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This Statewide Toll System Integration and Maintenance Agreement (“Agreement”) is entered into by and between the Texas Department of Transportation, a public agency of the State of Texas (“TxDOT”), and ______________________, a ___________________ (“Integrator”), effective as of ______________________, 2012, as set forth on the signature page hereto, with reference to the definitions contained in Exhibit A hereto and the following recitals:

A. TxDOT wishes to develop, install, test, integrate and maintain one or more toll collection systems (the “System”) on such similar and different TxDOT-owned and/or operated toll roads or portions thereof as TxDOT may, in its discretion, designate at any time during the Project Segment Designation Period. TxDOT may also, in its discretion, designate at any time during such Project Segment Designation Period a TxDOT-owned toll road operated by a regional mobility authority (an “RMA”) or by a developer under contract to TxDOT (an “Other TxDOT Integrator”). For any toll road designated by TxDOT, the facility so designated and the Work required to implement the System on each such designated toll road is referred to herein as a “Project Segment.” Development of the designated Project Segments and all other Work is collectively referred to herein as the “Project.” Projects operated or involving an RMA or an Other TxDOT Integrator are referred to as “Designated TxDOT Compatible Projects.”

B. Pursuant to Section 228.052 of the Texas Transportation Code and Section 27.83 of Title 43, Texas Administrative Code, on __________, 2011, TxDOT issued a Request for Proposals, and on __________, 2011, received __________ proposals. TxDOT determined that Integrator 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.

C. The Executive Director of TxDOT has been authorized to enter into this Agreement pursuant to the Texas Transportation Commission Minute Order [____________________].

D. The parties intend for this Agreement to be a comprehensive agreement obligating Integrator to perform the Work, including all work necessary to complete each Project Segment by the completion deadlines determined in accordance with the procedures specified herein (each a “Project Segment Deadline”) for the prices determined in accordance with the procedures specified herein (each, a “Project Segment Price”) subject only to certain specified limited exceptions. For greater certainty, the Project Segment Price is the price for all Work other than the Maintenance Work. Integrator submitted with its Proposal Project Delivery Unit Prices and a Hypothetical Project Delivery Price to be used as the basis for determining the Project Segment Prices. In order to allow TxDOT to budget for and finance the Project and to reduce the risk of cost overruns, this Agreement includes restrictions affecting Integrator’s ability to make claims for increases to a Price or extensions of the Completion Deadlines. Integrator has agreed in this Agreement to assume such responsibilities and risks and has reflected the assumption of
such responsibilities and risks in the System Prices, and in the procedures specified herein for determining the Project Segment Prices.

E. If Integrator fails to complete the Project in accordance with the Completion Deadlines set forth in the Contract Documents, then TxDOT and the members of the public represented by TxDOT will suffer substantial losses and damages. The Contract Documents provide that Integrator shall pay TxDOT substantial Liquidated Damages if such completion of any Project Segment is delayed.

F. The Work for each Project Segment, if any, will be initiated pursuant to a Project Segment Supplement or as otherwise provided in this Agreement, and TxDOT’s issuance of additional NTPs for each such Project Segment designated by TxDOT during the Project Segment Designation Period. The Project Segment Designation Period may be extended by TxDOT for a maximum of two consecutive three-year extensions (each a “Project Segment Designation Extension”). Each of the two Project Segment Designation Extensions shall be exercised, if at all, in TxDOT’s sole discretion.

G. The Agreement further provides for Integrator to maintain the entire System for the applicable Project Segment Maintenance Price(s) for a period commencing on the Final Acceptance Date of the applicable Project Segment and ending on the fifteenth anniversary of the effective date of this Agreement. Integrator submitted with its Proposal Maintenance Unit Prices and a Hypothetical Maintenance Price, to be used as the basis for determining the Project Segment Maintenance Prices in accordance with the procedures provided herein. In order to allow TxDOT to budget for and finance the Project and to reduce the risk of cost overruns, this Agreement includes restrictions affecting Integrator’s ability to make claims for increases to a Project Segment Maintenance Price. Integrator has agreed in this Agreement to assume such responsibilities and risks and has reflected the assumption of such responsibilities and risks in the Maintenance Unit Prices and Hypothetical Maintenance Price, and in the procedures specified herein for determining the Project Segment Maintenance Prices.

H. The System’s accuracy and reliability is of paramount importance to TxDOT’s ability to finance and build highways to meet the State’s infrastructure needs, and TxDOT will suffer substantial losses and damages if the System does not meet the Performance Requirements. The Contract Documents provide that Integrator shall pay TxDOT substantial Stipulated Damages if the System does not meet the Performance Requirements.

NOW, THEREFORE, in consideration of the sums to be paid to Integrator by TxDOT, the foregoing premises and the covenants and agreements set forth herein, the parties hereby agree as follows:
SECTION 1. CONTRACT COMPONENTS; INTERPRETATION OF CONTRACT DOCUMENTS

1.1 Certain Definitions

Exhibit A hereto contains the meaning of various terms used in the Contract Documents.

1.2 Order of Precedence

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

(a) For design and other non-installation and non-construction Work:

1. Change Orders and Agreement amendments (including amendments to Project Segment Supplements);

2. Project Segment Supplements;

3. Agreement (including all exhibits other than Exhibits C and N);

4. Technical Provisions;

5. Attachments to the Technical Provisions;

6. TxDOT Standards; and

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

(a) Notwithstanding the foregoing order of precedence, in the event and to the extent that Exhibit C expressly specifies that it is intended to supersede specific provisions of the Contract Documents, Exhibit C shall control over the specified provisions. In determining whether a conflict exists between the Proposal and other Contract Documents, to the extent that the Proposal can reasonably be interpreted as an offer to provide higher quality items than otherwise required by the Contract Documents or to perform services in addition to those otherwise required, or otherwise contains terms which TxDOT considers to be more advantageous than the requirements of the other Contract Documents, the Proposal shall not be considered in conflict with the other Contract Documents, and Integrator’s obligations hereunder shall include compliance with all such statements, offers and terms.

(b) For installation and construction-related standards, specifications and requirements, the order of precedence set forth in clause (a) shall apply, except that the
Final Design Documents shall also be considered Contract Documents and shall be added following the Proposal in the order of precedence, provided that (i) specifications contained therein shall have precedence over plans, and (ii) no conflict shall be deemed to exist between the Final Design Documents and the other Contract Documents with respect to requirements of the Final Design Documents that TxDOT determines are more beneficial than the requirements of the other Contract Documents; and (iii) any other Deviations contained in the Final Design Documents shall have priority over conflicting requirements of other Contract Documents only to the extent that the conflicts are specifically identified in the approval.

(c) Portions of the Reference Documents are referenced in the Contract Documents for the purpose of defining requirements of the Contract Documents. The referenced information shall be deemed incorporated in the Contract Documents to the extent that it is so referenced, with the same order of priority as the Contract Document in which the reference occurs.

(d) Additional details and more stringent requirements contained in a lower priority document will control unless the requirements of the lower priority document present an actual conflict with the requirements of the higher level document (i.e., it is not possible to comply with both requirements). Notwithstanding the order of precedence among Contract Documents set forth in this Section 1.2, in the event of a conflict among any standard or specification applicable to the Project established by reference contained in the Contract Documents to a described publication, TxDOT shall have the right to determine, in its sole discretion, which provision applies regardless of the order of precedence of the documents in which such standards are referenced. Integrator shall request in writing TxDOT's determination respecting the order of precedence involving the referenced standards promptly upon becoming aware of any such conflict.

1.3 Interpretation of Contract Documents

In the Contract Documents, where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; unless otherwise indicated references to Codes are to the codified laws of the State; the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation”; unless otherwise indicated references to sections, appendices or schedules are to this Agreement; words such as “herein,” “hereof” and “hereunder” shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings; references to Persons include their respective permitted successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and capacities; and words of any gender used herein shall include each other gender where appropriate. Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive. Integrator acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal, to review the terms and
conditions of the Contract Documents (including those Reference Documents that are referenced in the Contract Documents, and pursuant to Section 1.2(c) above, are considered Contract Documents) and to bring to the attention of TxDOT any conflicts or ambiguities contained therein. Integrator further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of the Contract Documents. Accordingly, if an ambiguity in or dispute regarding the interpretation of the Contract Documents, they shall not be interpreted or construed against the Person which prepared them, and, instead, other rules of interpretation and construction shall be used. TxDOT’s interim or final answers to the questions posed during the Proposal process for this Agreement shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except to the extent they may clarify provisions otherwise considered ambiguous. On plans, working drawings, and standard plans, calculated dimensions shall take precedence over scaled dimensions.

1.4  Referenced Standards and Specifications

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

1.4.2 In interpreting referenced standards, the following apply:

(a) References to the project owner shall mean TxDOT.

(b) References to “plan(s)” shall mean the Final Design Documents.

(c) Cross-references to measurement and payment provisions contained in the referenced standard shall be deemed to refer to the measurement and payment provisions contained in the Contract Documents.

1.5  Explanations; Omissions and Misdescriptions

Integrator shall not take advantage of or benefit from any apparent Error in the Contract Documents. Should it appear that the Work to be done or any matter relative thereto is not sufficiently detailed or explained in the Contract Documents, Integrator shall request in writing such further written explanations from TxDOT as may be necessary and shall comply with the explanation provided. Integrator shall promptly notify TxDOT in writing of all Errors which it may discover in the Contract Documents (including those Reference Documents that are referenced in the Contract Documents, and pursuant to Section 1.2 (c) above, are considered Contract Documents), and shall obtain specific instructions in writing from TxDOT regarding any such Error before proceeding with the Work affected thereby. The fact that the Contract Documents omit or misdescribe any details of any
Work which are necessary to carry out the intent of the Contract Documents, or which are customarily performed, shall not relieve Integrator from performing such omitted Work (no matter how extensive) or misdescribed details of the Work, and they shall be performed as if fully and correctly set forth and described in the Contract Documents, without entitlement to a Change Order hereunder except as specifically allowed under Section 13.

1.6 Computation of Periods

References to “Days” contained in the Contract Documents shall mean calendar days unless otherwise specified; provided that if the date to perform any act or give any notice specified in the Contract Documents (including the last date for performance or provision of notice “within” a specified time period) falls on a non-business day, such act or notice may be timely performed on the next succeeding day which is a business day. Notwithstanding the foregoing, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency and other requirements for which it is clear that performance is intended to occur on a non-business day, shall be required to be performed as specified, even though the date in question may fall on a non-business day. The term “business days” shall mean Days on which TxDOT is officially open for business.

1.7 Standard for Approvals

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

1.8 Federal Requirements

The Work to be performed under this Agreement will be financed in part with federal funds and is, therefore, subject to federal statutes, rules and regulations applicable to work financed with federal funds, including the federal requirements set forth in Exhibit D. In the event of any conflict between any applicable federal requirements and the other requirements of the Contract Documents, the federal requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.
SECTION 2. OBLIGATIONS OF INTEGRATOR; REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 Performance Requirements

2.1.1 Performance of Work; Project Segment Supplements; Project Management Plan

2.1.1.1 The Work shall include the design, construction, installation, integration, fabrication, assembly, testing, verification and maintenance of each Project Segment, in conformance with the Technical Provisions, the Basic Configuration and the Owner Design Documents (to the extent available and appropriate), and otherwise complying with the requirements of the Contract Documents. All materials, services and efforts necessary to achieve System Acceptance, Punch List Acceptance and Final Acceptance of each Project Segment or before the applicable Completion Deadlines shall be Integrator’s sole responsibility, except as otherwise specifically provided in the Contract Documents. Subject to the terms of Section 13, the costs of all Work, including such materials, services and efforts will be included in each Project Segment Price and each Project Segment Maintenance Price.

2.1.1.2 Integrator shall perform the Work for all Project Segments designated by TxDOT during the Project Segment Designation Period based upon executed Project Segment Supplements (or as otherwise provided in this Agreement) and upon issuance of the applicable NTPs. TxDOT shall notify Integrator in writing of TxDOT’s decision to exercise a Project Segment Designation Extension option to extend Integrator’s obligations under this Agreement for an additional three-year period not fewer than 60 Days prior to expiration of the then current Project Segment Designation Period (as the same may have been previously extended by TxDOT). TxDOT shall designate a Project Segment by submission of a draft Project Segment Supplement to Integrator in the form of Exhibit P. Project Segment Supplements issued by TxDOT shall describe the Project Segment Basic Configuration, and shall contain TxDOT’s proposed Project Segment Price, Project Segment Completion Deadlines, Project Segment Maintenance Price, Liquidated Damages amounts, Key Personnel designations applicable to the Project Segment, TxDOT-Provided Approvals applicable to the Project Segment, and any necessary Project Segment-specific modifications to the Contract Documents. The amount of Stipulated Damages applicable to each Project Segment shall be as set forth in Section 17.4. If Integrator does not have sufficient information to respond to TxDOT’s draft Project Segment Supplement within such 10 Days period, Integrator shall, within 10 Days of receipt of the draft Project Segment Supplement, provide TxDOT with written notice setting forth Integrator’s proposed detailed schedule for developing and providing such response, and a list detailing additional information Integrator requires in order to provide such response. Additional information that Integrator requests must be in the possession of TxDOT or readily available to it. All deviations from TxDOT’s draft Project Segment Supplement must be clearly identified in Integrator’s counter-proposal and justified. If Integrator does not accept the terms proposed by TxDOT, the parties shall endeavor in good faith to negotiate the Project Segment Price, the Project Segment Maintenance
Price, the Project Segment Completion Deadlines, the Project Segment Liquidated
Damages, any Project Segment-specific modifications to the Contract Documents and any
other relevant terms and conditions. Upon mutual agreement on the terms of the Project
Segment Supplement for a Project Segment, the parties shall execute the same and it
shall become a part of this Agreement. At any time, TxDOT may, in its sole discretion, (i)
direct Integrator to proceed with the Project Segment Work, and refer the determination of
the Project Segment Price, Project Segment Completion Deadlines, Project Segment
Maintenance Price and/or Project Segment Liquidated Damages to dispute resolution
pursuant to Section 19 (in which case, Integrator shall promptly provide all required
documents and instruments set forth in Section 2.2 and otherwise satisfy the prerequisites
to issuance of an NTP set forth in this Agreement and, upon issuance of the NTP, perform
such Work in accordance with the requirements of the Contract Documents), (ii) direct
Integrator to proceed with the Work in accordance with the Project Segment Schedule
provided by Integrator on a time and materials basis pursuant to Section 13.7 (in which
case, Integrator shall promptly provide all required documents and instruments set forth in
Section 2.2 and otherwise satisfy the prerequisites to issuance of an NTP set forth in this
Agreement and, upon issuance of the NTP, perform such Work in accordance with the
requirements of the Contract Documents), or (iii) terminate the negotiations and procure
the Project Segment Work from another party. Nothing contained herein shall limit or
modify TxDOT’s unilateral right, in its sole discretion, to procure or seek other alternatives
to issuing the Project Segment Supplements to Integrator or having other contractors or
developers perform such Work. If TxDOT proceeds under clause (i) of this
Section 2.1.1.2, the determination of the item(s) with which the parties have been unable
to agree shall be made by the party resolving the dispute using the information, items,
materials, principles, guidelines and methodologies described herein. Integrator
acknowledges and agrees that it has no contractual or other right to receive any Project
Segment Supplements or undertake any Project Segment Work for which an NTP has not
been issued, including no right of first negotiation or first refusal or other similar right or
interest. TxDOT shall not be required to commence or continue any negotiations of a
Project Segment Supplement and may decide to use another party for such Work as and
when it determines, in its sole discretion.

2.1.1.3 The draft Project Segment Supplement shall describe in
reasonable detail TxDOT’s estimated (i) Project Segment Price, (ii) Project Segment
Completion Deadlines; and (iii) Project Segment Maintenance Price. Any revisions to
pricing that Integrator proposes must be based upon differences between, on the one
hand, the original assumptions and Contract Document requirements with respect to the
Proposal Project Segment Pricesand, on the other hand, the Project Segment. For
example, material differences in required quantities or labor needs that affect the
Integrator’s purchasing power may justify a change in a price to reflect the additional
quantities or labor needs, but (a) time periods or gaps between issuance of NTPs for
Project Segments; (b) changes in market conditions, (c) changes in Integrator’s financial
condition or organizational structure, (d) outcomes or conditions experienced on prior
Project Segments that may increase Integrator’s cost of performing the Work, such as
incurring Liquidated Damages or Stipulated Damages, draws against a letter of credit, or
claims on a bond or insurance policy, or (e) any other circumstance not directly resulting
from material differences in the size, location, site conditions or character between the
proposed Project Segment and the Hypothetical Project Segment Scenario, would not justify a change in a price, except to the limited extent as set forth in Section 12.1.4 or Section 12.1.5. Any proposed pricing revision to TxDOT’s draft Project Segment Supplement must be developed using the same estimating, cost, schedule, risk assessment, overhead and profit principles used in connection with the development of the Proposal and the Proposal Project Segment Prices, it being the express intent of Integrator and TxDOT to determine the prices for a Project Segment on this basis. TxDOT shall have the right to review Integrator’s back-up for its quantities, labor and work effort estimates, as well as the EPDs and other materials submitted by Integrator with its Proposal, during the course of any Project Segment Price negotiations. The pricing shall be conducted on an “open-book” basis and will be based on the Proposal Project Segment Prices. The lump sum prices and unit prices shall be adjusted to account for changes in the cost items that were the basis for determining such initial amounts as set forth in Section 12.1.4 or Section 12.1.5. Any revisions to schedule that Integrator proposes must be based upon differences between the original assumptions with respect to the Hypothetical Project Segment Scenario, and the Project Segment; provided, however, that, except where the Completion Deadlines set forth in the draft Project Segment Supplement are not feasible, TxDOT reserves the right to address Integrator’s proposed schedule through modification of pricing rather than through schedule adjustment.

2.1.1.4 Notwithstanding Section 2.1.1.2, TxDOT shall not require simultaneous Service necessary to achieve System Acceptance of Project Segments aggregating more than 200 tolled lanes or 20 Project Segments at any given point in time without Integrator’s prior written consent, which consent shall not be unreasonably withheld or delayed.

2.1.1.5 Integrator shall maintain each Project Segment in accordance with the requirements of the Contract Documents during the Maintenance Term. TxDOT shall have the option to extend the Maintenance Term for any Project Segment as provided in this Section 2.1.1.5. If directed by TxDOT, in its sole discretion, Integrator shall continuously maintain any Project Segment designated by TxDOT for up to five consecutive one-year periods after the expiration of the initial Maintenance Term; provided, however, that no such extension shall result in a requirement to provide maintenance on a specific Project Segment for a period greater than eight years from Final Acceptance of such Project Segment unless mutually agreed to by the parties. TxDOT may exercise its extension options with respect to any and all of the Project Segments then being maintained by Integrator. TxDOT shall notify Integrator in writing of TxDOT’s desire to exercise an extension option to extend Integrator’s obligation to maintain any portion of the Project for an additional one-year period not fewer than 60 Days prior to expiration of the then current Maintenance Term (as the same may have been previously extended by TxDOT). The Project Segment Maintenance Prices to be paid by TxDOT during any extension period shall be determined in accordance with Section 12.1.3.

2.1.1.6 Integrator shall plan, schedule, and execute all aspects of the Work and shall coordinate its activities with all parties who are directly impacted by the Work. Integrator shall document and report all Work in accordance with the requirements
set forth herein and in the approved Project Management Plan described in [TP Section 1.2.1].

2.1.2 Performance Standards

Integrator shall furnish the design of the Project and shall install and construct the Project as designed, in accordance with all professional principles and construction practices generally accepted as standards of the industry in the State, in a good and workmanlike manner, free from defects (except with respect to Software or to the extent that such defects are inherent in prescriptive specifications included in the Contract Documents), and in accordance with the terms and conditions set forth in the Contract Documents.

2.1.3 Changes in Basic Configuration

2.1.3.1 Where Owner Design Documents are provided by TxDOT for a Project Segment, if, as the result of an Error in the Owner Design Documents, it becomes apparent that such Basic Configuration must be materially modified, such modification shall be considered a Necessary Basic Configuration Change and shall be eligible for a Change Order as provided in Section 13.8.

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

2.1.3.3 Integrator shall not make any change in a Basic Configuration except as approved by TxDOT and authorized by a Change Order in accordance with Section 13, and subject to the limitations contained in Section 6.4. A Change Order is required regardless of the reason underlying the change and regardless of whether the change increases, decreases or has no effect on Integrator’s costs or schedule.

2.1.3.4 Except for a TxDOT-Directed Change (including a Necessary Basic Configuration Change) that does not fall within Integrator’s responsibilities under Section 13.2.3 or involving a delay to a Critical Path, any changes in a Basic Configuration shall be the responsibility of Integrator.

2.2 Prerequisites to Issuance of Project Segment NTPs and Post-issuance Requirements

2.2.1 TxDOT shall not issue an NTP for Integrator to proceed with Work that is the subject of any Project Segment Supplement, unless and until TxDOT and Integrator have executed a Project Segment Supplement for such Work (or TxDOT directs that Work for such Project Segment proceed pending resolution of a dispute concerning the Project Segment Supplement, as described in Section 2.1.1.2).
2.2.2 In addition to the requirements set forth in Section 2.2.1, TxDOT shall not issue an NTP unless and until the following requirements for the applicable Project Segment have been satisfied:

(a) only in respect of the Initial NTP, Integrator shall have delivered to TxDOT the applicable Project Segment Performance Bond or Rider required pursuant to Section 8.1.1;

(b) only in respect of the Initial NTP, Integrator shall have delivered to TxDOT the applicable Project Segment Payment Bond or Rider required pursuant to Section 8.1.2;

(c) only in respect of the Initial NTP, Integrator shall have delivered to TxDOT the applicable letter of credit or amendment thereto required pursuant to Section 8.2;

(d) Integrator shall have delivered to TxDOT any Guaranty of Integrator’s obligations pursuant to the Contract Documents and/or Project Segment Supplement that may be required with respect to a Project Segment;

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

(f) TxDOT shall have approved any changes to the Key Personnel for such Project Segment pursuant to Section 7.4.5;

(g) Integrator has submitted all EPDs used in connection with the Project Segment Supplement, Integrator and TxDOT shall have jointly reviewed and indexed the same as set forth in Section 21.1 and such EPDs are in form and substance satisfactory to TxDOT;

(h) TxDOT shall have obtained all Environmental Approvals required under NEPA for such Project Segment, including a ROD or FONSI, as applicable;

(i) The Source Code Escrow shall be in place pursuant to Section 21.8.4 and shall be in full force and effect; and

2.2.3 (j) Integrator shall have provided to TxDOT any other documents, things or assurances reasonably required by the Contract Documents or an executed Project Segment Supplement or otherwise by TxDOT in connection with such Project Segment. Integrator acknowledges that no Project Segment will be implemented or be the subject of an NTP unless and until all required environmental approvals have been obtained and nothing contained in the Contract Documents shall (i) limit, modify or otherwise discharge TxDOT or the Integrator from their respective obligations under any applicable Environmental Law, including NEPA; or (ii) commit TxDOT to issue an NTP for any Project Segment in advance of obtaining all required Environmental Approvals.
Integrator acknowledges that selection of a “no-build” alternative with respect to any and all Project Segments may result from any environmental assessment undertaken by TxDOT.

2.2.4 No later than 5:00 p.m. (CDT) on the [30th] day following the issuance of an NTP other than the Initial NTP, Integrator shall deliver to TxDOT:

(a) the applicable Project Segment Performance Bond or Rider required pursuant to Section 8.1.1;

(b) the applicable Project Segment Payment Bond or Rider required pursuant to Section 8.1.2; and

(c) the applicable letter of credit or amendment thereto required pursuant to Section 8.2.

2.3 General Obligations of Integrator

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

2.3.1 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 Contract Documents expressly specify will be undertaken by TxDOT or other Persons) (a) to construct, fabricate, assemble, install and integrate the Project and maintain it during installation and construction in accordance with the requirements of the Contract Documents, the applicable Project Schedule (including all Project Segment Schedules), all Laws, all Governmental Approvals, the approved Civil Construction Quality Plan, the approved Quality Management Program, the Construction Documents and all other applicable safety, environmental and other requirements, taking into account the applicable ROW limits and other constraints affecting the Project, so as to achieve each System Acceptance, Punch List Acceptance and each Final Acceptance by the applicable Completion Deadlines, and (b) otherwise to do everything required by and in accordance with the Contract Documents. Except as otherwise approved by TxDOT in writing, Integrator shall use the equipment set forth in the Equipment Identification List attached hereto as Exhibit R with respect to each of the Project Segments.

2.3.2 At all times provide a Project Manager approved by TxDOT who (a) will have full responsibility for the prosecution of the Work, (b) will act as agent and be a single point of contact in all matters on behalf of Integrator, (c) will be present (or its approved designee will be present) at the Project Site at all times that Work is performed, and (d) will be available to execute instructions and directions received from TxDOT or its authorized representatives.

2.3.3 Obtain all Governmental Approvals required in connection with the Project (excluding the TxDOT-Provided Approvals shown in Exhibit E, and certain New Environmental Approvals as provided in Section 6.4.2); and prior to beginning any construction activities in the field, furnish TxDOT with fully executed copies of all...
Governmental Approvals (other than the Governmental Approvals obtained by TxDOT) required for such portion of the Project.

2.3.4 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 Contract Documents, except to the extent that responsibility for performance of such measures is expressly assigned to another Person in the Contract Documents.

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

2.3.6 Comply with, and ensure that all Subcontractors comply with, all requirements of all applicable Laws, including Environmental Laws, the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), including any amendments, and the federal requirements set forth in Exhibit D.

2.3.7 Cooperate with TxDOT, the Project Management Consultant, TxDOT’s other consultants, and Governmental Persons with jurisdiction over the Project in review and oversight of the design of the Project, performing oversight and conducting inspections during the construction, installation, testing, integration and verification of the Project and other matters relating to the Work.

2.3.8 Pay, prior to delinquency, all applicable federal, State and local sales, excise, consumer, use and similar taxes, property taxes and any other taxes, fees, charges or levies imposed by a Governmental Person, whether direct or indirect, relating to, or incurred in connection with, the performance of the Work. Integrator acknowledges that it is exempt from paying sales tax on Expendable Materials purchased within the State. If materials purchased for the Work are not wholly used or expended on the Project, Integrator shall be responsible for applicable sales taxes. In connection with any such exemption or request for (or claim of) exemption, Integrator shall be solely responsible for timely submitting any filings or other statements required by Applicable Law (including those required by the Comptroller of the State).

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

2.4 Representations, Warranties and Covenants

Integrator represents, warrants and covenants that:

2.4.1 Integrator and its Subcontractor(s) have, and throughout the term of this Agreement shall maintain, all required professional ability, skills and capacity to perform
the Work, and shall perform it in accordance with the requirements contained in the Contract Documents.

2.4.2 Integrator has evaluated the procedures specified herein with respect to determining the Project Segment Prices, Project Segment Completion Deadlines, Project Segment Liquidated Damages and Project Segment Stipulated Damages, and has reasonable grounds for believing, and does believe, that completion of Project Segments for the Project Segment Price(s) and within the Project Segment Completion Deadline(s) that will be determined based upon such procedures will be feasible and practicable, accounting for constraints affecting the applicable Project Segments, and the Project Segment Liquidated Damages and Project Segment Stipulated Damages determined based upon such procedures will be reasonable. Integrator has evaluated the procedures specified herein with respect to determining the Project Segment Maintenance Prices and has reasonable grounds for believing, and does believe, that such procedures will be feasible and practicable, accounting for constraints affecting the Project.

2.4.3 Integrator will, in accordance with prudent and generally accepted practices and prior to establishing or agreeing to any Project Segment Price(s), Project Segment Maintenance Prices and Project Segment Completion Deadline(s) (i) review any geotechnical information, utility surveys and information, design information, traffic and revenue studies and reports, hazardous materials surveys, right-of-way maps and other Project Segment-related information provided by TxDOT, (ii) take appropriate steps to verify any such Project Segment information provided by TxDOT, (iii) examine the Project Site and surrounding locations, (iv) perform appropriate field studies, and (v) undertake other activities sufficient to familiarize itself with existing Utilities, surface conditions and subsurface conditions potentially affecting such Project Segment to the extent Integrator deems necessary or advisable for performing its obligations under the Contract Documents with respect to such Project Segment. Integrator shall be deemed to have acknowledged and agreed that it has been afforded the opportunity to review the information and documents made available to it by TxDOT with respect to such future Project Site(s), and to the extent access is made available by TxDOT to conduct inspections and tests of the Project Site(s) and surrounding locations. Before commencing any Work on a particular portion or aspect of the Project, Integrator shall verify all governing dimensions of the relevant Project Site and shall examine all adjoining work which may have an impact on such Work. Integrator shall ensure that the Design Documents and Construction Documents accurately depict all governing and adjoining dimensions.

2.4.4 Integrator acknowledges and agrees that it 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. Integrator shall be deemed to have familiarized itself with the requirements of any and all applicable Laws and the conditions of any required Governmental Approvals for any Project Segment prior to entering into any Project Segment Supplement or performing any Work related thereto. Except as specifically permitted under Section 13, Integrator shall be responsible for complying with the foregoing at its sole cost and without any increase in any Price or extension of any Completion Deadline on account of such compliance, regardless of
whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the Contract Documents. Integrator has no reason to believe that any Governmental Approval required to be obtained by Integrator with respect to any Project Segment will not be granted in due course and, thereafter, remain in effect so as to enable the Work to proceed in accordance with the Contract Documents. If any Governmental Approvals required to be obtained by Integrator with respect to a Project Segment must formally be issued in the name of TxDOT, Integrator shall undertake all efforts to obtain such approvals subject to TxDOT’s reasonable cooperation with Integrator, including execution and delivery of appropriate applications and other Documentation prepared by Integrator in form approved by TxDOT. Integrator shall assist TxDOT in obtaining any Government Approvals which TxDOT may be obligated to obtain, including providing information requested by TxDOT, preparing necessary supporting materials and participating in meetings regarding such approvals.

2.4.5 All civil design Work furnished by Integrator shall be performed by or under the supervision of Persons licensed to practice architecture or surveying (as applicable) in the State. All design Work furnished by Integrator shall be performed by personnel who are careful, skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract Documents and who shall assume professional responsibility for the accuracy and completeness of the Design Documents and Construction Documents prepared or checked by them.

2.4.6 Integrator shall at all times schedule and direct its Work to provide an orderly progression of the Work to achieve, as applicable, each Project Segment System Acceptance, Project Segment Punch List Acceptance and Project Segment Final Acceptance by the applicable Completion Deadlines and in accordance with the applicable approved Project Schedules, including furnishing such employees, materials, facilities and equipment and working such hours, extra shifts, overtime operations, Sundays and holidays as are permitted by the Contract Documents and which may be necessary to achieve such goal, all at Integrator’s sole cost, except as otherwise specifically provided in Section 13.

2.4.7 With respect to Software, (a) except as provided in Section 21.8.1 hereof with respect to certain identified and preexisting works licensed to TxDOT, Integrator and its Subcontractors are and will be the sole author of all works employed by Integrator in preparing any and all Software, (b) Integrator has and will have sufficient right to assign or grant the rights and/or licenses granted in the Software pursuant to this Agreement (and Integrator acknowledges that all Software that is developed in whole or in part for toll collection shall be covered by the licensing requirements of Section 21.8.1), (c) all Software, except any preexisting works addressed in Section 21.8.1 hereof, have not been and will not be used or published under circumstances which have caused or will cause a loss of copyright, patent rights, trademark or other intellectual property right therein, and (d) all Software, including all preexisting works addressed in Section 21.8.1 hereof, do not and will not infringe any patents, copyrights, trademarks or other intellectual property rights (including trade secrets), privacy or similar rights of any third party, nor is any claim (whether or not embodied in an action, past or present) of such infringement pending,
been asserted or, to the best of Integrator’s knowledge, been threatened against Integrator (or, insofar as Integrator is aware, any entity from which Integrator has obtained such rights). The representations and warranties set forth in this \[Section 2.4.9\] shall survive the Maintenance Term and shall survive the expiration or termination of this Agreement.

2.4.8 Integrator is a corporation duly organized and validly existing under the laws of the State of [__________], with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted. Integrator is duly qualified to do business, and is in good standing, in the State, and will remain in good standing throughout the term of this Agreement and for as long thereafter as any obligations remain outstanding under the Contract Documents.

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

2.4.10 All required approvals have been obtained with respect to the execution, delivery and performance of this Agreement, and performance of this Agreement will not result in a breach of or a default under Integrator’s organizational documents or any indenture or loan or credit agreement or other material agreement, instrument, judgment or decree to which Integrator is a party or by which its properties and assets may be bound or affected.

2.4.11 This Agreement constitutes the legal, valid and binding obligation of Integrator, enforceable against Integrator and, if applicable, each member of Integrator, in accordance with its terms.

2.4.12 All customer information and data to which Integrator may have access or which Integrator may obtain in connection with performance of the Work hereunder, and other Project information generated in connection with this Agreement, is and shall be the sole property of TxDOT. Integrator shall at all times maintain the strict confidentiality of such information. Integrator shall have no right to sell, transfer, disclose or otherwise use such information for any purpose other than in performance of its duties hereunder. Integrator acknowledges and agrees that privacy of the customers is of paramount importance to TxDOT and the traveling public and that Integrator will comply with all applicable Laws concerning privacy and confidentiality of personal information obtained in the course of the Work performed under this Agreement.

2.5 Performance as Directed

At all times during the term hereof, including during the course of, and notwithstanding the existence of, any dispute, Integrator shall perform as and if directed by TxDOT in a diligent manner and without delay, shall abide by TxDOT’s decision or order, and shall comply with all applicable provisions of the Contract Documents. If a dispute arises regarding such performance or direction, the dispute shall be resolved in accordance with Section 19.
SECTION 3. DESIGN REQUIREMENTS; DISCLAIMER; ROLES OF PROJECT MANAGEMENT CONSULTANT AND FHWA

3.1 Design Requirements

3.1.1 Design Review Process and Compliance with Final Design Documents

3.1.1.1 Integrator shall furnish the Design Documents to TxDOT in accordance with the design review submittal and certification process set forth in [TP Sections 2 and 4].

3.1.1.2 Integrator shall respond to the comments provided by TxDOT and make modifications to the Design Documents based on such comments in accordance with TP Sections 2.1.6 and 7.12. Integrator acknowledges that comments may be provided which reflect concerns regarding operability or preferences of the commenter or which otherwise do not directly relate to specific requirements of the Contract Documents. Integrator agrees to undertake reasonable efforts to accommodate or otherwise resolve any such comments through the review process described in TP Section 2.1.5.4 and 4.4.2. The foregoing shall in no way be deemed to obligate Integrator to incorporate any comments that would result in a significant disruption to its schedule or a significant increase in its costs, except pursuant to a TxDOT-Directed Change.

3.1.1.3 Integrator shall construct, fabricate, assemble, provide, install, integrate, test and verify all aspects of each Project Segment in accordance with their respective Final Design Documents and Construction Documents. The Final Design Documents may be changed only with prior written approval of TxDOT in its sole discretion. Integrator may make minor modifications to the Construction Documents without prior written approval of TxDOT, but must deliver the modifications to TxDOT in advance of performance of the Work.

3.2 Responsibility for Design

3.2.1 Integrator Responsibility

Integrator agrees that it has full responsibility for the design of the Project and that Integrator will furnish the design of the Project, regardless of the fact that with respect to certain Project Segments, Owner Design Documents, including, in certain circumstances, a Schematic Design, may be provided to Integrator as a preliminary basis for Integrator’s design. Integrator specifically acknowledges and agrees that:

(a) Integrator is not entitled to rely on (i) any Owner Design Documents except as specified in Section 3.2.2, (ii) the Reference Documents, or (iii) any other documents or information provided by TxDOT, except to the extent specifically permitted in the Contract Documents.
(b) Integrator is responsible for correcting any Errors in the Owner Design Documents through the design and/or construction process without any increase in any Price or extension of a Completion Deadline for the relevant Work, subject only to the right to a Change Order with respect to any Necessary Basic Configuration Changes to the extent permitted by Section 13.8.

(c) TxDOT’s liability for Errors in any Owner Design Documents is limited to its obligations relating to Necessary Basic Configuration Changes, and is subject to the requirements and limitations of Section 13.

(d) Integrator’s warranties and indemnities hereunder cover Errors in the Project even though they may be related to Errors in the Owner Design Documents.

(e) Integrator is responsible for verifying all technical information contained in the RFP Documents or otherwise provided by TxDOT with respect to a Project Segment.

3.2.2 Owner Design Documents

3.2.2.1 Integrator may rely on the Basic Configuration elements as shown on any Owner Design Documents as representing a feasible design solution for the Project and that it is feasible to develop the Project within the Schematic ROW limits identified in the Owner Design Documents, and shall have the right to obtain a Change Order for Necessary Basic Configuration Changes as provided in Section 13.

3.2.2.2 Integrator acknowledges that any Owner Design Documents are preliminary and subject to refinement through the Final Design process, and that Integrator’s entitlement to an increase in a Price or time extension in connection with any changes in Owner Design Documents is limited to Necessary Basic Configuration Changes.

