prosecute cure to completion with good faith, diligence and continuity.

20.4.10 The Collateral Agent shall have the option to extend the 180-day deadline set forth in Section 20.4.4 or, if applicable, the 180-day deadline after obtaining possession set forth in Section 20.4.6 or the 180-day deadline set forth in Section 20.4.8.4(b), by up to but not exceeding an additional 180 days, provided that all the following conditions precedent have been satisfied by not later than 15 days before the deadline to be extended:

20.4.10.1 The Collateral Agent has delivered to TxDOT written notice requesting extension and setting forth a reasonable time period needed to effect cure, in any event not exceeding such 180 days;

20.4.10.2 The Collateral Agent has met all the requirements set forth in (a) Section 20.4.4, (b) Sections 20.4.5 and 20.4.6 or (c) Section 20.4.8.4, as applicable;

20.4.10.3 The Collateral Agent has delivered evidence to TxDOT demonstrating, and TxDOT is reasonably satisfied, that full and complete cure by the Collateral Agent is highly likely within the period of extension; and

20.4.10.4 The Collateral Agent has prepared and submitted to TxDOT, and TxDOT has approved, a remedial plan for effecting full and complete cure. The remedial plan shall set forth a schedule and specific actions to be taken by the Collateral Agent to fully and completely cure, with the schedule to be consistent with the period of extension. TxDOT may require that such actions include new and improved quality management practices, plans and procedures, revised and restated Management Plans, changes in organizational and management structure, increased monitoring and inspections, changes in Key Personnel and other important personnel, replacement of Contractors, and delivery of security to TxDOT.

Time is of the essence in the exercise of such option. If for any reason any of the foregoing conditions is not satisfied by 15 days before the deadline that is eligible to be extended, the option shall automatically expire and cease to have effect with respect to such deadline.

20.4.11 Notwithstanding any contrary provisions of the CDA Documents, in the event a Lender or its Substituted Entity obtains ownership of the Developer's Interest and full possession, custody and control of the Facility to the exclusion of Developer, all Noncompliance Points accumulated prior to the date the Lender or Substituted Entity obtains ownership and possession shall be reduced to zero. The foregoing shall not, however, excuse the Lender or its Substituted Entity from any obligation to cure prior uncured breaches or failures to perform under the CDA Documents, and except for determination of Persistent Developer Default shall not affect any rights and remedies available to TxDOT respecting uncured breaches or failures to perform.

20.4.12 Any curing of any Default Termination Event by the Collateral Agent shall not be construed as an assumption by the Collateral Agent of any obligations, covenants or agreements of Developer under the CDA Documents or any Principal Facility Documents,

except with respect to the work, services or actions taken or performed by or on behalf of the Collateral Agent.

20.4.13 Nothing in this Section 20.4 shall preclude or delay TxDOT from exercising any remedies other than termination of this Agreement and the Lease due to Developer Default, including, subject to TxDOT's express covenants to forebear, TxDOT's rights to cure the Developer Default at Developer's expense and to remove and replace Developer.

20.5 Forbearance

20.5.1 To the extent TxDOT has rights to enforce the Design-Build Contract or any O&M Contract, whether as assignee of Developer's rights or otherwise, so long as this Agreement remains in effect TxDOT shall forbear from exercising remedies against the Design-Build Contractor or any O&M Contractor if (a) Developer or the Collateral Agent commences the good faith, diligent exercise of remedies available to Developer under the Design-Build Contract or O&M Contract within 15 days after TxDOT delivers written notice to Developer and the Collateral Agent of default by the Design-Build Contractor or any O&M Contractor, and (b) thereafter continues such good faith, diligent exercise of remedies until the default is cured.

20.5.2 At TxDOT's request from time to time, Developer shall provide to TxDOT written reports on the status of any such default, cure and exercise of remedies.

20.6 Substituted Entities

20.6.1 Any payment to be made or action to be taken by the Collateral Agent as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Collateral Agent if a Substituted Entity proposed by the Collateral Agent and approved by TxDOT makes such payment or takes such action. TxDOT shall have no obligation to recognize any claim to the Developer's Interest by any person or entity that has acquired the Developer's Interest by, through, or under any Security Document or whose acquisition shall have been derived immediately from any holder thereof, unless such person or entity is a Substituted Entity.

20.6.2 Notwithstanding the foregoing, any entity that is wholly owned by a Lender or group of Lenders shall be deemed a Substituted Entity, without necessity for TxDOT approval, upon delivery to TxDOT of documentation proving that the entity is duly formed, validly existing and wholly owned by such Lender or group of Lenders, including a certificate signed by a duly authorized officer of each such Lender in favor of TxDOT certifying, representing and warranting such ownership.

20.6.3 TxDOT shall have no obligation to approve a person or entity as a Substituted Entity unless the Lender demonstrates that (a) the proposed Substituted Entity and its contractors collectively have the financial resources, qualifications and experience to timely perform Developer's obligations under the CDA Documents and Principal Facility Documents and (b) the proposed Substituted Entity and its contractors are in compliance with TxDOT's rules, regulations and adopted written policies regarding organizational conflicts of interest. TxDOT will approve or disapprove a proposed Substituted Entity within 30 days after it receives from the Lender a request for approval together with (a) such information, evidence and supporting documentation concerning the identity, financial resources, qualifications, experience and potential conflicts of interest of the proposed Substituted Entity and its contractors as TxDOT may request, and (b) such evidence of organization, authority, incumbency certificates, certificates regarding debarment or suspension, child support statements, and other certificates, representations and warranties as TxDOT may reasonably

request. TxDOT will request information on, and evaluate, the financial resources, qualifications, experience and potential conflicts of interest of the proposed Substituted Entity and its contractors using the same standards and criteria that it is then currently applying, or if there is no current application, then the same standards and criteria it most recently applied, to the evaluation of Persons responding to TxDOT requests for qualifications for concession or similar agreements for comparable projects and facilities. If for any reason TxDOT does not act within such 30-day period, or any extension thereof by mutual agreement of TxDOT and the Lender, TxDOT shall be deemed to disapprove.

20.6.4 Lender may request approval of more than one Substituted Entity. A Lender may request approval at any time or times. Any approval by TxDOT of a Substituted Entity shall expire one year after the approval is issued, unless TxDOT approves an extension in its sole discretion or unless within such one-year period (or any approved extension thereof) the Substituted Entity has succeeded to the Developer's Interest. TxDOT may revoke an approval if at any time prior to succeeding to the Developer's Interest (a) the Substituted Entity ceases to be in compliance with TxDOT's rules and regulations regarding organizational conflicts of interest or (b) there occurs, after exhaustion of all rights of appeal, any suspension or debarment of the Substituted Entity or any managing member, general partner or controlling investor of the Substituted Entity from bidding, proposing or contracting with any federal or State department or agency.

