

Final
December 18, 2007

**TURNKEY LUMP-SUM DESIGN-BUILD CONTRACT
FOR
THE 495 HOT LANES TOLLING AND TRAFFIC MANAGEMENT SYSTEM**

BETWEEN

FLUOR-LANE LLC,

AS COMPANY

AND

TRANSURBAN (USA), INC.,

AS CONTRACTOR

DATED AS OF DECEMBER 18, 2007

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 – DEFINITIONS.....	1
1.1 Definitions.....	1
ARTICLE 2 – CONTRACTOR’S WORK AND OTHER OBLIGATIONS OF CONTRACTOR	14
2.1 Work to be Performed.....	14
2.2 Contractor’s Assumption of Risk for Project Site Conditions; No Company’s Warranties for Site Information.	26
2.3 Commencement of the Work.	27
2.4 Standard of Performance.....	27
2.5 Compliance with Applicable Laws.....	27
2.6 Independent Engineer.	27
2.7 Safety Precautions.....	28
2.8 Federal and State Requirements.....	28
2.9 Company’s Right to Carry Out Work.....	29
ARTICLE 3 – SUBCONTRACTS	29
3.1 Subcontractors.....	29
3.2 Payments to Subcontractors.....	29
3.3 Subcontractor Warranties.....	30
3.4 No Privity.....	30
3.5 Subcontracts.....	30
3.6 Review and Approval not Relief of Contractor’s Liability.	30
3.7 Disadvantaged Business Enterprise (DBE) and Small, Women-Owned and Minority Business (SWAM) Goals.....	30
ARTICLE 4 – PRICE AND PAYMENT	30
4.1 Contract Sum.	30
4.2 Payment Schedule.....	31
4.3 Final Payment.	33
4.4 Termination Payment.....	33
4.5 All Payments Subject to Release of Liens.	34
4.6 Payment or Use Not Acceptance.	34
4.7 Set-Off.....	35
4.8 Guaranty.....	35
4.9 Letter of Credit.....	35
ARTICLE 5 – COMPANY’S OBLIGATIONS	36
5.1 Representatives.	36
5.2 Project Right of Way; Work Site.....	36
5.3 Reserved.....	36
5.4 Reserved.	36
5.5 Permits.	37
5.6 Payments of Contract Sum.....	37
5.7 Reserved.....	37
5.8 Utilities.....	37
5.9 Support Facilities.	37

TABLE OF CONTENTS
(continued)

	<u>Page</u>
5.10 Company Supplied Equipment and Facilities.....	37
ARTICLE 6 – COMMISSIONING, COMPLETION AND ACCEPTANCE	
OF WORK	37
6.1 Commissioning.	37
6.2 Reserved.....	38
6.3 Start-Up.....	38
6.4 Performance Tests.....	38
6.5 Completed Performance Test.....	38
6.6 Substantial Completion of the Work.....	38
6.7 Final Completion of the Work.	40
6.8 Company’s Punch List.....	41
6.9 Reserved.....	41
6.10 Acceptance by Company Not a Release of Contractor.....	42
6.11 Substantial Completion of Portions of the Work.....	42
ARTICLE 7 – LATE COMPLETION PAYMENT; BONUS	42
7.1 Guaranteed Substantial and Final Completion.	42
7.2 Late Completion Payment.....	42
7.3 Liquidated Damages Reasonable.....	43
7.4 Payment of Late Completion Payment.	43
7.5 Late Completion Payment for Delay Only.	43
7.6 Limitation on Liquidated Damages.	44
7.7 Bonus.	44
7.8 Late Lane Re-Opening.....	44
ARTICLE 8 – PERFORMANCE GUARANTEES	44
8.1 Performance Guarantees.	45
8.2 Equipment Performance.....	45
ARTICLE 9 – LIABILITY AND DAMAGES	45
9.1 Limitation of Certain Contractor Liabilities.	45
9.2 CONSEQUENTIAL DAMAGES.	45
9.3 Further Limitation of Liability.....	46
ARTICLE 10 – WARRANTIES AND GUARANTEES	46
10.1 General Warranty.....	46
10.2 Breach of General Warranty; Warranty Period.	46
10.3 Reserved.....	47
10.4 No Liens or Encumbrances.....	47
10.5 Company’s Right to Proceed.	47
10.6 EXCLUSIVE REMEDIES.	48
ARTICLE 11 – FORCE MAJEURE	48
11.1 Excused Performance.....	48
11.2 Disputes; Burden of Proof.	49
ARTICLE 12 – SCOPE CHANGES	49
12.1 Scope Change Orders.....	49
12.2 Scope Change by Company.....	50
12.3 Reserved.....	51

TABLE OF CONTENTS

(continued)

	<u>Page</u>
12.4	Scope Change by Contractor.51
12.5	Scope Changes Due to Changes in Applicable Laws.52
12.6	Work Stoppages Due to Injunction; Effect of Force Majeure Events.52
12.7	Hazardous Substances Change Orders.....53
12.8	Scope Changes Due to Company-Caused Delay.54
12.9	Work Orders.....54
12.10	Performance of Scope of Changes.....55
12.11	Scope Changes Due to Contractor Error.....55
12.12	Scope Change Due To Discovery of Certain Conditions; Familiarity with Conditions.55
12.13	Compliance with Guaranteed Substantial Completion Date.56
12.14	Scope Change Order Dispute; Concessionaire Claim Dispute.56
12.15	Expedited Dispute Resolution Procedure for Claims Against Concessionaire.57
ARTICLE 13 – INDEMNIFICATION.....58	
13.1	General Indemnification.58
13.2	Additional Indemnification.59
13.3	Patent and Copyright Indemnification.59
13.4	Notice and Legal Defense.....60
13.5	Failure to Defend Action by Indemnifying Party.60
13.6	Survival.....60
ARTICLE 14 – INSURANCE.....61	
14.1	Contractor-Provided Insurance.61
14.2	Company-Provided Insurance.....61
14.3	Certificates.62
14.4	Responsibility for Deductibles.....62
14.5	Waiver of Subrogation.....62
14.6	Failure to Procure Insurance.62
14.7	Contractor’s or Rented Equipment.62
14.8	Unemployment and Other Insurance Benefits.....62
14.9	Descriptions Not Limitations.....63
14.10	Additional Insureds.....63
14.11	No Limitation of Liability.....63
14.12	Insurance Primary.63
14.13	Capitalized Terms.63
14.14	Evidence of Insurance.....63
ARTICLE 15 – TERMINATION.....63	
15.1	Company’s Right to Suspend the Work.....63
15.2	Termination of Contractor for Cause.....64
15.3	Company Default.....65
15.4	Requirements Following Termination.66
15.5	Surviving Obligations.....67
ARTICLE 16 – ASSIGNMENTS.....67	
16.1	Assignment.67
16.2	Performance in Favor of Concessionaire, VDOT and Financing Parties.67
16.3	Successors and Assigns.....67

TABLE OF CONTENTS
(continued)

	<u>Page</u>
ARTICLE 17 – DESIGN DOCUMENTS	68
17.1 Company's Review.	68
17.2 Final As-Built Drawings and Documentation.....	68
17.3 Ownership.....	68
17.4 Use of Documents by Contractor.....	69
ARTICLE 18 – CONFIDENTIAL INFORMATION	69
18.1 Confidentiality.	69
18.2 Survival.....	70
18.3 Publicity Releases; Information.....	70
ARTICLE 19 – DISPUTE RESOLUTION	70
19.1 Arbitration; Other Actions.....	70
19.2 Common Issue in Dispute under the Comprehensive Agreement or the Design-Build Contract.....	71
19.3 Continuation of Work.....	71
ARTICLE 20 – COST RECORDS	71
20.1 GAAP.....	71
20.2 Inspection of Books, Records and Audit Rights.....	71
ARTICLE 21 – INDEPENDENT CONTRACTOR.....	72
21.1 Contractor as Independent Contractor.....	72
ARTICLE 22 – REPRESENTATIVES AND WARRANTIES OF CONTRACTOR.....	72
22.1 Representatives and Warranties.....	72
ARTICLE 23 – REPRESENTATIVES AND WARRANTIES OF COMPANY	73
23.1 Representatives and Warranties.....	73
ARTICLE 24 – MISCELLANEOUS	74
24.1 Estoppel Certificate.....	75
24.2 Waivers.....	75
24.3 Choice of Law.....	75
24.4 Severability.....	75
24.5 Notice.....	75
24.6 Headings.....	76
24.7 Entire Agreement.....	76
24.8 Amendments.....	76
24.9 Conflicting Provisions.....	76
24.10 No Third Party Rights.....	77
24.11 Reserved.....	77
24.12 Reserved.....	77
24.13 Survival of Provisions.....	77
24.14 Title to the Work.....	78
24.15 Obligation to Act in Good Faith.....	78
24.16 Coordination with VDOT and Financing Parties.....	78
24.17 Time of the Essence.....	78
24.18 Exhibits.....	78

EXHIBITS

Exhibit A	—	Form of Notice to Proceed
Exhibit B	—	Form of Contractor's Final Lien Waiver
Exhibit C	—	Form of Subcontractor's Final Lien Waiver
Exhibit D	—	Form of Contractor's Interim Lien Waiver
Exhibit E	—	Form of Subcontractor's Interim Lien Waiver
Exhibit F	—	Form of Guaranty
Exhibit G	—	Form of Scope Change Order
Exhibit H	—	Form of Letter of Credit in Favor of Company
Exhibit I	—	Design-Build Contract
Exhibit J	—	Maximum Cumulative Drawdown Schedule
Exhibit K	—	[Reserved]
Exhibit L	—	Payment and Values Schedule
Exhibit M	—	Project Schedule
Exhibit N-1	—	Project Right of Way Description
Exhibit N-2	—	HOT Lanes Right of Way Description
Exhibit O	—	[Reserved]
Exhibit P	—	Scope of Work
Exhibit Q	—	Schedule of Submittals
Exhibit R	—	[Reserved]
Exhibit S	—	Equipment Vendors Requiring Company's Approval
Exhibit T	—	[Reserved]
Exhibit U	—	[Reserved]
Exhibit V	—	Requirements for Highway Construction Projects Receiving Federal Aid
Exhibit W	—	Form of Substantial Completion Certificate
Exhibit X	—	Form of Final Completion Certificate
Exhibit Y	—	Acceptable Arbitrators
Exhibit Z	—	[Reserved]
Exhibit AA	—	Technical Requirements

THIS TURNKEY LUMP-SUM DESIGN-BUILD CONTRACT FOR THE 495 HOT LANES TOLLING AND TRAFFIC MANAGEMENT SYSTEM, dated as of December 18, 2007, is made by and between FLUOR-LANE LLC, a Delaware limited liability company, as Company, and TRANSURBAN (USA), INC., a Delaware corporation, as Contractor.

W I T N E S S E T H:

WHEREAS, Concessionaire (as defined below) and VDOT (as defined below) entered into the Comprehensive Agreement (as defined below) which sets out general requirements for the Project (as defined below); and

WHEREAS, Company and Concessionaire entered into the Design-Build Contract (as defined below) where Company has agreed to fulfill certain of Concessionaire's obligations under the Comprehensive Agreement for the Project; and

WHEREAS, in order to fulfill certain of Company's obligations under the Design-Build Contract, Contractor desires to supply to Company and Company desires to obtain from Contractor certain design, turnkey engineering, procurement, construction, demonstration, testing and related services relating to certain elements of the overall tolling and traffic management systems for which Company is responsible under the Design-Build Contract, all of which shall be provided on a lump sum, fixed price basis in accordance with the terms and conditions herein specified.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Definitions. As used in this Agreement, the following terms shall have the meanings indicated (such meanings as necessary to be equally applicable to both the singular and plural forms of the terms defined). Capitalized terms used elsewhere in this Agreement and not otherwise defined in this Agreement shall have the meaning ascribed to them in the Design-Build Contract.

“Affiliate” when used to indicate a relationship with a specified Person, means a Person that, directly or indirectly, through one or more intermediaries has a ten percent (10%) or more voting or economic interest in such specified Person or controls, is controlled by or is under common control with such specified Person, and a Person is deemed to be controlled by another Person, if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

“Agreement” means this Turnkey Lump-Sum Design-Build Contract for the 495 HOT Lanes Tolling and Traffic Management System, all written amendments, modifications and

supplements hereto, and all Exhibits attached hereto, all of which by this reference are incorporated herein.

“Agreement Date” means the date on which this Agreement is executed and delivered by the Parties, which date is intended to be the same date as the “Agreement Date” under the Design-Build Contract.

“Applicable Laws” means all laws, treaties, ordinances, judgments, decrees, injunctions, writs and orders of any Governmental Authority, and all rules, regulations, orders, interpretations and Permits of any Governmental Authority having jurisdiction over construction of the Project on the Project Right of Way, performance of the Work, operation of the Project, or the health, safety or environmental condition of the Project or the Project Right of Way, as the same may be in effect from time to time.

“Applicable Permits” means all Permits required by Applicable Laws to be obtained or maintained for Contractor's performance of the Work.

“Applicable Security Rate” means (i) during the period from the Agreement Date until the date that is twenty-four (24) months prior to the then-effective Guaranteed Substantial Completion Date, seven-and-one-half percent (7.5%), and (ii) during the period from the date that is twenty-four (24) months prior to the then-effective Guaranteed Substantial Completion Date until the date of Substantial Completion, forty percent (40%).

“Applicable Standards” means those codes and standards listed in the Scope of Work and the Technical Requirements; provided, however, that if any portion of such codes and standards conflicts with or is less stringent than Applicable Laws or other requirements in the Contract Documents, such conflicting or less stringent portions of such standards shall not be deemed “applicable.”

“ARCA Compensation Event” has the meaning given to such term in the Design-Build Contract.

“ARCA Delay Event” has the meaning given to such term in the Design-Build Contract.

“Bonus” has the meaning set forth in Section 7.7 hereof.

“Business Day” means any calendar day other than Saturday, Sunday or other day observed as a holiday by either the Commonwealth of Virginia or the U.S. government.

“Change Order Proposal” has the meaning set forth in Section 12.2 hereof.

“Capital Beltway” means that portion of the 64-mile long Interstate freeway (I-495) encircling Washington D.C. situated within the Commonwealth of Virginia, as it may be expanded or improved.

“Commencement Date” means the date on which Contractor is to commence performance of the entire Work, as specified in the Notice to Proceed delivered to Contractor by Company pursuant to Section 2.3 hereof.

“Commercially Reasonable Efforts” means efforts which are reasonably within the contemplation of the Parties at the time of executing this Agreement and which do not require the performing Party to expend any funds other than expenditures which are customary and reasonable in transactions of the kind and nature contemplated by this Agreement in order for the performing Party to satisfy its obligations hereunder.

“Commissioning” means the systematic verification, as required in the Commissioning program established pursuant to Section 6.1 hereof, that each component or system to be provided by Contractor as part of the Work is physically complete, checked, calibrated and safe for initial operation. To “commission the Work” means to provide Commissioning thereof.

“Company” means Fluor-Lane LLC, a Delaware limited liability company, and its successors and permitted assigns as company hereunder.

“Company-Caused Delay” means a delay or failure by Company in the performance of its obligations under this Agreement, or by Concessionaire in the performance of its obligations under the Design-Build Contract, or any agent or representative of either thereof (or anyone other than Contractor or any Subcontractor acting at the direction thereof), in each case that is not permitted under or excused by this Agreement or the Design-Build Contract, as applicable, and in each case only if the performance of the Work by Contractor is actually delayed as a result of such delay, failure or interference or if the cost to Contractor to perform the Work is increased as a result of such delay, failure or interference. Delays or failures by Company that are attributable to the failure of Contractor (or any Subcontractor) to perform its obligations in accordance with this Agreement shall not constitute Company-Caused Delays. For the avoidance of doubt, no ARCA Compensation Event or ARCA Delay Event shall be deemed to constitute a Company-Caused Delay.

“Company Contractors” means contractors engaged by Company or its designees at the Project Right of Way, other than Contractor.

“Company Delay Damages Rate” means \$100,000.

“Company Event of Default” has the meaning set forth in Section 15.3.1 hereof.

“Company Indemnified Parties” means Company, Concessionaire, the State Indemnitees, the Financing Parties, the Independent Engineer, each of their subsidiaries and Affiliates, and the directors, officers, agents, employees, successors and assigns of each of them.

“Company’s Approval” means the right of Company to review and approve the items set forth on Exhibit Q or another matter as expressly provided in this Agreement (which approval by Company may be contingent upon its receipt of VDOT’s and/or Concessionaire’s approval to the extent required under the Design-Build Contract or as otherwise designated on Exhibit Q). Contractor shall submit items of Work subject to Company’s Approval by the date specified in this Agreement or in Exhibit Q (or if a date is not specified, when Contractor desires), and Company shall provide its written approval or denial thereof within thirty (30) days of such submission, unless another time period for such approval is specified in Exhibit Q or in this Agreement. If Company determines to deny its approval, it shall provide a brief summary of the reasons for its determination. If Company does not respond within the time allotted, Company’s

Approval shall be deemed to have been given unless otherwise provided in Exhibit Q or in this Agreement with respect to the approval of such item. Unless the Parties expressly agree otherwise in writing, Company's Approval of any aspect of the Work (whether deemed or actual) shall not affect Contractor's obligation to provide the Work in accordance with the requirements of this Agreement or any of Contractor's other obligations hereunder, or change the Scope of Work, or reduce, increase or waive Contractor's obligations under this Agreement and its independent responsibility for performance of the Work hereunder or for any acts or omissions of the Contractor's design professionals or other Subcontractors engaged by Contractor to perform the Work, or constitute a waiver of Company's rights with respect thereto. Each Company's Approval is given by Company in reliance upon, and subject to, full and satisfactory performance by Contractor of its obligations hereunder.

"Company's Project Director" means a person employed by Company to administer and act under this Agreement on behalf of Company.

"Company's Punch List" means an itemized list of Work prepared (and periodically revised) by Company, and submitted to Contractor, setting forth the items of Work which remain to be completed after Substantial Completion has been achieved and before Final Completion, the existence, correction and completion of which will have no material or adverse effect on the normal, uninterrupted and safe use and operation of the Project.

"Company's Review" means the right of Company to review the items set forth on Exhibit Q or inspect an aspect of the Work or another matter specified in this Agreement (which review may include review or inspection by VDOT and/or Concessionaire to the extent required under the Design-Build Contract or otherwise designated on Exhibit Q). Contractor shall submit items of Work subject to Company's Review to Company by the applicable date specified in this Agreement or in Exhibit Q (or if a date is not specified, when Contractor desires), and Company shall provide its comments thereon, if any, within thirty (30) days of such submission, unless another time period is specified in Exhibit Q or in this Agreement. If Company fails to respond within the time allotted, Company's Review shall be deemed to have been made, unless otherwise provided in Exhibit Q or this Agreement with respect to such item. Unless the Parties expressly agree otherwise in writing, Company's Review of any aspect of the Work (whether deemed or actual) shall not affect Contractor's obligation to provide the Work in accordance with the requirements of this Agreement or any of Contractor's other obligations hereunder, or change the Scope of Work, or reduce, increase or waive Contractor's obligations under this Agreement and its independent responsibility for performance of the Work hereunder or for any acts or omissions of the Contractor's design professionals or other Subcontractors engaged by Contractor to perform the Work, or constitute a waiver of Company's rights with respect thereto.

"Company-Supplied Equipment and Facilities" means those items for which Company is responsible for providing pursuant to the Scope of Work.

"Company's Work Representative" has the meaning set forth in Section 5.1 hereof.

"Comprehensive Agreement" means the Amended and Restated Comprehensive Agreement Relating to the Route 495 Hot Lanes in Virginia Project, dated as of December 18,

2007, entered into by and between Concessionaire and VDOT, and all exhibits and schedules thereto, as supplemented or further amended from time to time.

“Concessionaire” means Capital Beltway Express LLC, a Delaware limited liability company, and its successors and permitted assigns as concessionaire under the Comprehensive Agreement.

“Concessionaire-Caused Delay” has the meaning given to such term in the Design-Build Contract.

“Concessionaire Contractors” means contractors engaged by Concessionaire or its designees at the Project Right of Way, including the OS&S Contractor.

“Construction Manager” means a person employed by Contractor to supervise and coordinate the prosecution of the Work at the Project Right of Way on behalf of Contractor. The Construction Manager may or may not be the same individual as the Project Manager.

“Construction Segment” means any area or portion of the Project designated as such pursuant to this Agreement for the purpose of scheduling construction of the Work (e.g., a toll location inclusive of toll gantries and associated technical shelter and the HOT Operations Center site).

“Contract Documents” means, collectively, this Agreement, the Comprehensive Agreement, the Design-Build Contract, the Design Documents, all Scope Change Orders, the Quality Plan, the Performance Testing and Commissioning Plan and Program, the safety and health program and the Operating Manual.

“Contract Sum” has the meaning set forth in Section 4.1 hereof.

“Contractor” means Transurban (USA), Inc., a Delaware corporation, and its permitted successors and assigns as contractor hereunder.

“Contractor ETTM Equipment” means the automatic vehicle identification equipment, video monitoring equipment, and electronic toll collection equipment, including its components, systems and subsystems; the transportation management system equipment; traffic management roadside equipment (including dynamic message signs, traffic cameras and traffic sensors); communications equipment, and all associated hardware and physical infrastructure and other computer hardware and software necessary to meet the performance specifications for the ETTM, in each case only to the extent provided in the Scope of Work.

“Contractor Event of Default” means any of the events set forth in Section 15.2 hereof.

“Contractor Guarantor” means Transurban International Limited.

“Contractor Indemnified Parties” has the meaning set forth in Section 13.1.2 hereof.

“Contractor's Marks” has the meaning set forth in Section 2.1.8.4 hereof.

“Contractor’s Punch List” means an itemized list of Work prepared (and periodically revised) by Contractor, and submitted to Company, setting forth the items of Work which remain to be completed after Substantial Completion has been achieved and before Final Completion, the existence, correction and completion of which will have no material or adverse effect on the normal, uninterrupted and safe use and operation of the Project.

“Damages” has the meaning set forth in Section 13.1.1 hereof. Use of the defined term “Damages” shall not be construed to permit the recovery of consequential loss or damage where such recovery would otherwise be precluded by the terms of Article 9 hereof.

“Design-Build Contract” means the Turnkey Lump-Sum Design-Build Contract for the Route 495 Hot Lanes in Virginia Project, dated as of December 18, 2007, by and between Concessionaire and Company, and all exhibits and schedules thereto, as in effect on the Agreement Date; a copy of the Design-Build Contract is attached hereto as Exhibit I.

“Design Documents” has the meaning set forth in Section 2.1.2.2 hereof.

“Equipment Performance Tests” means the tests of the Work in accordance with the Performance Testing and Commissioning Plan and Program.

“Environment” means soil, surface water, groundwater, land, stream sediments, surface or subsurface strata and ambient air.

“Environmental Laws” means any Applicable Law regulating or imposing liability or standards of conduct concerning or relating to the regulation, use or protection of human health, the Environment or Hazardous Substances, including by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC Section 9601 *et seq.*), the Resource Conservation and Recovery Act (42 USC 6901 *et seq.*), the Federal Clean Water Act (33 USC Section 1351 *et seq.*), the Occupational Safety and Health Act (29 USC Section 651 *et seq.*), each as currently in force or as hereinafter amended.

“ETTM” means electronic toll and traffic management.

“ETTM Data” means all data generated by or accumulated in connection with the operation of the ETTM System, including but not limited to customer lists, customer identification numbers, customer account information and billing records and other customer specific information, and including but not limited to use and enforcement data, origin and destination information, ETTM performance statistics, and real time traffic flow information.

“ETTM Facilities” means the HOT Operations Center, toll gantries and technical cabinets, utility connections, lighting facilities and other facilities associated with the ETTM (including both the tolling subsystem and HOT Operations Center traffic management subsystem).

“ETTM System” means the ETTM Facilities, the Company-Supplied Equipment and Facilities, and the Contractor ETTM Equipment and the software which monitors, controls or executes operation of the Contractor ETTM Equipment, all of which shall meet the performance criteria established by this Agreement and the Technical Requirements.

“FHWA” means the Federal Highway Administration or any successor agency.

“Final As-Built Drawings and Documentation” means all drawings, specifications and other documentation, as further described in Section 17.2 hereof, prepared in accordance with the standard of performance described in Section 2.4 hereof, which accurately and completely represent in detail the physical placement of all Work components and systems as installed and/or constructed and as they exist at the time of Final Completion.

“Final Completion” means the performance milestones to be achieved by Contractor in the manner described in Section 6.7 hereof.

“Final Completion Certificate” means, a certificate of Contractor in the form of Exhibit X, delivered to Company certifying that Final Completion has occurred.

“Final Payment” has the meaning set forth in Section 4.3 hereof.

“Financial Closing” means the date of closing and initial funding of the construction financing for the Project, defined as the “Closing Date” under the Comprehensive Agreement.

“Financing Parties” means (i) any and all lenders providing the construction, interim or long-term financing (including a leveraged lease or any other refinancing thereof) for the Project, and any trustee or agent acting on their behalf, and (ii) any and all equity investors providing leveraged lease financing or refinancing for the Project, and any trustee or agent acting on their behalf.

“Force Majeure Event” has the meaning given to such term in the Design-Build Contract.

“General Warranty” has the meaning set forth in Section 10.1 hereof.

“Governmental Authority” means any court, federal, state or local government, department, commission, board, bureau, agency or other regulatory or governmental authority.

“Gross Negligence” has the meaning given to such term in the Design-Build Contract.

“Guaranteed Final Completion Date” has the meaning set forth in Section 6.7.3 hereof.

“Guaranteed Substantial Completion Date” means the date on which Substantial Completion shall occur, which date shall be no later than sixty (60) calendar months after the Commencement Date, as the same may be adjusted from time to time pursuant to the terms of this Agreement.

“Hazardous Substances” means, but is not limited to, any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is or could be considered a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, solid waste, hazardous material or hazardous substance which is or becomes regulated by applicable Environmental Laws or which is classified as hazardous or toxic under applicable Environmental Laws (including gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated

biphenyls, asbestos, urea formaldehyde foam insulation and naturally occurring asbestos-containing soils or sulfidic geological materials).