3.3 Disclaimer

3.3.1 Integrator understands and agrees that TxDOT shall not be responsible or liable in any respect for any Losses whatsoever suffered by any Integrator-Related Entity by reason of any use of any information contained in any Owner Design Documents or Reference Documents, or any action or forbearance in reliance thereon, except to the extent that TxDOT has specifically agreed in Section 13 that Integrator shall be entitled to an increase in a Price and/or extension of a Completion Deadline with respect to such matter. Integrator further acknowledges and agrees that (a) if and to the extent Integrator or anyone on Integrator’s behalf uses any of said information in any way, such use is made on the basis that Integrator, not TxDOT, has approved and is responsible for said information, and (b) Integrator is capable of conducting and obligated hereunder to conduct any and all studies, analyses and investigations as it deems advisable to verify or supplement said information, and that any use of said information is entirely at Integrator’s own risk and at its own discretion.
3.3.2 SUBJECT TO SECTION 3.2.2, TxDOT DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED IN ANY OWNER DESIGN DOCUMENTS OR REFERENCE DOCUMENTS IS, OR WILL BE, EITHER COMPLETE OR ACCURATE (INCLUDING WITH RESPECT TO (i) HEIGHTS, LENGTHS OR SIZES DEPICTED IN THE OWNER DESIGN DOCUMENTS, (ii) HEIGHTS, LENGTHS OR SIZES OF STRUCTURES OR WALLS DEPICTED IN THE OWNER DESIGN DOCUMENTS, OR (iii) ANY FAILURE OR OMISSION TO DEPICT ANY OF THE FOREGOING IN THE OWNER DESIGN DOCUMENTS) OR THAT SUCH INFORMATION IS IN CONFORMITY WITH THE REQUIREMENTS OF TxDOT-Provided Approvals OR OTHER CONTRACT DOCUMENTS. TxDOT DOES NOT REPRESENT OR WARRANT THE ACCURACY OR COMPLETENESS OF ANY ITEMIZED LIST SET FORTH IN THE TECHNICAL PROVISIONS. THE FOREGOING SHALL IN NO WAY AFFECT TxDOT’s LIABILITY FOR NECESSARY BASIC CONFIGURATION CHANGES AS SPECIFIED HEREIN OR TO ISSUE CHANGE ORDERS IN ACCORDANCE WITH SECTION 13.

3.4 Role of Project Management Consultant

Jacobs has been designated as TxDOT’s Project Management Consultant. The Project Management Consultant will assist TxDOT in the management and oversight of the Project and the Agreement. TxDOT may change the designation of its Project Management Consultant at any time.

3.5 Role of FHWA

Integrator acknowledges and agrees that FHWA will have certain approval rights with respect to the Project (including rights to approve the Project design and certain Change Orders), as well as the right to provide certain oversight and technical services with respect to the Project.
SECTION 4. TIME WITHIN WHICH PROJECT
SHALL BE COMPLETED; PROJECT SCHEDULE AND PROGRESS

4.1 Time of Essence; Notice to Proceed

4.1.1 Time is of the essence of this Agreement.

4.1.2 Authorization allowing Integrator to proceed with Work hereunder shall be provided through sequentially numbered Notices to Proceed issued by TxDOT for each Project Segment (“Project Segment NTP 1” et seq.).

4.2 Completion Deadlines

4.2.1 System Acceptance Deadline

Integrator shall achieve Project Segment System Acceptance of each Project Segment on or before expiration of the number of Days specified in the relevant Project Segment Supplement for such Project Segment. Said date(s) for achieving System Acceptance, as it or they may be extended hereunder, is/are each referred to herein as a Project Segment “System Acceptance Deadline.”

4.2.2 Punch List Acceptance Deadline

Integrator shall achieve Project Segment Punch List Acceptance of each Project Segment on or before 30 Days after Project Segment System Acceptance of such Project Segment. Each such deadline for achieving Punch List Acceptance, as it may be extended hereunder, is referred to herein as a Project Segment “Punch List Acceptance Deadline.”

4.2.3 Final Acceptance Deadline

Integrator shall achieve Project Segment Final Acceptance of each Project Segment within 120 Days after Project Segment System Acceptance of such Project Segment. Each such deadline for achieving Final Acceptance, as it may be extended hereunder, is referred to herein as a Project Segment “Final Acceptance Deadline.”

4.2.4 No Time Extensions

Except as otherwise specifically provided in Section 13, TxDOT shall have no obligation to extend a Completion Deadline and Integrator shall not be relieved of its obligation to comply with the Project Schedule and to achieve System Acceptance, Punch List Acceptance and Final Acceptance of each Project Segment by the applicable Completion Deadlines for any reason.
4.3 Scheduling of Design, Construction and Payment

4.3.1 Project Schedule

4.3.1.1 Project Segment Schedule

Project Segment Work shall be undertaken and completed in accordance with the applicable Project Segment Schedule. Each Project Segment Schedule shall be used by the parties for planning and monitoring the progress of the Work and as the basis for determining the amount of payments to be made to Integrator. Integrator shall incorporate the Project Segment Completion Deadlines set forth in the Project Segment Supplement into its proposed Project Segment Schedule of all activities necessary to complete the Project Segment by such Project Segment Completion Deadlines. If Integrator fails to provide an acceptable Project Segment Project Schedule within 90 Days after issuance of any NTP for a Project Segment, Integrator shall have no right to receive payments until such time as Integrator has prepared and TxDOT has approved such Project Segment Project Schedule.

4.3.2 Float

All Float contained in a Project Schedule, as initially approved or generated thereafter, shall be considered a Project resource available to either party or both Parties as needed to achieve schedule milestones, interim completion dates and/or Completion Deadlines. All Float shall be shown as such in the relevant Project Schedule on each affected schedule path. Identification of (or failure to identify) Float on the schedule shall be examined by TxDOT in determining whether to approve the relevant Project Schedule. Once identified, Integrator shall monitor, account for and maintain Float in accordance with critical path methodology.

4.4 Prerequisites for Start of Construction

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

4.4.1 TxDOT shall have issued the relevant NTP.

4.4.2 TxDOT shall have approved the relevant Project Schedule.

4.4.3 TxDOT shall have provided written acceptance of the updated Civil Construction Quality Plan, the Quality Management Program, and if Hazardous Materials are identified in connection with the Project, the Hazardous Materials Management Plan relating to such Work.

4.4.4 All requirements of the Construction Quality Program and the Quality Management Program, which are a condition to construction and installation, shall have been met.
4.4.5 TxDOT shall have approved all applicable Design Documents and received all Construction Documents relating to such Work.

4.4.6 All Governmental Approvals necessary for construction of the applicable portion of the Project shall have been obtained and all conditions of such Governmental Approvals, which are a prerequisite to commencement of such construction, shall have been performed and satisfied.

4.4.7 All insurance policies, bonds and letters of credit required to be delivered to TxDOT hereunder prior to commencement of construction shall have been received and approved by TxDOT and shall remain in full force and effect.

4.4.8 All necessary rights of access for such portion of the Project shall have been obtained.

4.4.9 All pre-construction environmental surveys and mitigation shall have been completed as required for the area(s) proposed for construction, and Integrator shall have performed all other survey work and delivered all notices required by the Contract Documents to be delivered prior to commencement of construction on such portion of the Project.

As used in this Section 4.4, the term "construction" specifically excludes potholing and geotechnical investigations incidental to design Work, mobilization, Project Site security and establishment of work yard(s) and storage sites.

4.5 Recovery Schedule

4.5.1 If at any time, the Work on any Critical Path item is delayed, other than solely for a reason for which Integrator is entitled to a time extension pursuant to Section 13, for a period which exceeds the greater of either 30 Days in the aggregate or that number of Days in the aggregate equal to 5% of the Days remaining until a Completion Deadline, then Integrator shall prepare and submit to TxDOT for review and approval with the next Monthly Update a Recovery Schedule demonstrating Integrator’s proposed plan to regain lost schedule progress and to achieve the original contractual milestones in accordance with this Agreement and any Project Segment Supplement, including System Acceptance by the applicable System Acceptance Deadline, Punch List Acceptance by the applicable Punch List Acceptance Deadline and Final Acceptance by the applicable Final Acceptance Deadline.

4.5.2 TxDOT shall notify Integrator within 14 Days after receipt of each such Recovery Schedule whether the Recovery Schedule is deemed accepted or rejected. Within 7 Days after any rejection by TxDOT of the Recovery Schedule, Integrator will resubmit a revised Recovery Schedule incorporating TxDOT’s comments. When TxDOT accepts Integrator’s Recovery Schedule, Integrator shall, within five Days after TxDOT’s acceptance, incorporate and fully include such schedule into the applicable Project Schedule, deliver the same to TxDOT and proceed in accordance with the approved Recovery Schedule.
4.5.3 All costs incurred by Integrator in preparing, implementing and achieving the Recovery Schedule shall be borne by Integrator and shall not result in a change to the applicable Price, except to the extent that a change in the applicable Price is permitted in accordance with Section 13.

4.5.4 If Integrator fails to provide an acceptable Recovery Schedule as required herein, Integrator shall have no right to receive Milestone Payments until such time as Integrator has prepared and TxDOT has approved such Recovery Schedule.
SECTION 5. CONTROL OF WORK

5.1 Control and Coordination of Work

Integrator shall be solely responsible for and have control over the installation, integration, construction and testing means, methods, techniques, sequences, procedures and site safety, and shall be solely responsible for coordinating all portions of the Work under the Contract Documents.

5.2 Safety

Integrator shall take all reasonable precautions and be solely responsible for the safety of, and shall provide protection to prevent damage, injury, or loss to, all persons on the Project Site or who would reasonably be expected to be affected by the Work, including individuals performing Work, employees of TxDOT and its consultants, visitors to a Project Site and members of the public who may be affected by the Work. Integrator shall at all times comply with all health and safety requirements contained in the Technical Provisions and all such requirements under applicable Law.

5.3 Obligation to Minimize Impacts

Integrator shall ensure that all of its activities and the activities of Integrator-Related Entities are undertaken in a manner that will minimize the effect on surrounding property and the public to the maximum extent practicable.

5.4 Inspection and Testing

5.4.1 Integrator Inspection and Testing

Integrator shall perform the inspection, sampling, testing, quality control and quality assurance necessary for Integrator to comply with its obligations under the Contract Documents.

5.4.2 Oversight and Inspection and Owner Verification Testing by TxDOT and Others

All materials and each part or detail of the Work shall also be subject to oversight, inspection and owner verification testing by TxDOT and other Persons designated by TxDOT. At all points in performance of the Work at which specific inspections and/or approvals by TxDOT are required by the Technical Provisions and/or the Civil Construction Quality Plan, Integrator shall not proceed beyond that point until TxDOT has made such inspection or approval or waived its right in writing to inspect or approve. Such oversight, inspection and/or testing does not make such Person a party to this Agreement nor will it change the rights of the Parties. Integrator hereby consents to such oversight, inspection and owner verification testing. Upon request from TxDOT, Integrator shall furnish information to such Persons as are designated in such request and shall permit such Persons access to any Project Site and all parts of the Work.
5.4.3 Obligation to Uncover Finished Work

Integrator shall inform TxDOT in writing of any part of the Work which is about to be covered and offer a full and adequate opportunity to TxDOT to inspect and test such part of the Work before it is covered. At all times before any Final Acceptance, Integrator shall remove or uncover such portions of the finished Work as directed by TxDOT. After examination by the TxDOT and any other Persons designated by TxDOT, Integrator shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then uncovering, removing and restoring the Work and recovery of any delay to any Critical Path occasioned thereby shall be at Integrator’s cost and Integrator shall not be entitled to any time extension. Furthermore, any Work done or materials used without adequate notice to and opportunity for prior inspection by TxDOT (if applicable) or without inspection in accordance with TP Sections 2.2 and 8 may be ordered uncovered, removed or restored at Integrator’s cost and without a time extension, even if the Work proves acceptable and conforming after uncovering. Except with respect to Work done or materials used as described in the foregoing sentences of this Section 5.4.3, if Work exposed or examined under this Section 5.4.3 is in conformance with the requirements of the Contract Documents, then any delay in any Critical Path from uncovering, removing and restoring Work shall be considered a TxDOT-Caused Delay, and Integrator shall be entitled to a Change Order for the cost of such efforts and recovery of any delay to any Critical Path occasioned thereby. Refer to Section 5.6 for provisions regarding payments owing by Integrator to TxDOT if TxDOT agrees (in its sole discretion) to accept certain Nonconforming Work.

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

5.5.1 Oversight and Acceptance

The oversight, spot checks, inspections, verifications, audits, tests, reviews, acceptances and approvals conducted by TxDOT and others do not constitute acceptance of the materials or Work inspected or waiver of any warranty or legal or equitable right with respect thereto. TxDOT may request remedies for Nonconforming Work and/or identify additional Work which must be done to bring the Project into compliance with the requirements of the Contract Documents at any time prior to any Final Acceptance, whether or not previous oversight, spot checks, inspections, verifications, audits, tests, reviews, acceptances or approvals were conducted or waived by TxDOT or any such Persons.

5.5.2 No Estoppel

Integrator shall not be relieved of obligations to perform the Work in accordance with the Contract Documents, or any of its Warranty, maintenance or indemnity obligations, as the result of oversight, spot checks, audits, reviews, tests or inspections performed by any Persons, approvals or acceptances made by any Persons, or any failure of any Person to take such action. TxDOT shall not be precluded or estopped, by any measurement, estimate or certificate made either before or after a Final Acceptance, or by making any payment, from showing that any such measurement, estimate or certificate is
incorrectly made or untrue, or from showing the true amount and character of the Work performed and materials furnished by Integrator, or from showing that the Work or materials do not conform in fact to the requirements of the Contract Documents. Notwithstanding any such measurement, estimate or certificate, or payment made in accordance therewith, TxDOT shall not be precluded or estopped from recovering from Integrator and its Surety(ies) such damages as TxDOT may sustain by reason of Integrator’s failure to comply or to have complied with the terms of the Contract Documents.

5.6 Nonconforming Work

5.6.1 Rejection, Removal and Replacement of Work

Nonconforming Work rejected by TxDOT shall be removed and replaced so as to conform to the requirements of the Contract Documents, at Integrator’s cost and without a time extension; and Integrator shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. The fact that TxDOT may not have discovered the Nonconforming Work shall not constitute an acceptance of such Nonconforming Work. If Integrator fails to correct any Nonconforming Work within 10 Days of receipt of notice from TxDOT requesting correction, or if such Nonconforming Work cannot be corrected within 10 Days, and Integrator fails to (a) provide to TxDOT a schedule for correcting any such Nonconforming Work acceptable to TxDOT within such 10-Day period, (b) commence such corrective Work within such 10-Day period and (c) thereafter diligently prosecute such correction in accordance with such approved schedule to completion, then TxDOT may cause the Nonconforming Work to be remedied or removed and replaced and may deduct the cost of doing so from any moneys due or to become due Integrator and/or obtain reimbursement from Integrator for such cost.

5.6.2 Agreement to Accept Nonconforming Work

If TxDOT agrees to accept any Nonconforming Work with respect to a Project Segment without requiring it to be fully corrected, TxDOT shall be entitled to reimbursement of a portion of the applicable Price in an amount equal to the greatest of (a) the amount deemed appropriate by TxDOT to provide compensation for impacts to all affected parties (including TxDOT) such as future maintenance and/or other costs relating to the Nonconforming Work, (b) the amount of a Price allocated to such Work, or (c) 100% of Integrator’s cost savings associated with its failure to perform the Work in accordance with the requirements of the Contract Documents. Such reimbursement shall be payable to TxDOT within 10 Days after Integrator’s receipt of an invoice therefore. Alternatively, TxDOT may deduct the amount of such costs and expenses from any sums owed by TxDOT to Integrator pursuant to this Agreement. Integrator acknowledges and agrees that TxDOT shall have sole discretion regarding acceptance or rejection of Nonconforming Work and shall have sole discretion with regard to the amount payable in connection therewith.
SECTION 6. ACCESS TO PROJECT SITE; UTILITIES; ENVIRONMENTAL COMPLIANCE

6.1 Access to Project Site

6.1.1 TxDOT shall be responsible for providing Integrator with such access to the Final ROW for a Project Segment, as applicable, as is necessary to perform the Work. To the extent that Integrator has not been provided with access to portions of the Final ROW prior to the date set forth on the relevant Project Schedule, Integrator shall work around such Final ROW with the goal of minimizing delay to the completion of the Project.

6.1.2 TxDOT shall be responsible for the acquisition of any real property outside the Schematic ROW that must be acquired due to a TxDOT-Directed Change, subject to TxDOT’s reasonable determination that the property is necessary, subject to the limitations in Section 13.

6.1.3 All costs and expenses for the acquisition of any temporary right or interest in real property that Integrator determines necessary or desirable for its convenience in performance of the Work, such as for work space, contractor laydown areas, materials or storage areas, or for any permanent interest in real property that Integrator may wish to acquire for its convenience which lies outside the applicable Schematic ROW, shall be Integrator’s sole responsibility, to be undertaken at Integrator’s sole cost and expense. TxDOT shall have no obligations or responsibilities with respect to the acquisition, maintenance or disposition of such rights or interests, and shall not use its powers of eminent domain in connection therewith. Integrator will comply with all applicable Laws in acquiring and maintaining or disposing of any such property rights or interests. Integrator shall cause the documentation of any such property interest to contain the grantor’s express acknowledgment that TxDOT shall have no liability with respect thereto.

6.2 Utilities

TxDOT shall ensure that all necessary Utilities enter the Schematic ROW of each Project Segment. Integrator shall be responsible for verifying the location of all Utilities shown on any Utility Strip Map provided by TxDOT or otherwise related to any Project Segment (including undertaking field inspections and Project Site studies, researching Utility Owner records and confirming Integrator’s findings with TxDOT and the Utility Owners), and for obtaining all Utility installations, hook-ups and service extensions that are required to operate the System, and for coordination with Utility Owners, at Integrator’s cost. Integrator shall use its best efforts to minimize costs for which Integrator is entitled to compensation, including avoidance of an Unidentified Utility where feasible rather than its removal and/or reinstallation in a new location, and to minimize any delay for which Integrator is entitled to an extension in a Completion Deadline pursuant to this Section 6.2.
6.3 Hazardous Materials Management

6.3.1 Procedures and Compensation for Hazardous Materials Management

6.3.1.1 If during the course of the Work, Integrator encounters Hazardous Materials or potential Recognized Environmental Conditions, Integrator shall (a) promptly notify TxDOT in writing and advise TxDOT of any obligation to notify State or federal agencies under applicable Law; and (b) take reasonable steps, including design modifications and/or construction techniques, to avoid excavation or dewatering in areas with Hazardous Materials or Recognized Environmental Conditions. Where excavation or dewatering of Hazardous Materials or Recognized Environmental Conditions is unavoidable, Integrator shall utilize appropriately trained personnel and shall select the most cost-effective approach to Hazardous Materials Management, unless otherwise directed by TxDOT. Integrator's plan for Hazardous Materials Management shall be subject to the prior written approval of TxDOT. Wherever feasible and consistent with applicable Law, contaminated soil and groundwater shall not be disposed off-site. All Hazardous Materials and potential Recognized Environmental Conditions shall be managed, handled, remediated, transported (where applicable) and disposed of in accordance with applicable Law, Governmental Approvals, the Hazardous Materials Management Plan, and the approved Project Site Investigation Report.

6.3.1.2 Except where required to take an immediate action required by applicable Law, Integrator shall afford TxDOT the opportunity to inspect sites containing Hazardous Materials or potential Recognized Environmental Conditions before any action is taken which would inhibit TxDOT's ability to ascertain the nature and extent of the contamination.

6.3.1.3 Subject to the limitations and exceptions set forth in this Section 6.3. and Section 13, Integrator shall be entitled to a Change Order as set forth in Section 13.9.3 providing for additional compensation and/or a time extension with respect to costs and delays directly attributable to the discovery of Hazardous Materials within applicable Schematic ROW or any parcels added to the applicable Project Site by a TxDOT-Directed Change or required due to a Force Majeure Event.

6.3.2 Hazardous Material Generator

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

Hazardous Materials Management costs, including assessment, containment, and remediation expenses, on, arising from or related to and/or which result from (a) Release(s) of Hazardous Material attributable to the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any Integrator-Related Entity; or (b) Release(s) of Hazardous Materials arranged to be brought onto any Final ROW or elsewhere by any Integrator-Related Entity shall not be compensable to Integrator, regardless of the cause of the Release of Hazardous Materials.

6.3.4 Hazardous Materials Brought to Final ROW by Integrator

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

6.3.5 Environmental Approvals Relating to Hazardous Materials Management

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

6.4 Environmental Compliance

6.4.1 Integrator shall be responsible for compliance with all conditions and requirements of the Environmental Approvals, including TxDOT-Provided Approvals and similar Governmental Approvals, specifically applicable to the Project, other than the mitigation requirements that TxDOT expressly agrees to perform for any Project Segment. Each Price includes compensation for Integrator’s performance of all environmental requirements and conditions relating to the Project Segment to which such Price relates, including mitigation measures.
SECTION 7. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM; CIVIL RIGHTS; SUBCONTRACTORS; KEY PERSONNEL

7.1 DBE Requirements [NTD: To be updated to reflect final DBE Requirements.]

7.1.1 TxDOT’s Disadvantaged Business Enterprise (DBE) Program applicable to the Project are set forth in Exhibit G. The purpose of the DBE Program 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. The DBE participation goals for the Project as a whole are __________% DBE participation. Integrator shall comply with all requirements set forth in Exhibit G and the DBE Performance Plan. TxDOT shall specify individual DBE participation goals with its issuance of each NTP. Such individual DBE participation goals specified for each Project Segment may vary in TxDOT’s discretion; provided, however, that the required overall DBE participation for the Project shall not exceed the above-specified percentages.

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

7.2 Civil Rights; Equal Employment Opportunity

7.2.1 Integrator shall not, and shall cause the Subcontractors to not, discriminate on the basis of race, color, national origin or sex in the performance of the Work under the Contract Documents. Integrator shall carry out, and shall cause the Subcontractors to carry out, applicable requirements of 49 CFR Part 26 in the award and administration of FHWA-assisted agreements. Failure by Integrator to carry out these requirements is a material breach of this Agreement, which may result in the termination of the Contract Documents or such other remedy as TxDOT deems appropriate.

7.2.2 Integrator shall include Section 7.2.1 in every Subcontract (including purchase orders and in every subcontract of any Integrator-Related Entity for Work), and shall require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor.

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

7.3.1 Each instrument evidencing any agreement of Integrator with any Subcontractor shall provide, in terms and in form and substance satisfactory to TxDOT that: (a) the rights of Integrator under such instrument are assigned to TxDOT contingent only upon delivery of written request from TxDOT or its successor or assign following default by Integrator or termination or expiration of this Agreement; and (b) all warranties (express and implied) of such Subcontract shall inure to the benefit of TxDOT.

7.3.2 Integrator shall provide TxDOT with a list of all Subcontracts with each monthly update, shall allow TxDOT access to all Subcontracts and records regarding Subcontracts and shall deliver to TxDOT, within 10 Days after execution, copies of all Major Subcontracts and, within 10 Days after receipt of a request from TxDOT, copies of all other agreements or documents as may be requested.

7.3.3 The retention of Subcontractors by Integrator will not relieve Integrator of its responsibility hereunder or for the quality of the Work or materials provided by it. Integrator will at all times be held fully responsible to TxDOT for the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by its Subcontractors and persons employed by them and no Subcontract entered into by Integrator will impose any obligation or liability upon TxDOT to any such Subcontractor or any of its employees. Nothing in this Agreement will create any contractual relationship between TxDOT and any Subcontractor of Integrator.

7.3.4 The following requirements shall apply to Subcontracts:

(a) Integrator shall, prior to soliciting any bids for performance of work or labor or rendering of services relating to the design or construction of any portion of the Project or for special fabrication, assembly and installation of any portion of the Work, submit to TxDOT for its review and approval a procedure for the conduct of the bidding and approval process applicable to Major Subcontracts. Integrator may use procedures set forth in the TxDOT Standards or may submit alternative procedures to TxDOT for approval. Integrator shall not enter into any Major Subcontracts except in accordance with the foregoing procedure. Once Integrator has entered into any Major Subcontract, Integrator shall not have the right to make any substitution of such Subcontractor except with TxDOT’s prior written approval.

(b) As soon as Integrator has identified a potential Subcontractor, but in no event less than 30 Days prior to the scheduled initiation of Work by such proposed Subcontractor, Integrator shall notify TxDOT in writing of the name, address, phone number and contact name of such Subcontractor.

(c) Each Subcontract shall include terms and conditions sufficient to ensure compliance by the Subcontractor with the requirements of the Contract Documents, and shall include those terms that are specifically required by the Contract Documents to be included therein. All Subcontracts, including Subcontracts with Suppliers, shall incorporate terms substantially similar to those contained in this Agreement, specifically including an agreement by the Subcontractor to participate in any dispute proceeding
pursuant to Section 19, if such participation is requested by either TxDOT or Integrator, and a requirement to allow audits by TxDOT as provided in Section 21.4.

**7.3.5** Each Subcontract shall:

(a) Set forth a standard of professional responsibility or a standard for commercial practice equal to the requirements of the Contract Documents and prudent industry standards for work of similar scope and scale and shall set forth effective procedures for claims and change orders.

(b) Require the Subcontractor to carry out its scope of work in accordance with the Contract Documents, the Governmental Approvals and applicable Law, including the applicable requirements of the DBE Performance Plan.

(c) Include a covenant to maintain all licenses required by applicable Law, and set forth warranties, guaranties and liability provisions of the contracting party in accordance with good commercial practice for work of similar scope and scale.

(d) Be fully assignable without cost to TxDOT, such assignability to include the benefit of all Subcontractor warranties, indemnities, guarantees and professional responsibility and include express requirements that: (i) it will maintain usual and customary books and records for the type and scope of operations of business in which it is engaged (e.g., constructor, equipment supplier, designer, service provider); (ii) permit audit thereof by Integrator, and provide progress reports to Integrator appropriate for the type of work it is performing sufficient to enable Integrator to provide the reports it is required to furnish TxDOT under this Agreement; and (iii) allow TxDOT to assume the benefit of Integrator's rights with liability only for those remaining obligations of Integrator accruing after the date of assumption by TxDOT. No such assignment shall release or relieve Integrator from its obligations or liabilities under the assigned Subcontract.

(e) Not be assignable by the Subcontractor to any party other than TxDOT (or its assignee) without Integrator's prior written consent.

(f) With respect to any Subcontract which, when aggregated with all Subcontracts between Integrator and such Subcontractor for the same Fiscal Year, is in excess of $250,000: (i) be terminable by the Subcontractor only for cause; and (ii) include an indemnity from the Subcontractor in favor of Integrator and the Indemnified Parties against any and all Losses arising out of, related to or associated with, the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by the Subcontractor or any of its officers, employees, agents or representatives.

(g) Expressly require the Subcontractor to participate in meetings between Integrator and TxDOT, upon TxDOT's request, concerning matters pertaining to such Subcontract or its work, provided that all direction to such Subcontractor shall be provided by Integrator, and provided further that nothing in this clause (g) shall limit the authority of TxDOT to give such direction or take such action which, in its sole opinion, is necessary to remove an immediate and present threat to the safety of life or property.
(h) Expressly provide that all Liens, claims and charges of the Subcontractor and its subcontractors at any time shall not attach to any interest of TxDOT in the Project or the Final ROW.

(i) Be consistent in all other respects with the terms and conditions of this Agreement to the extent such terms and conditions are applicable to the scope of work of such Subcontractors, and include all provisions required by this Agreement.

7.3.6 Integrator shall not amend any Subcontract with respect to any of the foregoing matters without the prior written consent of TxDOT. All Subcontracts with Affiliates shall be on terms no less favorable (as determined by TxDOT) to Integrator than to non-Affiliates of the Subcontractor. Integrator shall not enter into any Subcontracts with any Person then debarred or suspended from submitting bids by any agency of the State.

7.4 Key Personnel; Qualifications of Employees

7.4.1 The Contract Documents identify certain job categories of Key Personnel for the Project. Integrator shall not change, or permit any change in, any Key Personnel without the prior written consent of TxDOT in accordance with TP Section 2.1.2.2.2.

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

7.4.3 Integrator shall designate in writing who shall have onsite field and office authority to represent and act for Integrator. An authorized representative shall be present at the jobsite at all times while Work is actually in progress at the jobsite. Integrator shall provide phone and pager numbers for all Key Personnel. TxDOT requires the ability to contact the following Key Personnel 24 hours per Day, seven Days per week: ProgramManager; installation manager (from the date of issuance of an NTP to the date of Final Acceptance); and maintenance manager (during the Maintenance Term).

7.4.4 Integrator acknowledges and agrees that the award of this Agreement by TxDOT to Integrator was based, in large part, on the qualifications and experience of the personnel listed in the Proposal and Integrator’s commitment that such individuals would be available to undertake and perform the Work. Integrator represents, warrants and
covenants that such individuals are available for and will fulfill the roles identified for them in the Proposal in connection with the Work. Unless otherwise agreed to by TxDOT in writing, individuals filling Key Personnel roles shall be available for the Work and shall maintain active involvement in the prosecution and performance of the Work. In addition to the foregoing, TxDOT reserves the right to require a 100% time commitment per position from any Key Personnel if TxDOT, in its sole discretion, determines that such personnel are not devoting sufficient time to the prosecution and performance of the Work.

7.4.5 Subject to the other terms, provisions and requirements of the Contract Documents (including the requirements for quality control and quality assurance and the right of TxDOT to require a 100% time commitment per position as set forth in Section 7.4.4), TxDOT acknowledges that an individual may fill more than one Key Personnel role. If an individual filling one or more Key Personnel roles is not available for the Work and does not maintain active involvement in the prosecution and performance of the Work, Integrator acknowledges that TxDOT, the Work and the Project will suffer significant and substantial Losses and that it is impracticable and extremely difficult to ascertain and determine the actual Losses which would accrue to TxDOT in such event. Therefore, if certain Key Personnel are not available or not actively involved in the prosecution and performance of the Work, as determined by TxDOT, in its sole discretion, Integrator agrees to pay TxDOT a liquidated amount as follows, for each position held by such individual, as deemed compensation to TxDOT for such Losses:

<table>
<thead>
<tr>
<th>POSITION</th>
<th>LIQUIDATED AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program Manager</td>
<td>$100,000</td>
</tr>
<tr>
<td>Maintenance manager</td>
<td>$50,000</td>
</tr>
<tr>
<td>All other positions noted with an asterisk in Exhibit X</td>
<td>$25,000</td>
</tr>
</tbody>
</table>

Integrator understands and agrees that any damages payable in accordance with this Section 7.4.5 are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the Effective Date. TxDOT shall have the right to deduct or draw upon any amount owed by Integrator to TxDOT hereunder from any amounts owed by TxDOT to Integrator, including any Retainage which may be payable by TxDOT to Integrator, or from any bond or letter of credit held by TxDOT under this Agreement. Notwithstanding the foregoing, Integrator shall not be liable for liquidated damages under this Section 7.4.5 if (i) Integrator removes or replaces such personnel at the direction of TxDOT; (ii) such individual is unavailable due to death, retirement, injury or no longer being employed by the applicable Integrator-Related Entity (provided that moving to an affiliated company shall not be considered grounds for avoiding liquidated damages), or (iii) such individual is unavailable due to TxDOT’s failure to issue the Initial NTP within 180 Days of the Agreement date for a reason other than the fault, act or omission of any Integrator-Related Entity; provided, however, in each such case, Integrator shall promptly propose to TxDOT a replacement for such personnel, which individual shall be subject to TxDOT’s review and written consent. If the Initial NTP has not been issued within 180 Days after the Agreement date, Integrator shall have 30 Days after issuance of the Initial NTP to identify any change in Key Personnel without incurring
any liquidated damages. Further notwithstanding the foregoing, following the issuance of the Initial NTP and subject to TxDOT’s right to review and approve the designation of additional or different Key Personnel for any subsequent Project Segment, Integrator shall not be liable for liquidated damages under this Section 7.4.5 if the same Key Personnel are not available to work on each such subsequent Project Segment, provided, however, that once approved, the Key Personnel designated for any such subsequent Project Segment must be available to complete the Work for such Project Segment. Following any TxDOT-approved substitution or replacement of a Key Personnel pursuant to the terms hereof for any Project Segment, the new individual shall be considered a Key Personnel for all purposes under this Agreement, including the provisions of this Section 7.4.5 relative to liquidated damages.

7.4.6 Integrator acknowledges and agrees that the Key Personnel positions are of critical importance to TxDOT and the Project. In addition to the approval rights of TxDOT set forth in Section 7.4.2 and the liquidated damages set forth in Section 7.4.5, if an individual in certain Key Personnel positions delineated on Exhibit X leaves that position for a reason other than as set forth in clauses (i)-(iii) of Section 7.4.5, TxDOT shall have the unilateral right to terminate this Agreement without further liability to Integrator, except for payment for such Work that has been completed and accepted as of the date of termination, unless Integrator provides TxDOT a replacement acceptable to TxDOT within 30 Days after the earlier of (i) the date on which such individual has left his/her position; or (ii) Integrator or TxDOT becomes aware that such individual intends to leave his/her position. In connection with a termination under this Section 7.4.6, Integrator shall not be entitled to any payment of profit, overhead or any settlement costs under Section 15, but shall only be entitled to the payment of Integrator’s actual costs incurred and not previously paid for by TxDOT in connection with Work which has been completed and accepted as of the termination date.

7.4.7 Any position on the Integrator’s Project (including a specific Project Segment) organizational chart or within the Integrator’s organization structure that is above that of a Key Personnel position for which liquidated damages may apply will be deemed to be a Key Personnel position and, for purposes of liquidated damages under Section 7.4.5, shall be at the level which is immediately higher than the Key Personnel immediately below that position (e.g., an individual that reports to the Maintenance Manager level but is higher than the other Key Personnel level would be considered a Maintenance Manager for this purpose).

7.5 Responsibility for Employees and Subcontractors

Integrator shall supervise and be responsible for the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any Integrator-Related Entity, as though Integrator directly employed all such Persons.
SECTION 8. PERFORMANCE AND PAYMENT BONDS; OTHER SECURITY; FINANCIAL INFORMATION

8.1 Provision of Bonds

Integrator shall provide payment, performance and warranty bonds to TxDOT securing Integrator’s obligations hereunder, each in an amount set forth herein, and shall maintain such bonds in full force and effect as described below.

8.1.1 As a condition to issuance of the Initial NTP, Integrator shall provide, and continuously maintain in place for the benefit of TxDOT, a performance bond in the form of Exhibit H (a “Performance Bond”) for the Work covered by Initial NTP. Integrator shall provide, no later than 5:00 p.m. (CDT) on the [30th] day following the date of issuance of an NTP other than the Initial NTP, a Rider to the existing Performance Bond in the form of attached Exhibit H-1 (with such modifications as TxDOT approves in writing, in its sole discretion), or furnish TxDOT with a separate Performance Bond (with such modifications as TxDOT approves in writing, in its sole discretion), with respect to such additional Project Segment. Such bond (or Rider, as the case may be) shall be in an amount of 100% of the Project Segment Price, as applicable. Subject to Section 8.1.3, TxDOT will release any individual Performance Bond relating solely to a Project Segment or, if a Rider is provided, reduce the amount of the Performance Bond by the Project Segment Price, as applicable, (a) upon expiration of the Warranty term related to such Project Segment, provided that no outstanding claims are then pending or threatened against Integrator hereunder, or (b) upon satisfaction of the conditions in Section 8.1.3.

8.1.2 As a condition to issuance of the Initial NTP, Integrator shall provide, and continuously maintain in place for the benefit of TxDOT, a payment bond in the form of Exhibit I (a “Payment Bond”) for the Work covered by the Initial NTP. Integrator shall provide, no later than 5:00 p.m. (CDT) on the [30th] day following the date of issuance of an NTP other than the Initial NTP, a Rider to the existing Payment Bond in the form of Exhibit I-1 (with such modifications as TxDOT approves in writing, in its sole discretion), or furnish TxDOT with a separate Payment Bond (with such modifications as TxDOT approves in writing, in its sole discretion) with respect to such additional Project Segment. Such bond (or Rider, as the case may be) shall be in an amount of 100% of the relevant Project Segment Price. Subject to Section 8.1.3, TxDOT will release any individual Payment Bond relating solely to a Project Segment or, if a Rider is Provided, reduce the amount of the Payment Bond by the Project Segment Price, as applicable, (a) upon receipt of (i) evidence satisfactory to TxDOT that all Persons eligible to file a claim against the bond have been fully paid and (ii) unconditional releases of Liens and stop notices from all Subcontractors who filed preliminary notice of a claim against the bond, (b) upon expiration of the statutory period for Subcontractors to file a claim against the bond, or (c) upon satisfaction of the conditions in Section 8.1.3.

8.1.3 After any Final Acceptance, subject to the requirements herein, Integrator may obtain a reduction in the amount of the relevant Performance Bond by providing a warranty bond, or such other security as is approved by TxDOT, in its sole discretion, which shall guarantee performance of the Work required to be performed during the
Warranty term and which shall also constitute a payment bond guaranteeing payment to Persons performing such Work ("Warranty Bond"). The Warranty Bond shall be (i) in an amount equal to 20% of the applicable Project Segment Price, (ii) substantially in the form attached hereto as Exhibit O (with such modifications as TxDOT approves in writing, in its sole discretion), and (iii) released upon satisfaction of the conditions in Section 8.1.1(a) and Section 8.1.2(a) or (b).

8.1.4 As a condition to any Final Acceptance, for each Project Segment, Integrator shall furnish TxDOT with (a) a maintenance performance bond in the form of Exhibit H-2 (with such modifications as TxDOT approves in writing, in its sole discretion) (a "Maintenance Performance Bond"), and (b) a maintenance payment bond in the form of Exhibit I-2 (with such modifications as TxDOT approves in writing, in its sole discretion) (a "Maintenance Payment Bond"). After the initial Maintenance Performance Bond and Maintenance Payment Bond are issued, as a condition precedent to subsequent Final Acceptances, in lieu of providing separate Maintenance Performance Bonds and Maintenance Payment Bonds for each additional Project Segment, Integrator may provide Riders to the existing Maintenance Performance Bond and Maintenance Payment Bond. Maintenance Performance Bonds and Maintenance Payment Bonds (or Riders, as the case may be) shall be in an amount equal to 100% of the aggregate two (2) year Maintenance Price for the relevant Project Segment. Integrator’s obligation to maintain and provide a current Maintenance Performance Bond and Maintenance Payment Bond with respect to a Project Segment shall continue throughout the Maintenance Term for such Project Segment, but TxDOT will accept Maintenance Performance Bonds and Maintenance Payment Bonds with a stated term of at least two (2) years with a statement set forth in the applicable bond that it shall be renewable annually in accordance with the Surety’s customary renewal practices. Upon expiration of the applicable Maintenance Term, TxDOT will release any individual Maintenance Performance Bond relating solely to a Project Segment or, if a Rider is provided, reduce the amount of the Maintenance Performance Bond, provided that no outstanding claims are then pending or threatened against Integrator hereunder. Upon expiration of the applicable Maintenance Term, TxDOT will release any individual Maintenance Payment Bond relating solely to a Project Segment or, if a Rider is provided, reduce the amount of the Maintenance Payment Bond (i) upon receipt of (A) evidence satisfactory to TxDOT that all Persons eligible to file a claim against the bond have been fully paid and (B) unconditional releases of Liens and stop notices from all Subcontractors who filed preliminary notice of a claim against the bond, or (ii) upon expiration of the statutory period for Subcontractors to file a claim against the bond, or (ii) upon expiration of the statutory period for Subcontractors to file a claim against the bond if no claims have been filed.

