



**OHIO TURNPIKE AND
INFRASTRUCTURE COMMISSION**

682 Prospect Street
Berea, Ohio 44017

**ADDENDUM NO. 3
Issued October 18, 2019**

**RFP No. 1 - 2019
REQUEST FOR PROPOSALS
TO FURNISH AND INTEGRATE A
TOLL COLLECTION SYSTEM ISSUED OCTOBER 4, 2019**

ATTENTION OF RESPONDENTS IS DIRECTED TO:

Insert as Appendix C to the RFP

Issued by the Ohio Turnpike and Infrastructure Commission through Jennifer L. Stueber, General Counsel.

A handwritten signature in blue ink that reads "J. Stueber".

10/18/19

Jennifer L. Stueber, Esq.
General Counsel

Date

Ohio Turnpike

RFP No. 1 – 2019 To Furnish, Integrate and Maintain a Toll Collection System

Addendum No. 3

10/18/19

RFP No. 1-2019 is hereby amended by attaching the form contract to Appendix C.

Please see attached form contract.

TOLL COLLECTION SYSTEM IMPLEMENTATION AND MAINTENANCE
CONTRACT

BETWEEN

THE OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION

And



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TOLL COLLECTION SYSTEM IMPLEMENTATION AND MAINTENANCE CONTRACT

This Toll Collection System Implementation and Maintenance Contract ("Contract"), is made and entered this [__] day of [____], 2019 (the "Effective Date"), between The Ohio Turnpike and Infrastructure Commission ("Commission") and [____], a [____] [corporation/limited liability company/partnership] ("Contractor"). Commission and Contractor may hereinafter be referred to as a "Party" or collectively as the "Parties."

WHEREAS, the Commission desires to implement a new toll collection system ("TCS") that includes highway speed open road tolling ("ORT"), open toll barrier and closed ticketed toll system characteristics, as well as a supporting new customer service center ("CSC") with significant advancements in improved customer experience, communication methods, data availability, and security; and

WHEREAS, in response to the Request for Proposals No. 1-2019 to Furnish, Integrate and Maintain a Toll Collection System issued by the Commission dated October 4, 2019 ("RFP"), as amended from time to time, Contractor proposed under its proposal dated _____, 2019 ("Proposal") to perform such services as identified therein for the Commission;

WHEREAS, the Commission finds that Contractor's Proposal is the best value among those submitted and desires to engage Contractor to perform such services, and Contractor desires to perform such services, under the terms, conditions and provisions contained herein.

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

1. Recitals.

The recitals set forth above are Incorporated into this Contract.

2. Definitions.

Capitalized terms used herein shall have the meanings assigned to them in this Contract or as set forth in the Scope of Services as set forth in Appendix A to this Contract. For purposes of this Agreement, "Day" shall mean a calendar day, and "Business Day" shall mean any day except Saturday, Sunday or any other day on which commercial banks located in Cleveland, Ohio are authorized or required by Law to be closed for business.

3. Appendices to Contract.

The Scope of Services to be performed hereunder are set forth in Appendix A (the "Scope" or "Work"); and as amended by the agreed upon technical specifications are set forth in Appendix B (the "Technical Proposal"); all costs and pricing are set forth in Appendix C (the "Pricing Schedule"); and the payment milestones are set forth in Appendix D ("Payment Milestones"), each as attached hereto and incorporated herein. In the case of a conflict between the provisions set forth in the body of this Contract and the terms set forth in any of the Appendices attached hereto, the terms of the Appendices shall govern and control as to that specific direct conflict item. The Parties acknowledge and agree

that the Work includes (i) the design, installation and testing of the System and all work related thereto (the "System Work"), and (ii) the maintenance and on-going operational support related to the System after the Go Live date (the "Maintenance Work"). The Work for purposes throughout, includes either the System Work or Maintenance Work or both, unless specifically identified otherwise.

4. Contract Term and Renewal.

This Contract shall begin on the Effective Date and shall continue thereafter until six (6) years after Final Acceptance of the System Work (as defined in the Scope) (the "Initial Term"), unless earlier terminated as provided herein. Notwithstanding the foregoing, the Term for the System Work is from the Effective Date until the date of Final Acceptance , and thereafter the Initial Term and any applicable renewal terms are for the Maintenance Work. The Commission, in its sole discretion, may elect to renew this Contract for the Maintenance Work on the same terms and conditions as contained in this Contract for such Maintenance Work for up to three (3) additional renewal periods with a term of up to two (2) years each (each renewal a "Renewal Term"). The Initial Term and any and all Renewal Terms may be referred to collectively as the "Term." The renewal of the Contract shall be at the sole discretion of the Commission and evidenced by an executed amendment; provided, that if the Commission elects to renew the Contract, Contractor must execute the amendment. Notwithstanding the foregoing, all components of the Work to be completed that is completion based must be completed within the time periods set forth in the Scope.

5. Scope of Services, Generally.

During the Term, Contractor shall provide, perform and deliver all of the Work set forth in this Contract. All of the Work, and each component or portion thereof, shall conform to each and every standard, specification, provision, criteria, warranty, representation, covenant and requirement, as applicable and as set forth in this Contract including, without limitation, the Scope.

6. Firm Price Period.

All the Work shall be performed by Contractor at the prices and costs set forth on the Pricing Schedule (as set forth in Appendix C). The prices for the Project shall be firm for the Work to be performed during the Term, except as otherwise allowed or modified by a duly authorized Change Order (as defined below).

7. Manner of Performance.

7.1 Reasonable Behavior.

Each party will act in good faith in the performance of its respective responsibilities under the Contract and will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required by the other Party in order to perform its responsibilities under the Contract; except in the event that the Commission has the ability to consent in its sole discretion.

7.2 Contractor's General Responsibilities.

Contractor shall perform the Work necessary or appropriate to achieve the successful integration, operation and maintenance of the Toll Collection System (hereinafter "TCS" or "System") which includes electronic toll collections, ticket system, traffic counting system, weigh-in-motion system and other supporting functions that may operate independently to achieve toll collection and adhere to System performance

requirements, all as detailed in the Scope. To that end Contractor shall furnish all design, engineering and equipment and software necessary for the System. Contractor shall also provide the services set forth in the Scope including, but not limited to, project management, coordination, implementation, warranty and maintenance services, as well as providing all materials, equipment and labor, excluding only those materials, services and efforts which the Contract and Scope expressly specify will be undertaken by the Commission or a third-party contractor engaged by the Commission.

7.3 Performance Expectations.

Subject to the express terms of the Scope, which Contractor shall perform in accordance therewith, Contractor acknowledges and agrees to the following:

- (1) Assistance with Enforcement and Collection Proceedings. In the case of any dispute regarding a trip or transaction on the Turnpike, including enforcement and collection proceedings, upon the Commission's request, Contractor, at its expense, shall provide assistance and cooperation to evidence the proper operation of the TCS and data furnished to the Commission's customer service center.
- (2) Mitigation of Delay. Contractor shall use commercially reasonable efforts to mitigate delay in performance and completion of the Work, in whole or the component parts, including, but not limited to, by re-sequencing Work, and/or re-allocating or re-deploying Contractor's resources and labor, as appropriate.
- (3) Work Arounds. The Commission anticipates the need for "work arounds" in the implementation and operation of the System to enable functionality for a period of time. Notwithstanding the same, if Contractor or the Commission incorporate a work around in order to allow a function to perform, such work around will be deemed a temporary measure and may be considered evidence of a System defect. The Commission must approve any Contractor suggested "work around." Unless otherwise approved by the Commission, such work around will be considered temporary and subject to cure, as specified in Section 14.
- (4) Maintenance. Contractor shall perform the Maintenance Work on the System in accordance with the terms of the Scope. Contractor will maintain the TCS and all of the subsystems and components of such System in good working order, and perform the maintenance and warranty services as detailed in the Scope.

7.4 Performance of Work Directed by the Commission Only.

Notwithstanding, any provision to the contrary, Contractor shall only take direction from the Commission. No other party has the authority to amend or change any aspect of the Work or otherwise direct Contractor with regard to any aspect of the Work other than the Commission or a designee of the Commission.

- (1) Commission Project Manager. The Commission has designated and authorized its Project Manager to serve as the primary point of contact for all Work related matters. The Commission's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, in connection with, or in any way related to or on account of, this Contract and the Scope.
- (2) Disputes. Contractor agrees that in the event of a dispute as to cooperation or coordination with the Commission's contractors, consultants, or other third party,

including a Governmental Entity, the Commission's Project Manager shall decide all matters which shall be binding. For purposes of this Contract, a "Governmental Entity" shall mean any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of law), or any arbitrator, court or tribunal of competent jurisdiction.

7.5 Cooperation.

Contractor shall promptly cooperate and require its subcontractors to promptly cooperate with the Commission and any other Commission designated representatives to facilitate the full, efficient, effective and timely performance of the Work. Contractor and its representatives and staff shall be available at all reasonable times to the Commission.

7.5.1 Responding to the Commission Requests. Contractor shall respond to the Commission's requests for information or other requests for which Contractor's input is needed within the times set forth in the Scope, and if no such time frame is provided, then Contractor will respond to the Commission's requests within the timeframe reasonably requested by the Commission. Contractor shall deliver all documentation required to be submitted as set forth in this Contract including, but not limited to, Section A.4.3 of the Scope including, but not limited to, escrow letters, bonds and insurance certificates.

7.5.2 Cooperation with Other Third Parties. Contractor shall cooperate with other subcontractors and suppliers, utility companies, governing authorities, and all other entities required to perform work related to the Services or otherwise responsible for oversight, supervision, inspection or performance of any part of the Services or Work.

7.6 Project Access and Coordination.

7.6.1 Access to Site. Contractor may enter the Project site solely to allow Contractor and/or its subcontractor(s) to prepare for and perform the Work including, but not limited to the ongoing maintenance obligations of the System. Contractor shall remain liable for the safety of its employees and contractors while on site at the locations in which Contractor must perform the Work. Contractor assumes all risk and liability resulting from or arising out of the acts and inactions of Contractor, and its employees, agents, subcontractors, and suppliers, including, but not limited to, damage related to the Work, Equipment and supplies.

7.6.2 Coordination. Contractor acknowledges and understands that throughout the Term, it will be performing Work on the roadway at the same time as other contractors are performing their work on or within the boundaries of the site. Contractor shall coordinate, and require its subcontractors to coordinate, through the Commission's Project Manager, the Work to ensure the full, efficient, effective and timely performance and completion of such Work. Contractor must coordinate through the Commission with these other contractors as set forth in the Scope, as applicable, regarding access to and from the Project site.

7.6.3 Minimize Operational Disruptions. Contractor shall cooperate and coordinate with the Commission its Work, and shall use its best efforts to minimize disruption to the integration, operation and maintenance of the System.

7.6.4 Incident Response. In the event of an incident that may occur on or near the roadway and in which Contractor or its subcontractors may be involved, Contractor shall for itself and its subcontractors, complete any forms and furnish the required information to the Commission or its designated representative. For any incidents that involve other contractors and/or subcontractors, Contractor shall complete the forms and furnish the necessary information as required by the Commission or its designated representatives, or follow other procedures as requested by the Commission.

7.6.5 Contractor Access to Plans. To assist Contractor, the Commission shall provide to Contractor during normal working hours, reasonable access to plans, surveys, drawings, as-built drawings, specifications, reports and other documents and information in the possession of the Commission relating to the Work or the Project site. Contractor, at its expense, shall have the right to make copies of the same at its expense. Contractor, at its expense, shall conduct such other inspections, investigations, document searches, surveys and other work as may be necessary to achieve compatibility, integration and transition with applicable related transportation facilities.

7.6.6 Notice of Conflict or Potential Conflict. In the event that Contractor believes that the Commission's third-party contractors are not cooperating with or otherwise coordinating with Contractor, Contractor shall immediately notify the Commission, but in no event later than two (2) Business Days, after the alleged non-cooperative activity began or occurs. Contractor shall provide the Commission with details of the nature of the failure or lack of cooperation. Failure of Contractor to furnish such notice within the specified time period shall result in the Contractor's waiver of any claim resulting from such lack of cooperation.

7.7 Project Execution and Planning.

Contractor shall be responsible for completing the Work in a timely and efficient manner, and as required by this Contract including, but not limited to, the Scope. Contractor must develop a "Project Management Plan" that covers all phases of the Project as described in the Scope, including, but not limited to, the end of Contract Term transition as set forth in Section 7.7.1.

7.7.1 End of Contract Term Transition and Responsibilities. Contractor acknowledges and understands that this Contract is subject to a date certain expiration or early termination, and there is no exclusivity by the Commission with regard to the Work or Services. The Commission may re-procure or self-perform the Work, in whole or any portion, as it deems necessary or appropriate. Contractor shall cooperate fully with the Commission or such other vendors in order to facilitate the performance of work by the Commission or such vendor(s), and agrees to refrain from any activity which would interfere with such performance.

7.7.1.1 Transition. Upon expiration or earlier termination of the Term, Contractor shall perform the end of Contract responsibilities set forth in the Scope or as otherwise requested by the Commission. Contractor shall accomplish a

complete transition of the Work from Contractor to the Commission, or to any replacement provider designated by the Commission. Contractor shall not cause, nor shall any party acting on behalf of or for Contractor, any interruption of, or adverse impact on the Commission's toll operation, any component of the Work or any other work provided by third parties. Contractor shall cooperate fully with the Commission or such replacement provider, and Contractor shall promptly take all steps required to assist in effecting a complete transition. All Work related to such transition shall be performed by Contractor at no additional cost.

7.7.1.2 Failure to Comply. Contractor acknowledges and agrees that Contractor's failure to comply with and fulfill the terms and condition of this Contract will adversely affect the Commission and result in monetary loss to the Commission. The Commission shall notify to Contractor any monetary losses resulting from the Contractor's failure to comply with the provisions of this Section 7. The Commission's reasonable determination as to the amount of the monetary loss suffered shall be conclusive unless determined otherwise in a court of law. If Contractor disputes the monetary loss determination, it may file claim in a court of law with within forty-five (45) Days of the Commission's notice of monetary loss determination. Contractor shall compensate the Commission for any undisputed loss within thirty (30) Days of notification of the loss by the Commission, or within five (5) Days of resolution of the dispute or resolution by the court of competent jurisdiction, as applicable.

8. Time of Performance.

8.1 Notice to Proceed.

The performance time will begin with the issuance of a Notice to Proceed, which shall be in writing and signed by the Commission's Project Manager. Unless an extension of time is granted by the Commission pursuant to Section 20.8 of this Contract, Contractor will commence and perform the Work in accordance with the timing set forth in Appendix A.

8.2 Project Schedule.

The Contractor shall perform its Work according to the Commission approved Project Schedule, set forth in Appendix A, which will take into consideration the requirements set forth in Section A.4.2 of the Scope. The Commission may also reasonably change or amend the Project Schedule to accommodate conditions encountered during the progress of the Project, in the Commission's sole and absolute discretion. Changes in the Project Schedule with not result in additional charges or costs to the Commission.

8.3 Deliverable Schedule.

All Work and each deliverable set forth in Section A.4.2 of the Scope (collectively, "Deliverables" and individually, "Deliverable") shall be performed or delivered by the Contractor within the times specified in the Deliverables Schedule or as otherwise set forth in this Contract or Appendix A, each as may be amended.

8.4 Suspension of Work.

The Commission shall have the authority to suspend, in whole or in part, the Work for (a) failure of Contractor to correct conditions unsafe for laborers or for the general public, (b) failure of the Contractor to carry out provisions of this Contract, (c) failure to carry out the Commission's directions, (d) unsuitable weather, or other conditions

considered unsuitable for the performance of all or part of the Work, (e) heavy traffic, (f) unsafe traffic control, or (g) for any other condition or reason deemed by the Commission to be in the public interest, all as determined in the sole and absolute discretion of the Commission. Any such suspension shall be for such periods as the Commission deems necessary. Contractor may qualify for an extension of time pursuant to Section 20.8 for suspensions that are the result of subsections (d),(e) or (f) above.

8.5 Contractor Delays.

Contractor shall pursue the Work without delay. If Contractor is responsible for any delays in the time and sequence of the Project Schedule or the Deliverable Schedule, Contractor shall be subject to liquidated damages in the event of a delay as set forth in Section 25 of this Contract or other damages as applicable.

9. Submittals, the Commission Reviews and Approvals.

9.1 Submittal Procedures.

Contractor shall timely submit documents as required and within the applicable timeframe set forth under this Contract (each a "Submittal" and collectively, the "Submittals"). In the event there are no provisions in this Contract, the Scope or Project Management Plan and component plans concerning submission, review and approval procedures, this Section shall govern and control.

9.2 Accuracy.

In all cases, all documentation required to be provided by the Contractor shall be true, complete and accurate in all respects, and tailored and detailed as necessary to the needs of the Project or the Commission.

9.3 Review Periods.

Except as expressly set forth in this Contract, whenever the Commission is entitled to review and comment or otherwise approve a Submittal, the Commission shall respond and/or act upon such Submittal generally within fifteen (15) Business Days from the date it receives an accurate and complete Submittal, unless otherwise specified, together with a completed transmittal form acceptable to the Commission and all necessary information and documentation concerning the subject matter of the Submittal. Any period of review by the Commission in excess of fifteen (15) Business Days, except where the Deliverables Schedule provides for a longer review time period, may give rise to an extension of time as set forth below in Section 9.4 and in Section 20.8 of this Contract.

9.4 Extension of Time Periods.

All time periods for the Commission to act upon Submittals shall be extended by the period of any delay actually caused by (a) a Force Majeure Event; (b) change in law; (c) issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of any material portion of the Work; and (d) to the extent of any delay by the Contractor or any Contractor Parties.

9.5 Commission's Comments/Objections.

The Commission reserves the right to comment on, take exception to, object to, accept, reject or disapprove any Submittal, Deliverable or portion or all of the Work. If the item is disapproved then the Commission will provide comments that define the nature and extent of the deficiency. The Commission's comment, exception, objection, rejection or

disapproval shall be deemed reasonable, valid and binding, with no further action by the Commission, if based on any of the following grounds:

- (1) Non-compliance with Requirements. The Submittal or subject provision thereof or the Work fails to comply with any applicable covenant, condition, requirement, term or provision of this Contract, Project Management Plan and component plans thereunder;
- (2) Good Industry Practice. The Submittal or subject provision thereof or the Work is not to a standard equal to or better than the requirements of Good Industry Practice;
- (3) Incomplete Submittal, Content or Work. Contractor has not provided all content and information required with respect to a Submittal, or subject provision or the Work.
- (4) Lack of Quality Control. The Submittal contains a multitude of technical errors, spelling or grammatical errors, incorrect references, or is generally unprofessional and indicative of a lack of or insufficient quality control.
- (5) Violation of Law. Adoption of the Submittal or subject provision thereof, or of any proposed course of action thereunder, would result in a conflict with or violation of applicable law or Governmental Entity approval ("Governmental Approval").
- (6) Not a Typical Commission Arrangement. In the case of a Submittal that is to be delivered to a Governmental Entity as a proposed Governmental Approval, or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval, the Submittal proposes commitments, requirements, actions, terms or conditions that are not arrangements that the Commission offers or accepts for addressing similar circumstances affecting its projects.

