

EXHIBIT II
FORM OF 395 TTMS CONTRACT

[SEE ATTACHED]

**TURNKEY LUMP-SUM
DESIGN-BUILD CONTRACT**

**RELATING TO THE I-395 HOV/HOT LANES TOLLING AND TRAFFIC
MANAGEMENT SYSTEM**

BETWEEN

**95 EXPRESS LANES LLC,
AS CONCESSIONAIRE**

AND

**TRANSURBAN (USA) INC.,
AS CONTRACTOR**

DATED AS OF FEBRUARY [___], 2017

TABLE OF CONTENTS
(continued)

Page

ARTICLE 1	DEFINITIONS.....	1
1.1	Definitions.....	1
ARTICLE 2	CONTRACTOR’S TTMS WORK AND OTHER OBLIGATIONS OF CONTRACTOR	20
2.1	TTMS Work to be Performed	20
2.2	Contractor’s Assumption of Risk for Project Site Conditions; No Concessionaire’s Warranties for Site Information.....	34
2.3	Commencement of the TTMS Work	35
2.4	Standard of Performance.....	35
2.5	Compliance with Laws	35
2.6	Lenders’ Technical Advisor.....	35
2.7	Safety Precautions.....	35
2.8	Federal and State Requirements.....	36
2.9	Ethical Standards	36
2.10	Concessionaire’s Right to Carry Out TTMS Work	37
2.11	Concessionaire Approvals; Technical Requirements	37
2.12	Department and Concessionaire Oversight.....	38
ARTICLE 3	SUBCONTRACTS	38
3.1	395 Project Subcontractors	38
3.2	Payments to Subcontractors.....	39
3.3	Subcontractor Warranties.....	39
3.4	No Privity.....	40
3.5	Subcontracts.....	40
3.6	Review and Approval Not Relief of Contractor’s Liability.....	40
ARTICLE 4	PRICE AND PAYMENT	40
4.1	Contract Sum and Allowances.....	40
4.2	Payment Schedule.....	41
4.3	Final Payment	42
4.4	Termination Payment.....	43
4.5	All Payments Subject to Release of Liens	44
4.6	Payment or Use Not Acceptance	44
4.7	Set-Off.....	44
4.8	[Reserved].....	45
4.9	Letter of Credit.....	45
ARTICLE 5	CONCESSIONAIRE’S OBLIGATIONS.....	46
5.1	Representatives	46

TABLE OF CONTENTS
(continued)

	<u>Page</u>
5.2 Project Right of Way; TTMS Work Site	46
5.3 Governmental Approvals	47
5.4 Payments of Contract Sum.....	47
5.5 Utilities.....	47
5.6 Support Facilities	47
5.7 Concessionaire-Supplied Equipment and Facilities.....	47
 ARTICLE 6 COMMISSIONING, COMPLETION AND ACCEPTANCE OF TTMS PROJECT.....	 47
6.1 TTMS Project Commissioning	47
6.2 TTMS Project Start-Up.....	48
6.3 Performance Tests.....	48
6.4 Completed Performance Test.....	48
6.5 395 Service Commencement of the TTMS Project	49
6.6 395 Final Completion of the TTMS Project	50
6.7 Concessionaire’s Punch List.....	52
6.8 Failure to Achieve 395 Service Commencement by 395 Guaranteed Service Commencement Date; 395 Service Commencement Recovery Plan	52
6.9 Acceptance by Concessionaire Not a Release of Contractor.....	52
 ARTICLE 7 LATE COMPLETION PAYMENTS; LANE CLOSURE PAYMENT.....	 53
7.1 395 Guaranteed Service Commencement and 395 Guaranteed Final Completion.....	53
7.2 Late Completion Payments	53
7.3 Payment of Late Completion Payments.....	54
7.4 Late Completion Payments for Delay Only.....	54
7.5 Lane Closure Liquidated Damages	54
7.6 Limitation on Liquidated Damages	55
7.7 Liquidated Damages Reasonable.....	55
 ARTICLE 8 RESERVED	 55
 ARTICLE 9 LIABILITY AND DAMAGES	 55
9.1 Limitation of Certain Contractor Liabilities	55
9.2 CONSEQUENTIAL DAMAGES	56
9.3 Further Limitation of Liability.....	56
 ARTICLE 10 WARRANTIES	 56
10.1 Warranties	56
10.2 Concessionaire’s Right to Proceed	58
10.3 No Liens or Encumbrances.....	58

TABLE OF CONTENTS
(continued)

	<u>Page</u>
10.4 EXCLUSIVE REMEDIES	59
ARTICLE 11 EXCUSED PERFORMANCE EVENTS	59
11.1 Excused Performance.....	59
11.2 Disputes; Burden of Proof	59
ARTICLE 12 SCOPE CHANGES	60
12.1 Scope Change Orders.....	60
12.2 Scope Change by Concessionaire	61
12.3 Reserved.....	62
12.4 Scope Change by Contractor	62
12.5 Scope Changes Due to CA Delay Events	62
12.6 Scope Changes Due to CA Compensation Events.....	64
12.7 Scope Changes Due to Concessionaire-Caused Delay	67
12.8 Work Orders.....	67
12.9 Performance of Scope of Changes.....	67
12.10 Scope Changes Due to Contractor Error.....	67
12.11 Familiarity with Conditions	67
12.12 Compliance with 395 Guaranteed Service Commencement Date.....	68
12.13 395 Design-Build Contract Modifications.....	68
ARTICLE 13 INDEMNIFICATION.....	68
13.1 Indemnities of Contractor	68
13.2 Indemnities of Concessionaire.....	69
13.3 Defense and Indemnification Procedures	69
13.4 Action in Case of Injunction.....	70
13.5 Survival.....	71
ARTICLE 14 INSURANCE.....	71
14.1 Contractor-Provided Insurance	71
14.2 General Liability Owner Controlled Insurance Policy	72
14.3 Builder’s Risk	73
14.4 Pollution Liability Coverage.....	74
14.5 Contractor Provided Coverage Amounts	74
14.6 Contractor General Requirements.....	75
14.7 Insurance Closeout Process.....	76
ARTICLE 15 SUSPENSION OF TTMS WORK; TERMINATION	76
15.1 Suspension of the TTMS Work	76
15.2 Termination of Contractor for Cause.....	78
15.3 Concessionaire Default	80
15.4 Termination Due to Significant Force Majeure Event.....	81

TABLE OF CONTENTS
(continued)

	<u>Page</u>
15.5 Requirements Following Termination	82
15.6 Surviving Obligations	83
ARTICLE 16 ASSIGNMENTS.....	83
16.1 Assignment	83
16.2 Successors and Assigns.....	83
ARTICLE 17 DESIGN DOCUMENTATION.....	83
17.1 Concessionaire’s Review	83
17.2 Final As-Built Drawings and Documentation.....	84
17.3 Ownership	84
17.4 Use of Documents by Contractor.....	84
ARTICLE 18 CONFIDENTIAL INFORMATION	85
18.1 Confidentiality	85
18.2 Survival.....	85
18.3 Publicity Releases; Information.....	85
ARTICLE 19 DISPUTE RESOLUTION.....	86
19.1 Arbitration; Other Actions	86
19.2 Common Issue in Dispute under the Comprehensive Agreement or the 395 Design-Build Contract	86
19.3 Continuation of TTMS Work.....	87
ARTICLE 20 COST RECORDS.....	87
20.1 Maintenance of Records	87
20.2 Inspection of Books, Records and Audit Rights.....	87
ARTICLE 21 INDEPENDENT CONTRACTOR.....	87
21.1 Contractor as Independent Contractor	87
ARTICLE 22 REPRESENTATIVES AND WARRANTIES OF CONTRACTOR.....	88
22.1 Representatives and Warranties.....	88
ARTICLE 23 REPRESENTATIVES AND WARRANTIES OF CONCESSIONAIRE	90
23.1 Representatives and Warranties.....	90
ARTICLE 24 MISCELLANEOUS	91
24.1 Estoppel Certificate.....	91
24.2 Waivers	91

TABLE OF CONTENTS
(continued)

	<u>Page</u>
24.3 Governing Law	91
24.4 Severability	91
24.5 Notice	92
24.6 Headings	92
24.7 Entire Agreement	92
24.8 Amendments	92
24.9 Conflicting Provisions	92
24.10 No Third Party Rights	93
24.11 Rule of Interpretation	93
24.12 Source Code Escrow	93
24.13 Survival of Provisions	94
24.14 Title to the TTMS Project	94
24.15 DBE and SWAM Reporting	95
24.16 Contracting Requirements	95
24.17 Time of the Essence	96
24.18 Exhibits	96

EXHIBITS

Exhibit A	—	Form of Notice to Proceed
Exhibit B	—	Form of Contractor’s Final Lien Waiver
Exhibit C	—	Form of Subcontractor’s Final Lien Waiver
Exhibit D	—	Form of Contractor’s Interim Lien Waiver
Exhibit E	—	Form of Subcontractor’s Interim Lien Waiver
Exhibit F	—	Reserved
Exhibit G	—	Form of Scope Change Order
Exhibit H	—	Form of Letter of Credit
Exhibit I	—	DBE/SWaM Plan
Exhibit J	—	Maximum Cumulative Drawdown Schedule
Exhibit K	—	Known Pre-Existing Hazardous Substances (<i>same as ARCA Exhibit T</i>)
Exhibit L	—	Payment and Values Schedule
Exhibit M	—	TTMS Work Schedule
Exhibit N	—	TTMS Special Provisions
Exhibit O	—	TTMS Interface Plan
Exhibit P	—	Scope of Work
Exhibit Q	—	Schedule of Submittals
Exhibit R	—	OCIP Manual
Exhibit S	—	Equipment Requiring Concessionaire’s Approval
Exhibit T	—	Known Geotechnical Conditions (<i>same as ARCA Exhibit S</i>)
Exhibit U	—	Scope of Early Work
Exhibit V	—	Federal Requirements (<i>same as ARCA Exhibit U</i>)
Exhibit W	—	Form of 395 Service Commencement Certificate
Exhibit X	—	Form of 395 Final Completion Certificate
Exhibit Y	—	Reserved
Exhibit Z	—	Technical Requirements (<i>same as ARCA Exhibits C-3 and C-4</i>)
Exhibit AA	—	Reserved

Exhibit BB	—	Form of 395 Design-Build Contract
Exhibit CC	—	Reserved
Exhibit DD	—	Reserved
Exhibit EE	—	Quality Management Requirements

THIS TURNKEY LUMP-SUM DESIGN-BUILD CONTRACT RELATING TO THE I-395 HOV/HOT LANES TOLLING AND TRAFFIC MANAGEMENT SYSTEM, dated as of February [], 2017, is made by and between 95 Express Lanes LLC, a Delaware limited liability company, as “**Concessionaire**,” and Transurban (USA) Inc., a Delaware corporation, as “**Contractor**.”