20.7 Receivers

20.7.1 The appointment of a receiver at the behest of Developer shall be subject to TxDOT's prior written approval in its sole discretion. The appointment of a receiver at the behest of any Lender not in compliance with Sections 20.1.1, 20.1.2, 20.1.3 and 20.1.4 shall be void and may be challenged by TxDOT in any proceeding. The appointment of a receiver at the behest of any Lender in compliance with Sections 20.1.1, 20.1.2, 20.1.3 and 20.1.4 shall be subject to the following terms and conditions:

20.7.1.1 TxDOT's prior approval shall not be required for the appointment of the receiver or the selection of the person or entity to serve as receiver;

20.7.1.2 Whenever any Lender commences any proceeding for the appointment of a receiver, it shall serve on TxDOT not less than five days' prior written notice of the hearing for appointment and of the Lender's pleadings and briefs in the proceeding;

20.7.1.3 TxDOT may appear in any such proceeding to challenge the selection of the person or entity to serve as receiver, but waives any other right to oppose the appointment of the receiver; and

20.7.1.4 TxDOT may at any time seek an order for replacement of the receiver by a different receiver.

20.7.2 No receiver appointed at the behest of Developer or any Lender shall have any power or authority to replace the Design-Build Contractor or any O&M Contractor except by reason of default or unless the replacement is a Substituted Entity approved by TxDOT.

20.8 Other Lender Rights

20.8.1 In addition to all other rights herein granted, the Lender shall have the right to be subrogated to any and all rights of Developer under this Agreement and the Lease with respect to curing any Developer Default. TxDOT shall permit the Collateral Agent and its

Substituted Entity the same access to the Facility and Facility Right of Way as is permitted to Developer hereunder. TxDOT hereby consents to Developer constituting and appointing any Collateral Agent as Developer's authorized agent and attorney-in-fact with full power, in Developer's name, place and stead, and at Developer's sole cost and expense, to enter upon the Facility and Facility Right of Way and to perform all acts required to be performed herein, in the Lease, and in any Principal Facility Document, but only in the event of a Developer Default or a default under the Lender's Funding Agreement or Security Document. TxDOT shall accept any such performance by the Collateral Agent as though the same had been done or performed by Developer.

20.8.2 The creating or granting of a Security Document shall not be deemed to constitute an assignment or transfer of this Agreement, the leasehold estate under the Lease or the Developer's Interest, nor shall any Lender, as such, be deemed to be an assignee or transferee of this Agreement, the leasehold estate under the Lease or the Developer's Interest so as to require such Lender, as such, to assume the performance of any of the terms, covenants or conditions on the part of Developer to be performed hereunder or thereunder. No Lender, nor any owner of the leasehold estate under the Lease or the Developer's Interest whose ownership shall have been acquired by, through, or under any Security Document or whose ownership shall have been derived immediately from any holder thereof, shall become personally liable under the provisions of this Agreement or the Lease unless and until such time as the Lender or such owner becomes the owner of the Developer's Interest. Upon any permitted assignment of this Agreement, the Lease and the Developer's Interest by a Lender or any owner of the Developer's Interest whose ownership shall have been acquired by, through, or under any Security Document or whose ownership shall have been derived immediately from any holder thereof, the assignor shall be relieved of any further liability which may accrue hereunder or thereunder from and after the date of such assignment, provided that the assignee is a Substituted Entity and executes and delivers to TxDOT a recordable instrument of assumption as required under Section 21.5.

20.8.3 A Lender or the Collateral Agent may exercise its rights and remedies under its Security Documents with respect to all, but not less than all, of the Developer's Interest.

20.8.4 The exercise by a Lender of its rights with respect to the Developer's Interest under its Security Documents, this Article 20, or otherwise, whether by judicial proceedings or by virtue of any power contained in the Security Documents, or by any conveyance from Developer to the Lender in lieu of foreclosure thereunder, or any subsequent transfer from the Lender to a Substituted Entity, shall not require the consent of TxDOT or constitute a breach of any provision of or a default under the CDA Documents. The foregoing does not affect the obligation to obtain approval of persons or entities as Substituted Entities pursuant to Section 20.6 (and the definition of Substituted Entity).

20.8.5 Whenever TxDOT or Developer obtains knowledge of any condemnation proceedings by a third party affecting the Facility or Facility Right of Way, it shall promptly give notice thereof to each Lender. Each Lender shall have the right to intervene and be made a party to any such condemnation proceedings, and TxDOT and Developer do hereby consent that each Lender may be made such a party or an intervener.

20.9 Consents and Estoppel Certificates

20.9.1 At any time and from time to time, within 15 days after written request of any Lender or proposed Lender, TxDOT, without charge, shall (a) consent to (i) the exercise by any Lender of its rights under and in accordance with this Article 20 in the event of a Developer Default and (ii) a pledge and hypothecation by Developer of the Developer's Interest to any

Lender or proposed Lender and (b) certify to its best knowledge by written instrument duly executed and acknowledged, to any Lender or proposed Lender as follows:

20.9.1.1 As to whether this Agreement has been supplemented or amended, and if so, the substance and manner of such supplement or amendment, attaching a copy thereof to such certificate;

20.9.1.2 As to the validity and force and effect of this Agreement, in accordance with its terms;

20.9.1.3 As to the existence of any Developer Default;

20.9.1.4 As to the existence of events which, by the passage of time or notice or both, would constitute a Developer Default;

20.9.1.5 As to the then accumulated amount of Noncompliance Points;

20.9.1.6 As to the existence of any claims by TxDOT regarding this Agreement;

20.9.1.7 As to the Effective Date and the commencement and expiration dates of the Term;

20.9.1.8 As to whether a specified acceptance, approval or consent of TxDOT called for under this Agreement has been granted;

20.9.1.9 Whether the Lender and its Funding Agreements and Security Documents, or the proposed Lender and its proposed Funding Agreements and Security Documents, meet the conditions and limitations set forth in Sections 4.3 and 20.1; and

20.9.1.10 As to any other matters of fact within TxDOT's knowledge about the CDA Documents, the Principal Facility Documents, Developer, the Facility or the Work as may be reasonably requested.

20.9.2 TxDOT shall deliver the same certified, written instrument to a Substituted Entity or proposed Substituted Entity within 15 days after receiving its written request, provided that the request is delivered to TxDOT either before the Substituted Entity or proposed Substituted Entity succeeds to the Developer's Interest or within 60 days after the Substituted Entity has succeeded to the Developer's Interest.

20.9.3 Any such certificate may be relied upon by, and only by, the Lender, proposed Lender, Substituted Entity or proposed Substituted Entity to whom the same may be delivered, and the contents of such certificate shall be binding on TxDOT.

20.9.4 Upon receipt of written request from the Collateral Agent (or any other Lender of Facility Debt that has no participating Lenders), and provided that the requesting Lender is then entitled to the protections of this Article 20, TxDOT shall enter into a direct agreement with the Collateral Agent or Lender setting forth the precise provisions of this Article 20. Any direct agreement shall be in the form set forth in Exhibit 25.

20.10 No Surrender

No mutual agreement to cancel or surrender this Agreement or the Lease shall be effective unless consented to in writing by the Collateral Agent, which consent Developer shall be solely responsible to obtain.

ARTICLE 21. ASSIGNMENT AND TRANSFER

21.1 Restrictions on Assignment, Subletting and Other Transfers

21.1.1 Developer shall not voluntarily or involuntarily sell, assign, convey transfer, pledge, mortgage or otherwise encumber the Developer's Interest or any portion thereof without TxDOT's prior written approval, except:

21.1.1.1 To Lenders for security as permitted by this Agreement, provided Developer retains responsibility for the performance of Developer's obligations under the CDA Documents;

21.1.1.2 To any Lender affiliate that is a Substituted Entity or to any other Substituted Entity approved by TxDOT; provided that such Substituted Entity assumes in writing full responsibility for performance of the obligations of Developer under this Agreement, the Lease, the other CDA Documents, and the Principal Facility Documents arising from and after the date of assignment; or

21.1.1.3 To any entity that is under the same ultimate management control as Developer.

21.1.2 Developer shall not sublease or grant any other special occupancy or use of the Facility to any other Person that is not in the ordinary course of Developer performing the Work, without TxDOT's prior written approval.