9.6 Contractor Review and Comments.

Contractor shall use its best efforts to accommodate or resolve any comments or objections to the Submittals by the Commission. Contractor shall timely and promptly respond to all of the Commission comments and objections to a Submittal and, except as provided below, make modifications to the Submittal as necessary to fully reflect and resolve all such comments and objections. If Contractor rejects a comment or objection, Contractor shall deliver to the Commission within a reasonable time period, not to exceed five (5) Business Days, after receipt of the Commission's comments or objections, a written explanation of the rejection or objection to the comment by Contractor fully detailing why it is rejecting or objecting to the comment. The written explanation shall include the facts, analyses and reasons that support the conclusion, as well as supporting documentation. The Contractor's Project Manager and the Commission's Project Manager shall resolve any such conflict.

- 9.6.1 Failure to Notify.** If Contractor fails to notify the Commission within the required time period, then that failure shall constitute Contractor's agreement to make all changes necessary to accommodate and resolve the comment or objection and full acceptance of all responsibility for such changes without right to a claim.

9.6.2 Limitation on Modifications. The foregoing shall in no way be deemed to obligate Contractor to incorporate any comments or resolve objections that would render the Submittal or Work erroneous, defective or less than Good Industry Practice.

9.7 Limitations on Contractor's Right to Rely.

Contractor at all times shall have an independent duty and obligation to fulfill the requirements of this Contract. Any approval by the Commission shall not be deemed to relieve or otherwise waive any of the Contractor's obligations or requirements under this Contract, unless the same is the subject matter of an amendment to this Contract. The Commission assumes no duty, obligation or liability regarding completeness or correctness of any Submittal, including a Submittal that is to be delivered to a Governmental Entity as a proposed Governmental Approval, or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval. No review, comment, objection, rejection, approval, disapproval, acceptance, certification (including certificates of acceptance and Final Acceptance), concurrence, monitoring, testing, inspection, spot checking, auditing or other oversight or similar action or the lack thereof, by or on behalf of the Commission shall constitute acceptance of non-conforming or defective materials or Work or waiver of any legal or equitable right under the Contract, at law, or in equity. The Commission shall be entitled to remedies for unapproved deviations and nonconforming Work and to identify additional Work which must be done to bring the Work and Project into compliance with the requirements of this Contract, including, but not limited to, the Scope, whether or not previous review, comment, objection, rejection, approval, disapproval, acceptance, certification, concurrence, monitoring, testing, inspection, spot checking, auditing or other oversight were conducted or given by the Commission or by the Commission's other contractors or designated representatives.

With respect to such activity or failure to conduct any such activity by the Commission or its other contractors or designated representatives, Contractor agrees and acknowledges that such activity:

- (1) is solely for the benefit and protection of the Commission;
- (2) does not relieve Contractor of its responsibility for the selection and the competent performance of all Contractor-Related Entities;
- (3) does not create or impose upon the Commission or other third party providing approval on the Commission's behalf any duty or obligation with regard to Contractor's requirements hereunder;
- (4) shall not be deemed or construed as any kind of warranty, express or implied, by the Commission;
- (5) shall not relieve Contractor from liability for, and responsibility to cure and correct any, unapproved deviations, nonconforming Work or Contractor Events of Default.
- (6) shall not relieve or entitle Contractor to any reduction of or modification to its obligations to perform the Work in strict accordance with this Contract, or any of its other liabilities and obligations, including, but not limited to, its indemnity obligations, or otherwise entitle Contractor to additional costs or funds;
- (7) may not be relied upon by Contractor or used as evidence in determining whether Contractor has fulfilled the requirements of this Contract; and
- (8) may not be asserted by Contractor against the Commission as a defense, legal or equitable, to or as a waiver of or from, Contractor's obligation or responsibilities under this Contract.

10. Inspection and Testing.

At all times during the Term of this Contract, the Commission shall have the right to conduct the monitoring, reviewing, inspection, testing, reporting, auditing and other oversight functions set forth in this Contract. The Commission shall have the right to attend and witness any tests and verifications to be conducted pursuant to this Contract by Contractor, and which such attendance or participation does not waive any rights of the Commission for any defects or failures to perform by Contractor hereunder. Contractor shall provide to the Commission all applicable test results and reports (which may be provided in electronic format) within ten (10) Days after Contractor receives them.

10.1 Failure to Pass Testing.

If Contractor fails, in whole or in part, to pass any test required by Section A.9 of the Scope, the Commission shall withhold approval and any associated payments due until the completion of any and all corrective action and the successful completion of any and all retests. In the event of any re-testing, Contractor shall pay for (a) the costs of the Commission employees to participate in and to attend each re-testing, including, but not limited to, travel, meals and lodging (but not the cost of any of the Commission's employee salary); (b) the consulting fees and the costs of the Commission's consultants to participate in and to attend, including, but not limited to, travel, meals and lodging; and (c) all of Contractor's costs and fees. Contractor shall make payment to the Commission for these costs and expenses within thirty (30) Days of the date of the invoice from the Commission listing such costs and expenses.

10.2 Inspection of Work.

If the Scope, laws, or any Governmental Entity require any component of the Work to be tested or approved, Contractor shall give the Commission timely written notice of its readiness for inspection and testing by the Commission or its designee.

11. Site Conditions.

11.1 Site Investigation.

Contractor acknowledges that it has carefully and thoroughly reviewed the site conditions where the Project is located. Contractor is satisfied as to the general, local and site conditions, and the condition of any and all gantries, equipment and hardware on or related to the Project that may affect costs, progress, performance or furnishing of the Work. Contractor agrees that the conditions at the Project site are sufficient and no changes need to be made for Contractor to perform completely and fully the Work as set forth in this Contract. The apparent silence of any specification as to any detail, or the apparent omission of detailed description concerning any point, shall be interpreted to mean that only the best commercial practice is to prevail and only material and workmanship of the first quality may be used. Upon receipt of any notice of noncompliance issued by the Commission, Contractor shall supply written proof of compliance within ten (10) Days.

11.2 Differing Site Conditions.

Contractor shall not proceed with performing Work or otherwise shall halt affected Work in progress, and notify the Commission in accordance with Section 11.3, upon discovering (a) subsurface or latent physical conditions at the Project site which differ materially from those indicated in this Contract; (b) unknown physical conditions at the Project site of an unusual nature, which differ materially from those ordinarily encountered and generally recognized; or (c) improper, incorrect or incomplete pre-

existing work on the Project that impact, interfere with or otherwise hinder Contractor's performance or quality of the Work.

11.3 Notice of Differing Site Conditions.

Contractor shall provide written notice to the Commission Project Manager of such matters set forth in Section 11.2 within three (3) Days of discovery. The notice shall describe the specific condition(s) identified, the cost and schedule implication(s), if any, and all proposed solutions to resolve the condition(s) identified. No request by Contractor for an adjustment to the Contract Price or for an extension of time under this Contract shall be considered by the Commission, unless the Contractor has given the written notice as required herein.

12. Safety Precautions.

The Contractor shall be solely and completely responsible for the safety of all persons and property related to the Work, and shall comply with the rules and regulations of OSHA, the Commission and any other Governmental Entity responsible for the safety of labor, the Work performed in, on or about the traffic lanes, and/or Work performed at any other work site related to the Project. The Contractor alone shall be responsible for the safety, efficiency and adequacy of its facilities, appliances and methods, and any damage which may result from their construction, maintenance or operations. Contractor shall erect and properly maintain at all times as required by the conditions and Work proper safeguards for the protection of its personnel, subcontractors, the public or any visitor or user of the Project site, and shall post danger warnings against any hazards created by Contractor's operations. Contractor shall designate a responsible member of its organization whose duty shall be the prevention of accidents.

13. Hardware/Equipment/Materials/Supplies.

13.1 Equipment.

Contractor shall obtain in the Commission's name and the Commission shall own all of the equipment and hardware (the "Equipment") as required by this Contract to be purchased for the Commission. In particular, Contractor shall purchase on behalf of the Commission all in lane and roadside Equipment that will be deployed for the Project (excepting any currently installed Equipment that will be incorporated into Contractor's Work). The Commission shall pay for this Equipment as more specifically set forth in the Pricing Schedules. The Equipment shall in all ways conform to the requirements set forth in this Contract including, but not limited to, the Scope.

- (1) Bill of Sale. Any invoices furnished by Contractor to the Commission for Equipment and spare parts for the applicable Equipment ("Spare Parts") shall have an executed Bill of Sale in the Commission's name on a form substantially similar to that in Exhibit A ("Bill of Sale") and shall fully evidence the Commission's ownership as required in this Contract, providing full title to the Commission of the applicable Equipment, free and clear of all encumbrances, debts, mortgages, attachments, pledges, charges, claims, security interests, and liens of any kind. Contractor shall deliver the fully executed Bills of Sale to the Commission no later than the date of Final Acceptance.
- (2) FOB Destination. Transportation of all Equipment, supplies and any other item that must be transported so that Contractor may commence or perform the Work shall be FOB Destination. Freight, handling, hazardous material

charges, taxes, and distribution and installation charges shall be included in the total price of each item set forth in the Pricing Schedule. No additional charges will be honored for payment unless Contractor receives prior written authorization from the Commission, which approval may be withheld in the Commission's sole discretion. If a party other than Contractor ships materials against this Contract, the shipper shall be instructed by Contractor to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment. A complete packing list must accompany each shipment.

- (3) Warranties. All warranties on such Equipment and Spare Parts shall be transferred to, and be enforceable by, the Commission. Contractor shall provide any such required assignments or conveyance documents for such warranties to the Commission as necessary.

13.2 Purchase Order Processing.

All orders for Equipment and/or software will be placed according to the terms herein. Contractor shall forward an email request to the Commission's Project Manager. This request shall include the name and quantity for each item being ordered, price per item, and the address to which the items will be delivered. This request must be received by the Commission's Project Manager at least 75 Days prior to the desired delivery date, unless otherwise agreed to in writing by the Commission's Project Manager. Contractor shall also notify the Commission's Project Manager upon Contractor's receipt of any Equipment and/or software. Such notification shall be in writing and detail the item(s) delivered, the location where the item(s) are being stored and the quantity received. Upon receipt of the Equipment and/or software, Contractor shall be responsible for the inventory process including the placement of asset identification labels on the item(s), if applicable, and providing information to the Commission from the Maintenance Management System to include vendor, date purchased, detailed description, picture, cost, make, model, serial number and estimated useful life in years. Contractor shall ensure that each item of Equipment and software shall be warranted by the manufacturer thereof, which warranty shall be enforceable by the Commission.

13.3 Spare Parts Inventory.

Contractor shall be solely responsible for maintaining an adequate Inventory of Equipment, Spare Parts and consumables to perform and maintain the Work. The Commission shall own each Spare Part and consumable upon payment by the Commission to Contractor, except in the event Contractor elects to utilize the initial Spare Parts inventory during the warranty period, in which case the Contractor is responsible for funding the replenishment of the inventory and maintaining inventory levels to their original quantities at no additional cost to the Commission. Contractor shall bear the risk of loss pursuant to Section 15 of this Contract. Contractor will turn over to the Commission upon termination of the Contract the inventory of Spare Parts in the amounts paid for by the Commission.

13.4 Quality Control.

Contractor must ensure that all parts, components, Equipment, materials, and other items purchased for use in the System are new and in accordance with the applicable warranty. All Spare Parts purchased by Contractor must be new, of good quality and designed to reliably carry out their functions within the System and meet the requirements of this Contract.

14. Defective Work.

A Deliverable or Work may be unacceptable because (i) it fails applicable testing, (ii) it fails to perform as required under this Contract, (iii) it fails to conform to the specifications of the Scope, (iv) it fails to conform to its warranty, or (v) is furnished in breach of or contrary to this Contract. Deliverables that are defective may be rejected upon inspection or at any later time if the defects contained in the Deliverables or non-compliance with the specifications were not ascertainable upon inspection. The Commission may provide written notice to Contractor of any item of Work that is not acceptable. If Contractor fails to cure the defect or replace the item of Deliverable or Work within the time set forth in any written notice then, in addition to the Commission's other rights and remedies under this Contract and law, the Commission may cancel or terminate, in whole or in part, this Contract or applicable Change Order, and contract with a different contractor and invoice Contractor for any differential in price over the Contract price. The Commission shall deliver notice to Contractor if it undertakes any of the foregoing action. Rejected items may be regarded as abandoned if not removed by Contractor as set forth in the Commission's written notice.

15. Risk of Loss.

Contractor shall have sole responsibility for the risk of loss to Contractor and Contractor Party-owned facilities, Equipment and other goods, and for risk of loss to the Software, material and supplies set forth in Sections 13.1 and 13.3 of this Contract. Contractor shall assume the risk of loss for all Equipment and materials, and software, until the Commission's acceptance of the applicable Work as set forth in the Scope. Contractor assumes all risk of loss for Spare Parts until the particular Spare Part is properly placed into the System and accepted by the Commission as set forth in the Scope. Contractor shall maintain adequate insurance for the risk of loss assumed in this Section 15. Notwithstanding the foregoing, if Equipment is installed in the lane and the road is open to tolling, and through no fault of Contractor a third party motorist damages the Equipment, then Contractor will not be responsible for the cost of repairs to the damaged Equipment or replacement of the damaged Equipment.

16. Loss of Revenue.

If Contractor meets an applicable KPI or availability requirements (as set forth in the Scope), but the Commission nevertheless incurs a loss of gross revenue as a result of the acts or inactions of Contractor or Contractor Parties, then for each event in which the Commission incurs a loss of revenue that exceeds \$5,000.00, Contractor shall make payment to the Commission of the revenue associated with lost trips and lost or unrecognized tolls. In the event that the Commission is unable to determine such lost revenue because data is lost or otherwise unavailable, then the Parties agree that the determination of the lost revenue shall be based on historical figures (traffic) maintained by the Commission. The Commission, at its option, may either reduce the amount of the subsequent monthly maintenance fee or warranty fee, as applicable, by the amount of revenue due as set forth herein, or require Contractor to make payment of the lost revenue within thirty (30) Days of the Commission's notice to Contractor of the amount.

16.1 Stale Transactions.

Once the Project is open to tolling and thereafter during the remainder of the Term, if as a result of the acts or inactions of Contractor or Contractor Parties, Contractor fails to successfully transmit to the CSC a properly formed E-ZPass transaction and all of the information required by this Contract for each such E-ZPass transaction within sixty (60) Days after the date the trip occurred ("Stale Transactions"), then Contractor

shall be responsible to make payment to the Commission for the amount of lost tolls represented by each State Transaction. Contractor shall make payment to the Commission of such loss of revenue from the State Transactions within thirty (30) Days of the Commission's notice to Contractor.

16.2 Contractor Recommendation.

Contractor may present to the Commission remedies that will prevent similar future events. If the Commission agrees that such remedies will prevent future similar events, then approval of the implementation of such remedies will not be unreasonably withheld by the Commission, taking into consideration the Commission's business needs and other general business considerations. By way of example and not by limitation, any correction that may result in a State Transaction as detailed in Section 16.1 of this Contract, shall be deemed unreasonable. Agreed upon remedies will be executed at no cost to the Commission and not impact in any way any of the Commission's other requirements under this Contract or Contractor's other obligations under this Contract. Contractor acknowledges that the Commission's approval of any such remedy does not limit the Commission's remedies or recourse in the event such approved remedy does not fulfill the stated purpose.

17. Contractor Personnel.

17.1 General.

Contractor shall provide sufficient professional personnel and staffing to perform the Work in a timely and efficient manner in accordance with this Contract. All Persons assigned to perform work or services under this Contract shall be employees or authorized subcontractors of Contractor, shall be licensed in the State of Ohio (if required by law) and shall be fully qualified to perform the work and/or services required to do the Work. Contractor shall include this provision in any agreement with any subcontractor and/or supplier selected to perform and/or to provide any portion of the Work. Personnel commitments set forth in the Scope shall not be changed unless approved by the Commission. Contractor's failure to provide adequate staffing to perform the Work as represented in this Contract and according to the Project Schedule may result in the termination of this Contract at the Commission's sole discretion. All Contractor personnel and subcontractor personnel shall comply with the Commission's workplace requirements while on the Commission's premises, Project site or otherwise while performing the Work. Contractor acknowledges and agrees that it is and shall be solely responsible for all of Contractor's employee wages and salaries, federal and state taxes, withholding, social security, insurance, and other benefits and taxes. Contractor agrees to provide workers' compensation insurance for Contractor's employees and agents and agrees to hold harmless and indemnify the Commission for any and all claims arising out of any injury, disability, or death of any of Contractor's employees or agents (as set forth in Section 28).

17.2 Contractor's Project Manager.

Contractor shall at all times provide a Project Manager as Key Personnel and approved by the Commission who (a) will have full responsibility for the prosecution of the Work, including design, integration, operation and maintenance of the Work; (b) will act as agent and be a single point of contact on all daily Work decisions and Project-related matters on behalf of Contractor; (c) will be available or present at the Project site, as requested by the Commission, at all times that Work is performed; and (d) will be available to respond to the Commission upon the Commission's request. Notwithstanding the above, the Project Manager may appoint a designee from time to

time in accordance with Section 17.3. Contractor agrees that Contractor's Project Manager shall have the authority to make decisions and to bind Contractor to decisions made by the Contractor's Project Manager and to documents signed by the Contractor's Project Manager in furtherance of the Project and the Work. Contractor shall cause its Project Manager to cooperate and coordinate with the Commission and the Commission designated representatives in the administration of this Contract.

17.3 Key Personnel.

The Project Management Plan shall also specify the on-site availability of the Key Personnel. Contractor shall provide written notice to the Commission of the departure of any Key Personnel within seven (7) Days of the departure. Contractor shall not substitute Key Personnel included in the organization chart(s) as required under Section A.4.1.2 of the Scope and assigned to this Contract without the prior written approval of the Commission. Contractor shall provide to the Commission the name of the proposed substitute Key Personnel accompanied by details of the experience and references of the proposed substitute person.