WITNESSETH:

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

WHEREAS, Concessionaire and the Department have entered into a First Amendment to the Comprehensive Agreement (as defined below), a Second Amendment to the Comprehensive Agreement (as defined below), and are expected to enter into the Amended and Restated Comprehensive Agreement (as defined below) that will govern the design, development, construction, operation and maintenance of the 395 Project;

WHEREAS, Concessionaire and Design-Builder entered into the 395 Design-Build Contract whereby Design-Builder has agreed to fulfill certain of Concessionaire’s design-build construction obligations under the Second Amendment and Amended and Restated Comprehensive Agreement for the design, development and construction of the 395 Project; and

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

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

ARTICLE 1

DEFINITIONS

1.1 Definitions. As used in this Agreement, the following terms shall have the meanings indicated (such meanings as necessary to be equally applicable to both the singular and plural forms of the terms defined).

“**395 Baseline Schedule**” has the meaning set forth in the Comprehensive Agreement and shall be consistent with the “Baseline Schedule” as updated and agreed to under the 395 Design-Build Contract.

“**395 Corridor**” means the portion of Interstate 395 located within the State with a southern terminus approximately one mile north of Route 648 (Edsall Road) and a northern terminus approximately at the Virginia shore line of the Potomac River.

“**395 Design-Build Contract**” means Part 3 395 Design-Build Contract, Part 4 General Conditions of Contract, and Part 5 Division I Amendments to the Standard Specifications by and between Concessionaire and Design-Builder, and any other parts, exhibits and schedules thereto, as in effect on the Agreement Date, in the form of Exhibit BB attached hereto.

“**395 Final Completion**” means the satisfaction by Contractor of the requirements set forth in Section 6.6.1 hereof.

“**395 Final Completion Certificate**” means, a certificate of Contractor in the form of Exhibit X, delivered to Concessionaire certifying that 395 Final Completion of the entire TTMS Project has occurred.

“**395 Guaranteed Final Completion Date**” has the meaning set forth in Section 6.6.3 hereof.

“**395 Guaranteed Service Commencement Date**” means the date set forth in the 395 Baseline Schedule, as such date may be extended hereunder; provided that a new 395 Guaranteed Service Commencement Date may be established pursuant to the 395 Service Commencement Recovery Plan proposed by Contractor and approved by (i) Concessionaire pursuant to Section 6.8 hereof, and as such date may be extended for CA Delay Events from time to time in accordance with the terms of the Comprehensive Agreement.

“**395 Long Stop Date**” means the date that is 365 days after the 395 Guaranteed Final Completion Date, as such date may be extended .

“**395 Project**” has the meaning given to such term in the Comprehensive Agreement.

“**395 Service Commencement**” means the opening of the 395 Project for normal and continuous operations and use by the travelling public, after occurrence of all the events and satisfaction of all the conditions therefor set forth in Section 9.02(f) of the Comprehensive Agreement.

“**395 Service Commencement Certificate**” means, a certificate of Contractor in the form of Exhibit W, delivered to Concessionaire certifying that 395 Service Commencement has been achieved.

“**395 Service Commencement Date**” means the date on which 395 Service Commencement is achieved under the Comprehensive Agreement.

“**395 Service Commencement Recovery Plan**” shall have the meaning set forth in Section 6.8.

“**Additional Contractor Delay Payments**” shall have the meaning set forth in Section 7.2.2.

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

“**Agreement**” means this Turnkey Lump-Sum Design-Build Contract Relating to the I-395 HOV/HOT Lanes Tolling and Traffic Management System, all written amendments, modifications and supplements hereto, and all Exhibits attached hereto, all of which by this reference are incorporated herein.

“**Agreement Date**” means the date on which this Agreement is executed and delivered by the Parties.

“**Amended and Restated Comprehensive Agreement**” means that certain Amended and Restated Comprehensive Agreement Relating to the I-95/395 HOV/HOT Lanes Project, to be executed by and between the Department and Concessionaire, and all exhibits and schedules thereto, as supplemented and amended from time to time.

“**Applicable Standards**” means those standards, special provisions and reference guides (including all supplements, errata, revisions and interims) applicable to the TTMS Work listed in Attachment 1.5a to the Technical Requirements in such versions in effect as of the date hereof or as otherwise noted in Attachment 1.5a to the Technical Requirements; provided, however, that if any portion of such standards, special provisions and reference guides conflicts with or is less stringent than Laws or other requirements in this Agreement, 395 Design-Build Contract or Comprehensive Agreement as applicable, such conflicting or less stringent portions of such standards, special provisions and reference guides shall not be deemed “applicable,” unless expressly provided by this Agreement.

“**Approved for Construction (AFC) Documents**” means all drawings, specifications, revisions thereto, and any other items necessary to construct the TTMS Work, sealed by a professional engineer licensed by the State as necessary.

“**Bank Rate**” means the prime rate of interest announced publicly by The Wall Street Journal (or its successors) as the so-called “prime rate.”

“**Business Day**” means any day on which the Department is officially open for business.

“**CA Compensation Event**” has the meaning given to the term “**Compensation Event**” as defined in the Comprehensive Agreement.

“**CA Compensation Event Notice**” has the meaning set forth in Section 12.6.1.1 hereof.

“**CA Delay Event**” has the meaning given to the term “Delay Event” as defined in the Comprehensive Agreement, except the term Force Majeure Event (as defined in the

Comprehensive Agreement) shall be replaced with Excused Performance Event as defined herein.

“**CA Delay Event Notice**” has the meaning set forth in Section 12.5.1.1 hereof.

“**Change in Law**” means (a) the enactment of any Law after the Agreement Date or (b) any change, amendment to, repeal or revocation of any Law or in the interpretation or application thereof by any Governmental Authority after the Agreement Date; excluding, however, any change in or new Law enacted but not yet effective as of the Agreement Date.

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

“**Claim**” means any and all claims, disputes, disagreements, causes of action, demands, suits, proceedings, damages, injuries, liabilities, obligations, losses, costs and expenses.

“**Commencement Date**” has the meaning set forth in Section 2.3.2 hereof.

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

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

“**Comprehensive Agreement**” means the Comprehensive Agreement Relating to the I-95 HOV/HOT Lanes Project, dated as of July 31, 2012, entered into by and between Concessionaire and the Department, and all exhibits and schedules thereto, as supplemented, restated or amended from time to time.

“**Concessionaire**” means 95 Express Lanes, LLC, a Delaware limited liability company, and its successors and permitted assigns as Concessionaire hereunder.

“**Concessionaire-Caused Delay**” means a delay or failure by Concessionaire in the performance of its obligations under this Agreement, in the performance of its obligations under the 395 Design-Build Contract, or any contractor, agent or representative of Concessionaire (or anyone other than Contractor or any Subcontractor acting at the direction thereof, including Design-Builder), in each case that is not permitted under or excused by this Agreement, as applicable, and in each case only if the performance of the TTMS Work by Contractor is actually delayed as a result of such delay, failure or interference or if the cost to Contractor to perform the TTMS Work is increased as a result of such delay, failure or interference. Delays or failures by Concessionaire that are attributable to the failure of Contractor (or any Subcontractor) to perform its obligations in accordance with this Agreement shall not constitute Concessionaire-Caused

Delays. For the avoidance of doubt, no CA Compensation Event or CA Delay Event shall be deemed to constitute a Concessionaire-Caused Delay.

“Concessionaire Default” means any of the events set forth in Section 15.3.1 hereof.

“Concessionaire Indemnitee” means Contractor, its subsidiaries and Affiliates, and the directors, officers, agents, employees, successors or assigns of each of them.

“Concessionaire’s Approval” means the right of Concessionaire to review and approve the items set forth on Exhibit Q or another matter as expressly provided in this Agreement or the Technical Requirements (which approval by Concessionaire may be contingent upon its receipt of the Department’s approval to the extent required under the Comprehensive Agreement, or as otherwise designated on Exhibit Q). Subject to Section 2.11, Contractor shall submit items of TTMS Work subject to Concessionaire’s Approval by the date specified in this Agreement, the Technical Requirements or in Exhibit Q, or if a date is not specified, as agreed between Concessionaire and Contractor, and in all cases allowing for at least four (4) business days for Concessionaire’s review (unless a longer period is specified elsewhere in this Agreement) before any submittals to the Department, and Concessionaire shall provide its written approval or disapproval thereof or otherwise respond within thirty (30) days of such submission, unless another time period is specified in Exhibit Q, the Technical Requirements or in this Agreement. If Concessionaire determines to deny its approval, it shall provide a summary in reasonable detail of the reasons for its determination. If Concessionaire does not respond within the time allotted, Concessionaire’s Approval shall be deemed to have been given unless otherwise provided in Exhibit Q, the Technical Requirements or in this Agreement with respect to the approval of such item. In the event of deemed disapproval, Concessionaire will provide, within nineteen (19) days after a request by Contractor therefor, its rationale for such deemed disapproval in reasonable detail. Except as otherwise specified in this Agreement, Exhibit Q or the Technical Requirements and subject to Section 2.11, if Concessionaire denies its approval, Contractor shall as promptly as reasonably possible resubmit items subject to Concessionaire’s Approval, and Concessionaire shall provide its written approval or denial thereof within nineteen (19) days of such re-submission, unless another time period is specified in Exhibit Q, the Technical Requirements or in this Agreement. Unless the Parties expressly agree otherwise in writing, Concessionaire’s Approval of any aspect of the TTMS Work (whether deemed or actual) shall not affect Contractor’s obligation to provide the complete TTMS Project in accordance with the requirements of this Agreement or any of Contractor’s other obligations hereunder, or change the scope of TTMS Work set forth in the Scope of Work, or reduce, increase or waive Contractor’s obligations under this Agreement and its independent responsibility for performance of the TTMS Work hereunder or for any acts or omissions of the Contractor’s design professionals or other Subcontractors engaged by Contractor to perform the TTMS Work, or constitute a waiver of Concessionaire’s rights with respect thereto. Each of Concessionaire’s Approval is given by Concessionaire in reliance upon, and subject to, full and satisfactory performance by Contractor of its obligations hereunder.