21.1.3 Any sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use in violation of this provision shall be null and void *ab initio* and TxDOT, at its option, may, by Warning Notice, declare any such attempted action to be a material Developer Default.

21.2 Restrictions on Change of Control

21.2.1 Developer shall not voluntarily or involuntarily cause, permit or suffer any Change of Control at any time prior to five years after the Service Commencement Date. Thereafter, any Change of Control of Developer shall be subject to TxDOT's prior written approval in accordance with Section 21.3.

21.2.2 If there occurs any voluntary or involuntary Change of Control without TxDOT's prior written approval, TxDOT, at its option, may, by Warning Notice, declare it to be a material Developer Default.

21.3 Standards and Procedures for TxDOT Approval

21.3.1 Where TxDOT's prior approval is required for a proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use, or for any proposed Change of Control, and such transaction is proposed at any time during the period ending five years after the Service Commencement Date, TxDOT

may withhold or condition its approval in its sole discretion. Any such decision of TxDOT to withhold consent shall be final, binding and not subject to the Dispute Resolution Procedures.

21.3.2 Thereafter, TxDOT shall not unreasonably withhold its approval thereto. Among other reasonable factors and considerations, it shall be reasonable for TxDOT to withhold its approval if:

21.3.2.1 Developer fails to demonstrate to TxDOT's reasonable satisfaction that the proposed assignee, sublessee, grantee or transferee, or the proposed transferee of rights and/or equity interests that would amount to a Change of Control (collectively the "transferee"), and its proposed contractors (a) have the financial resources, qualifications and experience to timely perform Developer's obligations under the CDA Documents and Principal Facility Documents and (b) are in compliance with TxDOT's rules, regulations and adopted written policies regarding organizational conflicts of interest;

21.3.2.2 Less than all of Developer's Interest is proposed to be assigned, conveyed, transferred, pledged, mortgaged, encumbered, sublet or granted; or

21.3.2.3 At the time of the proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use requiring TxDOT's prior approval, or of any proposed Change of Control, there exists any uncured Developer Default or any event or circumstance that with the lapse of time, the giving of notice or both would constitute a Developer Default, unless TxDOT receives from the proposed transferee assurances of cure and performance acceptable to TxDOT in its good faith discretion.

21.3.3 TxDOT will approve or disapprove within 30 days after it receives from Developer a Submittal consisting of a request for approval together with (a) a reasonably detailed description of the proposed transaction, (b) such information, evidence and supporting documentation as TxDOT may request concerning the identity, financial resources, qualifications, experience and potential conflicts of interest of the proposed transferee and its proposed contractors and (c) such evidence of organization and authority, and such incumbency certificates, certificates regarding debarment or suspension, and other certificates, representations and warranties as TxDOT may reasonably request. TxDOT will evaluate the identity, financial resources, qualifications, experience and potential conflicts of interest using the same standards and criteria that it is then currently applying, or if there is no current application, then the same standards and criteria it most recently applied, to the evaluation of Persons responding to TxDOT requests for qualifications for concession or similar agreements for comparable projects and facilities.

21.3.4 If for any reason TxDOT does not act within such 30-day period, or any extension thereof by mutual agreement of the Parties, then the provisions of Section 6.3.4.2 shall apply.

21.4 Assignment by TxDOT

TxDOT may assign all or any portion of its rights, title and interests in and to the CDA Documents, Payment and Performance Bond(s), guarantees, letters of credit and other security for payment or performance, (a) without Developer's consent, to any other Person that succeeds to the governmental powers and authority of TxDOT, and (b) to others with the prior written consent of Developer. TxDOT also may assign, without Developer's consent, all or any portion of its rights, title and interests in and to revenue streams from Developer under the CDA Documents, together with Payment and Performance Bond(s), guarantees, letters of credit and

other security for payment of such revenue streams and TxDOT's rights to enforce payment of such revenue streams other than rights to terminate this Agreement and the Lease, to any trustee, credit enhancer or swap counterparty with respect to bonds or other indebtedness issued by TxDOT or a related entity or instrumentality as security for repayment of the bonds or other indebtedness.

21.5 Notice and Assumption

21.5.1 Assignments and transfers of the Developer's Interest permitted under this Article 21 (other than pursuant to Section 21.1.1.1) or otherwise approved in writing by TxDOT shall be effective only upon TxDOT's receipt of written notice of the assignment or transfer and a written recordable instrument executed by the transferee, in form and substance acceptable to TxDOT, in which the transferee, without condition or reservation, assumes all of Developer's obligations, duties and liabilities under this Agreement, the Lease and the other CDA Documents then in effect and agrees to perform and observe all provisions thereof applicable to Developer.

21.5.2 Each transferee, including any Person who acquires the Developer's Interest pursuant to foreclosure, transfer in lieu of foreclosure or similar proceeding, shall take the Developer's Interest subject to, and shall be bound by, the Facility Management Plan, the Key Contracts, the Utility Agreements, all agreements between the transferor and railroads, the Governmental Approvals, and all agreements between the transferor and Governmental Entities with jurisdiction over the Facility or the Work, except to the extent otherwise approved by TxDOT in writing in its good faith discretion.

21.5.3 Except with respect to assignments and transfers pursuant to foreclosure, transfer in lieu of foreclosure or similar proceeding, the transferor and transferee shall give TxDOT written notice of the assignment not less than 30 days prior to the effective date thereof.

21.6 Change of Organization or Name

21.6.1 Developer shall not change the legal form of its organization in a manner that adversely affects TxDOT's rights, protections and remedies under the CDA Documents without the prior written approval of TxDOT, which consent may be granted or withheld in TxDOT's sole discretion.

21.6.2 In the event either Party changes its name, such Party agrees to promptly furnish the other Party with written notice of change of name and appropriate supporting documentation.

ARTICLE 22. RECORDS AND AUDITS; INTELLECTUAL PROPERTY

22.1 Maintenance and Inspection of Records

22.1.1 Developer shall keep and maintain in Tarrant County, Texas, or in another location TxDOT approves in writing in its sole discretion, all books, records and documents relating to the Facility, Facility Right of Way, Utility Adjustments or Work, including copies of all original documents delivered to TxDOT. Developer shall keep and maintain such books, records and documents in accordance with applicable provisions of the CDA Documents, Section 2.1.2 of the Technical Provisions, and of the Facility Management Plan, and in accordance with Good Industry Practice. Developer shall notify TxDOT where such records and documents are kept.

22.1.2 Developer shall make all its books, records and documents available for inspection by TxDOT and the Independent Engineer and their Authorized Representatives and legal counsel at Developer's principal offices in Texas, or pursuant to each Intellectual Property Escrow, at all times during normal business hours, without charge. Developer shall provide, or make available for review pursuant to each Intellectual Property Escrow, to TxDOT and the Independent Engineer copies thereof (a) as and when expressly required by the CDA Documents or (b) for those not expressly required, upon request and at no expense to Developer. TxDOT may conduct any such inspection upon 48 hours' prior written notice, or unannounced and without prior notice where there is good faith suspicion of fraud. The right of inspection includes the right to make extracts and take notes. The provisions of this Section 22.1.2 are subject to the following:

22.1.2.1 Developer reserves the right to assert exemptions from disclosure for information that would be exempt under applicable State Law from discovery or introduction into evidence in legal actions, provided that in no event shall Developer be entitled to assert any such exemption to withhold traffic and revenue data; and

22.1.2.2 Unless otherwise lawfully required by the FHWA, Developer may make available copies of books, records and documents containing trade secrets and confidential proprietary information with such information redacted, provided Developer deposits unredacted copies thereof in an Intellectual Property Escrow within five Business Days after receiving TxDOT's notice, and without restriction on TxDOT's right of access thereto for inspection. Unless otherwise lawfully required by the FHWA, TxDOT shall have no right to make extracts of such trade secrets and confidential proprietary information except in connection with resolution of Claims and Disputes. In no event shall Developer be entitled to apply this Section 22.1.2.2 to traffic and revenue data.