“HOT Lanes” means (a) four-lane inner directional roadways (two in each direction), including shoulders and ramps exclusively providing ingress and egress to HOT lanes and terminating at the merge point with the general-purpose traffic lanes, comprising a portion of the Capital Beltway to be identified separately from the adjacent general-purpose lanes of the Capital Beltway, dedicated for use by qualifying HOT lanes traffic and to be operated by Concessionaire pursuant to the Comprehensive Agreement, and (b) when constructed or designated as such, any additional traffic lanes dedicated for use by qualifying HOT lanes traffic or any Project enhancements. HOT Lanes are shown on the drawings attached to this Agreement as Exhibit N-2 and, upon Substantial Completion of the Project, such drawings shall be superseded by the as-built drawings delivered to Concessionaire under the Design-Build Contract.

“HOT Lanes Right of Way” means all real property within the access control line for the HOT Lanes Project (as defined in the Comprehensive Agreement), including the separation zone from the adjacent general-purpose lanes of the Capital Beltway and dedicated for use by qualifying HOT Lanes traffic, together with all improvements thereon related to the HOT Lanes Project Purposes (as defined in the Comprehensive Agreement), including the HOT Operations Center site and easements for fiber optic routing to such HOT Operations Center, and the property on which the ETTM Facilities and ETTM System are to be located, and all other facilities and improvements required for the opening and operations of the HOT Lanes. The area comprising the HOT Lanes Right of Way is indicated as the cross-hatched portion shown on the drawings attached to the Agreement as Exhibit N-2.

“HOT Operations Center” means the HOT Lanes operations center to be constructed by Company and made available to Contractor to be fitted out with the Contractor ETTM Equipment as part of the Work and generally described in the Technical Requirements.

“Indemnified Party” means a Concessionaire Indemnified Party, a Company Indemnified Party, or a Contractor Indemnified Party, as the context may require.

“Indemnifying Party” means a Party having the obligation to indemnify an Indemnified Party hereunder.

“Independent Engineer” means the engineering company or companies (retained by VDOT and Concessionaire) appointed from time to time by VDOT or the Financing Parties to act on their behalf in connection with the review of the Project and the Work.

“Intellectual Property” means the ETTM books and records, toll-setting and traffic management algorithms and Software and associated documentation used in connection with the Work (including but not limited to Software and associated documentation used for management of traffic on the HOT Lanes), copyrights (including moral rights), trade marks (registered and unregistered), designs (registered, including applications, and unregistered), patents (including applications), circuit layouts, plant varieties, business and domain names, inventions, trade secrets, proposals, copyrightable works, customer and supplier lists and information, and other

results of intellectual activity, copies and tangible embodiments of all of the foregoing (in whatever form or medium) and licenses granting any rights with respect to any of the foregoing (to the extent assignable), in each case, relating to the Project.

“ITS” means intelligent transportation systems consisting of any application of computer, electronics and/or telecommunications equipment and software and supporting fixtures and equipment whose function is to provide information, data and/or services to the traveling public or VDOT or to manage and control traffic, and any future systems or services conceived or developed for the same or similar purposes; provided that ITS does not include the ETTM System.

“Late Completion Payment” has the meaning set forth in Section 7.2 hereof.

“Late Lane Opening Payment” has the meaning set forth in Section 7.8 hereof.

“Late Payment Rate” means the rate of interest per annum publicly announced from time to time by Citibank, N.A., as its “prime rate” or, if such rate is not so announced, the rate published from time to time in The Wall Street Journal as the “prime rate,” plus one (1) percent.

“Letter of Credit” means an irrevocable, transferable standby letter of credit in the form of Exhibit H, issued by a Qualified Issuer.

“Maximum Cumulative Payment” means a cap, designated on the Maximum Cumulative Drawdown Schedule, on the aggregate amount of payments which can be made to Contractor hereunder as of any month during the construction of the work, as it may be modified from time to time pursuant to terms hereof.

“Maximum Cumulative Drawdown Schedule” means the schedule attached hereto as Exhibit J setting forth Maximum Cumulative Payments as of any month from the Commencement Date until Final Completion has occurred.

“Monthly Progress Report” means a progress report containing the following information: (a) a description of Contractor’s and all Subcontractors’ activities and design, engineering, procurement and construction progress as compared with the Work Schedule (and, at the request of Concessionaire, an updated Work Schedule), (b) the information required in Section 2.1.1.2 hereof, (c) a detailed description of the Work which has been completed, including photographs showing the progress of the Work, and the progress payments which have been received, as compared with the Payment and Values Schedule, (d) the status of material and equipment deliveries with respect to the Work, (e) copies of quality assurance documents and test results, (f) safety statistics, including details of any incidents involving Hazardous Substances and activities relating to environmental matters, (g) all EEO and other documentation required for federal-aid projects, to the extent applicable, and (h) all other information reasonably requested by Company relating to the Work.

“Net Toll Revenues” has the meaning given to such term in the Design-Build Contract.

“New Lanes” means the approximately fourteen-mile stretch of four new general purpose traffic lanes (two lanes in each direction) to be constructed on the outer sides of the existing Capital Beltway as more fully described in the Design-Build Contract.

“Notice of Final Completion” has the meaning set forth in Section 6.7.2 hereof.

“Notice to Proceed” means the written notice to be delivered by Company to Contractor pursuant to Section 2.3 hereof setting forth the Commencement Date.

“Notice of Substantial Completion” has the meaning set forth in Section 6.6.2 hereof.

“Operating Manual” means the complete instructions and procedures for the start-up, operation and maintenance of the Work, to be provided by Contractor pursuant to Section 2.1.28 hereof.

“OS&S Contractor” mean the Person that Concessionaire designates to operate the HOT Lanes.

“Party” or “Parties” means, respectively, a party or both parties to this Agreement.

“Payment and Values Schedule” means the schedule of values of various items of Work based upon which Scheduled Payments of the Contract Sum will be made by Company, as the same may be adjusted pursuant to this Agreement. Contractor shall submit its proposed Payment and Values Schedule within thirty (30) days after the Commencement Date for Company’s Approval.

“Performance Guarantees” has the meaning set forth in Section 8.1 hereof.

“Performance Test” means the operation of the Work in accordance with the Performance Testing and Commissioning Plan and Program and the provisions of Sections 6.4 and 6.5 hereof for the purposes of determining the Project’s level of achievement of the Performance Guarantees and other performance related conditions to Substantial Completion set forth in Section 6.6, and Final Completion set forth in Section 6.7 hereof.

“Performance Testing and Commissioning Plan and Program” means the plan and program, developed by Contractor and approved by Company (which approval by Company will be contingent upon the approval of Concessionaire and the Independent Engineer), for the conduct of Performance Tests.

“Permit” means any valid waiver, findings, exemption, variance, certification, consent decision, franchise, permit, authorization, license, ruling, registration, regulatory approval or order of or from Governmental Authority having jurisdiction over the matter in question.

“Person” means any individual, corporation, partnership, association, joint stock company, trust, unincorporated organization, joint venture, government or political subdivision or agency thereof.

“Project” has the meaning given to such term in the Design-Build Contract.

“Project Manager” means a person employed by Contractor to administer and act under this Agreement on behalf of Contractor.

“Project Right of Way” means (a) the real property within the access control line for the Project, including the HOT Lanes Right of Way, and (b) all other right of way, including temporary and permanent easements, that is necessary for the performance of the Work, in each case indicated as the cross-hatched portion shown on the map attached to this Agreement as Exhibit N-1.

“Project Schedule” means the initial Project Schedule attached to the Design-Build Contract.

“Proposal Request” has the meaning set forth in Section 12.2 hereof.

“Proprietary Intellectual Property” means any Intellectual Property that is patented or copyrighted by Contractor, Company, Concessionaire, VDOT or any other Person, as applicable, or any of its respective contractors or subcontractors, or, if not patented or copyrighted, is created, held and managed as a trade secret or confidential information by Contractor, Company, Concessionaire, VDOT or any other Person, as applicable, or any of its respective contractors or subcontractors, but excludes any item of Intellectual Property that is produced for multiple purposes and is not unique to the technology that is being applied to or for the Project.

“Quality Manager” means a person employed by Contractor who is responsible for overseeing quality assurance and quality control of the Work and for ensuring that the Work conformance with the requirements of this Agreement and the other Contract Documents.

“Qualified Issuer” means a U.S. commercial bank (or a foreign bank with a U.S. branch acceptable to Company) having total assets of at least \$10 billion and a senior unsecured long-term credit rating (unenhanced by third-party support) equivalent to “A-” or better as determined by Standard and Poor’s Ratings Services or its successor, and “A3” or better as determined by Moody’s Investors Service Inc. or its successor.

“Quality Plan” is Contractor’s written quality control and quality assurance program for the Work, as defined in the Scope of Work, including the written procedures to implement such program and detailing how Contractor will provide quality assurance and quality control for the design and construction elements of the Work, obtain samples for quality control testing, perform tests for quality control, provide inspection and exercise management control to ensure that the Work conforms to the requirements of the Contract Documents.

“Recovery Plan” has the meaning set forth in Section 2.1.1.4 hereof.

“Scheduled Payments” has the meaning set forth in Section 4.2 hereof.

“Scope Change” has the meaning set forth in Section 12.1 hereof.

“Scope Change Order” means a written order to Contractor, in the form of Exhibit G hereto, issued and signed by Company in accordance with the provisions of Article 12 hereof

after the execution and delivery of this Agreement, authorizing a Scope Change and, if appropriate pursuant to the terms hereof, an adjustment in one or more of the Scope of Work, the Contract Sum, the Guaranteed Substantial Completion Date, the Payment and Values Schedule, or any other amendment of the terms and conditions of the Contract Documents.

“Scope of Work” means the general description of the Work and the services to be performed by Contractor as set forth in Exhibit P hereto.

“Software” means (a) computer instructions, including programs, routines and databases and applications supplied, procured or developed by Contractor in connection with the Work, including but not limited to that which monitors, controls or executes on Contractor ETTM Equipment included as part of the Work or ITS equipment or hardware, and (b) all modifications, updates and revisions made to the matter described in clause (a) above, including those made to correct errors or to support new models of computer equipment and/or new releases of operating systems.

“Source Code” means Software program higher order language listings, internal documentation embedded in program listings, associated data files and data structures, in electronic and/or printed form, necessary for maintenance of and modifications to the Software. “Spare Parts Allowance” means an allowance to be provided by Company to Contractor in accordance with Section 2.1.15 hereof for a portion of procurement cost of spare parts for the Contractor ETTM Equipment included as part of the Work.

“Springfield Interchange Phase VIII” has the meaning given to such term in the Design-Build Contract.

“Standard of Care” means the performance of the Work in accordance with prudent industry practices, methods, techniques and standards, and using the degree of care, skill and diligence, that would be expected to be exercised by a prudent, skilled and experienced contractor engaged in the same types of undertakings as the Project under the same or similar circumstances and conditions as those applying to the design, development and construction of the Project, all Applicable Laws, all Applicable Permits, all Applicable Standards, the requirements of the Comprehensive Agreement, the Technical Requirements, terms of insurance policies and the other requirements specified or referred to herein or in other Contract Documents.

“State Indemnitees” means VDOT, the Commonwealth Transportation Commissioner or any successor thereto, the Commonwealth Transportation Board or any successor thereto, the Commonwealth of Virginia and their respective officers, employees, agents, contractors and consultant.

“Subcontract” means a contract between Contractor and a Subcontractor for the performance or supply of a portion of the Work by such Subcontractor.

“Subcontractor” means a vendor, supplier, materialman, consultant or subcontractor of any tier providing equipment, materials or services directly or indirectly to Contractor in connection with the Work.

“Substantial Completion” means the date on which the requirements of Section 6.6 hereof have been achieved by Contractor, as evidenced by Company’s delivery to Contractor of the fully countersigned Substantial Completion Certificate pursuant to Section 6.6.3 hereof.

“Substantial Completion Certificate” means a certificate of Contractor in the form of Exhibit W delivered to Company certifying that Substantial Completion has occurred.

“Taxes” has the meaning set forth in Section 2.1.19 hereof.

“Technical Requirements” means the technical requirements for the Project and the Work set forth in Exhibit AA hereto, as the same may be revised by any Technical Requirements Revisions pursuant to Section 7.12(d) of the Comprehensive Agreement.

“Technical Requirements Deviations” has the meaning set forth in Section 12.4 hereof.

“Technical Requirements Revisions” has the meaning given to such term in the Design-Build Contract.

“Termination For Cause” means a termination of this Agreement pursuant to Section 15.2 hereof.

“Termination Payment” has the meaning set forth in Section 4.4 hereof.

“Utilities” means any public, private, cooperative, municipal and/or government line, facility or system used for the carriage, transmission and/or distribution of cable television, electric power, telephone, telegraph, water, gas, oil, petroleum products, steam, chemicals, sewage, storm water not connected with the highway drainage and similar substances that directly or indirectly serve the public. The term “Utility” specifically excludes (a) storm water lines connected with the highway drainage, and (b) traffic signals, street lights, and electrical systems for roadways.

“VA. Code” means the Code of the Commonwealth of Virginia of 1950, as amended.

“VDOT” means the Virginia Department of Transportation, an agency of the Commonwealth of Virginia, and any other agency of the Commonwealth of Virginia succeeding to the powers, authorities and responsibilities of VDOT invoked by or under the Comprehensive Agreement.

“Warranty Period” has the meaning set forth in Section 10.2 hereof.

“Work” has the meaning set forth in Section 2.1 and further supplemented by the Scope of Work set forth in Exhibit P hereof.

“Work Order” is a written instruction from Company to Contractor to proceed with a Scope Change in accordance with the provisions of Sections 12.9 hereof, in lieu of the initial issuance of a Scope Change Order to govern such Scope Change.

“Work Schedule” means the construction and design schedule prepared by Contractor under the provisions of Section 2.1.1 hereof, which is to be consistent with the Project Schedule set forth as Exhibit M hereto, as adjusted pursuant to this Agreement.

“Work Site” means the area required by the Contractor for the performance of the Work and shall be within the boundaries of the Project Right of Way.

ARTICLE 2

CONTRACTOR’S WORK AND OTHER OBLIGATIONS OF CONTRACTOR

2.1 Work to be Performed. Except as otherwise expressly set forth in Article 5 hereof, and subject to the specific provisions of and exclusions set forth in the Scope of Work, Contractor shall perform or cause to be performed any and all work and services required or appropriate in connection with (A) the development and provision of the complete ETTM System specification, (B) the design, engineering, procurement, construction, and completion of that portion of the ETTM System included within the Scope of Work (and, for the avoidance of doubt, excluding the Company-Supplied Equipment and Facilities), (C) Commissioning, start-up, demonstration, and testing of the ETTM System and (D) fit-out of the HOT Operations Center (excluding the Company-Supplied Equipment and Facilities), and shall provide all materials, equipment, machinery, tools, labor, supervision, transportation, administration, training and other services and items required to complete and deliver to Company that portion of the ETTM System included within the Scope of Work, all on a lump-sum, fixed-price, turnkey basis in accordance with the requirements of this Agreement, Applicable Laws, Applicable Permits and Applicable Standards (collectively, the “Work”). Certain details of the Work are described in the Contract Documents, but Contractor shall perform or cause to be performed all activities necessary to complete the Work generally described in or reasonably inferable from the Contract Documents. Without limiting the foregoing, Contractor shall perform the following as part of the Work:

2.1.1 Scheduling and Milestones.

2.1.1.1 Work Schedule. Within forty (40) days after the Commencement Date, Contractor shall submit for Company’s Approval a detailed Work engineering, procurement, construction and Commissioning schedule, which shall be consistent with the “Project Schedule” attached as Exhibit M and include, among other things: (i) the order in which Contractor proposes to carry out the Work, including each stage of design, procurement, manufacture, delivery to the Project Right of Way, construction, inspection and testing, and Commissioning and (ii) the times when submissions and Company's Approvals are requested. Contractor shall perform the Work in accordance with the Work Schedule and shall coordinate and incorporate the schedules of all Subcontractors into the Work Schedule as they become available.

2.1.1.2 Schedule Updates. As part of each Monthly Progress Report and in conjunction with the monthly progress meetings required in accordance with Section 2.2.7 hereof, Contractor shall provide Company with updates to the Work Schedule and a narrative that describes, as a minimum, the overall progress for the preceding month, a critical path

analysis, a discussion of problems encountered and proposed solutions thereof, work calendars, constraints, delays experienced and any pending Time Impact Analysis (“TIA”), float consumption, documentation of any logic changes, duration changes, resource changes or other relevant changes. The narrative shall also include the following:

- (a) Comparisons of actual and planned progress, including: (i) illustrating schedule variance graphically by plotting the Budgeted Cost of Work Performed (“BCWP”) and the Budgeted Cost of Work Scheduled (“BCWS”); and (ii) reporting the Schedule Performance Index (“SPI”), defined as the ratio of BCWP divided by BCWS;
- (b) Details of any aspects of the Work which may jeopardize completion in accordance with the Contract Documents; and
- (c) Measures being (or to be) adopted to overcome such aspects and a list of approvals needed to adopt such measures.

If Company believes that the Work Schedule needs a specific revision, either in logic, activity duration, manpower or cost, it will be requested from Contractor in writing. Contractor shall respond in writing within five (5) days, either agreeing with Company’s proposed revision, and henceforth including it in the next Work Schedule update, or providing justification why it should not be accomplished. If revisions cannot be agreed upon either through written correspondence or subsequent meetings, Company and Contractor shall agree to attempt to resolve the issues through the dispute resolution process of Article 19 hereof. If Company and Contractor cannot agree on any revisions to the Work Schedule, Contractor shall proceed under the previously approved schedule. Contractor may not change the date for any critical path milestone noted as such on the initial Work Schedule without Company’s Approval.

2.1.1.3 Schedule Format. Contractor shall submit three (3) copies in electronic format of the Work Schedule update and narrative. A CD-ROM containing the latest schedule update in electronic format shall be submitted for each schedule iteration along with three (3) color coded plots of the current Time Scaled Logic Diagram, which shall be neatly organized and plotted time scaled from left to right on 11”x17” sheets with suitable notation relating the interface points among sheets. Time Scaled Logic Diagrams shall clearly depict the critical path, as well as activity identifications, activity descriptions, original durations, early start, early finish, late start, late finish, and actual dates as applicable. This process shall continue until Final Completion. The first day of the month (“data date”) of each Work Schedule update shall coincide with Contractor’s monthly request for payment made pursuant to Section 4.2.1 hereof. Contractor shall use Primavera Project Planner P3 v 3.1 software as the format for the Work Schedule and all updates.

2.1.1.4 Recovery Plans. If at any time prior to Substantial Completion the monthly Work Schedule update indicates that actual progress on the Work projects that Substantial Completion will occur more than five (5) months later than the then-current Guaranteed Substantial Completion Date, Company shall consult with Contractor and Contractor shall accordingly prepare a written schedule recovery plan for Company's Review concurrent with the next monthly Work Schedule update detailing the actions proposed to improve progress, which recovery plan shall set forth a revised Work Schedule that shall be

subject to Company's Approval (the "Recovery Plan"). Contractor shall respond to Company's comments related to the proposed Recovery Plan, following the process outlined in Section 2.1.1.2 hereof, until Company has approved the revised Work Schedule. Company's Review of a Recovery Plan and Company's Approval of a revised Work Schedule shall not affect any of Company's rights or Contractor's obligations under this Agreement, including Contractor's obligations to pay Late Completion Payments.

2.1.1.5 Reserved.

2.1.2 Engineering and Design. Contractor shall perform all engineering and design services for completion of the Work in conformity with the requirements of this Agreement. All engineering work of Contractor requiring certification shall be certified, and all Design Documents requiring sealing shall be sealed, by professional engineers licensed and properly qualified to perform such engineering services in all appropriate jurisdictions, which engineers and their qualifications shall be subject to the review and approval procedures set forth in Section 2.1.5.

2.1.2.1 Design. Contractor is responsible for the design of the Work. Contractor shall also develop and provide the complete ETTM System specification. Design work shall include specification and design for that portion of the ETTM System within the Scope of Work, preparation of drawings and specifications in accordance with the Scope of Work, and coordination of data systems with VDOT and the OS&S Contractor. Contractor expressly acknowledges and agrees that while the Scope of Work sets forth a general guide as to the requirements of the Project, Contractor shall have full responsibility for the adequacy, safety and stability of the design for the Work and methods of development, construction, maintenance, testing, Commissioning and completion of the Work in accordance with all Contract Documents and the Standard of Care, such that the whole of the Work is constructed, Commissioned and operational, capable of recording and collecting tolls, and may be safely operated.

2.1.2.2 Design Documents. Contractor shall prepare all plans, drawings and specifications for the Work, including but not limited to design standards, design or durability reports, models, samples and calculations (the "Design Documents"), in computer readable and written formats in full compliance with the Applicable Standards, Applicable Permits and Applicable Laws and shall submit those set forth on Exhibit Q for Company's Review or Company's Approval (which may include review and approval by Concessionaire or VDOT as provided in Exhibit Q). Contractor's obligations with respect to the Design Documents include fulfilling the obligations of Concessionaire under Sections 7.03(b)(i) and 7.05 of the Comprehensive Agreement solely as they pertain to Design Documents for the Work, and Contractor shall coordinate with Company as appropriate such that Concessionaire may timely and fully perform such obligations. Notwithstanding anything to the contrary in this Agreement, Company's Review or Company's Approval (as the case may be) of Design Documents shall be only a determination whether such documents (and the portions of the Work represented thereby) on their face meet the standards for the Work set forth in this Agreement, and shall not be considered an evaluation or determination that such documents and the portions of the Work represented thereby in fact meet the standards for the Work or are otherwise satisfactory for their intended purpose. Based on the Scope of Work and those Design Documents that have received Company's Approval, Contractor shall prepare comprehensive

drawings and specifications setting forth in detail the requirements for the procurement and construction of the Work. As the drawings and specifications for the Project are issued and, if applicable, receive Company's Approval, they shall be clearly identified as Design Documents. Contractor may, with Company's Approval, apply for approvals from VDOT of interpretive engineering decisions concerning the meaning, scope, interpretation and application of the Technical Requirements. All applications for such approvals shall be in writing. Contractor acknowledges that VDOT may issue a written approval of Contractor's proposed interpretive engineering decision, if any (upon which Company and Contractor may rely), may issue its own interpretive engineering decision, or may disapprove any interpretive engineering decision Contractor proposes.

2.1.3 Procurement. Contractor shall procure and pay for, in Contractor's name as an independent contractor and not as agent for Company, all materials, equipment, supplies, consumables, transportation, labor, supervision and other necessary services (whether on or off the Project Right of Way), which are not expressly specified to be furnished by Company pursuant to Article 5 hereof, to complete the Work in accordance with the Contract Documents. Contractor shall be responsible for obtaining all customs clearances required in connection with the provision of equipment, materials and supplies necessary to complete the Work in accordance herewith, including any temporary clearances for construction and testing equipment and other items to be used in the Work.

2.1.4 Construction. Not later than sixty (60) days prior to scheduled commencement of construction work at the Work Site, Contractor shall provide to Company an updated construction plan that includes updated manpower loading estimates, procedures for environmental protection, Work Site safety, security, and protection of areas adjacent to the Work Site in accordance with the requirements of this Agreement. The updated construction plan shall conform with and implement the Quality Plan. Contractor shall construct and install the Work expeditiously and in accordance with the updated construction plan and the requirements of this Agreement. Contractor shall furnish to Company Monthly Progress Reports of progress of the Work, together with monthly work plans of activities being performed at the Work Site(s) and an updated work Schedule (if applicable), as specified in Exhibit Q.

2.1.5 Labor Matters.

2.1.5.1 Contractor's Personnel. Contractor shall provide all labor and personnel required in connection with the Work, including: (a) professional engineers licensed to perform engineering services in each jurisdiction where the performance of the Work requires such licensing; (b) a lead engineer, cost and schedule engineer(s), and procurement, construction, start-up and training supervisors, all of whom have had extensive experience in work of similar technology and magnitude; (c) the Project Manager and the Construction Manager; and (d) the Quality Manager and other quality assurance personnel.

2.1.5.2 Facilities and Other Personnel Requirements. Company may conduct periodic searches of employees and other persons present at the Project Right of Way, and Contractor may conduct such searches of employees and other persons present at the Work

Site, in each case, including personal and professional possessions, automobiles, trucks, briefcases, lunchboxes and persons for the presence of firearms, alcohol and illegal drugs. Contractor shall immediately notify Company's Project Director if firearms, alcohol or illegal drugs are found on the Work Site. Company shall have the right to require the immediate removal and permanent expulsion from the Project Right of Way and from any work associated with the Work of any Person that at any time is found in possession of firearms, alcohol or illegal drugs.

2.1.5.3 Labor Relations. Contractor shall be responsible and liable for all labor relations matters of Contractor and Subcontractor personnel relating to the Work and shall at all times use Commercially Reasonable Efforts to maintain harmony among the unions (if any) and other personnel employed in connection with the Work and act in a reasonable, professional and courteous manner with Company Contractors and Concessionaire Contractors. Contractor shall at all times use all Commercially Reasonable Efforts and judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes and strikes.

2.1.5.4 OS&S Contractor Personnel. Contractor shall coordinate the recruitment by the OS&S Contractor of start-up personnel for Commissioning and testing of the ETTM System (excluding the Company-Supplied Equipment and Facilities), all in accordance with the Performance Testing and Commissioning Plan and Program. Contractor shall coordinate and manage the use of OS&S Contractor start-up personnel during the Commissioning and testing of the ETTM System (excluding the Company-Supplied Equipment and Facilities).

2.1.6 Work Site and Real Estate Rights.

2.1.6.1 Reserved.

2.1.6.2 Reserved.

2.1.6.3 Reserved.

2.1.6.4 Reserved.

2.1.6.5 Reserved.

2.1.6.6 Contractor's Obligation to Maintain. Contractor shall maintain any part of the ETTM Facilities of which it takes sole possession until care, custody and control is transferred to VDOT or Concessionaire in accordance with the terms of this Agreement. Company and Contractor agree to jointly develop an agreement that defines sole possession and maintenance responsibilities.