“Concessionaire’s Project Director” has the meaning set forth in Section 5.1 hereof.

“Concessionaire’s Punch List” means an itemized list of TTMS Work prepared (and periodically revised) by Concessionaire, and submitted to Contractor, setting forth the items of

TTMS Work which remain to be completed after 395 Service Commencement has been achieved and before 395 Final Completion, the existence, correction and completion of which will have no material or adverse effect on the normal, uninterrupted and safe use and operation of the TTMS Project, or the 395 Project.

“Concessionaire’s Review” means the right of Concessionaire to review the items set forth on Exhibit Q or inspect any aspect of the TTMS Work or another matter specified in this Agreement (which review may include review or inspection by the Department to the extent required under the Comprehensive Agreement, or as otherwise designated on Exhibit Q). Contractor shall submit items of TTMS Work subject to Concessionaire’s Review to Concessionaire by the applicable date specified in this Agreement or in Exhibit Q, or if a date is not specified, as agreed between Concessionaire and Contractor), and in all cases allowing for at least four (4) business days for Concessionaire’s review (unless a longer period is specified elsewhere in this Agreement) before any submittals to the Department) and Concessionaire shall provide its comments thereon, if any, within thirty (30) days of such submission, unless another time period is specified in Exhibit Q or in this Agreement. If Concessionaire fails to respond within the time allotted, Concessionaire’s Review shall be deemed to have been made, unless otherwise provided in Exhibit Q or this Agreement with respect to such item. Except as otherwise specified in this Agreement, Exhibit Q or the Technical Requirements and subject to Section 2.11, if Concessionaire’s response requires re-submittal, Contractor shall as promptly as reasonably possible resubmit items subject to Concessionaire’s Review, and Concessionaire shall provide its written response thereto within nineteen (19) days of such re-submission, unless another time period is specified in Exhibit Q, the Technical Requirements or in this Agreement. Unless the Parties expressly agree otherwise in writing, Concessionaire’s Review of any aspect of the TTMS Work (whether deemed or actual) shall not affect Contractor’s obligation to provide the complete TTMS Project in accordance with the requirements of this Agreement or any of Contractor’s other obligations hereunder, or change the scope of TTMS Work set forth in the Scope of Work, or reduce, increase or waive Contractor’s obligations under this Agreement and its independent responsibility for performance of the TTMS Work hereunder or for any acts or omissions of the Contractor’s design professionals or other Subcontractors engaged by Contractor to perform the TTMS Work, or constitute a waiver of Concessionaire’s rights with respect thereto.

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

“Concessionaire’s Work Representative” has the meaning set forth in Section 5.1 hereof.

“Construction Documentation” means all Design Documentation, AFC Documents, and all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary for construction of the TTMS Project included in the TTMS Work in accordance with the Agreement (including the Technical Requirements).

“Construction Manager” means a person employed by Contractor to supervise and coordinate the prosecution of the TTMS Work at the Project Right of Way on behalf of

Contractor. The Construction Manager may or may not be the same individual as the Project Manager.

“**Construction Quality Management Plan**” means the quality plan developed by Contractor that provides the organization, relationship and procedures that define clear lines of responsibility and well defined approach for meeting requirements for the TTMS Work and consistent with Concessionaire’s Quality Management Requirements.

“**Contract Sum**” has the meaning set forth in Section 4.1.1 hereof.

“**Contract Sum Adjustment**” has the meaning set forth in Section 12.6.2.1 hereof.

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

“**Contractor Default**” means any of the events set forth in Section 15.2.1 hereof.

“**Contractor ETTM Equipment**” means the automatic vehicle identification equipment, video monitoring equipment, vehicle occupancy detection equipment, toll violator systems, and electronic toll collection equipment, including its components, systems and subsystems, the transportation management system equipment, communications equipment, and all associated hardware and physical infrastructure and other computer hardware and software necessary to meet the performance specifications for ETTM, other than performance specifications required for Concessionaire-Supplied Equipment and Facilities. For the avoidance of doubt, the Contractor ETTM Equipment excludes the Concessionaire-Supplied Equipment and Facilities.

“**Contractor Indemnitee**” means Concessionaire, the State Indemnitees, the Financing Parties, the Lenders’ Technical Advisor, each of their subsidiaries and Affiliates (excluding the Contractor), and the directors, officers, agents, employees and successors of each of them.

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

“**Contractor Party**” means Contractor and any Affiliate and any agents, Representatives, officers, directors, employees, Subcontractors, suppliers and materialmen of the Contractor or any Affiliate, excluding Concessionaire.

“**Contractor’s Punch List**” means an itemized list of TTMS Work prepared (and periodically revised) by Contractor, and submitted to Concessionaire, setting forth the items of TTMS Work which remain to be completed with respect to the TTMS Project after 395 Service Commencement has been achieved and before 395 Final Completion, the existence, correction and completion of which will have no material or adverse effect on the normal, uninterrupted and safe use and operation of the TTMS Project.

“**Contractor Required Coverage**” means the insurance coverages that Contractor and Subcontractors are required to provide at their own expense in compliance with Article 14 of this Agreement.

“**CPI**” means the “Consumer Price Index – U.S. City Averages for all Urban Consumers, All Items” (not seasonally adjusted), or its successor, as published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor; *provided*, that if the CPI is changed so that the base year of the CPI changes, the CPI will be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor. If the CPI is discontinued or substantially altered, the applicable substitute index will be that chosen by the Secretary of the Treasury for the Department of Treasury’s Inflation-Linked Treasuries as described at 62 Fed. Reg. 846-847 (Jan. 6, 1997), or if no such securities are outstanding, will be determined by the Parties in accordance with general market practice at that time.

“**Critical Path**” means the longest chain(s), in terms of time, of logically connected activities on a TTMS Work Schedule ending with 395 Final Completion.

“**DBE**” means disadvantaged business enterprise.

“**Demobilization Costs**” means the amount necessary to reimburse the reasonable out-of-pocket and documented costs and expenses incurred by Contractor as result of the occurrence of a Significant Force Majeure Event, including its reasonable costs to demobilize and terminate Subcontracts between Contractor and third parties or Affiliates, excluding Concessionaire, for performance of TTMS Work, excluding Contractor’s non-contractual liabilities and indemnity liabilities (contractual or non-contractual) to third parties or Affiliates, excluding Concessionaire.

“**Department**” means the Virginia Department of Transportation, an agency of the State, and any other state agency succeeding to the powers, authorities and responsibilities of the Department invoked by or pursuant to the Comprehensive Agreement.

“**Department-Caused Delay**” means:

(a) a delay or failure by the Department in performing any of its material obligations pursuant to the to the Comprehensive Agreement; or

(b) performance of work by the Department or its Contractors (other than Concessionaire, Concessionaire’s contractors other than Contractor or its Subcontractors) within or immediately adjacent to the 395 HOT Lanes (as defined in the Comprehensive Agreement) or the Project Right of Way that causes physical damage to the 395 HOT Lanes, the TTMS Work or the work of the Design-Builder or limits access to the Right of Way, and such physical damage or limited access delays the TTMS Work;

provided, however, that a Department-Caused Delay shall specifically exclude a delay attributable to:

(1) the submission of incomplete documentation by Contractor or the Design-Builder (directly or through Concessionaire) for the Department’s review under the Comprehensive Agreement;

(2) required review of Governmental Approvals from other Governmental Authorities necessary or appropriate to the Department’s review;

- (3) failure by the Department to obtain appropriation and allocation of public funds;
- (4) submittals or requests that are “deemed approved” under the Comprehensive Agreement if no response is provided within the applicable timeframe; or
- (5) an Excused Performance Event.

“**Department Change**” means (a) a change to the work of the Design-Builder or TTMS Work pursuant to a “Change Order” (as defined in the Comprehensive Agreement) or a Directive Letter issued pursuant to the Comprehensive Agreement and (b) any other event that the Comprehensive Agreement expressly states will be treated as a Department Change.

“**Design-Builder**” means The Lane Construction Corporation, a Connecticut Corporation.

“**Design Documentation**” means such plans, drawings, specifications and other design documentation (including design standards, design or durability reports, models, samples and calculations) in computer readable and written formats prepared by or on behalf of Contractor for the purposes of the performance of the TTMS Work or any component thereof in accordance with this Agreement (including the Technical Requirements).

“**Design Quality Management Plan**” means the quality plan developed by Contractor that provides the organization, relationship and procedures that define clear lines of responsibility and well defined approach for meeting TTMS Project requirements and innovation in design approach, as described in more detail in the Technical Requirements, and consistent with Concessionaire’s Quality Management Requirements.

“**Document Management Plan**” means the plan developed by Contractor to define the document management approach for all Work Product, consistent with Concessionaire’s document management plan.

“**Dollar**” or “**\$**” shall mean the legal currency of the United States of America.

“**Early Work**” means the work identified in Exhibit U to be performed after issuance of LNTP and before Notice to Proceed.

“**Environmental Assessment**” means the Environmental Assessment document (and supporting technical reports) for the 395 Project dated September 18, 2016.

“**Escrow Agent**” has the meaning set forth in the Comprehensive Agreement.

“**Escrow Agreement**” means the Amended and Restated Escrow Agreement dated as of April 31, 2015 among the Concessionaire, the Department and the Escrow Agent, as it may be amended or supplemented from time to time.