22.1.3 Developer shall retain records and documents for the respective time periods set forth in the Texas State Records Retention Schedule, or, if not addressed in the Texas State Records Retention Schedule, for a minimum of five years after the date the record or document is generated; provided that if the CDA Documents or applicable Law specify any longer time period for retention of particular records, such time period shall control. Notwithstanding the foregoing, all records which relate to Claims and Disputes being processed or actions brought under the Dispute Resolution Procedures shall be retained and made available until any later date that such Claims, Disputes and actions are finally resolved. Refer to Attachment 1 to Exhibit 8 regarding applicable federal requirements and to Section 8.8.4 regarding the time period for retention of Patron Confidential Information.

22.2 Audits

22.2.1 TxDOT shall have such rights to review and audit Developer, its Contractors and their respective books and records as and when TxDOT deems necessary for purposes of verifying compliance with the CDA Documents and applicable Law. Without limiting the foregoing, TxDOT shall have the right to audit Developer's Facility Management Plan and compliance therewith, including the right to inspect Work and/or activities and to verify the accuracy and adequacy of the Facility Management Plan and its component parts, plans and other documentation. TxDOT may conduct any such audit of books and records upon 48 hours' prior written notice, or unannounced and without prior notice where there is good faith suspicion of fraud.

22.2.2 All Claims filed against TxDOT shall be subject to audit at any time following the filing of the Claim. The audit may be performed by employees of TxDOT or by an auditor under contract with TxDOT. No notice is required before commencing any audit before 60 days

after the expiration of the term of this Agreement. Thereafter, TxDOT shall provide 20 days notice to Developer, any Contractors or their respective agents before commencing an audit. Developer, Contractors or their agents shall provide adequate facilities, acceptable to TxDOT, for the audit during normal business hours. Developer, Contractors or their agents shall cooperate with the auditors. Failure of Developer, Contractors or their agents to maintain and retain sufficient books and records to allow the auditors to verify all or a portion of the Claim or to permit the auditor access to such books and records shall constitute a waiver of the Claim and shall bar any recovery thereunder. At a minimum, the auditors shall have available to them the following documents relating to the Claim:

22.2.2.1 Daily time sheets and supervisor's daily reports;

22.2.2.2 Union agreements;

22.2.2.3 Insurance, welfare, and benefits records;

22.2.2.4 Payroll registers;

22.2.2.5 Earnings records;

22.2.2.6 Payroll tax forms;

22.2.2.7 Material invoices and requisitions;

22.2.2.8 Material cost distribution work sheet;

22.2.2.9 Equipment records (list of company equipment, rates, etc.);

22.2.2.10 Contractors' (including Suppliers') invoices;

22.2.2.11 Contractors' and agents' payment certificates;

22.2.2.12 Canceled checks (payroll and Suppliers);

22.2.2.13 Job cost report;

22.2.2.14 Job payroll ledger;

22.2.2.15 General ledger;

22.2.2.16 Cash disbursements journal;

22.2.2.17 Daily records of Toll Revenues;

22.2.2.18 All documents that relate to each and every Claim together with all documents that support the amount of damages as to each Claim; and

22.2.2.19 Work sheets used to prepare the Claim establishing (a) the cost components of the Claim, including labor, benefits and insurance, materials, equipment, Contractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals, and (b) the lost revenue components of the Claim.

22.2.3 Full compliance by Developer with the provisions of this Section 22.2 is a contractual condition precedent to Developer's right to seek relief on a Claim under Section 17.8.

22.2.4 Rights of the Independent Engineer to review and audit Developer, its Contractors and their respective books and records are set forth in Section 9.3, in the Technical Provisions and in the Independent Engineer Agreement. Any rights of the FHWA to review and audit Developer, its Contractors and their respective books and records are set forth in Attachment 1 to Exhibit 8.

22.2.5 TxDOT's and the Independent Engineer's rights of audit include the right to observe the business operations of Developer and its Contractors to confirm the accuracy of books and records.

22.2.6 Developer shall include in the Facility Management Plan internal procedures to facilitate review and audit by TxDOT, the Independent Engineer and, if applicable, FHWA.

22.2.7 Developer represents and warrants the completeness and accuracy in all material respects of all information it or its agents provides in connection with TxDOT or Independent Engineer audits, and shall cause all Contractors other than TxDOT and Governmental Entities acting as Contractors to warrant the completeness and accuracy in all material respects of all information such Contractors provide in connection with TxDOT or Independent Engineer audits.

22.2.8 Developer's internal and third party quality and compliance auditing responsibilities shall be set forth in the Facility Management Plan, consistent with the audit requirements referred to in Section 9.1.6 and described in Attachment 2-1 to the Technical Provisions. In addition, Developer shall perform Audit Inspections as set forth in Section 22.4 of the Technical Provisions.

22.2.9 Nothing in the CDA Documents shall in any way limit the constitutional and statutory powers, duties and rights of elected State officials, including the independent rights of the State Auditor, in carrying out his or her legal authority. Developer understands and acknowledges that (a) the State Auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a Contract, (b) acceptance of funds directly under this Agreement or indirectly through a Contract 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, and (c) 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.

22.3 Public Information Act

22.3.1 Developer acknowledges and agrees that, except as provided by Transportation Code, Section 223.204, all Submittals, records, documents, drawings, plans, specifications and other materials in TxDOT's possession, including materials submitted by Developer to TxDOT, are subject to the provisions of the Public Information Act. If Developer believes information or materials submitted to TxDOT constitute trade secrets, proprietary information or other information that is not subject to the Public Information Act pursuant to Transportation Code, Section 223.204 or is excepted from disclosure under the Public Information Act, Developer shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such document or page affected, as it determines to be appropriate. Any specific proprietary

information, trade secrets or confidential commercial and financial information shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim. Nothing contained in this Section 22.3 shall modify or amend requirements and obligations imposed on TxDOT by the Public Information Act or other applicable Law, and the provisions of the Public Information Act or other Laws shall control in the event of a conflict between the procedures described above and the applicable Law. Developer is advised to contact legal counsel concerning such Law and its application to Developer.

22.3.2 If TxDOT receives a request for public disclosure of materials marked "CONFIDENTIAL," TxDOT will use reasonable efforts to notify Developer of the request and give Developer an opportunity to assert, in writing and at its sole expense, a claimed exception under the Public Information Act or other applicable Law within the time period specified in the notice issued by TxDOT and allowed under the Public Information Act. Under no circumstances, however, will TxDOT be responsible or liable to Developer or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by Law, or court order, or occurs through inadvertence, mistake or negligence on the part of TxDOT or its officers, employees, contractors or consultants.