2.1.7 Permitting. Contractor shall be responsible for the procurement and maintenance in full force and effect throughout the term hereof of those Applicable Permits required for it to perform the Work, except those designated as Company's responsibility in the Scope of Work.

2.1.8 Ownership of Intellectual Property; Royalties and License Fees; Source Code Escrow. Contractor shall pay all applicable and required initial royalties and license fees (it being understood that Contractor is not responsible for ongoing maintenance and support fees) and shall procure for the benefit of Concessionaire and/or VDOT, as applicable, at Contractor's sole expense (other than ongoing maintenance and support fees), the appropriate rights, licenses, agreements and permissions for materials, methods, processes and systems incorporated into the Project as part of the Work. In performing the Work hereunder, Contractor shall not incorporate into the Project any materials, methods, processes or systems which involve the use of any confidential information, intellectual property or proprietary rights which Concessionaire, VDOT or Contractor does not have the right to use or which may result in claims or suits against Company, Concessionaire, VDOT or Contractor arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other proprietary rights, or applications for any such rights, or use of confidential information. Any such rights held by Contractor with respect to items incorporated in the Work shall be assigned or licensed to VDOT or Concessionaire, as applicable, at no additional cost to Company, VDOT or Concessionaire, in connection with the use or operation of the Project.

2.1.8.1 All Proprietary Intellectual Property of Contractor shall remain exclusively the property of Contractor, notwithstanding any delivery of copies thereof to Company. Upon the expiration or earlier termination of, or any assignment by the Company of its rights under, this Agreement for any reason whatsoever, the Concessionaire and VDOT shall have a nonexclusive, nontransferable, irrevocable fully paid up license to use the Proprietary Intellectual Property of the Contractor solely in connection with the Project. Company shall not at any time sell any such Proprietary Intellectual Property or use or allow any party to use any such Proprietary Intellectual Property for any purpose whatsoever other than in connection with the Project. Company shall not disclose any Proprietary Intellectual Property of Contractor (other than to Concessionaire, contractors, subcontractors, employees, attorneys and agents in connection with the Work who agree to be bound by any confidentiality obligations of Company relating thereto) and Company shall enter into a confidentiality agreement reasonably requested by Contractor with respect to any such Proprietary Intellectual Property. Contractor shall continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

2.1.8.2 Contractor agrees that VDOT shall have the right to purchase from Contractor a nonexclusive, nontransferable, irrevocable, fully paid up license to use the Proprietary Intellectual Property of Contractor on any other tolled state highway owned and operated by VDOT or other State agency on commercially reasonable terms.

2.1.8.3 With respect to any Proprietary Intellectual Property owned by a Person other than Contractor, Concessionaire or VDOT, Contractor shall obtain from such owner, concurrently with execution of any contract, subcontract or purchase order with such owner, for Company, Concessionaire and VDOT, nonexclusive, nontransferable, irrevocable, fully paid up (other than with respect to ongoing maintenance and support fees) licenses to use such Proprietary Intellectual Property solely in connection with the Project, of at least identical scope, purpose, duration and applicability as the licenses granted by Section 2.1.8.1 above. Contractor shall use commercially reasonable efforts to obtain from such owner a right in favor of VDOT to purchase from such owner a nonexclusive, nontransferable, irrevocable, fully paid

up(other than with respect to ongoing maintenance and support fees) license to use such owner's Proprietary Intellectual Property on any other tolled state highway owned and operated by VDOT or other State agency on commercially reasonable terms. The limitations on sale and disclosure by Company set forth in Section 2.1.8.1 above shall also apply to Company's, Concessionaire's and VDOT's licenses in such Proprietary Intellectual Property.

2.1.8.4 Contractor's name and/or other trademarks, service marks and tradenames owned by Contractor (the "Contractor Marks") may appear on some of the Work-related assets, including supplies, materials, stationery and similar consumable items on the last day of the term hereof. The Parties agree that Contractor shall remain the owner of the Contractor Marks at the end of the term hereof, and Contractor may remove, at its expense, the Contractor Marks prior to the end of the term. Company acknowledges and agrees that it shall have no right, title, interest or license in the Contractor Marks.

2.1.8.5 Contractor shall comply with Company's reasonable direction, and agrees to execute further agreements as may be required, in order that Company and Concessionaire, as applicable, may fulfill their obligations under Section 18.06 of the Comprehensive Agreement, including to escrow Source Code and related documentation of software which is Proprietary Intellectual Property of Contractor.

2.1.9 Inspection and Expediting. Contractor shall perform all inspection, expediting, quality surveillance that are required for performance of the Work on a timely basis. Contractor's responsibilities under this Section 2.1.9 shall include, without limitation, inspecting all Contractor-supplied materials and equipment, both on and off the Project Right of Way that comprise or will comprise the Work or that are to be used in performance of the Work hereunder. Contractor shall perform a detailed inspection of all Work in progress at intervals appropriate to the stage of construction or fabrication off the Project Right of Way as is necessary to ensure that such Work is proceeding in accordance with the Contract Documents and to protect Company against defects and deficiencies in such Work. On the basis of such inspections, Contractor shall keep Company continuously informed of the progress and quality of all Work and shall provide Company with written reports of deficiencies revealed through such inspections and of measures proposed by Contractor to remedy such deficiencies. Contractor shall use all reasonable efforts to secure for Company, Concessionaire, VDOT and the Independent Engineer or their representatives the option of being present at all inspections off the Project Right of Way. In the event that the progress and quality of the Work is not proceeding in accordance with the Contract Documents, Company shall be entitled to make recommendations to Contractor for the purpose of remedying such deficiencies. Contractor shall provide Company with a detailed list of materials and equipment inspection points. Contractor shall provide Company with at least five (5) days' prior written notice of all inspections and on a monthly basis, Contractor shall advise Company of inspections planned for the forthcoming month. Company, Concessionaire, VDOT and the Independent Engineer, and each of their designated representatives, shall have the right to be present at and participate in all inspections of the Work or the Work Site undertaken by Contractor. No inspection performed or failed to be performed by Company, Concessionaire, VDOT or the Independent Engineer, or any recommendation from Company, Concessionaire, VDOT or the Independent Engineer in connection therewith, shall be a waiver of any of Contractor's obligations hereunder or be construed as an approval or acceptance of any Work hereunder and shall not relieve Contractor

of independent responsibility for performance of the Work hereunder or for any acts or omissions of the Contractor's design professionals or other Subcontractors engaged by Contractor to perform the Work.

2.1.10 Monthly Progress Meetings. Contractor shall conduct regularly scheduled, monthly progress meetings at the Project Right of Way throughout construction of the Work beginning the month after the Commencement Date to thoroughly discuss the progress and status of construction with Company's Work Representative and any other representatives of Company that Company desires or Concessionaire and VDOT may request. Such meetings shall be attended by Contractor's Construction Manager and Project Manager, Company's representatives and other appropriate representatives of Contractor's staff, and during such meetings, progress during the prior month, as presented in the Monthly Progress Report, shall be reviewed and Contractor shall report information from any key Subcontractors responsible for the Work completed during the specified duration and the Work scheduled during the upcoming reporting duration. Company shall be responsible for preparing, maintaining and distributing minutes of the monthly progress meetings to all attendees for review and approval.

2.1.11 Witness Points. The Quality Plan shall set forth a list of agreed witness points for Company, Concessionaire and VDOT to witness certain portions of the Work. At least sixteen (16) days in advance of any witness point, Contractor shall provide Company with a preliminary notice thereof, and Contractor shall provide a final notice no later than seven (7) days in advance of any witness point. Contractor shall not proceed past an established witness point prior to the date specified therefor in the advance notice unless Company, Concessionaire and VDOT have witnessed the activity and Contractor is in compliance with its obligations under Section 2.1.9 or Company, Concessionaire or VDOT has failed to witness or inspect the Work on the date scheduled, in which case Company, Concessionaire or VDOT, as applicable, will be deemed to have waived its right to witness such activity and Contractor shall be entitled to proceed with the Work. Company's failure to view a witness point shall not be cause for a Company-Caused Delay, Concessionaire's failure to view a witness point shall not be cause for a Concessionaire-Caused Delay, and VDOT's failure to view a witness point shall not be cause for a ARCA Delay Event.

2.1.12 Uncovering of Work. If any portion of the Work should be covered contrary to the written request of Company or to requirements specifically expressed in the Contract Documents, such portion of the Work shall, if requested in writing by Company, be uncovered for observation and shall be replaced at Contractor's expense. If any other portion of the Work has been covered which Company has not specifically requested to observe prior to being covered, VDOT, the Independent Engineer, Concessionaire or Company may request to see such Work and it shall be uncovered by Contractor. If such Work shall be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Scope Change Order, be charged to Company. If such Work shall be found not to be in accordance with the Contract Documents, Contractor shall pay such costs.

2.1.13 Storage and Related Matters. Contractor shall warehouse or otherwise provide appropriate storage (in accordance with manufacturers' recommendations) for all materials, supplies and equipment required for the performance of the Work, and shall

provide for the disposal of all surplus materials brought onto the Project Right of Way by Contractor or any of its Subcontractors.

2.1.14 Fuel. Contractor shall supply all fuel and consumables required to enable Contractor to perform the Work hereunder, including construction, start-up and testing.

2.1.15 Spare Parts. If requested under a Scope Change Order, Contractor shall procure start-up and operating spare parts for all items of the Contractor ETTM Equipment (excluding spare parts for items of Contractor ETTM Equipment installed by Company) necessary for the first year of operation of the Contractor ETTM Equipment and shall be reimbursed by Company for the costs thereof. Contractor shall use all reasonable efforts to secure the lowest pricing obtainable for such spare parts and shall store them under its control until Final Completion; provided, however, that each such item shall be clearly labeled as a part designated for the Project. Contractor shall have the right to purchase at its own expense any spare parts that Company does not require Contractor to purchase and, to the extent any such spare parts are not used prior to Final Completion, shall remain the property of Contractor. Nothing contained herein shall (i) obligate Company to procure any spare parts or (ii) be construed to excuse Contractor from the performance of any of its obligations under this Agreement in the event that any particular spare part has not been procured for the Work.

2.1.16 Clean-Up and Waste Disposal. Contractor shall dispose of all surplus materials procured and/or used by Contractor or Subcontractors in the course of performance of the Work in compliance with all Applicable Laws. Contractor shall generally keep the Work Site free from accumulation of waste materials, rubbish and other debris in accordance with the Standard of Care. On or before the date of Final Completion, Contractor shall remove from the Work Site all waste materials, rubbish and other debris, as well as other tools, construction equipment, machinery testing equipment and surplus material to which neither Concessionaire nor Company holds title, and shall leave the Work Site in a neat, clean and usable condition. All cleanup and waste disposal shall be conducted in accordance with all Applicable Laws, Applicable Standards, the Contract Documents and the Standard of Care. No materials shall be disposed of on or at the Project Right of Way. Contractor's obligations under this Section 2.1.16 shall include removal and disposal of all temporary Utility facilities, all temporary buildings, structures, equipment and installations which Company does not wish to retain and all Hazardous Substances associated with performance of the Work, but shall not include removal or disposal of Hazardous Substances for which Contractor is not responsible pursuant to Section 2.1.17.

2.1.17 Hazardous Substances.

2.1.17.1 Contractor shall be fully responsible for any Hazardous Substances brought on the Project Right of Way by Contractor or any Subcontractor and for the proper handling, removal, transportation and disposal of such Hazardous Substances. Such Hazardous Substances shall be stored and used in accordance with the requirements of this Agreement and Applicable Laws. Contractor shall minimize the use of Hazardous Substances in the construction of the Work and shall not utilize, or permit or cause any Subcontractor to utilize, such Hazardous Substances as are prohibited from being imported into the United States or used in the Commonwealth of Virginia under Applicable Laws. Contractor shall maintain an updated

file of all material safety data sheets for all Hazardous Substances used by Contractor or any Subcontractor at the Project or at any Construction Segment related to the Work and shall deliver an update of such file to Company no more than ten (10) Business Days after the end of each month. Contractor shall maintain an accurate record and current inventory of all Hazardous Substances that are the subject of material safety data sheets, which inventory shall identify quantities, location of storage, use and final disposition. Contractor shall implement and administer a Hazardous Substances handling program for all of its employees and all Subcontractors which shall include development of guidelines and training with respect to the proper handling, use and disposal of Hazardous Substances for which Contractor is responsible hereunder and the development, implementation and enforcement of procedures for notification of Company and appropriate Governmental Authorities about, and clean-up of, spills and other emissions of such Hazardous Substances. Contractor shall have responsibility for the clean-up and mitigation of any spills or emissions of Hazardous Substances caused by Contractor or its Subcontractors, or other problems (including management, treatment, storage, remediation and removal of contaminated soil) associated with Hazardous Substances brought onto the Project Site by Contractor or its Subcontractors.

2.1.17.2 Reserved.

2.1.17.3 Contractor shall be entitled to claim a Scope Change Order pursuant to Section 12.7.2 hereof in the event of the discovery of (a) Pre-Existing Hazardous Substances on the Project Right of Way, or (b) Hazardous Substances spilled or placed on the Project Right of Way after the Agreement Date, in each case for which Contractor does not have responsibility pursuant to Section 2.1.17.1 and Section 5.6, to the extent Contractor's performance of the Work is materially adversely affected thereby and Contractor cannot, in the absence of impacting the critical path, overcome the effect thereof. Contractor shall give Company immediate (within twelve (12) hours) notice of the discovery of any such Hazardous Substances. Clean-up and mitigation of spills or emissions or other problems (including management, treatment, storage, remediation and removal of contaminated soil) associated with such Hazardous Substances on the Project Right of Way shall be Company's responsibility.

2.1.17.4 During the period of any clean-up or mitigation activities, Contractor shall continue the Work to the maximum extent possible on unaffected parts of the Project and areas of the Project Right of Way. Other than pursuant to Section 12.7, no Scope Change Order shall be issued in the event of the discovery of Hazardous Substances at the Project Right of Way.

2.1.18 Monthly Progress Reports. Contractor shall submit a Monthly Progress Report to Company together with each request for payment made pursuant to Section 4.2.1 hereof. In addition, Contractor shall, whenever required by Company, provide in writing a general description of the arrangements and methods which Contractor proposes to adopt for the execution of the Work. No significant alteration to such arrangements or methods shall be made without informing Company.

2.1.19 Taxes. Contractor shall administer and pay all sales and use taxes, gross receipts, customs duty, import duty and other taxes and contributions imposed by any taxing authority upon the sale, purchase or use of materials, supplies, equipment, services or

labor incorporated in the Project or used in the Work, as well as taxes measured by Contractor's receipts hereunder or measured by wages earned by employees of Contractor or any Subcontractor (together with sales and use taxes, but excluding any taxes due on or payable with respect to income received by Contractor or any Subcontractor, "Taxes"), and shall promptly furnish to the appropriate taxing authorities all required information and reports in connection with such Taxes and promptly furnish copies of all such information and reports to Company. The amount of any such Taxes which are paid by Contractor shall be added to the Contract Sum, provided Contractor follows the procedures in Article 12 for a Scope Change with respect to such taxes. Contractor shall cooperate with Company to minimize Company's obligation to pay sales and use taxes in connection with the Work. Contractor shall maintain all cost and other records necessary to distinguish taxable from nontaxable items, and shall assist Company in determining the appropriate amounts of sales and use taxes and any available exemptions therefrom. All Subcontracts shall include the amount of any sales or use tax as a separate line item on the face thereof along with adequate supporting documentation.

2.1.20 Employee Identification. All employees of Contractor and its Subcontractors shall be identified by the use of a distinctive badge approved by Company, which approval shall not be unreasonably withheld.

2.1.21 Adjoining Utilities. Contractor shall do all things necessary or expedient to protect any and all parallel, converging and intersecting Utilities, highways, waterways, railroads, drainage ditches, culverts, fences, walls, gates and any and all property of others from damage as a result of its performance of the Work hereunder. To the extent that any such property is damaged or destroyed in the course of the performance of the Work hereunder, Contractor shall be responsible for such damage or destruction, and Contractor shall at its own expense rebuild, restore or replace such damaged or destroyed property to a condition at least equal to the condition of such property before such damage or destruction occurred.

2.1.22 Reserved.

2.1.23 Protection of Property. Notwithstanding Section 5.2, Contractor shall provide and shall require that each Subcontractor provides proper and ample protection from damage or loss to the Contractor ETTM Equipment, materials, construction equipment and tools during its performance of the Work. Where ingress and egress to and from the Project Right of Way requires the traverse of public or private lands, Contractor shall limit the movement of its crews and equipment and of all Subcontractors so as to cause as little damage as possible to crops or other property and shall use all reasonable efforts to avoid marring such lands, and shall in all respects comply with all obligations of and any restrictions imposed on Company by the Project Right of Way. Contractor shall not be reimbursed by Company for costs associated with loss of or damage to property, whether on or off the Project Right of Way, caused by Contractor or its Subcontractor arising in connection with the Work.

2.1.24 Coordination with Company and Other Contractors. Contractor shall cooperate with Company and Company Contractors to coordinate the Work with the work of Company Contractors. Contractor shall attend any negotiations or meetings that Company has with a third party, including Concessionaire and VDOT, on a matter which is or shall become Contractor's responsibility hereunder, including a meeting of Contractor's Project Manager, the

Company's Work Representative and the Company's Project Director within fourteen (14) days after the Commencement Date to discuss issues affecting the administration of the Work and to implement the necessary procedures to facilitate the ability of the Parties to perform their obligations hereunder. Contractor agrees that if any such a negotiation or meeting occurs without a presence of a Contractor's representative, such event shall not constitute a breach of this Agreement unless such events occur repeatedly due to Company's intentional exclusion of Contractor from such negotiations or meetings.

2.1.25 Reserved.

2.1.26 Contract Documents at Project Right of Way. Contractor shall maintain at the Project Right of Way, on a current basis, one record copy of all of the Contract Documents, in good order and marked currently to record all changes, and a complete set of all working drawings required to be maintained for the Work pursuant to Applicable Laws. These shall be available upon request of Company, Concessionaire, VDOT and the Independent Engineer.

2.1.27 Commissioning. Commencing as soon as practicable prior to start-up operations, but in any event in accordance with the Work Schedule, Contractor shall commission the Work as more specifically provided in Section 6.1 hereof.

2.1.28 Operating Manual. Not later than seven (7) months before the projected Substantial Completion Date as set forth on the Work Schedule, Contractor shall submit for Company's Approval a draft of the complete equipment and system instructions and procedures for the operation and maintenance of the systems and items of plant and equipment incorporated into the ETTM System. If Company does not approve the draft, it shall provide comments thereon to Contractor within thirty five (35) days after receipt, and Contractor promptly shall incorporate or otherwise respond to Company's comments and submit a revised draft for Company's Approval. Such procedure shall be repeated until receipt of Company's Approval therefor, and the revised product shall be the "Operating Manual." Not later than fifty (50) days before such scheduled commencement, Contractor shall prepare in individually numbered bound volumes and deliver to Company eleven (11) sets of such approved Operating Manual for the ETTM System, and shall also provide the same in an electronic form that may be edited and revised electronically.

2.1.29 Start-up and Initial Operation. The Work shall include the start-up of components, calibration of controls and the ETTM System, initial operation of the ETTM System and each portion thereof, total system function and verification tests, and all other start-up and initial operation functions pertaining to the ETTM System.

2.1.30 Quality Management System. In accordance with this Agreement, Applicable Laws and the Applicable Standards, Contractor shall be responsible for all quality assurance and quality control activities necessary to manage the development, design and construction of Work and shall develop and provide to Company the Quality Plan in accordance with the Schedule of Submittals. Contractor shall fully observe and implement, and cause all Subcontractors to fully observe and implement, the Quality Plan until Final Completion. Contractor shall provide oversight and management of the Work to control the

scope, quality, cost, and on-time delivery of the Work and if the Work is not being performed in compliance with the Quality Plan, Contractor shall increase and improve its management and oversight efforts such that repair or replacement of non-conforming items does not require any increase in Company's oversight of the Project. The Parties acknowledge that, pursuant to Section 7.17(d) of the Comprehensive Agreement, VDOT has the right to review Contractor's quality management system, including the right to inspect work and/or activities and to verify the accuracy and adequacy of quality management documentation. Contractor agrees to provide, and cause its Subcontractors to provide, the access and assistance as VDOT may reasonably require conducting such reviews. All tests, inspections and quality assurance procedures required by this Agreement, or recommended by Subcontractors, shall be in addition to, and not in lieu of, applicable Quality Plan activity. Contractor shall regularly document and report to Company its compliance with the Quality Plan in accordance with the procedures contained therein.

2.1.31 Public Information. During the design and construction of the Project, Contractor shall assist Company with providing information related to the Work for dissemination to the public concerning the Project in accordance with the plans therefor to be developed by Company under the Design-Build Contract.

2.1.32 Further Assurances. Contractor shall execute and deliver all further instruments and documents, and take all further action, including but not limited to assisting Company assist Concessionaire in filing a notice of commencement and a notice of completion with the appropriate state and local lien recording offices, that Company may reasonably request in order to enable Contractor to complete performance of the Work or to effectuate the purposes or intent of the Contract Documents.

2.2 Contractor's Assumption of Risk for Project Site Conditions; No Company's Warranties for Site Information.

2.2.1 Contractor's Assumption of Risk of Site Issues. Other than with respect to failure of the Company-Supplied Equipment and Facilities to meet the requirements of this Agreement, Company expressly disclaims any responsibility for, and Contractor expressly waives its right to seek any increase in the Contract Sum or extension to the Guaranteed Substantial Completion Date for, any conditions at or on the Project Site except as provided in Sections 2.1.17, 12.7 and 12.12 hereof.

2.2.2 No Company's Warranties for Site Information. Company makes no warranties or representations as to any surveys, data, reports or other information provided by Company to Contractor (which surveys, data, reports or other information were obtained by Company from VDOT or other Persons) concerning surface or subsurface conditions affecting the Project Site or surrounding locations, including the presence of Utilities, Hazardous Substances, contaminated groundwater, archeological, paleontological and cultural references and endangered and threatened species. Without prejudice to Contractor's right to claim a Scope Change Order under Sections 12.7 and 12.12, Contractor acknowledges that such information is for Contractor's reference only and has not been verified by Company or VDOT.

2.3 Commencement of the Work. Contractor shall commence performance of the Work and other services hereunder on the date which Company specifies (the “Commencement Date”) in a written notice delivered to Contractor in the form set forth as Exhibit A hereto (the “Notice to Proceed”); provided, however, that the Commencement Date may not occur unless and until Concessionaire has issued its “Notice to Proceed” under the Design-Build Contract. Company shall issue the Notice to Proceed with a Commencement Date that is the same as that under the Design-Build Contract. Contractor shall proceed with portions of Work prior to the Commencement Date only to the extent expressly directed to do so by Company in writing. In the event the Commencement Date under the Design-Build Contract does not occur within fifteen (15) days after the date of Financial Closing, and if Company receives an increase in its Contract Sum under the Design-Build Contract as a result of such delay, then Contractor shall be entitled to receive an increase in the Contract Sum in an amount to be agreed by the parties.

2.4 Standard of Performance. With respect to Contractor’s performance of the Work, subject to the terms and conditions of this Agreement, (i) Contractor shall comply with, and shall cause the Work and all components thereof (including the specification, design, engineering, construction, integration, testing and start-up of the Work, and all equipment included within the Work) to comply with, the Standard of Care, Applicable Laws, Applicable Standards, the Technical Requirements and the Contract Documents, (ii) all engineering and design services shall be provided in accordance with the Contract Documents, Applicable Laws, Applicable Standards, the Technical Requirements and the Standard of Care, and (iii) the Work shall be constructed and erected in a good and workmanlike manner in accordance with the preceding clauses (i) and (ii). Except as otherwise expressly provided in this Agreement, the standard of performance set forth in this Section 2.4 shall apply to all aspects of the Work, and this Section 2.4 shall be deemed to be incorporated by reference into each provision of the Contract Documents describing the Work, Contractor’s obligations to perform the Work, or referring to the “requirements of this Agreement” or words of similar effect.

2.5 Compliance with Applicable Laws. Contractor shall comply with and shall cause the Work and all components thereof (including without limitation the design, engineering and construction of the Work) to comply with all Applicable Laws as they may be in effect at the time of Contractor’s performance hereunder. Notwithstanding the foregoing, the effect of any change in Applicable Laws (excluding therefrom any change in Applicable Permits resulting from the acts or omissions of Contractor or any Subcontractor) enacted after the Agreement Date shall be determined under Section 12.5.

2.6 Independent Engineer. The Comprehensive Agreement and the documents which govern Concessionaire’s transactions with the Financing Parties for the Project may provide to the Independent Engineer certain rights of review, inspection, certification and consultation with Concessionaire concerning the Project and the Work in order that the Independent Engineer may regularly and completely apprise VDOT and the Financing Parties of the progress and other aspects of the Project and the Work. Contractor shall fully and promptly cooperate with the Independent Engineer as reasonably requested by Company. Any acceptance or comment by the Independent Engineer, VDOT or the Financing Parties shall not be construed to impose on the Independent Engineer, VDOT or the Financing Parties any control of any portion of the Work, or relieve Contractor of any of its duties, liabilities or obligations under the

Contract Documents. All communications to and from the Independent Engineer regarding the Work shall be made through Company, except as Contractor is otherwise directed by Company.

2.7 Safety Precautions.

2.7.1 General Requirements. Contractor recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to: (i) all individuals at the Project Right of Way, whether working or visiting; (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site; and (iii) all other property at the Project Right of Way or adjacent thereto. Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Contractor and Subcontractors shall comply with: (i) all Applicable Laws relating to safety; (ii) Contractor's safety and health program; and (iii) any Company-specific safety requirements set forth in the Scope of Work, provided that such Company-specific requirements do not violate any Applicable Laws. Contractor will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Company's Work Representative and, to the extent mandated by Applicable Laws, to all Governmental Authorities having jurisdiction over safety-related matters involving the Project or the Work. Contractor shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work.