“**ETTM**” means electronic toll and traffic management.

“ETTM Facilities” means the administration/operations building, toll gantries and technical cabinets, utility connections, lighting facilities and other facilities associated with electronic toll and traffic management.

“ETTM System” means the ETTM Facilities, the Concessionaire-Supplied Equipment and Facilities, the Contractor ETTM Equipment and the Software which monitors, controls or executes operation of the Contractor ETTM Equipment, all of which will meet the minimum performance criteria established by the Technical Requirements.

“Excluded Operations” means operations conducted away from the Project Right of Way, as well as certain on-site activities including transport, pickup, delivery, or loading or unloading of materials, personnel, parts or equipment or any other items or persons to or from the Project Right of Way by parties who do not otherwise work at the Project Right of Way. Each enrolled party is required to provide its own insurance for losses arising out of Excluded Operations, and is required to report such claims to its own insurance carriers.

“Excused Performance Event” shall have the meaning set forth in Section 11.1 herein.

“eVA Business to Government Vendor System” has the meaning as such term is used in the Comprehensive Agreement.

“E-ZPass” means an electronic toll collection system used in the Commonwealth of Virginia and as part of the “E-ZPass Interagency Group.”

“Federal Requirements” means the provisions required to be part of federal-aid construction contracts relating to highway projects and applicable to the 395 Project, including the provisions set forth in Exhibit V.

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

“Final As-Built Drawings and Documentation” means all drawings, specifications and other documentation, as further described in Section 17.2 hereof, prepared in accordance with the standard of performance described in Section 2.4 hereof, which accurately and completely represent in detail the physical placement of all TTMS Project components and systems as installed or constructed and as they exist at the time of 395 Final Completion.

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

“Financing Parties” means (i) any and all lenders providing the construction, interim or long-term financing (including a leveraged lease or any other refinancing thereof) for the 395 Project, and any trustee or agent acting on their behalf, and (ii) any and all equity investors providing leveraged lease financing or refinancing for the 395 Project, and any trustee or agent acting on their behalf.

“First Amendment to the Comprehensive Agreement” means that certain First Amendment to the Comprehensive Agreement Relating to I-95 HOV/HOT Lanes Project, dated as of May 2, 2016 by and between the Department and Concessionaire.

“FM Termination Payment” has the meaning set forth in Section 15.4 hereof.

“FONSI” means the Finding of No Significant Impact related to the 395 Project issued by the FHWA.

“General Warranty” has the meaning set forth in Section 10.1.1 hereof.

“Good Faith Efforts” means the adequate demonstrated effort required by Contractor to achieve the DBE and SWaM goals or other requirements in Article 24, as set forth in Exhibit I.

“Good Industry Practice” means the industry practices and standards that would be exercised by a prudent and experienced designer, engineer or contractor, engaged in the same kinds of undertakings and under similar circumstances as those applying to the TTMS Work.

“Governmental Approvals” means all local, regional, state and federal agreements, studies, findings, permits, approvals, authorizations, certifications, consents, decisions, exemptions, filings, leases, licenses, registrations, rulings and other governmental authorizations required to be obtained or completed under Law prior to undertaking any particular TTMS Work activity contemplated by this Agreement or a Scope Change Order. The term “Governmental Approvals” includes the NEPA Documents.

“Governmental Authority” means any court, federal, state or local government, department, commission, board, bureau, agency or other regulatory or governmental authority, but it does not include the Department.

“GP Lanes” means the general purpose traffic lanes (in either or both directions) along the 395 Corridor.

“Hazardous Environmental Condition” means the presence of any Hazardous Substances on, in, under or emanating from the Project Right of Way that is present at concentrations or in quantities that: (a) may present an imminent or substantial safety or health hazard for Contractor, Concessionaire, the Department or their respective employees, agents, representatives or independent contractors, the general public or the surrounding environment or (b) are required to be removed or remediated as a matter of Law or in accordance with the requirements of any Governmental Authority.

“Hazardous Substances” means, but is not limited to, any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is or could be considered a contaminant, pollutant, dangerous substance, toxic substance, Hazardous Waste, solid waste, hazardous material or hazardous substance which is or becomes regulated by Laws or which is classified as hazardous or toxic under Laws.

“Hazardous Waste” means a waste that is (a) listed as a hazardous waste in 40 CFR Section 261.31 to 261.33, and (b) exhibits one of the following characteristics: ignitability, corrosivity, reactivity or toxicity, or is otherwise defined as a hazardous waste by Law.

“Health and Safety Plan” means the plan developed by Contractor that defines the health and safety activities required during the design and construction of the TTMS Project, as

described in more detail in the Technical Requirements, and consistent with Concessionaire's health and safety plan.

"HOT Lanes" means the high occupancy toll lanes and the associated entry and exit ramps within the Project Right of Way that are separated from the adjacent GP Lanes, and the use of which is restricted pursuant to Section 5.01 of the Comprehensive Agreement.

"HOT Operations Center" means the HOT Lanes operations center as the same may be modified by Contractor pursuant to the terms of Shared Facilities Agreement.

"Indemnifying Party" has the meaning set forth in Section 13.3.1 hereof.

"Indemnitee" means any of the Contractor Indemnitees or the Concessionaire Indemnitees.

"Intellectual Property" means the ETTM books and records, toll-setting and traffic management algorithms, escrow documents, copyrights (including moral rights), trademarks (registered and unregistered), designs (registered, including applications, and unregistered), patents (including applications), circuit layouts, Source Code and Source Code Documentation, plant varieties, business and domain names, inventions, trade secrets, proposals, copyrightable works, customer and supplier lists and information, and other results of intellectual activity, copies and tangible embodiments of all of the foregoing (in whatever form or medium) and licenses granting any rights with respect to any of the foregoing (to the extent assignable), in each case, relating to the TTMS Project.

"ITS" means intelligent transportation system.

"JAMS" means JAMS, The Resolution Experts, a private alternative dispute resolution provider.

"Known Pre-Existing Hazardous Substances" means Hazardous Substances:

- (a) identified and attached hereto as Exhibit K;
- (b) which Contractor should have known were present within the Project Right of Way based on the contents of Exhibit K, as of the Agreement Date; and
- (c) which were actually known by Contractor to be present within the Project Right of Way as of the Agreement Date;

"Lane Closure Payment" has the meaning set forth in Section 7.5 hereof.

"Late Completion Payments" has the meaning set forth in Section 7.2 hereof.

"Late 395 Final Completion Payment" has the meaning set forth in Section 7.2 hereof.

"Late 395 Service Commencement Payment" has the meaning set forth in Section 7.2 hereof.

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

“**Lenders’ Technical Advisor**” means the company or companies (retained by Concessionaire) appointed from time to time by the Financing Parties to act on their behalf in connection with the review of the 395 Project, including the TTMS Work.

“**Letter of Credit**” means an irrevocable, unconditional letter of credit in favor of Concessionaire (with the Department as permitted transferee), in form and content reasonably acceptable to Concessionaire, that:

(a) is payable within one (1) Business Day in U.S. dollars upon presentation of a sight draft and a certificate confirming that Concessionaire has the right to draw under such letter of credit from time to time in the amount of such sight draft and confirming such other matters that may be required under the Letter of Credit, without presentation of any other document, statement or authorization;

(b) is issued by a commercial bank or trust company that (i) has a combined capital and surplus of at least \$1,000,000,000 U.S. Dollars, (ii) is a national banking association, a state bank chartered in one of the states of the United States, or the U.S. branch of a foreign bank, and (iii) is not an Affiliate of Contractor or Concessionaire;

(c) is issued by a commercial bank or trust company that has a current credit rating of at least A- or its equivalent from at least two nationally recognized Rating Agencies (or such other credit rating as is acceptable to Concessionaire in its discretion and approved by it prior to the submission of the letter of credit);

(d) has an initial term as specified in this Agreement;

(e) provides for the continuance or extension of its term for a period of at least one year, or if earlier, until the end of the term for which the Letter of Credit is required or as otherwise provided for in this Agreement; and

(f) provides that the office for presentment of sight drafts specified in the Letter of Credit will be located at a specified street address in the City of New York, New York.

“**LNTTP**” has the meaning set forth in Section 2.3.2 hereof.

“**Losses**” means, with respect to any Person, any losses, liabilities, judgments, damages, fees, penalties, fines, sanctions, charges or out-of-pocket and documented costs or expenses actually suffered or incurred by such Person, including as a result of any injury to or death of persons or damage to or loss of property.

“Maximum Cumulative Drawdown Schedule” means the schedule attached hereto as Exhibit J setting forth the Maximum Cumulative Payment stated as of any month during the TTMS Work Period.

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

“Monthly Progress Report” means a progress report containing the following information: (a) a narrative description of Contractor’s and all Subcontractors’ activities and design, engineering, procurement and construction progress as compared with the TTMS Work Schedule (including an updated TTMS Work Schedule), (b) the information required in Section 2.1.1.2 hereof, (c) a detailed description of the TTMS Work which has been completed, including digital photographs showing the progress of the TTMS Work and a comparison of actual and planned progress, (d) the current status of the TTMS Project and any deviations from scheduled performance, (e) critical Contractor and Design-Builder issues requiring prompt resolution, (f) safety activities and environmental compliance activities, (g) all other applicable information required by Section 1.4.3(B) and (C) of the Technical Requirements and (h) all other information reasonably requested by Concessionaire relating to the TTMS Work.

“NEPA Documents” means the Environmental Assessment and the FONSI.

“Non-Permitted Closure” has the meaning set forth in Section 7.5 hereof.

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

“Notice to Proceed” has the meaning set forth in Section 2.3.1 hereof.

“Open Book Basis” means allowing the Department or Concessionaire to review all underlying assumptions and data associated with each net revenue impact, net cost saving, pricing or compensation or adjustments thereto relating to the TTMS Work, including assumptions as to costs of the TTMS Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, and other items reasonably required by the Department or Concessionaire to satisfy itself as to the reasonableness and accuracy of the amount.

“Operating Manual” has the meaning set forth in Section 2.1.28 hereof.

“OS&S Contractor” means the Person that Concessionaire designates to operate the 395 Project.