22.3.3 In the event of any proceeding or litigation concerning the disclosure of any material submitted by Developer to TxDOT, TxDOT's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and Developer shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that TxDOT reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. Except in the case of TxDOT's voluntary intervention or participation in litigation, Developer shall pay and reimburse TxDOT within 30 days after receipt of written demand and reasonable supporting documentation for all costs and fees, including attorneys' fees and costs, TxDOT incurs in connection with any litigation, proceeding or request for disclosure.

22.3.4 Notwithstanding the foregoing, Developer consents to (i) disclosure of its Proposal, which, with the exception of the Escrowed Materials, is subject to disclosure in accordance with ITP Section 2.6 and Section 5.16, and (ii) all other disclosures required by law. Developer further expressly waives any right to contest, impede, prevent or delay such disclosure, or to initiate any proceeding that may have the effect of impeding, preventing or delaying such disclosure, under Transportation Code, Section 223.204, the Rules, the Public Information Act or any other law relating to the confidentiality or disclosure of information.

22.4 Intellectual Property

22.4.1 All Proprietary Intellectual Property, including with respect to Technology Enhancements, Source Code and Source Code Documentation, shall remain exclusively the property of Developer or its Affiliates or Contractors that supply the same, notwithstanding any delivery of copies thereof to TxDOT.

22.4.2 TxDOT shall have and is hereby granted a nonexclusive, transferable, irrevocable, fully paid up right and license to use, reproduce, modify, adapt and disclose, and sublicense others to use, reproduce, modify, adapt and disclose, the Proprietary Intellectual Property of Developer, including with respect to Technology Enhancements, Source Code and Source Code Documentation, solely in connection with the Facility and any Highway, tolled or not tolled, owned and operated by TxDOT or a State or regional Governmental Entity; provided that TxDOT shall have the right to exercise such license only at the following times:

22.4.2.1 From and after the expiration or earlier termination of the Term for any reason whatsoever;

22.4.2.2 During any time that TxDOT is exercising its step-in rights pursuant to Section 17.3.4.1, in which case TxDOT may exercise such license only in connection with the Facility; and

22.4.2.3 During any time that a receiver is appointed for Developer, or during any time that there is pending a voluntarily or involuntary proceeding in bankruptcy in which Developer is the debtor, in which case TxDOT may exercise such license only in connection with the Facility.

22.4.3 Subject to the license and rights granted to TxDOT pursuant to Section 22.4.2, TxDOT shall not at any time sell any Proprietary Intellectual Property of Developer or use, reproduce, modify, adapt and disclose, or allow any party to use, reproduce, modify, adapt and disclose, any such Proprietary Intellectual Property for any other purpose.

22.4.4 The right to transfer the license is limited to any Governmental Entity that succeeds to the power and authority of TxDOT generally or with respect to the Facility.

22.4.5 The right to sublicense is limited to State or regional Governmental Entities that own or operate a Highway or other road, tolled or not tolled, and to the concessionaires, contractors, subcontractors, employees, attorneys, consultants and agents that are retained by or on behalf of TxDOT or any such State or regional Governmental Entity in connection with the Facility or another Highway or other road, tolled or untolled. All such sublicenses shall be subject to Section 22.4.6.

22.4.6 Subject to Section 22.3, TxDOT shall:

22.4.6.1 Not disclose any Proprietary Intellectual Property of Developer to any Person other than authorized transferees and sublicensees who agree to be bound by any confidentiality obligations of TxDOT relating thereto;

22.4.6.2 Enter into a commercially reasonable confidentiality agreement if requested by Developer with respect to the licensed Proprietary Intellectual Property; and

22.4.6.3 Include, or where applicable require such State or regional Governmental Entity to include, in the contract with the sublicensee its covenant to employ sound business practices no less diligent than those used for its own confidential information, and no less diligent than required by commercially reasonable standards of confidentiality, to protect all Proprietary Intellectual Property of Developer and other materials provided under the sublicense against disclosure to third parties not in receipt of a sublicense, and to use the sublicense only for the permitted purposes.

22.4.7 Notwithstanding any contrary provision of this Agreement, in no event shall TxDOT or any of its directors, officers, employees, consultants or agents be liable to Developer, any Affiliate or any Contractor for any damages, including loss of profit, arising out of breach of the duty of confidentiality set forth in Section 22.4.6 if such breach is not the result of gross negligence or intentional misconduct. Developer hereby irrevocably waives all claims to any such damages. The foregoing provisions do not limit Developer's equitable remedies set forth in Section 17.6.4.4.

22.4.8 Developer shall continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

22.4.9 With respect to any Proprietary Intellectual Property, including with respect to Technology Enhancements, Source Code and Source Code Documentation, owned by a Person other than Developer, including any Affiliate, and other than TxDOT or a Governmental Entity acting as a Contractor, Developer shall obtain from such owner, concurrently with execution of any contract, subcontract or purchase order with such owner or with the first use or adaptation of the Proprietary Intellectual Property in connection with the Facility, both for Developer and TxDOT, nonexclusive, transferable, irrevocable, fully paid up licenses to use, reproduce, modify, adapt and disclose such Proprietary Intellectual Property solely in connection with the Facility and any Highway, tolled or not tolled, owned and operated by TxDOT or a State or regional Governmental Entity, of at least identical scope, purpose, duration and applicability as the license granted under Section 22.4.2. The foregoing requirement shall not apply, however, to mass-marketed software products (sometimes referred to as "shrink wrap software") owned by such a Person where such a license cannot be extended to TxDOT using commercially reasonable efforts. The limitations on sale, transfer, sublicensing and disclosure by TxDOT set forth in Sections 22.4.3 through 22.4.6 shall also apply to TxDOT's licenses in such Proprietary Intellectual Property.

22.5 Intellectual Property Escrows

22.5.1 TxDOT and Developer acknowledge that Developer and/or Contractors that supply software, Source Code, Financial Modeling Data or other Proprietary Intellectual Property may not wish to deliver the Proprietary Intellectual Property directly to TxDOT, as public disclosure could deprive Developer and/or Contractors of commercial value. Developer further acknowledges that TxDOT and the Independent Engineer nevertheless must be ensured access to such Proprietary Intellectual Property at any time, and must be assured that the Proprietary Intellectual Property is released and delivered to TxDOT in either of the following circumstances:

22.5.1.1 In the case of Proprietary Intellectual Property owned by Developer or any Affiliate, (a) this Agreement is terminated for Developer Default, (b) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of Developer occurs, (c) Developer is dissolved or liquidated or (d) Developer fails or ceases to provide services as necessary to permit continued use of the Proprietary Intellectual Property pursuant to the license or any sublicense thereof.

22.5.1.2 In the case of Proprietary Intellectual Property owned by a Contractor (other than a Contractor that is an Affiliate), this Agreement is terminated for any reason (including TxDOT Default) and either (a) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of the Contractor occurs or (b) the Contractor is dissolved or liquidated or otherwise ceases to engage in the ordinary course of the business of manufacturing, supplying, maintaining and servicing the software, product, part or other item containing the Proprietary Intellectual Property that is the subject of a license under Section 22.4.