8.1.5 Each bond required hereunder shall be issued by a Surety authorized to do business in the State with a rating of at least AVIII by “Best & Company” or rated in the top two categories by two nationally recognized rating agencies, or as otherwise approved by TxDOT in its sole discretion. If any bond previously provided becomes ineffective, or if the Surety that provided the bond no longer meets the requirements hereof, Integrator shall provide a replacement bond in the same form issued by a surety meeting the foregoing requirements, or other assurance satisfactory to TxDOT in its sole discretion. If a Price is increased in connection with a Change Order, TxDOT may, in its sole discretion, require a corresponding proportionate increase in the amount of each bond or alternative security.
8.2 Letter of Credit

8.2.1 As a condition to issuance of the Initial NTP, and until the expiration or earlier termination of this Agreement, Integrator shall obtain and continuously maintain in place for the benefit of TxDOT, an unconditional, irrevocable direct pay Letter of Credit securing Integrator’s obligation to perform under the Contract Documents during the period from and after System Acceptance of any Project Segment through and until the expiration of this Agreement, including the obligation to pay Stipulated Damages, compensation for Losses and any other amounts that may become payable to TxDOT under the Contract Documents. The required form of Letter of Credit is attached hereto as Exhibit Q. Subject to Section 16.5, the amount available for drawing under such Letter of Credit shall at all times be equal to the greater of $1,000,000 or twenty percent (20%) of the aggregate Project Segment Prices for Work for which an NTP has been issued hereunder (including Project Segments for which System Acceptance, Punch List Acceptance and/or Final Acceptance have occurred) as of such point in time (the “Minimum Letter of Credit Amount”); provided, however, that in no event shall the Minimum Letter of Credit Amount ever be required to exceed $10,000,000. Unless the then-existing Letter of Credit is in an amount equal to $10,000,000 (and the full amount of such Letter of Credit is available), Integrator shall, no later than 5:00 p.m. on the [30th] day following the issuance of any NTP other than the Initial NTP, either amend the existing Letter of Credit to increase the amount available for drawing thereunder to the required Minimum Letter of Credit Amount, or furnish TxDOT with a separate unconditional, irrevocable direct pay Letter of Credit in the form of Exhibit Q in a stated amount sufficient to cause the aggregate amount available for drawing under all such Letters of Credit to equal at least the Minimum Letter of Credit Amount.

8.2.2 TxDOT may draw upon the Letter of Credit, in whole in part, in the event that Stipulated Damages, compensation for Losses and/or any other amounts that may become payable to TxDOT under the Contract Documents from time to time are not paid in full by Integrator within 10 Days of written demand therefor. No draw shall be deemed to cure any failure, breach or default by Integrator hereunder and TxDOT shall retain all available rights and remedies under this Agreement.

8.2.3 The issuing bank shall be a recognized financial institution having unsecured long-term debt obligations rated in one of the three highest rating categories of Moody’s or Standard & Poor’s and short-term obligations rated in the highest Rating Category of Moody’s or Standard & Poor’s (a “Letter of Credit Bank”). Should a Letter of Credit Bank’s credit rating fall below that required herein, Integrator shall provide a substitute Letter of Credit from a financial institution meeting such requirements within 15 Days. Failure to provide such substitute Letter of Credit shall entitle TxDOT to draw the full amount of such existing Letter of Credit (a “Default Draw”) and hold the same as security against any obligation of Integrator to perform under the Contract Documents during the period from and after System Acceptance of any Project Segment through and until the expiration of this Agreement, including the obligation to pay Stipulated Damages, compensation for Losses and/or any other amounts that may become payable to TxDOT under the Contract Documents hereunder, and thereafter TxDOT may apply such funds directly to satisfy obligations of Integrator to perform under the Contract Documents during
the period from and after System Acceptance of any Project Segment through and until the expiration of this Agreement, including the obligation to pay Stipulated Damages, compensation for Losses and/or any other amounts that may become payable to TxDOT under the Contract Documents from time to time, as such amounts are incurred. Upon any use of the Default Draw as provided herein, Integrator shall promptly provide TxDOT with additional cash in the amount of the Default Draw used so that the funds held as security are again equal to the original amount of the Default Draw. TxDOT shall release the proceeds of the Default Draw back to Integrator (less any amounts applied as hereinabove provided and not reinstated), without interest thereon, only upon (i) provision of a new Letter of Credit as provided herein; or (ii) satisfaction of all conditions to release of a Letter of Credit hereunder. No Default Draw by TxDOT shall be deemed to cure Integrator's obligation to provide a Letter of Credit as required hereunder.

8.2.4 At least 60 Days prior to the stated expiration of any Letter of Credit provided hereunder, Integrator shall either (i) deliver a replacement letter of credit in the form required hereby, (ii) deliver an extension of the Letter of Credit in the form required hereby for at least an additional year from the prior expiration date, or (iii) deposit cash or a certificate of deposit in the amount of the expiring Letter of Credit (without regard to prior draws or payments upon the same). Failure of Integrator to comply with the foregoing shall entitle TxDOT to a Default Draw, with such proceeds to be used and held in the manner described in Section 8.2.2.

8.2.5 In the event of a TxDOT draw on such Letter of Credit reducing the amount available to be drawn thereunder to compensate TxDOT for Integrator's obligation to perform under the Contract Documents during the period from and after System Acceptance of any Project Segment through and until the expiration of this Agreement, including the obligation to pay Stipulated Damages, compensation for Losses and/or any other amounts that may become payable to TxDOT under the Contract Documents with respect to any Project Segment, Integrator shall, within five (5) business days after such draw, cause the available amount of the Letter of Credit to be reinstated to the full amount required hereunder; provided, however, that the reinstatement obligations shall be subject to the limitations set forth in Section 17.6. Should Integrator fail to reinstate such Letter of Credit, (x) TxDOT shall be entitled to draw the remaining amount of the Letter of Credit and hold the same as security as described and in the manner set forth in Section 8.2.2; and (y) such draw by TxDOT shall not cure Integrator's obligation to provide a Letter of Credit as required hereunder.

8.2.6 Provided that Integrator has paid TxDOT any applicable Stipulated Damages, compensation for Losses and any other amounts that are payable to TxDOT under the Contract Documents, the Letter of Credit(s) shall be released after the satisfaction of all conditions to Final Payment of the Maintenance Price pursuant to Section 12.5 with respect to the last Maintenance Term to expire under this Agreement.

8.2.7 Subject to Section 17.6, no draw upon the Letter of Credit(s) as provided herein shall preclude, inhibit, alter or modify TxDOT's rights to exercise any and all other rights and remedies available under the Contract Documents, at law or in equity.
8.3 No Relief of Liability

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

8.4 Periodic Updated Financial Information

Each year during the term of this Agreement, within 60 days following the completion of Integrator’s annual audited financials, Integrator shall deliver to TxDOT:

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

(b) Any financial ratings obtained.

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

(d) A letter from the chief financial officer or treasurer, providing information on any material changes in financial condition since submission of the prior year’s financial information, or a statement certifying that no material change has occurred and none is pending. The following list identifies certain items that TxDOT would consider a material change in financial condition. This list is intended to be indicative only. In instances where a material change has occurred, or is anticipated, Integrator shall provide a statement describing each material change in detail, the likelihood that the developments will continue during the period of performance of the Project, and the projected full extent of the changes likely to be experienced in the periods ahead. Where appropriate, Integrator shall identify the measures that will be undertaken to insulate the Project from any recent material changes, and those currently in progress or reasonably anticipated in the future:

   (i) An event of default or bankruptcy involving Integrator, a related business unit within the same corporation, or the parent corporation of the affected entity;

   (ii) A downward change in tangible net worth of 10% of shareholder equity;
(iii) A sale, merger or acquisition exceeding 10% of the value of shareholder equity prior to the sale, merger or acquisition which in any way involves Integrator, a related business unit, or parent corporation of Integrator;

(iv) A downward change in credit rating for Integrator, a related business unit, or parent corporation of Integrator;

(v) Inability to meet conditions of loan or debt covenants by Integrator, a related business unit or parent corporation of Integrator which has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders or other third parties;

(vi) Integrator, a related business unit in the same corporation, or the parent corporation of the affected entity either: (i) incurred a net operating loss; (ii) sustained charges exceeding 5% of the then shareholder equity due to claims, changes in accounting, write-offs or business restructuring; or (iii) implemented a restructuring/reduction in salaried personnel exceeding 200 positions or involving the disposition of assets exceeding 10% of the then shareholder equity;

(vii) Other events known to Integrator, a related business unit or parent corporation of the Integrator which represents a material change in financial condition since submission of the prior year’s financial information or may be pending for the next reporting period.

(e) Provide a letter from the certified public accountant, chief financial officer or treasurer for Integrator, identifying all off balance sheet liabilities.
SECTION 9. INSURANCE

Integrator shall purchase and continuously maintain in full force and effect through the expiration of the time periods specifically provided below, the insurance coverages and limits specified in this Section 9. The insurance provided hereunder shall be available for the benefit of TxDOT and Integrator with respect to covered claims, but shall not be interpreted to relieve Integrator of any obligations hereunder. All insurance required hereunder shall be procured from insurance or indemnity companies with an A.M. Best and Company rating level of A- or better, Class VIII or better, or as otherwise approved by TxDOT and authorized or approved to do business in the State. All limits of liability set forth below are in U.S. dollars.

9.1 Integrator Provided Insurance

As a condition to issuance of the Initial NTP, Integrator shall provide, at its own expense, insurance acceptable to TxDOT as described herein and shall maintain such insurance in full force and effect throughout the duration of this Agreement as specified herein.

9.1.1 Commercial General Liability Insurance

Integrator shall provide commercial general liability broad form coverage (for bodily injury, property damage, personal injury and advertising injury) written on an occurrence form that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office (ISO) 2000 form CG 00 01. Such insurance shall include, by its terms or appropriate endorsements, coverage for bodily injury, broad form property damage, fire legal liability (not less than the replacement value of the portion of the premises occupied), personal injury, blanket contractual, independent contractors, premises operations, and products and completed operations. This coverage shall have a minimum limit of $600,000 per occurrence and $600,000 annual aggregate and shall be endorsed to cover each Project Segment and Project Site for which an NTP has been issued (with such coverage amounts to be individually available without dilution for each Project Segment and Project Site, but not aggregated together to increase the coverage amount available for a particular Project Segment or Project Site above the foregoing amounts). The policy shall include products and completed operations extended coverage for each Project Segment for a minimum of five years following Final Acceptance of such Project Segment. If Integrator’s commercial general liability insurance or other form with a general aggregate limit and products and completed operations aggregate limit is used, then the annual aggregate limits shall apply separately to the Project, or Integrator may obtain separate insurance to provide the required limit which shall not be subject to depletion because of claims arising out of any other project or activity of Integrator; any such excess insurance shall be at least as broad as Integrator’s primary insurance. Integrator shall be the named insured and each of the Indemnified Parties shall be additional insureds with respect to liability arising out of the acts or omissions of any Integrator-Related Entity, whether occurring on or off of each Project Site. The required limits can be satisfied by a combination of a primary policy and an excess policy.
9.1.2 Workers’ Compensation Insurance

Integrator shall provide worker’s compensation insurance in conformance with applicable Law. Integrator shall be the named insured on these policies. The worker’s compensation coverage will contain the following endorsements:

(a) A voluntary compensation endorsement.

(b) An alternative employer endorsement.

(c) An endorsement extending coverage to all states operations on an “if any” basis.

9.1.3 Business Automobile Liability Insurance

Integrator shall provide comprehensive business automobile liability insurance covering the ownership, maintenance or use of all owned/leased, non-owned and hired vehicles used in the performance of the Work, including loading and unloading, with limits of not less than $250,000 per person, $500,000 per occurrence for bodily injury, and $100,000 per occurrence for property damage liability. The coverage shall be endorsed to cover each Project Segment and Project Site for which an NTP has been issued (with such coverage amounts to be individually available without dilution for each Project Segment and Project Site, but not aggregated together to increase the coverage amount available for a particular Project Segment or Project Site above the foregoing amounts). Integrator shall be the named insured and the Indemnified Parties shall be additional insureds with respect to liability arising out of the acts or omissions of any Integrator-Related Entity, whether occurring on or off of each Project Site. The policy deductibles shall be subject to TxDOT’s written approval. The required limits can be satisfied by a combination of a primary policy and an excess or umbrella policy.

9.1.4 Professional Liability Insurance

Integrator shall provide Project-specific professional liability coverage with limits not less than $5,000,000 per claim and aggregate. The professional liability coverage shall protect against any negligent act, error or omission arising out of design services performed by any Integrator-Related Entity with respect to the Project. The policy shall have a retroactive date no later than ______________ and shall have a five-year extended reporting period from the date of the latest Final Acceptance to occur for any Project Segment with respect to events which occurred but were not reported during the term of the policy. The coverage shall include all Integrator-Related Entities that are performing design services with respect to the Project. The Indemnified Parties shall not be a named insured under the policy, but the policy shall include an endorsement to provide vicarious liability coverage for TxDOT, the State, and their respective officers, directors, agents and employees. The policy shall have a deductible of no greater than $100,000.
9.2 General Insurance Requirements

9.2.1 Premiums, Deductibles and Self-Insured Retentions

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

9.2.2 Verification of Coverage

9.2.2.1 Policies. Concurrently with Integrator’s execution hereof, Integrator will deliver to TxDOT (1) a certificate of insurance with respect to each policy required to be provided by Integrator under this Section 9 and (2) copies of all endorsements to the policies that set forth the required additional insureds and other amendments to the policy forms. The required certificates must include original signatures by the authorized representative of the insurance company shown on the certificate with proof that he/she is an authorized representative thereof and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon. TxDOT shall have no duty to pay or perform under this Agreement until such certificate(s) and endorsements, in compliance with all requirements of this Section 9, have been provided. Upon TxDOT’s request in conjunction with a dispute, claim, item for which the insurance required hereunder is contemplated to cover and/or TxDOT’s reasonable belief that Integrator has not complied with the requirements of this Section 9, Integrator shall provide to TxDOT certified, true and exact copies of each of the insurance policies (including renewal policies) required under this Section 9. Prior to issuance of any NTP subsequent to the Initial NTP, Integrator shall deliver to TxDOT a certificate of insurance or other evidence acceptable to TxDOT confirming that the Work and obligations of Integrator with respect to such Project Segment shall be covered by the insurance coverages required pursuant to this Section 9.

9.2.2.2. Renewal Policies. Integrator shall promptly deliver to TxDOT a certificate of insurance and copies of all endorsements with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverages for the terms specified herein. Such certificate shall be delivered not less than 45 Days prior to the expiration date of any policy and shall bear a notation evidencing payment of the premium therefore. If requested by TxDOT from time to time, certified duplicate copies of the renewal policy shall also be provided.
9.2.3 Subcontractor Insurance Requirements

Integrator shall cause each Subcontractor to provide insurance that complies with requirements for Integrator-provided insurance set forth in this Section 9 in circumstances where the Subcontractor is not covered by Integrator-provided insurance and provided that Integrator shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors, which determination shall be made in accordance with reasonable and prudent business practices. Integrator shall cause each such Subcontractor to include each of the Indemnified Parties as additional insureds under such Subcontractor’s general liability and motorized vehicle liability insurance policies. Integrator shall require each such Subcontractor to require that its insurer agree to waive any subrogation rights the insurers may have against the Indemnified Parties. If requested by TxDOT, Integrator shall promptly provide certificates of insurance evidencing coverage for each Subcontractor. TxDOT shall have the right to contact the Subcontractors directly in order to verify the above coverage.

9.2.4 Endorsements and Waivers

All insurance policies required to be provided by Integrator hereunder shall contain or be endorsed to comply with the following provisions, provided that, for the workers’ compensation policy, only the following clauses (d) and (f) shall be applicable:

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

(b) Any failure on the part of a named insured to comply with reporting provisions or other conditions of the policies, any breach of warranty, any action or inaction of a named insured or others, any foreclosure relating to the Project or any change in ownership of all or any portion of the Project shall not affect coverage provided to the other insureds or additional insureds (and their respective members, directors, officers, employees, agents and consultants).

(c) The insurance shall apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the aggregate limits of the insurer’s liability.

(d) Each policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, modified or reduced in coverage or in limits except after 30 Days’ prior written notice by certified mail, return receipt requested, has been given to TxDOT. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.
(e) All endorsements adding additional insureds to required policies shall be on form CG-20-10 (1985 edition) or an equivalent form providing additional insureds with coverage for “completed operations”.

(f) Each policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of professional liability and errors and omissions policies).

(g) The commercial general liability insurance policy shall be endorsed to state that coverage for Subcontractor employees shall not be excluded.

(h) The automobile liability insurance policy shall be endorsed to include Motor Carrier Act Endorsement-Hazardous materials clean up (MCS-90).

9.2.5 Waivers of Subrogation

TxDOT and Integrator waive all rights against each other, against each of their agents and employees and against Subcontractors and their respective members, directors, officers, employees, agents and consultants for any claims, but only to the extent covered by insurance obtained pursuant to this Section 9, except such rights as they may have to the proceeds of such insurance and provided further that, Integrator shall not be entitled to additional compensation or time extension under this Agreement to the extent compensated by any insurance specified herein. Integrator shall require all Subcontractors to provide similar waivers in writing each in favor of all other parties enumerated above. Each policy, including workers’ compensation, shall include a waiver of any right of subrogation against the additional insureds (and their respective members, directors, officers, employees, agents and consultants).

9.2.6 Changes in Requirements

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

9.2.7 No Recourse

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

9.2.8 Support of Indemnifications

The insurance coverage provided hereunder by Integrator is not intended to limit Integrator’s indemnification obligations under Section 18.
9.2.9 Commercial Unavailability of Required Coverages

If, through no fault of Integrator, any of the coverages required in this Section 9 (or any of the required terms of such coverages, including policy limits) become unavailable or are available only with commercially unreasonable premiums, TxDOT will work with Integrator to find commercially reasonable alternatives to the required coverages that are acceptable to TxDOT. Integrator shall not be entitled to any increase in any Price for increased costs resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. TxDOT shall be entitled to a reduction in the applicable Price if it agrees to accept alternative policies providing less than equivalent coverage, with the amount to be determined by extrapolation using the insurance quotes included in the EPDs (or based on other evidence of insurance premiums as of the Proposal Date if the EPDs do not provide adequate information). TxDOT's right to a reduction in Price as set forth in the preceding sentence shall be without regard to the insurance costs expended by the Integrator for the less than equivalent coverage or on other insurance required under this Section 9.

9.3 Prosecution of Claims

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

9.4 Commencement of Work

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

9.5 TxDOT's Right to Remedy Breach by Integrator

If Integrator or any Subcontractor fails to provide insurance as required herein, TxDOT shall have the right, but not the obligation, to purchase such insurance or to suspend Integrator’s right to proceed until proper evidence of insurance is provided. Any amounts paid by TxDOT shall, at TxDOT’s sole option, be deducted from amounts payable to Integrator or reimbursed by Integrator upon demand, with interest thereon from the date
of payment by TxDOT to the reimbursement date, at the maximum rate allowable under applicable Law. Nothing herein shall preclude TxDOT from exercising its rights and remedies under Section 16 as a result of the failure of Integrator or any Subcontractor to satisfy the obligations of this Section 9.

9.6 Disclaimer

Integrator and each Subcontractor have the responsibility to make sure that their insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage which they deem advisable, whether or not specified herein.
SECTION 10. TITLE; PROJECT SITE SECURITY; MAINTENANCE DURING AND AFTER CONSTRUCTION

10.1 Title

Subject to the provisions of Section 21.7 and Section 21.8 with respect to intellectual property rights, Integrator warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for TxDOT for the operation, maintenance or repair thereof, free and clear of all Liens. Title to all of such materials, equipment, tools and supplies which shall have been delivered to a Project Site shall pass to TxDOT, free and clear of all Liens, upon the sooner of (a) incorporation into the Project, or (b) payment by TxDOT to Integrator of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, with respect to each Project Segment, Integrator shall retain sole care, custody and control of such materials, equipment, tools and supplies and shall exercise due care with respect thereto until the relevant Final Acceptance Date for such Project Segment, as applicable, or until Integrator is removed from the Project.

10.2 Project Site Security

Integrator shall provide appropriate security for each Project Site, and shall take all reasonable precautions and provide protection to prevent damage, injury, or loss to the Work and materials and equipment to be incorporated therein, as well as all other property at or on each Project Site, whether owned by Integrator, TxDOT, or any other Person.

10.3 Maintenance During Construction

10.3.1 With respect to each Project Segment, Integrator shall be responsible for maintenance of the Work and the Project Site in accordance with TP Sections 2.1.2.6, 5.12, and 6 at all times prior to System Acceptance of that Project Segment. Integrator shall maintain, rebuild, repair, restore or replace all Work, including Design Documents, Construction Documents, materials, equipment, supplies and maintenance equipment which are purchased for permanent installation in, or for use during construction of the Project that is injured or damaged prior to the date Integrator’s maintenance responsibility ends, regardless of who has title thereto under the Contract Documents and regardless of the cause of the damage or injury, at no additional cost to TxDOT, except to the extent that TxDOT is responsible for such costs in accordance with the express terms of this Agreement. Integrator, at its cost, shall also have sole responsibility during such periods for rebuilding, repairing and restoring all other property within the Final ROW whether owned by Integrator, TxDOT or any other Person.

10.3.2 If insurance proceeds with respect to any loss or damage for which Integrator is responsible for the rebuilding, repair or restoration thereof are paid to TxDOT, then TxDOT shall arrange for such proceeds to reimburse Integrator as repair or replacement work is performed by Integrator to the extent that TxDOT has not previously paid for such repair or replacement work; provided, however, that release of such
proceeds to Integrator shall not be a condition precedent to Integrator’s obligation to perform such replacement or repair work or indicate that such replacement or repair work has been approved and accepted by TxDOT.

10.4 Maintenance Obligations After System Acceptance

10.4.1 Integrator’s Obligation to Maintain and Repair

During the Maintenance Term, Integrator shall be responsible for all maintenance of the Work and the System (including each Project Segment), and shall keep the same in good working order and condition, performing all preventative maintenance and routine maintenance and making all adjustments, repairs, rehabilitations, reconstructions, and replacements necessary to keep the System in operation in accordance with the System Performance Requirements set forth in TP Section 4.3.16 at all times, including carrying out the approved Maintenance Plan developed pursuant to Section 10.4.2 below, scheduling and completing routine cleaning, inspection and servicing of all System components, provision and timely replenishment of all spares, supplies and consumables, and performance of scheduled preventative maintenance and corrective maintenance as required in the Contract Documents. Integrator shall maintain, rebuild, repair, restore or replace all Work, including Design Documents, Construction Documents, Software, Hardware, materials, equipment, supplies and maintenance equipment which are purchased for permanent installation in, or for use during construction or operation of the Project that is injured or damaged prior to the date Integrator’s maintenance responsibility ends, regardless of who has title thereto under the Contract Documents and regardless of the cause of the damage or injury, at no additional cost to TxDOT, except to the extent that TxDOT is responsible for such costs in accordance with the express terms of this Agreement. Integrator acknowledges and agrees that the maintenance of the civil and structural portions of the System, including gantries, signs on tolling zone gantries, dynamic (or similar) message signs (including their structures and mounts) barriers (not including flexible delineators) that are installed or modified by Integrator in connection with the System, and pavement installed or modified by Integrator for the System to the extent that System sensors are located within such pavement are expressly included within its maintenance and repair obligations under this Section 10.4.

10.4.2 Maintenance Plan and Procedures

10.4.2.1 For each Project Segment, Integrator shall prepare and provide TxDOT with a proposed written standard maintenance plan and procedures, including standards of performance with which Integrator and its employees and agents shall strictly comply (the “Maintenance Plan”). The Maintenance Plan shall include and cover all procedures of every kind necessary for the maintenance and repair of the System as specified in TP Section 2.1.2.6. Integrator shall develop procedures satisfactory to TxDOT, in its sole discretion. Each Maintenance Plan shall also include a plan for inventory management and control, including all activities required to maintain an adequate supply of materials, supplies, spares, parts and equipment to maintain the System at all times. Once accepted, such Maintenance Plan shall be subject to change in
whole or in part, at any time, at the sole discretion of TxDOT pursuant to Section 10.4.2.3 hereof.

10.4.2.2 Integrator shall furnish to TxDOT the proposed Maintenance Plan for each Project Segment for TxDOT’s review no later than 120 Days prior to the date of the applicable Project Segment System Acceptance Deadline established pursuant to the then-current applicable Project Schedule. TxDOT shall conduct its review within 15 Days of receipt thereof. To the extent that TxDOT objects to parts of the Maintenance Plan or directs changes therein, Integrator shall satisfy such objections and accommodate such change requests. Integrator shall submit the revised proposed Maintenance Plan for TxDOT’s review within 15 Days of receipt of TxDOT’s comments, whereupon TxDOT shall review the revised Maintenance Plan within 15 Days of receipt thereof. Integrator shall continue to satisfy TxDOT’s objections and accommodate TxDOT’s change requests in similar fashion until TxDOT accepts the Maintenance Plan. Neither the acceptance of any Maintenance Plan nor any direction of changes to a Maintenance Plan shall shift any liability or risk to TxDOT for maintenance of the System or Integrator’s obligations to comply with the Performance Requirements and the other requirements of the Contract Documents. Failure of TxDOT to respond during any 15 Day review period shall not constitute acceptance thereof. In such event, Integrator shall deliver a written notice to TxDOT expressly indicating TxDOT’s failure to respond. Should TxDOT fail to respond within 15 Days of receipt of such written notice, such failure shall be deemed TxDOT’s acceptance of Integrator’s submission.

10.4.2.3 The accepted Maintenance Plan shall be incorporated in a manual entitled “Maintenance Plan and Procedures, Open-Road Toll System.” Any changes to the Maintenance Plan approved by TxDOT, in its sole discretion, shall be documented by changes to the manual. The manual will be kept up-to-date in a single bound volume (to the extent practicable) reflecting all provisions in effect at all times for each Project Segment. The Maintenance Plan shall set forth a quality control and quality assurance program that will cause Integrator’s maintenance and repair of the System to meet all requirements hereof and will establish the procedures and methods of operation most likely to achieve quality and performance at minimum cost.

10.4.3 Additional Maintenance Responsibilities

10.4.3.1 Integrator shall collect and analyze data including System assurance data (“System Assurance Monitoring”) and System Functional Availability data, and perform diagnostic analysis of failures and trend analysis.

10.4.3.2 Integrator shall report monthly on System activities, including operating statistics and System accuracy and Functional Availability, inventory, and other information as requested by TxDOT. Integrator shall keep detailed maintenance records and inventory data to permit TxDOT to ascertain Integrator’s compliance with the Contract Document requirements and shall furnish copies of such documents upon request. The maintenance records shall include a summary of interruptions to normal Functional Availability and accuracy, explaining the duration and cause of such interruption. The procedures and forms for such recordkeeping for each Project Segment shall be provided
by Integrator and approved by TxDOT in advance and as a condition to any Final Acceptance thereof. At a minimum, the monthly management reports shall include a summary of the month’s activities, highlighting any special events and incidents, a summary of performance achieved, an accuracy and Functional Availability report, and such other information as may be required by the Contract Documents or requested by TxDOT.

10.4.3.3 Integrator shall develop a capital asset replacement program, including capital asset condition monitoring and reporting thereon.

10.4.3.4 Integrator shall monitor the System from a security perspective, respond to emergencies, and report security issues and incidents to appropriate authorities.

10.4.3.5 Integrator shall train new maintenance and supervisory personnel prior to transition to maintenance of the System by TxDOT as specified in Section 10.4.5.1.

10.4.3.6 Integrator shall be responsible for configuration management activities throughout the Maintenance Term for all System elements, including Hardware, Software and documentation, and support and maintain all System Software.

10.4.3.7 Integrator shall make no change in the design or configuration of the System as accepted by TxDOT without the express written consent of TxDOT, in its sole discretion.

10.4.4 Corrective Action

10.4.4.1 If the minimum System Functional Availability performance levels defined in Table 6 of the TP or the System Performance Requirements defined in Table 5 of the TP are not met for any calendar quarter (3 month period, or performance records indicate either will not be met, Integrator shall promptly notify TxDOT in writing and undertake a study to determine the causes and propose a plan to correct the problem. Integrator shall take immediate corrective action to mitigate the cause at Integrator’s sole cost and expense. The foregoing shall not modify, alter, limit or negate any of TxDOT’s rights or Integrator’s obligations under Section 16.5.

10.4.4.2 In addition to its rights under Section 10.4.4.1 above, (i) within 7 Days of receipt by Integrator of notice from TxDOT specifying a failure of any aspect of the System or Integrator’s failure to perform the maintenance Work as required hereunder, or (ii) at any time, in the event of an emergency requiring immediate curative action, a situation which poses a significant safety risk to the public or significant potential revenue loss (as determined by TxDOT, in its sole discretion), TxDOT shall have the right, but not the obligation, to perform or have performed by third parties the necessary work, remedy, and the costs thereof shall be borne by Integrator. Alternatively, TxDOT may deduct the amount of such costs and expenses from any sums owed by TxDOT to Integrator pursuant to this Agreement and/or from any letter of credit then held by TxDOT. The foregoing shall
not limit or modify TxDOT’s rights to any Stipulated Damages that may arise out of such failure.

10.4.5 Transfer of Maintenance to TxDOT at End of Maintenance Period

10.4.5.1 Training and Personnel

Integrator shall provide training of TxDOT personnel or the personnel of a TxDOT-designated organization to maintain all Project Segments to be initiated at least 6 months prior to the end of the Maintenance Term for any Project Segment. Staff numbers and positions and training procedures will be in accordance with Integrator’s staffing plan in the Maintenance Plan then in effect. Integrator shall design its classroom and on-the-job training with the objective of providing sufficient maintenance personnel competent to maintain the System. Integrator shall provide qualified instructors who will prepare the course material including the latest modifications, equipment changes, maintenance updates, and any revised maintenance procedures, and may enlist major subcontractors or suppliers to augment Integrator’s own trainers. Literature, training aids, and equipment used in training shall be turned over to TxDOT at the termination of the Maintenance Term for each Project Segment. The training shall be designed with the objective that within 3 months of the start of the training, but no later than 90 Days prior to the end of the Maintenance Term, there shall be sufficient quantity of personnel trained so that the Project Segment can be completely run without Integrator’s personnel. It shall include classroom and hands-on experience.

10.4.5.2 Continued Stocking of Parts

At the end of the Maintenance Term for each Project Segment, the spare parts, equipment, expendables and consumables inventory shall be fully stocked and complete (including substitution with suitable alternatives for any such spare parts, equipment and expendables that are obsolete) to the extent required by the Contract Documents, or as may be modified. In the event that such inventory is not fully stocked and complete, an amount equal to the cost of restocking and completing such inventory shall be deducted from any payments, if any, due Integrator and/or from any letter of credit then held by TxDOT. To the extent that the cost of restocking and completing such inventory incurred by TxDOT exceeds the payments due Integrator, such differential shall be paid by the Integrator to TxDOT within 15 Days after the date of termination of the Maintenance Term.
10.4.5.3 Condition of Project Segment at End of Maintenance Term

For each Project Segment, as of the date of expiration of the applicable Maintenance Term, the System shall be in a state of good operating condition and repair. Any capital asset replaced within one year prior to handover shall have a minimum of a one-year warranty in accordance with Section 11.2. Any extant warranty for any component of such Project Segment shall be transferred to TxDOT. Failure to maintain the assets in a state of good operating condition and repair shall be cause for termination, and/or for drawing against the bonds and letter of credit provided by Integrator as security for Integrator's performance. For each Project Segment, not more than 120 Days prior to expiration of the Maintenance Term for such Project Segment, TxDOT and Integrator shall conduct an inspection of such Project Segment and conduct such tests of the System in accordance with the procedures set forth in TP Section 7.16 and shall produce a punch-list of those items requiring Maintenance Work prior to transfer of the maintenance responsibility for such Project Segment to TxDOT.
SECTION 11. WARRANTIES

11.1 Warranties

11.1.1 Warranty

(a) Except for Software, Integrator warrants that (a) all design, installation, integration and maintenance Work furnished pursuant to the Contract Documents shall conform to all professional principles generally accepted as standards of the industry in the State, (b) the Project shall be free of defects, including design Errors, except to the extent that such defects are inherent in prescriptive specifications included in the Contract Documents, (c) the Project shall be fit for use for the intended function, (d) materials, equipment, and Hardware furnished under the Contract Documents shall be of good quality and new, and (e) the Work shall meet all of the requirements of, and perform in accordance with, the Contract Documents.

(b) Integrator warrants that (i) all Software shall be prepared in a workmanlike manner and with professional diligence and skill, (ii) all Software will function on the machines and with operating systems for which they are designed, (iii) all Software will conform to the specifications and functions set forth in the Contract Documents, including the Technical Provisions and Project Segment Supplements relating thereto; and (iv) any third party software utilized by Integrator in connection with the System, when properly installed, will function together with the Software in an integrated manner to provide TxDOT with the benefits contemplated by this Agreement.

(c) WITH RESPECT TO THE SOFTWARE ONLY, WARRANTIES EXPRESSED IN THE CONTRACT DOCUMENTS ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11.1.2 Warranty Term

The Warranty term for each Project Segment shall commence upon the applicable System Acceptance thereof. Subject to extension under Section 11.2, the Warranties shall remain in effect until one year after the Final Acceptance Date for such element. The Warranty term for elements of the Project that will be owned by Persons other than TxDOT, RMAs and Other TxDOT Developers (such as Utility Owners) shall commence as of the date of acceptance thereof by such Persons and shall end one year thereafter. If TxDOT determines that any of the Work has not met the standards set forth in this Section 11.1 at any time within the Warranty period, then Integrator shall correct such Work as specified below, even if the performance of such corrective work extends beyond the stated warranty period. The Project Segment Prices are deemed to include full compensation to Integrator for all warranty obligations hereunder.
11.1.3 Remedy

Within 7 Days of receipt by Integrator of notice from TxDOT specifying a failure of any of the Work to satisfy the Warranties or of the failure of any Subcontractor representation, warranty, guarantee or obligation which Integrator is responsible to enforce, Integrator and TxDOT shall mutually agree when and how Integrator shall remedy such violation; provided, however, that (i) in case of an emergency requiring immediate curative action or a situation which poses a significant safety risk, Integrator shall implement such action as it deems necessary and shall notify TxDOT in writing of the urgency of a decision; and (ii) the foregoing 7 Day period shall not limit or modify TxDOT’s rights to pursue and obtain Stipulated Damages as set forth in this Agreement during such 7 Day period. Integrator and TxDOT shall promptly meet in order to agree on a remedy. If Integrator does not use its best efforts to proceed to effectuate such remedy within the agreed time, or should Integrator and TxDOT fail to reach such an agreement within such 7 Day period (or immediately in the case of emergency conditions, a situation which poses a significant safety risk or significant potential revenue loss, as determined by TxDOT, in its sole discretion), TxDOT shall have the right, but not the obligation, to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by Integrator. Alternatively, TxDOT may deduct the amount of such costs and expenses from any sums owed by TxDOT to Integrator pursuant to this Agreement and/or from any letter of credit then held by TxDOT. TxDOT may agree to accept Nonconforming Work in accordance with Section 5.6.2.

11.1.4 Permits and Costs

Integrator shall be responsible for obtaining any required encroachment permits and required consents from any other Persons in connection with Warranty Work. Integrator shall bear all costs of Warranty Work, including additional testing and inspections. Integrator shall pay to TxDOT the expenses incurred by TxDOT for independent quality assurance and/or quality control with respect to the Warranty Work and any lost revenue arising from or relating to such Warranty Work (provided, however, that Integrator’s liability for revenue loss resulting from Warranty Work shall be as set forth in Section 17.4), in each case, within 10 Days after Integrator’s receipt of invoices therefore (including, subject to the limitations in Section 17.6). Alternatively, TxDOT may deduct such amounts from any sums owed by TxDOT to Integrator pursuant to this Agreement and/or from any letter of credit then held by TxDOT.

11.2 Applicability of Warranties to Re-Done Work

11.2.1 Original Warranty Work

The Warranties shall apply to all Work re-done, repaired, corrected or replaced pursuant to the terms of this Agreement. Following acceptance by TxDOT of re-done, repaired, corrected or replaced Work, the Warranties as to each re-done, repaired, corrected or replaced element of the Work shall extend beyond the original warranty period in order that each element of the Project (including redone, repaired, corrected or replaced Work) shall have at least a one year warranty period.
11.2.2 Maintenance Warranty Work

The Warranties shall also apply to all Work re-done, repaired, corrected or replaced by Integrator in the performance of its obligation to maintain the Project Segments during their respective Maintenance Terms. The Warranties as to each such re-done, repaired, corrected or replaced element of the Work during the Maintenance Term shall remain in effect until one year after acceptance by TxDOT of such element of the Work.

11.3 Subcontractor Warranties

11.3.1 Warranty Requirements

Without in any way derogating the Warranties and Integrator’s own representations and warranties and other obligations with respect to all of the Work, Integrator shall obtain from all Subcontractors and cause to be extended to TxDOT, for periods at least coterminous with the Warranties, appropriate representations, warranties, guarantees and obligations with respect to design, installation, integration, materials, workmanship, equipment, tools and supplies furnished by such Subcontractors. All representations, warranties, guarantees and obligations of Subcontractors (a) shall be written so as to survive all TxDOT inspections, tests and approvals, and (b) shall run directly to and be enforceable by Integrator and/or TxDOT and their respective successors and assigns. Integrator hereby assigns to TxDOT all of Integrator’s rights and interest in all extended warranties for periods exceeding the applicable Warranty period which are received by Integrator from any of its Subcontractors. To the extent that any Subcontractor warranty or guaranty would be voided by reason of Integrator’s negligence in incorporating material or equipment into the work, Integrator shall be responsible for correcting such defect.