“Owner Controlled Insurance Program” or “OCIP” shall have the meaning set forth in Section 14.2 hereof.

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

“Payment and Values Schedule” means the schedule of values of various items of TTMS Work based upon which Scheduled Payments of the Contract Sum will be made by Concessionaire as set forth in Exhibit L hereto, as the same may be adjusted pursuant to this Agreement.

“Performance Test” means the operation of the equipment and applicable systems included in the TTMS Work necessary for operation of the HOT Lanes by Contractor in accordance with the Performance Testing and Commissioning Plan and Program and the provisions of Article 6 hereof for the purposes of determining the TTMS Project’s level of achievement of the conditions to 395 Service Commencement set forth in Section 6.5, and 395 Final Completion set forth in Section 6.6 hereof.

“Performance Testing and Commissioning Plan and Program” means plan and program, developed by Contractor and approved by Concessionaire, for the conduct of Performance Tests; such plan shall also specify when start-up personnel needs to be dispatched for Commissioning and inspection of the TTMS Work.

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

“Pre-Existing Hazardous Substances” means Known Pre-Existing Hazardous Substances and Unknown Pre-Existing Hazardous Substances.

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

“Project Right of Way” means any real property within the 395 Corridor (which term is inclusive of all estates and interests in real property, including easements), which is:

- (a) necessary for performance of the Work, including temporary and permanent easements, and ownership and operation of the 395 Project;
- (b) shown on the approved ROW Acquisition and Relocation Plan; and
- (c) within the lines established by the NEPA Documents, as such limits may be adjusted pursuant to the Comprehensive Agreement.

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

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

“Quality Manager” means a person employed by Contractor who is responsible for overseeing quality assurance and quality control of the TTMS Work and for ensuring that the TTMS Work conforms with the requirements of this Agreement, the Comprehensive Agreement and the 395 Design-Build Contract.

“Quality Plan” means the plan developed by Contractor that defines the quality management systems during the design and construction phases of the TTMS Project, as described in more detail as Quality Management System Plan in the Technical Requirements, and is consistent with Concessionaire’s Quality Management requirements for the 395 Project.

“Remedial Actions” has the meaning set forth in Section 2.1.17.3 hereof.

“Rating Agencies” means any nationally recognized statistical rating organization, such as Moody’s Investor Service, Inc., Fitch Ratings, or Standard & Poor’s Rating Service, a division of The McGraw-Hill Companies, Inc., or any similar entity, or any of their respective successors.

“Representative” means, with respect to any Person, any director, officer, employee, official, lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, contractor, other Person for whom such Person is, under Law, responsible or other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its “Representative.”

“Response” has the meaning set forth in Section 2.11.1 hereof.

“ROW Acquisition and Relocation Plan” has the meaning as such term is used in the Comprehensive Agreement.

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

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

“Scope Change Order” means a written order to Contractor, in the form of Exhibit G hereto, issued and signed by Concessionaire in accordance with the provisions of Article 12 hereof after the execution and delivery of this Agreement, authorizing a Scope Change and, if appropriate pursuant to the terms hereof, an adjustment in one or more of the Scope of Work, the Contract Sum, the TTMS Work Schedule, the 395 Guaranteed Service Commencement Date, the 395 Guaranteed Final Completion Date, the 395 Date, the Payment and Values Schedule, the Maximum Cumulative Drawdown Schedule, or any other amendment of the terms and conditions of this Agreement, the 395 Design-Build Contract and Comprehensive Agreement as applicable.

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

“Second Amendment to the Comprehensive Agreement” means that certain second amendment to the Comprehensive Agreement Relating to the I-95 HOV/HOT Lanes Project dated as of February 22, 2017, by and between the Department and Concessionaire.

“Shared Facilities Agreement” means the Shared Facilities Agreement dated as of July 31, 2012 between the Concessionaire and Capital Beltway Express, LLC.

“Significant Force Majeure Event” has the meaning set forth in the Comprehensive Agreement.

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

“Source Code and Source Code Documentation” mean Software written in programming languages, such as C and Fortran, including all comments and procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object or machine readable code for operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, architectural standards, and commentary, explanations and instructions for compiling, describing the data flows, data structures, and control logic of the software in sufficient detail to enable a trained programmer through study of such documentation to maintain or modify the Software without undue experimentation. Source Code and Source Code Documentation also include all modifications, additions, substitutions, updates, upgrades and corrections made to the foregoing items prior to 395 Final Completion.

“Source Code Escrows” has the meaning set forth in Section 24.12.2.

“Standard of Care” means the performance of the TTMS Work in accordance with prudent industry practices, methods, techniques and standards, and using the degree of care, skill and diligence, that would be expected to be exercised by a prudent, skilled and experienced contractor engaged in the same types of undertakings as the TTMS Project under the same or similar circumstances and conditions as those applying to the design, development and construction of the TTMS Project, all Laws (including, without limitation, the State’s right to work Laws, and to the extent applicable, with all Federal Requirements and Laws applicable to a transportation project that has received or receives federal-aid funds), all Governmental Approvals, all Applicable Standards, Good Industry Practice, the requirements of the Comprehensive Agreement (including the Technical Requirements), the requirements of insurance policies required to be maintained in accordance with this Agreement so as not to knowingly void or omit to take any action that would void any such policy or limit the coverage of any such policy in a way that materially and adversely affects Concessionaire, and the other requirements specified or referred to herein, the 395 Design-Build Contract or Comprehensive Agreement as applicable.

“State” means the Commonwealth of Virginia.

“**State Highway**” means any highway designated a State Highway pursuant to Title 33.2, Chapter 1, Sections 25, 48 and 67, Code of Virginia.

“**State Indemnites**” means the State, the Commonwealth Transportation Board, the Department or any other agency, instrumentality or political subdivision of the State and their respective Representatives.

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

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

“**SWaM**” means small, women and minority-owned businesses.

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

“**Technical Requirements**” means the Technical Requirements attached as Exhibit Z hereto, as the same may be revised by any Technical Requirements Revisions pursuant to the Comprehensive Agreement, and shall be consistent with, to the extent applicable, the Technical Requirements attached as Exhibits C-3 and C-4 to the Comprehensive Agreement.

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

“**Technical Requirements Revisions**” has the meaning set forth in the Comprehensive Agreement.

“**Termination For Cause**” has the meaning set forth in Section 15.2.2 hereof.

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

“**Third Party Claims**” means any Claim asserted against an Indemnitee by any Person who is not a party to this Agreement or an Affiliate of such party.

“**Third Party Hazardous Substances**” has the meaning set forth in the Comprehensive Agreement.

“**TIA**” or “**Time Impact Analysis**” means a time impact analysis, (a) establishing the influence of an event on the TTMS Work Schedule, and will include a fragmentary network, and for events that have not yet occurred (such as proposed changes), the fragmentary network will demonstrate how Contractor proposes to incorporate such event in the TTMS Work Schedule, and (b) demonstrating: (i) the time impact based on the date the event occurred or notice of a proposed change is given to Contractor, (ii) the status of the TTMS Work at such point of time; and (iii) the time computation of all affected activities.

“**TTMS Interface Plan**” means the TTMS Interface Plan attached hereto as Exhibit O governing the schedule and manner in which the Contractor and Design-Builder shall perform their respective responsibilities to timely complete the 395 Project.

“**TTMS Project**” means that part of the 395 Project included in the TTMS Work but excludes such portion of the 395 Project that is expressly excluded from the TTMS Work by the terms of this Agreement and in accordance with the Scope of Work attached as Exhibit P.

“**TTMS Special Provisions**” means the TTMS Special Provisions attached hereto as Exhibit N containing requirements in addition to the Technical Requirements applicable to the TTMS Project.

“**TTMS Work**” has the meaning set forth in Section 2.1 hereof.

“**TTMS Work Period**” means the date commencing on the Commencement Date (or if an LNTP is issued, the date on which Contractor is to commence performance hereunder pursuant to an LNTP) and ending on the date 395 Final Completion occurs under this Agreement.

“**TTMS Work Schedule**” means the construction and design schedule prepared by Contractor under the provisions of Section 2.1.1 hereof, which is to be consistent with the 395 Baseline Schedule, as adjusted pursuant to this Agreement.

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

“**Unknown Pre-Existing Hazardous Substances**” means any Hazardous Substances present on the Project Right of Way or portion thereof as of the date that Contractor assumes responsibility for such Project Right of Way or portion thereof and which are not Known Pre-Existing Hazardous Substances.

“**USDOT**” means the United States Department of Transportation.

“**Utility**” means any public, private, cooperative, municipal or government line, facility or system used for the carriage, transmission or distribution of cable television, electric power, data or other telecommunications, telephone, telegraph, water, gas, oil, petroleum products, steam, chemicals, sewage, storm water not connected with the highway drainage and similar substances that directly or indirectly serve the public. The term “Utility” specifically excludes (a) storm water lines connected with the highway drainage, and (b) traffic signals, street lights, and electrical systems for 395 Project roadways.

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

“**Warranty Period**” has the meaning set forth in Section 10.1.3 hereof.

“**Work**” means collectively, the finance, development, planning, design, acquisition, installation, construction, completion, management, equipment, operation, repair and

maintenance and any other services identified in the Comprehensive Agreement to be performed by Concessionaire under the Comprehensive Agreement.

“**Work Order**” has the meaning set forth in Section 12.9 hereof.

“**Work Product**” means all the data, information, documentation and other work product produced, prepared, obtained or deliverable by or on behalf of Contractor for the TTMS Project, including but not limited to designs, drawings, plans and specifications, record and as-built plans and specifications, engineering documents, analyses, reports and records, agreements and documents (including records of payment and related correspondence, title policies, parcel diaries and all construction documents relating to the TTMS Work), engineers’ and inspectors’ diaries and reports, traffic and revenue studies, and other feasibility data, analyses, studies and reports, correspondence and memoranda relevant to design or construction decisions, contracting plans, mitigation studies and reports, data, assessments, studies and reports regarding Hazardous Substance investigations, testings, borings, monitoring and analyses, manifests regarding handling, storage or transportation of Hazardous Substances, correspondence and agreements relating to Governmental Approvals, change orders, final quantities, pile driving records, records of accidents and traffic management, field test records and reports, concrete pour records, surfacing depth check records, grade and alignment books, cross-section notes, drainage notes, photographs, false work and form plans, records of construction materials, Contractor ETTM Equipment and ETTM Facilities records and reports to the extent relating to the TTMS Work, and any other documents which can be reasonably described as technical or engineering documents. Work Product expressly excludes, however, documents and information which Concessionaire and Contractor mutually agree in writing, or which a court determines, to be exempted or protected from public disclosure and which is not conceived or first reduced to practice for the 395 Project purposes, such as proprietary financial and pricing information of Contractor.