17.4 Commission's Right to Remove.

The Commission shall have the right to request Contractor to remove an employee from performing the Work under this Contract. In the event of such removal, Contractor will replace the employee with the appropriate skilled personnel.

18. Subcontracting.

18.1 Subcontracting.

Contractor may employ independent professional associates, subcontractors and suppliers ("Contractor Parties") as Contractor may deem appropriate to assist in the performance of the Work hereunder. However, Contractor shall not subcontract Work to subcontractors or suppliers that are different from those subcontractors or suppliers listed in Appendix B, without obtaining the Commission's prior written approval, with such approval being within the Commission's sole discretion. Nothing contained in this Contract shall create any contractual relationship between the subcontractor of Contractor and the Commission. Contractor shall remain liable for the performance of all Work under this Contract.

18.2 Contractor Remains Responsible.

If Contractor subcontracts any of the Work to be performed under this Contract in accordance with the terms hereunder, Contractor shall be fully responsible for the management and oversight of the subcontractor or supplier, and Contractor shall be liable for subcontractors performance and for the acts, errors, or omissions of the subcontractor and supplier, without limitation. Contractor shall enforce the terms of this Agreement against subcontractor, and shall cooperate with the Commission in any actions taken by the Commission. Notwithstanding any subcontract or agreement with any subcontractor or supplier, Contractor shall be fully responsible for all of the Work on this Project, and for all terms, conditions, liabilities, and responsibilities under this Contract, whether or not Contractor performs the Work.

18.3 Mandatory Terms in Subcontracts.

Any subcontract entered into as a result of this Contract, except those exclusively regarding third-party materials, suppliers, and commercial off the shelf system software ("COTS") supplied by Contractor under this Contract, shall contain all applicable provisions of this Contract including, but not limited to, provisions pertaining to records,

and payment methods, and representations, warranties, indemnities and Events of Default under this Contract. Contractor shall further ensure that all subcontracts entered into by Contractor for any Work to be performed or Equipment or materials supplied grant the Commission all of the rights and privileges of such subcontract, including the Commission's right to secure materials, Equipment or service from the subcontractor that might be a part of the subcontractor's Work, and the rights to enforce contract rights, and any warranty or remedy for work performed by such subcontractor.

18.4 Timely Payments to Subcontractors.

Contractor warrants that it shall make timely and complete payments for Work performed to any subcontractor or supplier hereunder, and Contractor shall indemnify and hold harmless the Commission for any breach of this Section and in accordance with Section 28.

18.5 Relationship of the Parties.

Each Party, in the performance of this Contract, shall act in its individual legal capacity and not as an agent, employee, partner, joint venturer, or associate of the other Party. The employees, agents, partners or contractors of one Party shall not be deemed or construed to be the employees, agents, partners or contractors of the other Party for any purposes. Neither Party shall assume any liability of any type on behalf of the other Party or any of such other Party's employees, agents, partners or contractors. The Parties expressly understand and agree that Contractor is an independent contractor of the Commission in all manner and respect and that neither Party to this Contract is authorized to bind the other Party to any liability or obligation or to represent in any way that it has such authority.

18.6 [Joint Venture/Partnership.

If Contractor is a joint venture or partnership then each member of the joint venture or partnership shall be joint and several to the Commission for any and all obligations, responsibilities, liabilities, damages, liquidated damages, and warranties arising under this Contract.]

18.7 Removal of Subcontractor.

The Commission shall have the right to require Contractor to remove a subcontractor or supplier of Contractor from performing under this Contract, if in the Commission's reasonable opinion such subcontractor or supplier:

- (1) is not performing its portion of the Work satisfactorily;
- (2) is failing to cooperate as required in this Contract;
- (3) is posing a security risk to the Project or to the Commission's business;
- (4) is otherwise breaching a term of this Contract;
- (5) its presence on the Project is not in the interest of the Commission; or
- (6) any other reasonable basis.

In the event of such removal, Contractor will replace the subcontractor or supplier with a suitable replacement within a reasonable time specified by the Commission.

19. Payment Terms.

19.1 General.

The Commission shall compensate Contractor in accordance with the prices set forth in the Pricing Schedule for accepted Work as set forth in the Scope. All prices on the Pricing Schedule include, and Contractor shall be solely responsible for, all taxes, tariffs and duties, insurance, transportation, packaging, customs, benefits, ancillary costs, overhead, profit and any other similar charges. The Commission shall pay Contractor in accordance with its normal processes and procedures for all undisputed amounts within thirty (30) Days of receipt of a valid invoice, provided with regard to the System Work, the Commission or the Commission designated representatives, as applicable, received, approved and issued an acceptance for the particular component of Work or phase of Work, completion and acceptance of Project Milestones and/or Contractor has achieved Project Acceptance as set forth in this Contract. All Maintenance Work shall be invoiced to the Commission on a month basis, and the Commission shall pay Contractor within thirty (30) Days of receipt of a valid invoice. All amounts due from the Commission to Contractor may be net of any amount owed from the Contractor to the Commission. In addition to any right of set-off, deduction or recoupment provided or allowed by law, the Commission may, without notice to Contractor, set off against, and deduct and recoup from, any amounts due or to become due from the Commission to Contractor, any amounts due or to become due from Contractor to the Commission, including for damages resulting from breaches by Contractor or any Contractor designated Parties of its obligations under this Contract or any other agreement between such parties.

19.2 Retainage.

Work to be performed shall be subject to a retainage as set forth in the Scope. The retainage shall be paid upon Final Invoice (defined below in Section 19.8.2, less any outstanding amounts owed to the Commission pursuant to this Contract.

19.3 Invoicing.

Contractor shall deliver to the Commission an invoice (i) for the System Work in accordance with the timing set forth on the Project Schedule and the Scope and the Payment Milestones, and (ii) for the Maintenance Work on a monthly basis. Each System Work invoice shall include a request for payment for a Deliverable or Work that was completed, tested and accepted, as applicable for such Deliverable or Work in accordance with the Pricing Schedule. Contractor shall submit an itemized bill, identifying the date and a description of the Equipment delivered or Work completed, the address to where the Equipment was delivered, the documentation furnished or the labor and services rendered the previous month, the status of any on-going Work (i.e., the percent to completion of task or milestone), a detailed account or description of the Work or Deliverable performed during the time period to further or complete a component of Work or Deliverable, and notification if a component of the Work, Deliverable or milestone has been completed and accepted. Along with each invoice, Contractor will provide any backup documentation reasonably necessary to the Commission to verify the invoice, certifications and test results as required in this Contract or as otherwise requested by the Commission.

19.4 Withholding Payments.

The Commission reserves the right to withhold payment or payments, in whole or in part, for nonconforming Work or Deliverable or Work not completed in accordance with this Contract or the Project Schedule. The value of such action, duty or service or part

thereof will be determined by the Commission and deducted from any invoice claiming such items for payment. If the action, duty or service or part thereof has been completed and is not in conformance with this Contract. Payment for the non-conforming or incomplete work will be withheld by the Commission from any submitted invoice until such time as the Work or Deliverable is corrected or completed in accordance with this Contract. Any and all such payment previously withheld shall be released and paid to Contractor promptly upon resolution of the dispute in Contractor's favor or when the Work or Deliverable is subsequently performed in accordance with this Contract the provisions of this Section 19.1 shall not apply.

19.5 No Disruption of Work.

Except as specifically set forth in Section 20.8 , under no circumstances shall Work to be provided by Contractor be withheld, suspended or delayed by Contractor due to non-payment by the Commission pursuant to any provision of Section 19 or for any other reason. Contractor's failure to comply with this Section 19.5 shall be considered an Event of Default as set forth in Section 31.

19.6 Overpayment.

In the event an erroneous payment or overpayment is made by the Commission, Contractor shall immediately refund to the Commission the full amount of any such erroneous payment or overpayment following the Commission's written notice or Contractor's discovery of such erroneous payment or overpayment. Except in the case of a good faith dispute, if Contractor fails to refund the erroneous payment or overpayment within a 30-Day period, the Commission shall be entitled to interest at one percent (1%) per month, or the greatest amount permitted by law, on the amount not repaid from the date of such payment by the Commission until repaid by Contractor.

19.7 Full Compensation.

All Work performed by Contractor under this Contract shall be paid as set forth above, and shall constitute full payment and compensation for the Work and Deliverables, including but not limited to (a) the cost of all insurance and bond premiums, taxes, home office, job site and other overhead and profit relating to Contractor's performance of its obligations under this Contract; (b) the cost of performance of each and every portion of the Work (including all costs of all Work provided by subcontractors and suppliers); (c) the cost of obtaining all Governmental Approvals and all costs of compliance with and maintenance of such Governmental Approvals; (d) all risk of inflation for labor or materials, currency risk, interest and other costs of funds associated with the progress payment schedule for the Work as provided in this Contract; and (e) payment of any taxes, duties, permits and other fees or royalties imposed with respect to the Work, the Deliverables and any Equipment, materials, supplies, documentation, labor or services.

19.8 Final Systems Implementation.

Final payment and retainage for the System Work shall not be due to Contractor until Project Acceptance and each and every component of the System Work is delivered to and accepted by the Commission and there are no outstanding claims against Contractor.

19.8.1 Proposed Final Invoice. Contractor shall submit a final invoice to the Commission for the System Work within thirty (30) Days of the Project Acceptance ("Proposed Final Invoice"). All prior invoices and payments shall be subject to correction in the Proposed Final Invoice. The Commission will review the Proposed Final Invoice

and respond with a written request for additional information or documentation, changes or corrections within thirty (30) Days of the Commission's receipt.

19.8.2 Final Invoice. Based on the Commission's response, Contractor shall submit a final invoice ("Final Invoice") incorporating any changes to the Proposed Final Invoice or corrections made by the Commission, together with any additional requested information or documentation. Notwithstanding any monthly payment due to Contractor for maintenance, if the Commission agrees with all requests for compensation in the Final Invoice, the Commission will pay the entire sum found due within thirty (30) Days of its receipt of the Final Invoice. If the Commission disputes any amounts submitted for compensation, the Commission shall notify Contractor within a thirty (30) Day period, identifying those items in the Final Invoice that the Commission disputes, along with a written explanation of the basis of the dispute. If the Commission fails or refuses to act on a Final Invoice within the required time period, the amount submitted for compensation shall be deemed to have been accepted by the Commission on the last day of the period within which the Commission was required to respond.

19.9 Payment not Acceptance.

Payment or use of any Work or portions thereof by the Commission shall not constitute an acceptance of any Work not performed in accordance with this Contract, nor shall payment waive any preceding or then-existing breach or default by Contractor of any term, covenant or condition of this Contract. Additionally, payment shall not extend or affect (a) any time within which the Contractor is required to perform any obligation; or (b) any other notice or demand.

20. Change Orders/Modification of Scope of Services.

Any change or modification in the Work or services specifically described in this Contract shall adhere to the Change Order process described herein. Either Party may initiate a Change Order by a notice to the other Party setting forth the proposed Change Order.

20.1 Definitions.

"Change" means a modification of the Work which may or may not lead to a price and/or schedule adjustment of this Contract. "Change Order" means a formal written Change to this Contract. "Instruction to Proceed" means the written document issued by the Commission in order to authorize the execution of a Change whose time and cost impacts have been agreed to in writing by the Commission and Contractor. A "Request for Change" (RFC) is a written document issued by Contractor in accordance with this Contract requesting a Change. A "Request for Quotation" (RFQ) is a written document issued by the Commission in order to know the price and/or schedule impacts of a potential Change before issuing or agreeing to an Instruction to Proceed.

20.2 Allowable Changes.

Contract Changes will only be allowed to address (a) variances in the original quantities tabulated pursuant to this Contract, provided however, the variances are due to a change in the Scope as required by the Commission (by way of example and not by limitation, if the quantity increases because Contractor's solution as set forth in the Proposal does not meet the requirements of the Scope, then any increase in quantity may not be subject to a Change Order); (b) variances in the Work where there is a different functionality beyond that contained in the Scope and for which there is no appropriate pay item or category (the Parties understanding that such additional work may be subject to a new competitive procurement if deemed by the Commission to be

in its best interest); (c) a decrease in the Scope, regardless of whether there is an appropriate pay item or category; (d) addition to or reduction in the Project; (e) the decision by the Commission to cancel or otherwise reduce the scope of a Project; and (f) an extension of time to the extent a delay is caused by events listed in Section 20.8).

20.3 Ineligible Changes.

No change in or modification, termination or discharge of the Work or any component thereof, in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by the Commission's Project Manager and an authorized representative of Contractor. No time relief will be available to the extent that (a) the events causing a delay are within the control of Contractor or its subcontractors or suppliers; (b) the events are due to any wrongful act, wrongful omission, negligent act or negligent omission, recklessness, willful misconduct, breach of contract or law, or violation of a Governmental Approval by Contractor or any of the Contractor Parties; or (c) the events (or the effects of such events) could have been avoided by the exercise of reasonable caution, due diligence, or other reasonable efforts by Contractor or Contractor Parties. Contractor shall perform at no additional cost to the Commission all such additions, deletions or other revisions which arise from the actions or inactions of Contractor or Contractor's subcontractors or suppliers.

20.4 Request for Quotation.

The Commission shall clearly specify in a RFQ its needs and objectives and shall provide any necessary documentation in order to enable Contractor to issue a RFC with a complete quotation and within a reasonable period of time. If Contractor considers that it cannot answer to a RFQ for whatever reason, Contractor shall notify the Commission of its decision as soon as reasonably practicable (with supporting particulars). Any RFQ shall systematically specify whether the corresponding part of the Work subject to the RFQ shall be suspended or not pending quotation by Contractor. If a RFQ specifies that the part of the Work subject to the RFQ is suspended pending quotation by Contractor, an extension of time will be automatically granted to Contractor and the ensuing costs shall be borne by the Commission irrespective of its final decision relating to the quotation submitted by Contractor. The Parties shall handle, in a diligent manner and as soon as reasonably practicable, any RFQ on the basis of the Change Order process. The Commission shall pay Contractor's reasonable and documented costs for preparing the quotation requested by the Commission if the Change is not ordered.

20.5 Request for Change.

Contractor shall issue a RFC in response to a RFQ sent by the Commission and may issue one on its own initial as specified herein. The RFC shall provide an estimate of the time and/or schedule impacts as requested by the RFQ and shall specify whether another part of the Services is impacted by the RFQ in addition to the suspended part mentioned in the RFQ. Contractor is also entitled to issue a RFC as soon as practicable when (a) Contractor considers that an event or an explicit or implicit instruction/information, whatever the nature, has a price and/or schedule impact on the Contract irrespective of any Commission RFQ; (b) the Contractor ascertains that a mistake, an omission and/or an inconsistency in the documents provided by the Commission has a price and/or schedule impact on the Contract irrespective of any Commission RFQ; (c) the Contractor proposes any modification of the contractual Services in the interest of the project. The Contractor shall estimate the ensuing price and/or schedule impacts and shall require the Commission's decision relating to the suspension or not of the

part of the Work concerned by the RFC. Failure of the Commission to answer within the period of time indicated in the RFC shall be deemed as a decision to continue to execute the Work according to the last contractual Services.

20.6 Determination.

If the Commission and the Contractor agree on the price and schedule impacts of a RFQ or a RFC, the Commission shall issue an Instruction to Proceed in order to authorize the Contractor to execute the corresponding Change. If the Parties do not agree on the price and schedule impacts of a RFQ or a RFC, the Commission shall notify the Contractor of its decision to abandon or not the RFQ or RFC as soon as reasonably practicable.

20.7 Disputed Work.

If the Parties fail to reach agreement with respect to the Change Order, the Commission may nevertheless direct Contractor to proceed with the Work included in the Change Order Proposal (which for purposes of this Section 20 shall be hereinafter referred to as "Disputed Work"). In the event of such Disputed Work, Contractor shall be obligated to proceed immediately upon notice from the Commission to perform the Disputed Work and shall be compensated by the Commission in accordance with the time and Equipment rates in the Pricing Schedules of this Contract. For Equipment purchased at any time from and after the expiration of the Warranty Period for the Maintenance Work or for Equipment needed for an authorized Change Order during the Term, the Commission will pay Contractor for the actual cost of such Equipment plus (i) a 10% markup for Equipment that costs \$100,000 or less, or (ii) a 5% markup for Equipment that costs more than \$100,000. The Contractor shall furnish weekly status reports regarding the Disputed Work, including such documentation as the Commission may require in order to support all costs of the Disputed Work. The Contractor agrees to maintain and furnish the Commission with time and materials records that will substantiate Contractor's costs related to the Disputed Work.

20.8 Delay and Extension of Time.

- (1) The Commission will only grant an extension of time if Contractor is delayed in the progress of the Work and the delay is the direct result of (a) a negligent act of the Commission, (b) the performance of work by the Commission's contractors within the Right of Way that directly disrupts Contractor's on-site Work, or (c) an event listed in Section 36.6. If and when such event occurs, then the time of completion set forth in Contractor's Schedule shall, unless otherwise agreed to in writing by the Parties, be extended by an amount of time equal to the time lost as a result of the delay.
- (2) Contractor expressly agrees that Contractor's sole and exclusive remedy for delay shall be an extension of the Project Schedule and that Contractor shall not be entitled to any damages and shall make no demand for any damages. No such extension shall be made for delays occurring more than ten (10) Days before claim thereof is made in writing to the Commission. In the case of a continuing cause of delay, only one claim is necessary, but no claim for a continuing delay shall be valid unless Contractor, within ten (10) Days from the cessation of the delay, shall have given written notice to the Commission as to the amount of additional time claimed.

20.9 Commission, Other's Delays.

If Contractor alleges that the Commission's or other third party's (other than Contractor's subcontractor or suppliers) acts or omissions will result in a delay to Contractor, then no later than two (2) Business Days after the commencement of such delay, Contractor shall file a written notice with the Commission's Project Manager, detailing with specificity the nature of the cause of the delay. Failure of Contractor to furnish such notice within the specified time period shall result in Contractor's waiver of any delay claim resulting from such act or omission.

21. Intellectual Property.

21.1 General.

Contractor shall provide the Commission with the intellectual property as set forth in the Scope (the "Intellectual Property"). Intellectual Property that will be delivered to the Commission shall include all documentation along with all licenses required for the Commission to operate and maintain the System. It is understood that in order to meet the Commission's requirements under this Contract, modifications to the Intellectual Property may be necessary. The Commission shall have a license set forth below in Section 21.2 to use the Intellectual Property provided under this Contract and as modified to meet the particular requirements of this Contract. The License (defined below) allows an unlimited number of end users to use the Intellectual Property. Source Code and Source Code Documentation shall be used solely for the purposes of supporting and maintaining the Intellectual Property.