11.3.2 Enforcement

Upon receipt from TxDOT of notice of a failure of any of the Work to satisfy any Subcontractor warranty, representation, guarantee or obligation, Integrator shall enforce or perform any such representation, warranty, guaranty or obligation, in addition to Integrator’s other obligations hereunder. TxDOT’s rights under this Section 11.3.2 shall commence at the time such representation, warranty, guaranty or obligation is furnished and shall continue until the expiration of Integrator’s relevant Warranty (including extensions thereof under Section 11.2). Until such expiration, the cost of any equipment, Hardware, Software, material, labor or shipping shall be for the account of Integrator if such cost is covered by such a representation, warranty, guaranty or obligation and Integrator shall be required to replace or repair defective equipment, material or workmanship furnished by Subcontractors. The foregoing provisions concerning Subcontractor warranties are intended to provide TxDOT with an additional Person and source in which to seek recourse if Work fails to meet the requirements of the Contract Documents. In no event shall the foregoing provisions be interpreted to modify, limit, discharge, release, negate or waive the Warranties or Integrator’s obligations with respect to the Work, and Integrator shall not be entitled to use the existence of Subcontractor warranties as a defense to Integrator’s obligations under this Agreement and the other Contract Documents.
11.4 No Limitation of Liability

Subject to Section 17.6, the foregoing Warranties and Subcontractor warranties are in addition to all rights and remedies available under the Contract Documents or applicable Law or in equity, and shall not limit Integrator’s liability or responsibility imposed by the Contract Documents or applicable Law or in equity with respect to the Work, including liability for design defects, latent construction defects, strict liability, breach, negligence, willful misconduct or fraud; provided, however, that upon expiration of the Warranties, Integrator shall have no further liability hereunder for patent construction defects.

11.5 Damages for Breach of Warranty

Subject to Section 17.6 and in addition to TxDOT’s other rights and remedies hereunder, at law or in equity, Integrator shall be liable for actual damages resulting from any breach of an express or implied warranty or any defect in the Work, including the cost of performance of such obligations by others; provided, however, that Integrator’s liability for revenue loss resulting from the failure of the System to perform in accordance with the Performance Requirements shall be as set forth in Section 17.4.
SECTION 12. PAYMENT FOR SERVICES

12.1 Price

12.1.1 Project Segment Prices

12.1.1.1 Proposal Prices

The Parties agree that the Project Delivery Unit Prices and the Hypothetical Project Delivery Price provide a reasonable framework for establishing the Project Segment Price for any Project Segment designated by TxDOT.

12.1.1.2 Determination and Payment of Project Segment Prices

TxDOT shall notify Integrator of its intent to issue a Project Segment Supplement for a Project Segment as provided in Section 2.1.1.2, and the Project Segment Price for each Project Segment shall be determined pursuant to the guidelines and procedures set forth in Section 2.1.1.3. Once determined, the Project Segment Prices shall be increased or decreased only by a Change Order issued in accordance with Section 13 or by an Agreement amendment. The Project Segment Prices shall be paid in accordance with Section 12.2.

12.1.2 Maintenance Prices

12.1.2.1 Proposal Prices

The Parties agree that the Maintenance Unit Prices and the Hypothetical Maintenance Price provide a reasonable framework for establishing the Project Segment Maintenance Prices.

12.1.2.2 Determination and Payment of Project Segment Maintenance Prices

Project Segment Maintenance Prices for any Project Segments shall be determined as provided in Section 2.1.1.3. Payment of the Project Segment Maintenance Price for a Project Segment shall commence upon Project Segment Final Acceptance for such Project Segment. The Project Segment Maintenance Prices shall be subject to annual price adjustment in accordance with Section 12.1.5 (after issuance of the NTP for such Project Segment), below. The Project Segment Maintenance Prices shall be paid in accordance with Section 12.2.

12.1.3 Adjustment of Prices Before NTP Issued.

The prices to be used for establishing the Project Segment Price and Project Segment Maintenance Price for any future Project Segment Supplements for which an NTP has not yet been issued shall be adjusted annually commencing on the second anniversary of this Agreement (and continuing until such time as an NTP has been issued) to account for increases or decreases in the costs of labor and materials from the costs as
of the Base Month. These adjustments will be made as specified in this Section 12.1.3, regardless of the actual variations in cost of labor and materials for such items, and shall be Integrator’s sole and exclusive remedy for Project Segment cost variations over the term of this Agreement. Integrator agrees that the economic price adjustments pursuant to this Section 12.1.3 shall be the sole basis for adjusting the Proposal Project Segment Prices for Project Segments for which an NTP has not yet been issued to reflect inflation and/or market conditions. Integrator warrants that the prices contained in its Proposal do not include any contingency to cover anticipated increased costs of performance due to price inflation following the Base Month.

(a) Economic price adjustments shall be based on the following indices:

(i) Labor Amounts shall be adjusted in accordance with the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Installation Workers for the Dallas – Fort Worth metropolitan area (“all items”) as published by the U.S. Department of Labor, Bureau of Labor Statistics.

(ii) Material Amounts shall be adjusted in accordance with an index, which shall be a composite of the Electrical Machinery and Equipment Index (WPU 117) and the Metals and Metal Products Index (WPU 10), as published by the U.S. Bureau of Labor Statistics. The relative weights of those two indices in determining the composite index shall be calculated by Integrator as a result of the average distribution of material prices in the above two index categories, subject to approval by TxDOT.

(b) Beginning with the second anniversary of this Agreement (for application during the third year of this Agreement), the economic price adjustment shall be applied each year to the Proposal Project Segment Prices. On or before each anniversary of this Agreement, commencing with the second anniversary, Integrator shall deliver to TxDOT a statement showing the adjustment calculations, using a format approved by TxDOT. The adjustment shall be calculated by individually multiplying the original Proposal Project Segment Prices by a fraction, the numerator of which shall be the most recently published index as of the adjustment date and the denominator of which shall be the index for the Base Month. Notwithstanding the foregoing, the amount of adjustment for each adjustment described in this Section 12.1.3 shall not exceed 5% for any given adjustment request. The price adjustments set forth in this paragraph shall apply to NTP’s issued for Project Segment Supplements during the third year of this Agreement.
(c) In the event that any of the indices referenced in this Section 12.1.3 ceases to be published, or the method of calculating the index is materially altered, TxDOT shall select another index to be used in place of the discontinued or altered index, or a method of adjusting the altered index. Any new index shall be comparable to the index which it replaces. Foreign (non-U.S.) indices and/or corrections for trading of currency shall not be eligible for use.

12.1.4 Adjustment of Prices After NTP Issued

The Project Segment Maintenance Prices shall be adjusted annually commencing on the second anniversary of the Maintenance Base Month (for application during the third year of the applicable Maintenance Term), to account for increases or decreases in the costs of labor and materials from the costs as of the Maintenance Base Month. These adjustments will be made as specified in this Section 12.1.4, regardless of the actual variations in cost of labor and materials for such items, and shall be Integrator’s sole and exclusive remedy for Project Segment maintenance cost variations over the course of the Agreement. Integrator agrees that the economic price adjustments pursuant to this Section 12.1.4 shall be the sole basis for adjusting the Project Segment Maintenance Prices after an NTP has been issued to reflect inflation and/or market conditions. Integrator warrants that the prices contained in its Proposal do not include any contingency to cover anticipated increased costs of performance due to price inflation following the Maintenance Base Month.

(a) Economic price adjustments shall use the same indices as described in Section 12.1.3.

(b) Beginning with the second anniversary of the Maintenance Base Month (for application during the third year of the applicable Maintenance Term), the respective Project Segment Maintenance Price for each Project Segment shall be adjusted annually, in each case by a fraction, the numerator of which shall be the most recently published index as of the adjustment date and the denominator of which shall be the index for the Maintenance Base Month. Notwithstanding the foregoing, the amount of adjustment for each adjustment described in this Section 12.1.4 shall not exceed 5% in any given year.

12.1.5 No Duplication

In no event shall any adjustment pursuant to Section 12.1.3 or Section 12.1.4 be duplicative or result in “double-counting”, it being the express intent of TxDOT and Integrator that a price that is subject to adjustment pursuant to Section 12.1.3 shall not be eligible for adjustment under Section 12.1.4 and vice versa.

12.1.6 Items Included in Prices

Integrator acknowledges and agrees that, subject only to Integrator’s rights under Section 13, each Price includes or will include (a) all designs, equipment, materials, Hardware, Software, labor, insurance, letter of credit and bond premiums, home office, jobsite and other overhead, profit and services relating to Integrator’s performance of its
obligations under the Contract Documents (including all Work, equipment, Hardware, Software, supplies, materials, labor and services provided by Subcontractors and intellectual property rights necessary to perform the Work); (b) performance of each and every portion of the Work; (c) the cost of obtaining all Governmental Approvals (except as specified in Section 2.3.3); (d) all costs of compliance with and maintenance of the Governmental Approvals and compliance with Laws to the extent applicable to the Project; (e) payment of any taxes, duties, permit and other fees and/or royalties imposed with respect to the Work and any equipment, materials, labor or services included therein; and (f) compensation for all obligations, risks and contingencies assigned to Integrator under the Contract Documents.

12.2 Invoicing and Payment

The following process shall apply to invoicing and payment:

12.2.1 Project Segment Price Payment Milestones

TxDOT’s payment of the Project Segment Prices shall be made based upon the Milestone Payment Structure set forth in Exhibit F hereto. Milestone Payments for each Project Segment shall be calculated based upon the Schedule of Project Segment Prices set forth as an exhibit to each Project Segment Supplement.

12.2.2 Delivery of Milestone Payment Draw Request

Integrator may submit a Draw Request for Milestone Payments not more frequently than monthly. To request a Milestone Payment, Integrator shall deliver to TxDOT one hard original copy and one electronic copy of a Draw Request in the form attached hereto as Exhibit J and meeting all requirements specified herein except as otherwise approved in writing by TxDOT. Each Draw Request shall be executed by a designated and authorized representative of Integrator appointed by Integrator to have such authority in accordance with this Agreement. Integrator acknowledges that TxDOT may obtain funding for portions of the Work from the federal government, local agencies and other third parties, and Integrator agrees to segregate Draw Requests for all such Work in a format reasonably requested by TxDOT and with detail and information as reasonably requested by TxDOT. A separate Draw Request shall be required for each Project Segment. Each Draw Request shall be organized to account for applicable reimbursement requirements, including an allocation for any reimbursements with respect to applicable insurance, letter of credit and/or bonds, and to facilitate the reimbursement process.

12.2.3 Contents of Milestone Payment Draw Request

Each Draw Request must contain the following items:

(a) Draw Request cover sheet;

(b) Description of the status of all completed Milestones, as of the date of the Draw Request;
(c) Payments which are then due in accordance with the Milestone Payment Structure, as of the date of the Draw Request;

(d) A monthly progress report(s) for the applicable Project Segment as of the date of the Draw Request in the format described in [TP Section 7];

(e) Certification by the Integrator that all Work which is the subject of the Draw Request fully complies with the requirements of the Contract Documents subject to any exceptions identified in the certification;

(f) A report of personnel hours for the applicable Project Segment since the prior Draw Request (including a list setting forth all Key Personnel and the hours which they worked during this period);

(g) Draw Request data sheet(s) and supporting documents, as required by TxDOT to support and substantiate the amount requested (based on quantities and unit prices for unit priced Work for each Project Segment), and based on time and materials for Time and Materials Change Orders for each Project Segment;

(h) [DBE utilization report in a format reasonably satisfactory to TxDOT for the applicable Project Segment]; [NTD: Conform as necessary to reflect final DBE requirements.]

(i) An approved and updated Project Schedule for the applicable Project Segment; and

(h) Such other items as TxDOT reasonably requests.

In addition, no Draw Request shall be considered complete unless it: (1) describes in detail the status of completion as it relates to the Project Schedule for the applicable Project Segment; (2) sets forth in detail the related payments which are then due in accordance with the Project Schedule for the applicable Project Segment, as of the end of most recent prior Draw Request, including detailed itemization for any payments with respect to applicable insurance, letter of credit and/or bonds; (3) in the case of amounts to be paid on a unit price basis, includes invoices, receipts or other evidence establishing the number of units delivered; (4) in the case of amounts invoiced on a time and materials basis, includes all supporting documentation described in Section 13.7; and (5) sets forth in detail the amounts paid to Subcontractors (including Suppliers and sub-subcontractors) from the payments made by TxDOT to Integrator with respect to the most recent prior Draw Request, including executed unconditional waivers of claims with respect to all amounts so paid.

12.2.4 Draw Request Cover Sheet Contents

The Draw Request cover sheet shall include the following:

(a) Project number and title;
(b) Project Segment number and title;

(c) Request number (numbered consecutively starting with “1”);

(d) Total amount earned to date for the applicable Project Segment, as well as for the overall Project; and

(e) Authorized signature, title of signer, and date of signature.

12.2.5 Certification by QC Personnel

Each Draw Request shall include a certificate in the form included in Exhibit J, certifying that:

(a) All Work, including that of designers, Subcontractors, including Suppliers and fabricators, which is the subject of the Draw Request has been checked and/or inspected by the Quality Manager (with respect to all Work);

(b) Except as specifically noted in the certification, all Work which is the subject of the Draw Request conforms to the requirements of the Contract Documents, the Governmental Approvals and applicable Laws;

(c) The Civil Construction Quality Plan and the Quality Management Plan and all of the measures and procedures provided therein are functioning properly and are being followed in all respects;

(d) The _______________________________ percentages indicated are accurate and correct; and

(e) The Milestone to which the Draw Request relates has been achieved.

12.2.6 Maintenance Price Payments

Except for the portion of the Maintenance Price identified in any Project Segment Supplement as the price for “End of Term Maintenance Activities” (which amount shall be paid as part of the Final Maintenance Payment pursuant to Section 12.5), the annual Maintenance Price for each Project Segment shall be paid in arrears, in equal monthly installments, commencing upon the applicable Project Segment Final Acceptance.

12.2.7 Delivery of Maintenance Price Draw Request

Within 60 days of the last day of each month, Integrator shall deliver to TxDOT one copy of a Maintenance Price Draw Request in the form attached hereto as Exhibit S and meeting all requirements specified herein except as otherwise approved in writing by TxDOT. Each Maintenance Price Draw Request shall be executed by a designated and authorized representative of Integrator appointed by Integrator to have such authority in accordance with this Agreement. Integrator acknowledges that TxDOT may obtain funding for portions of the Work from the federal government, local agencies and other third
parties, and Integrator agrees to segregate Maintenance Price Draw Requests for all such Work in a format reasonably requested by TxDOT and with detail and information as reasonably requested by TxDOT. A separate Maintenance Price Draw Request shall be required for each Project Segment. Each Maintenance Price Draw Request shall be organized to account for applicable reimbursement requirements and to facilitate the reimbursement process.

12.2.8 Contents of Maintenance Price Draw Request

Each Maintenance Price Draw Request must contain the following items:

(a) Maintenance Price Draw Request cover sheet;

(b) Monthly Maintenance Report as described in Section 7.9 of the TP;

(c) Certifications in form acceptable to TxDOT by the Project Manager and Maintenance Manager that the Work conforms to the approved and updated (if applicable) Maintenance Plan;

(d) Monthly report of personnel hours (including a list setting forth all Key Personnel and the hours which they worked during this period);

(e) Maintenance Price Draw Request data sheet(s), documents and summary that support and substantiate the Performance Requirements have been met; and

(f) Submitted and approved System updates, As-Built Documents and changes to the maintenance Plan and Procedures, Open Road Toll System manual if applicable.

12.2.9 Report of Personnel Hours

With each Draw Request and Maintenance Price Draw Request, Integrator shall report the total monthly labor hours for design, construction and maintenance personnel used in connection with the Work which is the subject of the Draw Request or Maintenance Price Draw Request.

12.2.10 Draw Request and Maintenance Price Draw Request Data Sheets

Draw Request and Maintenance Price Draw Request data sheets shall be subdivided into Integrator-designated Project elements and shall be attached to a Project-wide report and Draw Request/ Maintenance Price Draw Request data sheet. It is TxDOT’s intent to base payments for Work other than Maintenance Work on the achievement of Milestones as provided in the Milestone Payment Structure (except as expressly set forth in this Agreement), except that cost plus or unit price Change Order work or items to be paid from an allowance may be paid based upon measured quantities. Integrator shall present the format of the Draw Request/Maintenance Price Draw Request
data sheets for TxDOT approval at least 20 business days prior to the submittal of the first Draw Request and Maintenance Price Draw Request. Once the Draw Request format has been approved by TxDOT, the format shall not change without TxDOT’s prior written approval. Upon commencement of the Maintenance Term, the annual price for Maintenance Work will be paid in equivalent monthly installments; provided, however, that TxDOT intends to pay the annual cost of the Warranty Bond, the Maintenance Payment Bond, the Maintenance Performance Bond, insurance premiums incurred for the relevant year of the Maintenance Term and the cost of providing the Letter of Credit during such year of the Maintenance Term on an actual cost basis as incurred, without markups, profit or overhead, as provided in Section 12.3.4.2; provided, further, that Integrator shall not be entitled to reimbursement for any increase in the actual cost of bond or insurance premiums or Letter of Credit fees attributable to claims or loss experience of any Integrator-Related Entity, whether under an insurance policy, bond or letter of credit required for the Project or in connection with any unrelated work or activity of Integrator-Related Entities. Integrator shall bear the burden of proving that increases in such costs are not the result of adverse changes in Integrator’s financial condition, Integrator risk rating or experience or the acts, omissions, negligence or misconduct of Integrator or any member of the Integrator-Related Entity.

12.2.11 Payment by TxDOT

Within fifteen business days after TxDOT’s receipt of a complete Draw Request or Maintenance Price Draw Request, TxDOT will review the Draw Request or Maintenance Price Draw Request, as applicable, and all attachments and certificates thereto for conformity with the requirements of the Contract Documents, and shall notify Integrator of the amount approved for payment and the reason for disapproval of any remaining invoiced amounts or of any other information set forth in the Draw Request or Maintenance Price Draw Request. Integrator may include such disapproved amounts in the next month’s Draw Request after correction of the deficiencies noted by TxDOT and satisfaction of the requirements of the Contract Documents related thereto. Within five business days after TxDOT’s approval of a Draw Request or Maintenance Price Draw Request, as applicable, TxDOT shall pay Integrator the amount of the Draw Request or Maintenance Price Draw Request, as applicable, approved for payment less any applicable Retainage and less any amounts which TxDOT is otherwise entitled to withhold or deduct with respect to any Project Segment. With respect to any Change Order Work to be performed on a Time and Materials basis, in no event shall Integrator be entitled to (a) payment for any activity related to a Project Segment, as applicable, in excess of the value of the activity times the completion percentage of such activity (for non-unit priced Work), or (b) aggregate payments hereunder in excess of the overall completion percentage for the applicable Project Segment times the applicable Price (for non-unit-priced Work) for such Project Segment, as applicable.
12.3 Deductions, Exclusions and Limitations on Payment; Payment for Certain Items

12.3.1 Retainage

12.3.1.1 On an individual Project Segment basis, TxDOT shall withhold funds (the “Retainage”) from each payment of the Project Segment Price to be made to Integrator for Work necessary to achieve Final Acceptance. The Retainage shall be an amount equal to 5% of the payment amount.

12.3.1.2 No portion of the Retainage shall be released with respect to an individual Project Segment unless and until all of the following conditions have been met: (a) no Liquidated Damages, Stipulated Damages and/or any other amounts shall then be payable to TxDOT as to such Project Segment; (b) Integrator shall have established to TxDOT’s reasonable satisfaction that no Liquidated Damages, Stipulated Damages and/or any other amounts are anticipated to be payable to TxDOT as to such Project Segment; (c) no Liquidated Damages, Stipulated Damages and/or any other amounts shall then be payable to TxDOT as to any other Project Segment; (d) Integrator shall have established to TxDOT’s reasonable satisfaction that no Liquidated Damages, Stipulated Damages and/or any other amounts are anticipated to be payable to TxDOT as to any other Project Segment; (e) Integrator shall have applied in writing for such release; (f) no Event of Default has occurred and no event has occurred that, with the passage of time or the giving of notice, would constitute an Event of Default; and (g) such release shall have been approved in writing by each Surety.

12.3.1.3 Provided that Integrator has satisfied the conditions set forth in Section 12.3.1.2 above, TxDOT agrees to release 20% of the Retainage then held by TxDOT with respect to a Project Segment within 30 Days after achievement of Punch List Acceptance of such Project Segment, subject to the following terms and conditions. The amount to be released shall be reduced by 150% of the amounts estimated by TxDOT that are necessary to pay (a) amounts applied to the payment of Liquidated Damages, Stipulated Damages and other amounts payable to TxDOT for that Project Segment plus any other Project Segment, (b) amounts applied to the payment of Losses incurred by TxDOT for which Integrator is responsible with respect to any Project Segments, regardless of the source of the Retainage, (c) amounts that TxDOT deems advisable, in its sole discretion, to retain to cover any existing or threatened claims, Liens and stop notices from Subcontractors, laborers, Utility Owners or other third parties relating to the Project, and (d) the estimated cost of repairing any Nonconforming Work or otherwise remedying any breach of contract or warranty by Integrator with respect to any Project Segments, regardless of the source of the Retainage. TxDOT shall hold the balance of the Retainage with respect to a Project Segment until the date the Final Payment of the Price relating to such Project Segment is due hereunder. At such time and provided that Integrator has satisfied the conditions set forth in Section 12.3.1.2 above, TxDOT shall release to Integrator all remaining Retainage other than 150% of the amounts estimated by TxDOT that are necessary to pay (a) amounts applied to the payment of Liquidated Damages, Stipulated Damages and any other amounts payable to TxDOT for that Project Segment plus any other Project Segment, (b) amounts applied to the payment of Losses incurred by
TxDOT with respect to that Project Segment plus any other Project Segment for which Integrator is responsible, (c) amounts that TxDOT deems advisable, in its sole discretion, to retain to cover any existing or threatened claims, Liens and stop notices from Subcontractors, laborers, Utility Owners or other third parties relating to the Project, and (d) the estimated cost of repairing any Nonconforming Work or otherwise remedying any breach of contract or warranty by Integrator with respect to that Project Segment plus any other Project Segment. Final payment of such Retainage not applied to the matters identified above shall be made upon Integrator’s showing, to TxDOT’s reasonable satisfaction, that all such matters have been resolved, including delivery to TxDOT of a certification representing that there are no outstanding claims of Integrator or any claims, Liens or stop notices of any Subcontractor, laborer, Utility Owner or other third party with respect to the Work.

12.3.1.4 At any time prior to Integrator’s satisfaction of the conditions to the release of Final Payment of the Price with respect to a Project Segment, TxDOT may withdraw from the Retainage account and apply any funds withheld as Retainage to satisfy any of the items described in clauses (a)-(d) of Section 12.3.1.3. In such event, Integrator shall, within 10 Days thereafter, replenish the Retainage by delivering to TxDOT sufficient funds to bring the total Retainage to the amount required hereunder.

12.3.1.5 Integrator shall have the right to substitute a letter of credit for all or any portion of the Retainage, provided that the conditions set forth in Section 12.3.1.2 above have been satisfied and the letter of credit shall (a) be an unconditional, irrevocable direct pay letter of credit payable immediately upon presentation by TxDOT, issued by a Letter of Credit Bank, (b) be in the amount of 100% of the required Retainage amount, (c) be in a form approved by TxDOT, in its sole discretion, and (d) name TxDOT as the payee. In the event of a TxDOT draw on such letter of credit reducing the amount available to be drawn thereunder to compensate TxDOT for any of the items described in clauses (a)-(d) of Section 12.3.1.3, within 10 Days thereafter, Integrator shall cause the available amount of the letter of credit to be reinstated to the full amount of the Retainage required hereunder, or shall deliver to TxDOT sufficient immediately available funds to bring the total of the available amount under the letter of credit plus the Retainage funds held by TxDOT to an amount equaling the total Retainage required hereunder. Should a Letter of Credit Bank’s credit rating fall below that required pursuant to Section 8.2, Integrator shall provide a substitute retainage letter of credit from a financial institution meeting such requirements within 15 Days. Failure to provide such substitute, or to reinstate the available amount of the letter of credit after any draw as provided above, shall entitle TxDOT to draw the full amount of such existing letter of credit and hold the same as Retainage.

12.3.2 Deductions

In addition to the deductions provided for under Section 12.3.1, TxDOT may deduct from each payment and any Final Payment the following:
(a) Any TxDOT or third party Losses for which Integrator is responsible hereunder or any Liquidated Damages or Stipulated Damages as to any Project Segment which have accrued as of the date of the application for payment or which are anticipated to accrue based on the applicable System Acceptance, Punch List Acceptance and Final Acceptance dates shown in the current Project Schedule(s) for each Project Segment;

(b) If a notice to stop payment, claim or Lien is filed with TxDOT as to any Project Segment due to the Integrator’s failure to pay for labor or materials used in the work, money due for such labor or materials will be withheld from payment to the Integrator;

(c) Any sums expended by or owing to TxDOT as a result of Integrator’s failure to maintain the as-built drawings as to any Project Segment,

(d) Any sums expended by TxDOT in performing any of Integrator’s obligations under this Agreement as to any Project Segment which Integrator has failed to perform, and

(e) Any other sums which TxDOT is entitled to recover from Integrator as to any Project Segment under the terms of this Agreement.

The failure by TxDOT to deduct any of these sums from a progress payment shall not constitute a waiver of TxDOT’s right to such sums.

All amounts owing by Integrator to TxDOT under this Agreement shall earn interest from the date on which such amount is owing at the lesser of (i) 12% per annum or (ii) the maximum rate allowable under applicable Law.

12.3.3 Unincorporated Materials

TxDOT will not pay for materials not yet incorporated in the Work other than precast concrete, reinforcing steel, structural steel, precast concrete members, stone, gravel, sand or other non-perishable materials that will be permanently incorporated in the Work unless all of the following conditions are met:

12.3.3.1 Material shall be (1) delivered to the applicable Project Site, (2) delivered to Integrator and promptly stored by Integrator in bonded storage at a location approved by TxDOT in its sole discretion, or (3) stored at a Supplier’s fabrication site, which must be a bonded commercial location approved by TxDOT, in its sole discretion. Integrator shall submit certified bills for such materials with the invoice, as a condition to payment for such materials. TxDOT shall allow only such portion of the amount represented by these bills as, in its sole opinion, is consistent with the reasonable cost of such materials. If such materials are stored at any site not approved by TxDOT, Integrator shall accept responsibility for and pay all personal and property taxes that may be levied against TxDOT by any state or subdivision thereof on account of such storage of such material.
12.3.3.2 All such materials so accepted shall be and become the property of TxDOT. Integrator at its own cost shall promptly execute, acknowledge and deliver to TxDOT proper bills of sale or other instruments in writing in a form acceptable to TxDOT conveying and assuring to TxDOT title to such material included in any invoice, free and clear of all Liens. Integrator, at its own cost, shall conspicuously mark such material as the property of TxDOT, shall not permit such materials to become commingled with non-TxDOT-owned property and shall take such other steps, if any, as TxDOT may require or regard as necessary to vest title to such material in TxDOT free and clear of Liens.

12.3.3.3 The cost and charges for material included in an invoice but which is subsequently lost, damaged or unsatisfactory may be deducted from succeeding invoices if TxDOT, in its sole discretion, determines that is appropriate after considering the availability of insurance coverage and Integrator’s actions to replace the lost, damaged or unsatisfactory items.

12.3.3.4 Payment for material furnished and delivered as indicated in this Section 12.3.3 will not exceed the amount paid by Integrator as evidenced by a bill of sale supported by paid invoice. TxDOT shall withhold Retainage from such payment as specified in Section 12.3.1.

12.3.4 Payments for Mobilization, Bond, Letter of Credit and Insurance Premiums and As-Built Documents

12.3.4.1 With respect to each Project Segment, Integrator shall be entitled to payment for mobilization in installments, in an amount not to exceed 5% of the applicable Project Segment Price. The first payment shall be in an amount equal to 25% of the bid item price for mobilization, payable as part of the first Draw Request, which may be submitted at any time following the first month after the NTP for such Project Segment is issued. The second payment shall be in an amount equal to 50% of the bid item price for mobilization, payable when at least 10% of the applicable Price (less mobilization) is earned. The third payment shall be in the amount of 25% of the bid item price for mobilization, payable when at least 25% of the applicable Price (less mobilization) is earned.

12.3.4.2 With respect to the Initial NTP, the portion of the Project Segment Price allocable to bond, letter of credit and insurance premiums (for the insurance policies required to be in place following the NTP through Final Acceptance) shall be payable to reimburse Integrator for bond, letter of credit and insurance premiums actually paid, without markup, profit or overhead, not to exceed the line item for such premiums set forth in the Proposal. Any excess portion of the line item for such premiums set forth in the Proposal shall be payable following System Acceptance. With respect to the Initial NTP, insurance premiums for the insurance policies required for the first year of the Maintenance Term and the premiums paid for the initial two-year Maintenance Performance Bond and the Maintenance Payment Bond shall be payable to reimburse Integrator for the bond premiums actually paid, without markup, profit or overhead, not to exceed the line item for such premiums set forth in the Proposal. Any excess portion of
the line item for such premiums set forth in the Proposal shall be payable following expiration of the first two years of the Maintenance Term for the Initial NTP.

12.3.4.3 Except as set forth in Section 12.3.4.2, payment to reimburse Integrator for bond, letter of credit and insurance premiums (including those relating to insurance policies required for the Initial NTP for the period commencing one year after the start of the Maintenance Term) shall be made for costs actually incurred by Integrator, without markup, profit or overhead; provided, however, that TxDOT shall not be responsible for the payment of any increases or adjustments in bond, letter of credit or insurance premiums resulting from adverse changes in Integrator’s financial condition, Integrator risk rating or experience or the acts, omissions, negligence or misconduct of Integrator or any member of the Integrator-Related Entity.

12.3.4.4 With respect to each Project Segment, the amount payable for as-built documents acceptable to TxDOT shall equal 1% of the applicable Price for the applicable Project Segment. Integrator shall not be entitled to payment for the last 1% of the applicable Price until acceptable as-built documents have been delivered to TxDOT.

12.3.5 Equipment

TxDOT shall not pay for direct costs of equipment. Costs of equipment, whether new, used or rented, and to the extent not included in the mobilization payments under Section 12.3.4, shall be allocated to and paid for as part of the activities with which the equipment is associated, in a manner which is consistent with the requirements of [Section 12.2.6].

12.4 Final Payment of a Project Segment Price

Final Payment of the Price for all Work other than Maintenance Work will be made as follows:

12.4.1 On or about the date of Final Acceptance of a Project Segment, Integrator shall prepare and submit a proposed Final Draw Request to TxDOT showing the proposed total amount due Integrator with respect to such Project Segment, as applicable, including any amounts owing from Change Orders. In addition to meeting all other requirements for invoices hereunder, the Final Draw Request shall list all outstanding PCO Notices with respect to such Project Segment, as applicable, stating the amount at issue associated with each such notice. A Final Draw Request shall be accompanied by (a) evidence regarding the status of all existing or threatened claims, Liens and stop notices of Subcontractors and laborers against Integrator or against TxDOT, (b) consent of any Guarantors and Surety to such Final Payment, (c) such other documentation as TxDOT may reasonably require; and (d) the release described in Section 12.4.4, executed by Integrator. Prior applications and payments shall be subject to correction in the Final Draw Request. PCO Notices filed concurrently with a Final Draw Request must be otherwise timely and meet all requirements under Sections 13 and 19.
12.4.2 If a Final Draw Request shows no existing or threatened claims, Liens and stop notices of Subcontractors, Utility Owners, railroads or laborers against Integrator or against TxDOT, and provided such Final Draw Request has been approved, TxDOT, in exchange for an executed release meeting the requirements of Section 12.4.4 and otherwise satisfactory in form and content to TxDOT, will pay the entire sum found due on the approved Final Draw Request, less the amount of any Losses that have accrued as of the date of the Final Payment of the Price, the costs to complete or remediate uncompleted Work or Nonconforming Work and any other deductions permitted under Section 12.3.2 above.

12.4.3 If a Final Draw Request lists any existing or threatened claims, Liens and stop notices of Subcontractors, laborers, or Utility Owners or railroads against Integrator or against TxDOT, or if any is thereafter filed, TxDOT may withhold from the payment of the amounts set forth on the approved Final Draw Request such amount as TxDOT deems advisable to cover any amounts owing or which may become owing to TxDOT by Integrator, including the amount of any Losses that have accrued as of the date of the Final Payment of the Price and any other deductions permitted under Section 12.3.2 above, the costs to complete or remediate uncompleted Work or Nonconforming Work, and the amount of any existing or threatened claims, Liens and stop notices of Subcontractors, laborers, Utility Owners and railroads against Integrator or against TxDOT.

12.4.4 The executed release from Integrator shall be from any and all claims arising from the Work, and shall release and waive any claims against the Indemnified Parties, excluding only those matters identified in any PCO Notices listed as outstanding in the Final Draw Request. The release shall be accompanied by an affidavit from Integrator certifying that:

(a) all Work with respect to such Project Segment, as applicable, has been performed in strict accordance with the requirements of the Contract Documents;

(b) Integrator has resolved any claims made by Subcontractors, Utility Owners, laborers, railroads and others against Integrator, TxDOT or the Project with respect to such Project Segment, as applicable;

(c) Integrator has no reason to believe that any Person has a valid claim against Integrator, TxDOT or the Project which has not been communicated in writing by Integrator to TxDOT as of the date of the certificate; and

(d) all required guarantees, letters of credit, Warranties, insurance, and the Payment Bond and the Performance Bond are in full force and effect.

Each release and the affidavit shall survive a Final Payment.

12.4.5 All prior Draw Requests shall be subject to correction in the Final Draw Request.

12.4.6 TxDOT will review Integrator’s proposed Final Draw Request, and changes or corrections will be forwarded to Integrator for correction within 20 business days.
TxDOT shall pay any undisputed amounts with respect to such Project Segment, as applicable, less any Losses that have accrued as of the date of the Final Payment of the Price, the costs to complete or remediate uncompleted Work or Nonconforming Work and any other deductions permitted under Section 12.3.2 above, within 30 Days after its approval of such amounts on the application for Final Payment of the Price, but not earlier than the date of Final Acceptance with respect to such Project Segment, as applicable.

12.5 Final Payment of a Project Segment Maintenance Price

Final Maintenance Payment for a Project Segment will be made as follows:

12.5.1 On or about the date that the Maintenance Term terminates, Integrator shall prepare and submit a proposed Final Maintenance Price Draw Request to TxDOT for the Final Maintenance Payment, showing the proposed total amount due Integrator with respect to the Project Segment, including any amounts owing from Change Orders and the portion of the Maintenance Price identified in any Project Segment Supplement as the price for “End of Term Maintenance Activities". In addition to meeting all other requirements for Maintenance Price Draw Requests hereunder, the Final Maintenance Payment Draw Request shall list all outstanding PCO Notices with respect to such Project Segment, stating the amount at issue associated with each such notice. A Final Maintenance Payment Draw Request shall be accompanied by (a) evidence regarding the status of all existing or threatened claims, Liens and stop notices of Subcontractors and laborers against Integrator or against TxDOT, (b) consent of any Guarantors and Surety to such Final Payment, (c) a list of any System equipment that has unexpired warranty records, accompanied by the service records with respect to such equipment; (d) such other documentation as TxDOT may reasonably require; and (e) the release described in Section 12.4.4, executed by Integrator. Prior applications and payments shall be subject to correction in the Final Maintenance Payment Draw Request. PCO Notices filed concurrently with a Final Maintenance Payment Draw Request must be otherwise timely and meet all requirements under Sections 13 and 19.

12.5.2 The provisions of Sections 12.4.2 and 12.4.3, above, shall apply with respect to the Final Maintenance Payment.

12.5.3 The Final Maintenance Payment shall also be subject to Integrator’s certification in the release required by Section 12.4.4 that Integrator has satisfied all the conditions to the end of the Maintenance Term set forth in Section 7.16 of the TP. TxDOT will review Integrator's proposed Final Maintenance Price Draw Request, and changes or corrections will be forwarded to Integrator for correction within 20 business days. TxDOT shall pay any undisputed amounts with respect to such Project Segment, as applicable, less any Losses that have accrued as of the date of the Final Maintenance Payment, the costs to complete or remediate uncompleted Work or Nonconforming Work and any other deductions permitted under Section 12.3.2 above, within 30 Days after its approval of such amounts on the application for the Final Maintenance Payment, but not earlier than the end of the Maintenance Term.
12.6 **Payment to Subcontractors**

12.6.1 No later than 10 Days after receipt of payment from TxDOT, Integrator shall promptly pay each Subcontractor, out of the amount paid to Integrator on account of such Subcontractor’s portion of the Work, the amount to which such Subcontractor is entitled, less any retainage provided for in the Subcontract and any other offsets and deductions provided in the Subcontract or by law. No later than 10 Days after satisfactory completion of all Work to be performed by a Subcontractor, including provision of appropriate releases, certificates and other evidence of the Subcontractor’s compliance with all applicable requirements of the Contract Documents, Integrator shall return all moneys withheld in retention from the Subcontractor. Such payment shall be made promptly following satisfaction of the foregoing requirements, even if Work to be performed by Integrator or other Subcontractors is not completed and has not been accepted. Each Subcontract shall require the Subcontractor to make payments to sub-subcontractors and Suppliers in a similar manner.

12.6.2 For the purpose of this Section 12.6, satisfactory completion shall have been accomplished when:

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

(b) the Work performed by the Subcontractor has been inspected and approved in accordance with the Contract Documents and the final quantities of the Subcontractor’s work have been determined and agreed upon.

12.6.3 The inspection and approval of a Subcontractor’s work does not eliminate or impair the Integrator’s responsibility for the Work. Any delay or postponement of payments to Subcontractors from the above-referenced time frames may occur only for good cause following written approval by TxDOT. Integrator shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner. TxDOT shall have no obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law. Interest on late payments to Subcontractors shall be Integrator’s responsibility, and shall not be a part of the applicable Price.