ARTICLE 2

CONTRACTOR’S TTMS WORK AND OTHER OBLIGATIONS OF CONTRACTOR

2.1 TTMS Work to be Performed. Except as otherwise expressly set forth in this Agreement, and subject to the specific provisions of and exclusions set forth in the Scope of Work, Contractor shall perform or cause to be performed any and all work and services required or appropriate in connection with (A) the development and provision of the complete ETTM System specification, (B) the design, engineering, procurement, construction and completion of that portion of the ETTM System included within the Scope of Work (and for avoidance of doubt, excluding the Concessionaire -Supplied Equipment and Facilities), (C) Commissioning, start-up, demonstration and testing of the ETTM System, (D) any modifications to the HOT Operations Center included within the Scope of Work and shall provide all materials, equipment, machinery, tools, labor, supervision, transportation, administration, training and other services and items required to complete and deliver to Concessionaire that portion of the ETTM System included in the Scope of Work, all on a lump-sum, fixed-price, turnkey basis in accordance with the requirements of this Agreement, Laws and Applicable Standards, and (E) Progress design and coordination of TTMS infrastructure needs with Design-Builder in accordance with the

TTMS Interface Plan, TTMS Special Provisions and TTMS Work Schedule (collectively, the “**TTMS Work**”). Notwithstanding the foregoing, the fact that Contractor exercised the Standard of Care shall not excuse Contractor from a breach of any express obligation hereunder or the General Warranty. The TTMS Work does not include the items expressly excluded from the TTMS Work by the terms of this Agreement, or any items excluded from the responsibility of contractor by the Scope of Work. Contractor shall perform or cause to be performed activities necessary to complete the TTMS Project generally described in the TTMS Interface Plan, this Agreement or reasonably inferable from the Comprehensive Agreement. Without limiting the foregoing, Contractor shall perform the following as part of the TTMS Work:

2.1.1 Scheduling and Milestones.

2.1.1.1 TTMS Work Schedule. Contractor shall, within forty-five (45) days after the Commencement Date, submit for Concessionaire’s Approval a proposed updated detailed TTMS Work Schedule, which shall be consistent with the 395 Baseline Schedule of the 395 Design-Build Contract and include, among other things: (i) the order in which Contractor proposes to carry out the TTMS Work, including each stage of design, procurement, manufacture, construction, inspection, testing and Commissioning (ii) applicable information required by the Technical Requirements (iii) the times when submissions and Concessionaire’s Approvals are requested and (iv) schedule design requirements related work to support the 395 Baseline Schedule process. Such proposed TTMS Work Schedule shall be submitted by Contractor to Concessionaire for approval, in the form of one (1) electronic version in the Primavera proprietary exchange format and in any other form requested by Concessionaire. Contractor shall perform the TTMS Work in accordance with the TTMS Work Schedule and shall coordinate and incorporate the schedules of all Subcontractors into the TTMS Work Schedule as they become available.

2.1.1.2 Schedule Updates. Following the conclusion of the process outlined in Section 2.1.1.1, as part of each Monthly Progress Report and in conjunction with the monthly progress meetings required in accordance with Section 2.1.10 hereof, Contractor shall provide Concessionaire with updates to the TTMS Work Schedule meeting the applicable requirements of Section 1.4.3 of the Technical Requirements. If Concessionaire believes that the TTMS Work Schedule needs a specific revision, either in logic, activity duration, TTMS Work breakdown structure, manpower or cost, Concessionaire will request Contractor in writing to make such revisions. Contractor shall respond in writing within five (5) days or such other timeframe as mutually agreed by the Parties, either agreeing with Concessionaire’s proposed revision, and henceforth including it in the next TTMS Work Schedule update, or providing justification why it should not be accomplished. If revisions cannot be agreed upon either through written correspondence or subsequent meetings, Concessionaire and Contractor shall agree to attempt to resolve the issues through the dispute resolution process set forth in Article 19 hereof. If Concessionaire and Contractor cannot agree on any revisions to the TTMS Work Schedule, Contractor shall proceed under the previously approved schedule, subject to the dispute resolution process set forth in Article 19.

2.1.1.3 Schedule Update Format. Contractor shall submit to Concessionaire the TTMS Work Schedule update and narrative in the form of one (1) electronic

version in Primavera proprietary exchange format and in any other standard or customary form reasonably requested by Concessionaire. This process shall continue until 395 Final Completion.

2.1.1.4 395 Service Commencement Recovery Plans. If any Monthly Progress Report shows that 395 Service Commencement is projected to occur thirty (30) days later than the then-current 395 Guaranteed Service Commencement Date, Contractor will, subject to Section 6.8, submit a 395 Service Commencement Recovery Plan for Concessionaire's Review concurrent with the next monthly TTMS Work Schedule update. Such recovery schedule shall (i) include a list of all activities changed, added or deleted along with all logic or sequence changes and an accompanying narrative explaining the nature of the changes as required by Section 1.4.6 of the Technical Requirements and (ii) set forth a revised TTMS Work Schedule that shall be subject to Concessionaire's Approval. Contractor shall respond to Concessionaire's comments in accordance with the process outlined in Section 2.1.1.2 until Concessionaire has approved the revised TTMS Work Schedule. Concessionaire's Review of a recovery plan and Concessionaire's Approval of a revised TTMS Work Schedule shall not affect any of Concessionaire's rights or Contractor's obligations under this Agreement, including Contractor's obligations to pay Late Completion Payments. Once a revised TTMS Work Schedule is reviewed and approved by Concessionaire hereunder, it shall become the TTMS Work Schedule and be used as the basis for subsequent Monthly Progress Reports.

2.1.1.5 395 Final Completion Recovery Plan. If any Monthly Progress Report shows that 395 Final Completion is projected to occur thirty (30) days later than the then-current 395 Guaranteed Final Completion Date, Contractor will submit a written recovery plan for Concessionaire's Review concurrent with the next monthly TTMS Work Schedule update. Such recovery schedule shall (i) include a list of all activities changed, added or deleted along with all logic changes and an accompanying narrative explaining the nature of the changes as required by Section 1.4.6 of the Technical Requirements and (ii) set forth a revised TTMS Work Schedule that shall be subject to Concessionaire's Approval. Contractor shall respond to Concessionaire's comments in accordance with the process outlined in Section 2.1.1.2 until Concessionaire has approved the revised TTMS Work Schedule. Concessionaire's Review of a recovery plan and Concessionaire's Approval of a revised TTMS Work Schedule shall not affect any of Concessionaire's rights or Contractor's obligations under this Agreement, including Contractor's obligations to pay Late Completion Payments. Once a revised TTMS Work Schedule is reviewed and approved by Concessionaire hereunder, it shall become the TTMS Work Schedule and be used as the basis for subsequent Monthly Progress Reports.

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

2.1.2.1 Design. Contractor is responsible for the design of the TTMS Work. Contractor shall also develop and provide the complete ETTM System specification. Design work shall include specification and design for that portion of the ETTM System within

the Scope of Work, preparation of drawings and specifications in accordance with the Scope of Work, and coordination of data systems with the Department and the OS&S Contractor. Contractor expressly acknowledges and agrees that while the Scope of Work sets forth a general guide as to the requirements of the TTMS Project, Contractor shall have full responsibility for the adequacy, safety and stability of the design for the TTMS Work and methods of development, construction, maintenance, testing, Commissioning and completion of the TTMS Project in accordance with this Agreement, the Comprehensive Agreement and the Standard of Care, such that the whole of the TTMS Project is constructed, Commissioned and operational and capable of recording and collecting tolls.

2.1.2.2 Design Documentation. Contractor shall prepare all Design Documentation in computer readable and written formats in full compliance with Applicable Standards, Governmental Approvals and Laws and shall submit those set forth on Exhibit Q for Concessionaire's Review or Concessionaire's Approval (which may include review and approval by Concessionaire or the Department as provided in Exhibit Q). Contractor's obligations with respect to the Design Documentation include fulfilling the obligations of Concessionaire with respect to the TTMS Project under the Comprehensive Agreement solely as they pertain to the Design Documents for the TTMS Work, and Contractor shall coordinate with Concessionaire as appropriate such that Concessionaire may timely and fully perform such obligations. Notwithstanding anything to the contrary in this Agreement, Concessionaire's Review or Concessionaire's Approval (as the case may be) of Design Documentation shall be only a determination whether such documents (and the portions of the TTMS Work represented thereby) on their face meet the standards for the TTMS Work set forth in this Agreement, and shall not be considered an evaluation or determination that such documents and the portions of the TTMS Work represented thereby in fact meet the standards for the TTMS Work or are otherwise satisfactory for their intended purpose. Based on the Scope of Work and that Design Documentation that has received Concessionaire's Approval, Contractor shall prepare comprehensive drawings and specifications setting forth in detail the requirements for the procurement and construction of the TTMS Project. As the drawings and specifications for the TTMS Project are issued and, if applicable, receive Concessionaire's Approval, they shall be clearly identified as Design Documentation. Contractor may, with Concessionaire's Approval, apply for approvals from the Department of interpretive engineering decisions concerning the meaning, scope, interpretation and application of the Technical Requirements. All applications for such approvals shall be in writing. Contractor acknowledges that the Department may issue a written approval of Contractor's proposed interpretive engineering decision, if any (upon which Concessionaire and Contractor may rely), may issue its own interpretive engineering decision, or may disapprove any interpretive engineering decision Contractor proposes.