2.7.2 Safety and Health Program. Contractor shall provide, for Company's Review, a safety and health program seven (7) days before Contractor intends to commence any construction-related activities at the Project Right of Way. Contractor shall not perform any construction related activity (including any activity that disturbs the Project Right of Way) until an acceptable program is in place.

2.7.3 No Relief. Contractor's responsibility for safety under this Section 2.7 is not intended in any way to relieve Subcontractors of their own contractual and legal obligations and responsibility for: (i) complying with all Applicable Laws, including those related to health and safety matters; and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, Damages or accidents resulting from their performance of the Work.

2.8 Federal and State Requirements. In addition to complying with all other Applicable Laws, in performing the Work Contractor shall comply, and cause all Subcontractors to comply, with all legal requirements applicable to highways that are part of the interstate highway system, all applicable legal requirements for highway construction projects receiving federal aid, set forth in Exhibit V hereto, the prevailing wage requirements set forth in 42 U.S.C. § 276a, 23 U.S.C. § 113, as supplemented by 29 C.F.R. Part 5, 23 C.F.R. §§ 635.117(f), 635.118 and FHWA Form 1273 §§ IV and V for those contracts that involve construction of highway improvements, the Buy America requirements set forth in Section 165 of the Surface Transportation Assistance Act of 1982 and implementing regulations (23 C.F.R. § 635.410), the applicable requirements of 49 C.F.R. Part 26 relating to the Disadvantaged Business Enterprise program, and all requirements imposed pursuant to VA. Code §§ 2.2-4367 *et seq.* (Ethics in Public Contracting).

2.9 Company's Right to Carry Out Work. If Contractor defaults or neglects to carry out the Work in accordance with the requirements of this Agreement or if there are defects or deficiencies in the Work that Contractor refuses or neglects to repair, in each case after giving effect to and without limiting Contractor's right to cure or repair or correct performance as provided in this Agreement, and Contractor fails within thirty (30) days after receipt of written notice from Company to commence and continue correction of such default, neglect, defect or deficiency with diligence and promptness, Company may, without prejudice to any other remedy Company may have, correct same or cause it to be corrected in accordance with this Agreement. In the event Company exercises its rights hereunder, an appropriate Scope Change Order shall be issued by Company deducting from the payments then or thereafter due Contractor the reasonable, documented, out-of-pocket cost of correcting such default, neglect, defect or deficiency. If the payments then or thereafter due Contractor are not sufficient to cover such amount, Contractor shall pay the difference to Company within thirty (30) days after Company issues an invoice for such amount together with supporting documentation.

ARTICLE 3

SUBCONTRACTS

3.1 Subcontractors. Contractor may enter into Subcontracts for discrete portions of the Work, but may not subcontract the entire Work. The identity of vendors supplying the equipment specified in Exhibit S shall require Company's approval, not to be unreasonably withheld.

3.2 Payments to Subcontractors. From and after the Commencement Date, Contractor shall be solely responsible for paying each Subcontractor and any other Person to whom any amount is due from Contractor for services, equipment, materials or supplies in connection with the Project. Pursuant to VA. Code §2.2-4354, Contractor agrees that, within seven (7) days following receipt of monies from Company for work performed by any Subcontractor, Contractor shall either: (a) pay the Subcontractor for the proportionate share of the total payment received from Company attributable to the work performed by the Subcontractor; or (b) notify Company and such Subcontractor, in writing, of Contractor's intention to withhold all or a part of the Subcontractor's payment, specifying the reason for the non-payment. Contractor also agrees that it shall include in all of its Subcontracts a provision that: (a) obligates Contractor to pay interest to Subcontractors on all amounts owed by Contractor that remain unpaid after seven (7) days following receipt of monies from Company for work performed by any Subcontractor, except for amounts withheld as allowed in the preceding sentence; (b) states, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."; and (c) obligates each Subcontractor to include or otherwise be subject to the same payment and interest requirements as specified in this Section 3.2 with respect to each lower-tier Subcontractor. Contractor's obligations to pay an interest charge to a Subcontractor shall not be construed to be an obligation of Company, nor shall any modification to this Agreement be allowed for the purpose of providing reimbursement for the interest charge. Cost reimbursement claims shall not include any amount for reimbursement for the interest charge.

3.3 Subcontractor Warranties. Contractor shall, for the protection of Company, Concessionaire and VDOT, obtain from all Subcontractors guarantees and warranties on all machinery, equipment, services, materials, supplies and other items used and installed hereunder, and such guarantees and warranties shall not be amended, modified or otherwise discharged without the prior written consent of Company. Contractor shall use Commercially Reasonable Efforts to cause such guarantees and warranties from Subcontractors having Subcontracts for amounts in excess of \$500,000 to cover periods of not less than two (2) years from the date of Substantial Completion and to include parts, shipping, service and labor for all warranty repairs with respect thereto. Contractor shall enforce guarantees and warranties to the fullest extent thereof on behalf of Company, Concessionaire and VDOT until expiration of the Warranty Period. At Company's request or, if later, upon the expiration of the Warranty Period, Contractor shall assign to Company, all guarantees and warranties of all Subcontractors then remaining in effect; provided, however, that (i) such assignment shall not relieve Contractor of its warranty obligations under the Contract Documents and (ii) Contractor shall have the prior right to enforce the guarantees and warranties of Subcontractors to the extent necessary to assure satisfaction of Contractor's warranty obligations to Company under the Contract Documents. Neither Contractor, nor any Subcontractor or any Person under Contractor's control, shall take any action which could release, void, impair or waive any warranties or guarantees on equipment, materials or services that it procures from others.

3.4 No Privity. Company shall not be deemed by virtue of this Agreement to have any contractual obligation to or relationship with any Subcontractor.

3.5 Subcontracts. Each Subcontract to which Contractor is a party shall contain or incorporate by reference the essential terms of this Agreement, and also must provide that such Subcontract may be freely assigned to Company upon the request of Company following termination of this Agreement or to VDOT upon the request of Company.

3.6 Review and Approval not Relief of Contractor's Liability. The review, approval and consent by Company of the identity of vendors supplying equipment on Exhibit S shall not relieve Contractor of any of its duties, liabilities or obligations under the Contract Documents. Any inspection, review or approval by Company or any other Person permitted under the Contract Documents of any portion of the Work or of any work in progress by Contractor or Subcontractors shall not relieve Contractor of any duties, liabilities or obligations under the Contract Documents.

3.7 Disadvantaged Business Enterprise (DBE) and Small, Women-Owned and Minority Business (SWAM) Goals. Contractor shall comply with, and require all its Subcontractors to comply with, the DBE/SWAM goals set forth in Sections 11.03(b)-(e) of the Comprehensive Agreement to the extent applicable to the Work.

ARTICLE 4

PRICE AND PAYMENT

4.1 Contract Sum. As consideration to Contractor for the full and complete performance of the Work in accordance with the terms hereof and all costs incurred in

connection therewith, Company shall pay, and Contractor shall accept, a firm, fixed-price, lump sum equal to \$41,592,235, to be paid in installments as set forth in Section 4.2 hereof (such amount, as it may be adjusted from time to time in accordance with this Agreement, herein referred to as the “Contract Sum”). The Contract Sum is not subject to adjustment for any reason other than pursuant to a Scope Change authorized by Company or to which Contractor is entitled to claim as specified herein. Payment for material on hand shall be handled in a manner consistent with the Design-Build Contract.

4.2 Payment Schedule. The Contract Sum shall be paid by Company to Contractor in monthly installments (“Scheduled Payments”) based on percentage completion of the Work (other than Scheduled Payments designated as "Mobilization Payments" on the Payment and Values Schedule, which shall be payable at the time specified in the Payment and Values Schedule), subject to the Maximum Cumulative Drawdown Schedule and in accordance with the Payment and Values Schedule, as may be adjusted from time to time pursuant to the terms of this Agreement.

4.2.1 Request for Payment. No earlier than the fifteenth (15th) and no later than the eighteenth (18th) day of each month commencing with the month in which the Commencement Date occurred, Contractor shall submit to Company its request for payment consisting of (a) an invoice in the amount of the applicable Scheduled Payment; (b) a certificate signed by the Contractor that Contractor has achieved the appropriate percentage of completion required for such Scheduled Payment in accordance with the Payment and Values Schedule and attaching reasonable documentary evidence of the performance of the relevant portion of the Work sufficient for Company and the Independent Engineer to reasonably determine that such portion of the Work has been performed; and (c) copies of the lien waivers specified in Section 4.5 or a bond meeting the requirements set forth in Section 4.5 with respect to any lien not waived. Notwithstanding anything to the contrary contained herein, Company shall not be obligated to make any payment to the extent that such payment, when added to all previous payments, exceeds the amount designated as the “Maximum Cumulative Payment” for the corresponding month on the Maximum Cumulative Drawdown Schedule. Also, with each payment request, Contractor shall furnish to Company all cost details relating to such payment request as necessary for Company to satisfy the requirements of the Financing Parties and the legal requirements of all Governmental Authorities. Such information shall be subject to audit in accordance with Section 20.2 hereof. Company and Contractor shall use all reasonable efforts to cooperate with each other to cause each request for payment to be reviewed and certified by the end of each calendar month. Contractor agrees that no information shall be submitted to the Independent Engineer under this Section 4.2.1 without its first being submitted to Company for review and approval.

4.2.2 Conditions to Scheduled Payments. Subject to the terms of this Agreement, and provided that Company has received Contractor’s request for payment in accordance with Section 4.2.1 above, Company shall make, or cause to be made, the corresponding Scheduled Payment to Contractor within seven (7) days after receipt by Company of corresponding payment from the Concessionaire, such payment to comply with VA. Code §2.2, et seq., which addresses prompt payment; provided, however, that Concessionaire may withhold all or part of any Scheduled Payment upon the occurrence of any of the following events:

(i) Contractor's request for payment does not include the certification required by Section 4.2.1 hereof or otherwise does not meet the requirements of Section 4.2.1 hereof;

(ii) Contractor has not supplied Company with (i) the certification and the interim lien waivers as described in Section 4.5 hereof or (ii) the Monthly Progress Report for the month for which the request for payment has been made as described in Section 2.1.18 hereof;

(iii) one or more third parties have filed a mechanics' lien or similar claim against Company, Concessionaire or the Project or Project Right of Way resulting from the actions or inactions of Contractor, any of its Subcontractors, or any person for whom Contractor is legally responsible, and Contractor has not furnished in respect thereof a bond meeting the requirements of the penultimate sentence of Section 4.5 hereof;

(iv) Contractor has failed to make timely payments to Subcontractors as required under applicable Subcontracts and Applicable Law; provided, however, that the foregoing shall not apply if Company has wrongfully withheld payments due to Contractor;

(v) Contractor fails to pay any amounts owing to Company under the Contract Documents;

(vi) the Independent Engineer does not approve the related request for payment by the Company under the Design-Build Contract for work performed by Contractor or any of its Subcontractors;

(vii) any event which would permit a Termination For Cause of this Agreement by Company has occurred and is continuing beyond any applicable cure period; or

(viii) this Agreement is terminated before the Final Payment is made, in which event Company shall not be obligated to make further Scheduled Payments or other payments except in accordance with Section 4.4 or Section 15.2 hereof, as applicable.

4.2.3 Deferral of Scheduled Payments. Contractor shall re-invoice at the next regular monthly invoicing date any Scheduled Payment or portion thereof withheld under Section 4.2.2 once the cause for such withholding has been removed or resolved, and Company shall make such Scheduled Payment, other than any portion thereof in dispute, without interest, if all the conditions to the Scheduled Payment have been satisfied. Contractor shall continue to perform the Work, notwithstanding a withholding by Company under Section 4.2.2.

4.2.4 Interest on Late Payments. Any undisputed amount not paid when due shall bear interest at the Late Payment Rate from the date such payment is due until the date it is actually paid. Any disputed amount which is ultimately determined to be payable shall

bear interest at the Late Payment Rate from the date of such determination until the date it is actually paid.

4.3 Final Payment. Following Final Completion Contractor shall submit to Company its request for the unpaid balance of the Contract Sum (the “Final Payment”), consisting of (i) the countersigned Final Completion Certificate, (ii) a final list and summary of the work performed by all Subcontractors, the amount due to each Subcontractor, and certification by Contractor that all undisputed amounts due to Subcontractors have been paid in full, (iii) a final lien waiver, in the form of Exhibit B, of all liens that Contractor may have against Company, Concessionaire, the Project and the Project Right of Way, (iv) final lien waivers in the form of Exhibit C (or, solely in the case of vendors providing materials or equipment valued at less than \$50,000 in the aggregate, other evidence reasonably satisfactory to Company demonstrating that such vendor has waived or is not entitled to place any lien on any part of the Project or the Project Right of Way) from each Subcontractor with a Subcontract of more than \$50,000 in value (and from such other Subcontractors as may be necessary such that the aggregate value of all Subcontracts for which a final release and waiver has not been obtained does not exceed \$1,000,000) or, if Contractor is unable to obtain all such waivers, a letter of credit or bond that has received Company’s Approval to protect Company, Concessionaire, VDOT, the Project and the Project Right of Way from any and all claims made on account of such liens, (v) the satisfaction of all other conditions to a Scheduled Payment contained in this Agreement or to which Contractor has otherwise agreed, and (vi) an invoice in the amount of the Final Payment. Company shall make, or cause to be made, the corresponding Final Payment to Contractor within seven (7) days following receipt of monies from Concessionaire for work performed by Contractor. Company may withhold from the Final Payment the amount of all Subcontracts for which a final release and waiver has not been obtained or for which Contractor has not provided a satisfactory payment bond to protect the Project and Company. Company shall pay over to Contractor the relevant portions of such withheld amount when the statutory period by which any liens may be created has expired without such liens have been created.

4.4 Termination Payment. Upon a termination of this Agreement pursuant to Section 15.3 hereof, Contractor shall be entitled to receive a termination payment (the “Termination Payment”) equal to the sum of (i) that portion of the Contract Sum, which is due and payable to Contractor by Company and applicable to the Work completed up to the date of termination and which has not previously been paid to Contractor, (ii) the direct, out-of-pocket costs reasonably incurred by Contractor in withdrawing its equipment and personnel from the Project Right of Way and in otherwise demobilizing, and (iii) the direct, out-of-pocket costs reasonably incurred by Contractor in terminating contracts with Subcontractors. Representatives of Company and Contractor shall determine the Contract Sum amount referred to in clause (i) above in accordance with the Payment and Values Schedule, and Contractor shall document the costs claimed under clause (ii) above to Company’s reasonable satisfaction and shall supply Company with copies of the Subcontractor invoices covering amounts claimed under clause (iii) above. Contractor shall submit an invoice to Company for the Termination Payment with the supporting information and documents referred to above, and Company shall pay such invoice within thirty (30) days after its receipt of same subject to the provisions of this Section 4.4. and unless it disputes certain elements thereof, in which event only the undisputed portion of the Termination Payment need be made within such 30-day period and the dispute over the

remainder of the claimed Termination Payment may be submitted to the appropriate dispute resolution process provided under Article 19. The Termination Payment shall be subject to offset for amounts payable by Contractor to Company. As a condition precedent to receiving the Termination Payment, Contractor shall comply with all the provisions of Section 15.4 hereof. Payment of the Termination Payment shall be the sole and exclusive liability of Company, and the sole and exclusive remedy of Contractor, with respect to termination of this Agreement pursuant to Section 15.3 hereof. In no event shall Company have any further liability to Contractor in any such event for actual, incidental, consequential or other damages, notwithstanding the actual amount of damages that Contractor may have sustained in connection with a termination pursuant to Section 15.3 hereof. Calculation of the Termination Payment has been agreed upon and fixed hereunder because of the difficulty of ascertaining the exact amount of such damages Contractor will actually sustain in the event of a termination of the Work pursuant to Section 15.3 hereof, and Company and Contractor agree that the calculation of the Termination Payment is reasonable.

4.5 All Payments Subject to Release of Liens. At the time of each Scheduled Payment hereunder, Contractor shall (a) certify to Company that the Project, the Project Right of Way and any and all interests and estates therein, and all improvements and materials placed on the Project Right of Way, are, to the extent of the most recent payment received by Contractor, free from any and all claims, liens, security interests or encumbrances in the nature of mechanics', labor or materialmen's liens or otherwise, arising out of or in connection with performance by Contractor, or any Subcontractor, of the Work, and (b) provide an interim lien waiver, in the form of Exhibit D hereto (or, solely in the case of vendors providing materials or equipment valued at less than \$50,000 in the aggregate, other evidence reasonably satisfactory to Company demonstrating that such vendor has waived or is not entitled to place any lien on any part of the Project or the Project Right of Way), of Contractor's lien claims, to the extent of the most recent payment received by Contractor, and interim lien waivers, in the form of Exhibit E hereto, from each Subcontractor with a Subcontract in excess of \$50,000, to the extent of the most recent payment received by Contractor, as are necessary to support Contractor's certificate. If any claim, lien, security interest or encumbrance is filed or notification of withholding money for labor or material furnished under this Agreement is served on Company, Concessionaire, VDOT or any Financing Party, Company may withhold from any Scheduled Payment or other amount payable to Contractor under this Agreement or otherwise, an amount sufficient to discharge any or all such liens or claims, unless Contractor shall furnish a bond in form, substance and amount reasonably satisfactory to Company, Concessionaire, VDOT and the Financing Parties to protect Company, Concessionaire, the Project and the Project Right of Way against such liens or claims, and, after thirty (30) days from the time such lien or claim is made, unless Contractor shall have furnished a bond as described above, Company may discharge such lien or claim with the moneys withheld, whereupon for purposes of this Agreement such moneys shall be deemed to have been paid to Contractor hereunder. In addition, Contractor shall deliver to Company a final release and waiver of liens, in the form of Exhibit C hereto, from each Subcontractor with a Subcontract in excess of \$50,000 on the payment date next following the date on which final payment to such Subcontractor is made.

4.6 Payment or Use Not Acceptance. No Scheduled Payment or other payment to Contractor or any use of the Project by Company shall alone constitute an acceptance

of any of the Work or relieve Contractor of any of its obligations or liabilities with respect thereto.

4.7 Set-Off. Company may deduct and set-off against any part of the balance due or to become due to Contractor under this Agreement, any amounts due from Contractor to Company under or in connection with this Agreement, including any Delay Damages due or to become due from Contractor to Company pursuant to Article 7.

4.8 Guaranty. Contractor shall cause the Guarantor to execute and deliver a guaranty in favor of Company, in the form of Exhibit F hereto, as a security for all obligations of Contractor hereunder. Such guaranty must be provided by no later than the Agreement Date.

4.9 Letter of Credit. On the Agreement Date, Contractor shall provide Company with a Letter of Credit in the form of Exhibit H hereto issued by a Qualified Issuer in an amount equal to seven-and-one-half percent (7.5%) of the Contract Sum, as additional security for Contractor's performance of its obligations hereunder. On the date that is twenty-four (24) months prior to the Guaranteed Substantial Completion Date, the amount of the Letter of Credit shall be increased to an amount equal to forty percent (40%) of the Contract Sum (as it has been adjusted by Change Order), less the amount of any draws on the Letter of Credit prior to such date. Upon Substantial Completion of the Work, the amount of the Letter of Credit may be adjusted to an amount equal to three percent (3%) of the Contract Sum and be subject to draw by Company during the first two (2) years of the Warranty Period. If any General Warranty claims remain unresolved as of the date the Letter of Credit (or portion thereof) is otherwise permitted to expire pursuant to the preceding sentence, Contractor shall cause the Letter of Credit (or portion thereof) to remain in effect through the date of resolution of such General Warranty claims, provided that the amount of the Letter of Credit (or applicable portion thereof) shall be reduced following the end of the first two (2) years of the Warranty Period to an amount equal to one hundred fifty percent (150%) of the total amount of such outstanding claims. For so long as Contractor is obligated to maintain the Letter of Credit, not later than thirty (30) days prior to the stated expiration date of the Letter of Credit, Contractor shall renew, or cause the renewal of, each outstanding Letter of Credit, or replace, or cause the replacement of, each such Letter of Credit with one or more replacement Letters of Credit from a Qualified Issuer and having a stated amount equal to that of the Letter of Credit being renewed or replaced. For so long as Contractor is obligated to maintain the Letter of Credit, in the event (i) the issuer of a Letter of Credit shall fail to meet the requirements of a Qualified Issuer, (ii) an issuer of a Letter of Credit shall fail to honor the beneficiary's properly documented request to draw on an outstanding Letter of Credit, or (iii) the issuer of an outstanding Letter of Credit indicated its intent not to renew such Letter of Credit, within five (5) Business Days thereafter Contractor shall provide a substitute Letter of Credit from a Qualified Issuer other than the bank that has been downgraded or failed to honor the outstanding Letter of Credit. If Company does not receive a replacement Letter of Credit from a Qualified Issuer within the time specified in either of the two preceding sentences, it may draw on the full available amount of the Letter of Credit. Amounts drawn in such circumstances shall be held directly by Company and shall be available to be applied by Company under the conditions set forth in the Letter of Credit. In all cases, the costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing or otherwise administering a Letter of Credit shall be borne by Contractor.

ARTICLE 5

COMPANY'S OBLIGATIONS

5.1 Representatives. Company shall designate a representative (the "Company's Project Director") to administer the Contract Documents on behalf of Company. Company's Project Director shall have the authority to (a) issue Company's instructions and other communications to Contractor, (b) determine achievement of milestones under the Payment and Values Schedule, (c) issue Company's determination regarding Substantial Completion, Final Completion, the Contractor's Punch List and the Company's Punch List, and (d) execute Proposal Requests and Scope Change Orders. Company's Project Director shall be the recipient of notices and other written communications from Contractor under the Contract Documents. In furtherance of his/her responsibilities described hereunder, Company's Project Director may conduct observations and inspections of the Project throughout design, procurement and construction, provided that no such observations or inspections shall relieve Contractor of any of its obligations under the Contract Documents. Company shall also designate a representative to observe the Work on the Work Site ("Company's Work Representative"). Company's Work Representative shall have the right to be present at the Work Site at all times and to participate in weekly Work status meetings conducted by Contractor. Company's Work Representative shall have the right to observe and inspect the progress of procurement and construction of the Work, and may offer advice to Contractor about the conformance of the Work with the Contract Documents. Contractor shall notify Company's Work Representative before commencing any significant items of installation and testing for the Work. However, Company's Work Representative shall not have the authority to make decisions or give instructions binding upon Company, except to the extent expressly authorized by Company in writing. In the event Company employs or designates a different Company's Project Director or Company's Work Representative, Company shall give Contractor written notice of the identity of the new Company's Project Director or Company's Work Representative. Company's Project Director or Company's Work Representative may delegate any or all of his/her authority to one or more delegates, but not such delegation shall be effective unless made in a written instrument from him/her delivered to Contractor naming the delegate, his/her tenure and the extent of his/her authority. In addition, Company shall have the right to retain one or more independent consultants to monitor and inspect the Work at the Work Site or specific portions of the Work.

5.2 Project Right of Way; Work Site. Company shall furnish Contractor access to the Project Right of Way when the same is made available to Company by Concessionaire. Company shall provide the Work Site in a clean and dry state, generally clear of mud, snow and ice, and otherwise in accordance with the Applicable Standards, Applicable Laws and the Contract Documents, and shall be responsible for the general security of the Work Site and the Project Right of Way.

5.3 Reserved.

5.4 Reserved.

5.5 Permits. Company shall obtain or cause to be obtained all Applicable Permits other than the Applicable Permits for which Contractor is responsible for pursuant to Section 2.1.7 hereof. Company shall cooperate with Contractor in connection with Contractor's efforts to obtain any Applicable Permits that are designated as Contractor's responsibility herein.

5.6 Payments of Contract Sum. Company shall make all undisputed payments of the Contract Sum due to Contractor in accordance with Article 4.

5.7 Reserved.

5.8 Utilities. Company shall arrange, install and pay for the temporary and permanent Utilities required for the Work as set forth in the Scope of Work.

5.9 Support Facilities. Company shall provide sufficient and appropriate first-aid facilities, sanitary facilities and potable water for the benefit of all personnel employed or expected to be present at the Project Right of Way including Contractor's personnel, and all such facilities shall be maintained in a clean and orderly condition.

5.10 Company Supplied Equipment and Facilities. Company shall provide the Company Supplied Equipment and Facilities. In the event that Contractor's requirements or specifications for the Company Supplied Equipment and Facilities materially differ from those requirements and specifications defined in the Scope of Work, Contractor shall compensate Company for any incremental cost in complying with such requirements and/or specifications.

ARTICLE 6

COMMISSIONING, COMPLETION AND ACCEPTANCE OF WORK

6.1 Commissioning. At least ninety (90) days before Commissioning of the Work is scheduled to begin, Contractor shall propose, for Company's Approval and the Independent Engineer's review and acceptance, a Performance Testing and Commissioning Plan and Program for the ETTM System, including a Commissioning schedule, an organization chart of Contractor's personnel conducting the Commissioning, and a comprehensive procedure for the review of the Operating Manual and the application of its contents to the ETTM System. Contractor shall coordinate with the OS&S Contractor as provided in Section 5.7 hereof for the provision of all labor necessary to start-up and Commission the ETTM System. Company shall provide its personnel or its subcontractor's personnel as defined in the Performance Testing and Commissioning Plan and Program to participate in the commissioning of the Company-Supplied Equipment and Facilities. Company shall hand over Company-Supplied Equipment and Facilities in accordance with the requirements of the Performance Testing and Commissioning Plan and Program. Upon Concessionaire's and the Independent Engineer's acceptance of the Performance Testing and Commissioning Plan and Program for the ETTM System, Contractor shall proceed to commission the ETTM System. As Commissioning progresses, Contractor shall provide Concessionaire, VDOT and the OS&S Contractor's personnel with comprehensive classroom and on-the-job training in the operation and maintenance of the Work. Contractor shall coordinate all training sessions in a manner sufficient to provide Concessionaire, VDOT

and the OS&S Contractor's personnel with an adequate understanding of the basic and principal design, and the operation and maintenance aspects, of each dimension of the Work as an integrated whole.