12.7 **Disputes**

Failure by TxDOT to pay any amount in dispute shall not alleviate, diminish or modify in any respect Integrator’s obligation to perform under the Contract Documents, including Integrator’s obligation to achieve Final Acceptance of each Project Segment and all Work in accordance with the Contract Documents, and Integrator shall not cease or slow down its performance under the Contract Documents on account of any such amount in dispute. Any dispute regarding such payment shall be resolved pursuant to Section 19. Integrator shall proceed as directed by TxDOT pending resolution of the dispute. Upon resolution of any such dispute, each party shall promptly pay to other any amount owing.
SECTION 13. CHANGES IN THE WORK

This Section 13 sets forth the requirements for obtaining all Change Orders under this Agreement. Integrator hereby acknowledges and agrees that each Price constitutes full compensation for performance of all of the Work for the applicable Project Segment, subject only to those exceptions specified in this Section 13, and that TxDOT is subject to constraints limiting its ability to increase any Price or extend any Completion Deadlines. Integrator unconditionally and irrevocably waives the right to any claim for a time extension or for any monetary compensation in addition to the applicable Price and other compensation specified in this Agreement, except in accordance with this Section 13. To the extent that any other provision of this Agreement expressly provides for a Change Order to be issued, such provision is incorporated into and subject to this Section 13.

13.1 Circumstances Under Which Change Orders May Be Issued

13.1.1 Definition of and Requirements Relating to Change Orders

13.1.1.1 Definition of Change Order

The term “Change Order” shall mean a written amendment to the terms and conditions of the Contract Documents issued in accordance with this Section 13. TxDOT may issue unilateral Change Orders as specified in Section 13.2.2. Change Orders may be requested by Integrator only pursuant to Section 13.3. A Change Order shall not be effective for any purpose unless executed by TxDOT. Change Orders may be issued for the following purposes (or combination thereof):

(a) to modify the scope of the Work;
(b) to revise a Completion Deadline;
(c) to revise a Price;
(d) to revise other terms and conditions of the Contract Documents.

Upon TxDOT’s approval of the matters set forth in the Change Order form (whether it is initiated by TxDOT or requested by Integrator), TxDOT shall sign such Change Order form indicating approval thereof. A Change Order may, at the sole discretion of TxDOT, direct Integrator to proceed with the Work with the amount of any adjustment of any Completion Deadline or Price to be determined in the future. All additions, deductions or changes to the Work as directed by Change Orders shall be executed under the conditions of the original Contract Documents.

13.1.1.2 Issuance of Directive Letter

TxDOT may at any time issue a letter (each, a “Directive Letter”) to Integrator in the event of any desired change in the Work or in the event of any dispute
regarding the scope of the Work. The Directive Letter will state that it is issued under this Section 13.1.1.2, will describe the Work in question and will state the basis for determining compensation, if any. Integrator shall proceed immediately as directed in the Directive Letter, pending the execution of a formal Change Order (or, if the letter states that the Work is within Integrator’s original scope of Work, Integrator shall proceed with the Work as directed but shall have the right pursuant to Section 13.3 to request that TxDOT issue a Change Order with respect thereto).

13.1.1.3 Directive Letter as Condition Precedent to Claim that TxDOT-Directed Change Has Occurred

13.1.1.3.1 Integrator shall not be entitled to additional compensation or time extension for any such work performed prior to receipt of a Directive Letter or Change Order, except to the extent that Section 13.3.2.2 preserves Integrator’s right to compensation for work performed following delivery of a Request for Partnering. Integrator acknowledges that it will be at risk if it elects to proceed with any such work, since TxDOT may later decide not to provide direction with regard to such work. In addition to provision of a PCO Notice and subsequent Change Order request pursuant to Section 13.3.2, receipt of a Directive Letter from TxDOT shall be a condition precedent to Integrator’s right to make a Claim that a TxDOT-Directed Change has occurred.

13.1.1.3.2 The fact that a Directive Letter was issued by TxDOT shall not be considered evidence that in fact a TxDOT-Directed Change occurred. The determination whether a TxDOT-Directed Change in fact occurred shall be based on an analysis of the original requirements of the Contract Documents and a determination whether the Directive Letter in fact constituted a change in those requirements. The requirements of Section 13.1.1.3.1 shall not imply that a Directive Letter would be required in order for Integrator to have the right to receive compensation for Work within its original scope for which additional compensation is specifically allowed under this Section 13.

13.2 Right of TxDOT to Issue Change Orders

TxDOT may, at any time and from time to time, without notice to any Surety, authorize and/or require changes in the Work within the general scope of this Agreement pursuant to a Change Order. For the purpose of this Section 13.1.2, any direction to perform work shall be considered within the general scope of this Agreement if it is related to the Project; any direction to delete or modify Work shall be considered within the general scope unless as a result this Agreement would no longer be considered a design-build contract for the Project of the nature described in the RFP. Integrator shall have no obligation to perform any work outside the general scope of this Agreement, except on terms mutually acceptable to TxDOT and Integrator.

13.2 TxDOT-Initiated Change Orders

This Section 13.2 concerns (a) Change Orders issued by TxDOT following a Request for Change Proposal and (b) Change Orders unilaterally issued by TxDOT.
13.2.1 Request for Change Proposal

13.2.1.1 If TxDOT desires to issue a TxDOT-Directed Change or to evaluate whether to initiate such a change, then TxDOT may, at its discretion, issue a Request for Change Proposal. A Directive Letter may also constitute a Request for Change Proposal.

13.2.1.2 Within five business days after Integrator's receipt of a Request for Change Proposal, or such longer period as may be mutually agreed to by TxDOT and Integrator, TxDOT and Integrator shall consult to define the proposed scope of the change. Within five business days after the initial consultation, or such longer period as may be mutually agreed to by TxDOT and Integrator, TxDOT and Integrator shall consult concerning the estimated cost and time impacts.

13.2.1.3 Within five business days after the second consultation described in Section 13.2.1.2, TxDOT shall notify Integrator whether TxDOT (a) wishes to issue a Change Order, (b) wishes to request Integrator to provide a Cost and Schedule Proposal as discussed at the meeting, (c) wishes to request Integrator to prepare a modified work plan for the change and a Cost and Schedule Proposal based on the modified plan, or (d) no longer wishes to issue a Change Order. TxDOT may at any time, in its sole discretion, require Integrator to provide two alternative Cost and Schedule Proposals, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted hereunder.

13.2.1.4 If so requested, Integrator shall, within ten business days after receipt of the notification described in Section 13.2.1.3, or such longer period as may be mutually agreed to by TxDOT and Integrator, prepare and submit to TxDOT for review and approval by TxDOT a Cost and Schedule Proposal (in the format provided by TxDOT) for the requested change, complying with all applicable requirements of Section 13.4, and incorporating and fully reflecting all requests made by TxDOT. Integrator shall bear the cost of developing the Cost and Schedule Proposal, including any modifications thereto requested by TxDOT, except that costs of design work required for preparation of plans or exhibits necessary to the Cost and Schedule Proposal, as pre-authorized by TxDOT, may be included in the Change Order as reimbursable items. If the Change Order is approved, such design costs will be included within the Change Order, otherwise, they shall be separately reimbursed through a separate Change Order.

13.2.1.5 If Integrator and TxDOT agree that a change in the requirements relating to the Work has occurred but disagree as to whether the change justifies additional compensation or time or disagree as to the amount of any change to be made to the applicable Price or Completion Deadline, TxDOT may, in its sole discretion, order Integrator to proceed with the performance of the Work in question notwithstanding such disagreement. Such order may, at TxDOT’s option, be in the form of: (a) a Time and Materials Change Order as provided in Section 13.7 or (b) a Directive Letter under Section 13.1.1.2.
13.2.1.6 If it is not practicable, due to the nature and/or timing of the event giving rise to a proposed Change Order, for Integrator to provide a complete Cost and Schedule Proposal meeting all of the requirements of Section 13.4, Integrator shall provide an incomplete proposal which includes all information capable of being ascertained. Said incomplete proposal shall: (a) include a list of those Change Order requirements which are not fulfilled together with an explanation reasonably satisfactory to TxDOT stating why such requirements cannot be met, (b) provide such information regarding projected impact on a critical path as is requested by TxDOT, and (c) in all events include sufficient detail to ascertain the basis for the proposed Change Order and for any price increase associated therewith, to the extent such amount is then ascertainable. Integrator shall provide monthly updates to any incomplete Cost and Schedule Proposals in the same manner as updates to incomplete Requests for Change Order under Section 13.3.2.6.2.

13.2.2 Unilateral Change Orders

TxDOT may issue a Change Order at any time, regardless of whether it has issued a Request for Change Proposal. Integrator shall be entitled to compensation in accordance with Section 13.7 for additional Work which is required to be performed as the result of any unilateral Change Order, and shall have the right to submit the issue of entitlement to an extension of the Completion Deadlines to dispute resolution in accordance with Section 19. For deductive unilateral Change Orders, the Change Order may contain a price deduction deemed appropriate by TxDOT, and Integrator shall have the right to submit the amount of such price deduction to dispute resolution in accordance with Section 19.

13.2.3 TxDOT-Directed Changes Under $5,000

Integrator shall not be entitled to an increase in a Price for any TxDOT-Directed Changes involving less than $5,000 in additional direct costs incurred by Integrator; provided, however, that the aggregate direct costs incurred by Integrator as a result of any such TxDOT-Directed Changes does not exceed an aggregate for all Project Segments of $25,000 per year of this Agreement, commencing upon issuance of Initial NTP.

13.3 Integrator-Requested Change Orders

13.3.1 Eligible Changes

13.3.1.1 Integrator may request a Change Order to extend a Completion Deadline only for delays directly attributable to one or more of the following events or circumstances which change the duration of a Critical Path:

(a) Force Majeure Events;

(b) TxDOT-Caused Delays;

(c) delays relating to Differing Site Conditions, discovery of Hazardous Materials, and/or Changes in Law, to the extent permitted by Section 13.9;
13.3.1.2 Integrator may request a Change Order to increase the applicable Price only for increased costs of performance of the Work as follows:

(a) subject to Section 13.2.3, additional costs directly attributable to additional Work resulting from TxDOT-Directed Changes and TxDOT-Caused Delays for which TxDOT has not submitted a Change Order or a Request for Change Proposal;

(b) additional costs directly attributable to Necessary Basic Configuration Changes, to the extent provided in Section 13.8;

(c) additional costs relating to Differing Site Conditions, Hazardous Materials, and Force Majeure Events, to the extent provided in Section 13.9; or

(d) additional costs directly attributable to uncovering, removing and restoring Work, to the extent provided in Section 5.4.3.

13.3.1.3 Integrator’s entitlement to a Change Order for eligible changes is subject to the restrictions and limitations contained in this Section 13 and furthermore is subject to Integrator’s compliance with all notification and other requirements identified herein. Integrator shall initiate the Change Order process by delivery of a PCO Notice as described in Section 13.3.2, followed by submittal of a Request for Change Order and supporting documentation to TxDOT.

13.3.2 Procedures

The requirements set forth in this Section 13.3.2 constitute conditions precedent to Integrator’s entitlement to request and receive a Change Order except those involving a Request for Change Proposal. Integrator understands that it shall be forever barred from recovering against TxDOT under this Section 13 if it fails to give notice of any act, or failure to act, by TxDOT or any of its representatives or the happening of any event, thing or occurrence pursuant to a proper PCO Notice, and thereafter complies with the remaining requirements of this Section 13.3.

13.3.2.1 Delivery of Requests for Partnering and PCO Notices

Integrator acknowledges the importance of providing prompt notification to TxDOT upon occurrence of any event or thing entitling Integrator to a Change Order under Section 13.3.1. Among other things, such notification serves the purpose of allowing TxDOT to take action to mitigate adverse impacts. Such notification must be delivered as promptly as possible after the occurrence of such event or situation, through either (a) a PCO Notice as described in Section 13.3.2.3 or (b) if permitted by Section 13.3.2.2, a Request for Partnering followed by a PCO Notice if appropriate.
13.3.2.2 Requests for Partnering

The term “Request for Partnering” shall mean a notice delivered by Integrator requesting that TxDOT enter into partnering discussions with Integrator with regard to an event or situation that has occurred within the scope of Section 13.3.1.2. The Request for Partnering shall reference this Section 13.3.2.2 and shall describe the event or situation as well as action which Integrator would like to take with respect thereto. The parties shall promptly meet and confer for the purpose of determining what action should be taken and also to determine whether the parties are in agreement as to entitlement to a Change Order. Either party may at any time terminate partnering discussions by delivery of written notice to the other, and partnering discussions shall automatically terminate 60 days after delivery of the Request for Partnering unless both parties agree in writing to an extension. Within five Business Days after termination of partnering discussions, if TxDOT has not issued either a Directive Letter or Change Order, Integrator must submit a PCO Notice in order to preserve its right to pursue a Change Order. The foregoing process is not available for events or situations involving a delay to the Critical Path. With regard to any such events or situations, Integrator must submit a PCO Notice as provided in Section 13.3.2.3.

13.3.2.3 PCO Notices

The term “PCO Notice” shall mean a notice delivered by Integrator, meeting the requirements set forth below, stating that an event or situation has occurred within the scope of Section 13.3.1 and stating which subsection thereof is applicable. The first notice shall be labeled “PCO Notice No. 1” and subsequent notices shall be numbered sequentially.

13.3.2.3.1 The PCO Notice shall: (a) state in detail the facts underlying the anticipated Request for Change Order, the reasons why Integrator believes additional compensation or time will or may be due and the date of occurrence, (b) state the name, title, and activity of each Project Management Consultant and TxDOT representative knowledgeable of the facts underlying the anticipated Request for Change Order, (c) identify any documents and the substance of any oral communication involved in the facts underlying the anticipated Request for Change Order, (d) state in detail the basis for necessary accelerated schedule performance, if applicable, (e) state in detail the basis that the work is not required by this Agreement, if applicable, (f) identify particular elements of Agreement performance for which additional compensation may be sought under this Section 13.3.2, (g) identify any potential critical path impacts, and (h) provide an estimate of the time within which a response to the notice is required to minimize cost, delay or disruption of performance.

13.3.2.3.2 If the Request for Change Order relates to a decision which this Agreement leaves to the discretion of a Person or as to which this Agreement provides that such Person’s decision is final, the PCO Notice shall set out in detail all facts supporting Integrator’s objection to the decision, including all facts supporting any contention that the decision was capricious or arbitrary or is not supported by substantial evidence.
13.3.2.3 Written notification provided in accordance with Section 13.9.1.2 or 13.9.3.1.1 may also serve as a PCO Notice provided it meets the requirements for PCO Notices.

13.3.2.4 Any adjustments made to this Agreement shall not include increased costs or time extensions for delay resulting from Integrator's failure to timely provide requested additional information under this Section 13.3.2.3.

13.3.2.4Waiver

13.3.2.4.1 Each PCO Notice shall be delivered as promptly as possible after the occurrence of such event or situation. If any PCO Notice is delivered later than ten days after Integrator first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence described therein, Integrator shall be deemed to have waived (a) the right to collect any costs incurred prior to the date of delivery of the Request for Partnering (if applicable) or PCO Notice (if no Request for Partnering was submitted or if the PCO Notice was not timely submitted following termination of partnering discussions), and (b) the right to seek an extension of any Completion Deadline with respect to any delay in a critical path which accrued prior to the date of delivery of the written notice. Furthermore, if any PCO Notice concerns any condition or material described in Section 13.9.3.1, Integrator shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that TxDOT is not afforded the opportunity to inspect such material or condition before it is disturbed.

13.3.2.4.2 In addition to the limitations set forth in Section 13.3.2.4.1, Integrator's failure to provide a PCO Notice within 60 days after Integrator first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation shall preclude Integrator from any relief, unless Integrator can show, based on a preponderance of the evidence, that (a) TxDOT was not materially prejudiced by the lack of notice, or (b) TxDOT's designated representative specified in accordance with Section 24.5.1 had actual knowledge, prior to the expiration of the 60-day period, of the event or situation and that Integrator believed it was entitled to a Change Order with respect thereto. For situations involving Requests for Partnering, the 60-Day period shall be extended until two Business Days following termination of the partnering period. In other words, if the requirements of clause (a) or clause (b) above are satisfied, Integrator shall retain the right to receive a Change Order, but shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the PCO Notice or Request for Partnering, as applicable, and shall be deemed to have waived the right to seek a time extension with respect to any delay in any Critical Path which accrued prior to the date of delivery of the PCO Notice.

13.3.2.5 Delivery of Request for Change Order

Integrator shall deliver all Requests for Change Order under this Section 13.3 to TxDOT within 30 days after delivery of the PCO Notice, or such longer period of time as may be allowed in writing by TxDOT. TxDOT may require design and construction costs to be covered by separate Requests for Change Order. If Integrator
requests a time extension, then TxDOT, in its sole discretion, may require Integrator to provide two alternative Requests for Change Order, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted hereunder. If it is not feasible to recover to the original Completion Deadline or if Integrator believes that the costs associated with such a recovery are prohibitive, then Integrator shall recommend a date to be shown in the alternative Change Order form. If Integrator fails to deliver a complete Request for Change Order or incomplete Request for Change Order meeting all of the requirements of Section 13.3.2.6 within the appropriate time period, Integrator shall be required to provide a new PCO Notice before it may submit a Request for Change Order.

13.3.2.6 Incomplete Requests for Change Order

13.3.2.6.1 Each Request for Change Order provided under Section 13.3.2.5 shall meet all requirements set forth in Section 13.4; provided that if any such requirements cannot be met due to the nature and/or timing of the occurrence, Integrator shall provide an incomplete Request for Change Order which fills in all information capable of being ascertained. Said incomplete Request shall: (a) include a list of those Change Order requirements which are not fulfilled together with an explanation reasonably satisfactory to TxDOT stating why such requirements cannot be met, (b) provide such information regarding projected impact on a critical path as is requested by TxDOT, and (c) in all events include sufficient detail to ascertain the basis for the proposed Change Order and for any price increase associated therewith, to the extent such amount is then ascertainable.

13.3.2.6.2 Integrator shall furnish, when requested by TxDOT or its designee, such further information and details as may be required to determine the facts or contentions involved. Integrator agrees that it shall give TxDOT or its designee access to any and all of Integrator’s books, records and other materials relating to the Work, and shall cause its Subcontractors to do the same, so that TxDOT or its designee can investigate the basis for such proposed Change Order. Integrator shall provide TxDOT with a monthly update to all outstanding Requests for Change Order describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to TxDOT, expenditures to date and time anticipated for completion of the activities for which the time extension is claimed. TxDOT may reject the Request for Change Order at any point in the process. TxDOT’s failure to respond to a complete Request for Change Order within 15 business days of delivery of the request shall not be deemed an acceptance of such request, and the Integrator shall have the burden of following up with TxDOT on the status of any such Request for Change Order.
13.3.2.7 Importance of Timely Response

Integrator acknowledges and agrees that, due to limitations on funding for the Project, timely delivery of notification of such events and situations and Requests for Change Orders and updates thereto are of vital importance to TxDOT. TxDOT is relying on Integrator to evaluate promptly upon the occurrence of any event or situation whether the event or situation will affect the Project Schedule or Price and, if so, whether Integrator believes a time extension and/or price increase is required hereunder. If an event or situation occurs which may affect a Price or Completion Deadline, TxDOT will evaluate the situation and determine whether it wishes to make any changes to the definition of the Project so as to bring it within TxDOT’s funding and time restraints. The following matters (among others) shall be considered in determining whether TxDOT has been prejudiced by Integrator’s failure to provide timely notice: (a) the effect of the delay on alternatives available to TxDOT (that is, a comparison of alternatives which are available at the time notice was actually given and alternatives which would have been available had notice been given within ten Days after occurrence of the event or when such occurrence should have been discovered in the exercise of reasonable prudence); and (b) the impact of the delay on TxDOT’s ability to obtain and review objective information contemporaneously with the event.

13.3.2.8 Review of Subcontractor Claims

Prior to submission by Integrator of any Request for Change Order which is based in whole or in part on a request by a Subcontractor to Integrator for a price increase or time extension under its Subcontract, Integrator shall have reviewed all claims by the Subcontractor which constitute the basis for the Request for Change Order and determined in good faith that each such claim is justified hereunder and that Integrator is justified in requesting an increase in the applicable Price and change in the applicable Completion Deadlines in the amounts specified in the Request for Change Order. Each Request for Change Order involving Subcontractor Work, and each update to an incomplete Change Order request involving such Work shall include a summary of Integrator’s analysis of all Subcontractor claims components and shall include a certification signed by Integrator’s Project Manager stating that Integrator has investigated the basis for the Subcontractor’s claims and has determined that all such claims are justified as to entitlement and amount of money and/or time requested, has reviewed and verified the adequacy of all back-up documentation to be placed in escrow pursuant to Section 21.2, and has no reason to believe and does not believe that the factual basis for the Subcontractor’s claim is falsely represented. Any Request for Change Order involving Subcontractor Work which is not accompanied by such analysis and certification shall be considered incomplete.

13.3.3 Performance of Disputed Work

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

13.4 Contents of Change Orders

13.4.1 Form of Change Order

Each Cost and Schedule Proposal and Request for Change Order shall be prepared in form acceptable to TxDOT, and shall meet all applicable requirements of this Section 13.

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

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

13.4.2.1 Scope of Work

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

13.4.2.2 Cost Estimate

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

13.4.2.3 Delay Analysis

If Integrator claims that such event, situation or change affects a Critical Path, it shall provide an impacted delay analysis indicating all activities represented or affected by the change, with activity numbers, durations, predecessor and successor activities, resources and cost, and with a narrative report, in form satisfactory to TxDOT, which compares the proposed new schedule to the current approved Project Schedule.
13.4.2.4 Other Supporting Documentation

Integrator shall provide such other supporting documentation as may be required by TxDOT.

13.4.3 Justification

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

13.4.4 Integrator Representation

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

13.5 Certain Limitations

13.5.1 Limitation on Price Increases

Any increase in a Price allowed hereunder shall exclude: (a) costs caused by the breach of contract or fault or negligence, or act or failure to act by any Integrator-Related Entity; (b) costs to the extent that they are unnecessary or could reasonably be avoided by Integrator, including by resequencing, reallocating or redeploying its forces to other portions of the Work or to other activities unrelated to the Work; and (c) costs for remediation of any Nonconforming Work. Costs incurred for the purpose of mitigating damages as described in (b) above, and not otherwise disallowed hereunder, would be reimbursable.

13.5.2 Limitation on Delay and Disruption Damages

13.5.2.1 Acceleration Costs; Delay and Disruption Damages

Acceleration Costs shall be compensable hereunder only with respect to Change Orders issued by TxDOT as an alternative to allowing an extension of a Completion Deadline as contemplated by Sections 13.2.1.3 and 13.3.2.5. Other delay and disruption damages shall be compensable hereunder only in the case of delays which
qualify as TxDOT-Caused Delays entitling Integrator to an extension of a Completion Deadline. Without limiting the generality of the foregoing, costs of rearranging Integrator’s work plan to accommodate TxDOT-Directed Changes not associated with an extension of a Completion Deadline shall not be compensable hereunder.

13.5.2.2 Other Limitations

Delay and disruption damages shall be limited to direct costs directly attributable to the delays described in Section 13.5.2.1 and markups thereon in accordance with Section 13.7 and any additional field office and jobsite overhead costs incurred by Agreement or directly attributable to such delays. In addition, before Integrator may obtain any increase in a Price to compensate for additional or extended overhead, Acceleration Costs or other damages relating to delay, Integrator shall have demonstrated to TxDOT’s satisfaction that:

(a) its schedule which defines the affected Critical Path in fact set forth a reasonable method for completion of the Work; and

(b) the change in the Work or other event or situation which is the subject of the requested Change Order has caused or will result in an identifiable and measurable disruption of the Work which impacted the Critical Path activity (i.e. consumed all available Float and extended the time required to achieve System Acceptance, Punch List Acceptance or Final Acceptance beyond the applicable Completion Deadline); and

(c) the delay or damage was not due to any breach of contract or fault or negligence, or act or failure to act of any Integrator-Related Entity, and could not reasonably have been avoided by Integrator, including by resequencing, reallocating or redeploying its forces to other portions of the Work or other activities unrelated to the Work (provided that TxDOT has agreed to reimburse Integrator for additional costs reasonably incurred in connection with such reallocation or redeployment); and

(d) the delay for which compensation is sought is not concurrent with any delay for which Integrator is responsible hereunder; and

(e) Integrator has suffered or will suffer actual costs due to such delay, each of which costs shall be documented in a manner satisfactory to TxDOT.

13.5.3 Limitation on Time Extensions

Any extension of a Completion Deadline allowed hereunder shall exclude any delay to the extent that it (a) did not impact a Critical Path, (b) was due to the fault or negligence, or act or failure to act of any Integrator-Related Entity, (c) is concurrent with any other unrelated delay to a Critical Path that is Integrator’s responsibility hereunder, or (d) could reasonably have been avoided by Integrator, including by resequencing, reallocating or redeploying its forces to other portions of the Work (provided that if the
request for extension involves a TxDOT-Caused Delay, Integrator shall be entitled to a
time extension unless TxDOT shall have agreed, if requested to do so, to reimburse
Integrator for its costs incurred, if any, in resequencing, reallocating or redeploying its
forces).  Integrator shall be required to demonstrate to TxDOT’s satisfaction that the
change in the Work or other event or situation which is the subject of the Request for
Change Order seeking a change in a Completion Deadline has caused or will result in an
identifiable and measurable disruption of the Work which has impacted the Critical Path
activity (i.e. consumed all available Float and extended the time required to achieve
System Acceptance, Punch List Acceptance or Final Acceptance beyond the applicable
Completion Deadline).

13.5.4 Work Performed Without Direction

To the extent that Integrator undertakes any efforts outside of the scope of the
Work, unless Integrator has received a Directive Letter or Change Order signed by TxDOT
to undertake such efforts, Integrator shall be deemed to have undertaken the extra work
voluntarily and shall not be entitled to a Change Order in connection therewith.  In addition,
TxDOT may require Integrator to remove or otherwise undo any such work, at Integrator’s
sole cost.

13.6 Change Order Pricing

The price of a Change Order under this Section 13.6 shall be a negotiated lump sum price
or unit prices as provided below.  Lump sum price or unit prices shall be based on the
original allocations of the applicable Price to comparable activities as set forth in
Exhibits U-1, U-2, U-4 and U-5, whenever possible.  If reference to price allocations is
inappropriate and if requested by TxDOT, negotiation for lump sum or unit price Change
Orders shall be on an Open Book Basis and may be based on the pricing contained in the
EPDs as well as Subcontractors’ bid prices.

13.6.1 Detailed Cost Proposal

Integrator may be required to submit a detailed cost proposal identifying all
categories of costs in accordance with the requirements of Section 13.7:  (a) showing all
impacts on this Agreement from Work additions, deletions and modifications shown in the
Change Order being priced; and (b) setting out the proposed costs in such a way that a fair
evaluation can be made.  When the Change Order adds Work to Integrator’s scope, the
increase in the applicable Price shall be negotiated based on estimates or actual costs of
labor, material and equipment.  When the Change Order deletes Work from Integrator’s
scope, the amount of the reduction in the applicable Price shall be based upon an estimate
including a bill of material, a breakdown of labor and equipment costs.  Markup for profit
and overhead consistent with Section 13.7 shall apply for added and deleted Work Change
Orders.
13.6.2 Identification of Conditions

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

13.6.3 Contents

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

13.6.4 Added Work

When the Change Order adds Work to Integrator’s scope, the increase in the applicable Price shall be negotiated based on estimated costs of labor, material and equipment, or shall be based on actual costs in accordance with Section 13.7. For negotiated Change Orders, markups for profit and overhead shall be consistent with Sections 13.5.2 and 13.7.6. Risk associated with the Work described in the Change Order shall be addressed through the assumptions contained therein regarding the scope of such Work.

13.6.5 Deleted Work

When the Change Order deletes Work from Integrator’s scope, the amount of the reduction in the applicable Price shall be based upon Integrator’s estimated price for such work included in the relevant Project Segment Supplement, including a bill of material and a breakdown of labor and equipment costs, plus variable overhead and profit associated with the deleted Work. Estimated costs that Integrator applied to develop the Proposal Project Segment Prices, as well as markup for profit and variable overhead at the rates Integrator applied to develop the Proposal Project Segment Prices, as reflected in the EPDs, shall apply for determining the amount of the price reduction for deleted Work Change Orders. The amount of risk associated with such Work by Integrator, as of the Contract Date, shall be an additional factor in determining the amount of the price reduction for deleted Work Change Orders. When a deduction is involved, documented cancellation and restocking charges may be included in costs and subtracted from the price deduction. Reimbursement will be made for actual Work done and all costs incurred, including mobilization of materials, prior to the date of the Directive Letter or other notification by TxDOT eliminating the Work.

13.6.6 Change Order Both Adding and Deleting Work

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

(a) Net increase in cost, the change shall be treated as work added and the provisions of Section 13.6.4 shall be used to determine markups for overhead and profit. Markups for overhead and profit will be allowed only for the net increase in cost in order to establish the amount to be added to the applicable Price.

(b) Net decrease in cost, the change shall be treated as work deleted and the provisions of Section 13.6.5 shall be used on the net decrease in cost in order to establish the price deduct to the applicable Price.

(c) Net change of zero, there will be no change in the applicable Price.

13.6.7 Unit Priced Change Orders

Unit prices shall be deemed to include all costs for labor, material, overhead and profit, and shall not be subject to change regardless of any change in the estimated quantities. Unit-priced Change Orders shall initially include an estimated increase in the applicable Price based on estimated quantities. Upon final determination of the quantities, TxDOT will issue a modified Change Order setting forth the final adjustment to the applicable Price.

13.6.8 All-Inclusive Change Orders

All Change Orders submitted by Integrator shall be all-inclusive, comprehensive and complete and shall not include any conditions with respect to pricing or schedule.

13.7 Time and Materials Change Orders

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

13.7.1 Labor Costs

The cost of labor for workers used in the actual and direct performance of the Change Order work, whether provided by Integrator or a Subcontractor, will equal the sum of the following:

(a) For construction-related labor, (1) the actual cost for direct labor; plus (2) the actual cost of workers’ compensation and liability insurance required under this
Agreement, health, welfare and pension benefits and Social Security deductions or 55% of the actual direct labor cost, whichever is less; plus (3) 25% of the total of the amounts set forth in clauses (1) and (2) for profit and overhead.

(b) For non-construction-related Work, (1) the actual wages (i.e. the base wage paid to the employee exclusive of any fringe benefits); plus (2) a labor surcharge in the amount of 200%, which shall constitute full compensation for all profit, overhead and all state and federal payroll, unemployment and other taxes, insurance, fringe benefits and all other payments made to, or on behalf of, the workers, in excess of actual wages.

13.7.2 Material Costs

Material costs for Change Order work shall be the actual cost of all materials to be used in the performance of construction work including normal wastage allowance as per industry standards, less salvage value, plus 25% for profit and overhead. The material prices shall be supported by valid quotes and invoices from the suppliers. The cost shall include applicable sales taxes, freight and delivery charges and any allowable discounts.

13.7.3 Equipment

13.7.3.1 Costs for Integrator-owned machinery, trucks, power tools or other similar equipment that are required for Change Order work will be allowed based on the following methodology:

(a) The direct cost of fuel, lubricants, repairs, parts, and depreciation will be considered without any additional compensation percentage for overhead and profit being added; and

(b) The equipment rental rates shall be those tabulated in the most recent version of the Rental Rate Blue Book, available at www.equipmentwatch.com. The rental rates to be used shall be the published monthly rate divided by 150 to yield an hourly rate, which hourly rate shall be further adjusted by multiplying it by the Rental Rate Blue Book adjustment rate for the year the equipment was manufactured and by the regional factor contained in the Rental Rate Blue Book estimated hourly operating cost rate.

Integrator shall be considered to own such items if an ownership interest therein is held by (w) Integrator, (x) any equity participant in Integrator, (y) any Subcontractor performing construction work, or (z) any Affiliate of Integrator, any equity participant in Integrator or any such Subcontractor. If the publication of the Rental Rate Blue Book should be discontinued for any reason, TxDOT may select a different publication from which to make the described calculations.

13.7.3.2 Costs for machinery, trucks, power tools or other similar equipment that are required for Change Order work rented from any commercial enterprises routinely offering equipment and tools for rent or lease to the public will be
allowed in an amount equal to the direct rental rate for the equipment plus a 5% markup for overhead and profit.

13.7.3.3 The time to be paid for use of equipment on the Project Site shall be the time the equipment is in operation on the Change Order work being performed. The time shall include the reasonable time required to move the equipment to the location of the Change Order work and return it to the original location or to another location requiring no more time than that required to return it to its original location. Moving time will not be paid for if the equipment is also used at the Project Site other than for Change Order work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power. No payment for loading and transporting will be made if the equipment is also used at the Project Site other than for Change Order work. Time will be computed in half and full hours. In computing the time for use of equipment, less than 30 minutes shall be considered one-half hour.

13.7.4 Subcontracted Work

To the extent that any Change Order is intended to compensate Integrator for the cost of work performed by Subcontractors, the Change Order shall provide for compensation equal to (1) the actual cost to Integrator of such work (which shall be charged by the Subcontractor on a time and materials basis in accordance with this Section 13.7, unless otherwise approved in writing by TxDOT), plus (2) 5% of such cost. The 5% markup for subcontracted work shall not apply to (i) Subcontracts with Affiliates; or (ii) Subcontracts with Suppliers.

13.7.5 Other Direct Costs

For any justified change-related direct cost not covered by the categories of costs contained in Sections 13.7.1 through 13.7.4, Integrator shall accept as full payment therefor an amount equal to the actual cost to Integrator for such direct cost item. Without additional mark-up, back-up documentation supporting each cost item for this category shall be provided by Integrator and approved by TxDOT in writing prior to any payment authorization being granted.

13.7.6 Overhead Items

The mark-ups specified herein constitute full and complete compensation for all overhead, tools or equipment having an individual replacement value of $1,000 or less, consumables (items which are consumed in the performance of the Work which are not a part of the finished product) and other indirect costs of the added or changed Work, as well as for profit thereon, including any and all costs and expenses incurred due to any delay in connection with the added or changed Work. Integrator’s mark-up percentages shall be considered to include:

(a) Supervisory expenses of all types, including salary and expenses of executive officers, supervising officers or supervising employees, excluding only direct supervision of force account work;
(b) Clerical or stenographic employees;

c) Any and all field, jobsite and general home office overhead and operating expenses whatsoever;

d) Subsistence and travel expenses for all personnel, other incidental job burdens, and bonuses not otherwise covered;

e) Quality assurance and quality control; and

(f) Bond and insurance premiums.

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

13.7.7 Change Order Data

Integrator shall contemporaneously collect, record in writing, segregate and preserve (a) all data necessary to determine the costs described in this Section 13.7 with respect to all Work which is the subject of a Change Order or a requested Change Order (excluding negotiated Change Orders previously executed and delivered), specifically including costs associated with design work as well as Integrator’s costs for Utility Adjustment Work, and (b) all data necessary to show the actual impact (if any) on the Critical Path, the Project Schedule, and performance deadlines with respect to all Work which is the subject of a Change Order or a proposed Change Order. Such data shall be provided to TxDOT and any authorized representative of TxDOT reviewing any Claim or Dispute regarding compensation for such Work. Integrator hereby waives the right to obtain compensation for any work for which cost data is required to be provided hereunder, if Integrator fails to maintain and timely provide to TxDOT cost data meeting the requirements of this Agreement.

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

13.7.7.2 All reports shall be signed by Integrator. TxDOT will compare its records with Integrator’s reports, make the necessary adjustments and compile the costs of Work completed under a Time and Materials Change Order. When
such reports are agreed upon and signed by both Parties, they will become the basis of payment.

13.8 Necessary Basic Configuration Changes

13.8.1 Notwithstanding the fact that this Agreement generally obligates Integrator to undertake all work necessary to complete each Project Segment without an increase in the applicable Price, this Section 13.8 provides for an increase in the Price to be made in conjunction with Necessary Basic Configuration Changes, and such changes shall be considered a TxDOT-Directed Change for which TxDOT has not submitted a Change Order or a Request for Change Proposal. If Integrator commenced any construction work affected by the change prior to delivery of an appropriate PCO Notice, the Change Order shall allow TxDOT a credit for the cost of any unnecessary work performed and/or shall exclude any additional costs associated with redoing the work already performed.

13.8.2 Integrator shall be responsible for any cost increases and/or delays which affect the duration of a Critical Path resulting from changes in requirements and obligations of Integrator relating to any Project Segment due to Errors in the Owner Design Documents other than those which require a Necessary Basic Configuration Change. In such event, no change in the Work shall be deemed to have occurred and no Change Order shall be issued for any such cost increases and/or delays.

13.9 Change Orders for Differing Site Conditions, Force Majeure Events, and Hazardous Materials

13.9.1 Differing Site Conditions

13.9.1.1 Subject to the restrictions and limitations set forth in this Section 13, Integrator shall be entitled to a Change Order for certain additional costs which are directly attributable to any Differing Site Conditions to the extent permitted in this Section 13.9.1. No time extension shall be available with respect to Differing Site Conditions, and no delay damages shall be recovered. To the extent that additional costs are incurred in connection with a Project Segment due to changes in Integrator’s obligations relating to the Work resulting from the existence of Differing Site Conditions and which are not reimbursed by insurance proceeds, TxDOT shall be fully responsible for any additional costs directly attributable to changes in Integrator’s obligations hereunder resulting from the existence of Differing Site Conditions, and a Change Order shall be issued to compensate Integrator for such additional costs.

13.9.1.2 During progress of the Work, if Differing Site Conditions are encountered, Integrator shall immediately notify TxDOT thereof telephonically or in person, to be followed immediately by written notification. Integrator shall be responsible for determining the appropriate action to be undertaken, subject to concurrence by TxDOT. In the event that any Governmental Approvals specify a procedure to be followed, Integrator shall follow the procedure set forth in the Governmental Approvals. If the discovery of Differing Site Conditions necessitates a change in the design of the Project, such change shall be submitted to TxDOT for concurrence in accordance with [TP Section 2.4.3].
13.9.1.3 Integrator hereby acknowledges and agrees that it has assumed all risks with respect to the need to work around locations impacted by Differing Site Conditions. Integrator shall bear the burden of proving that a Differing Site Condition exists and that it could not reasonably have worked around the Differing Site Condition so as to avoid additional cost.