2.1.2.3 Design Quality Management Plan. Within five (5) days of execution of this Agreement, Contractor shall provide the Design Quality Management Plan to Concessionaire, in a form to be approved by Concessionaire. In the event the Concessionaire request any edits, deletions or additions made to the Design Quality Management Plan, the Contractor shall make such edits, deletions or additions and return to Concessionaire in a timely manner. Within thirty (30) days of the execution of this Agreement, Contractor must provide the Quality Plan to the Concessionaire for the Concessionaire's approval. In the event the Concessionaire requests any changes to the Quality Plan, the Contractor shall make such changes and return to Concessionaire within ten (10) days of such request.

2.1.2.4 Document Management Plan. Within sixty (60) days of the execution of this Agreement, the Contractor must provide the Document Management Plan, to the Concessionaire for the Concessionaire's approval. In the event the Concessionaire request any changes to the Document Management Plan, the Contractor shall make such changes and return to Concessionaire within ten (10) days of such request.

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

2.1.4 Construction. If not already approved by Concessionaire, Contractor shall provide an updated Construction Quality Management Plan for inclusion in the Quality Plan for Concessionaire's Approval no later than sixty (60) days prior to scheduled commencement of construction work at the TTMS Work Site, and shall construct and install the TTMS Project expeditiously and in accordance with the approved Quality Management Plan and the requirements of this Agreement. Contractor shall furnish to Concessionaire Monthly Progress Reports of progress of the TTMS Work, together with monthly TTMS Work plans of activities being performed at the TTMS Work Site and an updated TTMS Work Schedule (if applicable).

2.1.5 Labor Matters.

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

2.1.5.2 Facilities and Other Personnel Requirements. Concessionaire may conduct periodic searches of employees and other persons present at the Project Right of Way, and Contractor may conduct such searches of employees and other persons present at the TTMS Work Site, in each case, including personal and professional possessions, automobiles, trucks, briefcases, lunchboxes and persons for the presence of firearms, alcohol and illegal drugs. Contractor shall immediately notify Concessionaire's Project Director if firearms, alcohol or illegal drugs are found on the TTMS Work Site. Concessionaire shall have the right to require the immediate removal and permanent expulsion from the Project Right of Way and from any work associated with the TTMS Work of any Person that at any time is found in possession of firearms, alcohol or illegal drugs. In addition, Contractor will comply, and to the extent required

by the Comprehensive Agreement will cause its Subcontractors to comply, with the provisions set forth in Exhibit I to this Agreement related to labor, employment and DBE/SWaM-related matters. Contractor must meet any conduct and access requirements set forth by the United States Federal Government necessary to perform any applicable portion of the TTMS Work on or around the Pentagon facility located in Arlington County, Virginia.

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

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

2.1.6 TTMS Work Site. Contractor shall maintain any part of the ETTM Facilities of which it takes sole or shared possession until care, custody and control is transferred to Concessionaire in accordance with the terms of this Agreement.

2.1.7 Governmental Approvals. Contractor shall procure and maintain in full force and effect throughout the term hereof all Governmental Approvals necessary for the TTMS Work, excluding only those Governmental Approvals designated as Concessionaire's responsibility in the Scope of Work. Contractor shall provide copies of all Governmental Approvals and modifications to such Governmental Approvals to Concessionaire upon receipt and shall comply with other requirements related to the permitting applicable to the TTMS Work set forth in the Technical Requirements. In addition, Contractor shall timely provide any data or deliverables necessary for the Concessionaire or the Department to obtain any and all applicable permits associated with access to, and the performance of TTMS Work in or around, the Pentagon facility located in Arlington County, Virginia.

2.1.8 Ownership of Intellectual Property; Royalties and License Fees; Contractor's Marks. Contractor shall pay all applicable and required initial royalties and license fees (it being understood that Contractor is not responsible for ongoing maintenance and support fees) and shall procure for the benefit of Concessionaire or the Department, as applicable, at Contractor's sole expense (other than ongoing maintenance and support fees), the appropriate rights, licenses, agreements and permissions for materials, methods, processes and systems incorporated into the TTMS Project as part of the TTMS Work. In performing the TTMS Work hereunder, Contractor shall not incorporate into the TTMS Project any materials, methods,

processes or systems which involve the use of any confidential information, intellectual property or proprietary rights which Concessionaire, the Department or Contractor does not have the right to use or which may result in Claims or suits against Concessionaire, the Department or Contractor arising out of Claims of infringement of any domestic or foreign patent rights, copyrights or other proprietary rights, or applications for any such rights, or use of confidential information. Any such rights held by Contractor with respect to items incorporated in the TTMS Work shall be assigned or licensed to the Department or Concessionaire, as applicable, at no additional cost to the Department or Concessionaire, in connection with the use or operation of the TTMS Project.

2.1.8.1 All Proprietary Intellectual Property of Contractor shall remain exclusively the property of Contractor, notwithstanding any delivery of copies thereof to Concessionaire. Upon the expiration or earlier termination of, or any assignment by the Concessionaire of its rights under, this Agreement for any reason whatsoever, Concessionaire and the Department shall have a nonexclusive, nontransferable, irrevocable fully paid up license to use the Proprietary Intellectual Property of Contractor solely in connection with the 395 Project. Concessionaire shall not at any time sell any such Proprietary Intellectual Property or use or allow any party to use any such Proprietary Intellectual Property for any purpose whatsoever other than in connection with the 395 Project (except as permitted in accordance with Section 2.1.8.2). Concessionaire shall not disclose any Proprietary Intellectual Property of Contractor (other than to contractors, subcontractors, employees, attorneys and agents in connection with the development and operation of the 395 Project who agree to be bound by any confidentiality obligations of Concessionaire relating thereto) and Concessionaire shall enter into a confidentiality agreement reasonably requested by Contractor with respect to any such Proprietary Intellectual Property. Contractor shall continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

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

2.1.8.3 With respect to any Proprietary Intellectual Property owned by a Person other than Contractor, Concessionaire or the Department, Contractor shall obtain from such owner, concurrently with execution of any contract, subcontract or purchase order with such owner, for Concessionaire and the Department, nonexclusive, nontransferable, irrevocable, fully paid up (other than with respect to ongoing maintenance and support fees) licenses to use such Proprietary Intellectual Property solely in connection with the 395 Project, of at least identical scope, purpose, duration and applicability as the licenses granted by Section 2.1.8.1 above; provided, that the foregoing requirement will not apply to standard, pre-specified manufacturer licenses of mass-marketed products (including software products) or equipment where the license cannot be extended to the Department or Concessionaire using Commercially Reasonable Efforts or to other licenses of products or equipment where the products or equipment are not reasonably necessary for the operation or maintenance of the 395 Project. Contractor shall use Commercially Reasonable Efforts to obtain from such owner a right in favor of the Department to purchase from such owner a nonexclusive, nontransferable, irrevocable,

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

2.1.8.4 Contractor's name or other trademarks, service marks and trade names owned by Contractor (the "**Contractor Marks**") may appear on some of the TTMS Work-related assets, including supplies, materials, stationery and similar consumable items at the Project on the last day of the term hereof. The Parties agree that Contractor shall remain the owner of the Contractor Marks at the end of the term hereof, and Contractor may remove, at its expense, the Contractor Marks prior to the end of the term. If Contractor fails to do so, Concessionaire or the Department will be entitled to remove the Contractor Marks and, in such case, Concessionaire will be entitled to payment from Contractor of its reasonable documented costs (or Concessionaire's costs or the Department's "**Allocable Costs**" (as defined in the Comprehensive Agreement), as applicable) in so doing. Concessionaire acknowledges and agrees that it shall have no right, title, interest or license in the Contractor Marks.

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

2.1.9 Inspection and Expediting. Contractor shall perform all inspection, expediting and quality surveillance that are required for performance of the TTMS Work on a timely basis. Contractor's responsibilities under this Section 2.1.9 shall include, without limitation, inspecting all Contractor-supplied materials and equipment, both on and off the Project Right of Way that comprise or will comprise the TTMS Project or that are to be used in performance of the TTMS Work hereunder. Contractor shall perform a detailed inspection of all TTMS Work in progress at intervals appropriate to the stage of construction or fabrication off the Project Right of Way as is necessary to ensure that such TTMS Work is proceeding in accordance with this Agreement, the 395 Design-Build Contract and the Comprehensive Agreement, and to protect Concessionaire against defects and deficiencies in such TTMS Work. On the basis of such inspections, Contractor shall keep Concessionaire continuously informed of the progress and quality of all TTMS Work and shall provide Concessionaire with written reports of deficiencies revealed through such inspections and of measures proposed by Contractor to remedy such deficiencies. Contractor shall use all reasonable efforts to secure for Concessionaire and the Department or their respective representatives the option of being present at all inspections of the TTMS Work Site. In the event that the progress and quality of the TTMS Work is not proceeding in accordance with this Agreement, the 395 Design-Build Contract or the Comprehensive Agreement, Concessionaire shall be entitled to make recommendations to Contractor for the purpose of remedying such deficiencies. Contractor shall provide Concessionaire with a detailed list of materials and equipment inspection points. Contractor shall provide Concessionaire and the Department with at least five (5) days' prior written notice of all inspections and on a monthly basis, Contractor shall advise Concessionaire

and the Department of inspections planned for the forthcoming month. Concessionaire and the Department, and each of their designated representatives, shall have the right to be present at and participate in all inspections of the TTMS Work or the TTMS Work Site undertaken by Contractor. No inspection performed or failed to be performed by Concessionaire or the Department or any recommendation from Concessionaire or the Department in connection therewith, shall be a waiver of any of Contractor's obligations hereunder or be construed as an approval or acceptance of any TTMS Work hereunder and shall not relieve Contractor of independent responsibility for performance of the TTMS Work hereunder or for any acts or omissions of the Contractor's design professionals or other Subcontractors engaged by Contractor to perform the TTMS Work.