6.2 Reserved.

6.3 Start-Up. Contractor shall present to Company for Company's Approval a completed checklist of all documentation, equipment and systems reviewed during the Commissioning of the ETTM System. Following confirmation by Company that such checklist is complete and accurate and that Substantial Completion has been achieved, Contractor shall start up the Work in accordance with the Standard of Care, the Contract Documents and a schedule of start-up procedures delivered by Contractor to, and approved by, Company at least ninety (90) days prior to start-up.

6.4 Performance Tests. Provided the Work is capable of safe and continuous operation in accordance with the Standard of Care, the Operating Manual, the Performance Guarantees and the Contract Documents, subject to the approval of Company, Contractor shall conduct the Performance Tests. At least ninety (90) days prior to the date Contractor wishes to commence a Performance Test, Contractor shall provide to Company, for Company's Approval, complete test procedures developed in accordance with the Performance Testing and Commissioning Plan and Program. Thereafter, Contractor shall give Company at least seven (7) Business Days' prior written notice of the date on which Contractor intends to commence each Performance Test. A Performance Test shall consist of the operation of the Work in accordance with the Contract Documents and the Performance Testing and Commissioning Plan and Program. Company shall designate and make available qualified and authorized representatives to observe the Performance Tests and to monitor the taking of measurements to determine the level of achievement of the Performance Guarantees, all in accordance with the Contract Documents and the Performance Testing and Commissioning Plan and Program. Concessionaire and VDOT may observe each Performance Test and VDOT will be included in such Performance Tests for purpose of demonstrating effective information transfer across system interfaces. Contractor shall not attempt to perform a Performance Test if any Commissioning, start-up or initial test procedures have not been completed as required prior to the Performance Test or any aspect of the Project has not been completed sufficiently to assure the safe and continuous operation of all or any part of the Work during the Performance Test in accordance with the Standard of Care, the Operating Manual, the Contract Documents and the Performance Testing and Commissioning Plan and Program.

6.5 Completed Performance Test. When Contractor believes it has successfully completed a Performance Test, Contractor shall provide Company a written report of the test results as part of the Substantial Completion delivered under Section 6.6 hereof. The performance results will be calculated in accordance with the Performance Testing and Commissioning Plan and Program and the Performance Guarantees, including any adjustments to reflect deviations from the Performance Guarantees to be calculated as set forth in the Performance Testing and Commissioning Plan and Program.

6.6 Substantial Completion of the Work.

6.6.1 Substantial Completion of the Work shall be achieved hereunder if and only if:

(i) Contractor has concluded a Performance Test in which the Work demonstrates a level of achievement deemed satisfactory in accordance with the Performance Testing and Commissioning Plan and Program;

(ii) Contractor has performed all of the Work required by the Contract Documents, except for any remaining items listed in Company's Punch List;

(iii) All equipment and facilities necessary for the full, safe and continuously reliable operation of the Work, excluding the Company Supplied Equipment and Facilities, have been properly constructed, installed, insulated and protected where required for such operation, and correctly adjusted;

(iv) The Work is fully capable of operation in accordance with the Contract Documents;

(v) All quality management documentation for the Work has been provided to and reviewed by Company in accordance with the Quality Plan, all quality management issues have been resolved to the satisfaction of Company, and Contractor has provided final design and construction documents as required under Section 7.14(a) of the Comprehensive Agreement for the Work;

(vi) Contractor has delivered either (i) (A) an interim lien waiver, in the form of Exhibit D hereto, of Contractor's lien claims to the extent of most recent payment received by Contractor and (B) interim lien waivers, in form of Exhibit E hereto, from each Subcontractor with a Subcontract in excess of \$50,000, to the extent of most recent payment received by such Contractor, as are necessary to support Contractor's certificate (or solely in the case of vendors providing materials or equipment valued at less than \$50,000 in the aggregate, other evidence reasonably satisfactory to Company demonstrating that such vendor has waived or is not entitled to place any lien on any part of the Project or the Project Right of Way); or (ii) written evidence of posting of a bond by Contractor in the amount equal to the aggregate of amounts of all liens on any part of the Project or the Project Right of Way that remain outstanding as of the date of Substantial Completion (or, if earlier, the date of the most recent payment to Contractor); and

(vii) Reserved.

(viii) Contractor has delivered to Company the Substantial Completion Certificate for the Work signed by Contractor and countersigned by Company.

6.6.2 Notice and Report of Substantial Completion of the Work. At least forty five (45) days prior to the date when Contractor anticipates to achieve Substantial Completion, it shall deliver to Company a notice thereof (the "Notice of Substantial Completion"). The Notice of Substantial Completion shall contain a report of results of the

Performance Test and a description of all Work completed in a form acceptable to Company with sufficient detail to enable Company to establish whether Substantial Completion has been achieved, as well as a Substantial Completion Certificate signed by Contractor.

6.6.3 Achievement of Substantial Completion of the Work. Within twenty five (25) days after Contractor has provided the Notice of Substantial Completion to Company, Contractor and Company will meet, confer and exchange information on a regular basis with a goal being Company's countersigning of the Substantial Completion Certificate. Within such twenty-five (25) day period, Company shall also inspect the Work, review the results of the Performance Test and the report submitted by Contractor, and either (a) deliver to Contractor the counter-signed Substantial Completion Certificate, or (b) if reasonable cause exists for doing so, notify Contractor that Substantial Completion has not been achieved stating the reasons therefor. If Company notifies Contractor that Substantial Completion has not been achieved, Contractor shall promptly take such action or perform such additional Work as will permit achievement of Substantial Completion, conduct another Performance Test, if necessary, and issue to Company a revised Substantial Completion Certificate signed by Contractor. The foregoing process shall be repeated until Substantial Completion has occurred, as evidenced by Company's countersigning of the Substantial Completion Certificate. For all purposes of this Agreement, the date of achievement of Substantial Completion shall be the date on which Company issues to Contractor such Substantial Completion Certificate that is countersigned by Company.

6.7 Final Completion of the Work. Final Completion of the Work may be achieved hereunder pursuant to Section 6.7.1 below.

6.7.1 Demonstration of Final Completion. Final Completion shall be achieved hereunder if the following conditions have been met:

- (i) Contractor has performed all of the Work required by the Contract Documents;
- (ii) All items on Company's Punch List have been completed by Contractor in accordance with the Contract Documents;
- (iii) All conditions to Substantial Completion under Section 6.6.1 have been and remain satisfied;
- (iv) All quality management documentation has been provided to and reviewed by Company in accordance with the Quality Plan, and all quality management issues have been resolved to the satisfaction of Company;
- (v) Contractor has delivered all certifications, if any, required under Section 2.1.2;
- (vi) Final As-Built Drawings and Documentation for the Work have been accepted by Company, VDOT and the Independent Engineer;

(vii) Contractor has provided Company with all other work product required to be delivered under this Agreement; and

(viii) Concessionaire has delivered to Company the Final Completion Certificate for the for the Work signed by Contractor and countersigned by Company.

6.7.2 Notice and Report of Final Completion of the Work. At least forty five (45) days prior to the date when Contractor anticipates to achieve Final Completion, it shall deliver to Company a notice thereof (the “Notice of Final Completion”). The Notice of Final Completion shall contain a report in a form acceptable to Company with sufficient detail to enable Company to establish that Contractor has completely performed all of the Work under the Contract Documents, including the items listed in Company’s Punch List, as well as a Final Completion Certificate signed by Contractor.

6.7.3 Achievement of Final Completion of the Work. Within twenty five (25) days after Contractor has provided the Notice of Final Completion to Company, Contractor and Company will meet, confer and exchange information with the goal being Company's countersigning the Final Completion Certificate. Within such twenty five (25) day period, Company shall inspect the Work hereunder and review the report submitted by Contractor and either (a) deliver to Contractor the counter-signed Final Completion Certificate , or (b) if reasonable cause exists for doing so, notify Contractor that Final Completion has not been achieved, stating in detail the reasons therefor. If Company notifies Contractor that Final Completion has not been achieved, Contractor shall promptly take such action or perform such additional Work as will permit achievement of Final Completion, conduct another Performance Test, if necessary, and issue to Company a revised Final Completion Certificate signed by Contractor. The foregoing process shall be repeated until Company is satisfied with the Notice of Final Completion and concurs that Final Completion has occurred, whereupon it shall countersign the Final Completion Certificate and forward the same to Contractor. For all purposes of this Agreement, the date of achievement of Final Completion shall be the date on which Company issues to Contractor such Final Completion Certificate that is countersigned by Company; provided, however, that Contractor is obligated to achieve Final Completion within ninety (90) days after the date of Substantial Completion (the “Guaranteed Final Completion Date”).

6.8 Company’s Punch List. At any time after the commencement of Project start-up, Company may submit Company’s Punch List to Contractor, and may thereafter revise the same from time to time, provided that Company does not have the right to submit or revise Company’s Punch List after Company issues fully counter-signed Final Completion Certificate; notwithstanding the foregoing, Company shall retain the right to confirm that punch list items performed by Contractor are properly completed. Company shall not be precluded from listing any item of Work on the Company’s Punch List that was not included on Contractor’s Punch List.

6.9 Reserved.

6.10 Acceptance by Company Not a Release of Contractor. The acceptance or approval by Company of the Design Documents, or any other part of the Work, shall not constitute a waiver or relinquishment by Company of any of its rights under this Agreement, nor exonerate or relieve Contractor from any obligation, warranty or liability hereunder, except to the extent expressly provided herein. Each such acceptance or approval shall be given by Company in reliance upon, and subject to, the performance by Contractor of its obligations hereunder.

6.11 Substantial Completion of Portions of the Work. To the extent that portions of the Work are considered by VDOT to constitute an element for the function and operation of portions of the New Lanes or Springfield Phase VIII and Contractor completes such portions of Work., Contractor shall be entitled together with Company to request VDOT to approve issuance of a Substantial Completion certificate in accordance with Section 7.15 of the Comprehensive Agreement with respect to such portions of the New Lanes or Springfield Interchange Phase VIII prior to issuance of the Substantial Completion Certificate with respect to the entire Project. Contractor acknowledges that Concessionaire may at its discretion seek VDOT's approval of such issuance, in which case, solely for the purpose of processing such early acceptance, all references to Substantial Completion of the Work in Section 6.6 shall be deemed to be references to Substantial Completion of the portion of the Work that VDOT has agreed in its discretion to accept early pursuant to Section 7.15 of the Comprehensive Agreement.

ARTICLE 7

LATE COMPLETION PAYMENT; BONUS

7.1 Guaranteed Substantial and Final Completion. Subject only to the adjustments permitted in accordance with this Agreement, Contractor guarantees that Substantial Completion will be achieved on or before the Guaranteed Substantial Completion Date and that Final Completion will be achieved on or before the Guaranteed Final Completion Date.

7.2 Late Completion Payment. If Substantial Completion has not occurred on or before the Guaranteed Substantial Completion Date, then for each calendar day (or portion thereof) by which Substantial Completion occurs after the Guaranteed Substantial Completion Date, subject to the limitation set forth in Section 7.6 hereof, Contractor hereby agrees to pay to Company, as part of the consideration for awarding the contract, an amount of liquidated damages equal to the Company Delay Damages Rate; provided, however, that Contractor shall not be obligated to pay such amount unless Company is then obligated, solely as a result of Contractor's failure to achieve Substantial Completion hereunder by the Guaranteed Substantial Completion Date, to pay the "Late Substantial Completion Payment" to Concessionaire under Section 7.2 of the Design-Build Contract. If Final Completion has not occurred on or before the Guaranteed Final Completion Date, then for each calendar day (or portion thereof) by which Final Completion occurs after the Guaranteed Final Completion Date, Contractor hereby agrees to pay Company, as part of the consideration for awarding the contract, an amount of liquidated damages equal to \$5000; provided, however, that Contractor shall not be obligated to pay such amount unless Company is then obligated, solely as a result of Contractor's failure to achieve Final Completion by the Guaranteed Final Completion Date, to pay the "Late Final Completion

Payment” to Concessionaire under Section 7.2 of the Design-Build Contract. The foregoing liquidated damage payments are referred to collectively as the “Late Completion Payments”

The above notwithstanding, Contractor shall not be responsible for Late Completion Payments for that period of a delay in achieving Substantial Completion by the Guaranteed Substantial Completion Date solely attributable to theft or damage to Contractor ETTM Equipment or Company-Supplied Equipment and Facilities, not caused by Contractor or its Subcontractors, once such materials are physically installed into the permanent facilities at the Work Site; provided that this exclusion shall not apply to theft or damage to Contractor ETTM Equipment or Company-Supplied Equipment and Facilities that are in the HOT Operations Center once the HOT Operations Center is turned over to Contractor for fit-out. For the avoidance of doubt in the application of this Section 7.2, a failure by the Contractor to provide protection of property on the gantries located on the HOT Lanes where ETTM Equipment has been installed in accordance with 2.1.23 will not be deemed to be Contractor caused theft or damage.

7.3 Liquidated Damages Reasonable. Company and Contractor hereby acknowledge and agree that the terms, conditions and amounts fixed pursuant to Section 7.2 for Late Completion Payments are fair and reasonable, considering the actual costs that Company will incur in the event of Contractor’s failure to achieve Substantial Completion by the Guaranteed Substantial Completion Date and/or Final Completion by the Guaranteed Final Completion Date. The amount of liquidated damages is agreed upon and fixed hereunder because of the difficulty of ascertaining the exact amount of Damages that will be actually incurred by Company for late occurrence of Substantial Completion, Final Completion or lane re-opening, and Company and Contractor agree that the liquidated damages amounts specified in Section 7.2 represent a reasonable estimate of fair compensation of Damages that may be reasonable anticipated for such late occurrences and shall be applicable regardless of the amount of such costs actually incurred by Company.

7.4 Payment of Late Completion Payment. Late Completion Payments shall be paid by Contractor or withheld by Company, as applicable, in arrears at the payment intervals applicable to Scheduled Payments beginning after the Guaranteed Substantial Completion Date or the Guaranteed Final Completion Date, as applicable, with the last such payment to occur on the date on which Substantial Completion or Final Completion, as applicable, actually occurs. Company’s rights of set-off under Section 4.7 hereof expressly apply to any amounts of the Late Completion Payment not timely paid to Company hereunder.

7.5 Late Completion Payment for Delay Only. The Late Completion Payment shall be the full measure of Contractor’s liability only for delay in achieving the Substantial Completion and/or Final Completion, and shall not limit Contractor’s liability for defects or deficiencies in the Work or for Contractor’s failure to perform its other obligations under the Contract Documents. The Late Completion Payment is in lieu of Company’s right to terminate this Agreement pursuant to Section 15.2(iv) hereof solely as a result of any schedule delay, except to the extent such delay otherwise constitutes an Event of Default under Section 15.2(iv) resulting from Contractor's failure to achieve Substantial Completion within 365 calendar days after the Guaranteed Substantial Completion Date.

7.6 Limitation on Liquidated Damages. Contractor's liability to Company under this Agreement for Late Completion Payment for the delay in achieving Substantial Completion shall not exceed an amount equal to \$16,636,894.00; provided, that the foregoing limitation shall not apply if Contractor agrees to continue paying Late Completion Payments notwithstanding the foregoing limit and Company agrees to forestall exercise of its termination right under Section 15.2(iv) during a period to be agreed by the Parties. This Section 7.6 shall not be construed to limit Contractor's other obligations or liabilities arising under or in connection with this Agreement.

7.7 Bonus. Company shall pay twenty-five percent (25%) of the "Bonus" it receives under Section 7.7 of the Design-Build Contract if Contractor achieves Substantial Completion six (6) months prior to the original Guaranteed Substantial Completion Date (as the same may be extended pursuant to Section 12.8 solely due to a Concessionaire-Caused Delay). Company shall pay such bonus to Contractor within ten days after its receipt of any "Bonus" paid under Section 7.7 of the Design-Build Contract, provided that Contractor has achieved Final Completion by the Guaranteed Final Completion Date, it being agreed that Company's receipt of the "Bonus" under the Design-Build Contract is a condition precedent to Company's obligation to pay a bonus to Contractor under this Agreement. If pursuant to Section 7.7 of the Design-Build Contract Concessionaire issues a subordinated debt instrument to Company evidencing its obligation to pay any "Bonus" due thereunder, then, Company and Contractor shall negotiate a arrangement acceptable to both parties with respect to the payment of the bonus hereunder.

7.8 Late Lane Re-Opening. If VDOT permits the temporary closure of lanes to traffic on certain portions of the Capital Beltway to enable the Work to be performed hereunder and Company notifies Contractor thereof and the conditions of such permission, Contractor agrees that it will completely abide with the conditions of the closure to allow Company to close and then fully reopen the closed lanes to traffic by the time specified by VDOT in its permission, and that if Contractor fails to do so and solely as a result thereof Company is obligated to pay "Late Lane Re-Opening Payments" under Section 7.8 of the Design-Build Contract, Contractor shall pay to Concessionaire on behalf of Company the amount of liquidated damages to be paid over to VDOT by Concessionaire pursuant to Section 7.01(f)(ii) of the Comprehensive Agreement (the "Late Lane Opening Payment") and not as penalty. The Late Lane Opening Payment shall be the measure of Contractor's liability only for delay in re-opening the lanes pursuant to this Section 7.8, and shall not limit Contractor's liability for defects or deficiencies in the Work or for Contractor's failure to perform its other obligations under the Contract Documents. The Late Lane Opening Payment shall be paid by Contractor or withheld by Company, as applicable, in arrears at the payment intervals applicable to Scheduled Payments beginning after the designed time for re-opening of the affected lanes. Company's rights of set-off under Section 4.7 hereof expressly apply to any amounts of the Late Lane Opening Payment not timely paid to Company hereunder.

ARTICLE 8

PERFORMANCE GUARANTEES

8.1 Performance Guarantees. Contractor guarantees that the Work will achieve all of the applicable performance specifications referred to in the Contract Documents (the "Performance Guarantees"). Contractor agrees to exhaust all reasonable repair and replacement alternatives in order that the Work might attain the Performance Guarantees.

8.2 Equipment Performance. Contractor shall use all reasonable efforts to cause Subcontractors supplying any equipment for the Work to achieve the performance standards guaranteed by the suppliers of such equipment. Any damages payable by a supplier to Contractor shall be remitted to Company, except for that portion of such damages required to compensate Contractor for amounts paid to Company hereunder as a result of the failure of such supplier's equipment to achieve the required standards under this Agreement and for other costs incurred by Contractor as a result of such failure. No such damages paid to Company shall relieve Contractor from any of its obligations under this Agreement and any such damages remitted to Company shall not be applied to reduce Contractor's liability hereunder.

ARTICLE 9

LIABILITY AND DAMAGES

9.1 Limitation of Certain Contractor Liabilities. Notwithstanding anything herein to the contrary, the total liability of Contractor in contract, tort, equity or otherwise (including negligence, warranty, strict liability or otherwise, and including any Liquidated Damages that may be payable pursuant to Article 7 hereof) relative to or arising out of this Agreement shall not exceed an amount equal to forty percent (40%) of the Contract Sum; provided, that the foregoing limitation shall not apply to or include:

- (i) the proceeds of insurance not to exceed amounts required to be maintained by Contractor in accordance with the terms of this Agreement;
- (ii) costs, liabilities or obligations that arise from the Gross Negligence, willful misconduct or actual fraud of Contractor;
- (iii) costs, liabilities or obligations that arise from Contractor's abandonment of the Work or from a Contractor Event of Default described in Section 15.2(i);
- (iv) Contractor's breach of its obligations in Section 10.4; or
- (v) Contractor's indemnity obligations under Article 13.

9.2 CONSEQUENTIAL DAMAGES. NEITHER COMPANY NOR CONTRACTOR SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING LOSS OF USE OR LOSS OF PROFIT, AND COMPANY AND CONTRACTOR EACH HEREBY RELEASES THE OTHER AND ITS CONTRACTORS AND AGENTS FROM ANY SUCH LIABILITY. THE FOREGOING EXCLUSION (I) SHALL NOT PRECLUDE RECOVERY, WHERE APPLICABLE, OF LIQUIDATED DAMAGES PURSUANT TO SECTION 7.2 AND (II) SHALL NOT BE CONSTRUED TO LIMIT

RECOVERY UNDER ANY INDEMNITY IN ARTICLE 13 FOR THIRD PARTY CLAIMS FOR DAMAGE TO OR DESTRUCTION OF PROPERTY OF, OR DEATH OF OR BODILY INJURY TO, ANY PERSON.

9.3 Further Limitation of Liability. The limitations of liability and the exclusions of consequential damages set forth in this Agreement shall apply irrespective of whether a Party or any Affiliate thereof, or any partner, shareholder, officer, director or employee of a Party or an Affiliate thereof, asserts a theory of liability in contract, tort, negligence, misrepresentation (including negligent misrepresentation), strict liability or any other theory of liability.

ARTICLE 10

WARRANTIES AND GUARANTEES

10.1 General Warranty. Contractor warrants and guarantees to Company, Concessionaire and VDOT (the "General Warranty") as follows:

10.1.1 The design of the Work shall satisfy the requirements of this Agreement, the Comprehensive Agreement and the Technical Requirements.

10.1.2 All Work (except as described in Section 10.1.1 hereof), including materials and equipment furnished as part of the construction, shall be new unless otherwise specified herein, of good quality, in conformance with the Standard of Care, Applicable Laws, Applicable Standards, the Technical Requirements, this Agreement and the other Contract Documents, free of defects in material and workmanship and fit for its intended purpose, and the completed Work shall be free of all defects and deficiencies in design, materials and workmanship.

10.1.3 The Final As-Built Drawings and Documentation shall be accurate and complete, comply with the requirements of the Contract Documents, and accurately reflect the condition of the Work as of Final Completion.

10.2 Breach of General Warranty; Warranty Period.

10.2.1 If Company notifies Contractor in writing during the Warranty Period, or no later than fifteen (15) days after the expiration of the Warranty Period, that a breach of the General Warranty has occurred during the Warranty Period, Contractor shall promptly investigate and determine the source of the deficiency or defect (including any inaccuracy or other deficiency in the Final As Built Drawings and Documentation), and promptly rectify any defects or deficiencies in the Work at its expense without recourse to Company or VDOT. Contractor's liability for such defects shall include labor, parts, transportation, factory repair and testing, dismantling, re-designing, re-construction, re-erecting, re-testing and re-Commissioning associated with the correction of such defects which are needed or appropriate to assure the

continued performance of the Project for its intended functions as a complete operating system. If Contractor fails to repair and/or replace a defect or deficiency within reasonable time following Company's notice of a breach of the General Warranty, Company (or VDOT pursuant to the Comprehensive Agreement) shall have the right to employ another contractor to correct the deficiency or defect and complete the Work at Contractor's expense.

10.2.2 The "Warranty Period" for the Work, and each component thereof unless otherwise provided herein, shall be five (5) years from the date of Substantial Completion of the Work; provided, however, that:

(i) the Warranty Period shall be extended for an additional twelve (12) months from the date of repair or replacement with respect to any portion of the Work that is repaired or replaced during the final year of the initial Warranty Period;

(ii) any warranties from third party suppliers longer than the Warranty Period shall be passed through to Company; and

(iii) the Warranty Period as to individual pieces of equipment shall be two (2) years unless Contractor is able to obtain from the vendor thereof longer durations on commercially reasonable terms.

10.2.3 Following the expiration of the first two (2) years of the applicable Warranty Period, the General Warranty shall extend only to repairs which exceed \$15,000 per single occurrence (but such threshold shall not apply if the same type of defect causes same type of repair more than twice), subject to an aggregate annual exclusion of \$60,000 in each of the third, fourth and fifth year of the applicable Warranty Period. The duties, liabilities and obligations of Contractor under this Section 10.2 do not extend to any repairs, adjustments, alterations, replacements or maintenance of materials which are required as a result of normal corrosion, erosion, or wear and tear in the operation of the Project other than as caused by the negligence of or breach of the Contract Documents by Contractor.

10.3 Reserved.

10.4 No Liens or Encumbrances. Contractor warrants and guarantees that title to the Work, any portion or component of the Work, and all Work provided hereunder shall pass to Company, Concessionaire or VDOT as provided under Section 24.13 hereof, free and clear of all liens, claims, security interests and other encumbrances (other than inchoate liens provided by Applicable Laws to secure payments not yet delinquent), and that none of such work, materials, supplies or equipment shall be acquired by Contractor subject to any agreement under which a security interest or other lien or encumbrance is retained by any Person. Such warranty shall become effective as title to Work passes to Company under Section 24.13 hereof, subject to Company's obligation to pay for such Work in accordance with the Contract Documents.

10.5 Company's Right to Proceed. If, within fourteen (14) days after notification by Company of a breach of any warranty hereunder, Contractor has not, to the reasonable satisfaction of Company, commenced re-performance, repair, replacement or other performance as required herein or notified Company of its disagreement with such alleged breach and, within seven (7) days after such notice, provided reasonable evidence in support of

its position, Company may retain a third party to undertake such re-performance, repair, replacement or other performance and the costs of retaining such third party shall be for the account of Contractor. Company's retention of such third-party contractor shall not in any way diminish Contractor's obligations or liabilities under the Contract Documents or reduce its warranty obligations under this Article 10 with respect to the work undertaken by such third party. Nothing herein shall be deemed to preclude Company from retaining a third-party contractor at its own cost to undertake any re-performance, repair, replacement or other performance of warranty claims hereunder.