13.9.1.4 Each request for a Change Order relating to a Differing Site Condition shall be accompanied by a statement signed by a qualified professional setting forth all relevant assumptions made by Integrator with respect to the condition of the applicable Project Site, justifying the basis for such assumptions, explaining exactly how the existing conditions differ from those assumptions, and stating the efforts undertaken by Integrator to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs. No time extension or costs will be allowed in connection with any work stoppage in affected areas during the investigation period described above.

13.9.2 Force Majeure Events

Subject to the limitations contained in, and upon Integrator’s fulfillment of all applicable requirements of, this Section 13, TxDOT shall issue Change Orders (a) to compensate Integrator for additional costs incurred arising directly from Force Majeure Events (excluding Acceleration Costs or delay and disruption damages other than for any Force Majeure Events which are included in the definition of TxDOT-Caused Delay), and (b) to extend the applicable Completion Deadlines as the result of any delay in a Critical Path directly caused by a Force Majeure Event, to the extent that it is not possible to work around the problem.

13.9.3 Hazardous Materials Management

If compensation is payable to Integrator pursuant to Section 6.3 with respect to Hazardous Materials Management, the amount of the Change Order shall either be a negotiated amount acceptable to the Parties, or 100% of the Reimbursable Hazardous Materials Costs for the work in question, subject to the limitations set forth in this Section 13.9.3. Integrator shall not be entitled to a Change Order for additional compensation or extension of time with respect to the Hazardous Materials Management responsibilities set forth in Sections 6.3.4 and 6.3.5.

Entitlement to compensation or a time extension shall be limited to work performed pursuant to Integrator’s Hazardous Materials Management Plan, Investigative Work Plan and Site Investigation Report for such Hazardous Materials as approved by TxDOT, in writing. No compensation or time extension shall be allowed with respect to (a) immaterial quantities of Hazardous Materials, (b) any Hazardous Materials that could have been avoided by reasonable design modifications or construction techniques (which design modifications or construction techniques would have been consistent with applicable Law), (c) any costs that could have been avoided, or (d) any Hazardous Materials encountered during or in connection with the demolition of buildings, fixtures or other improvements on any parcels within the applicable Project Site.
13.9.3.1 Determination of Reimbursable Amount

13.9.3.1.1 Integrator shall be deemed to have waived the right to collect any and all costs incurred in connection with any Hazardous Materials Management and any right to obtain an extension of a Completion Deadline if TxDOT is not provided written notice of the discovery of Hazardous Materials and afforded the opportunity to inspect sites containing Hazardous Materials before any action is taken which would inhibit TxDOT's ability to ascertain, based on a site inspection, the nature and extent of the materials. In the event of an emergency involving Hazardous Materials, Integrator may take such limited actions as are required by Law without advance notice to TxDOT, but shall provide such notice immediately thereafter (which in no event shall be more than 2 hours after the incident by phone and 24 hours after the incident by written notice).

13.9.3.1.2 In cases involving reimbursement for Hazardous Materials Management under this Section 13.9.3, allowable costs shall be limited to the incremental costs incurred after completion of the testing process to determine whether Hazardous Materials are present, associated with the Hazardous Materials at issue (deducting any avoided costs such as the cost of disposal that would have been incurred had Hazardous Materials not been present). Investigating and characterizing are included in each Price and Integrator shall not be entitled to additional compensation therefor. Integrator shall take all reasonable steps to minimize any such costs. Compensation shall be allowed only to the extent that Integrator demonstrates to TxDOT's reasonable satisfaction that (a) the Hazardous Materials Management could not have been avoided by reasonable design modifications or construction techniques and (b) Integrator's plan for the Hazardous Materials Management represents the approach which is most beneficial to the Project and the public. Integrator shall provide TxDOT with such information, analyses and certificates as may be requested by TxDOT in order to enable a determination regarding eligibility for payment.

13.9.3.2 Time Extensions

Integrator shall not be entitled to an extension of any Completion Deadline with regard to any need to investigate or characterize any Hazardous Materials, regardless of the total quantities. If Integrator encounters Hazardous Materials within the Schematic ROW Limits which, due to no fault of Integrator, results in delays to a Critical Path, then TxDOT shall bear the risk of such delay (excluding those conditions for which Integrator has agreed to be responsible as described in Section 18.1.1(g)).

13.9.3.3 Limitations on Change Orders

Integrator shall have no right to receive any compensation for any Hazardous Materials Management resulting from a situation described in Section 18.1.1(g).
13.9.3.4 Insurance Proceeds

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

13.10 Change Order Records

Integrator shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Work for which it is entitled (or for which it believes it is entitled) to an increase in the applicable Price and the costs of other operations. Integrator shall contemporaneously collect, record in writing, segregate and preserve (a) separate daily occurrence logs as required under TP Sections 2.1.4.5 and/or 2.1.5.5, together with all other data necessary to determine the costs of all Work which is the subject of a Change Order or a requested Change Order, specifically including costs associated with design Work as well as Adjustments, and (b) all data necessary to show the actual impact (if any) of the change on each Critical Path with respect to all Work which is the subject of a Change Order or a proposed Change Order, if the impact on the Project Schedule is in dispute. Such data shall be provided to any dispute resolvers, TxDOT and its authorized representatives as directed by TxDOT, on forms approved by TxDOT. The cost of furnishing such reports is included in Integrator’s predetermined overhead and profit markups.

13.10.1 Daily Work Reports and Data Collection

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

(a) Name, classification, date, daily hours, total hours, rate, and extension for each worker (including both construction and non-construction personnel) for whom reimbursement is requested.

(b) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.

(c) Quantities of materials, prices, and extensions.

(d) Transportation of materials.

The reports shall also state the total costs to date for the Time and Materials Change Order Work.
13.10.2  Supplier's Invoices

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

13.10.3  Execution of Reports

All Time and Materials Change Order reports shall be signed by Integrator’s Project Manager.

13.10.4  Adjustment

TxDOT will compare its records with the completed daily time and material Work reports furnished by Integrator and make any necessary adjustments. When these daily time and material Work reports are agreed upon and signed by both parties, said reports shall become the basis of payment for the Work performed, but shall not preclude subsequent adjustment based on a later audit. Integrator’s cost records pertaining to Work paid for on a time and material basis shall be open, during all regular business hours, to inspection or audit by representatives of TxDOT during the life of this Agreement and for a period of not less than five years after the Final Acceptance Date, and Integrator shall retain such records for that period. Where payment for materials or labor is based on the cost thereof to any Person other than Integrator, Integrator shall make every reasonable effort to insure that the cost records of each such other Person will be open to inspection and audit by representatives of TxDOT on the same terms and conditions as the cost records of Integrator. Payment for such costs may be deleted if the records of such third parties are not made available to TxDOT’s representatives. If an audit is to be commenced more than 60 days after the Final Acceptance Date, Integrator will be given a reasonable notice of the time when such audit is to begin.

13.11  Matters Not Eligible for Change Orders and Waiver

Integrator acknowledges and agrees that no increase in a Price or extension of a Completion Deadline is available except in circumstances expressly provided for herein, that such price increase and time extension shall be available only as provided in this Section 13 and that Integrator shall bear full responsibility for the consequences of all other events and circumstances. Matters which are Integrator’s exclusive responsibility include the following:

(a) Errors in the Design Documents and Construction Documents (including Errors therein traceable to Errors in the Owner Design Documents, subject only to the right to a Change Order to the extent permitted by Section 13.8 or 13.9):
(b) any design changes requested by TxDOT as part of the process of approving the Design Documents for consistency with the requirements of the Contract Documents, the Governmental Approvals and/or applicable Laws;

(c) defective or incorrect schedules of Work or changes in the planned sequence of performance of the Work (unless arising from causes which otherwise give rise to a right to a Change Order);

(d) action or inaction of Integrator’s employees, any member of the Integrator-Related Entity or Subcontractors (unless arising from causes which otherwise give rise to a right to a Change Order);

(e) action or inaction of adjoining property owners or TxDOT’s other contractors (unless arising from causes which otherwise give rise to a right to a Change Order);

(f) groundwater levels or subsurface moisture content;

(g) untimely delivery of equipment or material, or unavailability or defectiveness or increases in costs of material, equipment or products specified by the Contract Documents, except to the extent resulting from a Force Majeure Event;

(h) any costs covered by insurance proceeds received by (or on behalf of) Integrator;

(i) correction of Nonconforming Work and review and acceptance thereof by TxDOT (including rejected design submittals);

(j) failure by any Integrator-Related Entity to comply with the requirements of the Contract Documents, Governmental Approvals or Laws;

(k) delays not on a Critical Path;

(l) any suspensions, terminations, interruptions, denials, non-renewals of, or delays in issuance of a Governmental Approval that is required to be obtained by Integrator, any failure to obtain such Governmental Approval, and compliance with the terms and conditions of all Governmental Approvals;

(m) any situations (other than Force Majeure Events) which, while not within one of the categories delineated above, were or should have been anticipated because such situations are referred to elsewhere in this Agreement or arise out of the nature of the Work;

(n) fluctuations and changes in the price of labor, materials, equipment, Hardware, Software, machinery or any other item required to perform and complete the Work, except to the extent covered by Section 12.1.3 or Section 12.1.4; and
(o) all other events beyond the control of TxDOT for which TxDOT has not expressly agreed to assume liability hereunder.

Integrator hereby assumes responsibility for all such matters, and acknowledges and agrees that assumption by Integrator of responsibility for such risks, and the consequences, costs, and delays resulting therefrom, is reasonable under the circumstances of this Agreement and that contingencies included in the Proposal Project Segment Prices in Integrator’s sole judgment, constitute sufficient consideration for its acceptance and assumption of said risks and responsibilities.

INTEGRATOR HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE WORK, DELAY, SUSPENSION OR ACCELERATION (INCLUDING ANY CONSTRUCTIVE CHANGE, DELAY, SUSPENSION OR ACCELERATION) FOR WHICH INTEGRATOR FAILED TO PROVIDE PROPER AND TIMELY NOTICE OR FAILED TO PROVIDE A TIMELY REQUEST FOR CHANGE ORDER, AND AGREES THAT IT SHALL BE ENTITLED TO NO COMPENSATION OR DAMAGES WHATSOEVER IN CONNECTION WITH THE WORK EXCEPT TO THE EXTENT THAT THE CONTRACT DOCUMENTS EXPRESSLY SPECIFY THAT INTEGRATOR IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION OR DAMAGES.

13.12 Disputes

If TxDOT and Integrator agree that a request to increase a Price and/or extend any Completion Deadline by Integrator has merit, but are unable to agree as to the amount of such price increase and/or time extension, TxDOT agrees to mark up the Request for Change Order or Cost and Schedule Proposal, as applicable, provided by Integrator to reduce the amount of the price increase or time extension as deemed appropriate by TxDOT. In such event, TxDOT will execute and deliver the marked-up Change Order to Integrator within a reasonable period after receipt of a request by Integrator to do so, and thereafter will make payment and/or grant a time extension based on such marked-up Change Order. The failure of TxDOT and Integrator to agree to any Change Order under this Section 13 (including agreement as to the amount of compensation allowed under a Time and Materials Change Order and the disputed amount of the increase in the applicable Price and/or extension of a Completion Deadline in connection with a Change Order as described above) shall be a dispute to be resolved pursuant to Section 19. Except as otherwise specified in the Change Order, execution of a Change Order by both parties shall be deemed accord and satisfaction of all claims by Integrator of any nature arising from or relating to the Work covered by the Change Order. Integrator’s Claim and any award by the dispute resolver shall be limited to the incremental costs incurred by Integrator with respect to the disputed matter (crediting TxDOT for any corresponding reduction in Integrator’s other costs) and shall in no event exceed the amounts allowed by Section 13.7 with respect thereto.

13.13 Changes Not Requiring Change Order

Changes in the Work which have no net cost effect on a Price may be approved in writing by TxDOT as a Deviation, and in such event shall not require a Change Order. Any other
change in the requirements of the Contract Documents shall require either a Directive Letter or a Change Order.

13.14 No Release or Waiver

13.14.1 No extension of time granted hereunder shall release Integrator’s Surety from its obligations. Work shall continue and be carried on in accordance with all the provisions of this Agreement and this Agreement shall be and shall remain in full force and effect during the continuance and until Final Acceptance unless formally suspended or terminated by TxDOT in accordance with the terms hereof. Permitting Integrator to finish the Work or any part thereof after a Completion Deadline, or the making of payments to Integrator after such date, shall not constitute a waiver on the part of TxDOT of any rights under this Agreement.

13.14.2 Neither the grant of an extension of time beyond the date fixed for the completion of any part of the Work, nor the performance and acceptance of any part of the Work or materials specified by this Agreement after a Completion Deadline, shall be deemed to be a waiver by TxDOT of its right to terminate this Agreement for abandonment or failure to complete within the time specified (as it may have been extended) or to impose and deduct damages as may be provided.

13.14.3 No course of conduct or dealings between the parties nor express or implied acceptance of alterations or additions to the Work, and no claim that TxDOT has been unjustly enriched shall be the basis for any claim, request for additional compensation or extension of a Completion Deadline. Further, Integrator shall undertake, at its risk, work included in any request, order or other authorization issued by a person in excess of that person’s authority as provided herein, or included in any oral request. Integrator shall be deemed to have performed such work as a volunteer and at its sole cost. In addition, TxDOT may require Integrator to remove or otherwise undo any such work, at Integrator’s sole cost.
SECTION 14. SUSPENSION

14.1 Suspending for Convenience

TxDOT may, at any time and for any reason, by written notice, order Integrator to suspend all or any part of the Work required under the Contract Documents for the period of time that TxDOT deems appropriate for the convenience of TxDOT. Integrator shall promptly comply with any such written suspension order. Integrator shall promptly recommence Work upon receipt of written notice from TxDOT directing Integrator to resume the work. Any such suspension for convenience shall be considered a TxDOT-Directed Change; provided, however, that TxDOT shall have the right to direct suspensions for convenience on an individual Project Segment basis not exceeding 48 hours each up to a total of 168 hours per Project Segment, which shall not be considered a TxDOT-Directed Change. Adjustments of the applicable Price and Completion Deadlines shall be available for any such TxDOT-Directed Change, subject to Integrator’s compliance with the terms and conditions set forth in Section 13.

14.2 Suspending for Cause

TxDOT has the authority to suspend the Work by written order, wholly or in part, for Integrator’s failure to:

(a) Correct conditions deemed by TxDOT to be unsafe for the Project personnel or the general public; or

(b) Comply with any Governmental Approval, Law or otherwise carry out the requirements of the Contract Documents; or

(c) Carry out orders of TxDOT;

(d) Comply with requirements for developing and implementing the Civil Construction Quality Plan and the Quality Management Program; or

(e) Comply with environmental requirements; or

(f) Provide, obtain or amend, as applicable, any Performance Bond, Payment Bond, Maintenance Performance Bond, Maintenance Payment Bond or Letter of Credit as required pursuant to Section 8.1 or 8.2.

Integrator shall promptly comply with any written suspension order. Integrator shall promptly recommence the Work upon receipt of written notice from TxDOT directing Integrator to resume work. TxDOT shall have no liability to Integrator in connection with any such suspension.

14.3 Responsibilities of Integrator During Suspension Periods

During periods that Work is suspended, Integrator shall continue to be responsible for the Work and shall prevent damage or injury to the Project, provide for drainage and shall
erect necessary temporary structures, signs or other facilities required to maintain the Project. Additionally, Integrator shall continue other Work that has been or can be performed at a Project Site or offsite during the period that Work is suspended.
SECTION 15. TERMINATION FOR CONVENIENCE

15.1 Termination

TxDOT may, at any time, terminate this Agreement and the performance of the Work by Integrator in whole or in part (including with respect to a particular Project Segment), if TxDOT determines, in its sole discretion, that a termination is in TxDOT’s best interest. TxDOT shall terminate by delivering to Integrator a written Notice of Termination for Convenience or Notice of Partial Termination for Convenience specifying the extent of termination and its effective date. Termination (or partial termination) of this Agreement shall not relieve any Surety of its obligation for any claims arising out of the Work performed.

Integrator acknowledges and agrees that TxDOT has no obligation to issue any NTP hereunder, and further agrees that unless and until the Initial NTP is issued, TxDOT shall have no liability to Integrator hereunder.

15.2 Integrator’s Responsibilities After Receipt of Notice of Termination

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

15.2.1 Stop Work as specified in the notice.

15.2.2 Notify all affected Subcontractors that this Agreement is being terminated and that their Subcontracts (including orders for materials, services or facilities) are not to be further performed unless otherwise authorized in writing by TxDOT.

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

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

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

15.2.6 Subject to the prior written approval of TxDOT, settle all outstanding liabilities and all termination settlement proposals arising from termination of Subcontracts that are required to be terminated hereunder.
15.2.7 No later than 90 Days from the effective date of termination, unless extended in writing by TxDOT upon written request of Integrator within this 90-Day period, provide TxDOT with an inventory list of all materials, supplies, equipment, Hardware and Software previously produced, purchased or ordered from Suppliers for use in the Work and not yet used in the Work, including its storage location, as well as any documentation or other property required to be delivered hereunder which is either in the process of development or previously completed but not yet delivered to TxDOT, and such other information as TxDOT may request; and transfer title and deliver to TxDOT through bills of sale or other documents of title, as directed by TxDOT, (a) the Work in process, completed Work, supplies, equipment, any Hardware, Software and other material produced or acquired for the Work terminated that has not already been provided to TxDOT, and (b) the Design Documents, Construction Documents and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, samples, information and other property that would have been required to be furnished to TxDOT if the Work had been completed.

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

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

15.2.10 As authorized by TxDOT in writing, use its best efforts to sell, at reasonable prices, any property of the types referred to in Section 15.2.7; provided, however, that Integrator (a) is not required to extend credit to any purchaser, and (b) may acquire for itself the property under the conditions prescribed and at prices approved by TxDOT. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by TxDOT under the Contract Documents or paid in any other manner directed by TxDOT.

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

15.2.12 Take other actions directed by TxDOT.

15.3 Acceptance

15.3.1 Acceptance of this Agreement as hereinafter specified shall not relieve Integrator of responsibility for damage to materials. Integrator shall continue to be responsible for damage to materials after issuance of the Notice of Termination for Convenience or a Notice of Partial Termination for Convenience, except as follows:
(a) Integrator's responsibility for damage to materials for which partial payment has been made as provided herein shall terminate when TxDOT's Authorized Representative certifies that those materials have been stored in the manner and at the locations directed by TxDOT.

(b) Integrator's responsibility for damage to materials purchased by TxDOT subsequent to the issuance of the notice that this Agreement is to be terminated shall terminate when title and delivery of those materials has been taken by TxDOT.

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

15.4 Settlement Proposal

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

15.5 Amount of Negotiated Termination Settlement

Integrator and TxDOT may agree, as provided in Section 15.4, upon the whole or any part of the amount or amounts to be paid to Integrator by reason of the total or partial termination of Work for convenience pursuant to this Section 15. Such negotiated settlement may include a reasonable allowance for profit solely on Work which has been completed as of the termination date and subsequently inspected and accepted by TxDOT. Such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Price for the Project as a whole or, individually, for the applicable Project Segment(s) with respect to which a total or partial termination for convenience has occurred, as reduced by the amount of payments otherwise made and the applicable Price of Work not terminated. Upon determination of the settlement amount this Agreement will be amended accordingly, and Integrator will be paid the agreed amount as described in this Section 15.5. Nothing in Section 15.6 prescribing the amount to be paid to Integrator in the event that Integrator and TxDOT fail to agree upon the whole amount to be paid to Integrator by reason of the termination of Work pursuant to this Section 15.5, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which
may be agreed upon to be paid to Integrator pursuant to this Section 15.5. TxDOT’s execution and delivery of any settlement agreement shall not affect any of its rights under the Contract Documents with respect to completed Work, relieve Integrator from its obligations with respect thereto, including Warranties, or affect the rights of TxDOT or Integrator under any Performance Bond(s), Payment Bond(s), Maintenance Bond(s), other bonds and/or letters of credit as to such completed or non-terminated Work.

15.6 No Agreement as to Amount of Termination Settlement

If Integrator and TxDOT fail to agree upon either all or some portion of the amount to be paid Integrator by reason of the termination of Work for convenience pursuant to this Section 15, the amount payable (exclusive of interest charges) shall be determined by TxDOT in accordance with the following, but without duplication of any items or of any amounts agreed upon in accordance with Sections 15.4 and 15.5:

15.6.1 TxDOT will pay Integrator the sum of the following amounts for Work performed prior to the effective date of the Notice of Termination for Convenience or Notice of Partial Termination for Convenience:

(a) Integrator’s actual reasonable out-of-pocket cost, without profit, for all Work performed, including mobilization (not to exceed the maximum amounts permitted hereunder), demobilization, work in process and work done to secure the applicable portion of the Project for termination, including reasonable overhead and accounting for any refunds payable with respect to insurance, bond or letter of credit premiums, deposits or similar items, as established to TxDOT’s satisfaction. In determining the reasonable cost, deductions will be made for the cost of materials, supplies, Hardware, Software and equipment to be retained by Integrator, amounts realized by the sale of such items, and for other appropriate credits against the cost of the Work, including those deductions which would be permitted in connection with a Final Payment. When, in the opinion of TxDOT’s Authorized Representative, the cost of a contract item of Work is excessively high due to costs incurred to remedy or replace defective, Nonconforming Work or rejected Work, the reasonable cost to be allowed will be the estimated reasonable cost of performing that Work in compliance with the requirements of the Contract Documents and the excessive actual cost shall be disallowed.

(b) A sum, as profit on clause (a) above, determined by TxDOT to be fair and reasonable, but in no event to exceed 4% of the amount determined under clause (a); however, if it appears that Integrator would have sustained a loss on the entire contract had it been completed, TxDOT shall allow no profit under this clause (b) and shall reduce the settlement to reflect the indicated rate of loss;

(c) The cost of settling and paying claims arising out of the termination of Work under Subcontracts as provided in Section 15.2.6, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor prior to the effective date of the Notice of Termination for Convenience or Notice of Partial Termination for Convenience of Work under this
Agreement, which amounts shall be included in the cost on account of which payment is made under clause (a) above;

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

15.6.2 Integrator acknowledges and agrees that, in the event of termination under this provision, it shall not be entitled to any compensation in excess of the value of the Work performed (determined as provided in Section 15.6.1) plus its settlement costs, and that items such as lost or anticipated profits, unabsorbed overhead and opportunity costs shall not be recoverable by it upon a total or partial termination of this Agreement. The total amount to be paid to Integrator, exclusive of costs described in Sections 15.6.1(c) and (d), may not exceed the total Price for the Project as a whole or, individually, for the applicable Project Segment(s) with respect to which a total or partial termination for convenience has occurred, less the amount of payments previously made. Furthermore, in the event that any refund is payable with respect to insurance, letter of credit or bond premiums, deposits or other items which were previously passed through to TxDOT by Integrator, such refund shall be paid directly to TxDOT or otherwise credited to TxDOT. Except to the extent that TxDOT will have expressly assumed the risk of loss, there will be excluded from the amounts payable to Integrator under Section 15.6.1, the fair value, as determined by TxDOT, of equipment, supplies, Hardware, Software, machinery, materials and property which is destroyed, lost, stolen, or damaged so as to become undeliverable to TxDOT, or sold pursuant to Section 15.2.10. Information contained in the EPDs may be a factor in determining the value of the Work terminated. Upon determination of the amount of the termination payment, this Agreement shall be amended to reflect the agreed termination payment, Integrator shall be paid the agreed amount, and the applicable Price shall be reduced to reflect the reduced scope of Work.

15.6.3 If a termination hereunder is partial as to a particular Project Segment, Integrator may file a proposal with TxDOT for an equitable adjustment of the applicable Price for the continued portion of this Agreement. Any proposal by the Integrator for an equitable adjustment under this clause shall be requested within 90 Days from the effective date of termination unless extended in writing by the TxDOT. The amount of any such adjustment as may be agreed upon shall be set forth in an amendment to this Agreement.

15.7 Reduction in Amount of Claim

The amount otherwise due Integrator under this Section 15 shall be reduced by (a) the amount of any claim which TxDOT may have against any Integrator-Related Entity in connection with this Agreement, (b) the agreed price for, or the proceeds of sale, of property, materials, supplies, equipment, Hardware, Software or other things acquired by
Integrator or sold, pursuant to the provisions of this Section 15, and not otherwise recovered by or credited to TxDOT, (c) all unliquidated advance or other payments made to or on behalf of Integrator applicable to the terminated portion of the Work or Agreement, (d) amounts that TxDOT deems advisable, in its sole discretion, to retain to cover any existing or threatened claims, Liens and stop notices relating to the Project, including claims by Utility Owners, (e) amounts payable to TxDOT as Liquidated Damages or Stipulated Damages; (f) amounts that TxDOT deems advisable, in its sole discretion to retain to cover any existing or anticipated Losses incurred by TxDOT; (g) the cost of repairing any Nonconforming Work (or, in TxDOT's sole discretion, the amount of the credit to which TxDOT is entitled under Section 5.6.2) and (h) any amounts due or payable by Integrator to TxDOT.

15.8 Payment

TxDOT may from time to time, under such terms and conditions as it may prescribe and in its sole discretion, make partial payments on account against costs incurred by Integrator in connection with the terminated portion of this Agreement, whenever in the opinion of TxDOT the aggregate of such payments shall be within the amount to which Integrator will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Section 15, such excess shall be payable by Integrator to TxDOT upon demand together with interest at the rate of the lesser of (a) 12% per annum or (b) the maximum rate allowable under applicable Law.

15.9 Subcontracts

15.9.1 Provisions shall be included in each Subcontract (at all tiers) regarding terminations for convenience, allowing such terminations to be passed through to the Subcontractors and establishing terms and conditions relating thereto, including procedures for determining the amount payable to the Subcontractor upon a termination, consistent with this Section 15.

15.9.2 Each Major Subcontract shall provide that, in the event of a termination for convenience by TxDOT, the Subcontractor will not be entitled to any anticipatory or unearned profit on Work terminated or partly terminated, or to any payment which constitutes consequential damages on account of the termination or partial termination.

15.10 No ConsequentialDamages

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

15.11 No Waiver

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

15.12 Dispute Resolution

The failure of the parties to agree on amounts due under this Section 15 shall be a dispute to be resolved in accordance with Section 19.

15.13 Allowability of Costs

All costs claimed by Integrator under this Section 15 shall be allowable, allocable and reasonable in accordance with the cost principles and procedures of 48 CFR Part 31.
SECTION 16. DEFAULT

16.1 Default of Integrator

16.1.1 Events and Conditions Constituting Default

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

(a) Integrator fails promptly to begin the Work for a Project Segment under the Contract Documents following issuance of an NTP for such Project Segment, or

(b) Integrator fails to resume performance of Work for the Project as a whole or, individually, for a Project Segment which has been suspended or stopped, within a reasonable time after receipt of notice from TxDOT to do so or (if applicable) after cessation of the event preventing performance; or

(c) Integrator fails to perform the Work in accordance with the Contract Documents, including conforming to applicable standards set forth therein for the design, installation, integration, construction and maintenance of the Project, or refuses to correct, remove and replace rejected materials or Nonconforming Work or unacceptable Work, or fails to achieve Final Acceptance within at least 60 Days following a Final Acceptance Completion Deadline; or

(d) Integrator suspends, ceases, stops or abandons the Work for the Project as a whole or, individually, for a Project Segment, or fails to continuously and diligently prosecute the Work for the Project as a whole or, individually, for a Project Segment (exclusive of work stoppage due to termination by TxDOT, or due to and during the continuance of a Force Majeure Event or suspension by TxDOT); or

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

(f) Integrator attempts or purports to assign or transfer the Contract Documents or any right or interest herein, except as expressly permitted under Section 24.4; or

(g) Integrator fails, absent a valid dispute, to make payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors and applicable Law, or shall have failed to comply with any Law or failed reasonably to comply with the instructions of TxDOT consistent with the Contract Documents, or fails to make payment to TxDOT when due of any amounts owing to TxDOT under this Agreement; or

(h) Integrator breaches any other agreement, covenant, representation or warranty contained in the Contract Documents; or
(i) Integrator or any Guarantor fails to discharge or obtain a stay within ten Days of any final judgment(s) or order for the payment of money against it in excess of $100,000 in the aggregate (provided that for purposes hereof, posting of a bond in the amount of 125% of such judgment or order shall be deemed an effective stay); or

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

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

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

(m) Integrator commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect; seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; becomes insolvent, or generally does not pay its debts as they become due; admits in writing its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing; or any of the foregoing acts or events shall occur with respect to any of Integrator’s partners, members or joint venturers, any material Subcontractors, or any Surety, Guarantor or Letter of Credit Bank; or

(n) An involuntary case is commenced against Integrator seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to Integrator or Integrator’s debts under any bankruptcy, insolvency or other similar Laws now or hereafter in effect; seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of Integrator or any substantial part of Integrator’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 Integrator in good faith or shall remain undismissed and unstayed for a period of 60 Days; or any such involuntary case; or any of the foregoing acts or events shall occur with respect to any of Integrator’s partners, members or joint venturers, any material Subcontractors, or any Surety, Guarantor or Letter of Credit Bank; or

(o) Integrator is a party to fraud; or

(p) A Persistent Breach occurs.
16.1.2 Notice and Opportunity to Cure

(a) Except for a breach declared under clause (p) above, Integrator and Surety shall be entitled to 15 Days written notice and opportunity to cure any breach before an Event of Default is declared under clauses (a) through (d) and clauses (g) through (i) of Section 16.1.1, provided that no such notice and opportunity to cure is required for any breach which by its nature cannot be cured (which shall include the items described in clauses (e) through (f) and clauses (j) through (o) of Section 16.1.1). Failure to provide notice to Surety shall not preclude TxDOT from exercising its remedies against Integrator. If a breach is capable of cure but, by its nature, cannot be cured within 15 Days, as determined by TxDOT, such additional period of time shall be allowed as may be reasonably necessary to cure the breach so long as Integrator commences such cure within such 15-Day period and thereafter diligently prosecutes such cure to completion; provided, however, that in no event shall such cure period exceed 60 Days in total unless TxDOT, in its sole discretion, agrees in writing to extend such time.

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

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

16.2 Remedies

16.2.1 If any breach described in Section 16.1.1 is not subject to cure or is not cured within the period (if any) specified in Section 16.1.2, TxDOT may declare that an “Event of Default” has occurred and notify Integrator to discontinue the Work under this Agreement as a whole, or with respect to any Project Segment(s) with respect to which the Event of Default has occurred. The declaration of an Event of Default shall be in writing and given to Integrator and Surety. In addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under the Contract Documents, the Performance Bond(s), the Maintenance Bond(s) and any letters of credit, if an Event of Default shall occur, TxDOT shall have the following rights without further notice and without waiving or releasing Integrator from any obligations and Integrator shall have the following obligations (as applicable):

(a) TxDOT may terminate this Agreement or a portion thereof (including with respect to any Project Segment(s) with respect to which the Event of
Default has occurred), including Integrator’s rights of entry upon, possession, control, operation and maintenance of the Project, in which case, the provisions of Sections 15.2 and 15.3 shall apply:

(b) If and as directed by TxDOT, Integrator shall withdraw from all Project Sites specified by TxDOT and shall remove, at TxDOT’s direction, materials, equipment, tools and instruments used by, and any debris or waste materials generated by, any Integrator-Related Entity in the performance of the Work;

(c) Integrator shall deliver to TxDOT possession of any or all Design Documents, Construction Documents and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, information, schedules, samples, shop drawings, Hardware, Software, electronic files and other documents and facilities related to the Project that TxDOT deems necessary for completion of the Work;

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

(e) TxDOT may deduct from any amounts payable by TxDOT to Integrator such amounts payable by Integrator to TxDOT, including reimbursements owing, Liquidated Damages, Stipulated Damages, an amount TxDOT deems advisable to cover any existing or threatened claims, Liens and stop notices of Subcontractors, laborers, or Utility Owners against Integrator or against TxDOT, the amount of any Losses that have accrued, the cost to complete or remediate uncompleted Work or Nonconforming Work or other damages or amounts that TxDOT has determined are or may be payable to TxDOT under the Contract Documents;

(f) TxDOT may draw or realize upon any letter of credit, bonds, funds, collateral or security then held by TxDOT;

(g) TxDOT shall have the right, but not the obligation, to pay such amount and/or perform such act as may then be required;

(h) TxDOT may appropriate any or all materials, supplies, Hardware, Software and equipment on each Project Site as may be suitable and acceptable and may direct the Surety to complete this Agreement or may enter into an agreement for the completion of this Agreement according to the terms and provisions hereof with another contractor or the Surety, or use such other methods as may be required for the completion of the Work and the requirements of the Contract Documents, including completion of the Work by TxDOT; and/or

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

16.2.2 If an Event of Default shall have occurred, Integrator, Surety and each
Guarantor shall be jointly and severally liable to TxDOT (in addition to any other damages
under the Contract Documents except for those costs intended to be covered by
Liquidated Damages and Stipulated Damages payable hereunder) for all costs reasonably
incurred by TxDOT or any party acting on TxDOT’s behalf in completing the Work or
having the Work completed by another Person (including any re-procurement costs, throw
away costs for unused portions of the completed Work, and increased financing costs).
The preceding sentence shall expressly include all Maintenance Work and Work to be
performed during the Maintenance Term. Upon occurrence of an Event of Default and so
long as it continues, TxDOT shall be entitled to withhold all or any portion of further
payments to Integrator until the later of (i) the latest Final Acceptance Date occurs for any
Project Segment with respect to which an NTP has been issued or (ii) the date on which
TxDOT otherwise accepts such Project Segment as complete or determines that it will not
proceed with completion, at which time TxDOT will determine whether and to what extent
Integrator is entitled to further payments. Promptly following such Final Acceptance Date
or the date on which TxDOT otherwise accepts such Project Segment as complete or
determines that it will not proceed with completion, the total cost of all completed Work
shall be determined, and TxDOT shall notify Integrator, its Surety and each Guarantor in
writing of the amount, if any, that Integrator, its Surety and each Guarantor shall pay
TxDOT or TxDOT shall pay Integrator or its Surety with respect thereto. All costs and
charges incurred by TxDOT, including attorneys’, consultants’, accountants’ and expert
witness fees and costs, together with the cost of completing the Work under the Contract
Documents and any other deduction that TxDOT would be entitled to make with respect to
a Final Payment of the Price (including those set forth in Section 12.4), will be deducted
from any moneys due or which may become due Integrator or its Surety. If such expense
exceeds the sum which would have been payable under this Agreement, then Integrator
and its Surety(ies) and each Guarantor shall be liable and shall pay to TxDOT the amount
of such excess. If the Surety or Guarantor fails to pay such amount immediately upon
TxDOT’s demand, then TxDOT shall be entitled to collect interest from the Surety or
Guarantor on the amounts TxDOT is required to pay in excess of the remaining balance of
the applicable Prices for which an NTP has been issued. The interest rate which the
Surety and each Guarantor shall pay shall be the lesser of (a) 12% per annum or (b) the
maximum rate allowable under applicable Law. The interest rate shall accrue on all
amounts TxDOT has had to pay excess of the remaining balance of the applicable Prices
for which an NTP has been issued from the date of TxDOT payment.

16.2.3 Integrator acknowledges that if a default under Section 16.1.1(m) or (n)
occurs, such event could impair or frustrate Integrator’s performance of the Work.
Accordingly, Integrator agrees that upon the occurrence of any such event, TxDOT shall
be entitled to request of Integrator, or its successor in interest, adequate assurance of
future performance in accordance with the terms and conditions hereof. Failure to comply
with such request within 10 Days of delivery of the request shall entitle TxDOT to terminate this Agreement and to the accompanying rights set forth above. Pending receipt of adequate assurance of performance and actual performance in accordance therewith, TxDOT shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be credited against and deducted from TxDOT's payment obligations hereunder. The foregoing shall be in addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under this Agreement and the Performance Bond(s), the Warranty Bonds, the Maintenance Bonds and any letter of credit.

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

16.2.5 If this Agreement is terminated for grounds which are later determined not to justify a termination for default, such termination shall be deemed to constitute a termination for convenience pursuant to Section 15.

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

16.2.7 If TxDOT suffers damages as a result of Integrator’s breach or failure to perform an obligation under the Contract Documents, then, subject to the limitation on liability contained in Section 17.6, TxDOT shall be entitled to recovery of such damages from Integrator regardless of whether the breach or failure that gives rise to the damages ripens into an Event of Default.

16.2.8 Integrator and Surety shall not be relieved of liability for continuing Liquidated Damages or Stipulated Damages on account of a default by Integrator hereunder or by TxDOT’s declaration of an Event of Default, or by actions taken by TxDOT under this Section 16.2.

16.2.9 TxDOT’s remedies with respect to Nonconforming Work shall include the right to accept such Work and receive payment as provided in Section 5.6.2 in lieu of the remedies specified in this Section 16.

16.3 Failure to Comply Caused by Delay Event

Notwithstanding anything to the contrary contained herein, the Parties agree that the term “Event of Default” shall specifically exclude Integrator’s failure to meet a Completion Deadline, if such failure is caused solely and directly by an event or events beyond Integrator’s control, which event was not due, in whole or in part, to the breach, default,
fault, act, omission, negligence, recklessness, gross negligence or willful misconduct of any Integrator-Related Entity, and which delay could not have been avoided by due diligence and use of reasonable efforts by Integrator. The foregoing circumstance is referred to herein as a “Delay Event,” with the understanding that the term “Delay Event” does not apply in cases where the delay to the Critical Path is resolved by extension of the applicable Completion Deadline(s) under Section 13. Delay Events shall only apply to the particular Project Segment with respect to which it has occurred and shall not apply to any other Project Segment or any other aspect of the Work. If Integrator fails to meet a Project Segment Schedule as a result of a Delay Event, TxDOT shall not be entitled to terminate this Agreement or exercise any of the remedies described in Section 16.2 for such failure of Integrator to perform, except as follows: (i) if Integrator fails to perform or delays the performance of any Work as the result of a Delay Event, then TxDOT shall have the right, but not the obligation, to cause third parties to perform such Work, and, in such event, the cost of such Work shall be deducted from the applicable Price; and (ii) occurrence of a Delay Event shall not excuse Integrator from its obligation to implement a Recovery Schedule or from its obligation to pay damages, including Liquidated Damages, for failure to achieve the applicable System Acceptance, Punch List Acceptance or Final Acceptance by the applicable Completion Deadline; provided, however, that to the extent that Integrator is excused from payment of Liquidated Damages by reason of Section 17.6 or otherwise, TxDOT shall be entitled to terminate this Agreement and exercise any and all remedies available. Integrator shall promptly notify TxDOT in writing of any occurrence of a Delay Event and of the steps that Integrator intends to implement to mitigate the delays arising therefrom.