21.2 License.

For a period of five (5) years after (a) the expiration of the Term, or (b) any earlier termination of this Contract for any reason, whichever occurs later, Contractor hereby grants to the Commission for the purposes set forth in this Contract and the operation and maintenance of the System, an irrevocable, non-exclusive, royalty free, non-transferrable (except as provided below), fully paid up right and license to use, reproduce (for back-up or transition purposes), modify, adapt and disclose, and sublicense others to use, reproduce (for back-up and transition purposes), modify, and adapt on the Commission's behalf, the Intellectual Property and the Enhancements, except for COTS software and firmware that will be subject to their respective license agreements ("License").

21.2.1 Limited Right to Transfer and Usage. Notwithstanding Section 21.2, the Commission shall have the right to transfer the applicable License to a successor in the event another entity or agency is given the responsibility to maintain or otherwise operate tolls in the State of Ohio, provided that any such successor entity or agency agrees to be bound by these License terms. The License includes the right to make and have made copies of any and all software (for back-up or transition purposes), firmware and documentation and to use any and all such copies, reproductions, modifications, adaptations, improvements or derivative works for the purposes set forth in this Contract and the operation and maintenance of the TCS. Source Code and Source Code Documentation shall be licensed to the Commission pursuant to the terms in this Section 21.2.1 but only upon the occurrence of the events set forth in the Escrow Agreement (set forth in Exhibit B). There shall be no right to modify or adapt the source code except to maintain, enhance and operate the System. Such right shall not include the ability to create derivative works.

21.2.2 License Transfer. Contractor shall secure all required licenses from third parties, pursuant to the terms set forth above in the name of the Commission, and shall ensure that such licenses are transferable to and assignable to the Commission, without additional compensation to such third party. Contractor shall furnish the Commission with original license agreements it obtains from such third parties within five (5) Days after entering into such license agreement. Contractor shall also provide to the Commission the computer programs, disks, interfaces and documentation for all software and firmware it obtains from third parties relating to the System, and the Commission shall take title to and own the same.

21.2.3 Enhancements. The TCS shall be performance scalable, capable of being modified or enhanced within the system platform. The License shall include all updates, enhancements, modifications, upgrades, revisions, replacements, upgrades made to or in the place of software or any related documentation including, but not limited to, those that corrects errors, correct safety hazards, to support new computer hardware or Equipment with which the software is designed to operate, or other changes that are improvements or extensions of the Contractor's Intellectual Property provided herein, and all error corrections, patches and bug fixes and any other derivative works created by Contractor or Contracting Parties during the Term, but not thereafter ("Enhancements"). Notwithstanding the foregoing, Enhancements eligible for additional compensation is limited to those Enhancements (revisions, updates, modifications or upgrades) made after the applicable warranty period that increase software or hardware capabilities beyond the original Project specifications. Such reimbursable Enhancements are included in Contractor's maintenance services set forth in the Pricing Schedule, and do not include routine system updates, modifications or maintenance work made to the software or hardware that is required to correct errors, patches or bug fixes or to operate and maintain in accordance with the Scope.

21.2.4 Exclusions. Subject to the License and rights granted to the Commission pursuant to this Contract and public records disclosure matters, the Commission shall not at any time (a) sell any Contractor's Intellectual Property or use, reproduce, modify, adapt and disclose, or permit any party to use, reproduce, modify , adapt and disclose, any such Intellectual Property for any other purpose not consistent with this Contract, (b) except as expressly permitted by this Contract , create derivative works based on Contractor's Intellectual Property; (c) reverse engineer, disassemble, or decompile Contractor Intellectual Property; or (d) remove any identification or notices contained on Contractor's Intellectual Property.

21.3 Ownership.

Subject to Contractor's License rights, Contractor's Intellectual Property, including, but not limited to, Enhancements, Source Code and Source Code Documentation, shall remain exclusively the property of Contractor or Contractor Parties, as applicable, notwithstanding any delivery of copies any delivery of copies thereof to the Commission and instead shall be furnished to the Commission pursuant to the license terms set forth in this Section 21.

21.4 Benefit of Innovation.

In the event Contractor develops innovations not otherwise provided for or required in the Scope (including, Enhancements) nor tested in the market, and if the Commission and Contractor see opportunities for mutual benefit in the exploration and testing of

such innovations within the framework of the Projects, then the Commission and Contractor agree to work cooperatively to explore and advance new technologies and innovations if feasible within the Commission's sole discretion. Contractor agrees to offer the Commission the opportunity to test and implement new technologies or innovations subject to the negotiation of a fair and reasonable cost for the Commission's willingness to test such innovation.

22. Work-for-Hire Product.

- 22.1** All documentation, manuals, and Work and Submittals created specifically for the System or the Commission (the "Work for Hire Product") shall be owned by the Commission as Work for Hire Product. If the Commission opts to not treat it as a Work for Hire Product, then the Contractor will own the same and the Commission shall have an unlimited, non-exclusive, transferable, sub-licensable, perpetual, fully-paid and royalty-free license to use such Work product for the Commission's business purposes, to include by way of example and not limitation, creating derivative works and decompiling.
- 22.2 Work-for-Hire Product.** Work-for-Hire Product produced under this Contract will be owned by the Commission with Contractor receiving an unlimited non-exclusive, transferable, sub-licensable perpetual, fully-paid and royalty-free license to use such Work for Hire Product for Contractor's Work under this Contract.
- 22.3 Assignment of Works for Hire Product.** Except with regard to any good faith unresolved dispute between the Parties, in the event that any such Work-for-Hire Product are deemed not to be works made for hire for the Commission, the Contractor hereby irrevocably assigns to the Commission all right, title and interest in all such Work-for-Hire Product, including, without limitation, all intellectual property rights with respect thereto, and further agrees to execute and deliver such other and further assignments, certificates of originality and other documents and instruments as reasonably requested by the Commission in order for the Commission to evidence and perfect its ownership of all rights with respect thereto.
- 22.4 Confirmation of Applicability.** Contractor acknowledges and agrees that the provisions of this Contract apply regardless of any disputes, payment issues or other claims that may exist between the Parties, and that the Commission's ownership of all rights with respect to such Work-for-Hire Product is unconditional. Such Work-for-Hire Product shall include any and all modifications, improvements, adaptations, revisions, updates, releases, new versions, derivative works, and documentation (including any specifications, copies, notes, summaries or analyses) comprising, based on, derived from, or related to any Work for Hire Product, including any of the foregoing that is conceived, discovered, invented, created, developed or made by Contractor or Contractor Parties.
- 22.5 Disclaimer of Contractor Rights.** None of the Contractor Parties shall have any proprietary interest in such Work-for-Hire Product. The Contractor Parties shall not assert any ownership interest or conditions to executing assignments and other documents to evidence and perfect the Commission's ownership of all rights in and to same, and any claims that the Contractor Parties may have against the Commission shall exclude claims challenging the Commission's of ownership of same.

22.6 Delivery of Partially Completed Work. All Work-for-Hire Product becomes the property of the Commission, whether such Work is completed or not. In the event this Contract is terminated or expires, all Work-for-Hire Product whether completed or not shall be delivered within ten (10) Days from the date of termination or expiration to the Commission. All drawings, technical manuals, other technical data and other material created pursuant to this Contract either by the Contractor or its subcontractors that is eligible for copyright shall be deemed to be a work for hire, and the title to and exclusive ownership of all such items shall be in the Commission to the extent not based on Contractor's Intellectual Property.

23. Intellectual Property Escrow.

The Commission and Contractor acknowledge that Contractor and Contractor Parties that supply software, source code, or other Intellectual Property may not wish to deliver the Intellectual Property directly to the Commission, and that Contractor and/or Contractor Parties desire to implement measures to protect such information from public disclosure to the extent permitted under applicable Law. Contractor further acknowledges that the Commission nevertheless must be ensured access to such Intellectual Property including, without limitation, all software source code, system design documentation and deliverables, all Enhancements to such software, documentation and deliverables, instructions to compile all software source code and all other materials and information necessary for the Commission to operate, maintain and modify the software and the System, at any time, and must be assured that the Intellectual Property is usable, released and delivered to the Commission immediately. Therefore, Contractor shall deposit the Intellectual Property with a neutral trustee. Contractor shall (a) select, subject to the Commission's prior approval, an escrow company or other neutral custodian ("Escrow Agent") engaged in the business of receiving and maintaining escrows in the Cleveland, Ohio area, or in another location the Parties agree to in writing, of Source Code or other Intellectual Property; and (b) establish an escrow ("Intellectual Property Escrow") with the Escrow Agent on terms and conditions substantially similar to the ones attached hereto as Exhibit B (Escrow Agreement) for the deposit, retention and upkeep of such above-described Intellectual Property and related documentation. Intellectual Property Escrow also may include Contractor Parties as parties and may include deposit of their Intellectual Property. Contractor shall be responsible for the fees and costs of the escrow agent and the escrow. Notwithstanding the foregoing, the Commission makes no representation with regard to the confidentiality of any Intellectual Property Escrow. Contractor shall provide the Commission with verification of deposit of the software source code and all Enhancements prior to Final Acceptance.

23.1 Delivery to Escrow Agent.

Contractor shall make such delivery to the Escrow Agent not later than:

- (1) for pre-existing source code and source code documentation, immediately upon execution of this Contract ;
- (2) for source code and source code documentation incorporated into or used on or for the Project, prior to the applicable project Go-Live date;
- (3) for any Enhancement (including, but not limited to, update, upgrade or correction of source code and source code documentation) incorporated into or used on or for the Project or any portion thereof, not later than fifteen (15) Days after the end of the calendar quarter in which it is first incorporated or used in any Project; and for any other Intellectual Property, on the Effective Date (if it exists as of such

date) and otherwise within fifteen (15) Days after the end of the calendar quarter in which it is first incorporated or used In connection with the Project or the Work.

23.2 Commission as Signatory.

The Commission shall be a signatory on the Intellectual Property Escrow agreement with direct rights of enforcement against Contractor and the Escrow Agent, and any relevant third party depositor of such Intellectual Property. Each escrow agreement shall provide that any amendment or supplement to such escrow agreement shall be subject to the Commission's prior written approval in its sole discretion.

23.3 Access and Inspection.

Intellectual Property Escrows shall provide rights of access and inspection to the Commission at any time.

23.4 Survival of Escrow Agreement.

The Intellectual Property Escrow shall not be terminated during the Term except by the express mutual written agreement of the Commission and Contractor. The Intellectual Property Escrows shall survive expiration or earlier termination of this Contract regardless of the reason, until such time as both Parties agree, in their respective sole discretion, that the Intellectual Property contained therein is of no further use or benefit to the Project. Should the Commission require the Intellectual Property Escrow Agreement remain open after the expiration of the Term, the Commission shall pay the fees and expenses associated with any such escrow agreement.

24. Data Access and Public Records.

24.1 Data Ownership/ Access/ Security.

All data, Transaction records, Trip records, system database and other logs, and any data collected by the TCS System, including all images, is the property of the Commission. If the data is organized and stored using COTS database or proprietary database software (often referred to as ETL – extract transfer and load) then the Contractor must provide a secure network path and web service or direct open data base connectivity (ODBC) or similar connection to the database with appropriate permissions and credentials to extract from the database or query data within the database. This includes, but is not limited to, newly inserted or updated data in the database, database backups, and archives (offline back ups). Contractor shall ensure that no unauthorized personnel will have access to individual facilities, cabinets, data and records, any personal information of existing or potential customers of the Commission.

24.2 Public Records.

The Commission constitutes a “public office” and materials submitted in response to this Contract including, but not limited to, Confidential Information, will be considered “public records” subject to disclosure under the Ohio Public Records Act found at Section 149.43 of the Ohio Revised Code, except as required by Law. In entering into this Contract, Contractor expressly acknowledges, represents, and agrees that any information submitted is subject to disclosure under Ohio Public Records Act. Contractor affirmatively represents that only the information which has been segregated and stamped as “trade secret asserted” is the subject of such a claim by Contractor; and that all other information is not subject to such a claim; and that Contractor affirmatively waives any claim to the contrary.

25. Liquidated Damages.

25.1 Time of the Essence.

Time is of the essence with regard to performance of this Contract. The Commission will assess liquidated damages for Contractor's failure to meet the items set forth in Table 25.2 below, failure to reopen the lanes as set forth in Section 25.3 , or failure to meet service levels as set forth in Section A.3 and A.8 of the Scope.

25.2 Difficulty of Ascertaining Certain Damages.

The amount of liquidated damages as set forth in Section 25.1 is fixed and agreed to by and between Contractor and the Commission because both Parties agree and acknowledge the impracticability and extreme difficulty of fixing and ascertaining the true value of the damages which the Commission will sustain by failure of Contractor to meet the items set forth in Section 25.1, such as loss of revenue, service charges, interest charges, harm and inconvenience to the public, delays caused to other activities of the Commission by failure to perform this Contract, increase of inspection and administrative costs, and other damages, some of which are indefinite and not susceptible of easy proof, said amounts were actively negotiated between the Parties, and are in each instance agreed by both Parties to be a reasonable estimate of the amount of damages which the Commission will sustain in each instance and said amount shall be deducted from any monies due or that may become due to Contractor. The Parties intend that the liquidated damages constitute compensation, and not a penalty. The Parties acknowledge and agree that the Commission's harm caused by a Contractor delay would be impossible or very difficult to accurately estimate, and that the liquidated damages are a reasonable estimate of the anticipated or actual harm that might arise from Contractor's delay. Contractor's payment of the liquidated damages is Contractor's sole liability and entire obligation and the Commission's exclusive remedy for the occurrences set forth in Section 25.1.

25.2.1 Unenforceability of liquidated Damages. If any liquidated damages are found for any reason to be void, invalid or otherwise inoperative, then the Commission is entitled to claim against Contractor for any and all damages available to it at law or in equity for Contractor's failure to complete or otherwise perform the Work as set forth in this Contract.

Table 25.2

Liquidated Damages for Delay in Reaching Certain Milestone Events

Milestone Event	Scope Section	Deadline	Liquidated Damages Amount
Factory Acceptance Test Completion	A.10.7.2	TBD	\$1,000 per day
System Acceptance Test Completion	A.10.7.4	TBD	\$3,000 per day

Go Live	A.10.7.6	November 30, 2022	\$10,000 per day
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25.3 Closure of Lanes; Failure to Reopen.

Should the Contractor fail to reopen lane(s) at the times specified in writing by the Commission, Contractor shall pay liquidated damages in the amount of \$5,000.00 per lane per hour or any portion thereof.

25.4 No Waiver.

Permitting the Contractor to continue and finish the Work or any part of the Work after the expiration of the time allowed for completion or after any extension of time, shall not operate as a waiver of the rights of the Commission under this Section 25 or any other section of this Contract.

25.5 Contractor and Surety Jointly and Severally Liable.

Notwithstanding any other provision to the contrary, Contractor's and the Contractor's surety shall be jointly and severally liable for the liquidated damages assessed by the Commission pursuant to this Section 25 . In the event Contractor and/or the Contractor's surety litigates the validity of or assessment of these liquidated damages, Contractor and the Contractor's surety, jointly and severally, shall also be liable for legal fees, expert fees, professional fees, costs, other expenses and/or damages incurred by the Commission.

26. Warranties.

26.1 Warranties.

In addition to any express warranties and implied warranties provided by law and in the Scope, Contractor hereby expressly represents and warrants the following:

(1)As to Contractor:

- a. Contractor is duly formed and validly existing under the laws of the State of [_____], and Contractor is qualified to do business, and is in good standing, in the State of Ohio.
- b. Contractor has all power and authority including, but not limited to, all required licenses to carry on its present and proposed activities in Ohio, and has full power, right and authority to execute and deliver this Contract and to perform each and all of the obligations of Contractor provided for herein.
- c. Contractor will maintain its existence and remain in good standing in the State of Ohio throughout the Term of the Contract and thereafter as long as any obligations remain outstanding under this Contract.
- d. The execution, delivery and performance of the Contract has been duly authorized by all necessary [corporate, partnership or limited liability company] action of Contractor; each person executing this Contract on behalf of Contractor has been duly authorized to

execute and deliver it on behalf of Contractor; and this Contract has been duly executed and delivered by Contractor.

- e. This Contract constitutes the legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and general principles of equity.
- f. Contractor has and will maintain in full force and effect during the Term of the Contract all required authority, licenses, certifications and permits, professional ability, skills and capacity necessary to perform the Work.
- g. Contractor is not now insolvent and will not be rendered insolvent by any of the transactions contemplated by this Contract. As used in this section, "insolvent" means that the sum of the debts and other probable liabilities of Contractor exceeds the present fair saleable value of Contractor's assets. Contractor is (a) able to pay its debts as they become due; (b) own property that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities); and (c) have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors of Contractor. In connection with the transactions contemplated hereby, Contractor has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.
- h. Neither the execution and delivery by Contractor of this Contract, nor the consummation of the transactions contemplated hereby, is in conflict with or has resulted or will result in a default under, or a violation of, the governing or organizational documents of Contractor, any approvals or laws applicable to Contractor or any other material agreement to which Contractor is a party.
- i. There is no action, suit, proceeding, investigation or litigation pending or to Contractor's knowledge, threatened which challenges Contractor's authority to execute, deliver or perform, or the validity or enforceability of, this Contract, or which challenges or prohibits Contractor from entering into or performing under this Contract; and Contractor has disclosed to the Commission any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Contractor is aware.
- j. Contractor is not in breach of any applicable law that would have an adverse effect on the performance of this Project or Contractor's ability to perform its obligations under this Contract.

- k. Contractor is the legal and valid holder of the interest attributed to Contractor under this Contract.
- l. Contractor has disclosed to the Commission all material information related to its ability to perform the Work and complete the Contract. Further Contractor has not omitted to disclose a material fact necessary to its ability to perform this Contract or that makes any of the representations and warranties in this Section 26.1 untrue or misleading.
- m. All documentation of every and any form, name, format and content is complete and accurate in all material respects.