22.5.2 In lieu of delivering the Proprietary Intellectual Property directly to TxDOT and the Independent Engineer, Developer may elect to deposit it with a neutral custodian. In such event, Developer shall (a) select, subject to TxDOT's prior approval, one or more escrow companies or other neutral custodian (each an "Escrow Agent") engaged in the business of receiving and maintaining escrows in Tarrant or Travis County, or in another location TxDOT approves in writing in its sole discretion, of Source Code or other Intellectual Property, and (b)

establish one or more escrows (each an "Intellectual Property Escrow") with the Escrow Agent in such location on terms and conditions reasonably acceptable to TxDOT and Developer for the deposit, retention and upkeep of Source Code, Source Code Documentation and/or other Proprietary Intellectual Property and related documentation. The location of such escrows is limited to Tarrant or Travis County, or another location TxDOT approves in writing in its sole discretion, provided that the escrow containing the Financial Model Formulas, Base Case Financial Model, Base Case Financial Model Updates, Financial Modeling Data and related materials must be located within a radius of ten miles from TxDOT's headquarter building. Intellectual Property Escrows also may include Affiliates and Contractors as parties and may include deposit of their Proprietary Intellectual Property. TxDOT shall not be responsible for the fees and costs of the Escrow Agent.

22.5.3 If Developer elects to deliver Proprietary Intellectual Property to an Intellectual Property Escrow, Developer shall make such delivery to the Escrow Agent not later than the following times:

22.5.3.1 For pre-existing Source Code and Source Code Documentation, immediately upon execution of this Agreement or, if provided by a Contractor, execution of the relevant Contract;

22.5.3.2 For Source Code and Source Code Documentation incorporated into or used on or for a Facility Segment, prior to the Service Commencement Date for such Facility Segment;

22.5.3.3 For any Technology Enhancement, update, upgrade or correction of Source Code and Source Code Documentation incorporated into or used on or for the Facility or any portion thereof, not later than 15 days after the end of the calendar quarter in which it is first incorporated or used;

22.5.3.4 For the Financial Model Formulas, Base Case Financial Model, Ultimate Scope Financial Model, Base Case Financial Model Update (including, if applicable, the Base Case Financial Model Update for all NTP Capacity Improvements, as described in Section 5.2.5), Financial Modeling Data and related materials, the times set forth in Section 22.5.6;

22.5.3.5 For Initial Funding Agreements and Initial Security Documents, on the Effective Date, and for amendments and supplements thereto, within 30 days after they are executed and delivered;

22.5.3.6 For other Funding Agreements and Security Documents and amendments and supplements thereto, within 30 days after they are executed and delivered; and

22.5.3.7 For any other Proprietary Intellectual Property, on the Effective Date if it exists as of such date, and otherwise within 15 days after the end of the calendar quarter in which it is first created, reduced to practice, incorporated or used in connection with the Facility or the Work.

22.5.4 TxDOT shall be a named, intended third party beneficiary of each escrow agreement and each Intellectual Property Escrow with direct rights of enforcement against Developer and the Escrow Agent. Each escrow agreement shall provide that neither Developer nor the Escrow Agent shall have any right to amend or supplement it, or waive any provision thereof, without TxDOT's prior written approval in its sole discretion.

22.5.5 Intellectual Property Escrows shall provide rights of access and inspection to both TxDOT and the Independent Engineer at any time, subject to terms and conditions reasonably necessary to protect the confidentiality and proprietary nature of the contents of the Intellectual Property Escrows.

22.5.6 If Developer elects to deposit the Financial Model Formulas, the Base Case Financial Model and Ultimate Scope Financial Model into an Intellectual Property Escrow rather than deliver them directly to TxDOT, Developer shall:

22.5.6.1 Deposit the Financial Model Formulas, the Base Case Financial Model and Ultimate Scope Financial Model, on or prior to the Effective Date, deposit updated Financial Model Formulas, the Base Case Financial Model and Ultimate Scope Financial Model approved by both Parties within five days of the Effective Date, and include with each deposit of the Financial Model Formulas, the Base Case Financial Model and Ultimate Scope Financial Model a complete set of the then-current Financial Modeling Data and related materials;

22.5.6.2 Also deposit, as and when prepared, each Base Case Financial Model Update and a complete set of the updated and revised Financial Modeling Data and related materials; and

22.5.6.3 Deposit them in a form or forms that are acceptable to TxDOT, that fully reveal their content on an Open Book Basis, and that will conveniently enable TxDOT at any time upon request to gain access thereto and to electronically operate and manipulate the same in order to run projections and scenarios respecting the Facility and to print out and examine such projections and scenarios.

22.5.7 The Intellectual Property Escrows shall survive expiration or earlier termination of this Agreement regardless of the reason, until such time as both Parties mutually agree, in their respective sole discretion, that the Intellectual Property contained therein is of no further use or benefit to the Facility.

22.5.8 In accordance with Sections 22.5.2 through 22.5.6, Developer has elected to enter into an Intellectual Property Escrow agreement, dated as of the Effective Date, for escrowing Developer's Proprietary Intellectual Property, in the form required by TxDOT in the RFP, or such modified form as has been approved in writing by TxDOT.

ARTICLE 23. FEDERAL REQUIREMENTS

23.1 Compliance with Federal Requirements

Developer shall comply and require its Contractors (other than NTTA) to comply with all federal requirements applicable to transportation projects that receive federal credit or funds, including those set forth in Exhibit 8. If Developer uses TIFIA credit or loans to finance the Facility or any portion thereof, Developer shall provide any compliance certifications and milestone payment schedules required in connection with TIFIA, as specified in the TIFIA Funding Agreements and TIFIA Security Documents. In the event of any conflict between any applicable federal requirements and the other requirements of the CDA Documents, the federal requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.

23.2 Role of and Cooperation with FHWA

Developer acknowledges and agrees that FHWA will have certain approval rights with respect to the Facility, including the right to provide certain oversight and technical services with respect to the Work. Developer shall cooperate with FHWA in the reasonable exercise of FHWA's duties and responsibilities in connection with the Facility.

ARTICLE 24. MISCELLANEOUS

24.1 Replacement of Independent Engineer

24.1.1 The Parties recognize that from time to time it will be necessary to replace the Independent Engineer in the event any party to the Independent Engineer Agreement elects not to extend or renew it at expiration of its term, or in the event it is terminated in accordance with its terms prior to expiration. Whenever it becomes necessary to replace the Independent Engineer, TxDOT shall select and appoint a replacement Independent Engineer according to the terms and procedures set forth in this Section 24.1.

24.1.2 The replacement shall satisfy TxDOT's then existing rules, regulations and applicable written policies concerning organizational conflicts of interest, as well as any comparable written policies of Developer designed to assure neutrality of the Independent Engineer.

24.1.3 If TxDOT then maintains a list of firms qualified to serve as independent engineers under TxDOT comprehensive development agreements, the replacement shall be one of the listed firms and shall be selected either through TxDOT's competitive selection processes or, if permitted by applicable Law and acceptable to TxDOT, through negotiation. Developer shall have the right and obligation to consult and confer with TxDOT in the course of the competitive selection process and to participate with TxDOT in any negotiations. TxDOT may elect, however, not to select a replacement from the list and instead proceed under Section 24.1.4.

24.1.4 If TxDOT does not then maintain such a list of firms, then TxDOT shall procure a replacement through TxDOT's competitive qualification and procurement processes, and Developer shall have the right and obligation to consult and confer with TxDOT regarding the qualifications, evaluation and selection of competing firms.

24.1.5 The right to consult and confer includes the right to observe interviews of firms competing for selection, but does not include any right to observe or participate in meetings or discussions of the evaluation committee or subcommittees.

24.1.6 The Independent Engineer Agreement with the replacement shall be on substantially the same terms and conditions as the prior Independent Engineer Agreement, except for pricing and except for any changes in scope of work or other terms and conditions mutually acceptable to TxDOT and Developer.