16.4 Right to Stop Work for Failure by TxDOT to Make Undisputed Payment

Integrator shall have the right to stop Work if TxDOT fails to make an undisputed payment due hereunder within 15 business days after TxDOT’s receipt of written notice of nonpayment from Integrator. Any such work stoppage shall be considered a suspension for convenience under Section 14. Integrator shall not have the right to terminate this Agreement for default as the result of any failure by TxDOT to make an undisputed payment due hereunder, but Integrator shall have the right to declare a termination for convenience under Section 15 by delivering to TxDOT a written notice of termination specifying its effective date, if such nonpayment continues for more than 180 Days after TxDOT’s receipt of written notice of nonpayment from Integrator.

16.5 Anticipatory Breach

16.5.1 Integrator recognizes and acknowledges that a pattern or practice of continuing, repeated or numerous breaches or failures to perform by Integrator, even if individual instances are not material or are eventually cured, will undermine the confidence and trust essential to the success of this Agreement and will have a material, cumulative adverse impact on the value of this Agreement to TxDOT. Integrator acknowledges and agrees that the measures for determining the existence of such a pattern or practice described in the definition of Persistent Breach are a fair and appropriate objective basis to conclude that such a pattern or practice will continue.
16.5.2 Accordingly, in the event TxDOT issues a notice under Section 16.1.2 with respect to a breach under Section 16.1.1(p) for a Persistent Breach, TxDOT shall have the right to declare an anticipatory breach of this Agreement by Integrator. So long as the circumstances under the definition of Persistent Breach have occurred, any such declaration of anticipatory breach shall be valid, conclusive and binding, and such breach shall be deemed material even if such items comprising the Persistent Breach shall have been cured.

16.5.3 Integrator shall have a reasonable period of time, in no event to exceed the time period for each stated below (measured from the date TxDOT issues notice of anticipatory breach), to fully and completely deliver all, and not less than all, of the following assurances of performance, which Integrator agrees and acknowledges are (i) the minimum necessary to tender adequate assurance of performance and (ii) reasonable, fair and appropriate to bring to a halt the pattern and practice of continuing, repeated and numerous breaches and failure to perform:

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

(b) Any new Key Personnel, to the extent required by TxDOT, each replacement to be acceptable to TxDOT in its sole discretion, to be completed no later than 60 Days;

(c) A revised and restated PSQP, TSSQP, and CQP, meeting best industry standards and practices, in form and content acceptable to TxDOT in its good faith discretion, to be completed and delivered no later than 60 Days. As part of the revised plans, TxDOT may, in its sole discretion, increase the level of TxDOT involvement and oversight, at the sole cost and expense of Integrator and such involvement shall not be cause for any relief or rights on the part of Integrator under the Contract Documents or otherwise;

(d) Replacement of each subcontractor that TxDOT reasonably determines is or was a material source of any continuing, repetitive or chronic breach or failure to perform (including any subcontractor with responsibility for quality assurance or quality control), with a substitute subcontractor acceptable to TxDOT in its good faith discretion, to be completed no later than 60 Days; and

(e) Notwithstanding any limitation on the maximum amount of the Letter of Credit set forth under Section 8.2.1 or otherwise, Integrator shall increase the maximum amount available under the Letter of Credit by 100%, to be completed within 15 Days

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

16.5.5 Nothing contained in this Section 16.5 shall modify, alter, discharge or release Integrator from any obligations to pay Stipulated Damages or other compensation under this Agreement.
SECTION 17. LIQUIDATED DAMAGES, STIPULATED DAMAGES AND LIMITATION OF LIABILITY

17.1 Liquidated Damages Generally

Integrator understands and agrees that if Integrator fails to complete the Work in accordance with the Contract Documents, TxDOT will suffer substantial Losses. Integrator agrees that it shall be liable for all such Losses. Integrator and TxDOT have agreed to require payment of Liquidated Damages with respect to certain types of Losses. Integrator acknowledges and agrees that the Liquidated Damages are intended to compensate TxDOT solely for Integrator’s failure to meet the System Acceptance Deadline set forth in Section 4.2.1 and shall not excuse Integrator from liability from any other breach of requirements of the Contract Documents, including any failure of the Work to conform to applicable requirements. Integrator shall not be liable for actual damages in addition to the Liquidated Damages for Integrator’s failure to meet the System Acceptance Deadline. The fact that TxDOT has agreed to accept Liquidated Damages as compensation for its damages associated with any delay in meeting a System Acceptance Deadline shall not preclude TxDOT from exercising its other rights and remedies respecting the delay set forth in Section 16.2 and, if applicable, Section 16.3 or elsewhere in this Agreement, other than the right to collect other damages due solely to the delay, except that TxDOT agrees not to exercise such other rights and remedies respecting the delay so long as (a) the applicable Project Segment Schedule demonstrates that Integrator is capable of meeting such System Acceptance Deadline within 90 Days after the Completion Deadline and (b) Integrator diligently performs the Work in accordance with said schedule.

17.2 Amount of Liquidated Damages

Integrator acknowledges and agrees that because of the unique nature of the Project and each Project Segment, the fact that the Project Segments are essential parts of the Texas highway system, and the fact that inconvenience to the traveling public will be one of the significant impacts of any failure by Integrator to achieve each System Acceptance by the applicable System Acceptance Deadline, it is impracticable and extremely difficult to ascertain and determine the actual Losses which would accrue to TxDOT and the public in such event. Therefore, Integrator shall pay TxDOT a liquidated amount (the “Liquidated Damages”) as deemed compensation to TxDOT for such Losses. Integrator shall pay TxDOT Liquidated Damages for each Day after the applicable System Acceptance Deadline and through the date of System Acceptance, but not to exceed 365 Days, in the amount set forth in Exhibit Y for each Project Segment, Integrator shall pay TxDOT Liquidated Damages in a dollar amount per Day to be set forth in the relevant Project Segment Supplement, determined by TxDOT in accordance with the methodology described for Project Segment Liquidated Damages in Exhibit Y, but not to exceed 365 Days. Notwithstanding the occurrence of System Acceptance, if for any reason it is subsequently determined that Integrator’s representations regarding the satisfaction of the conditions to System Acceptance of any Project Segment were materially incorrect and TxDOT revokes such System Acceptance, then the Liquidated Damages period shall be re instituted, commencing from the date that such System Acceptance is revoked, but not
to exceed 365 Days total when aggregated with any Liquidated Damages paid by Integrator prior to the initial System Acceptance.

17.3 **Reasonableness of Liquidated Damages**

Integrator acknowledges and agrees that the foregoing damages have been set based on an evaluation by TxDOT of damages to TxDOT and the public caused by late System Acceptance. Integrator and TxDOT agree that the amount of such damages are impossible to ascertain as of the date of execution hereof and the parties have agreed to such Liquidated Damages in order to fix Integrator’s costs and to avoid later disputes over which items are properly chargeable to Integrator. It is understood and agreed by Integrator that any Liquidated Damages payable in accordance with Section 17.2 are in the nature of liquidated damages and not a penalty and that such sums are reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of the proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. Integrator further acknowledges and agrees that Liquidated Damages may be owing even though no Event of Default has occurred.

17.4 **Stipulated Damages**

17.4.1 **Stipulated Damages Generally**

Integrator understands and agrees that if the Performance Requirements are not met for any Project Segment at any time after System Acceptance, TxDOT will suffer substantial Losses. Integrator agrees that it shall be liable for all such Losses to the extent set forth in this Section 17.4.1 and elsewhere in this Agreement. Integrator and TxDOT have agreed to stipulate to a process to determine the amount of damages payable for such failure. Integrator acknowledges and agrees that such Stipulated Damages are intended to compensate TxDOT solely for its damages caused by the failure to meet the Performance Requirements, and shall not excuse Integrator from liability to correct any defects in the Project Segment or from any other breach of requirements of the Contract Documents. TxDOT agrees to accept Stipulated Damages as its sole compensation for damages caused by such failure, provided that TxDOT shall not be precluded from exercising its other rights and remedies respecting such failure, including requiring Integrator to make adjustments to the Project Segment that will cause it to meet the Performance Requirements after TxDOT’s written notice to Integrator of the failure.

17.4.2 **Amount of Stipulated Damages**

Integrator acknowledges and agrees that because of the unique nature of the Project and each Project Segment, and the fact that performance of the System in conformance with the Performance Requirements is essential to TxDOT’s ability to collect toll revenue to enable it to continue to finance, construct, operate and maintain and improve the Texas highway system, it is not possible to ascertain and determine the actual Losses, including lost toll revenues, which would accrue to TxDOT and the public from such failure. Therefore, commencing upon the applicable System Acceptance date, Integrator shall pay to TxDOT an amount determined as follows (the “Stipulated Damages”) as deemed compensation to TxDOT for lost toll revenues.
(a) With respect to any failure to meet the Performance Requirements set forth in the Technical Provisions for any Project Segment, including those set forth in Section 4.2 and in Table 1 and Table 2 of the Technical Provisions, the parties hereby agree that the Stipulated Damages payable for lost toll revenues shall be calculated based upon a comparison of the number of transactions identified by the System during the period of failure to meet the Performance Requirements and the number of transactions identified by the System during a comparable prior period determined by TxDOT; provided, however, that if the Project Segment does not have at least 6 months of operating history from which to compare, Stipulated Damages shall be determined by reference to the traffic and revenue study estimates for the period of time in question. For example, if, during the period in which the System fails to meet the Performance Requirements, the System identifies 100 transactions, and during a comparable prior period the System identifies 1000 transactions, the Stipulated Damages for the failure to meet the Performance Requirements for the period in question would be the value of the difference in the number of transactions, i.e., an amount equal to 900 multiplied by the toll rate(s) applicable to such transactions.

(b) If during any calendar month, the mean time to respond to a maintenance call or the mean time to complete repairs exceeds the time stated in TP Section 7.10, then for each Project Segment, Integrator shall pay TxDOT a dollar amount per hour to be set forth in the relevant Project Segment Supplement. Expressed as a formula, Stipulated Damages for Integrator’s failure to meet the required mean time to respond to a maintenance call or to complete repairs with the required mean time to complete repairs shall equal:

$$[(TTR - RTTR)NRI \times $100] = \text{damages for failure to meet required mean time to respond/repair}$$

where:

- \( TTR \) = Total Time to Respond to Maintenance Calls/Perform Repairs;
- \( RTTR \) = Required Mean Time to Respond to Maintenance Calls/Perform Repairs;
- \( NRI \) = Number of Response Incidents (with each component, lane, or subsystem affected counting as one incident).

Integrator may be liable for Stipulated Damages as a result of either or both of the foregoing calculations. In no event shall the foregoing calculations ever be a negative number or result in Integrator being entitled to additional payment from TxDOT (e.g., as a result of a faster repair then required). Integrator understands and agrees that any Stipulated Damages payable in accordance with this Section 17.4.2 are in the nature of stipulated damages and not a penalty and that the methodology for determining such sums was established based on the parties’ agreement that the amounts so determined will constitute a reasonable approximation of the actual damages from lost toll revenues that TxDOT will accrue as a result of the circumstances giving rise to such Stipulated
Damages. Integrator further acknowledges and agrees that Stipulated Damages may be owing even though no Event of Default has occurred.

17.5 Payment; Offset; Reduction; Waiver

17.5.1 Liquidated Damages and Stipulated Damages shall be payable by Integrator to TxDOT within 10 Days after Integrator’s receipt of an invoice therefor from TxDOT.

17.5.2 TxDOT shall have the right to deduct any amount owed by Integrator to TxDOT hereunder (i) from any amounts owed by TxDOT to Integrator, including any Retainage which may be payable by TxDOT to Integrator pursuant to Section 12.3.1; and/or (ii) by tendering or drawing upon the Performance Bond or Maintenance Performance Bond provided for the relevant Project Segment pursuant to Section 8.1.1 or Section 8.1.4, respectively, and/or any Letter of Credit provided pursuant to Section 8.2 (whether applicable to the affected Project Segment or not). In the event of any such deduction from the Retainage for a Project Segment, or draw against a letter of credit provided with respect to a Project Segment, Integrator shall replenish the applicable Retainage and reinstate the amount available to draw under the relevant letter of credit as required by Section 8.2, Section 12.3.1.4 and Section 12.3.1.5.

17.5.3 Permitting or requiring Integrator to continue and finish the Work or any part thereof after a Completion Deadline or notwithstanding any failure to meet the Performance Requirements, as applicable, shall not act as a waiver of TxDOT’s right to receive Liquidated Damages or Stipulated Damages hereunder or any rights or remedies otherwise available to TxDOT.

17.6 Limitation of Integrator’s Liability

To the extent permitted by applicable Law, TxDOT will not seek indemnification and defense under Section 18 or to recover damages (including actual, indirect, special, consequential, multiple or punitive damages) from Integrator resulting from breach of this Agreement (whether arising in contract, negligence or other tort, or any other theory of law) in excess of the sum of (a) all those costs reasonably incurred by TxDOT or any party acting on TxDOT’s behalf in completing or correcting the Work or having the Work completed or corrected by another Person, plus (b) an amount equal to the greater of (i) $12,500,000.00 (which amount shall specifically include any Liquidated Damages and Stipulated Damages paid pursuant to this Section 17 as well as any payments made by Integrator pursuant to Section 18) or (ii) 20% of the aggregate of the Project Segment Prices for Work for which an NTP has been issued hereunder (including Project Segments for which System Acceptance, Punch List Acceptance and/or Final Acceptance have occurred); provided, however, that in no event shall the amount described in this clause (b) ever be required to exceed $30,000,000; plus (c) any amounts paid by Integrator which are covered by insurance proceeds; plus (d) all Losses incurred by any Indemnified Party relating to or arising out of any illegal activities, fraud, criminal conduct, gross negligence or willful misconduct on the part of any Integrator-Related Entity; and plus (e) work required or arising under the Warranties.

TEXAS DEPARTMENT OF TRANSPORTATION
Statewide Toll System Integration and Maintenance Agreement
409308_4.DOC
SECTION 18. INDEMNIFICATION

18.1 Indemnifications by Integrator

18.1.1 SUBJECT TO SECTION 17.6, AND SECTION 18.1.3, INTEGRATOR SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS TXDOT, THE MEMBERS OF THE COMMISSION, FHWA, THE PROJECT MANAGEMENT CONSULTANT AND THEIR SUCCESSORS AND ASSIGNS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO AS THE “INDEMNIFIED PARTIES”) FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, SUITS, JUDGMENTS, INVESTIGATIONS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, COSTS, PENALTIES, FINES, DAMAGES, LOSSES, LIABILITIES AND RESPONSE COSTS, INCLUDING ANY INJURY TO OR DEATH OF PERSONS OR DAMAGE TO OR LOSS OF PROPERTY, AND INCLUDING PENALTIES, FINES, ATTORNEYS', ACCOUNTANTS' AND EXPERT WITNESS FEES AND COSTS INCURRED IN CONNECTION WITH THE ENFORCEMENT OF THIS INDEMNITY, ARISING OUT OF, RELATING TO OR RESULTING FROM:

(a) THE BREACH OR ALLEGED BREACH OF THIS AGREEMENT BY ANY INTEGRATOR-RELATED ENTITY; AND/OR

(b) THE FAILURE OR ALLEGED FAILURE BY ANY INTEGRATOR-RELATED ENTITY TO COMPLY WITH THE GOVERNMENTAL APPROVALS; ANY APPLICABLE ENVIRONMENTAL LAWS OR OTHER GOVERNMENTAL RULES (INCLUDING GOVERNMENTAL RULES REGARDING HAZARDOUS MATERIALS MANAGEMENT); AND/OR

(c) ANY ALLEGED PATENT OR COPYRIGHT INFRINGEMENT OR OTHER ALLEGEDLY IMPROPER APPROPRIATION OR USE OF TRADE SECRETS, PATENTS, PROPRIETARY INFORMATION, KNOW-HOW, COPYRIGHT RIGHTS OR INVENTIONS IN PERFORMANCE OF THE WORK AND/OR THE SYSTEM, OR ARISING OUT OF ANY USE IN CONNECTION WITH THE PROJECT AND/OR THE SYSTEM OF METHODS, PROCESSES, SOFTWARE, DESIGNS, INFORMATION, OR OTHER ITEMS FURNISHED OR COMMUNICATED TO TXDOT OR ANOTHER INDEMNIFIED PARTY PURSUANT TO THIS AGREEMENT PROVIDED THAT IF INFRINGEMENT CAN BE AVOIDED BY MODIFICATION TO THE ALLEGEDLY INFRINGING ARTICLE, TXDOT AGREES TO ALLOW SUCH MODIFICATION, AT INTEGRATOR’S SOLE COST AND EXPENSE, UNLESS THE FORM, FIT OR FUNCTION OF THE ALLEGEDLY INFRINGING ARTICLE OR THE SYSTEM IS, IN TXDOT’S SOLE DETERMINATION, ADVERSELY AFFECTED; AND FURTHER PROVIDED THAT THIS INDEMNITY SHALL NOT APPLY TO ANY INFRINGEMENT TO THE EXTENT RESULTING FROM (i) TXDOT’S FAILURE TO COMPLY WITH SPECIFIC WRITTEN INSTRUCTIONS REGARDING USE PROVIDED TO TXDOT BY INTEGRATOR; (ii) COMPLIANCE WITH WRITTEN SPECIFICATIONS PRESCRIBED BY TXDOT WITH RESPECT TO WHICH (1) INTEGRATOR HAS COMPLIED IN FULL; (2) THE REASON FOR THE INFRINGEMENT SOLELY ARISES OUT OF TXDOT’S SPECIFICATIONS; AND (3) INTEGRATOR HAS NOTIFIED TXDOT IN WRITING IN ADVANCE OF POTENTIAL INFRINGEMENT AND
TXDOT HAS DIRECTED INTEGRATOR TO PROCEED AND DISREGARD THE
POTENTIAL INFRINGEMENT, OR (iii) MODIFICATIONS TO THE DELIVERABLES NOT
MADE BY A INTEGRATOR-RELATED ENTITY; AND/OR

(d) THE ACTUAL OR ALLEGED ACT, ERROR, OMISSION OR
MISCONDUCT OF ANY INTEGRATOR-RELATED ENTITY IN OR ASSOCIATED WITH
PERFORMANCE OF THE WORK; AND/OR

(e) ANY AND ALL CLAIMS BY ANY GOVERNMENTAL OR TAXING
AUTHORITY CLAIMING TAXES BASED ON GROSS RECEIPTS, PURCHASES OR
SALES, THE USE OF ANY PROPERTY OR INCOME OF ANY INTEGRATOR-RELATED
ENTITY WITH RESPECT TO ANY PAYMENT FOR THE WORK MADE TO OR EARNED
BY ANY INTEGRATOR-RELATED ENTITY; AND/OR

(f) ANY AND ALL STOP NOTICES AND/OR LIENS FILED IN
CONNECTION WITH THE WORK, INCLUDING ALL EXPENSES AND ATTORNEYS',
ACCOUNTANTS' AND EXPERT WITNESS FEES AND COSTS INCURRED IN
DISCHARGING ANY STOP NOTICE OR LIEN, PROVIDED THAT TXDOT IS NOT IN
DEFAULT IN PAYMENTS OWING TO INTEGRATOR WITH RESPECT TO SUCH WORK;
AND/OR

(g) ANY SPILL OR RELEASE OR THREATENED SPILL OR
RELEASE OF A HAZARDOUS MATERIAL (I) WHICH WAS BROUGHT ONTO ANY
PROJECT SITE BY ANY INTEGRATOR-RELATED ENTITY, OR (II) ATTRIBUTABLE TO
THE ACTS, OMISSIONS, NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF
CONTRACT OR GOVERNMENTAL RULES BY ANY INTEGRATOR-RELATED ENTITY;
AND/OR

(h) THE CLAIM OR ASSERTION BY ANY CONTRACTOR OF
INCONVENIENCE, DISRUPTION, DELAY OR LOSS CAUSED BY INTERFERENCE BY
ANY INTEGRATOR-RELATED ENTITY WITH OR HINDERING THE PROGRESS OR
COMPLETION OF WORK BEING PERFORMED BY OTHER CONTRACTORS OR
INTEGRATORS AS DESCRIBED IN SECTION 23.1, OR FAILURE OF ANY
INTEGRATOR-RELATED ENTITY TO COOPERATE REASONABLY WITH OTHER
CONTRACTORS AND INTEGRATORS IN ACCORDANCE THEREWITH; AND/OR

(i) INVERSE CONDEMNATION, TRESPASS, NUISANCE OR
SIMILAR TAKING OF OR HARM TO REAL PROPERTY BY REASON OF (i) THE
FAILURE OF ANY INTEGRATOR-RELATED ENTITY TO COMPLY WITH
REQUIREMENTS OF THE CONTRACT DOCUMENTS OR GOVERNMENTAL
APPROVALS RESPECTING CONTROL AND MITIGATION OF CONSTRUCTION
ACTIVITIES AND CONSTRUCTION IMPACTS, (ii) THE INTENTIONAL MISCONDUCT
OR NEGLIGENCE OF ANY INTEGRATOR-RELATED ENTITY, OR (iii) THE ACTUAL
PHYSICAL ENTRY ONTO OR ENCROACHMENT UPON ANOTHER'S PROPERTY BY
ANY INTEGRATOR-RELATED ENTITY.

18.1.2 SUBJECT TO SECTIONS 13.8 AND 18.1.3, INTEGRATOR SHALL
RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES
18.1.3 Subject to the releases and disclaimers herein, Integrator’s indemnity obligation shall not extend to any Loss, damage or cost to the extent that such loss, damage or cost was caused by:

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

(b) TxDOT’s material breach of any of its obligations under the Contract Documents.

18.1.4 In claims by an employee of Integrator, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 18.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Integrator or a Subcontractor under workers’ compensation, disability benefit or other employee benefits laws.

18.1.5 Integrator hereby acknowledges and agrees that it is Integrator’s obligation to cause the Project to be designed and to construct the Project in accordance with the Contract Documents and that the Indemnified Parties are fully entitled to rely on Integrator’s performance of such obligation. Integrator further agrees that any certificate, review and/or approval by TxDOT and/or others hereunder shall not relieve Integrator of any of its obligations under the Contract Documents or in any way diminish its liability for performance of such obligations or its obligations under this Section 18.

18.2 Indemnification by TxDOT

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

18.3 No Effect on Other Rights

The foregoing obligations shall not be construed to negate, abridge, or reduce other rights or obligations which would otherwise exist in favor of a party indemnified hereunder.

18.4 CERCLA Agreement

The indemnities set forth in Sections 18.1.1(g) and 18.2 are intended to operate as agreements pursuant to Section 9607(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to insure, protect, hold harmless and indemnify the Indemnified Parties.

18.5 Intent of Indemnity for Breach of Agreement

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

18.6 No Relief from Responsibility

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

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

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

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

(d) be deemed or construed as any kind of representation or warranty, express or implied, by TxDOT.
18.7 Right to Rely

Notwithstanding the provisions of Section 18.6, (a) Integrator shall be entitled to rely on specific written Deviations TxDOT gives under this Agreement, (b) TxDOT is not relieved from any liability arising out of a material misrepresentation under any written statement TxDOT knowingly and intentionally delivers, and (c) TxDOT is not relieved from its obligations under the Contract Documents.
SECTION 19. PARTNERING AND DISPUTE RESOLUTION

19.1 General Dispute Resolution Provisions

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

19.2 Partnering

19.2.1 Schedule; Participation

As soon as possible after execution of this Agreement, TxDOT and Integrator shall jointly select a third-party facilitator to conduct the partnering meetings. The cost of the facilitator shall be shared equally by TxDOT and Integrator. Partnering meetings shall be conducted at the office of TxDOT or at such location as otherwise agreed upon by the Parties. Persons who should attend the partnering meetings include appropriate Key Personnel and executives of the Parties.

19.2.2 Confidentiality

Subject to the requirements of the Public Information Act, neither the language of this Section 19.2.2 nor any statements made or materials prepared during or relating to partnering meetings, including any statements made or documents prepared by the facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

19.3 Disputes Governed by this Section; Disputes; Priorities

If partnering fails to resolve an issue and Integrator elects to pursue a formal Dispute with TxDOT, the Dispute shall be resolved pursuant to 43 Texas Administrative Code Section 9.1 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 Exhibit M attached to this Agreement. Section 19 shall not apply to (i) claims that are not actionable against TxDOT by Integrator on its own behalf or on behalf of any of its Subcontractors in accordance with Section 19.4, (ii) claims arising solely in tort; (iii) claims for indemnity under Section 18; (iv) claims for injunctive relief; (v) claims against insurance companies, including any Subcontractor Dispute that is covered by insurance; (vi) any Dispute based on remedies expressly created by statute; (vii) any Dispute that is actionable only against a bonding company; or (viii) any Dispute that is actionable only against a letter of credit bank.

19.4 Dispute Resolution: Additional Requirements for Subcontractor Disputes

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

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

(b) Failure of Integrator to assert a Subcontractor Dispute on behalf of any Subcontractor at the time of submission of a related Dispute by Integrator, as provided hereunder, shall constitute a release and discharge of TxDOT by Integrator on account of, and with respect to, such Subcontractor Dispute.

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

19.5 Subsequent Proceedings

19.5.1 Exclusive Jurisdiction and Venue

Integrator agrees that the exclusive jurisdiction and venue for any legal action or proceeding, at law or in equity, arising out of or relating to the Contract Documents or the Project, shall be the Travis County District Court. Integrator waives all objections it might have to the jurisdiction or venue of such court and hereby consents to such court’s jurisdiction, regardless of Integrator’s residence or domicile, for any such action or proceeding.

19.5.2 Admissibility of Disputes Resolution Proceedings

The admissibility, in any administrative or judicial proceeding subsequent to this dispute resolution process, of the Parties’ submittals and any TxDOT determinations shall be in the discretion of the appropriate administrative officer or the court in accordance with applicable rules of law.
19.6 Continuation of Work

At all times during this dispute resolution process or any subsequent administrative, arbitration or court proceeding, Integrator and all Subcontractors shall proceed with the Project diligently, without delay, in accordance with this Agreement, and as directed by TxDOT. Integrator acknowledges that it shall be solely responsible for any Project delay that results from its actions or inactions during the dispute resolution process, even if Integrator’s position in connection with the Dispute ultimately prevails. In addition, all Parties shall continue to comply with all provisions of the Contract Documents, the Governmental Approvals and applicable Law.

19.7 Records Related to Dispute

Throughout the course of any Work that is the subject of any Dispute, Integrator shall keep separate and complete records as required by Section 13.3.4. These records shall be retained for a period of not less than five years from the date of resolution of the Dispute.
SECTION 20. COMPLETION AND ACCEPTANCE

20.1 System Acceptance

20.1.1 General Requirements

In general, System Acceptance with respect to any Project Segment can be achieved only when (i) all required System Acceptance testing is successfully completed, (ii) the Work associated with such Project Segment is completed, (iii) the Project Site of such Project Segment safely may be opened to public and private vehicular traffic, and (iv) such Project Segment functions accurately and reliably in accordance with the Performance Requirements.

20.1.2 Notice and Inspection

Integrator shall provide written notice to TxDOT when all of the following have occurred:

(a) Integrator has completed all Work relating to the applicable Project Segment except for Punch List items, final cleanup and other items included in the requirements for Final Acceptance of such Project Segment;

(b) Integrator has ensured that all such Work relating to the applicable Project Segment has been performed in accordance with the requirements of the Contract Documents, the Governmental Approvals and applicable Law;

(c) The applicable Project Segment may be operated without damage to the System or Project Segment or any other property on or off the applicable Project Site, and without injury to any Person;

(d) The Project Segment, (i) can be safely opened to public use, (ii) is fully signed and striped, and (iii) has all safety appurtenances installed;

(e) All remaining Punch List work for the applicable Project Segment can be completed with no impact to traffic. If any lane closures are required to complete the Punch List items, Integrator shall be only entitled to close lanes between 8:00 p.m. and 6:00 a.m. and through traffic will be maintained by Integrator at all times;

(f) Integrator has furnished to TxDOT (i) the necessary preliminary as-built drawings associated with completed Work, (ii) the as-built drawings and documents required for conducting inspections and/or testing, and (iii) the applicable as-built drawings and documents for maintenance and operations;

(g) Integrator has furnished to TxDOT a certification from Integrator’s Construction Quality Acceptance Manager, in form and substance satisfactory to TxDOT, certifying conformity of the construction with the Design Documents;
(h) Integrator has acquired all spare parts, components and equipment as described in TP Section 4.5.6; and

(i) Integrator has completed all inspection, testing and verification as described in TP Sections 7.6 and 7.14.4, including any additional inspection and testing following any repairs, modifications and/or replacements required thereunder and has provided TxDOT with all documentation and other items required by TP Sections 2, 4 and 5.

TxDOT will then conduct such inspections, verifications, surveys and/or testing as it deems desirable. If such inspections, verifications, surveys and/or tests disclose that any of Work does not meet the requirements of the Contract Documents, TxDOT will promptly advise Integrator as to any Errors in the Work necessary to be corrected as a condition to System Acceptance and as to any Errors which may be corrected as Punch List items. Upon correction of the Errors identified as a prerequisite to System Acceptance, Integrator shall provide written notification to TxDOT, and TxDOT will conduct additional inspections, verifications, surveys and/or testing as it deems desirable. This procedure shall be repeated until TxDOT finds that all prerequisites to System Acceptance of the applicable Project Segment have been met.

20.1.3 Certificate of System Acceptance

TxDOT will issue a Certificate of System Acceptance with respect to the applicable Project Segment at such time as (a) TxDOT finds that all conditions set forth in Section 20.1.2 have been satisfied; (b) TxDOT finds that all Errors identified as prerequisites to System Acceptance have been corrected, (c) all inspection and testing as described in TP Section 4.4 shall have been completed, (d) Integrator and TxDOT have agreed upon a Punch List; and (e) any other conditions precedent to System Acceptance expressly set forth in this Agreement have occurred.

20.2 Punch List Acceptance

20.2.1 Requirements

Integrator shall provide written notice to TxDOT when all of the items of Work listed on the Punch List have been completed.

20.2.2 Certificate of Punch List Acceptance

TxDOT will issue a Certificate of Punch List Acceptance with respect to the applicable Project Segment at such time as (a) Integrator has delivered to TxDOT the written notice described in Section 20.2.1; (b) all inspection and testing of Punch List Work as described in TP Section 4.4 shall have been completed, and (c) TxDOT finds that all Errors identified as prerequisites to Punch List Acceptance have been corrected.
20.3 Final Acceptance

20.3.1 Promptly after System Acceptance with respect to a Project Segment, Integrator shall perform all of the Work relating to such Project Segment, if any, which was deferred in connection with the System Acceptance, and shall satisfy all of its other obligations under the Contract Documents, the Governmental Approvals and applicable Laws, including ensuring that all equipment, materials, facilities, improvements, structures and components have been properly adjusted and tested. TxDOT will issue a Certificate of Final Acceptance when it finds that all of the following conditions have been satisfied:

(a) TxDOT has issued a Certificate of System Acceptance and a Certificate of Punch List Acceptance with respect to the applicable Project Segment;

(b) TxDOT has received all Design Documents, As-Built Document, Final ROW record maps, surveys, maintenance manuals, electronic files, test data and other deliverables required under the Contract Documents and a Source Code Escrow has been established for any Software Source Code that is required to be deposited into a Source Code Escrow pursuant to Section 21.8.4;

(c) All special tools, equipment, furnishings, Hardware, Software and supplies purchased and/or used by Integrator as provided in the Contract Documents (provided, however, that prior to expiration of this Agreement, Integrator may retain possession of any such items that may be used in connection with a future Project Segment Supplement) shall have been delivered to TxDOT free and clear of Liens;

(d) All personnel, construction supplies, equipment, waste materials, rubbish and temporary facilities of each Integrator-Related Entity shall have been removed from the applicable Project Site, Integrator shall restore and repair all damage or injury arising from such removal to the satisfaction of TxDOT, and such Project Site shall be in good working order and condition;

(e) Integrator shall have delivered to TxDOT a certification representing that there are no outstanding claims of Integrator or claims, Liens or stop notices of any Subcontractor, laborer, Utility Owner or railroads with respect to the Work, other than any previously submitted unresolved claims of Integrator and any claims, Liens or stop notices of a Subcontractor, laborer, Utility Owner or railroad being contested by Integrator (in which event the certification shall include a list of all such matters with such detail as is requested by TxDOT and, with respect to all Subcontractor, laborer, Utility Owner and railroad claims, Liens and stop notices, shall include a representation by Integrator that it is diligently and in good faith contesting such matters by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same). For purposes of such certificate, the term “claim” shall include all matters or facts which may give rise to a claim;

(f) Integrator shall have satisfactorily completed all additional inspection and testing following any repairs, modifications and/or replacements required thereunder;
(g) The Punch List items shall have been completed to the satisfaction of TxDOT, all of Integrator’s other obligations under the Contract Documents, the Governmental Approvals and applicable Laws, other than obligations which by their nature are required to be performed after such Final Acceptance, shall have been satisfied in full or waived in writing by TxDOT;

(h) Integrator shall have completed the items set forth as conditions to Final Acceptance in the TP, including Sections 2.1.3, 2.1.5.4, 2.1.6.4, 2.1.6.8, 2.1.6.9, 5.10, and 4.4.12.4; and

(i) Integrator shall have finalized and closed out all Governmental Approvals.

20.3.2 Final Acceptance for a Project Segment will not prevent TxDOT from correcting any measurement, estimate, or certificate made before or after completion of the Work for such Project Segment, nor shall it prevent TxDOT from recovering from Integrator, its Surety(ies), Letter of Credit Banks, or other provider of performance security or any combination of the foregoing, overpayment sustained for failure of Integrator to fulfill the obligations under the Contract Documents. A waiver on the part of TxDOT of any breach of any part of Integrator shall not be held to be a waiver of any other or subsequent breach. The occurrence of any Final Acceptance shall not relieve Integrator of any of its continuing obligations under the Contract Documents, including Warranty and maintenance obligations, or constitute any assumption of liability by TxDOT.

20.4 End of Maintenance Term Acceptance

20.4.1 Requirements

In connection with the expiration of the Maintenance Term for each Project Segment, Integrator shall provide written notice to TxDOT when all of the following have occurred:

(a) Integrator has supplied and TxDOT has accepted revised As-Built Documents reflecting any and all changes and modifications that may have occurred during the Maintenance Term;

(b) Integrator has supplied and TxDOT has approved and accepted the complement of spare parts and tools required to properly maintain the System;

(c) Integrator has supplied and TxDOT has approved and accepted maintenance manuals revised as necessary to reflect any and all changes and modifications that may have been made to the System since the manuals were originally provided. The sets of manuals shall be provided in the following quantities: one copy for each Tolling Zone that is part of the Project Segment in question, plus 5 copies for TxDOT headquarters;

(d) Integrator has supplied and TxDOT has approved and accepted completed Maintenance Records and Maintenance Reports;
(e) All punch list items relating to the end of the Maintenance Term have been corrected by Integrator and approved and accepted by TxDOT;

(f) A System Performance Audit has been successfully completed to TxDOT’s satisfaction;

(g) If not already located on TxDOT’s property and if requested by TxDOT, Integrator has delivered and installed, and TxDOT has approved and accepted, all MOMS Software and Hardware at a location designated by TxDOT; and

(h) Integrator has trained TxDOT’s designated maintenance staff to TxDOT’s satisfaction.

20.4.2 Certificate of End of Maintenance Term Acceptance

TxDOT will issue a Certificate of End of Maintenance Term Acceptance with respect to the applicable Project Segment at such time as (a) TxDOT finds that all conditions set forth in Section 20.2.1 have been satisfied; (b) TxDOT finds that all Errors identified as prerequisites to End of Maintenance Term Acceptance have been corrected, (c) all inspection and testing as described in TP Section 2.1.6.4 shall have been completed, and (d) any other conditions precedent to End of Maintenance Term expressly set forth in this Agreement have occurred.

20.5 Assignment of Causes of Action

Integrator shall assign to TxDOT all right, title and interest in and to all claims and causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15), arising from purchases of goods, services, equipment, Hardware, Software or materials pursuant to the Contract Documents or any Subcontract. This assignment shall be made and become effective with respect to each Project Segment at the time TxDOT tenders the applicable Final Payment of the Price to Integrator, without further acknowledgment by the Parties.
SECTION 21. DOCUMENTS AND RECORDS, INSPECTION AND TESTING

21.1 Escrowed Proposal Documents

Prior to execution of this Agreement, Integrator shall have delivered into escrow one copy of all unit pricing, price quote and other documentary information used in preparation of any Price submitted with the Proposal (the “EPDs”). Upon execution of this Agreement, the EPDs shall be transferred from escrow and held in locked fireproof cabinet(s) supplied by Integrator and located in TxDOT’s project office with the key held only by Integrator. Concurrently with the issuance of each NTP and with the approval of each Project Segment Supplement, Change Order or amendment to any Contract Document, one copy of all unit pricing, price quote and other documentary information used in preparation of the Project Segment Supplement, Change Order or amendment shall be added to the cabinet to be held with the other EPDs. The EPDs will be held in such cabinet or otherwise maintained until all of the following have occurred: (a) 180 Days have elapsed from the later of expiration of the last Maintenance Term or termination of this Agreement, as applicable; (b) all disputes regarding the Work have been settled; and (c) Final Payment of the Maintenance Price has been made and accepted with respect to each Project Segment.

21.1.1 Availability for Review

The EPDs shall be available during business hours for joint review by Integrator, TxDOT and any dispute resolver in accordance with Section 19, in connection with approval of any Project Segment Supplements, Project Schedule(s), negotiation of Change Orders and resolution of Disputes under the Contract Documents, and also as described in Section 21.1.6. TxDOT shall be entitled to review all or any part of the EPDs in order to satisfy itself regarding the applicability of the individual documents to the matter at issue.