10.6 EXCLUSIVE REMEDIES. THIS ARTICLE 10, ARTICLE 8 AND SECTION 15.2 HEREOF SET FORTH COMPANY'S EXCLUSIVE REMEDIES AGAINST CONTRACTOR, AND COMPANY HEREBY WAIVES ALL OTHER REMEDIES, REGARDING DEFECTS OR DEFICIENCIES IN THE WORK, WHETHER PATENT OR LATENT OR ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR PURSUANT TO OTHER LEGAL THEORY, EXCEPT FOR DEFECTS AND DEFICIENCIES IN THE WORK RESULTING FROM THE FRAUD OR DECEIT OF CONTRACTOR. CONTRACTOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED RELATING TO THE QUALITY OF THE WORK, PROVIDED, HOWEVER, THAT CONTRACTOR SHALL CONTINUE TO BE RESPONSIBLE FOR ALL OF ITS OTHER OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING THE DESIGN AND CONSTRUCTION OF THE PROJECT, NOTWITHSTANDING THE PARTIES' AGREEMENT TO EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY UNDER THIS SECTION 10.6.

ARTICLE 11

FORCE MAJEURE

11.1 Excused Performance. If a Party is rendered wholly or partially unable to perform its obligations under the Contract Documents because of a Force Majeure Event, then that Party will be excused (but in the case of Contractor, solely to the extent provided in a Scope Change Order entered into pursuant to Section 12.6) from whatever performance is affected by the Force Majeure Event to the extent so affected, provided, that:

- (i) the affected Party gives the other Party notice describing the particulars of the occurrence promptly after the occurrence of the Force Majeure Event, and, in no event more than seven (7) days after the affected Party becomes aware of such occurrence;
- (ii) within seven (7) days after giving the notice described in clause (a) above, the affected Party gives the other Party its best estimate of the occurrence's expected duration and probable impact on the performance of such Party's obligations hereunder, and continues to furnish timely regular reports with respect thereto during the continuation of the Force Majeure Event;
- (iii) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

(iv) no monetary obligations or default of either Party which arose before the occurrence of the Force Majeure Event causing the suspension of performance shall be excused as a result of the occurrence, but so long as the affected Party shall have commenced and is diligently continuing to attempt to cure such default prior to the occurrence of the Force Majeure Event, the cure period (if any) provided in Article 15 with respect to such default shall be extended on a day-for-day basis to the extent a cure actually is prevented as a result of the Force Majeure Event;

(v) the affected Party shall exercise all reasonable efforts to mitigate or limit damages to the other Party; and

(vi) the affected Party shall use all reasonable efforts to continue to perform its obligations hereunder and to correct or cure the event or condition excusing performance.

A Scope Change Order shall be executed by Company and Contractor as provided in Section 12.6 to account for the actual effect, if any, on Contractor's performance of its obligations as a result of a Force Majeure Event.

11.2 Disputes; Burden of Proof. If Company and Contractor are unable in good faith to agree that a Force Majeure Event has occurred, either Party may submit the dispute to the applicable dispute resolution process provided for under Article 19; provided, however, that the burden of proof as to whether a Force Majeure Event has occurred and whether the Force Majeure Event excuses the Party from performance under Section 11.1 shall be upon the Party claiming such Force Majeure Event.

ARTICLE 12

SCOPE CHANGES

12.1 Scope Change Orders. A "Scope Change" means a material addition to, deletion from, suspension of or other modification to, the quality, function or intent of the Work as delineated in the Scope of Work, or a material change to the requirements of this Agreement, but shall not include refinement, correction or detailing of the Work by Company and Contractor from time to time. Company may order Scope Changes to the Work, in which event, as more specifically set forth in this Article 12, one or more of the Contract Sum, the Payment and Values Schedule, the Work Schedule and the Guaranteed Substantial Completion Date shall be adjusted accordingly, if necessary, as agreed by Company and Contractor. If either Company or Contractor believes a Scope Change is necessary, it shall proceed as set forth in this Article 12. If Company believes that a particular item of Work is within the then-existing Scope of Work but Contractor believes that such Work constitutes a Scope Change, the Contractor shall diligently proceed with such Work as directed in writing by Company; provided, that if the disputed item of Work is subsequently determined to constitute a Scope Change (whether by mutual agreement of the Parties or by operation of the dispute resolution provisions in Section 12.14), then such Work shall be deemed to have been the subject of a Work Order under Section 12.9 and Company shall issue a Scope Change Order with respect thereto as provided in Section 12.10 hereof; otherwise, Contractor shall not be entitled to a Scope Change Order with respect to such

item of Work. As a condition to Company's obligation under this Article 12 to make payments to Contractor in respect to a Scope Change Order or Work Order, Contractor shall increase the amount of the Letter of Credit for the benefit of Company by an amount equal to the Applicable Security Rate of the increase in the Contract Sum resulting from the Scope Change Order or Work Order to the extent the aggregate increase in the Contract Sum resulting from all Scope Changes exceeds \$15,000,000; in lieu of increasing the Letter of Credit by the full amount required, Contractor may notify Company to withhold as retainage from payments of the Contract Sum the amount not provided pursuant to a Letter of Credit, such retainage not to exceed the Applicable Security Rate of each installment payment of the Contract Sum. Amounts withheld as retainage may be applied by Company to the same purposes for which draws on the Letter of Credit may be applied, and shall be released to Contractor in whole or in part at the time the amount of the Letter of Credit may be reduced pursuant to Section 4.9 hereof, it being understood that the Parties intend that the Letter of Credit is to be the primary form of additional security during the first two (2) years of the Warranty Period, and that amounts withheld as retainage will continue to be withheld during the first two (2) years of the Warranty Period only to the extent the amount of the Letter of Credit does not satisfy the requirements of Section 4.9. All Scope Changes shall be subject to VDOT's consent except to the extent otherwise provided in Section 7.05(a) of the Comprehensive Agreement, as described in Section 24.8 hereof. In the event VDOT requires modifications to the Contract Documents as a condition of its approval of any Scope Change, the Parties shall cooperate to effect such modifications.

12.2 Scope Change by Company. If a Scope Change is initiated by Company (including a Scope Change resulting from a change in Applicable Standards after the Agreement Date that Company determines should apply to the Work, if such changes do not otherwise constitute a change in Applicable Law covered by Section 12.5 hereof or a change in the Technical Requirements pursuant to Section 12.3.2 of the Design-Build Contract), Company shall give Contractor a written "Proposal Request" (herein so called) setting forth in detail the nature of the requested change. Upon receipt of a Proposal Request, Contractor shall promptly return to Company two (2) completed copies of its written "Change Order Proposal" (herein so called) setting forth in detail, with a separate pay item (addition or deletion) for purchase and installation of equipment and materials and an otherwise suitable breakdown of costs by trades and work classifications, a stipulated sum proposed as an adjustment to the Contract Sum for the performance of the Scope Change set forth in the Proposal Request, together with any proposed adjustment to the Guaranteed Substantial Completion Date, the Scope of Work and the Payment and Values Schedule or other changes in the Contract Documents necessary because of such proposed Scope Change. The stipulated sum set forth in each Change Order Proposal shall equal the amount obtained by (a) calculating the difference of (i) Contractor's good faith estimate of the actual costs of the proposed Scope Change, but including only such costs as are directly attributable to and necessarily incurred as part of the proposed Scope Change and are not included in Contractor's existing administrative and overhead expenses, and (ii) Contractor's good faith estimate of the cost savings, if any, that will result from the replacement or obviation of previously planned Work by the performance or supply of the proposed Scope Change, then (b) provided the difference obtained in clause (a) is a positive number, adding to such difference an amount to cover the total of Contractor's overhead costs and Contractor's profit for services rendered calculated through application of the overhead and profit percentages set forth in Section 12.9 hereof. The adjustment, if any, to the Guaranteed Substantial Completion Date and the Payment and Values Schedule specified in any Change Order Proposal shall be limited to the

delays to the critical path directly attributable to and necessarily incurred as a result of the proposed Scope Change. Each Change Order Proposal shall be accompanied by appropriate data reasonably acceptable to Company supporting the proposed adjustments therein, including but not limited to bids, cost estimates, quotations from suppliers and wage schedules. If Company approves Contractor's Change Order Proposal, Company will issue and Contractor will execute and accept a written Scope Change Order in the form attached to this Agreement as Exhibit G, and the Contract Sum, the Payment and Values Schedule and the Guaranteed Substantial Completion Date shall be adjusted as set forth in such Scope Change Order. If Company does not approve Contractor's Change Order Proposal, Company may, at its option, execute and deliver to Contractor a Work Order in accordance with Section 12.9 hereof in lieu of the Scope Change Order.

12.3 Reserved.

12.4 Scope Change by Contractor. If Contractor desires to initiate a Scope Change because of a Force Majeure Event or otherwise, Contractor shall, within seven (7) Business Days after first becoming aware (or should have been aware, using all reasonable due diligence) that a Scope Change may be necessary, provide notice thereof to Company. Within five (5) Business Days thereafter, Contractor shall deliver to Company (i) a Change Order Proposal to Company meeting the requirements specified in Section 12.2, together with a detailed description of the proposed Scope Change, a reasonably detailed explanation of why Contractor believes the proposed Scope Change is necessary, all relevant back up documentation, including drawings (original vs. latest), relevant technical/commercial agreement references, and a description of the critical activity which is directly affected, and by how long, or (ii) such of the foregoing information as is known to Contractor at the time, together with its estimate of the date by which a full Change Order Proposal will be submitted to Company. Subject to the final sentence of this Section 12.4, Company shall approve a Change Order Proposal evidencing Contractor's entitlement to claim a Scope Change Order under Sections 12.5, 12.6, 12.7, 12.8 and 12.12 due to any of the causes specified therein, but if Company has a reasonable basis for objecting to any such Change Order Proposal, Company shall state such objections in writing to Contractor within ten (10) days of receipt of Contractor's Change Order Proposal and the Parties promptly shall meet to resolve their differences; Company is under no obligation to approve any other Change Order Proposal initiated by Contractor. If the Parties cannot agree on the Scope Change Order, either Party may submit the dispute for resolution pursuant to Section 12.14. Contractor shall not be entitled to submit a package of one or more Change Order Proposals more than once in any month (other than a Change Order Proposal which Company must approve as set forth in the second preceding sentence, as to which there shall be no limits). Contractor shall not be entitled to submit a package of one or more Change Order Proposals more than once in any month (other than a Change Order Proposal which Company must approve as set forth in the second preceding sentence, as to which there shall be no limits). Contractor acknowledges and agrees that timely notice as set forth in the first sentence of this Section 12.4 is essential to allow Company to review the Change Order Proposal while the facts and conditions underlying the request therefor are contemporaneous, that Company need not approve any Change Order Proposal to which Contractor is otherwise entitled under this Agreement if Contractor has failed to provide such timely notice, and that VDOT is not obligated under the Comprehensive Agreement to provide any relief in the event a Compensation Event or Delay Event is not claimed within twenty (20) Business Days after

Concessionaire (following notice by Company) first becomes aware (or should have been aware, using all reasonable due diligence) of such Compensation Event or Delay Event. Contractor may also request Company to approve any material proposed or actual change, deviation, modification, alteration or exception from any of the Technical Requirements (the “Technical Requirements Deviations”) by submitting a Change Order Proposal containing details required by clause (i) of this Section 12.4, in addition to setting forth Contractor's estimate of impacts on costs and schedule attributable to the proposed Technical Requirements Deviation, and Company may in its sole discretion pass such Change Order Proposal to Concessionaire for submittal by Concessionaire for VDOT's consideration pursuant to Section 7.13(b) of the Comprehensive Agreement. No Technical Requirements Deviations shall exist or be effective for the purposes of the Work and the Contract Documents unless and until a written notice of VDOT's approval thereof is provided to Contractor by Company.

12.5 Scope Changes Due to Changes in Applicable Laws. To the extent an ARCA Delay Event described in clause (e) of the definition thereof causes a material delay in Contractor’s performance of the Work that Contractor cannot, in the absence of incurring material cost or impacting the critical path, overcome the effect thereof, Contractor shall be entitled to claim a Scope Change Order in accordance with the procedures of this Article 12 to appropriately adjust one or more of the Work Schedule, the Payment and Values Schedule and the Guaranteed Substantial Completion Date (but not the Contract Sum). Company’s obligation to extend the Guaranteed Completion Date as a result of such a Scope Change Order shall be subject to Company’s receipt of approval thereof from Concessionaire under the Design-Build Contract, which in turn is subject to approval thereof by VDOT under the Comprehensive Agreement. Company shall proceed in accordance with Section 12.15 hereof and Section 12.5 of the Design-Build Contract to obtain such approval under the Comprehensive Agreement. The provisions of Section 12.15 hereof shall apply in the event Company and Contractor cannot agree on the length of the extension that Company shall request Concessionaire to seek from VDOT pursuant to the Comprehensive Agreement in respect of such a Scope Change Order.

12.6 Work Stoppages Due to Injunction; Effect of Force Majeure Events.

12.6.1 Scope Change Due to Injunction for More Than 30 Days (ARCA Compensation Event). To the extent an ARCA Compensation Event described in clause (e) of the definition thereof causes a material delay in Contractor’s performance of the Work that Contractor cannot, in the absence of incurring material cost or impacting the critical path, overcome the effect thereof, Contractor shall be entitled to claim a Scope Change Order in accordance with the procedures of this Article 12 to appropriately adjust one or more of the Guaranteed Substantial Completion Date, the Work Schedule, the Payment and Values Schedule and the Contract Sum. The Contract Sum shall be adjusted only in an amount necessary to compensate Contractor for all reasonable costs and expenses incurred to mitigate or avoid the effects of such ARCA Compensation Event. Company’s obligation to pay Contractor any increase in the Contract Sum as a result of such a Scope Change Order shall be subject to Company’s receipt of necessary funds in respect thereof from Concessionaire under the Design-Build Contract. Company shall proceed in accordance with Section 12.15 hereof and Section 12.15 of the Design-Build Contract to obtain such funds from Concessionaire. The provisions of Section 12.15 hereof shall apply in the event Company and Contractor cannot agree on the

amount or other terms of any claim that Company shall request Concessionaire to make against VDOT pursuant to the Comprehensive Agreement in respect of such a Scope Change Order.

12.6.2 Scope Change Due to Injunction (ARCA Delay Event). To the extent an ARCA Delay Event described in clause (d) of the definition thereof causes a material delay in Contractor's performance of the Work that Contractor cannot, in the absence of incurring material cost or impacting the critical path, overcome the effect thereof, Contractor shall be entitled to claim a Scope Change Order in accordance with the procedures of this Article 12 to appropriately adjust one or more of the Work Schedule, the Payment and Values Schedule and the Guaranteed Substantial Completion Date (but not the Contract Sum). Company's obligation to extend the Guaranteed Completion Date as a result of such a Scope Change Order shall be subject to Concessionaire's receipt of approval thereof from VDOT under the Comprehensive Agreement and Company's receipt of approval and receipt of relief from Concessionaire under the Design-Build Contract. Company shall proceed in accordance with Section 12.15 hereof and Section 12.5 of the Design-Build Contract to obtain such approval under the Comprehensive Agreement. The provisions of Section 12.15 hereof shall apply in the event Company and Contractor cannot agree on the length of the extension that Company shall request Concessionaire to seek from VDOT pursuant to the Comprehensive Agreement in respect of such a Scope Change Order.

12.6.3 Effect of Force Majeure Events (ARCA Delay Event). To the extent an ARCA Delay Event described in clause (a) of the definition thereof causes a material delay in Contractor's performance of the Work that Contractor cannot, in the absence of incurring material cost or impacting the critical path, overcome the effect thereof, Contractor shall be entitled to claim a Scope Change Order in accordance with the procedures of this Article 12 to appropriately adjust one or more of the Work Schedule, the Payment and Values Schedule and the Guaranteed Substantial Completion Date (but not the Contract Sum). Company's obligation to extend the Guaranteed Completion Date as a result of such a Scope Change Order shall be subject to Concessionaire's receipt of approval thereof from VDOT under the Comprehensive Agreement and Company's receipt of approval and receipt of relief from Concessionaire under the Design-Build Contract. Company shall proceed in accordance with Section 12.15 hereof and Section 12.5 of the Design-Build Contract to obtain such approval under the Comprehensive Agreement. The provisions of Section 12.15 hereof shall apply in the event Company and Contractor cannot agree on the length of the extension that Company shall request Concessionaire to seek from VDOT pursuant to the Comprehensive Agreement in respect of such a Scope Change Order.

12.7 Hazardous Substances Change Orders.

12.7.1 Scope Change Due to Discovery of Pre-Existing Hazardous Substances on the Existing Project Right of Way. To the extent a discovery of the Pre-Existing Hazardous Substances on the Existing Project Right of Way causes a material delay in Contractor's performance of the Work that Contractor cannot, in the absence of incurring material cost or impacting the critical path, overcome the effect thereof, Contractor shall be entitled to claim a Scope Change Order in accordance with the procedures of this Article 12 to appropriately adjust one or more of the Guaranteed Substantial Completion Date, the Work Schedule, the Payment and Values Schedule and the Contract Sum. The Contract Sum shall be

adjusted only in an amount necessary to reimburse Contractor for all reasonable costs and expenses incurred to mitigate or avoid the effects of the discovery of the Pre-Existing Hazardous Substances on the Existing Project Right of Way. Concessionaire's obligation to pay Contractor any increase on the Contract Sum as a result of such a Scope Change Order shall be subject to Company's receipt of necessary funds in respect thereof from Concessionaire under the Design-Build Contract. The provisions of Section 12.15 hereof shall apply in the event Company and Contractor cannot agree on the amount or other terms of any claim that Company shall request Concessionaire to make against VDOT pursuant to the Comprehensive Agreement in respect of such a Scope Change Order.

12.7.2 Other Hazardous Substances (ARCA Delay Event). To the extent an ARCA Delay Event described in clause (b)(D) of the definition thereof as set forth in the Design-Build Contract causes a material delay in Contractor's performance of the Work that Contractor cannot, in the absence of incurring material cost or impacting the critical path, overcome the effect thereof, Contractor shall be entitled to claim a Scope Change Order in accordance with the procedures of this Article 12 to appropriately adjust one or more of the Work Schedule, the Payment and Values Schedule and the Guaranteed Substantial Completion Date (but not the Contract Sum). Company's obligation to extend the Guaranteed Completion Date as a result of such a Scope Change Order shall be subject to Company's receipt of approval thereof from Concessionaire under the Design-Build Contract. The provisions of Section 12.15 hereof shall apply in the event Company and Contractor cannot agree on the length of the extension to be sought from VDOT pursuant to the Comprehensive Agreement in respect of such a Scope Change Order.

12.8 Scope Changes Due to Company-Caused Delay. Except to the extent another consequence is expressly provided in this Agreement, Contractor shall be entitled to claim a Scope Change Order adjusting one or more of the Contract Sum, the Payment and Milestone Schedule and the Guaranteed Substantial Completion Date to the extent Contractor's performance of the Work is adversely affected by a Company-Caused Delay and in respect of which Contractor cannot, in the absence of incurring material cost or impacting the critical path, overcome the effect thereof.

Notwithstanding the foregoing, Contractor's entitlement to relief under this Section 12.8 for Company-Caused Delays attributable to Concessionaire-Caused Delay or to VDOT-caused delay under the Design-Build Contract or the Comprehensive Agreement, as applicable, shall be subject to Company's receipt of relief from Concessionaire under the Design-Build Contract.

12.9 Work Orders. If Contractor's Change Order Proposal delivered pursuant to Section 12.2 hereof is not agreed to by Company, Company may, at its option, execute and deliver to Contractor a Work Order in lieu of the Scope Change Order procedures described in this Article 12. A "Work Order" is a written instruction to Contractor to proceed with the Scope Change that is the subject of a Change Order Proposal. Payment for Scope Changes undertaken pursuant to a Work Order shall be calculated in accordance with the same manner set forth in Section 12.9 of the Design-Build Contract unless and until an adjustment to the Contract Sum has been agreed between Company and Contractor pursuant to an executed Scope Change Order.

12.10 Performance of Scope of Changes. If Company executes and delivers to Contractor a Work Order, or if Company and Contractor agree to a Scope Change Order, Contractor promptly shall perform the Work described in the Work Order or Scope Change Order. Company shall not be responsible for premium time work unless (i) Company has expressly directed the performance of premium time work, (ii) the need for such premium time work was not caused by Contractor, and (iii) such premium time work was not contemplated by Contractor's original work plan. With respect to Work performed pursuant to a Work Order, Contractor shall deliver to Company, within twenty (20) days after completion, invoices, statements, payroll data and other evidence of the actual cost of the Work attributable to the Work Order that Company may reasonably require. Promptly following (a) completion of the Scope Change required under a Work Order, (b) agreement by Company and Contractor as to the adjustments to the Contract Sum, the Payment and Values Schedule, and the Guaranteed Substantial Completion Date which should be permitted as a result of such Work Order, and (c) receipt by Company of all required invoices, statements, payroll data and other evidence of the actual cost of the Work performed pursuant to such Work Order, Company shall issue a Scope Change Order adjusting one or more of the Contract Sum, the Payment and Values Schedule and the Guaranteed Substantial Completion Date. If the Scope Change under a Work Order is performed over a period of more than one (1) month, Contractor may request, and shall be entitled to, payments for the Scope Change performed during each month in the same manner as payments requested for other Work. Agreement on any Scope Change Order shall constitute a final settlement on all items covered therein, subject to performance thereof and payment therefor pursuant to this Agreement.

12.11 Scope Changes Due to Contractor Error. Notwithstanding anything in this Article 12 to the contrary, no Scope Change Order shall be issued and no adjustment of the Contract Sum, the Guaranteed Substantial Completion Date or the Payment and Values Schedule shall be made in connection with any correction of errors, omissions, deficiencies, or improper or defective work on the part of Contractor or any Subcontractor in the performance of the Work hereunder, or correction of any improper, defective or deficient equipment supplied by Contractor or any Subcontractor.

12.12 Scope Change Due To Discovery of Certain Conditions; Familiarity with Conditions.

12.12.1 Scope Change Due to Certain Conditions. To the extent an ARCA Delay Event described in clause (b)(A), (b)(B), (b)(C) or (b)(E) of the definition thereof causes a material delay in Contractor's performance of the Work that Contractor cannot, in the absence of incurring material cost or impacting critical path, overcome the effect thereof, Contractor shall be entitled to claim a Scope Change Order in accordance with the procedure of this Article 12 to appropriately adjust one or more of the Work Schedule, the Payment and Values Schedule and the Guaranteed Substantial Completion Date (but not the Contract Sum). Company's obligation to extend the Guaranteed Completion Date as a result of such a Scope Change Order shall be subject to Concessionaire's receipt of approval thereof from VDOT under the Comprehensive Agreement and Company's receipt of approval thereof from Concessionaire under the Design-Build Contract. The provisions of Section 12.15 hereof shall apply in the event Contractor and Company cannot agree on the length of the extension to be sought amount from Concessionaire pursuant to the Design Build Contract in respect of such a Scope Change Order.

For avoidance of doubt, this Section 12.12.1 shall not act as a limitation on Contractor's ability to assert a claim against Company under Section 12.8 for failure of the Company-Supplied Equipment and Facilities to meet the requirements of this Agreement unless such failure is caused by an ARCA Delay Event described above, in which case the provisions of this Section 12.12.1 shall apply.

12.12.2 Familiarity with Conditions. Except as otherwise expressly provided in Sections 12.7 and 12.12.1 hereof, Contractor accepts the risk of mistake or error relating to all matters within the scope of the Work and acknowledges and agrees that no increase or adjustment in the Contract Sum, the Guaranteed Substantial Completion Date or the Payment and Values Schedule will be authorized by Company as a result of any such mistake or error. Contractor has received from Company and VDOT, for its reference purpose only, certain information pertinent to the Project Site and the Work. Neither Company nor VDOT has made and will not make any express or implied warranty to Contractor as to the accuracy and completeness of such information, and neither Company nor VDOT shall be liable to Contractor with respect to such information.

12.13 Compliance with Guaranteed Substantial Completion Date. With respect to any Scope Change proposed by Company or Contractor or required hereunder, Contractor shall whenever possible provide Company with the option to cause Contractor to perform the Scope Change without an adjustment in the Guaranteed Substantial Completion Date or the Work Schedule, provided that the Contract Sum is adjusted to compensate Contractor for any reasonable additional costs incurred in performing the Scope Change in accordance with such time limitation. If Company disputes Contractor's estimate of such reasonable additional costs, such costs shall nonetheless be paid pending the resolution of the dispute. Amounts that are subsequently determined not to have been properly payable to Contractor shall be refunded to Company together with interest at the Late Payment Rate. Subject to the foregoing, Company shall have the right to elect to cause such Scope Change to be performed without an adjustment in the Guaranteed Substantial Completion Date or any schedule for the Work whenever possible, or to cause such Scope Change to be performed upon any other terms and conditions set forth in the Change Order Proposal.

12.14 Scope Change Order Dispute; Concessionaire Claim Dispute. In the event Contractor makes a claim for a Scope Change Order to which it believes it is entitled under the terms hereof and (a) the Parties are unable to reach agreement regarding the terms of such Scope Change Order within ten (10) Business Days after Contractor's submission of the Change Order Proposal and supporting documentation, or (b) solely in respect of a proposed Scope Change Order resulting from the claimed occurrence of an ARCA Compensation Event or an ARCA Delay Event, Company determines that it is not appropriate to request, pursuant to the Design-Build Contract, that the Concessionaire seek the relief requested by Contractor under the ARCA, and as a consequence thereof is unwilling to provide a Scope Change Order to Contractor, the Parties agree to a fast-track adjudication process in accordance with this Section 12.14:

- (i) A Party may submit the claim to a qualified independent third-party arbitrator with substantial experience in highway construction contracts; the Parties agree that any of the Persons named on Exhibit Y hereto will be acceptable arbitrators unless a Party sends a notice objecting to such Person's inclusion on Exhibit Y

prior to the commencement of the adjudication process. The other Party shall submit its response to the arbitrator within 10 (10) days of submission of the claim to the arbitrator by the initiating Party.