(2) As to the Work:

- a. The Work shall be performed in a good and workmanlike manner in compliance with all applicable codes and safety and public health regulations.
- b. All Equipment and supplies furnished by Contractor will be new, manufactured by skilled, qualified and properly trained labor, be free and clear of all liens and encumbrances, and not violate any of the Intellectual Property rights of any third party.
- c. The Services shall be performed in a workmanlike and professional manner, consistent with the highest level of care and skill exercised by other providers of similar services in the industry.
- d. All hardware, Equipment, supplies and other material, including, but not limited to, Spare Parts, supplied under this Contract shall (a) comply with and conform to all performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, and functions required by the Scope; (b) have a minimum service life as set forth in the Section A.1.5 of the Scope and meet the warranty period requirements set forth in Section A.10 of the Scope, (c) be new, off the shelf, field proven and meet applicable ISO, IEEE and ANSI defined standards, as applicable, (d) conform, in all respects, to the specifications, standards, drawings, samples, descriptions, quality requirements, performance requirements, statements of work, and fit, form and function requirements furnished, specified or approved by the Commission;(e) be merchantable (as such term is defined in the UCC) and free from defects, latent or otherwise, in design, materials, and workmanship; (f) be fit and sufficient for the particular purpose intended by the Commission, of which Contractor is aware (and Contractor acknowledges that it knows of the Commission's intended use of the Equipment and that such Equipment has been selected, designed, manufactured or assembled based upon the stated use and will be fit and sufficient for the particular purposes intended by the Commission), and (g) with regard to Equipment and hardware that will either be installed in the Project or otherwise purchased by the Commission pursuant to this Contract, Contractor

will convey good, transferable and marketable title, and that all such Equipment and supplies shall be delivered to the Commission and remain free from all security interests or other liens or encumbrances. Contractor also agrees to defend the Commission's title against all persons claiming ownership or other interest in the whole or part of any such Equipment or supplies furnished to the Commission under this Contract.

- e. (a) with the exception of COTS, all Software that Contractor will use to perform the Work shall be free from defects and any update or revision to any of such software will be free from defects and will meet all specifications set forth in this Contract ; (b) Contractor will, without charge to the Commission, either (i) correct any defects and make any fixes, additions, modifications or adjustments to any of such software or any update or revision to such software as may be necessary to keep the software in operating order in accordance with this Contract, or (ii) provide the Commission with an alternative that meets the specifications set forth in this Contract; and (iii) with the exception of COTS, all software provided pursuant to this Contract and any update or revision to any of such software will be free from viruses, worms, time bombs, back doors, Trap Doors, Trojan horses, all other forms of malicious code or disabling devices or the like.
- f. The labor and services to be performed hereunder will be performed on time and in accordance with the Project Milestones.
- g. All documentation, services and labor shall conform to the performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, and functions required by the Scope.
- h. (i) no aspect of the Work will violate or in any way infringe upon the rights of third parties, including, but not limited to, proprietary information and non-disclosure rights, or any Intellectual Property rights; (ii) Contractor is the lawful owner or license holder of all software, methods, methodologies and any pre-existing Intellectual Property used in the Work contemplated hereunder and Contractor has the right to grant the Commission access to, or use of, such software, methods, methodologies and Intellectual Property. As used in this Contract, "Intellectual Property" shall mean any and all know-how, inventions, patents, copy rights, models, designs, trademarks, trade dress, trade secrets, discoveries, regulatory filings, or other information (whether or not patentable and whether or not in tangible or intangible form), software design submittals and related documentation, and any other industrial or proprietary rights, and any documentation relating thereto, and any and all applications for any of the forgoing, whether or not registered as of the Effective Date or at any later date.

26.2 Maintenance Warranty.

In addition to the foregoing warranties, Contractor represents and warrants to the Commission that for the period provided by applicable law, or for such longer period as twelve (12) months (i) after Go Live date, or (ii) the successful completion of the System Acceptance Test and Final Acceptance, the Work including, without limitation, the Equipment, will continue to function and operate as provided in the Scope.

26.3 Additional Terms.

The foregoing Warranties (a) are in addition to all other warranties, express, implied, statutory and common law, (b) extends to the Work's future performance, (c) survives delivery of the Work, the Commission's receipt, inspection, acceptance, use of the Work and payment for the Work, and the termination or expiration of this Agreement, (d) inures to the benefit of the Commission and its successors and assigns, and (e) may not be limited or disclaimed by Contractor. The Commission's approval of Contractor's designs, materials, processes, drawings, specifications or similar requirements will not be construed to relieve Contractor of any warranties.

26.4 Third Party Warranties.

Contractor shall transfer and assign to the Commission all of its rights (but not any obligations) under all warranties from equipment or material manufacturers or suppliers, permitted subcontractors or other third parties for any and all items of Work furnished to the Commission.

26.5 Survival.

The representations and warranties of Contractor contained in this Section 26 of this Contract shall survive the expiration or earlier termination of this Contract.

27. Warranty Cure Process.

During the maintenance warranty period set forth in Section 26.2, upon discovery of defective Work, Contractor shall be responsible to repair or replace the defective Work at no additional cost to the Commission.

27.1 Contractor Duty to Remedy.

Contractor shall, within the time periods designated in this Contract, correct, remedy, replace, re-execute, supply omitted or defective Work and pay for any damage to other work resulting therefrom, without expense to the Commission, including but not limited to, shipping and delivery costs and labor costs. If the Scope does not specify a warranty cure period, then Contractor shall replace any defective item of Work, including Deliverables, furnished in breach of this Contract, no later than five (5) Business Days after the date of the Commission's written notification thereof.

27.2 Extension of Time to Cure.

If the Commission believes Contractor is using its best efforts to make good the deficiency, correct, or remedy defective Work, or supply any omitted Work, then the Commission, in its sole discretion and taking into consideration the Commission's general business concerns and the need to ensure that there are no delays to the Project Schedule, Milestone Schedule and any other contractor's schedules, or

operation of the toll system, may extend the respective cure period set forth in its notice to Contractor.

27.3 The Commission Cure.

The Commission reserves the right to cure any defective Work if Contractor does not remove, correct or make good the deficiency, remedy defective Work, or supply any omitted Work within the time periods set forth under this Contract. If no time is set in the Scope or this Contract then unless otherwise agreed to in writing by the Parties, then the Commission may remove the Work, correct the Work, remedy the Work or supply omitted Work. The Commission shall provide written notice of its intent to cure at the expense of the Contractor. If the Commission has not yet made payment to Contractor, then the Commission may deduct the cost thereof from any payment then or thereafter due and owing the Contractor. If final payment has been made to Contractor, then Contractor shall reimburse the cost to the Commission within thirty (30) Days of written demand therefore by the Commission. In case of emergency involving health, safety of property or safety of life, the Commission may proceed at once and without notice to Contractor and Contractor shall remain responsible for the cost thereof.

28. Indemnification.

28.1 Generally.

Contractor shall indemnify, pay for the defense and hold harmless the Commission, its Commission members, officers, directors, employees, affiliates, agents, successors, assigns, and the Commission Related Parties ("Indemnified Parties"), from and against any and all liability, including claims, demands, losses, damages, deficiencies, actions, settlements, judgments, interest, awards, penalties, fines, costs and expenses (including, but not limited to, reasonable attorney's fees, any costs of investigation or defense, fees and the costs of enforcing any right to indemnification under this Contract and the cost of pursuing any insurance providers) of every kind and description (collectively, "Losses"), whether directly or indirectly, relating to, arising out of or in connection with:

- (1) the acts, errors, omissions, undertakings, representations or warranties of Contractor or the Contractor Related Parties, or its or their respective officers, owners, directors, employees, agents, independent contractors, suppliers or subcontractors;
- (2) the breach, failure or non-fulfillment of Contractor's obligations under this Contract, including without limitation breach of any warranty in Section 26 or failure to maintain any insurance requirements;
- (3) any negligent or more culpable act or omission of Contractor, Contractor Related Parties, or any of its or their respective officers, owners, directors, employees, agents, independent contractors, suppliers or subcontractors (including any recklessness or willful misconduct) in connection with Contractor's performance under this Contract;
- (4) any bodily injury, death of any person or damage to real or tangible personal property caused by the willful or negligent acts or omissions of Contractor, Contractor Related Parties, or any of its or their respective officers, owners, directors, employees, agents, independent contractors, suppliers or

subcontractors including, without limitation, damage to vehicles from Equipment malfunctions, including without limitation, toll plaza lane gate(s); and

- (5) any failure by Contractor, Contractor Related Parties, or any of its or their respective officers, owners, directors, employees, agents, independent contractors, suppliers or subcontractors to comply with any applicable Laws.

28.2 Intellectual Property Indemnification.

Contractor represents and warrants that it will have at all times while performing the Work and the Commission will have, upon completion of the Work, all necessary Intellectual Property rights to all Work including, without limitation, Deliverables, furnished by Contractor under this Contract and that all Work, as a whole and each of its components shall not misappropriate any or Infringe upon any third party intellectual property right. In case any component of the Work constitutes a misappropriation or an infringement of the United States patent rights or copyrights or other intellectual property rights of a third party and its use is enjoined, Contractor at the Contractor's sole cost and expense, shall promptly (a) secure for the Commission, its representatives, agents, and designees the right to continue using the infringing item by suspension of the injunction or by procuring a perpetual, non-revocable, paid-up, royalty-free, assignable, non-exclusive license to reproduce, publish, or otherwise use for the Commission's purposes as contemplated herein; or (b) replace the infringing item with a non-infringing substitute that meets the requirements and fulfills the purpose under this Contract ; or (c) modify the infringing item so that it becomes non-infringing provided the resulting Work meets the requirements of this Contract. If the amount of time necessary to proceed with one of these options is deemed excessive by the Commission, the Commission may direct Contractor to select another option (and failure to do so will be an Event of Default under this Contract). Nothing in this Section shall be deemed to limit or condition the Commission's rights otherwise set forth in this Contract, including, without limitation, termination of this Contract and damages. Contractor shall defend all suits or claims for misappropriation or infringement of any Intellectual Property rights and shall pay for the defense of and, indemnify, save and hold the Commission, its agents, employees, representatives, and assigns harmless from any and all Losses on account thereof resulting from the use by the Commission or any of its agents, employees, representatives and assigns of Equipment or Deliverables supplied or Work performed under this Contract.

28.3 Obligations Not Mutually Exclusive.

The Contractor's obligations under this Section 28 are in addition to Contractor's obligations under Section 33 (Insurance) of this Contract. Such obligations shall not be limited by the types, terms, conditions, or limits of liability of any insurance purchased and maintained.

28.4 Waiver.

Contractor, for itself, its successors and assigns and the Contractor Related Parties does hereby waive, as a complying employer, any immunity provided for under the provisions of the Constitution or statutes of the State of Ohio pertaining to Workers' Compensation, solely with respect to claims brought against the Commission by Contractor's employees, whereby Contractor could preclude its joinder by such indemnified party as an additional defendant, or avoid liability for damages, contribution, defense, or indemnity in any action at law, or otherwise, where

Contractor's employee or employees, heirs, assigns or anyone otherwise entitled to receive damages by reason of injury or death brings an action at law against the Commission. Contractor's obligation to the Commission herein shall not be limited by any limitation on the amount or type of damages, benefits or compensation payable by or for Contractor under any worker's compensation acts, disability benefit acts, or other employee benefit acts on account of claims against the Commission by an employee of Contractor or anyone employed directly or indirectly by Contractor or anyone for whose acts Contractor may be liable. This section shall survive termination or expiration of this Contract for any reason.

28.5 Application; Survival.

This indemnification extends to the successors and assigns of the Contractor. This indemnification obligation survives the expiration or termination of this Contract and the dissolution or, to the extent allowed by Law, the bankruptcy of the Contractor. Contractor shall waive and shall not assert any claim against the Commission for any injury to persons, whether or not resulting in death, or any loss or damage to property occurring from any cause unless such injury, loss or damage is due solely to the negligence of the Commission, its agents or employees. Should the Commission elect to have the Contractor defend one or more of the Indemnified Parties, the Commission shall have the right, but not the obligation, to associate in such defense, whether directly or through outside legal counsel, or both.

28.6 Indemnification Control.

The Commission shall control the defense of any claim against the Commission, and Contractor shall reimburse and pay the Commission for all costs and expenses of such defense as and when they occur, whether or not Contractor shall be joined therein, and Contractor shall reasonably cooperate with the Commission in such defense. The Commission shall have charge and direction of the defense and settlement of such claim.

29. Limitation of Liability.

The Commission shall not, under any circumstances, be liable for any incidental, consequential, special, punitive, exemplary or indirect damages, lost business profits or lost data arising out of this Contract, even if the Commission is informed of the possibility of such damages. The Commission's liability to Contractor, if any, shall be limited to direct damages and in such case, only to the extent of the amount the Commission has paid to or owes Contractor under this Contract for the twelve months immediately preceding Contractor's claim.

30. [Intentionally Omitted]

31. Default; Remedies.

31.1 Events of Default.

Subject to relief from its performance obligations pursuant to Section 20.8 of this Contract, Contractor shall be in breach under this Contract upon the occurrence of any one or more of the following events or conditions (each an "Event of Default"):

- (1) Contractor (a) fails to begin the applicable Work within thirty (30) Days following issuance of Notice To Proceed, (b) fails to satisfy all conditions to commencement

of the applicable Work, or (c) fails to commence such Work with diligence and continuity, by each deadline set forth in this Contract and in the Scope;

- (2) Contractor has withheld, disrupted or delayed Work or any Deliverable due to non-payment by the Commission;
- (3) Contractor fails to meet the KPIs and maintenance levels as set forth in Section A.3 of the Scope when calculated on a monthly basis for all lanes in all Toll Plazas in the same category for more than three (3) consecutive months or for more than six (6) times in any rolling twelve (12) month period;
- (4) Contractor has failed to deliver the Work or a component thereof on a timely basis except to the extent of an excusable delay in accordance with Section 20.8 of this Contract;
- (5) Contractor has assigned its rights and obligations under this Contract without Commission's prior approval or as may otherwise violate this Contract;
- (6) the Work or any component thereof has failed to meet the functional and/or performance criteria set forth in this Contract;
- (7) Contractor has failed to provide "adequate assurances" within five (5) Days of the Commission's notice, when, in the opinion of the Commission, reasonable grounds for uncertainty exist with respect to Contractor's ability to perform any of its obligations under this Contract;
- (8) Contractor has failed to remedy defective work in accordance with Sections 26, 14 of this Contract or the Maintenance requirements set forth in Section 3 of the Scope;
- (9) Contractor has failed to maintain bonds and insurance policies and coverages or fails to provide proof of bonds and insurance or copies of bonds and insurance policies, or fails to comply with any requirement of this Contract pertaining to the amount, terms or coverage of the same as required by Sections 33 and 34 of this Contract;
- (10) Contractor becomes insolvent or Contractor has taken advantage of any insolvency statute or debtor/ creditor Law or Contractor's property or affairs have voluntarily been put in the hands of a receiver; or any case, proceeding or other action against Contractor was commenced in bankruptcy, or seeking reorganization, liquidation or any relief under any bankruptcy, insolvency, reorganization, liquidation, dissolution or other similar act or Law of any jurisdiction;
- (11) Contractor has failed to fully comply with the schedule or specific elements of, or actions required under any approved remedial plan furnished to the Commission pursuant to this Contract or otherwise;
- (12) the suspension or revocation of any license, permit, or registration necessary for the performance of the Contractor's obligations under this Contract;
- (13) the Contractor has suspended or failed to proceed with any properly authorized part of the Work;

- (14) the default in the performance or observance of any of Contractor's other obligations under this Contract;
- (15) any representation or covenant in this Contract including, but not limited to, in the Scope, made by Contractor, or any certificate, schedule, report, instrument or other document delivered by or on behalf of Contractor to the Commission pursuant to this Contract is false, misleading or inaccurate, in a material respect, when made or omits material information when made; or
- (16) after exhaustion of all rights of appeal, there occurs any suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, from bidding, proposing or contracting with any federal or State department or agency of (a) Contractor, (b) any member of Contractor with a material financial obligation owing to Contractor for equity or shareholder loan contributions, (c) any affiliate of Contractor for whom transfer of ownership would constitute a Change of Control, or (d) any Key Contractor whose work is not completed.

31.2 Cure Period.

Upon the occurrence of an Event of Default, other than a monetary payment default which shall have no cure period, if the Event of Default is capable of being cured, then Contractor shall have a period of ten (10) Days from the occurrence of the Event of Default to cure such default to the satisfaction of the Commission, in its sole discretion. Upon the occurrence of an Event of Default, whether or not such Event of Default may be cured, the Commission has the right to all damages available to it under this Contract including but not limited to Section 25 above, or at law or in equity.

31.3 Commission Damages/Remedies.

Upon the occurrence of an Event of Default, the Commission may, in addition to and without prejudice to all other contractual remedies and/or remedies allowed at Law or in equity, proceed to take any or all of the following actions:

- (1) withhold any money then due and/or thereafter due to Contractor;
- (2) perform or cause to be performed for the account of Contractor any contractual covenant in the performance of which Contractor is in default or make any payment for which Contractor is in default. Contractor shall pay to the Commission upon demand any amount paid or incurred by the Commission in the performance of such covenant. Any amounts which have been paid or incurred by reason of failure of Contractor to comply with any covenant or provision of this Contract shall bear interest at the default rate, which shall be defined as the Prime Rate plus five percent (5%), but in no case higher than the highest rate permitted by Law, from the date of payment by the Commission until paid by Contractor. Upon request, the Commission will provide reasonable documentation substantiating any claim for payment under this Subsection;
- (3) the Commission or the Commission designated representatives shall have the right to immediately take possession of any or all of the materials, tools, technical specifications, drawings, Equipment, supplies and property of every kind, provided, purchased, maintained, leased, owned, or rented by the Contractor, including but not limited to the Source Code, and the Equipment and hardware either paid for by the Commission, used by Contractor to perform Work or

otherwise stored by the Commission or at the Project site; make available any or all of the foregoing items to a third party provider and/or procure other materials, plant, tools, Equipment, and supplies and charge the Contractor therefor and the Contractor shall be liable to the Commission for the expense of said labor, materials, plant, tools, Equipment, supplies and property; provided that in the Commission's reasonable opinion these expenses are necessary in order to satisfactorily perform the Work. The Commission will provide to Contractor an itemized invoice reflecting such expenses. Notwithstanding the above, the Commission will not take possession vehicles leased by Contractor.

- (4) collect lost revenue and other direct damages that were the result of the Event of Default. In the event that the Commission is unable to determine lost business revenue because data is lost or otherwise unavailable, then the Parties agree that lost business revenue shall be based on historical traffic figures and revenues maintained by the Commission;
- (5) obtain the Work, or a portion thereof, from a third party under similar terms of this Contract, and recover from Contractor all additional costs and expenses paid or incurred by the Commission as a result of the Event of Default, plus all additional costs paid or incurred by the Commission to obtain the replacement Work as set forth in Section 31.3 of this Contract;
- (6) terminate this Contract, in whole or in part, with no liability or recourse to the Commission; and
- (7) reduce the Scope of Services or the Work as determined by the Commission.