21.1.2 Proprietary Information

The EPDs are, and shall always remain, the property of Integrator and shall be considered to be in Integrator’s possession, subject to TxDOT’s right to review the EPDs as provided in this Section 21.1. Integrator will have and control the keys to the filing cabinet containing the EPDs. TxDOT acknowledges that Integrator may consider that the EPDs constitute trade secrets or proprietary information.

21.1.3 Representation

Integrator represents and warrants that the EPDs constitute (or in the case of Project Segments, will constitute) all documentary information used in the preparation of the applicable Price. Integrator agrees that no other price proposal preparation information will be considered in resolving Disputes or Claims. Integrator further agrees that the EPDs are not part of the Contract Documents and that nothing in the EPDs shall change or modify any Contract Document.
21.1.4 Contents of EPDs

The EPDs shall, inter alia, clearly detail how each price included in the Proposal (and, in the case of Project Segments, included in the Project Segment Supplement) has been determined and shall show prices and price elements in sufficient detail as is adequate to enable TxDOT to understand how Integrator calculated the applicable Price. The EPDs provided in connection with quotations, amendments and Change Orders shall, inter alia, clearly detail how the total price and individual components of that price were determined. The EPDs shall itemize the estimated costs of performing the required work separated into usual and customary items and cost categories and sub-items and cost categories to present a detailed estimate of costs, such as direct labor; repair labor; equipment ownership and operation, maintenance, refurbishment/repair/replacement; Hardware; Software; Expendable Materials, supplies and spares; permanent materials; Subcontract costs; plant and equipment; indirect costs; contingencies; mark-up; overhead and profit. The EPDs shall itemize the estimated annual costs of insurance premiums, bonds and letters of credit for each coverage required to be provided by Integrator under Section 9. The EPDs shall include all assumptions, detailed quantity takeoffs, price reductions and discounts, rates of production and progress calculations, and quotes from Subcontractors used by Integrator to arrive at the applicable Price, Project Segment Supplement price, amendment price or Change Order price.

21.1.5 Form of EPDs

Except as otherwise provided in the RFP, Integrator shall submit the EPDs in such format as is used by Integrator in connection with its Proposal and in the calculation of each Price other than that which is covered by Initial NTP. Integrator represents and warrants that all EPDs provided were or will be personally examined by an authorized officer of Integrator prior to delivery, and that the EPDs meet the requirements of Section 21.1.4. Integrator further represents and warrants that the EPDs provided in connection with quotations, amendments, Project Segment Supplements and Change Orders will be personally examined prior to delivery by an authorized officer of Integrator, and that they shall meet the requirements of Section 21.1.4.

21.1.6 Review by TxDOT

TxDOT may at any time conduct a review of the EPDs to determine whether they are complete. If TxDOT determines that any data is missing from an EPD, Integrator shall provide such data within three business days after delivery of TxDOT's request for such data. At that time of its submission to TxDOT, such data will be date stamped, labeled to identify it as supplementary EPD information and added to the EPD. Integrator shall have no right to add documents to the EPDs except upon TxDOT's request.

21.2 Subcontract Pricing Documents

For each Project Segment, Integrator shall require the principal design Subcontractor and each Major Subcontractor to submit to Integrator a copy of all documentary information used in determining its Subcontract price (including the price for Subcontract Work included in any Project Segment Supplement, amendment and/or
Change Order), immediately prior to executing the Subcontract and each change order and Subcontract amendment, to be held in the same manner as the EPDs and which shall be accessible by Integrator and its successors and assigns (including TxDOT) and dispute resolvers, on terms substantially similar to those contained herein. Each such Subcontract shall include a representation and warranty from the Subcontractor, for the benefit of Integrator and TxDOT, stating that its EPDs constitute all the documentary information used in establishing its Subcontract price, and agreeing to provide a sworn certification in favor of Integrator and TxDOT together with each supplemental set of EPDs, stating that the information contained therein is complete, accurate and current. Each Subcontract that is not subject to the foregoing requirement shall include a provision requiring the Subcontractor to preserve all documentary information used in establishing its Subcontract price and to provide such documentation to Integrator and/or TxDOT in connection with any claim made by such Subcontractor.

21.3 Reporting Requirements

21.3.1 Integrator shall deliver to TxDOT financial and narrative reports, statements, certifications, budgets and information as and when required under this Agreement.

21.3.2 Integrator shall furnish, or cause to be furnished, to TxDOT such information and statements as TxDOT may reasonably request from time to time for any purpose related to the Project, this Agreement or the other Contract Documents. In addition, Integrator shall deliver to TxDOT the following financial statements for each Guarantor, at the times specified below:

21.3.2.1 Within 60 Days after the end of each fiscal quarter, duplicate copies of the balance sheet and a consolidated statement of earnings of the Guarantor and its consolidated subsidiaries for such quarter and for the period from the beginning of the then current Fiscal Year to the end of such quarter, setting forth in comparative form the figures for the corresponding periods during the previous Fiscal Year, all in reasonable detail and certified as complete and correct, subject to changes resulting from year-end adjustments, by the chief financial officer of the Guarantor;

21.3.2.2 Within 120 Days after the end of each Fiscal Year, duplicate copies of the balance sheet and a consolidated statement of financial condition of the Guarantor and its consolidated subsidiaries at the end of such year, and statements of earnings, changes in financial position of the Guarantor and its consolidated subsidiaries for such year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and accompanied by an opinion thereon of an independent public accountant of recognized national standing selected by the Guarantor, which opinion shall state that such financial statements have been prepared in accordance with Generally Accepted Accounting Principles consistently applied (except for changes in application in which such accountants concur), and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and accordingly, included such tests of the
accounting records and such other auditing procedures as were considered necessary in the circumstances; and

21.3.2.3 Upon request of TxDOT for particular fiscal quarters, copies of all other financial statements and information reported by the Guarantor to its shareholders generally and of all reports filed by the Guarantor with the Securities Exchange Commission under Sections 13, 14 or 15(d) of the Exchange Act, to be provided to TxDOT as soon as practicable after furnishing such information to the Guarantor's shareholders or filing such reports with the Securities and Exchange Commission, as the case may be.

21.3.3 Integrator shall cooperate and provide, and shall cause the Subcontractors to cooperate and provide, such information as determined necessary or desirable by TxDOT in connection with any Project financing. Without limiting the generality of the foregoing, Integrator shall provide such information deemed necessary or desirable by TxDOT for inclusion in TxDOT’s securities disclosure documents and in order to comply with Securities and Exchange Commission Rule 15c2-12 regarding certain periodic information and notice of material events. Integrator shall provide customary representations and warranties to TxDOT and the capital markets as to the correctness, completeness and accuracy of any information furnished.

21.3.4 Integrator shall cooperate and provide, and shall cause the Subcontractors to cooperate and provide, such information as is necessary or requested by TxDOT to assist or facilitate the submission by TxDOT of any documentation, reports or analysis required by the State, UST, FHWA and/or any other Governmental Entity with jurisdiction over the Project.

21.3.5 All information delivered by Integrator under Sections 21.3.3 and 21.3.4 shall also be delivered electronically, to the extent electronic files exist, and be suitable for posting on the web.

21.4 Maintenance of, Access to and Audit of Records

21.4.1 Integrator shall maintain at a Project administration office in Austin, Texas a complete set of all books and records prepared or employed by Integrator in its management, scheduling, cost accounting and other activities related to the Work and the Project. Integrator shall grant to TxDOT [and the State Auditor's Office (“SAO”)] such audit rights and shall allow TxDOT [and SAO] such access to and the right to copy such books and records as TxDOT [or SAO] may request in connection with the issuance of any NTP or with respect to any Change Orders, the resolution of Disputes, and such other matters as TxDOT [or SAO] reasonably deems necessary for purposes of verifying compliance with this Agreement and applicable law. [Integrator shall ensure that all of its subcontracts of any tier in respect of this Project shall provide for such audit rights in respect of each subcontractor of any tier.] [NTD: SAO will require auditing rights if State funds involved.]

21.4.2 Where the payment method for any Work is on a time and materials basis, such examination and audit rights shall include all books, records, documents and other
evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If an audit indicates Integrator has been overpaid under a previous progress report or progress payment, the excess payment will be credited against current progress reports or payments.

21.4.3 For cost and pricing data submitted in connection with Project Segments other than that which is covered by any Change Orders, TxDOT and its representatives shall have the right to examine all books, records, documents and other data of Integrator related to the negotiation of or performance of such Work for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted; provided, however, that the foregoing shall not apply to pricing based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public or prices set by law or regulation, in each case, as determined by TxDOT. Such right of examination shall extend to all documents deemed necessary by TxDOT and its representative to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

21.4.4 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 later of (i) the expiration of the Maintenance Term, or (ii) the termination of this Agreement. Thereafter, TxDOT shall provide 10 Days notice to Integrator, any Subcontractors or their respective agents before commencing an audit. Integrator, Subcontractors or their agents shall provide adequate facilities, acceptable to TxDOT, for the audit during normal business hours. Integrator, Subcontractors or their agents shall cooperate with the auditors. Failure of Integrator, Subcontractors or their agents to maintain and retain sufficient records to allow the auditors to verify all or a portion of the claim or to permit the auditor access to the books and records of Integrator, Subcontractors or their agents shall constitute a waiver of the claim and shall bar any recovery thereunder.

21.4.5 At a minimum, the auditors shall have available to them the following documents:

1. Daily time sheets and supervisor's daily reports;
2. Union agreements;
3. Insurance, welfare, and benefits records;
4. Payroll registers;
5. Earnings records;
6. Payroll tax forms;
7. Material invoices and requisitions;
8. Material cost distribution work sheet;
9. Equipment records (list of company equipment, rates, etc.);
10. Subcontractors’ (including Suppliers) invoices;
11. Subcontractors’ and agents’ payment certificates;
12. Canceled checks (payroll and Suppliers);
13. Job cost report;
14. Job payroll ledger;
15. General ledger;
16. Cash disbursements journal;
17. All documents that relate to each and every claim together with all documents that support the amount of damages as to each claim; and
18. Work sheets used to prepare the claim establishing the cost components for items of the claim including labor, benefits and insurance, materials, equipment, subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals.

21.4.6 Full compliance by Integrator with the provisions of this Section 21.4 is a contractual condition precedent to Integrator’s right to pursue a formal Dispute under Section 19.

21.4.7 Integrator represents and warrants the completeness and accuracy of all information it or its agents provides in connection with this Section 21.4.

21.5 Retention of Records

Integrator shall maintain all records and documents relating to the Work, including copies of all original documents delivered to TxDOT, and the Project in Austin, Texas until five years after the later of (i) the expiration of the Maintenance Term, or (ii) the termination of this Agreement. Integrator shall notify TxDOT where such records and documents are kept. Notwithstanding the foregoing, all records which relate to Claims being processed or actions brought under the dispute resolution provisions hereof shall be retained and made available until such actions and Claims have been finally resolved. Records to be retained include all books, electronic information and files and other evidence bearing on Integrator’s costs under the Contract Documents. Integrator shall make these records and documents available for audit and inspection to TxDOT, at Integrator’s offices in Austin, Texas, at all reasonable times, without charge, and shall allow such Persons to make copies of such documents, at no expense to Integrator. If approved by TxDOT,
photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents.

21.6 Public Information Act

21.6.1 Integrator acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials in TxDOT’s possession, including materials submitted by Integrator, are subject to the provisions of the Public Information Act. If Integrator believes information or materials submitted to TxDOT constitute trade secret, proprietary information or other information excepted from disclosure, Integrator shall be solely responsible for specifically and conspicuously designating that information by placing “CONFIDENTIAL” in the center header of each such 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 provision shall modify or amend requirements and obligations imposed on TxDOT by the Public Information Act or other applicable law, and the provisions of the Act or other laws shall control in the event of a conflict between the procedures described above and the applicable law. Integrator is advised to contact legal counsel concerning such law and its application to Integrator.

21.6.2 If TxDOT receives a request for public disclosure of materials marked “CONFIDENTIAL,” TxDOT will use reasonable efforts to notify Integrator of the request and give Integrator 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 Integrator 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 consultant.

21.6.3 In the event of any proceeding or litigation concerning the disclosure of any material submitted by Integrator 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 Integrator 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. All costs and fees, including attorneys’ fees and costs, incurred by TxDOT in connection with any litigation, proceeding or request for disclosure shall be reimbursed and paid by Integrator. Nothing in this Agreement is intended to prejudice the rights of Integrator to protect from disclosure information of Integrator that, under applicable law, is entitled to protection from disclosure.

21.7 Ownership and Use of Documents

As between TxDOT and Integrator, except as set forth in Section 21.8, all services and products provided under this Agreement, including all copyright interests and any other
intellectual property, in and to the Software (including both object code and Software Source Code) and any other systems, data, sketches, charts, calculations, plans, specifications, deliverables, electronic files, correspondence and other documents created or collected under the terms of the Contract Documents produced or provided by Integrator, alone or in combination with TxDOT and/or its employees, under this Agreement and Inventions as defined in Section 21.9.1 ("Developed Intellectual Property") shall be the property of TxDOT, and that TxDOT hereby grants Integrator a worldwide, nonexclusive, royalty-free license to the Developed Intellectual Property. Integrator agrees that, except as otherwise provided in Section 21.8 hereof, any contribution by Integrator or its employees to the creation of such works, including all copyright interest therein, shall be considered works made for hire by Integrator for TxDOT and that such works shall, upon their creation, be owned exclusively by TxDOT. To the extent that any such works may not be considered works made for hire for TxDOT under applicable law, Integrator agrees to assign and, upon their creation, automatically assigns to TxDOT the ownership of such works, including copyright interests and any other intellectual property therein, without the necessity of any further consideration. System Design Documents (excluding the Software Source Code) shall become TxDOT’s property upon preparation; Construction Documents shall become TxDOT’s property upon delivery to TxDOT; and other documents prepared or obtained by Integrator in connection with the performance of its obligations under the Contract Documents, including studies, manuals, as-built drawings, technical and other reports and the like, shall become the property of TxDOT upon Integrator’s preparation or receipt thereof. Subject to any requirements in the Contract Documents for Integrator’s delivery of specific documents, not less frequently than monthly, Integrator shall provide TxDOT with a detailed written list of all Design Documents and Construction Documents prepared or received by Integrator, and Integrator shall furnish TxDOT with copies of any such Design Documents and Construction Documents immediately upon TxDOT’s written request. Integrator shall maintain all other documents described in this Section 21.7 in accordance with the requirements of Section 21.5 and shall deliver copies to TxDOT as required by the Contract Documents or upon request if not otherwise required to be delivered, with an indexed set delivered to TxDOT as a condition to Final Acceptance.

21.8 Intellectual Property Rights; Licensing

21.8.1 Preexisting Works by Integrator

Notwithstanding anything to the contrary in Section 21.7 above, Integrator may include in the Software, the System design and technology and in any other System idea, concept and deliverable, pre-existing work or materials only if either they are provided by TxDOT or if they are owned or licensable by Integrator. To the extent that pre-existing work or materials owned or licensed by Integrator are included in the Software, the System design and technology and/or any other System idea, concept or deliverable, Integrator shall identify any such work or materials prior to commencement of the Work involving such work or materials. Integrator grants to TxDOT (as an exception to the transfer and assignment provided in Section 21.7) and, where the System is being provided to an RMA or an Other TxDOT Integrator pursuant to the terms of this Agreement (including pursuant to a Project Segment Supplement or otherwise), such RMA and Other TxDOT Integrator, an irrevocable, permanent, nonexclusive, world-wide royalty-free right and license to use,
execute, reproduce, display, perform, and distribute internally copies of, and prepare
derivative works based upon, the Software, the System design and technology and/or any
other System idea, concept or deliverable, and the right to authorize third parties to do any
of the foregoing, subject to the execution of a commercially reasonable non-disclosure
agreement by such third party and further subject to the terms of this Agreement and any
separate and specific licensing agreement entered into between TxDOT and the
Integrator. The foregoing licenses and rights shall be used solely as needed (i) to operate,
maintain and support the System and the Project and at any toll road or similar or related
facilities in which such Software, System design and technology and any other System
idea, concept and deliverables are used under or pursuant to this Agreement (whether by
TxDOT, an RMA or an Other TxDOT Integrator), including at the toll roads and in the toll
traffic lanes that utilize such System and at the Project Sites specified in this Agreement or
pursuant to any Project Segment Supplements issued incident to the acquisition of the
System by TxDOT, an RMA or an Other TxDOT Integrator, and (ii) in the event of an Event
of Default or the failure, unwillingness or inability of Integrator to perform its obligations
under the Contract Documents; and (iii) in the event of an Event of Default or the failure,
unwillingness or inability of Integrator to perform its obligations under the Contract
Documents, at any other toll roads, toll traffic lanes or similar or related facilities owned,
operated or managed by TxDOT, an RMA or an Other TxDOT Integrator. The foregoing
rights and licenses shall survive the expiration or termination of this Agreement.

21.8.2 Residuals

It is mutually acknowledged that, during the normal course of its dealings with
TxDOT and the Work under this Agreement, Integrator and its personnel and agents may
become acquainted with ideas, concepts, know-how, methods, techniques, processes,
skills, and adaptations pertaining to the Software, Project, System design and technology
and any other System idea, concept and deliverable, including those which TxDOT
considers to be proprietary or secret. Notwithstanding anything in this Agreement to the
contrary, and regardless of any termination of this Agreement, Integrator shall be entitled
to use, disclose, and otherwise employ any ideas, concepts, know-how, methods,
techniques, processes, and skills, and adaptations, including generalized features of the
sequence, structure and organization of any works of authorship, in conducting its
business (including providing Work or creating programming or materials for other
customers), and TxDOT shall not assert against Integrator or its personnel any prohibition
or restraint from so doing.

21.8.3 Third Party Interests

TxDOT's interest in and obligations with respect to any (i) Software, (ii) System
design and technology, (iii) System ideas, concepts and deliverables, (iv) documentation,
or (v) data to be obtained from third-party vendors, whether or not obtained with the
assistance of Integrator, shall be determined in accordance with the agreements and
policies of such vendors; provided, however, that (x) Integrator shall be solely responsible
for all costs associated with the items described in clauses (i)-(v) hereof; and (y) in no
event shall Integrator change the terms of such agreements without TxDOT’s written
approval.
21.8.4 Source Code Escrow

(a) TxDOT and Integrator acknowledge that Integrator and/or Integrator’s Software suppliers may not wish to disclose directly to TxDOT the Software Source Code which is pre-existing works (not for Software owned by TxDOT pursuant to Section 21.7), as public disclosure could deprive Integrator and/or Integrator’s Software suppliers of commercial value, but that TxDOT must be ensured access to such Software Source Code in certain circumstances to permit it to realize the benefits contemplated by this Agreement. Therefore, as a condition to payment of certain Draw Requests, Maintenance Payment Draw Requests, and System Acceptance for a Project Segment, Integrator shall place all the Software Source Code owned by Integrator, licensed to or by Integrator or with respect to which Integrator has a right to use in connection with the System or this Project in an escrow (the “Source Code Escrow”) with a mutually acceptable escrow company (“Code Escrow Agent”) engaged in the business of receiving and maintaining escrows of Software Source Code, related documentation, and other technology. With regard to Software and updates developed as part of the Maintenance Work, such disclosure and delivery to the Source Code Escrow shall occur at the earlier of (x) when required in connection with a Maintenance Payment Draw Request or (y) such time as the Software and updates are implemented. The terms of the Source Code Escrow shall be as set forth in Exhibit W, provided that TxDOT shall be assured access to the Software Source Code in the event any of the following events have occurred (i) a business failure (including cessation of business, bankruptcy, or insolvency) of the Integrator and/or Software supplier; (ii) the Integrator and/or Software supplier has failed to provide or is unable or unwilling to provide the services as necessary to permit continued use of the Software by TxDOT (or where applicable, an RMA or Other TxDOT Integrator that has acquired the System pursuant to the terms of this Agreement) as contemplated by the Contract Documents; or (iii) in connection with a partial or complete termination of this Agreement as a result of a Integrator Event of Default. Integrator shall cause the Software supplier to keep the Software Source Code up-to-date by depositing all enhancements and modifications into the Source Code Escrow during the term of its existence as such enhancements and modifications are developed, completed or implemented.

(b) For purposes hereof, the “Software Source Code” means the software written in programming languages, such as C and Fortran, including all comments and procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object or machine readable code for operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, and architectural standards, describing the data flows, data structures, and control logic of the Software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the Software without undue experimentation.
21.9 Inventions

21.9.1 Invention Defined.

An “Invention” shall mean any idea, design, concept, technique, invention, discovery or improvement, whether or not patentable, made solely or jointly by Integrator and/or Integrator’s employees, or jointly by Integrator and/or Integrator’s employees with one or more employees of TxDOT, during the term of this Agreement and in the performance of any Work under any NTP issued hereunder, provided that either the conception or reduction to practice thereof occurs during the term of this Agreement and in the performance of Work under an NTP issued hereunder.

21.9.2 Vesting of Rights.

Integrator hereby assigns to TxDOT, its successors and assigns, all Inventions, together with the right to seek protection by obtaining patent rights therefor and to claim all rights or priority thereunder, and the same shall become and remain TxDOT’s property whether or not such protection is sought. Integrator shall promptly make a complete written disclosure to TxDOT of each Invention not otherwise clearly disclosed to TxDOT in the pertinent Deliverables, specifically pointing out features or concepts that Integrator believes to be new or different. Integrator shall, upon TxDOT’s request and at TxDOT’s expense, cause patent applications to be filed thereon, through lawyers designated by TxDOT, and shall forthwith sign all such applications over to TxDOT, its successors, and assigns. Integrator shall give TxDOT and its lawyers all reasonable assistance, at TxDOT’s expense, in connection with the preparation and prosecution of any such patent applications and shall cause to executed all such assignments or other instruments or documents as TxDOT may consider necessary or appropriate to carry out the intent of this Agreement.

21.10 Inspection and Testing

21.10.1 If the Contract Documents or any Law requires any portion of the Work to be inspected, tested or approved, Integrator shall give TxDOT timely notice of its readiness so TxDOT may observe such inspection, testing or approval. Integrator shall bear all costs of such inspections, tests or approvals unless otherwise provided.

21.10.2 If TxDOT determines that any Work requires special inspection, testing or approval which Section 21.10.1 does not include, it will instruct Integrator to order such special inspection, testing or approval and Integrator shall give notice as in Section 21.10.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, Integrator shall bear all costs thereof, including compensation for TxDOT’s additional services made necessary by such failure. If the Work complies, TxDOT shall bear such costs and an appropriate Change Order shall be issued.

21.10.3 Integrator shall permit all reasonable inspection and testing TxDOT may desire to conduct. Such inspection and testing shall not relieve Integrator of any of its obligations under this Agreement.
SECTION 22. [INTENTIONALLY OMITTED]
SECTION 23.  COOPERATION AND COORDINATION
WITH OTHER CONTRACTORS AND ADJACENT PROPERTY OWNERS

23.1   Cooperation with Other Contractors

Integrator acknowledges and agrees that TxDOT has awarded and plans to award contracts for construction and other work at or near the Project Sites, Integrator shall fully cooperate and shall adapt scheduling and performance of the Work and other obligations under this Agreement as reasonably necessary to accommodate such other work, and accept any direction that may be provided by TxDOT. Integrator shall not comment or permit any actions that will interfere with the performance of work by another contractor.

23.2   Interference by Other Contractors

If Integrator asserts that any of TxDOT’s other contractors have caused damage to the Work, or have hindered or interfered with the progress or completion of the Work, then, subject only to the right to a Change Order for TxDOT-Caused Delays, Integrator’s sole remedy shall be to seek recourse against such other contractors.

23.3   Coordination with Utility Owners and Adjacent Property Owners

Integrator shall coordinate with Utility Owners and owners of property adjoining the Project, and with their respective contractors, as more particularly described in the Contract Documents.
SECTION 24. MISCELLANEOUS PROVISIONS

24.1 Amendments

The Contract Documents may be amended only by a written instrument duly executed by
the parties or their respective successors or assigns.

24.2 Waiver

Either party’s waiver of any breach or failure to enforce any of the terms, covenants,
conditions or other provisions of the Contract Documents at any time shall not in any way
limit or waive that party’s right thereafter to enforce or compel strict compliance with every
term, covenant, condition or other provision, any course of dealing or custom of the trade
notwithstanding. Furthermore, if the parties make and implement any interpretation of the
Contract Documents without documenting such interpretation by an instrument in writing
signed by both parties, such interpretation and implementation thereof will not be binding
in the event of any future disputes.

24.3 Independent Contractor

Integrator is an independent contractor, and nothing contained in the Contract Documents
shall be construed as constituting any relationship with TxDOT other than that of Project
developer and independent contractor. In no event shall the relationship between TxDOT
and Integrator be construed as creating any relationship whatsoever between TxDOT and
Integrator’s employees. Neither Integrator nor any of its employees is or shall be deemed
to be an employee of TxDOT. Except as otherwise specified in the Contract Documents,
Integrator has sole authority and responsibility to employ, discharge and otherwise control
its employees and has complete and sole responsibility as a principal for its agents, for all
Subcontractors and for all other Persons that Integrator or any Subcontractor hires to
perform or assist in performing the Work.

24.4 Successors and Assigns

The Contract Documents shall be binding upon and inure to the benefit of TxDOT and
Integrator and their permitted successors, assigns and legal representatives.

24.4.1 TxDOT may assign all or part of its right, title and interest in and to any
Contract Documents, including rights with respect to the Payment and Performance
Bonds, to any other Person.

24.4.2 Integrator may not, without the prior written consent of TxDOT in its sole
discretion, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or
otherwise encumber its rights or interests under the Contract Documents. No partner, joint
venturer, member or shareholder of Integrator may assign, convey, transfer, pledge,
mortgage or otherwise encumber its ownership interest in Integrator without the prior
written consent of TxDOT, in TxDOT's sole discretion.
24.5 Designation of Representatives; Cooperation with Representatives

24.5.1 TxDOT and Integrator shall each designate an individual or individuals who shall be authorized to make decisions and bind the parties on matters relating to the Contract Documents (“Authorized Representative”). Exhibit L hereto provides the initial Authorized Representative designations. Such designations may be changed by a subsequent writing delivered to the other party in accordance with Section 24.10. The parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the construction of the Project and negotiate on behalf of each of the parties but who do not have authority to bind TxDOT or Integrator.

24.5.2 Integrator shall cooperate with TxDOT and all representatives of TxDOT designated as described above.

24.6 Survival

Integrator’s representations and warranties, the dispute resolution provisions contained in Section 19, the warranties contained in Section 11, the indemnifications and releases contained in Section 18, the Source Code Escrow provisions contained in Section 21.8.4 and all other provisions which by their inherent character or express terms should survive termination of this Agreement and/or any Final Acceptance, shall survive the termination of this Agreement and/or the expiration of the Maintenance Term, shall survive the termination of this Agreement and the expiration of the Maintenance Term (including any Maintenance Period Options).

24.7 Limitation on Third Party Beneficiaries

It is not intended by any of the provisions of the Contract Documents to create any other third party beneficiary hereunder or to authorize anyone not a party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 24.7, the duties, obligations and responsibilities of the parties to the Contract Documents with respect to third parties shall remain as imposed by law. The Contract Documents shall not be construed to create a contractual relationship of any kind between TxDOT and a Subcontractor or any Person other than Integrator.

24.8 Tort Liability; Personal Liability of TxDOT Employees

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.

No agent, consultant, officer or authorized employee of TxDOT nor any member of the Commission, shall be personally responsible for any liability arising under this Agreement.
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.

In no event shall TxDOT be liable for injury, damage, or death sustained by reason of a defect or want of repair on or within the Project Site during the period Integrator has operation and control of the Project Site, nor shall TxDOT be liable for any injury, damage or death caused by the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any Integrator-Related Entity. Integrator expressly acknowledges and agrees that TxDOT’s rights in this Agreement to take any action with respect to the Project, including the right to review, comment on, disapprove and/or accept designs, plans, specifications, work plans, construction, installation, traffic management details, safety plan and the like, are discretionary in nature and exist solely for the benefit and protection of TxDOT and do not create or impose upon TxDOT any standard or duty of care toward Integrator or any other Person, all of which are hereby expressly disclaimed.

24.9 Governing Law

The Contract Documents shall be governed by and construed in accordance with the laws of the State of Texas.

24.10 Notices and Communications

24.10.1 Notices under the Contract Documents shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by telefacsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

All correspondence with Integrator shall be sent to Integrator’s Project Manager or as otherwise directed by Integrator’s Project Manager. The address for such communications shall be:

___________________________________________________________________
___________________________________________________________________
___________________________________________________________________

All communications to TxDOT shall be marked as regarding the Statewide Toll System Integration and Maintenance Agreement and shall be delivered as directed by TxDOT’s Project Management Consultant.
In addition, copies of all notices regarding disputes, termination and default notices shall be delivered to the following persons:

**Texas Department of Transportation**
Office of General Counsel
125 East 11th Street
Austin, Texas 78701

Telephone: (512) 463-8630
Facsimile: (512) 475-3070

**24.10.2** Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by telefacsimile 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 Integrator’s Project Manager and technical representatives designated by TxDOT. Integrator’s representatives shall be available at all reasonable times for consultation. Except as otherwise provided in Section 24.5.1, each party’s representative shall be authorized to act on behalf of such party in matters concerning the Work.

**24.10.3** Integrator shall copy TxDOT on all written correspondence pertaining to the Project between Integrator and any Person other than Integrator’s Subcontractors, consultants and attorneys.

**24.11 Further Assurances**

Integrator shall promptly execute and deliver to TxDOT all such instruments and other documents and assurances as are reasonably requested by TxDOT to further evidence the obligations of Integrator hereunder, including assurances regarding the validity of (a) the assignments of Subcontracts contained herein and (b) any instruments securing performance hereof.
24.12 Severability

If any clause, provision, section or part of this Agreement is ruled invalid under Section 19 or otherwise by a court having proper jurisdiction, then the parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the parties, including an equitable adjustment to the applicable Price to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of this Agreement, which shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable clause, provision, section or part.

24.13 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.

24.14 Entire Agreement

The Contract Documents contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties with respect to its subject matter.

24.15 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.

SECTION 25. CERTAIN ADDITIONAL FEDERAL AND STATE PROVISIONS

25.1 Title 49, Code of Federal Regulations, Part 29 Debarment and Suspension Certifications

Integrator certifies, under penalty of perjury to the best of its knowledge, except as noted below, that it, and any other person associated with Integrator in the capacity of owner, partner, director, officer, manager (a) is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency; (b) has not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (c) is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the immediately preceding offenses;
and (d) has not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

Exceptions to this certification are as follows: None

25.2 Certification Regarding Use of Contract Funds for Lobbying

Integrator certifies, to the best of its knowledge and belief (after due inquiry and investigation), that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of Integrator, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Lobbying Activities,” in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who makes an expenditure prohibited under 31 U.S.C § 1352 shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure. Any person who fails to file or amend a declaration required to be filed or amended under 31 U.S.C. § 1352 be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Integrator shall require that the language of this certification be included in all lower tier Subcontracts which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

25.3 Child Support Statement for State Grants, Loans and Contracts

Under Section 231.006, Texas Family Code, Integrator certifies that Integrator is eligible to receive the payments provided for hereunder and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

Listed below are the names and social security numbers of the individual or sole proprietor and each partner, shareholder or owner with an ownership interest of at least 25% of Integrator.
Section 231.006, Texas Family Code, specifies that a child support obligor who is more than 30 Days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under a contract to provide property, materials, or services; or receive a state-funded grant or loan.

A child support obligor or business entity ineligible to receive payments described above remains ineligible until all arrearage have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency.

Except as provided by Section 231.302(d), Texas Family Code, a social security number is confidential and may be disclosed only for the purposes of responding to a request for information from an agency operating under the provisions of Parts A and D of Title IV of the federal Social Security Act (42 U.S.C. Section 601-617 and 651-669).

Concurrent with execution of this Agreement, Integrator shall submit duplicates of the foregoing statement signed on behalf of all partners, members or joint venturers of the Integrator and all other Major Participants.

25.4 Equal Employment Opportunity Certification

Integrator hereby certifies that it has _______ has not ____ participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President’s Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

INTEGRATOR ACKNOWLEDGES THAT THE FOREGOING CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS IS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS SHALL BE EXECUTED BY THE INTEGRATOR AND EACH NON-EXEMPT SUBCONTRACTOR.

THE FOLLOWING CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS SHALL BE EXECUTED BY THE INTEGRATOR AND EACH NON-EXEMPT SUBCONTRACTOR.

SECTION 26. DESIGNATED TXDOT COMPATIBLE PROJECTS

26.1.1 TxDOT’s right to designate Project Segments and to issue Project Segment Supplements and NTPs hereunder shall apply with equal force and effect to Designated TxDOT Compatible Projects to be built and/or operated by an RMA or an Other TxDOT Integrator. In such event, TxDOT shall have the option, in its discretion, of issuing the Project Segment Supplement and/or NTP on behalf of the relevant RMA or Other TxDOT Integrator (either by acting as a conduit for such Person under the terms of
this Agreement, pursuant to a subcontract between TxDOT and such Person or pursuant to such other mechanism acceptable to TxDOT), or assigning its right to issue the Project Segment Supplement and/or NTP directly to such RMA or Other TxDOT Integrator, as the case may be. In either case, the methodologies for determining the Project Segment Prices, Project Segment Maintenance Prices, Project Schedules, Liquidated Damages, Stipulated Damages, bonds, letters of credit, maximum liability amounts and all other terms of this Agreement, shall apply with equal force and effect to such Designated TxDOT Compatible Project. In no event shall Integrator be entitled to modify its pricing, schedule or other terms and conditions due to the involvement of an RMA or Other TxDOT Integrator in the Designated TxDOT Compatible Project or the Project Segment.

26.1.2 TxDOT also may, in its discretion, (i) enter into a subcontract with the relevant RMA or Other TxDOT Integrator with respect to the relevant Designated TxDOT Compatible Project; or (ii) assign to the relevant RMA or Other TxDOT Integrator any or all of TxDOT’s rights, remedies and obligations under this Agreement with respect to the relevant Designated TxDOT Compatible Project, including payment obligations hereunder for such Designated TxDOT Compatible Project and rights to enforce the terms of this Agreement with respect to such Designated TxDOT Compatible Project.

26.1.3 In case of such subcontract or assignment under Section 26.1.2, TxDOT shall have no liability or obligations to Integrator with respect to the payment and performance by the applicable RMA or Other TxDOT Integrator of the obligations under this Agreement with respect to the Designated TxDOT Compatible Project, it being expressly acknowledged and agreed that TxDOT shall act in such capacity as a conduit between the relevant RMA or Other TxDOT Integrator, on the one hand, and the Integrator, on the other hand; provided, however, that TxDOT will be an express third party beneficiary of such agreement and be entitled to enforce all obligations of Integrator thereunder. In the event of such subcontract or assignment of TxDOT’s rights, remedies and/or obligations to an RMA or an Other TxDOT Integrator, the provisions of this Agreement requiring provision of bonds, letters of credit, insurance and other performance security shall apply separately with respect to the Designated TxDOT Compatible Project, and shall not be commingled or aggregated with the instruments provided to TxDOT for TxDOT’s Project Segments hereunder, it being expressly acknowledged by Integrator that it shall provide separate bonds, letters of credit, insurance and other performance security to the RMA or Other TxDOT Integrator, as applicable. A termination under this Agreement with respect to a Designated TxDOT Compatible Project shall not constitute a termination of this Agreement with respect to any other Designated TxDOT Compatible Project and a termination under this Agreement with respect to a Project Segment shall not constitute a termination of this Agreement with respect to any Designated TxDOT Compatible Project.

26.1.4 Upon the request of TxDOT or of any RMA or Other TxDOT Integrator to which rights and obligations under this Agreement have been either assigned or are the subject to a subcontract as described in Section 26.1.2, Integrator shall execute and deliver to the RMA or Other TxDOT Integrator a separate agreement, identical in all material respects to this Agreement, for the Designated TxDOT Compatible Project, which separate agreement, when mutually executed and delivered, shall substitute for and
replace the subcontract or assignment and assumption of TxDOT’s rights and obligations under this Agreement with respect to such Designated TxDOT Compatible Project; **provided, however, that TxDOT will be an express third party beneficiary of such agreement and be entitled to enforce all obligations of Integrator thereunder.** A termination with respect to a Designated TxDOT Compatible Project under such separate agreement shall not constitute a termination of this Agreement or otherwise with respect to any other Designated TxDOT Compatible Project or Project Segment and a termination under this Agreement as to a Project Segment shall not constitute a termination under such separate agreement with respect to any Designated TxDOT Compatible Project.

**26.1.5** The exercise by (i) an RMA or Other TxDOT Integrator of rights and remedies under this Agreement or a separate agreement described in Section 26.1.4 above with respect to a Designated TxDOT Compatible Project or (ii) TxDOT pursuant to a subcontract between TxDOT and any RMA or Other TxDOT Integrator with respect to a Designated TxDOT Compatible Project shall not affect, limit, modify, derogate or diminish TxDOT’s rights and remedies under this Agreement with respect to Project Segments. Specifically, (x) Integrator’s obligations and liabilities with respect to a Designated TxDOT Compatible Project shall not apply or be credited against any liability of Integrator under this Agreement for Liquidated Damages, Stipulated Damages or pursuant to Section 17.6 or otherwise; and (y) Integrator shall provide separate insurance, bonds, letters of credit and any other performance security to the RMA, Other TxDOT Integrator or TxDOT relating to a Designated TxDOT Compatible Project and such items shall not be commingled, aggregated or be deemed delivered in lieu or satisfaction of Integrator’s obligations under this Agreement to provide the same to TxDOT with respect to Project Segments.
IN WITNESS WHEREOF, this Agreement has been executed as of
_________ _______, 2012.

Integrator:
__________________________________________

__________________________________________

By________________________________________
Name:_____________________________________ 
Title:_______________________________________

TEXAS DEPARTMENT OF TRANSPORTATION

By________________________________________
Name:_____________________________________ 
Title:_______________________________________