(ii) Such independent arbitrator will have fifteen (15) calendar days to make a preliminary determination whether (I) in the case of a dispute described in clause (a) of the first paragraph of this Section 12.14, Contractor's claim and proposed cost adjustment amount appears in good faith to be valid, and if the independent arbitrator so determines, he/she shall then advise the Parties of an appropriate interim measure while the Parties proceed with the dispute resolution process as set out in paragraphs (iii), (iv) and (v) below; or (II) in the case of a dispute described in clause (b) of the first paragraph of this Section 12.14, Contractor's claim appears in good faith to be valid, and if the independent arbitrator so determines, the Parties shall follow the procedure set forth in Section 12.15 hereof.

(iii) Subject to Company's compliance with its obligations under Section 5.8 and to Contractor's suspension rights set forth in clause (iv) below, the Parties agree that such interim measure shall require Contractor to proceed with the works set out in the disputed Scope Change Order and that claims and certification for such works shall occur in accordance with the conditions of this Agreement. If a payment has been made according to the terms of this Section 12.14, and the claim underlying such payment is subsequently determined not to be valid, Contractor shall repay all monies to Company (including accumulated interest at the Late Payment Rate);

(iv) Upon certification by the independent arbitrator, Company shall pay for the disputed Scope Change Order in accordance with this Agreement, and if Company fails to make such payment, Contractor shall be entitled to suspend only that portion of the Work that is required by the specific disputed Scope Change Order until Company makes the required payment. Any suspension of the Work by Contractor under this Section 12.14 shall entitle Contractor to make a claim for a Scope Change Order under the terms of this Agreement; and

(v) The dispute resolution process employed by the Parties pursuant to this Section 12.14 shall be structured with the goal of fully resolving disputed Scope Change Orders and Contractor's claims thereto within ninety (90) days of submission by Contractor of such Scope Change Order.

Nothing in this Section 12.14 shall be deemed to waive or otherwise affect any requirement in this Article 12 that Concessionaire and, if applicable, VDOT approve a Scope Change Order before Contractor may issue or implement the same, and Contractor shall have no obligation to do so pending receipt of any required Concessionaire and VDOT approval(s).

12.15 Expedited Dispute Resolution Procedure for Claims Against Concessionaire. In the event Contractor and Company cannot agree on (1) the amount or other terms of any claim to be presented to Concessionaire under the Design-Build Contract for presentation to VDOT under the Comprehensive Agreement as a result of the occurrence of an ARCA Compensation Event entitling Contractor to claim a Scope Change Order hereunder, or

(2) the period of time by which Company should request Concessionaire to seek an extension of the Guaranteed Substantial Completion Date under the Comprehensive Agreement (and, thus, the Design-Build Contract) upon the occurrence of an ARCA Delay Event entitling Contractor to claim a Scope Change Order hereunder, the Parties shall follow the following procedure:

(a) A Party may submit the dispute to a qualified independent third-party arbitrator with substantial experience in highway construction contracts; the Parties agree that any of the Persons named on Exhibit Y hereto will be acceptable arbitrators unless a Party sends a notice objecting to such Person's inclusion on Exhibit Y prior to the commencement of the adjudication process. The other Party shall submit its response within ten (10) days of submission of the claim to the arbitrator by the initiating Party. In their respective submittals, each of the Parties shall specify its "best and final" offer regarding the amount and other terms of the claim to be presented to Concessionaire or the period of time by which Company should request Concessionaire to extend the Guaranteed Substantial Completion Date under the Design-Build Contract, as applicable.

(b) The independent arbitrator shall, within fifteen (15) calendar days after receipt of the Parties' submissions, select only one of the "best and final" offers submitted, and shall not craft any alternative or compromise.

(c) The determination of the independent arbitrator shall be final and binding upon the Parties, and Company shall thereafter exercise its rights under the Design-Build Contract to cause Concessionaire, in the case of an ARCA Compensation Event, to seek from VDOT under the Comprehensive Agreement the claim amount and other relief terms selected by the arbitrator, or in the case of an ARCA Delay Event, the length of the extension request selected by the arbitrator, unless in either instance Company determines to provide a Scope Change Order to Contractor providing the outcome sought in Contractor's submission without regard for obtaining a corresponding Scope Change Order under the Design-Build Contract. Company shall allow Contractor to participate in the presentation of the claim to and negotiations of the claim with Concessionaire. Any compromise with Concessionaire that is less favorable to Contractor than the relief selected by the arbitrator shall be subject to Contractor's approval.

(d) Contractor shall not be entitled to any further relief under this Agreement in respect of such ARCA Compensation Event or ARCA Delay Event if (i) Company successfully obtains the relief in the offer selected by the arbitrator, (ii) Company accepts a compromise with Concessionaire pursuant to subsection (c) above, or (iii) the matter is finally resolved in accordance with the Comprehensive Agreement, Article 19 of the Design-Build Contract or Article 19 hereof.

ARTICLE 13

INDEMNIFICATION

13.1 General Indemnification.

13.1.1 Contractor. Contractor shall fully indemnify, save harmless and defend the Company Indemnified Parties from and against any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, interest and causes of action, including without limitation reasonable attorney's fees (collectively, the "Damages"; provided, that as used elsewhere in this Agreement other than this Article 13, "Damages" shall not include attorney's fees), directly or indirectly arising out of, resulting from or related to third-party claims associated with the design, procurement or construction or the Work, including without limitation any damage to or destruction of property of, or death of or bodily injury to, any Person (whether such person is an employee of a Company Indemnified Party, Contractor or any Subcontractor, or is a Person unaffiliated with the Project), to the extent caused or contributed to by Contractor's fault, intentional act, negligence or strict liability in the performance of the Work or otherwise relating to the design or construction of the Work, by Contractor's failure to comply with Section 2.1.23, or by any other breach by Contractor of the Contract Documents. Contractor's aforesaid indemnity is for the exclusive benefit of the Company Indemnified Parties and in no event shall inure to the benefit of any other Person.

13.1.2 Company. Company shall fully indemnify, save harmless and defend Contractor, each of its subsidiaries and Affiliates, and the directors, officers, agents, employees, successors and assigns of each of them, (the "Contractor Indemnified Parties"), from and against any and all Damages directly or indirectly arising out of, resulting from or related to third-party claims associated with the performance by Company of its obligations hereunder, including without limitation any damage to or destruction of property of, or death of or bodily injury to, any Person, to the extent caused by or contributed to by Company's fault, intentional act, negligence or strict liability in the performance of Company's obligations hereunder or by any breach by Company of its obligations hereunder. Company's aforesaid indemnity is for the exclusive benefit of the Contractor Indemnified Parties and in no event shall inure to the benefit of any other Person.

13.2 Additional Indemnification. Contractor shall fully indemnify, save harmless and defend the Company Indemnified Parties from and against any and all Damages in favor of any Person with respect to: (a) payments of Taxes relating to Contractor's income or other Taxes required to be paid by Contractor without reimbursement hereunder, or (b) nonpayment of amounts due as a result of furnishing materials or services to Contractor or any Subcontractor in connection with the Work to the extent that Company has paid Contractor all undisputed amounts hereunder then due and payable from Company to Contractor.

13.3 Patent and Copyright Indemnification.

13.3.1 Contractor's Indemnity. Contractor shall fully indemnify, save harmless and defend the Company Indemnified Parties from and against any and all Damages which they may hereafter suffer or pay by reason of any claims, suits or proceedings arising out of allegations of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights, with respect to materials and information designed, procured or provided by Contractor or by any Subcontractor in performing the Work or in carrying on operations under the Contract Documents.

13.3.2 Action in Case of Injunction. If, in any claim, suit or proceeding identified in Section 13.1.1, a temporary restraining order or preliminary injunction is granted, Contractor shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraining order. If, in any such claim, suit or proceeding, the Work or any part, combination or process thereof is held to constitute an infringement and its use is permanently enjoined, Contractor shall at its own expense and without impairing performance requirements, either replace the infringing Work or part, combination or process thereof with non-infringing components or parts or modify the same so that they become non-infringing. If Contractor is unable to do so within a reasonable time, Contractor shall promptly make every reasonable effort to secure for Concessionaire or Company or both, as applicable, a license, at no cost to Concessionaire or Company, authorizing continued use of the infringing Work. Neither the Guaranteed Substantial Completion Date nor any of Contractor's scheduling requirements under this Agreement shall be extended due to any temporary restraining order or injunction described hereunder.

13.4 Notice and Legal Defense. Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity in favor of the Indemnified Parties provided for in Section 13.1, 13.2 or 13.3 hereof may apply, the Indemnifying Party shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense thereof with counsel reasonably satisfactory to the Indemnified Party; provided that (a) the Indemnified Party shall have the right to be represented therein by advisory counsel of its own selection and at its own expense, and (b) if the defendants in any such action include both the Indemnifying Party and an Indemnified Party, and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from, additional to or inconsistent with those available to the Indemnifying Party, such Indemnified Party shall have the right to select separate counsel to participate in the defense of such action on its own behalf at the Indemnifying Party's expense.

13.5 Failure to Defend Action by Indemnifying Party. If any claim, action, proceeding or investigation arises as to which the indemnity in favor of the Indemnified Parties provided for in Section 13.1, 13.2 or 13.3 hereof may apply, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation, then the Indemnified Party may at the Indemnifying Party's expense contest (or, with the prior written consent of the Indemnifying Party, settle) such claim; provided, that no such contest need be made and settlement or full payment of any such claim, action, proceeding or investigation may be made without the Indemnifying Party's consent (with the Indemnifying Party remaining obligated to indemnify the Indemnified Party under Section 13.1, 13.2 and 13.3 hereof) if, in the written opinion of the Indemnified Party's counsel, such claim is meritorious. All costs and expenses incurred by the Indemnified Party in connection with any such contest, settlement or payment shall be reimbursed by the Indemnifying Party to the Indemnified Party, with interest thereon at the Late Payment Rate, promptly following the Indemnifying Party's demand therefor.

13.6 Survival. The provisions of this Article 13 shall survive Final Completion and the termination of this Agreement.

ARTICLE 14

INSURANCE

14.1 Contractor-Provided Insurance. From the date on which the Work is to commence pursuant to the Notice to Proceed, Contractor shall provide the following insurance with the indicated limits, with insurance carriers and in form reasonably satisfactory to Company, Concessionaire and VDOT, and shall maintain such insurance in full force and effect until Final Completion; provided, however, that Contractor shall provide all types of Liability insurance coverage required under this Article 14 and Workers' Compensation Coverage for all periods during which Contractor or any of its agents, subcontractors or employees enters onto the Work Site and provided, further, that such Liability insurance coverage and Worker's Compensation Coverage shall continue in full force and effect during the Warranty Period and Contractor shall provide Completed Operations Coverage and Commercial General Liability ("CGL") and certify to Company and Concessionaire that such Completed Operations Coverage and CGL will be in effect for a period of three (3) years after the end of the Warranty Period.

14.1.1.1 Workers' Compensation insurance within the statutory limits of the workers' compensation laws applicable in the state in which the Work is being performed.

14.1.1.2 Employer's Liability Coverage.

14.1.1.3 Automobile Liability Coverage covering all owned, non-owned and hired automobiles, trucks and trailers, licensed or unlicensed.

14.1.1.4 CGL in a form (with explosion, collapse and underground exclusions removed), including independent contractors, personal injury, products and completed operations with broad form blanket contractual liability coverage and coverage for claims arising out of the construction of the Work for bodily injury and property damage.

14.1.1.5 Coverage in respect of Sections 14.1.1.2 (Employers Liability), 14.1.1.3 (Automobile Liability) and 14.1.1.4 (CGL) shall be \$10,000,000 any one claim and combined in the aggregate during the period of insurance. Such limit may be procured through a combination of primary and excess layer/umbrella policies.

14.1.1.6 Contractor shall require that its lead design engineer maintains professional indemnity insurance to indemnify them for their acts, errors or omissions arising in connection with the Work for not less than \$5,000,000 any one claim and in the aggregate, to be maintained throughout the Work period and the Warranty Period and to include any work or design undertaken prior to the commencement of the Work

14.2 Company-Provided Insurance. Company shall provide and pay for all insurance it is obligated to maintain under the Design-Build Contract. To the extent Contractor is entitled to make a claim under such policies, Contractor shall be responsible for the deductibles associated with such claim.

14.3 Certificates. Contractor shall furnish to Company and Concessionaire and their respective permitted assigns and successors, upon request, certificates of insurance required hereunder in a form reasonably acceptable to Company and Concessionaire and their respective permitted assigns and successors, as the case may be. All such certificates shall state that thirty (30) days' prior written notice shall be given to each such party in the event of cancellation or non-renewal of or material change in the relevant policy. Renewal certificates shall be provided upon request.

14.4 Responsibility for Deductibles. Deductibles under the policies of insurance set forth in Section 14.1 shall be borne by Contractor. The Parties agree that the policies shall contain a single deductible, where available.

14.5 Waiver of Subrogation. All insurance policies supplied by Contractor or Company under this Article 14 shall include a waiver of any right of subrogation of the insurers thereunder against all State Indemnitees, and to the extent reasonably available, against Company or Contractor (as applicable), its Subcontractors, Concessionaire and its Subcontractors, the Financing Parties, the Independent Engineer and their respective permitted assigns, successors, subsidiaries, parent companies, Affiliates, employees insurers and underwriters and of any right of the insurers to any set-off or counterclaim or any other deduction, save for outstanding premium under the relevant insurance only, whether by attachment or otherwise, in respect of any liability of any Person insured under any such policy.

14.6 Failure to Procure Insurance. If Contractor fails to procure and maintain the required insurance, or any portion thereof, Company shall have the right, but not the obligation, to procure and maintain the required insurance for and in the name of such Party and shall promptly pay the cost thereof and shall furnish all information necessary to acquire and maintain such insurance. Neither Party shall violate or knowingly permit any violation. The required insurance shall include a severability of interest clause, and Contractor agrees that none of the insurance policies required to be obtained by it under this Article 14 shall contain a clause that would void coverage due to the individual actions of any other insured parties.

14.7 Contractor's or Rented Equipment. All equipment, supplies and materials belong to Contractor or any Subcontractor used by or on behalf of Contractor or any Subcontractor for its performance hereunder or is leased or loaned to any of them, shall be brought to and kept at the Work Site at the sole cost, risk and expense of Contractor or such Subcontractor and Company shall not be liable for loss or damage thereto, and any insurance policies carried by Contractor, any Subcontractor, or any third party on said equipment, supplies and materials shall provide for a waiver of the underwriters' right to subrogation against Company, all State Indemnitees, Concessionaire, the Financing Parties, the Independent Engineer and their respective permitted assigns, successors, parent companies, subsidiaries, Affiliates, employees, insurers and underwriters.

14.8 Unemployment and Other Insurance Benefits. Contractor agrees to and does hereby accept full and exclusive responsibility and liability for the withholding and payment of any and all Taxes and contributions levied or assessed against Contractor for Unemployment Insurance and for Old Age Retirement Benefits, and for pensions and annuities now imposed, or hereafter imposed, by the Governmental Authorities with respect to, assessed

against or measured by wages, salaries or other remuneration paid to persons employed by Contractor in connection with the Work hereunder. Contractor further agrees to indemnify and hold harmless the Company Indemnified Parties from any and all liability therefor.

14.9 Descriptions Not Limitations. The coverages referred to in this Article 14 are set forth in full in the respective policy forms, and the descriptions of such policies in this Agreement are not intended to be complete, nor to alter or amend any provision of the actual policies and in matters, if any, in which the said descriptions may be conflicting with such instruments, the provisions of the policies of insurance shall govern; provided, however, that neither the content of any insurance policy or certificate nor Company's approval thereof shall relieve Contractor or any of its obligations under the Contract Documents.

14.10 Additional Insureds. All insurance policies furnished by Contractor pursuant to this Article 14 (except Worker's Compensation Insurance, Automobile, Employer's Liability Insurance and Professional Indemnity Insurance) shall name Company, all State Indemnites, Concessionaire, the Financing Parties, VDOT, the Independent Engineer and their respective permitted assigns, successors, subsidiaries and Affiliates as additional insureds as their respective interests may appear.

14.11 No Limitation of Liability. The required coverages referred to and set forth in this Article 14 shall in no way affect, nor are they intended as a limitation of, Contractor's liability with respect to its performance of the Work hereunder.

14.12 Insurance Primary. All policies of insurance provided by Contractor pursuant to this Article 14 shall be written as primary policies, not contributing with, and not in excess of, the coverage that Company, Concessionaire, VDOT, the Independent Engineer, the Financing Parties and their respective permitted assigns, successors, parent companies, subsidiaries and Affiliates may carry against the same hazards.

14.13 Capitalized Terms. Capitalized terms used in this Article 14 and not otherwise defined in this Agreement shall have the respective meanings generally ascribed to them in the commercial insurance industry in the United States.

14.14 Evidence of Insurance. Contractor will provide Company certified copies of all policies required under this Agreement prior to the date the Work is to commence on the Work Site.

ARTICLE 15

TERMINATION

15.1 Company's Right to Suspend the Work. Company may elect to suspend completion of all or any part of the Work upon ten (10) days' prior written notice to Contractor (or, in emergency situations, upon such prior notice as circumstances permit) indicating (a) the portion of the Work the completion of which Company has elected to defer, (b) Company's estimate of the duration of such suspension; and (c) the effective date of such suspension of the Work. Upon receipt of and consistent with the effective date of such notice, Contractor shall stop performance of the portion of the Work which Company has elected to defer and shall

continue to complete performance of the balance of the Work hereunder. In the event of a suspension of the Work pursuant to this Section 15.1, Company will authorize a Scope Change Order or, at its option, a Work Order if appropriate, making required adjustments to one or more of the Guaranteed Substantial Completion Date, the Contract Sum or the Payment and Values Schedule, as appropriate. Contractor shall mitigate to the fullest extent reasonable possible any additional expenses to be borne by Company as a result of suspension of the Work pursuant to this Section 15.1. In the event the entire Work is suspended pursuant to this Section 15.1 for a period of 365 consecutive days, Contractor may terminate this Agreement upon written notice to Company. In the event Contractor terminates this Agreement pursuant to this Section 15.1, Company shall pay the Termination Payment to Contractor in accordance with Section 4.4 as Contractor's sole and exclusive remedy.

15.2 Termination of Contractor for Cause. Company may elect, by ten (10) Business Days written notice to Contractor, at Company's sole option, to terminate this Agreement if any of the following events ("Contractor Events of Default") shall occur: (i) Contractor or the Guarantor makes a general assignment for the benefit of its creditors, is generally unable to pay its debts as they become due, or becomes the subject of any voluntary or involuntary bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding under any Applicable Law, now in existence or hereafter becoming effective, and, in the case of any such involuntary proceeding, it is not dismissed or stayed within sixty (60) days after it is commenced; (ii) Contractor fails, for any reason other than failure of Company to make payments to Contractor when obligated and in accordance with this Agreement, to make payments due to Subcontractors, which failure continues for thirty (30) days after written notice of such non-payment (which notice requirement shall be waived if Applicable Law prohibits the giving of such notice); (iii) Contractor intentionally or negligently disregards Applicable Laws in the performance of the Work and such failure continues for fifteen (15) days after written notice from Company (which notice requirement shall be waived if Applicable Law prohibits the giving of such notice), or, if such failure is not capable of being cured within such fifteen (15) day period, if Contractor has not commenced the cure within such period and thereafter diligently pursued the same until a cure is effected, not to exceed an additional thirty (30) days unless the failure is not susceptible of cure; (iv) Contractor fails to achieve Substantial Completion within [365] calendar days after the Guaranteed Substantial Completion Date; (v) Contractor fails to diligently implement a corrective action plan adopted pursuant to Section 2.1.1; (vi) Contractor abandons the Work, (vi) Contractor fails to maintain the Letter of Credit in effect in the amount required hereunder; (vii) failure by the Contractor Guarantor to maintain the guaranty in effect as required hereunder, (viii) Contractor otherwise is in default of any provision of or has failed to perform its obligations under the Contract Documents and such failure continues for thirty (30) days after written notice from Company (which notice requirement shall be waived if Applicable Law prohibits the giving of such notice), or, if such failure is not capable of being cured within such thirty (30) day period, if Contractor has not commenced the cure within such period and thereafter diligently pursued the same until a cure is effected, not to exceed an additional ninety (90) days unless the failure is not susceptible of cure, provided, however, that Company shall not exercise its remedy provided in this clause (viii) of Section 15.2 if Contractor's default consists solely of a violation of Section 3.7 hereof, but Contractor shall nonetheless be responsible for payment of any fines and penalties applicable to such violation as may be imposed on Contractor, Company or any other Person for whom Contractor is responsible by the appropriate Governmental Authority; or (ix) VDOT terminates the Comprehensive Agreement as a result of

a breach by Contractor of its obligations hereunder. With respect to any termination by Company pursuant to this Section 15.2 (a “Termination For Cause”):

(i) If Company terminates this Agreement in accordance with this Section 15.2, Company may cause the Work to be completed by other contractors, and Contractor shall pay for the cost of such completion and Damages suffered by Company to the extent the same exceeds the Contract Sum. Company shall, within a reasonable period of time after the Work is fully and finally completed by the work of one or more other contractors, determine the total cost (including contractor fees) to Company for completing the Work, including all sums previously paid or then owed to Contractor pursuant to this Agreement. If the Contract Sum is less than the sum of (i) the cost incurred by Company to fully and finally complete the Work, (ii) all other Damages suffered by Company as a result of a default or breach by Contractor of its obligations under the Contract Documents, and (iii) all amounts previously paid to Contractor pursuant to this Agreement, Contractor shall pay to Company on demand the amount of such difference. Any amount owed by Company to Contractor for the month and level of completion of the Work shall be retained by Company until after completion of the Work and applied by Company to pay any amounts and Damages owed by Contractor pursuant to this Section 15.2(a) or otherwise. Any excess shall be remitted to Contractor within sixty (60) days after the Work is fully and finally completed.

(ii) If a Contractor Event of Default has occurred for which a cure period is envisioned above in this Section 15.2, Contractor shall prepare a remedial program and submit the same for Company’s Approval, and Contractor shall remedy such Contractor Event of Default in accordance with the agreed remedial program. To the extent Contractor fails to cure such Contractor Event of Default and Company elects not to exercise its termination rights hereunder, Company may remedy such Event of Default with the cost thereof to be borne by Contractor.

(iii) No compensation shall be payable to Contractor in the event of a Termination for Cause except to the extent provided in Section 15.2(a).

15.3 Company Default.

15.3.1 The following events shall constitute “Company Events of Default”: (i) Company makes a general assignment for the benefit of its creditors, is generally unable to pay its debts as they become due, or becomes the subject of any voluntary or involuntary bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding under any Applicable Law, now in existence or hereafter becoming effective, and, in the case of any such involuntary proceeding, it is not dismissed or stayed within sixty (60) days after it is commenced; (ii) Company fails to pay to Contractor any portion of a Scheduled Payment which is not in dispute and such failure continues for thirty (30) days after written notice of such non-payment (which notice requirement shall be waived if Applicable Law prohibits the giving of such notice); and (iii) only if relief cannot be provided by issuance of a Scope Change Order under Section 12.8, Company otherwise is in default or has failed to perform any of its other material obligations under the Contract Documents and such failure continues for thirty (30) days after written notice from Contractor (which notice requirement

shall be waived if Applicable Law prohibits the giving of such notice), or, if such failure is not capable of being cured within such thirty (30) day period, if Company has not commenced the cure within such period and thereafter diligently pursued the same until a cure is effected, not to exceed an additional ninety (90) days unless the failure is not susceptible of cure.

15.3.2 Upon the occurrence of a Company Event of Default under Section 15.3.1(ii), Contractor may suspend performance of the Work hereunder and, if Company fails to pay the undisputed portion of the Scheduled Payment within ninety (90) days after written notice of such non-payment (which notice requirement shall be waived if Applicable Law prohibits the giving of such notice), terminate this Agreement upon ten (10) Business Days written notice to Company. In the case of any other Company Event of Default, Contractor may terminate this Agreement upon ten (10) Business Days written notice to Company. Any right of Contractor to terminate this Agreement shall be subject to any cure rights of VDOT under the Comprehensive Agreement and of the Financing Parties that are applicable to this Agreement. In the event Contractor terminates this Agreement by Contractor pursuant to this Section 15.3.2, Company shall pay the Termination Payment to Contractor in accordance with Section 4.4 hereof as Contractor's sole and exclusive remedy.

15.4 Requirements Following Termination. Upon termination of this Agreement, Company shall be immediately released from any and all obligations to Contractor (except for Company's obligation to pay the Termination Payment or any amount specified in Section 15.2, if applicable), Contractor shall immediately discontinue the Work and remove its personnel and construction equipment from the Project Right of Way, and Company shall be entitled to take exclusive possession of the Work and all or any part of the equipment and materials delivered or enroute to the Work Site, to the extent that Company has paid Contractor all undisputed amounts hereunder then due and payable from Company to Contractor. If requested by Company, Contractor will make every reasonable effort to cancel any existing Subcontracts upon terms satisfactory to Company. Except as provided in Section 4.4 hereof, any payments to be made to a Subcontractor as a result of any such termination shall be at the expense of Contractor. Contractor shall also, upon request by Company, (i) deliver and assign to Company (but in no event shall Company be liable for any action or default of Contractor occurring prior to such delivery and assignment except to the extent such action or default was caused by Company, and each Subcontract shall so provide) any and all Subcontracts, purchase order, bonds and options made by Contractor in performance of the Work, and (ii) deliver to Company originals of all Contract Documents and, if the termination occurs at a time when the design of the Work is incomplete, originals of all Design Documents in process (except that Contractor may keep for its records copies, and, if sufficient originals exist, an original set, of the Agreement and other Contract Documents executed by Company), all other materials relating to the Work which belong to Company, and all papers and documents relating to the Permits for the Work, orders placed, bills and invoices, lien releases and financial management under this Agreement. All deliveries hereunder shall be made free and clear of any liens, security interests or encumbrances, except such as may be created by Concessionaire or Company. Notwithstanding any termination of Contractor's retention or this Agreement pursuant to this Article 15, Contractor shall for a period not to exceed five (5) days take such steps as are reasonable necessary to preserve and protect Work completed and in progress and to protect materials, equipment and supplies at the Project Right of Way, stored off-site, or in transit. Except as provided herein, no action taken by Company or Contractor after the termination of

Contractor's retention of this Agreement shall prejudice any other rights or remedies of Company or Contractor provided by law, by the Contract Documents or otherwise upon such termination.