31.4 Commission Default.

Subject to the Commission's exercise of its withholding rights and other remedies and rights under this Contract, if the Commission fails to pay Contractor undisputed invoices when due under this Contract and fails to make such payments within ninety (90) Days of receipt of written notice from Contractor of the failure to make such payment, Contractor may, by giving written notice to the Commission, terminate this Contract as of a date specified in the notice of termination. Contractor shall not have the right to terminate the Contract for the Commission's breach of the Contract except as specifically provided in this Section 31.4. In the event of termination of this Contract by Contractor for the Commission's default as provided in this Section 31.4, the Commission shall be liable only for payments required by the terms of this Contract for Work which has been performed satisfactorily according to this Contract, any restocking fees actually and reasonably Incurred by Contractor for any Work ordered but not used on the Project, and reasonable and actual wind down costs.

32. Termination

32.1 Termination for Cause.

Upon an Event of Default, the Commission may, in its sole discretion, terminate this Contract in whole or in part. Termination shall take effect on the date set forth in the Commission's notice to Contractor, which shall be no less than ten (10) Days after the date of such notice. Upon such termination the Commission shall not be required to pay Contractor any amounts for Work performed prior to the date of termination for which payment may be due and owing but not yet paid ("Remaining Payment"). In the event the Commission's expenses incurred or anticipated to be incurred as a result of

Contractor's breach are less than the Remaining Payment, the Commission shall remit such differential to Contractor. In the event the Commission's expenses incurred or anticipated to be incurred as a result of Contractor's breach exceed the Remaining Payment, then Contractor shall within thirty (30) Days of written notice from the Commission, make payment of the differential to the Commission. In addition to the rights and remedies in this Section 32.1, the Commission shall have all other rights and remedies against Contractor which are available at Law or in equity.

32.2 Termination for Convenience.

The Commission may terminate this Contract, in whole or in part, for convenience, with or without cause, upon 30 Days written notice, which shall commence upon the date included in the notice. All Work, including Deliverables, shall at the Commission's option become the property of the Commission upon receipt of payment by Contractor for the amount owed for such item of Work. The Commission shall only pay Contractor for Work performed through the termination date, any restocking fees actually and reasonably incurred by Contractor for any Work ordered but not used on the Project, and reasonable and actual wind-down costs. The Commission shall not be responsible for any other costs, fees and expenses of any nature whatsoever, including but not limited to administrative fees, legal fees, salary, or any other cost or expense, whether direct or indirect, whether foreseen or unforeseen. Contractor acknowledges that the remedy set forth in this Section 32.2 is Contractor's sole and exclusive remedy against the Commission for termination for convenience and Contractor hereby waives all other rights and remedies it may have against the Commission for termination for convenience.

32.3 Pre-existing Liability.

No termination of this Contract shall excuse either Party from any liability arising out of any default as provided in this Contract that occurred prior to termination.

32.4 Termination Procedures and Duties.

Upon expiration of the Term or any earlier termination of this Contract as provided herein, the provisions of this Section 32.4 shall apply. Contractor shall timely comply with such provisions independently of, and without regard to, the timing for determining, adjusting, settling and paying any amounts due Contractor or the Commission on account of such termination.

32.4.1 Within three (3) Business Days after receipt of a notice of termination, Contractor shall meet and confer with the Commission for the purpose of developing an interim transition plan for the orderly transition of Work, demobilization and transfer of the Project control to the Commission. The Parties shall use diligent efforts to complete preparation of the interim transition plan within a reasonable timeframe, taking into consideration the Commission's business needs. The Parties shall use diligent efforts to complete a final transition plan within thirty (30) Days after such date. The transition plan shall be in form and substance acceptable to the Commission in its good faith discretion and shall include and be consistent with the other provisions and procedures set forth in this Section 32.4, all of which procedures Contractor shall immediately follow, regardless of any delay in preparation or acceptance of the transition plan.

32.4.2 On the termination date, or as soon thereafter as is possible, Contractor shall relinquish and surrender full control and possession of the Project to the Commission, and shall cause all persons and entities claiming under or through

Contractor to do likewise, in at least the condition required by the termination turnover requirements set forth in the transition plan. On the later of the termination date or the date Contractor relinquishes full control and possession, the Commission shall assume responsibility, at its expense, for the Project, subject to any rights to damages that the Commission has against Contractor where the termination is due to an Event of Default.

- 32.4.3 Within thirty (30) Days after notice of termination is delivered, Contractor shall provide the Commission with true and complete list of all materials, goods, machinery, Equipment, parts, supplies and other property in inventory or storage (whether held by Contractor or any person or entity on behalf of or for the account of Contractor) for use in or respecting the Work, the System or the Project, or on order or previously completed but not yet delivered from supplier(s) for use in or respecting the Work, the System or the Project. In addition, on or about the termination date, Contractor shall transfer title and deliver to the Commission or the Commission's designee, through bills of sale or other documents of title, as directed by the Commission, all such materials, goods, machinery, Equipment, parts, supplies and other property, provided the Commission assumes in writing all of Contractor's obligations under any contracts relating to the foregoing that arise after the termination date.
- 32.4.4 Contractor shall take all action that may be necessary, or that the Commission may direct, for the protection and preservation of the Project, the Work and such materials, goods, machinery, Equipment, parts, supplies and other property.
- 32.4.5 On or about the Termination Date, Contractor shall execute and deliver to the Commission the following, together with an executed bill of sale or other written instrument, in form and substance acceptable to the Commission, acting reasonably, assigning and transferring to the Commission all of Contractor's right, title and interest in and to the following:
- (1) all completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, designs, design documents, as-built and record plans, surveys, and other documents and information pertaining to the design or construction of the Project;
 - (2) all books, records, reports, test reports, studies and other documents of a similar nature relating to the Work and the Project;
 - (3) all data and information relating to the use of the Project, including all studies, reports, and other information provided that the transfer of any Intellectual Property shall be subject to Sections 21.2 and 23 of this Contract; and
 - (4) all other work product and Intellectual Property used or owned by Contractor or any Affiliate relating to the Work, the Project, provided that the transfer of any Intellectual Property shall be subject to Sections 21.2 and 23 of this Contract.
- 32.4.6 Contractor shall otherwise assist the Commission in such manner as the Commission may require prior to and for a reasonable period following the termination date to ensure the orderly transition of the Project and its management to the Commission, and shall, if appropriate and if requested by the Commission,

take all steps as may be necessary to enforce the provisions of Contractor's agreements with the Contractor Parties pertaining to the surrender of the Project.

33. Insurance.

33.1 Requirements.

Contractor and each of its consultants, general contractors, contractors or subcontractors (collectively "Subcontractors"), shall purchase and maintain at their own expense, or cause to be purchased and maintained, throughout the term of this Project, the insurance as specified below and in Appendix F (Insurance Requirements) of this Contract. All insurance required hereunder shall apply to and cover loss, damages, or liability caused by, arising from, or resulting from the services performed or required to be performed, provided or required to be provided, hereunder.

33.2 Evidence of Insurance.

Contractor shall submit to the Commission within ten (10) Days after award of the Request for Proposal, and prior to commencement of the Work, and periodically as requested by the Commission, Accord certificates evidencing the effectiveness of the insurance policies required herein. Contractor shall, within fifteen (15) Days of the Commission's request during the term of this Request for Proposal, provide the Commission with a full and complete copy of all insurance policies purchased and maintained by Contractor pursuant to this Project.

All policies for insurance must be endorsed to contain a provision giving the Commission a thirty (30) day prior written notice of any cancellation, conditional renewal, or non-renewal of that policy. Contractor shall provide thirty (30) day prior written notice to the Commission of any material change in coverage. A material change in coverage includes any change that reduces the limits, terms, and/or conditions below those required within this Request for Proposal. Should a notice of cancellation be issued for non-payment of premiums or any part thereof, or should Contractor fail to provide sufficient proof of insurance coverage as set forth herein, the Commission shall have the right, but shall not have the obligation, to pay such premium to the insurance company or to obtain such coverage and to deduct such payment from any sums that may be due or become due to Contractor, or to seek reimbursement for said payments from Contractor.

Annually for a period of ten (10) years after substantial completion of the services under this Project, Contractor, upon written request from the Commission, shall promptly provide the Commission with certificates of insurance evidencing the effectiveness of the insurance coverages required pursuant to this Request for Proposal, and if requested by the Commission, original copies of the complete policies, including all endorsements.

the Commission's review or receipt of any evidence of insurance purchased and maintained by Contractor, shall not constitute the Commission's approval of such insurance or the Commission's agreement that such insurance satisfies the insurance requirements set forth in this Contract.

33.3. Deductibles.

Contractor shall be responsible for the payment of any and all deductible(s) or retention(s) under the policy or policies of insurance purchased and maintained by it pursuant to this Request for Proposal.

33.4 Additional Insured.

the Commission, and their board members, officers, administrators, members, employees, representatives, agents, and consultants shall be included as additional insureds on Contractor's Commercial General Liability policy, Automobile policy, and Excess/Umbrella Liability policy. The extent of the additional insured coverage shall be no less broad than that provided under ISO Form CG 20 26 11/85 for General Liability (or a substitute form providing equivalent coverage, including the combination of CG 20 10 10/01 and CG 20 37 10/01) and Umbrella/Excess Liability and ISO Form CA 20 48 02/99 for Auto Liability. The additional insured coverage afforded under Contractor policies shall include both ongoing operations (work in progress) and completed operations (completed work). Additional insured coverage shall be maintained for a minimum of ten (10) years after substantial completion of the services under this Request for Proposal. Such endorsements may be issued on a blanket basis. All of Contractor's liability insurance with respect to which a person or entity is required to be an Additional Insured pursuant to this Agreement shall exhaust prior to the exhaustion, erosion, or application of any insurance or self-insurance maintained by the persons or entities who are Additional Insureds pursuant to this Agreement, and Contractor shall take all measures, whether by endorsement or rider to the policy(ies) or otherwise to ensure its policy(ies) will operate accordingly, including, if needed to satisfy this requirement, an amendment to the Excess Umbrella policy's(ies)' Other Insurance provision.

33.5. Primary Coverage.

The insurance coverage to be purchased and maintained by Contractor as required by this Request for Proposal shall be primary to any insurance, self-insurance, or self-funding arrangement maintained by the Commission, which shall not contribute therewith, and there shall be severability of interests under the insurance policies required by this Request for Proposal for all coverages provided under said insurance policies and otherwise provide cross liability coverage.

33.6. Insurer Rating.

All insurance required to be purchased and maintained by Contractor shall be placed and maintained with insurance companies rated, currently and for at least the previous two years, at least equal to the AM Best's Rating of A-, financial size of IX, licensed to do business in Ohio; and where commercially feasible, admitted to do business in Ohio.

33.7. No Limitation.

The types and limits of insurance to be purchased and maintained by Contractor pursuant to this Request for Proposal shall not be deemed to constitute a limitation of Contractor's liability or indemnification obligations hereunder.

33.8. Purchase of Insurance.

If Contractor fails to purchase, maintain, and continue in force insurance in the types and with limits of liability required by this Request for Proposal, the Commission may purchase such insurance and the cost thereof shall be borne by Contractor. The General Liability, Workers' Compensation, Contractors' Pollution Liability and Professional Liability insurance required herein to be purchased and maintained by

Contractor shall be and remain in force for not fewer than the ten (10) years after substantial completion of the services under this Request for Proposal.

33.9 Notice of Occurrence.

Upon Contractor's knowledge of any occurrence, event, or claim that may reasonably exceed \$50,000, or be expected to exceed \$50,000, or which may reduce or materially affect the aggregate amount of insurance coverage available to the Commission pursuant to this Request for Proposal, Contractor shall (a) immediately provide the Commission with written notice of such occurrence, event or third-party claim(s) with reasonable detail, and (b) to the extent reasonably commercially available, promptly obtain replacement insurance for the eroded aggregate limit and provide the Commission with evidence thereof.

33.10 Waiver of Subrogation.

Notwithstanding anything to the contrary contained herein, and subject to the clause below in this section regarding the Commission's Property insurance deductible, Contractor on behalf of itself and its board members, officers, administrators, members, employees, representatives, agents, and consultants, and the Commission and its board members, officers, administrators, members, employees, representatives, agents, and consultants, hereby expressly waive all rights of recovery against each other, and their insurer's(s') rights of subrogation, for damages caused by fire or other causes of loss to the extent covered by Property insurance obtained or required to be obtained (whichever is broader) pursuant to this Request for Proposal. The Commission and all parties the Commission or Contractor engage relative to the Project shall require of their respective Subcontractors, and any sub-Subcontractors or sub-sub-Subcontractors, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers by endorsement or otherwise. A waiver of right of recovery or subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. The waivers expressed in this section shall not apply with respect to any deductible or retention existing in the Property insurance purchased and maintained by the Commission pursuant to this Request for Proposal.

33.11 Third Party Over.

In any and all claims against the Commission, the indemnification obligations of Contractor in this Contract shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for Contractor under Workers' Compensation Acts, disability benefits or other employee benefit acts. As between the Commission and Contractor, Contractor waives its immunities under Ohio Revised Code Chapter 4123, Article 3 of the Ohio Constitution or any similar Workers' Compensation statutory immunity for purposes of conforming the indemnity obligations of this Request for Proposal. Contractor shall require of its respective Subcontractors, and any sub-Subcontractors or sub-sub-Subcontractors, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein.

34. Bonds.

34.1 Performance and Payment Bond.

Contractor shall furnish a performance and payment bond in a form satisfactory to the Commission at the time of Contract execution (the "Performance and Payment Bond"). The Performance and Payment Bond must be in an amount equal to at least 100% of this Contract's TCS implementation cost, plus any Change Orders. The Performance and Payment Bond shall provide for payment to the Commission in the event the Contractor fails to perform any of the terms and conditions of the Contract, at any time during the Term.

34.2 Maintenance Bond.

The Contractor shall also furnish a maintenance bond in a form satisfactory to the Commission within 10 days of the Effective Date (the "Maintenance Bond"). The Maintenance Bond must be in an amount equal to at least 100% of this Contract's TCS maintenance cost for the Initial Term. The Maintenance Bond shall provide for payment to the Commission in the event Contractor fails to perform any of the terms and conditions of the maintenance obligations under this Contract, at any time during the Initial Term.

34.3 Bond Requirements.

In addition to the requirements set forth in Sections 34.1 and 34.2, as applicable, each of the Performance and Payment Bond and the Maintenance Bond shall be furnished by a surety authorized to conduct business in the State of Ohio, and shall remain in effect throughout the term of this Contract. Provided the Initial Term has not expired, the Performance and Payment Bond shall be released and returned to the Contractor at the later of (i) one year after Go-Live (as defined in the Scope) or (ii) upon successful completion of the System Acceptance Test (as defined in the Scope).

34.4 Required Qualifications for Surety.

The surety and insurance companies must be acceptable to the Commission. Only those sureties listed in the Department of Treasury's Listing of Approved Sureties (Department Circular 570) are acceptable to the Commission. All bonds at the time of issuance must be issued by a company authorized by the Insurance Commissioner to transact the business of suretyship in the State of Ohio, and shall have a Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger.

35. Records Retention and Audit Rights.

35.1. In addition to audit obligations as set forth in the Scope, Contractor shall and shall cause each Contractor Party to maintain accurate books, records, documents and other evidence concerning Contractor's performance of Work under this Contract (hereinafter referred to as the "Records") during the Term of this Contract Contractor agrees to make available, at all reasonable times the Records for inspection or audit by any authorized representative of the Commission upon seven (7) Days' notice.

35.2 Within no more than sixty (60) Business Days after the termination of this Contract for any reason, upon written request to Contractor, copies of all Records shall be given to the Commission. Records that relate to litigation, appeals or the settlements of claims arising out of the performance of this Contract, or costs and expenses of any such agreement as to which exception has been taken by the Commission's Auditor or any of his or her duly authorized representatives, shall be retained by Contractor until such

appeals, litigation, claims or exceptions have been disposed. Notwithstanding anything to the contrary stated in this provision, nothing in this Section 35 shall obligate Contractor to provide its internal cost data for review or for audit. The Commission shall also at all times during the Term of this Contract have the right to conduct the monitoring and auditing Contractor's books and records to determine compliance with requirements of this Contract and the approved Project Management Plan, including audit review of Design Documents, Plan, Construction Documents and other Submittals.

36. General Provisions.

36.1 Compliance with Laws.

The Contractor shall perform its obligations hereunder, and shall ensure that all of its subcontractors perform their obligations, in accordance with all applicable federal, State, and local government Laws, rules, regulations, orders and approvals, including but not limited to procedures and requirements relating to labor standards, compliance with Americans with Disabilities Act, and auditing and reporting provisions, now or hereafter in effect, and any rules required by any federal grant funding payment by the Commission. Any changes to applicable laws, rules, or regulations that are enacted after contract award may be the subject of a Change Order only if a change to applicable Laws, rules, or regulations results in an actual and direct increase in cost to Contractor to comply with such changes.

36.2 Conflicts of Interest.

Contractor represents and warrants that it, its principals, its employees, and all others in close association with it, have no conflict of interest or of time, directly or indirectly, that would prevent timely performance of the Work or the performance of Work in a manner that is free of appearance or fact of impropriety. Contractor promises not to allow such conflict to arise and promises to disclose such a conflict in the event that one develops.

36.3 Non-Collusion.

Contractor shall execute and deliver to the Commission the Non-Collusion Affidavit (attached hereto as Exhibit C) simultaneously with the execution and delivery of this Contract. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Contractor further covenants that no person having any such interest shall be employed in the performance of this Contract.

36.4 Assignment.

Contractor shall not assign, delegate, sublet or transfer this Contract or any rights under this Contract without the prior written consent of the Commission, which may be withheld for any reason. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation Contractor of any of its obligations under this Contract

36.5 Parties Bound.

This Contract will legally bind the successors, and assigns of each Party.