24.1.7 Developer shall be obligated to execute the Independent Engineer Agreement with the replacement unless Developer diligently participates, consults and confers with TxDOT in the selection and delivers to TxDOT, before TxDOT concludes its selection and negotiation process, written notice of objection to the firm selected or to pricing or changes in scope of work or other terms and conditions, stating the reasons for objection in reasonable detail. If Developer has the right to refuse, and does refuse, to execute an Independent Engineer

Agreement with the replacement due to such a reasonable objection, then TxDOT shall commence a new procurement to select a replacement. All the provisions of this Section 24.1 shall apply to the new procurement.

24.1.8 The Parties shall use diligent efforts to select and appoint a replacement Independent Engineer sufficiently prior to expiration or termination of the existing Independent Engineer Agreement to permit a smooth transition of the Independent Engineer functions and responsibilities from the then-existing Independent Engineer to the replacement. If necessary, the Parties shall grant, and the then-existing Independent Engineer shall accept, short-term extensions of its Independent Engineer Agreement to accommodate selection and appointment of the replacement and its transition into effective service.

24.2 Taxes

24.2.1 Developer shall pay, prior to delinquency, all applicable Taxes. Developer shall have no right to a Compensation Event or, except as provided in Section 24.2.2, to any other Claim due to its misinterpretation of Laws respecting Taxes or incorrect assumptions regarding applicability of Taxes.

24.2.2 With respect to Expendable Materials that any Developer-Related Entity (other than NTTA) purchases, Developer shall submit or cause the Developer-Related Entity to submit a "Texas Sales and Use Tax Exemption Certification" to the seller of the Expendable Materials. In the event Developer is thereafter required by the State Comptroller to pay sales tax on Expendable Materials, TxDOT shall reimburse Developer for such sales tax. Reimbursement shall be due within 60 days after TxDOT receives from Developer written evidence of the State Comptroller's claim for sales tax, the amount of the sales tax paid, the date paid and the items purchased. Developer agrees to cooperate with TxDOT in connection with the filing and prosecution of any request for refund of any sales tax paid with respect to Expendable Materials. If materials purchased for the Work are not wholly used or expended on the Facility, such that they do not qualify as Expendable Materials, Developer will be responsible for applicable sales taxes.

24.3 Amendments

The CDA Documents may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this Agreement (e.g. Sections 7.2.6, 7.2.7, 8.1.2.2, 14.1, 14.3).

24.4 Waiver

24.4.1 No waiver of any term, covenant or condition of this Agreement or the other CDA Documents shall be valid unless in writing and signed by the obligee Party.

24.4.2 The exercise by a Party of any right or remedy provided under this Agreement or the other CDA Documents shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any Party of any right or remedy under this Agreement or the other CDA Documents shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or the other CDA 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.

24.4.3 Except as provided otherwise in the CDA Documents, no act, delay or omission done, suffered or permitted by one Party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under this Agreement or the other CDA Documents.

24.4.4 Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the CDA 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 CDA Documents without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes.

24.4.5 Subject to Section 13.2.10, the acceptance of any payment or reimbursement by a Party shall not waive any preceding or then-existing breach or default by the other Party of any term, covenant or condition of this Agreement or the other CDA Documents, other than the other Party's prior failure to pay the particular amount or part thereof so accepted, regardless of the paid party's knowledge of such preceding or then-existing breach or default at the time of acceptance of such payment or reimbursement. Nor shall such acceptance continue, extend or affect: (a) the service of any notice, any Dispute Resolution Procedures or final judgment; (b) any time within which the other Party is required to perform any obligation; or (c) any other notice or demand.

24.5 Independent Contractor

24.5.1 Developer is an independent contractor, and nothing contained in the CDA Documents shall be construed as constituting any relationship with TxDOT other than that of Facility developer and independent contractor, and that of landlord and tenant under the Lease.

24.5.2 Nothing in the CDA Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between TxDOT and Developer; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists. While the term "public-private partnership" may be used on occasion to refer to contractual relationships of the type hereby created, the Parties do not thereby express any intention to form or hold themselves out as a *de jure* or *de facto* partnership, joint venture or similar relationship, to share net profits or net losses, or to give TxDOT control or joint control over Developer's financial decisions or discretionary actions concerning the Facility and Work.

24.5.3 In no event shall the relationship between TxDOT and Developer be construed as creating any relationship whatsoever between TxDOT and Developer's employees. Neither Developer nor any of its employees is or shall be deemed to be an employee of TxDOT. Except as otherwise specified in the CDA Documents, Developer has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Contractors (other than NTTA) and for all other Persons that Developer or any Contractor hires to perform or assist in performing the Work.

24.6 Successors and Assigns

The CDA Documents shall be binding upon and inure to the benefit of TxDOT and Developer and their permitted successors, assigns and legal representatives.

24.7 Designation of Representatives; Cooperation with Representatives

24.7.1 TxDOT and Developer shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to the CDA Documents ("Authorized Representative"). Exhibit 22 provides the initial Authorized Representative designations. A Party may change such designations by a subsequent writing delivered to the other Party in accordance with Section 24.12.

24.7.2 Developer shall cooperate with TxDOT and all representatives of TxDOT designated as described above.

24.8 Survival

Developer's and TxDOT's representations and warranties, the dispute resolution provisions contained in Section 17.8 and the Disputes Board Agreement, the indemnifications, limitations and releases contained in Sections 7.9.5 and 16.5, the express obligations of the Parties following termination (including those set forth in Sections 19.5, 19.8 and 19.10, 20.4.8 and 22.5.7), and all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement and/or completion of the Work shall survive the expiration or earlier termination of this Agreement and/or the completion of the Work. The provisions of Section 17.8 and the Disputes Board Agreement shall continue to apply after expiration or earlier termination of this Agreement to all Claims and Disputes between the Parties arising out of the CDA Documents.

24.9 Limitation on Third Party Beneficiaries

It is not intended by any of the provisions of the CDA Documents to create any third party beneficiary hereunder or to authorize anyone not a Party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions, and the provisions for the protection of certain Lenders under Article 20) identify third parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 24.9, the duties, obligations and responsibilities of the Parties to the CDA Documents with respect to third parties shall remain as imposed by Law. The CDA Documents shall not be construed to create a contractual relationship of any kind between TxDOT and a Contractor or any Person other than Developer.

24.10 No Personal Liability of TxDOT Employees; No Tort Liability

24.10.1 TxDOT's Authorized Representatives are acting solely as agents and representatives of TxDOT when carrying out the provisions of or exercising the power or authority granted to them under this Agreement. They shall not be liable either personally or as employees of TxDOT for actions in their ordinary course of employment.

24.10.2 The Parties agree to provide to each other's Authorized Representative written notice of any claim which such Party may receive from any third party relating in any way to the matters addressed in this Agreement, and shall otherwise provide notice in such form and within such period as is required by Law.

24.11 Governing Law

The CDA Documents shall be governed by and construed in accordance with the laws of the State of Texas.