15.5 Surviving Obligations. Termination of this Agreement or the retention of Contractor to perform the Work (a) shall not relieve Contractor of its obligations with respect to the confidentiality of Company information as set forth in Article 18 hereof, (b) shall not relieve Contractor of any obligation hereunder which expressly or by implication survives termination hereof, and (c) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Company or Contractor of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination, and shall not relieve Contractor of its obligations as to portions of the Work or other services hereunder already performed or of obligations assumed by Contractor prior to the date of termination.

ARTICLE 16

ASSIGNMENTS

16.1 Assignment. Neither Party shall have the right, power or authority to assign or delegate this Agreement or any portion thereof, either voluntarily or involuntarily, or by operation of law, without the prior written consent of the other Party, which consent may be granted or withheld in the sole discretion of such other Party. Nothing in this Section 16.1 shall be deemed to preclude Contractor from subcontracting portions of the Work in accordance with Article 3 hereof.

16.2 Performance in Favor of Concessionaire, VDOT and Financing Parties. Contractor agrees that in the event of a default by Company under the terms and conditions of the Design-Build Contract, Concessionaire, VDOT and/or the Financing Parties shall be entitled to use and enforce this Agreement, as the same may be amended or supplemented before or after such default, all without additional cost to Concessionaire, VDOT or the Financing Parties. In the event Concessionaire, VDOT or any Financing Party notifies Contractor in writing that Company has defaulted under the Design-Build Contract and requests Contractor to continue performance under this Agreement, Contractor shall thereafter perform hereunder in accordance with the terms and provisions hereof, so long as Contractor shall be paid in accordance with this Agreement for the Work performed hereunder, including payment of any sums due to Contractor for Work performed to and including the date of Company's default. Contractor will consent to such other agreements with respect to VDOT's and/or the Financing Parties' enforcement of their liens and security interests as VDOT and/or the Financing Parties may reasonably request.

16.3 Successors and Assigns. All of the rights, benefits, duties, liabilities and obligations of the Parties hereto shall inure to the benefit of and be binding upon their respective successors and permitted assigns.

ARTICLE 17

DESIGN DOCUMENTS

17.1 Company's Review. All design information and calculations shall be subject to Company's Review, but neither (a) the review of such information or calculations by Company or (b) Company's acceptance of Substantial Completion or Final Completion shall constitute a waiver of, or release Contractor from, any liability for errors or omissions contained in any designs or calculations by Contractor or by any Subcontractor, including any errors or omissions contained in the Final As-Built Drawings and Documentation. Notwithstanding anything to the contrary herein contained, except with respect to the Company Supplied Equipment and Facilities, Company shall not be liable for and makes no representation with respect to any designs and specifications prepared by Contractor and reviewed or accepted by Company, and including any designs and specifications set forth in the Contract Documents. With respect to all aspects of the Work design, Contractor must create designs and solutions that comply with Applicable Laws and the other requirements of this Agreement. Company's acceptance of the Work shall not relieve Contractor of its obligation for such compliance.

17.2 Final As-Built Drawings and Documentation. As a condition to achievement of Final Completion, Contractor shall furnish for Company's Approval CAD disks and reproducible mylars of the Final As-Built Drawings and Documentation. Together with the Final As-Built Drawings, Contractor shall furnish to Company a Project library in an electronic format that can be searched easily to include, without limitation: all Design Documents, inspection and test reports, electronic management system and other documents prepared by Contractor and used in the performance of the Work hereunder. Contractor shall incorporate into the Final As-Built Drawings and Documentation all changes or corrections to the Work made at the Work Site prior to Final Completion so as to accurately represent the completed Work. Contractor shall establish such systems and retain such personnel as are necessary to maintain full quality control and quality assurance with respect to the Final As-Built Drawings and Documentation. If Contractor fails to provide Final As-Built Drawings and Documentation which in all material respects comply with the provisions of this Section 17.2, Company, without limiting any other right or remedy it may have under the Contract Documents or under Applicable Laws, may engage a third party engineer to produce Final As-Built Drawings and Documentation complying herewith, and Contractor shall pay all fees and costs of such engineer.

17.3 Ownership. Subject to Section 2.1.8, Contractor agrees that all Design Documents, the Final As-Built Drawings and Documentation, and other documents prepared or required to be prepared by Contractor as deliverables under this Agreement shall be the sole and exclusive property of VDOT, Company and Concessionaire and shall not be used by Contractor or Company in connection with any other project without Concessionaire's prior written consent. The foregoing does not apply to Contractor's pre-existing technical experience, expertise, standard formats or the like. Contractor agrees that all such documents, as well as any drawings, tracings, specifications, calculations, memoranda, data, notes and other materials which are supplied by Company and come into the possession of Contractor, shall be delivered to Company at the earlier of Final Completion or termination of the Work hereunder if not previously delivered hereunder, except to the extent Company shall instruct Contractor not to deliver such materials. Company shall not, and shall request that Concessionaire shall not, copy

or disseminate such materials in connection with any project other than the Project unless Contractor's name is deleted from such materials. Company shall defend, indemnify and hold Contractor harmless from any claim, demand or liability arising from reuse of Contractor's documents if such reuse is not in connection with the Project.

17.4 Use of Documents by Contractor. Contractor shall be entitled to retain and use solely and specifically in connection with the Work hereunder and for enhancement of its engineering files a reproducible set of all Design Documents, the Final As-Built Drawings and Documentation, and other documents delivered to Company by Contractor in accordance with this Article 17.

ARTICLE 18

CONFIDENTIAL INFORMATION

18.1 Confidentiality. Except as set forth in this Section 18.1, each Party shall hold in confidence for a period ending five (5) years after the earlier of (i) Final Completion of the entire Project or (ii) the earlier termination hereof, any confidential information (marked as such) supplied to it by the other Party or otherwise related to the Contract Documents or the Project. Contractor shall inform its Subcontractors, suppliers, vendors and employees of its obligations under this Section 18.1 and shall require each of its Subcontractors, suppliers, vendors and employees to execute confidentiality arrangements substantially in the form of this Article 18. Notwithstanding the foregoing, each Party may disclose the following categories of information or any combination thereof:

- (i) information which was in the public domain prior to receipt thereof by such Party or which subsequently becomes part of the public domain by publication or otherwise except by a wrongful act of the other Party or, in the case of Contractor, any Subcontractor;
- (ii) information that such Party can show was lawfully in its possession prior to receipt thereof from the other Party through no breach of any confidentiality obligation;
- (iii) information received by such Party from a third party having no obligation of confidentiality with respect thereto;
- (iv) information at any time developed independently by such Party provided it is not developed from otherwise confidential information;
- (v) information disclosed pursuant to and in conformity with the law or a judicial order or in connection with any legal proceedings or arbitration procedures; and
- (vi) information required to be disclosed under securities laws applicable to publicly traded companies and their subsidiaries or reporting required by a Governmental Authority if such Party informs the other Party of the need for such disclosure and, if reasonably requested by the other Party, seeks, through a protective order or other appropriate mechanism, to maintain the confidentiality of such information.

18.2 Survival. Provisions of this Article 18 shall continue in full force and effect in accordance with their terms, and shall survive any termination of this Agreement.

18.3 Publicity Releases; Information. Contractor shall not issue any press or publicity release or any advertisement, or publish, release or disclose any photograph or other information concerning this Agreement or the Project, without the express prior written consent of Company, which consent shall not be unreasonably withheld. Contractor shall include this restriction in all Subcontracts and purchase orders. Contractor shall give prior notice to Company of any information contained in documents filed with public authorities or any other public disclosure which would result in the dissemination of confidential information.

ARTICLE 19

DISPUTE RESOLUTION

19.1 Arbitration; Other Actions. Any claim or controversy between Company and Contractor not exceeding One Million Dollars (\$1,000,000) in value shall be submitted to binding arbitration in accordance with this Section 19.1 upon written notice of either Party delivered to the other of such Party's intention to arbitrate, the nature of the dispute, the amount claimed and the decision sought, provided that a dispute relating to a Scope Change Order shall be resolved in accordance with Section 12.14. Arbitration under this Section 19.1 shall be conducted by JAMS or its successor in accordance with its Streamlined Arbitration Rules and the Federal Arbitration Act, 9 USC Section 1 et seq. The notice of intent to arbitrate also shall specify the name and address of an arbitrator selected by the Party requesting arbitration. The other Party shall within ten (10) Business Days of receipt of the arbitration notice select its arbitrator; provided that if it fails to do so, the arbitrator appointed by the Party requesting arbitration shall serve as the sole arbitrator of the dispute. However, if both Parties name an arbitrator, the two arbitrators thus selected shall within ten (10) Business Days of the selection of the second arbitrator select the third arbitrator. All arbitrators shall be qualified, independent and neutral. The decision of any two of the three arbitrators on any issue shall be final. Unless the Parties otherwise agree, all arbitration proceedings shall be held in Washington, DC. Company and Contractor shall proceed with any arbitration expeditiously. All conclusions and decisions of the arbitration shall be made consistent with applicable legal principles and the arbitrators' good faith interpretation of the terms and provisions of this Agreement. The award of the arbitrators will be final and binding on both Parties and may be enforced in any court having jurisdiction over the Party against which enforcement is sought. Each Party shall bear its own expenses, including but not limited to counsel fees and witness fees. If the arbitrators determine that the claim or defense of either Party was frivolous (i.e., without justifiable merit), they may require that the Party at fault pay or reimburse the other Party for costs of the arbitration in whole or in part, except that all expenses of the arbitration shall be apportioned in the award of the arbitrators based upon the respective merit of the positions of the Parties.

NOTWITHSTANDING THE FOREGOING, EQUITABLE REMEDIES, INCLUDING INJUNCTION AND SPECIFIC PERFORMANCE, SHALL BE AVAILABLE TO THE PARTIES BY JUDICIAL PROCEEDINGS AT ANY TIME AND, FOR THIS PURPOSE AND FOR THE PURPOSE OF ENFORCING ANY ARBITRAL AWARD OR DECISIONS, THE PARTIES HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE FEDERAL AND STATE COURTS IN RICHMOND, VIRGINIA. THE PARTIES ALSO

SUBMIT TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE FEDERAL AND STATE COURTS IN RICHMOND, VIRGINIA, REGARDING ANY DISPUTE BETWEEN THE PARTIES WHERE THE AMOUNT IN CONTROVERSY EXCEEDS ONE MILLION DOLLARS (\$1,000,000). EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING UNDER THIS AGREEMENT AND FOR ANY COUNTERCLAIM IN SUCH AN ACTION OR PROCEEDING. THE PROVISIONS OF THIS SECTION 19.1 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

19.2 Common Issue in Dispute under the Comprehensive Agreement or the Design-Build Contract. Notwithstanding any other provision in this Agreement to the contrary, if any issue in dispute between the Parties to this Agreement is also the subject of a concurrent dispute under the Comprehensive Agreement or the Design-Build Contract, the Parties shall seek to cause the dispute hereunder to be consolidated with the dispute resolution process occurring under the Comprehensive Agreement or the Design-Build Contract. If such consolidation does not occur, then any ongoing proceeding regarding the dispute hereunder shall be stayed pending final resolution of the dispute under the Comprehensive Agreement or the Design-Build Contract, as applicable, which resolution shall be binding on the Parties for all purposes of this Agreement.

19.3 Continuation of Work. Contractor shall continue its performance of the Work on a timely basis in accordance with the Work Schedule during any dispute which may arise between Company and Contractor concerning the Work, subject to Contractor's suspension rights in Section 12.14.

ARTICLE 20

COST RECORDS

20.1 GAAP. Contractor shall maintain fiscal records and books of account pertaining to the Project in accordance with generally accepted American accounting principles consistently applied.

20.2 Inspection of Books, Records and Audit Rights. Contractor covenants and agrees to keep and maintain full, complete and detailed records of all its costs and allowances pertaining to Scope Changes. Contractor authorizes Company, Concessionaire (to the extent required under the Design-Build Contract), VDOT (to the extent required under the Comprehensive Agreement) and independent third parties designated by Company to inspect and audit, during business hours, all of its records and books of account pertaining to the Work to the extent reasonably necessary to (i) establish or verify the amounts of cost-plus Change Orders or Work Orders, (ii) assemble data required to be submitted to Governmental Authorities, and (iii) calculate income, ad valorem or other taxes, prepare returns in connection therewith or obtain exemptions therefrom. Such records, books and accounts shall be preserved by Contractor for a period of three (3) years after Final Completion, at no additional cost to Company, and subject to Company inspection and audit during such period. All expenses of an audit by Company shall be paid by Company. No inspection or audit rights shall apply to the make-up of the lump-sum

Contract Sum or to any unit price or rate used under this Agreement after such price or rate has been agreed by the Parties.

ARTICLE 21

INDEPENDENT CONTRACTOR

21.1 Contractor as Independent Contractor. Contractor, shall be an independent contractor with respect to the Project, each part thereof, and the Work hereunder, and neither Contractor, its Subcontractors, nor the employees of any of them shall be deemed to be agents, representatives, employees or servants of Company in the performance of the Work or any other services dealt with herein. Company shall not have the right to control the methods or means by which Contractor or any agent, representative, Subcontractor, or employee or Contractor conducts its independent business operations. Company and Contractor covenant and agree that in the performance of the Work by Contractor, Contractor shall not perform any act or make any representation to any Person to the effect that Contractor or any of its agents, representatives or Subcontractors is the agent of Company.

ARTICLE 22

REPRESENTATIVES AND WARRANTIES OF CONTRACTOR

22.1 Representatives and Warranties. Contractor represents and warrants to Company that:

22.1.1 Organization and Qualification. Contractor is duly organized, validly existing and in good standing under the laws of the State of Delaware, and has the lawful power to engage in the business it presently conducts and contemplates conducting. Contractor is duly licensed or qualified to do business in the Commonwealth of Virginia and in each other jurisdiction wherein the nature of the business transacted by them makes such licensing or qualification necessary.

22.1.2 Power and Authority. Contractor has the corporate power to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part.

22.1.3 No Conflict. The execution, delivery and performance of this Agreement by Contractor (assuming issuance of Applicable Permits in due course upon application therefor) will not conflict with Contractor's governing documents, any Applicable Laws or any covenant, agreement, understanding, decree or order to which Contractor is a party or by which Contractor is bound or affected.

22.1.4 Validity and Binding Effect. This Agreement has been duly and validly executed and delivered by Contractor. This Agreement constitutes a legal, valid and binding obligation of Contractor, enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity. No authorization, approval, exemption or consent by any Governmental Authority (other than the

Applicable Permits) is required in connection with the authorization, execution, delivery and carrying out of the terms of this Agreement.

22.1.5 Litigation. There are no actions, suits, proceedings or investigations pending or, to the knowledge of Contractor, threatened against Contractor at law or in equity before any court or before any Governmental Authority, whether or not covered by insurance, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Contractor or to result in any impairment of Contractor's ability to perform its obligations under this Agreement. Contractor has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any Governmental Authority which is reasonably likely to have such a materially adverse effect or to result in such impairment.

22.1.6 Patents; Licenses; Franchises. Contractor owns or possesses all the patents, trademarks, service marks, trade names, copyrights, licenses, franchises, Permits and rights with respect to the foregoing necessary to perform the Work and to carry on its business as presently conducted and presently planned to be conducted without conflict with the rights of others.

22.1.7 Compliance with Laws. Contractor has complied with all Applicable Laws such that Contractor is not subject to any fines, penalties, injunctive relief or criminal liabilities which in the aggregate have materially affected or are reasonably likely to have a materially adverse effect upon the business operations or financial condition of Contractor or Contractor's ability to perform the Work or other services hereunder.

22.1.8 Disclosure. No representation or warranty by Contractor contained herein or in any other document furnished by Contractor to Company contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading in light of the circumstances under which it was made. All financial and other information furnished by Contractor to Company is true and correct in all material respects.

ARTICLE 23

REPRESENTATIVES AND WARRANTIES OF COMPANY

23.1 Representatives and Warranties. Company represents and warrants to Contractor that:

23.1.1 Organization and Qualification. Company is duly organized, validly existing and in good standing under the laws of State of Delaware, and has the lawful power to engage in the business it presently conducts and contemplates conducting. Company is duly licensed or qualified to do business in the Commonwealth of Virginia and in each other jurisdiction wherein the nature of the business transacted by them makes such licensing or qualification necessary.

23.1.2 Power and Authority. Company has the limited liability company power to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part.

23.1.3 No Conflict. The execution, delivery and performance of this Agreement by Company (assuming issuance of Applicable Permits in due course upon application therefor) will not conflict with Company's governing documents, any Applicable Laws or any covenant, agreement, understanding, decree or order to which Company is a party or by which Company is bound or affected.

23.1.4 Validity and Binding Effect. This Agreement has been duly and validly executed and delivered by Company. This Agreement constitutes a legal, valid and binding obligation of Company, enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity. No authorization, approval, exemption or consent by any Governmental Authority (other than the Applicable Permits) is required in connection with the authorization, execution, delivery and carrying out of the terms of this Agreement.

23.1.5 Litigation. There are no actions, suits, proceedings or investigations pending or, to the knowledge of Company, threatened against Company at law or in equity before any court or before any Governmental Authority, whether or not covered by insurance, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Company or to result in any impairment of Company's ability to perform its obligations under this Agreement. Company has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any Governmental Authority which is reasonably likely to have such a materially adverse effect or to result in such impairment.

23.1.6 Compliance with Applicable Laws. Company has complied with all Applicable Laws such that Company is not subject to any fines, penalties, injunctive relief or criminal liabilities which in the aggregate have materially affected or are reasonably likely to have a materially adverse effect upon the business operations or financial condition of Company or Contractor's ability to perform the Work or other services hereunder.

23.1.7 Disclosure. No representation or warranty by Company contained herein or in any other document furnished by Company to Contractor contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading in light of the circumstances under which it was made. All financial and other information furnished by Company to Contractor is true and correct in all material respects.

ARTICLE 24

MISCELLANEOUS

24.1 Estoppel Certificate. Contractor shall at any time and from time to time furnish promptly upon request by Company, Concessionaire or any Financing Party a written statement in such form as may be required by the requesting party stating that this Agreement is a valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity; that this Agreement has not been released, subordinated or modified; and that there are no offsets or defenses against the enforcement of this Agreement against Contractor; or if any of the foregoing statements are untrue, specifying the reasons therefor.

24.2 Waivers. No failure to exercise, and no delay in exercising, any right, power or remedy under the Contract Documents shall impair any right, power or remedy which any party hereto may have, nor shall such failure or delay be construed to be a waiver of any such rights, powers or remedies, or an acquiescence in any breach or default under the Contract Documents, nor shall any waiver of any breach or default be deemed a waiver of any default or breach subsequently occurring under the Contract Documents.

24.3 Choice of Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER AND/OR ARISING FROM OR RELATING IN ANY WAY TO THE TRANSACTIONS EVIDENCED BY THE CONTRACT DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF VIRGINIA, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW RULES THEREOF WHICH MAY DIRECT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

24.4 Severability. In the event that any of the provisions, or portions or applications thereof, of any of the Contract Documents are held to be unenforceable or invalid by any court of competent jurisdiction, Company and Contractor shall negotiate an equitable adjustment in the provisions of the affected Contract Documents with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

24.5 Notice. Unless otherwise expressly required or permitted by the Contract Documents, any notice required or permitted to be given by Contractor to Company hereunder shall be in writing and shall be addressed to Company at:

Fluor-Lane LLC
c/o Fluor Corporation
100 Fluor Daniel Drive
Greenville, South Carolina
Attention: Mr. Herbert W. Morgan, Vice President of Operations
Telephone: (803) 330-5215
Fax: (803) 560-9381

and any notice required or permitted to be given by Company to Contractor hereunder shall be in writing and shall be addressed to:

Transurban (USA), Inc.
565 5th Avenue, 18th Floor
New York, NY 10017
Attention: President
Telephone: (646) 278-0870
Facsimile: (646) 278-0839

With a copy to:

Transurban (USA), Inc.
1421 Prince Street
Suite 200
Alexandria, VA 22314
Attention: Vice President-Development
Telephone: (571) 527-2050
Facsimile: (571) 527-2060

24.5.1 Delivery. Unless otherwise expressly required or permitted by the Contract Documents, all notices shall be delivered (a) in person to the Party above mentioned, (b) via certified mail with a return receipt requested in a securely sealed envelope, (c) by expedited delivery service with proof of delivery, or (d) by prepaid telegram, telex or telecopy. A notice shall be deemed delivered either at the time of personal delivery or, in the case of delivery service or mail, as the date of first attempted delivery at the address provided herein, or in the case of telegram, telex or telecopy, upon receipt. Company and Contractor, by like notice in writing, may designate, from time to time, another address or office to which notices may be given pursuant to this Agreement.

24.6 Headings. The Article and Section headings herein have been inserted for convenience of reference only and shall not in any manner affect the construction, meaning or effect of the provisions herein contained nor govern the rights and liabilities of the Parties hereto.

24.7 Entire Agreement. The Contract Documents contain the entire agreement between Company and Contractor with respect to the Work, and supersede any and all prior and contemporaneous written and oral agreements, proposals, negotiations, understandings and representations pertaining to the Work.

24.8 Amendments. No amendments or modifications of the Contract Documents shall be valid unless evidenced by a Scope Change Order or by a written instrument signed by a duly authorized representative of the Party against whom enforcement is sought.

24.9 Conflicting Provisions. In the event of any inconsistencies between this Agreement and the other Contract Documents, the following order of precedence in the interpretation hereof or resolution of such conflict hereunder shall prevail:

- (i) the Comprehensive Agreement;
- (ii) the Design-Build Contract;
- (ii) Duly authorized and executed Scope Change Orders and written amendments to this Agreement executed by both Parties;
- (iii) This Agreement, excluding the Exhibits hereto;
- (iv) Scope of Work;
- (v) The remaining Exhibits hereto; and
- (vi) Design Documents, including drawings produced and delivered pursuant hereto (in respect of which, precedence shall be given to drawings of a larger scale over those of smaller, figured dimensions on the drawings shall control over scaled dimensions, and noted materials shall control over undimensioned graphic indications).

Where an irreconcilable conflict exists among Applicable Laws, this Agreement, the drawings included in the Design Documents, and the specifications in the Design Documents, the earliest item mentioned in this sentence involving a conflict shall control over any later mentioned item or items subject to such conflict, and if a conflict exists within or between parts of the Contract Documents, or between the Contract Documents and Applicable Laws, or among Applicable Laws themselves, the more stringent or higher quality requirements shall control. All obligations imposed on Contractor and each Subcontractor under the Contract Documents (other than this Agreement) or under Applicable Laws or Applicable Standards and not expressly imposed or addressed in this Agreement shall be in addition to and supplement the obligations imposed on Contractor under this Agreement, and shall not be construed to create an “irreconcilable conflict.” Where a conflict exists among codes and standards applicable to the Work or Contractor’s performance of the Work, the most stringent provision of such codes and standards shall govern.

24.10 No Third Party Rights. The Contract Documents and all rights thereunder are intended for the benefit of Company and Contractor, Concessionaire (to the extent set forth in the Design-Build Contract), the Financing Parties (to the extent provided in Articles 13 and 16 hereof), VDOT (to the extent set out in the Comprehensive Agreement), and the Indemnified Parties (to the extent provided in Article 13 hereof), and shall not imply or create any rights on the part of, or obligations to, any other Person or any other rights on the part of, or other obligations to, Concessionaire, the Financing Parties, VDOT and the Indemnified Parties beyond the rights and obligations expressly set forth herein.

24.11 Reserved.

24.12 Reserved.

24.13 Survival of Provisions. All provisions of the Contract Documents which are expressly or by implication to come into or continue in force and effect after the expiration or

termination of this Agreement shall remain in effect and be enforceable following such expiration or termination.

24.14 Title to the Work. Title to all materials, supplies, equipment and machinery used in connection with the Work which become a permanent part of the Project shall vest in VDOT upon the earliest of (i) the occurrence of any event by which title passes from the Subcontractor providing such materials, supplies, equipment or machinery, (ii) full payment therefor by Contractor, (iii) full payment therefor by Company, (iv) incorporation of the Work into the Project at the Project Right of Way, or (v) delivery of equipment or materials for incorporation into the Work to an approved off-site location.

24.15 Obligation to Act in Good Faith. In all cases where approvals, consents or determinations are required to be provided hereunder, such approvals or consents shall not be withheld unreasonably and such determinations shall be made reasonably except in cases where a different standard (such as, by way of example only, sole discretion) is specified. In cases where sole discretion is specified for an approval, consent, determination or other decision, the decision shall not be subject to dispute resolution hereunder.

24.16 Coordination with VDOT and Financing Parties. Contractor acknowledges that each of VDOT and the Financing Parties shall have the right to review this Agreement, and that they may require to review this Agreement, and that they may have rights (a) to receive notices of default by Contractor and notices of inspections and tests, (b) to approve Final Completion, and (c) to have the Independent Engineer inspect the progress of the Work. Contractor agrees to make changes to this Agreement and to otherwise cooperate with each of VDOT and the Financing Parties to the extent reasonably required in order for Company and Concessionaire to obtain VDOT approval.

24.17 Time of the Essence. Without prejudice to any provision of this Agreement relating to liquidated damages, delay or termination for default relating to delay, time is of the essence in the performance of this Agreement.

24.18 Exhibits. All exhibits attached to this Agreement are made a part hereof for all purposes.

IN WITNESS WHEREOF, Company and Contractor, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives as of the date indicated below and to be effective as of the day and year first above written.

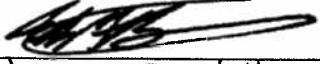
COMPANY

FLUOR-LANE, LLC

By: Herbert Morgan
Name: Herbert Morgan
Title: President
Date: December 16, 2007

CONTRACTOR

TRANSURBAN (USA) INC.

By: 
Name: James Brett Burns
Title: Attorney-in-fact
Date: December 18, 2007