36.6 Force Majeure.

Neither Party shall be liable to the other Party for any delay or failure of performance due to the occurrence of any of the following events that materially and adversely affects performance of Contractor's or the Commission's obligations, provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by the affected Party (a) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Project , in each case occurring within the State; (b) any act of terrorism or sabotage that causes direct physical damage to the Project; (c) nuclear explosion or contamination, in each case occurring within the State; (d) riot and civil commotion on the immediate vicinity of the Project; (e) fire, explosion, flood, earthquake, hurricane, or tornado, in each case that causes direct physical damage to the Project; or (f) national or statewide (i.e., State of Ohio) strike that has a direct adverse impact on the Contractor's ability to obtain materials, Equipment or labor for the Project. Contractor's exclusive remedies for Force Majeure are set forth in Section 20.8 of this Contract

36.7 Notices.

All notices or communications required or permitted as a part of the Contract shall be in writing (unless another verifiable medium is expressly authorized) and shall be deemed delivered when (1) actually received; (2) if not actually received, three (3) Days after transmittal evidenced by mail receipt by the United States Postal Service with proper postage affixed and addressed to the respective other party at the address set out below or such other address as the party may have designated by notice to the other party; or (3) upon physical delivery to the Party's respective physical address. The addresses of the Parties are as follows:

In the case of the Commission:
Ohio Turnpike and Infrastructure Commission
Audit and Internal Control
Attn: David J. Miller
682 Prospect Street
Berea, Ohio 44017
david.miller@ohioturnpike.org

with a copy to:
Ohio Turnpike and Infrastructure Commission
General Counsel
Attn: Jennifer L. Stueber, Esq.
682 Prospect Street
Berea, Ohio 44017
jennifer.stueber@ohioturnpike.org

In the case of the Contractor :

with a copy to:

Attn:
Fax:
Phone:
E-Mail:

36.8 Federal Intellectual Property Bankruptcy Protection Act.

The Commission shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n) and any amendments thereto.

36.9 Governing Law and Venue.

36.9.1 Governing Law. This Contract is made under the Laws of the State of Ohio and shall be enforced according to Ohio Law without regard to its conflict of Laws rules or any other rules directing referral to foreign Law or forums.

36.9.2 Uniform Commercial Code. Except to the extent provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted by the State shall govern this Contract. To the extent the Contract entails both the supply of goods and services such shall be deemed goods within the meaning of the Uniform Commercial Code, except when deeming such services as goods would result in a clearly unreasonable interpretation.

36.9.3 Venue. Any action arising out of or related to this Contract in any way shall be brought exclusively in the Federal or State courts sitting in Cuyahoga County, Ohio, and each Party hereby consents to the jurisdiction and venue of such Court and the appropriate appellate courts therefrom in any such action and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the personal jurisdiction and venue of such court and to any claim of inconvenient forum. Each Party hereby agrees to execute an acknowledgment of service of process at the request of the other Party in any litigation related to this Contract. In the event that a Party does not provide an acknowledgment of service as agreed, each Party consents to service of process at that Party's address set forth in Section 36.7 of this Contract

36.10 Publicity.

Neither party may use the name or any data, pictures, or other representation of the other party in connection with any advertising or publicity materials or activities without the prior written consent of the other party. Contractor shall not issue a press release or otherwise publicize the Work or this Contract without the prior written permission of the General Counsel. However, Contractor may include the Commission's name on its client list and may describe briefly, and in general terms, the nature of the work performed by the Contractor for the Commission.

36.11 Remedies Cumulative.

With the exception of liquidated damages, the rights and remedies of the Commission under this Contract are cumulative of one another and with those otherwise provided by Law or in equity.

36.12 No Waiver.

No waiver of any term, covenant or condition of this Contract shall be valid unless in writing and signed by the obligee Party. The exercise by a Party of any right or remedy provided under this Contract shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy as such right or remedy is specifically allowed under this Contract. No waiver by any Party of any right or remedy under this Contract shall be deemed to be a waiver of any other or subsequent right or remedy under this Contract. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given. Except as provided otherwise in this Contract, no act, delay or omission done or permitted by one Party or its agents shall

be deemed to waive, exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under this Contract. Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Contract at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding.

36.13 Severability.

The invalidity or unenforceability of any clause, provision, section or part of this Contract shall not affect the validity or enforceability of the balance of this Contract, which shall be construed and enforced as if this Contract did not contain such invalid or unenforceable clause, provision, section or part.

36.14 Taxes.

Contractor will pay, prior to delinquency, all taxes lawfully imposed upon it that may arise with respect to this Contract.

36.15 No Third-Party Beneficiaries.

Except for the Indemnified Parties, nothing contained in this Contract shall be construed as conferring upon or giving to any person, other than the Parties hereto, any rights or benefits under or by reason of this Contract.

36.16 Headings.

The captions in this Contract are solely for convenience, and will not affect the interpretation of any terms of this Contract.

36.17 Counterparts.

The Parties may execute this Contract in counterparts.

36.18 Construction of Contract.

In the event this Contract must be interpreted by a court of competent jurisdiction as set forth in Section 36.9, the Parties expressly agree that this is a negotiated Contract that will not be construed against one Party over the other because such Party drafted this Contract.

36.19 Survival.

In addition to those provisions, which by their terms would naturally survive termination of this Contract, Sections 7.7, 9.7, 13, 14, 15, 16, 18, 19.9, 21,22, 23, 24, 25, 26, 28, 29, 32.3, 32.4, 33, 35, and 36 of this Contract shall survive the termination or expiration of this Contract, for whatever reason.

36.20 No Exclusivity.

This is a non-exclusive Contract. This Contract in no way precludes the Commission from obtaining like goods or services from other suppliers at any time. Such determination by the Commission shall be made at the sole discretion of the Commission as deemed to be in the best interest of the Commission and shall be conclusive.

36.21 Entire Contract; Amendment.

This Contract contains the entire agreement between the Parties with respect to its subject matter and supersedes all other prior and contemporaneous contracts and understandings between the Parties, whether oral or written. the Commission shall not be bound by any terms and conditions included in any packaging, invoice, catalog, brochure, technical data sheet, or other document prepared by the Contractor which attempts to impose any condition in variance with or in addition to the terms and conditions contained herein. No amendment to this Contract shall be valid unless made in writing and signed by both Parties.

36.22 Severability.

The provisions of the Contract will be deemed severable, and the unenforceability of any one or more provisions will not affect the enforceability of any other provisions. In addition, if any provision of the Contract, for any reason, is declared to be unenforceable, the parties will substitute an enforceable provision that, to the maximum extent possible under applicable law, preserves the original intentions and economic positions of the parties.

36.23 Interpretation of Agreement.

All terms and words used in this Contract, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context or sense of this Contract or any paragraph or clause in this Contract may require, the same as if such words have been fully and properly written in the number and gender. The headings of Articles and Paragraphs, to the extent used herein, are for reference only, and in no way define, limit or describe the scope or intent of any provision hereof. This Contract may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.

36.24 Authority.

Any act to be performed under the Contract by the "Commission" may be performed by the Executive Director or by such of its employees or such other persons, corporations or firms as the Executive Director may designate. "Executive Director" when used herein, shall refer to the Executive Director of the Commission and include the Director of Audit and Internal Control, the Deputy Executive Director and the CFO/Comptroller. The undersigned signatory for the Contractor hereby represents and warrants that he or she has full and complete authority to execute the Contract on behalf of the Contractor. This representation and warranty is made for the purpose of inducing the Commission to execute the Contract.

(SIGNATURE ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties have caused this Contract to be executed as of the date first above written.

CONTRACTOR

**OHIO TURNPIKE AND
INFRASTRUCTURE COMMISSION**

By: _____
Name: _____
Title: _____

By: _____
Ferzan M. Ahmed, P.E.
Executive Director

APPROVED AS TO FORM:

General Counsel

APPENDIX A – SCOPE OF SERVICES

See attached

APPENDIX B – TECHNICAL PROPOSAL

See attached

APPENDIX C – PRICING SCHEDULE

See attached

APPENDIX D – PAYMENT MILESTONES

See attached

APPENDIX F – INSURANCE

The policies the Contractor and its Subcontractors maintain shall be with companies authorized to do business in Ohio and rated “A” or above by A.M. Best Company or equivalent and carry the following coverages and limits:

LIMITS BY LINE OF COVERAGE	SUB-CONTRACT AMOUNT	SUB-CONTRACT AMOUNT	SUB-CONTRACT AMOUNT	CONTRACTOR
	\$0 - \$1,000,000	\$1,000,001 - \$5,000,000	>\$5,000,001	
GENERAL LIABILITY				
Bodily Injury & Property Damage Limit each occurrence	\$5,000,000	\$10,000,000	\$10,000,000	\$25,000,000
Products/Completed Operations Annual Aggregate	\$5,000,000	\$10,000,000	\$10,000,000	\$25,000,000
Personal & Advertising Injury	\$5,000,000	\$10,000,000	\$10,000,000	\$25,000,000
General Annual Aggregate	\$5,000,000	\$10,000,000	\$10,000,000	\$25,000,000
AUTO LIABILITY				
Annual Combined Single Limit – Bodily Injury, Property Damage	\$5,000,000	\$10,000,000	\$10,000,000	\$25,000,000
WORKERS' COMPENSATION				
PART ONE – WORKERS' COMPENSATION	Statutory	Statutory	Statutory	Statutory
PART TWO - EMPLOYERS LIABILITY				
Bodily injury by accident, each accident	\$5,000,000	\$5,000,000	\$10,000,000	\$25,000,000
Bodily injury by disease, each employee	\$5,000,000	\$5,000,000	\$10,000,000	\$25,000,000
Bodily injury by disease, annual policy aggregate	\$5,000,000	\$5,000,000	\$10,000,000	\$25,000,000

CONTRACTORS POLLUTION LIABILITY				
Bodily Injury & Property Damage, Third-Party Claims, each occurrence	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000
Bodily Injury & Property Damage, Third-Party Claims, annual aggregate	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000
Clean-up, Response, & Remediation On-Site, each occurrence	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000
Clean-up, Response, & Remediation Off-Site, each occurrence	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000
PROFESSIONAL (ERRORS and OMISSIONS) LIABILITY				
Per Claim	\$1,000,000	\$2,000,000	\$5,000,000	\$10,000,000
Annual Aggregate	\$1,000,000	\$2,000,000	\$5,000,000	\$10,000,000
PRIVACY AND NETWORK SECURITY BREACH LIABILITY (CYBER LIABILITY)	\$2,000,000	\$5,000,000	\$10,000,000	\$10,000,000
Network Protection	\$2,000,000	\$5,000,000	\$10,000,000	\$10,000,000
Theft, loss, or corruption of data	\$2,000,000	\$5,000,000	\$10,000,000	\$10,000,000
Cyber extortion	\$2,000,000	\$5,000,000	\$10,000,000	\$10,000,000
Network security breach liability, denial of service	\$2,000,000	\$5,000,000	\$10,000,000	\$10,000,000
Regulatory action defense and fines/penalties	\$2,000,000	\$5,000,000	\$10,000,000	\$10,000,000
Privacy liability, notification expense, credit monitoring expense and public relations expense	\$2,000,000	\$5,000,000	\$10,000,000	\$10,000,000

1. General Liability Insurance. On an occurrence coverage basis (including without limitation, bodily injury, personal injury and advertising injury, property damage, broad form property damage, and broad-form contractual liability arising from or relating to this Project, coverage as respects independent contractors, operating mobile equipment, products and completed operations, explosion, collapse and underground hazards) of not less than the limits in the chart above.

General Liability, Umbrella/Excess limits of liability (including products/completed operations coverage) shall apply on a per-project basis, and such General Liability, Auto Liability, and Umbrella/Excess coverage shall include, without limitation, a waiver of subrogation in favor of the additional insureds. The General Liability insurance limit and Auto Liability insurance limit requirements may be satisfied by the purchase and maintenance of any combination of primary, Excess and/or Umbrella insurance.

2. Auto Liability Insurance. Owned, Non-owned and Hired Automobile Liability coverage minimum combined single limit, bodily injury and property damage, not less than the limits in the chart above. Such insurance shall cover and include liability arising from all vehicles owned by, hired by, or used by or on behalf of Contractor. The coverage must be endorsed with ISO Form CA 99 48, or a substitute form providing equivalent coverage, to include without limitation, coverage respecting liability arising out of the transporting, loading or unloading of hazardous materials, hazardous waste, or hazardous chemicals.

3. Workers' Compensation. With statutory limits. Employers Liability with limits of not less than the limits in the chart above. The Employers Liability insurance requirement may be satisfied by including such coverage within the General Liability policy.

4. Contractor Pollution Liability. If services performed or provided include activities that could result in or give rise to a contamination or pollution incident, or a release of Hazardous Materials, then Contractor shall purchase and maintain in force, or cause to be purchased and maintained in force, insurance covering loss and liability arising out of or relating to such performance of services. Insurance shall cover and include claims alleging bodily injury, property damage, or clean-up which shall include investigation, response, removal, remediation and neutralization of the pollution condition for both on and off site claims or to any other location to which Hazardous Materials were transported from the Project site with limits not less than the limits in the chart above. Contractors Pollution Liability insurance may be written on a claims-made basis provided such policy shall either (a) be renewed annually for a period of not fewer than ten (10) years after substantial completion of the services under this Request for Proposal with substantially the same terms and conditions or (b) include an extended reporting period endorsement or clause providing not less than ten (10) years within which a claim may be made under the policy respecting performance of the services; the retroactive date of any insurance policy required herein that is issued on a claims-made basis shall coincide with or precede the commencement of this Request for Proposal, whether such insurance is existing, renewed or replaced; the cost for such ten (10) year period shall be borne exclusively by Contractor; provided further that if such insurance is written on a claims-made basis then the per occurrence limits stated above shall apply per incident; limits of liability shall apply on a per-project basis, if commercially feasible.

5. Professional Liability (Errors and Omissions) Insurance: Contractor shall purchase and maintain in force, or cause to be purchased and maintained in force, Professional Liability

insurance (including contractual liability coverage) covering liability and damages arising out of or resulting from the acts, errors, omissions, or professional services rendered, or which should have been rendered, pursuant to this Request for Proposal, with limits of liability of not less than the limits in the chart above. Professional Liability insurance may be written on a claims-made basis provided such policy shall either (a) be renewed annually for a period of not fewer than ten (10) years after substantial completion of the services under this Request for Proposal with substantially the same terms and conditions or (b) include an extended reporting period endorsement or clause providing not less than ten (10) years within which a claim may be made under the policy respecting the performance of services; the retroactive date of any insurance policy required herein that is issued on a claims-made basis shall coincide with or precede the commencement of this Request for Proposal, whether such insurance is existing, renewed or replaced; the cost of coverage for such ten (10) year period shall be borne exclusively by Contractor; and if commercially feasible, limits of liability shall apply on a per-project basis with a designated limit applying to the Project site.

6. Privacy and Network Security Liability (Cyber Liability). Contractor shall purchase and maintain in force, or cause to be purchased and maintained in force, Privacy and Network Security Liability (Cyber Liability) with limits of liability of not less than \$10,000,000 each claim or incident alleging a wrongful act, liability, loss, or damage including coverage for network protection, theft, loss, or corruption of data, cyber extortion, denial of service, network security breach liability, regulatory action defense and fines/penalties, privacy liability, notification expense, credit monitoring expense and public relations expense.

7. Riggers Liability. If services performed or provided include activities that could include the use or operation of a crane or any other device or piece of equipment by which materials or equipment, or the movement of property, are rigged, hoisted, lowered, elevated, raised, loaded or unloaded, then Contractor shall purchase and maintain in force, or cause to be purchased and maintained in force insurance covering damage or loss to such property or equipment, with a limit of liability of not less than the purchase price of the most expensive device or piece of equipment that may be rigged, hoisted, lowered, elevated, raised, loaded or unloaded; such coverage shall include a limit for liability arising from any consequential or indirect losses including without limitation, any delay or loss of use claim.

8. Railroad Protective Liability. If work involves construction or demolition operations at or near railroad property (i.e., within fifty (50) feet of such property), Contractor shall purchase and maintain in force Railroad Protective Liability covering liability and damages arising out of or resulting from Contractor's or its subcontractor's work rendered, or which should have been rendered, in relation to this Request for Proposal, with limits of liability of not less than \$2,000,000 per claim, \$4,000,000 annual aggregate. Such limits of liability shall apply separately for each annual period for all damages arising out of bodily injuries to or death of one or more persons and all damages arising out of injury to or destruction of property. The railroad authority shall be the named insured under the Railroad Protective Liability insurance. Such policy shall be written using ISO Form Number CG 00 35 01 07 98 and Pollution Exclusion Amendment Form CG 28 31 07 98, or other form(s) providing equivalent coverage. Such coverage shall be purchased and maintained for so long as required by the railroad authority and may be satisfied by a standalone policy or by endorsement to the General Liability policy.

EXHIBIT A – BILL OF SALE

This Bill of Sale is made on this day of [_____,] 2020 by [_____] ("Seller"), in favor of The Ohio Turnpike and Infrastructure Commission (the "Commission").

For good and valuable consideration in the amount of \$_____, the receipt and adequacy of which Seller hereby acknowledges, Seller hereby irrevocably sells, assigns, transfers, conveys, grants, bargains and delivers to the Commission, all of its right, title and interest in and to the goods listed below (the "Goods"):

Seller represents and warrants that (1) Seller is conveying good and valid title to all the Goods, free and clear of all encumbrances, debts, mortgages, attachments, pledges, charges, claims, security interests, and liens of any kind; and (2) Seller has the right to sell the Goods to the Commission and shall warrant and defend the right against the lawful claims and demands of all persons.

Seller transfers all warranties covering the Goods.

Seller, for itself and its successors and assigns, hereby covenants and agrees that, at any time and from time to time on the Commission's written request, Seller will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, all such further acts, assignments, transfers, conveyances, powers of attorney, and assurances as may be reasonably required by the Commission in order to assign, transfer, set over, convey, assure, and confirm unto and vest in the Commission and its successors and assigns title to the assets sold, conveyed, and transferred by this Bill of Sale.

Seller has good right to sell the Goods and will warrant, indemnify and defend the right against the lawful claims and demands of all persons.

This Bill of Sale is governed by, and construed in accordance with, the laws of the State of Ohio, United States of America[, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Ohio.

Seller has duly executed and delivered this Bill of Sale as of the date first above written above.

[_____] Seller's Name

By: _____

Name: _____

Title: _____

EXHIBIT B – ESCROW AGREEMENT

This ESCROW AGREEMENT (the "*Escrow Agreement*") is made and entered into this _____ day of _____, 2020 ("Effective Date"), by and among _____ ("Contractor"), and the Ohio Turnpike and Infrastructure Commission (the "*Commission*"), and _____ ("*Escrow Agent*", together with the Commission and Contractor, collectively referred to as the "*Parties*" and each individually as a "*Party*").

Contractor and the Commission entered into that certain Toll Collection System Implementation and Maintenance Contract, dated _____, __, 2020 (the "*Contract*"), and the Parties are entering into this Escrow Agreement as required under Section 23 of the Contract.