24.12 Notices and Communications

24.12.1 Notices under the CDA Documents shall be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

24.12.2 All notices, correspondence and other communications to Developer shall be delivered to the following address or as otherwise directed by Developer's Authorized Representative:

Jose Maria Lopez de Fuentes
7700 Chevy Chase Drive, Bldg One, Suite 500C
Austin, Texas 78752-1562
Telephone: (512) 637-8545
Facsimile: (512) 637-1498
E-mail: jmlopez@cintra.us.com

24.12.3 All notices, correspondence and other communications to TxDOT shall be marked as regarding the North Tarrant Express Facility and shall be delivered to the following address or as otherwise directed by TxDOT's Authorized Representative:

Ed Pensock, Jr., P.E.
Texas Department of Transportation
Texas Turnpike Authority Division
125 East 11th Street
Austin, Texas 78701

In addition, copies of all notices regarding Disputes, and termination and default notices shall be delivered to the following person:

Texas Department of Transportation
Office of General Counsel
125 East 11th Street
Austin, Texas 78701
Telephone: (512) 463-8630
Facsimile: (512) 475-3070
E-mail: jingram@dot.state.tx.us

24.12.4 Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. Central Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before

4:00 p.m.). Any technical or other communications pertaining to the Work shall be conducted by Developer's Authorized Representative and technical representatives designated by TxDOT.

24.13 Integration of CDA Documents

TxDOT and Developer agree and expressly intend that, subject to Section 24.14, this Agreement, the Lease and other CDA Documents constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.

24.14 Severability

24.14.1 If any clause, provision, section or part of the CDA Documents or any other Principal Facility Document (other than the Design-Build Contract or any O&M Contract) is ruled invalid (including invalid due to Change in Law) by a court having proper jurisdiction, then the Parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including an equitable adjustment to the Base Case Financial Model Update (or, if there has been no Base Case Financial Model Update, the Base Case Financial Model) and TxDOT's compensation to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of the CDA Documents or such other Principal Facility Documents, which shall be construed and enforced as if the CDA Documents or such other Principal Facility Documents did not contain such invalid or unenforceable clause, provision, section or part.

24.14.2 If after the efforts required by Section 24.14.1, the Parties mutually agree that without the section or part of the CDA Documents or such other Principal Facility Documents that the court ruled to be invalid, there is no interpretation or reformation of the CDA Documents or such other Principal Facility Documents that can reasonably be adopted which will return the Parties to the benefits of their original bargain, the Parties can mutually agree to treat the court order as a Termination by Court Ruling pursuant to Section 19.12.

24.14.3 If after the efforts required by Section 24.14.1, the Parties are unable to mutually agree about whether, without the section or part of the CDA Documents or such other Principal Facility Documents that the court ruled to be invalid, there is any interpretation or reformation of the CDA Documents or such other Principal Facility Documents that could reasonably be adopted which would return the Parties to the material benefits of their original bargain, either Party can refer that question to the Disputes Board for resolution pursuant to Section 17.8. The Parties agree that if the Disputes Board determines that there is no interpretation or reformation that can be reasonably adopted which will return the Parties to the material benefits of their original bargain, such a determination by the Disputes Board shall be deemed for all purposes under this Agreement as a Termination by Court Ruling, or in the circumstances similar to those described in Section D.3 or D.4 of Exhibit 20, a Termination for Convenience or a Default Termination Event, as appropriate.

24.14.4 If there is no mutual agreement of the Parties pursuant to Section 24.14.2, a referral to the Disputes Board must occur not later than 60 days after the court order becomes final. Otherwise, the court order shall be treated as a Termination by Court Ruling pursuant to Section 19.12. The Parties may by mutual agreement extend this deadline.

24.15 Headings

The captions of the sections of this Agreement are for convenience only and shall not be deemed part of this Agreement or considered in construing this Agreement.

24.16 Construction and Interpretation of Agreement

24.16.1 The language in all parts of the CDA Documents shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Party. The Parties hereto acknowledge and agree that the CDA Documents are the product of an extensive and thorough, arm's length exchange of ideas, questions, answers, information and drafts during the Proposal preparation process, that each Party has been given the opportunity to independently review the CDA Documents with legal counsel, and that each Party has the requisite experience and sophistication to negotiate, understand, interpret and agree to the particular language of the provisions of the CDA Documents. Accordingly, in the event of an ambiguity in or Dispute regarding the interpretation of the CDA Documents, the CDA Documents shall not be interpreted or construed against the Party preparing it, and instead other rules of interpretation and construction shall be utilized. TxDOT's final answers to the questions posed during the Proposal preparation process for this Agreement shall in no event be deemed part of the CDA Documents and shall not be relevant in interpreting the CDA Documents except as they may clarify provisions otherwise considered ambiguous.

24.16.2 The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

24.16.3 References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation and/or undertaking "herein," "hereunder" or "pursuant hereto" (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument. All terms defined in this instrument shall be deemed to have the same meanings in all riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument unless the context thereof clearly requires the contrary. Unless expressly provided otherwise, all references to Exhibits, Articles and Sections refer to the Exhibits, Articles and Sections set forth in this Agreement. Where a specific Section is referenced, such reference shall include all subsections thereunder. Unless otherwise stated in this Agreement or the other CDA Documents, words that have well-known technical or construction industry meanings are used in this Agreement or the other CDA Documents in accordance with such recognized meaning. All references to a subsection or clause "above" or "below" refer to the denoted subsection or clause within the Section in which the reference appears. Wherever the word "including," "includes" or "include" is used in the CDA Documents, it shall be deemed to be followed by the words "without limitation". Wherever reference is made in the CDA Documents to a particular Governmental Entity, it includes any public agency succeeding to the powers and authority of such Governmental Entity.

24.16.4 As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

24.17 Usury Savings

The CDA Documents are subject to the express condition that at no time shall either Party be obligated or required to pay interest on any amount due the other Party at a rate which could subject the other Party to either civil or criminal liability as a result of being in excess of the maximum non-usurious interest rate permitted by Texas Law (the "maximum legal rate"), if any. If, by the terms of the CDA Documents either Party at any time is obligated to pay interest on any amount due in excess of the maximum legal rate, then such interest shall be deemed to be immediately reduced to the maximum legal rate and all previous payments in excess of the maximum legal rate shall be deemed to have been payments in reduction of the principal amount due and not on account of the interest due. All sums paid or agreed to be paid to a Party for the use, forbearance, or detention of the sums due that Party under the CDA Documents shall, to the extent permitted by applicable Texas Law, be amortized, prorated, allocated, and spread throughout the full period over which the interest accrues until payment in full so that the rate or amount of interest on account of the amount due does not exceed the maximum legal rate in effect from time to time during such period. If after the foregoing adjustments a Party still holds interest payments in excess of the maximum legal rate, it shall promptly refund the excess to the other Party.

24.18 Approvals under CDA Documents

24.18.1 Refer to Sections 6.3.3 and 6.3.4.1 regarding the standards for TxDOT approval or consent.

24.18.2 In all cases where approvals or consents are required to be provided under the CDA Documents by Developer and no particular standard for such approvals or consents is expressly provided, such approvals or consents shall not be unreasonably withheld or delayed. In cases where sole discretion is specified, Developer's decision shall be final, binding and not subject to dispute resolution hereunder.

24.19 Entire Agreement

The CDA Documents contain the entire understanding of the Parties with respect to the subject matter thereof and supersede all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to their subject matter.

24.20 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.

[Signature Page Immediately Follows]

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

Developer

NTE MOBILITY PARTNERS LLC

By: _____
Name: Carlos Ugarte
Title: Authorized Representative

By: _____
Name: Joseph Aiello
Title: Authorized Representative

TxDOT

TEXAS DEPARTMENT OF TRANSPORTATION

By: _____
Name: Amadeo Saenz, P.E.
Title: Executive Director