Now, therefore, in consideration thereof, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound agree as follows:

1. Definitions. All capitalized term and abbreviations used in this Escrow Agreement, but not expressly defined herein, have the respective meanings set forth in the Contract.
2. Appointment of Escrow Agent.
 - 2.1. Fee. Escrow Agent shall receive a fee for its services payable by Contractor annually in accordance with the fee schedule attached hereto as Appendix A (the "*Service Fees*"), due and payable on execution hereof and on each anniversary of such date so long as this Escrow Agreement is in effect. All Service Fees are due within thirty (30) calendar days from the date of invoice in U.S. currency and are non-refundable. Escrow Agent may update the Service Fees with a ninety (90) calendar day written notice to Contractor during the term of this Escrow Agreement; providing, however, in the event any such update results in a material increase in Services Fees, as determined in Contractor' s discretion, Contractor and the Commission may upon written agreement replace Escrow Agent with another escrow agent. Contractor is liable for any taxes related specifically to services provided under this Escrow Agreement or shall present to Escrow Agent an exemption certificate acceptable to the taxing authorities. Applicable taxes shall be billed as a separate item on the invoice. Contractor and the Commission agree that if this Escrow Agreement terminates during the term for any reason, other than for the fault of Escrow Agent, all prepaid fees shall be non-refundable, except to the extent termination results from a material increase in Service Fees as provided herein. Any Service Fees not collected by Escrow Agent when due shall bear interest until paid at a rate of one percent (1%) per month (12% per annum) or the maximum rate permitted by law, whichever is less. Notwithstanding the non-performance of any obligations of Contractor to deliver the Contractor deposited Intellectual Property (as set forth in the Contract), Escrow Agent shall nevertheless be entitled to be paid all Service Fees that accrue while this Escrow Agreement is in effect.
 - 2.2 (a) Term. The term of this Escrow Agreement shall commence as of the Effective Date, and shall continue in effect until a Release (as defined below) occurs as

provided in Section 4 hereof, or until this Escrow Agreement is otherwise terminated as provided herein. Unless the Contractor Deposited Software (as defined below) held in escrow has been released to the Commission, upon termination of this Escrow Agreement, Escrow Agent shall return to the Contractor the deposited Intellectual Property. If reasonable attempts to return the deposited Intellectual Property to Contractor are unsuccessful, Escrow Agent shall destroy the deposited Intellectual Property.

(b) Termination for Nonpayment. In the event of the nonpayment of undisputed Service Fees owed to Escrow Agent, Escrow Agent shall provide all Parties written notice of Escrow Agent's intent to terminate this Escrow Agreement. Either the Commission or Contractor shall have the right to pay any unpaid Service Fees to Escrow Agent to cure a payment default. If the past due payment is not received in full by Escrow Agent within thirty (30) calendar days of the date of such written notice, then Escrow Agent shall have the right to terminate this Escrow Agreement at any time thereafter by sending written notice to all Parties. Termination of this Escrow Agreement shall not relieve any Party of any payment obligation arising hereunder.

3. Conditions. The conditions of this escrow are as follows:

- 3.1 Deposit. Contractor shall deposit the Contractor deposited Intellectual Property ("Contractor Deposited Software") with an accurate and complete description of all Contractor Deposited Software sent to Escrow Agent for the use and benefit of the Commission. The Contractor Deposited Software delivered to Escrow Agent shall consist of technical data, including source code, software, Enhancements (as defined and described in Section 23 of the Contract) sufficient to allow the Commission to run and maintain Contractor Deposited Software and the Toll Collection System software itself or to retain a third party to do so on the Commission's behalf. Escrow Agent shall have the obligation to implement and maintain safeguards designed to protect the confidentiality of the Contractor Deposited Software. Escrow Agent shall treat the Contractor Deposited Software as confidential and proprietary information, and shall not, except as expressly permitted in this Escrow Agreement or with written consent of the Parties hereto, at any time use or disclose the Contractor Deposited Software except to the extent necessary to carry out the intent of this Escrow Agreement and the Contract. To the extent Escrow Agent is required by a court or other governmental body to disclose or provide the Contractor Deposited Software or any information relating thereto to any such third party, Escrow Agent will immediately notify Contractor and the Commission of the same, unless prohibited by law. After notifying the Parties, Escrow Agent may comply in good faith with any such order. Escrow Agent shall be under no obligation to challenge any such order; provided, however, Escrow Agent does not waive its rights to challenge any such order. Escrow Agent will cooperate with Contractor or the Commission, as applicable, to support efforts to quash or limit any subpoena, at such Party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission or a detailed request.
- 3.2 Representations. Contractor represents that the Contractor Deposited Software is and shall at all times contain a duplicate of the Contractor Deposited Software described in the Contract, as such may be updated or modified from time to time. Contractor shall completely and accurately identify each item delivered to Escrow

Agent using the form attached hereto as Appendix B, and certify that the Contractor Deposited Software is the same as what is described under the Contract and that the Contractor Deposited Software is not "copy protected" and can be copied onto magnetic media for use as permitted by this Escrow Agreement and the Contract. Contractor represents that it lawfully possesses all Contractor Deposited Software provided to Escrow Agent under this Escrow Agreement and that any Contractor Deposited Software liens or encumbrances will not prohibit limit, or alter the rights and obligations of Escrow Agent under this Escrow Agreement. Contractor warrants that with respect to the Contractor Deposited Software, Escrow Agent's proper administration of this Escrow Agreement will not violate the rights of any third parties. Escrow Agent will conduct a visual inspection upon receipt of any Contractor Deposited Software and associated Appendix B. If Escrow Agent determines that the Contractor Deposited Software does not match the description provided by Contractor represented in Appendix B attached hereto, Escrow Agent will notify Contractor of such discrepancies and notate such discrepancy on the Appendix B. Within five (5) days after receipt of the Contractor Deposited Software, Escrow Agent shall give the Commission written notice of the acceptance of the Contractor Deposited Software into the account. Escrow Agent shall have no responsibility to test, investigate or authenticate such Contractor Deposited Software, its identity or condition, and is entitled to rely upon the foregoing representation of Contractor;

- 3.3 Updates. Contractor shall, promptly upon, but no later than one month after, development or the release thereof, deposit into escrow with Escrow Agent any and all Enhancements, updates, modifications, new releases and other changes and corrections to the Contractor Deposited Software, including, but not limited to, the most recent version of the Contractor Deposited Software, and those other materials as herein required inspection. the Commission shall have the right to inspect the Contractor Deposited Software in escrow upon at least ten (10) Business Days' advance written notice to determine the accuracy, completeness, sufficiency and quality of the Contractor Deposited Software deposited in escrow. The inspection must be conducted during normal business hours with costs and expenses borne by the Party requesting the inspection. The information collected during the audit shall be considered Confidential Information, but may be used to enforce rights under this Escrow Agreement or the Contract. The scope of any such inspection shall be limited to records pertaining to the services being provided to Contractor or the Commission. Neither Contractor nor the Commission shall be granted access to the vault or other secure areas of the Escrow Agent's facility. While a Party and/or its authorized representatives are on Escrow Agent's premises, they agree to comply with Escrow Agent's safety and security policies. To the extent the deposit is incomplete or unsatisfactory as determined by the Commission, the Commission shall notify Contractor of such deficiencies or incompleteness, and Contractor shall promptly cure such deficiencies and/or inaccuracies.

4. Release and Delivery.

- 4.1 Release of the Contractor Deposited Software by Escrow Agent upon Demand. A copy of the Contractor Deposited Software shall be delivered by Escrow Agent to the Commission (the "Release") upon the occurrence of any of the following:

- (a) Contractor notifies Escrow Agent in writing to effect Release to the Commission;
- (b) Escrow Agent receives a written notice from the Commission that one of the following has occurred:
 - (1) the dissolution, liquidation, cessation of business operations or insolvency of Contractor, or the commencement of any action seeking the same;
 - (2) the appointment of a receiver, trustee, interim trustee or other custodian for Contractor or for all or substantially all of Contractor's assets;
 - (3) the commencement of a case by Contractor under the Federal Bankruptcy Code, or the bringing of an action or petition by Contractor seeking relief under the Federal Bankruptcy Code or seeking similar relief or alleging that Contractor is insolvent or unable to pay its debts as they mature;
 - (4) the commencement of a case against Contractor under the Federal Bankruptcy Code, or an action or petition against Contractor is brought under the Federal Bankruptcy Code, or any action is brought seeking similar relief or alleging that Contractor is insolvent or unable to pay its debts as they mature, in each case which is consented to or acquiesced in by Contractor or is not dismissed within 30 days of the date upon which it was instituted; or
 - (5) the Contract is terminated for breach by the Contractor or an Event of Default occurs under the Contract (all as provided therein).

The Parties hereby acknowledge that Escrow Agent shall release Contractor Deposited Software within five (5) business days of receipt of the Commission's request for a Release, and in no event be required to evaluate the validity or accuracy of any such affidavit, statement, or notice.

4.2 Contractor's Right to Object. Within four (4) business days of receiving notice of any of the events described in Section 4.1 above, Escrow Agent shall send to Contractor by certified mail, return receipt requested, a copy of such notice (to the extent possible). Contractor shall have ten (10) days from the date it receives such notice to notify Escrow Agent and the Commission in writing of its objection, if any, to the Release. Such notice shall be on company letterhead and signed by an authorized Contractor representative, and shall specify in detail Contractor's objections to the Release.

- (a) If Contractor sends such written notice of objection to Escrow Agent within such ten (10) day period, Escrow Agent shall notify both Contractor's and the Commission's authorized person(s) (as set forth on the table attached hereto) that there is a dispute to be resolved .
- (b) Notwithstanding Contractor's objection, Escrow Agent shall deliver the Contractor Deposited Software to the Commission in accordance with the Commission's instructions, and the Commission shall be entitled to use and

enjoy the Contractor Deposited Software for the purposes permitted herein and in the Contract.

- (c) This Escrow Agreement shall terminate upon a Release, unless there is an ongoing dispute pursuant to this Escrow Agreement. If there is an ongoing dispute after a Release, this Escrow Agreement shall remain active, pending (i) notice to Escrow Agent of agreement by the Parties of formal resolution of the dispute between the Commission and Contractor, or (ii) re-deposit of the Contractor Deposited Software with Escrow Agent, provided all Service Fees continue to be paid to Escrow Agent by Contractor.
 - (d) If it is agreed or finally determined that the Commission did not have the right to receive the Contractor Deposited Software from Escrow Agent, the Commission shall return the Contractor Deposited Software to Escrow Agent, and the Commission and Contractor shall continue to have any and all rights then available under the Contract.
 - (e) In the event of re-deposit of the Contractor Deposited Software by the Commission after Release, the Commission agrees to be subject to the terms of this Escrow Agreement.
 - (f) In the event the Contractor Deposited Software is returned to Escrow Agent in accordance with the terms of this Escrow Agreement, then Contractor and the Commission acknowledge and agree that Escrow Agent shall have no liability for any claim in connection with the Contractor Deposited Software arising after Release of the Contractor Deposited Software by Escrow Agent to the Commission and prior to return of the Contractor Deposited Software to Escrow Agent to the extent such Release was not a result of a breach of this Escrow Agreement or violation of applicable laws. Escrow Agent shall have no liability in connection with any alteration, modification, loss, damage, destruction or disclosure of the Contractor Deposited Software that occurs after Escrow Agent releases the Contractor Deposited Software to the Commission to the extent such release was not a result of a breach of this Escrow Agreement or violation of applicable laws.
5. Escrow Agent Action. In the event of any dispute between Contractor and the Commission regarding the rights provided hereunder, Escrow Agent shall have no responsibility to become a party to such dispute. In any such instance, Escrow Agent shall not be responsible for any alleged damage suffered or claimed either by Contractor or the Commission as a result of their dispute or as a result of Escrow Agent delivering the Contractor Deposited Software to the Commission.
6. Notices. All notices and requests in connection with this Escrow Agreement shall be provided in accordance with, and upon those terms and conditions as described in, the applicable provisions of the Contract, and notices to Escrow Agent shall be to: _____ . Notwithstanding the above, Contractor and the Commission acknowledge that Escrow Agent has no knowledge of the terms and conditions contained in the Contract and that Escrow Agent's only obligations shall be as set forth herein or in any other writing signed by Escrow Agent.

7. Limitations and Warranties.

- 7.1 Liability of Escrow Agent - Consequential Waiver. **IN NO EVENT SHALL ESCROW AGENT BE LIABLE TO ANOTHER PARTY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE EVEN IF THE POSSIBILITY THEREOF MAY BE KNOWN IN ADVANCE TO ONE OR MORE PARTIES.**
- 7.2 Warranties. **ESCROW AGENT WARRANTS ANY AND ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER.**
- 7.3 Indemnification. With the exception of gross negligence, willful misconduct or intentional misrepresentation on behalf of Escrow Agent, Contractor and the Commission shall, jointly and severally, indemnify and hold harmless Escrow Agent and each of its directors, officers, agents, employees, members and stockholders ("Escrow Agent Indemnitees") from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees directly arising from this Agreement.

8. Miscellaneous

- 8.1 The relationship of Contractor and the Commission established by this Escrow Agreement is that of independent contractors. Nothing in this Agreement shall be construed to create any partnership, joint venture, agency or other similar relationship between Contractor and the Commission. Neither party shall have any right, power or authority to assume, create or incur any expense, liability or obligation, express or implied, on behalf of the other.
- 8.2 No failure or delay of either party to exercise any rights or remedies under this Escrow Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any rights or remedies preclude any further or other exercise of the same or any other rights or remedies.
- 8.3 If any provision of this Escrow Agreement is held invalid or unenforceable in any circumstance by a court of competent jurisdiction, the remainder of this Escrow Agreement, and the application of such provision in any other circumstances and in any other jurisdiction shall not be affected thereby.
- 8.4 This Escrow Agreement will be enforced according to Ohio law without regard to its conflict of laws rules or any other rules directing referral to foreign law or forums. Any action related to this agreement in any way shall be brought exclusively in the _____ Court of _____ County, Ohio.
- 8.5 This Escrow Agreement may be executed in one or more counterparts.
- 8.6 This Escrow Agreement and the terms of the Contract constitute the entire agreement of the parties regarding the subject matter herein, superseding any and all previous agreements and understandings whether oral or written. No

modification or waiver of the provisions of this Escrow Agreement shall be valid or binding on either party unless in writing and signed by both parties.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have duly executed this Escrow Agreement as of the day and year first above written.

THE OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION

By: _____
Name: _____
Title: _____

Contractor:

By: _____
Name: _____
Title: _____

Escrow Agent:

By: _____
Name: _____
Title: _____

EXHIBIT C – CONTRACTOR’S NON-COLLUSION AFFIDAVIT

OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION

State of _____ }
County of _____ } **SS:**

The undersigned, being first duly sworn as provided by law, deposes and says:

1. Their name is _____,
and their office is located at _____.

2. They make this Affidavit with the knowledge and intent that it is to be filed with the Ohio Turnpike and Infrastructure Commission and with the expectation that it will be relied upon by said Commission as consideration and any action which it may take with respect to the bid or proposal accompanying this Affidavit.

3. The undersigned serves in the capacity of _____
Sole Owner, Partner, President, etc.

and in that capacity makes and authorized to make representations and this Affidavit on behalf of:

Full Legal Name of Contractor

a _____ organized under the laws of _____,
Sole Proprietorship, Partnership, Corp, LLC, etc.

and registered to do business with the Ohio Secretary of State

4a. **Sole Proprietorship Only:** The undersigned states that the following is a complete and accurate list of the names and addresses of all individuals having an interest in the contract contemplated under the bid or proposal accompanying this Affidavit: _____

4b. **Partnership Only:** The undersigned states that the following is a complete and accurate list of the names of the general partners of the partnership and all other individuals having an interest in the contract contemplated under the bid or proposal accompanying this Affidavit, including any partners with a five percent (5%) or more equity interest in the partnership (attach additional pages if necessary) _____

4c. **Corporation or Limited Liability Company Only:** The undersigned states that the following is a complete and accurate list of the chief executive officer and all individuals that are expected to have an interest in the contract contemplated under the bid or proposal accompanying this Affidavit, including anyone owning five percent (5%) or more equity interests in the entity submitting the bid or proposal (attach additional pages as necessary):

President (or similar chief executive): _____

Owners with 5% or more equity interest: _____

Additional individuals with an expected interest in the contemplated contract: _____

5. The undersigned represents that no person, firm, agent or employee of the entity identified in paragraph 3, nor anyone else to the knowledge of the undersigned, has retained anyone to solicit or secure affirmative or favorable action by the Commission with respect to the bid or proposal accompanying this Affidavit (except a regularly employed salesman paid for services on a regular schedule of commissions and serving in the usual course of business in soliciting such consideration or action by the Commission without promise or expectation of receiving consideration other than the standard and normal fee, commission, or percentage) under any agreement providing for a bonus, fee, commission, percentage, or other form of payment whatsoever which is in any way contingent upon the action to be taken by the Commission with respect to the bid or proposal.

6. The undersigned represents that no person or firm associated with the entity identified in paragraph 3 has any interest, direct or indirect, in any other proposal or bid submitted with respect to the contract contemplated in the bid or proposal accompanying this Affidavit, except the subcontractors, material suppliers, truckers/haulers disclosed in the SBE Utilization Plan.

7. The undersigned states that the bid or proposal accompanying this Affidavit is a genuine and earnest attempt to contract with the Commission, and is not made in the interest or on behalf of any undisclosed individual, person, partnership, company, association, organization or corporation; that the bid or proposal is not collusive or a sham; that the entity identified in paragraph 3 has not, directly or indirectly, induced or solicited any other entity to submit a false or sham bid or proposal, and has not directly or indirectly, colluded, conspired, connived or agreed with any other respondent to submit a collusive or sham bid or proposal, or to refrain from submitting a bid or proposal; and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference with any person, firm or corporation, to fix the prices of any other responding entity, or to secure any advantage against the Commission or any person, firm or corporation interested in the proposed contract;

8. The undersigned states that the entity identified in paragraph 3 has received the Commission's Ethics Policy; the Ethics Policy has been reviewed by its managerial staff; the terms

and conditions of the Policy are understood; and the entity agrees to comply and assist the Commission in complying with the Policy. Insofar as undersigned knows, no member of the Commission and no employee or agent of the Commission has or will have any interest, either direct or indirect, in the prospective contract contemplated under the bid or proposal accompanying this Affidavit.

Affiant

Printed

Sworn to before me and subscribed in my presence this ____ day of _____, 20__.

Notary Public