2.1.10 Monthly Progress Meetings. Contractor shall conduct regularly scheduled, monthly progress meetings at the TTMS Work Site throughout design, development, and construction of the TTMS Project beginning the month after the Commencement Date to thoroughly discuss the progress and status of construction with Concessionaire's Work Representative and any other representatives of Concessionaire that Concessionaire desires or the Department may request. Such meetings shall be attended by Contractor's Construction Manager and Project Manager, Concessionaire's representatives and other appropriate representatives of Contractor's staff, and during such meetings, progress during the prior month, as presented in the Monthly Progress Report, shall be reviewed and Contractor shall report information from any key Subcontractors responsible for the TTMS Work completed during the specified duration and the TTMS Work scheduled during the upcoming reporting duration. Concessionaire shall be responsible for preparing, maintaining and distributing minutes of the monthly progress meetings to all attendees for review and approval. In addition, under the Comprehensive Agreement, Concessionaire and the Department are to conduct monthly progress meetings in accordance with the Technical Requirements and Contractor shall attend all such meetings unless otherwise directed by Concessionaire. The Parties acknowledge that all direction to Contractor will be provided by Concessionaire.

2.1.11 Witness Points. The Quality Plan shall set forth a list of agreed witness points for Concessionaire and the Department to witness certain portions of the TTMS Work. At least fourteen (14) days in advance of any witness point, Contractor shall provide Concessionaire with a preliminary notice thereof, and Contractor shall provide a final notice no later than seven (7) days in advance of any witness point. Contractor shall not proceed past an established witness point prior to the date specified therefor in the advance notice unless Concessionaire has witnessed the activity and Contractor is in compliance with its obligations under Section 2.1.9 or Concessionaire has failed to witness or inspect the TTMS Work on the date scheduled, in which case Concessionaire will be deemed to have waived its right to witness such activity and Contractor shall be entitled to proceed with the TTMS Work. Concessionaire's failure to view a witness point shall not be cause for a Concessionaire -Caused Delay.

2.1.12 Uncovering of TTMS Work. If any portion of the TTMS Work should be covered contrary to the written request of Concessionaire or to requirements specifically expressed in the 395 Design-Build Contract or the Comprehensive Agreement, such portion of the TTMS Work shall, if requested in writing by Concessionaire, be uncovered for observation and shall be replaced at Contractor's expense. If any other portion of the TTMS Work has been covered which Concessionaire has not specifically requested to observe prior to being covered,

the Department or Concessionaire may request to see such TTMS Work and it shall be uncovered by Contractor. If such TTMS Work shall be found in accordance with this Agreement, the 395 Design-Build Contract and the Comprehensive Agreement, the cost of uncovering and replacement shall, by appropriate Scope Change Order, be charged to Concessionaire. If such TTMS Work shall be found not to be in accordance with this Agreement, the 395 Design-Build Contract or the Comprehensive Agreement, Contractor shall pay such costs.

2.1.13 Storage and Related Matters. In accordance with the Technical Requirements, Contractor shall warehouse or otherwise provide appropriate storage (in accordance with manufacturers' recommendations) for all materials, supplies and equipment required for performance of the TTMS Work and shall provide for the disposal of all surplus materials brought onto the Project Right of Way by Contractor or any of its Subcontractors.

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

2.1.15 Spare Parts. Contractor may submit for Concessionaire's Approval a proposed list of operating spare parts for all items of the Contractor ETTM Equipment (excluding spare parts for items of Contractor ETTM Equipment installed by Concessionaire) necessary for the first year of operation of the Contractor ETTM Equipment and, following Concessionaire's Approval thereof, shall procure spare parts included in such approved list. The costs of any such spare parts up to a maximum of \$500,000.00 shall be reimbursed by Concessionaire to Contractor. Contractor shall use all reasonable efforts to secure the lowest pricing obtainable for such spare parts and shall procure the spare parts prior to the 395 Guaranteed Service Commencement Date and store them under its control until 395 Final Completion; provided, however, that each such item shall be clearly labeled as a part designated for the TTMS Project. Contractor shall have the right to purchase at its own expense any additional spare parts that Concessionaire does not require Contractor to purchase or is above the \$500,000.00 cap and, to the extent any such additional spare parts are not used prior to 395 Final Completion, shall remain the property of Contractor. Nothing contained herein shall (i) obligate Concessionaire to procure any spare parts, or (ii) be construed to excuse Contractor from the performance of any of its obligations under this Agreement in the event that any particular spare part has not been procured for the TTMS Project.

2.1.16 Clean-Up and Waste Disposal. Contractor shall dispose of all surplus materials procured or used by Contractor or Subcontractors in the course of performance of the TTMS Work in compliance with all Laws. Contractor shall generally keep the TTMS Work Site free from accumulation of waste materials, rubbish and other debris related to the TTMS Work Site in accordance with the Standard of Care. On or before the date of 395 Final Completion, Contractor shall remove from the TTMS Work Site all waste materials, rubbish and other debris related to the TTMS Work, as well as Contractor's and Subcontractors' other tools, construction equipment, machinery testing equipment and surplus material to which neither Concessionaire nor the Design-Builder holds title, and shall leave the TTMS Work Site in a neat, clean and usable condition. All cleanup and waste disposal shall be conducted in accordance with the Standard of Care, Laws, Applicable Standards and the 395 Design-Build Contract or the

Comprehensive Agreement. No materials shall be disposed of on or at the Project Right of Way. Contractor's obligations under this Section 2.1.16 shall include removal and disposal of all temporary Utility facilities, all temporary buildings, structures, equipment and installations associated with the TTMS Work which Concessionaire does not wish to retain and all Hazardous Substances associated with performance of the TTMS Work, but shall not include removal or disposal of Hazardous Substances for which Contractor is not responsible pursuant to Section 2.1.17.

2.1.17 Hazardous Substances.

2.1.17.1 Contractor shall be fully responsible for any Hazardous Substances brought on the Project Right of Way by any Contractor Party and for the proper handling, removal, transportation and disposal of such Hazardous Substances. Such Hazardous Substances shall be stored and used in accordance with this Agreement and Laws. Contractor shall minimize the use of Hazardous Substances in the construction of the TTMS Project and shall not utilize, or permit or cause any Subcontractor to utilize, such Hazardous Substances as are prohibited from being imported into the United States or used in the Commonwealth of Virginia under Laws. Contractor shall maintain an updated file of all material safety data sheets for all Hazardous Substances used by Contractor or any Subcontractor at the TTMS Project or at any construction area related to the TTMS Project and shall deliver an update of such file to Concessionaire no more than eight (8) Business Days after the end of each month. Contractor shall maintain an accurate record and current inventory of all Hazardous Substances that are the subject of material safety data sheets, which inventory shall identify quantities, location of storage, use and final disposition. Contractor shall implement and administer a Hazardous Substances handling program for all of its employees and all Subcontractors which shall include development of guidelines and training with respect to the proper handling, use and disposal of Hazardous Substances for which Contractor is responsible hereunder and the development, implementation and enforcement of procedures for notification of Concessionaire and appropriate Governmental Authorities about, and clean-up of, spills and other emissions of such Hazardous Substances. Under the Comprehensive Agreement, the Department agreed to be deemed the generator of Pre-Existing Hazardous Substances and Third Party Hazardous Substances, the presence of either of which constitutes a Hazardous Environmental Condition within the Project Right of Way, and has agreed to be identified as the generator of such Pre-Existing Hazardous Substances and Third Party Hazardous Substances in waste manifests and any other documentation submitted to transporters, disposal facilities and any Governmental Authority. Contractor will be deemed the generator of Hazardous Substances introduced to the Project Right of Way by a Contractor Party, the presence of which constitutes a Hazardous Environmental Condition within the Project Right of Way. Contractor agrees to be identified as the generator of such Hazardous Substances in waste manifests and any other documentation submitted to transporters, disposal facilities and any Governmental Authority.

2.1.17.2 Reserved

2.1.17.3 After the earlier of (i) the issuance of an LNTP (but limited to the portion of the Project Right of Way on which the TTMS Work is performed pursuant to such LNTP) or (ii) issuance of the Notice to Proceed, if Contractor encounters any Hazardous Environmental Condition that must be managed, treated, handled, stored, monitored, removed,

transported or disposed of (collectively, “**Remedial Actions**”), then Contractor will promptly (within ten (10) hours) notify Concessionaire thereof but the Remedial Actions shall be Concessionaire’s responsibility, except for Hazardous Environmental Conditions caused by Contractor or its Subcontractors, which shall be Contractor’s sole responsibility. The Parties acknowledge that the Department has the right to inspect areas and locations that require Remedial Actions in accordance with the Comprehensive Agreement.

2.1.17.4 Contractor shall be entitled to claim a Scope Change Order pursuant to Section 12.5 hereof in respect of a CA Delay Event resulting from the discovery of (a) Unknown Pre-Existing Hazardous Substances or (b) Hazardous Substances spilled or otherwise placed on the Project Right of Way after the Agreement Date other than by a Contractor Party in the course of performing of the TTMS Work, in each case for which Contractor does not have responsibility pursuant to Section 2.1.17.1, to the extent Contractor’s performance of the TTMS Work is materially adversely affected thereby and Contractor cannot, in the absence of impacting the Critical Path, overcome the effect thereof.

2.1.17.5 Reserved

2.1.17.6 Reserved

2.1.17.7 During the period of any clean-up or mitigation activities, Contractor shall continue the TTMS Work to the maximum extent possible on unaffected parts of the TTMS Project and areas of the Project Right of Way. Except as otherwise expressly provided in this Agreement, no Scope Change Order shall be issued in the event of the discovery of Hazardous Substances at the Project Right of Way.

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

2.1.19 Taxes. Contractor shall administer and pay all sales and use taxes, gross receipts, customs duty, import duty and other taxes and contributions imposed by any taxing authority upon the sale, purchase or use of materials, supplies, equipment, services or labor incorporated in the TTMS Project or used in the TTMS Work, as well as taxes measured by Contractor’s receipts hereunder or measured by wages earned by employees of Contractor or any Subcontractor (together with sales and use taxes, but excluding any taxes due on or payable with respect to income received by Contractor or any Subcontractor, “**Taxes**”), and shall promptly furnish to the appropriate taxing authorities all required information and reports in connection with such Taxes. Taxes are included within the Contract sum, and Contractor shall not be entitled to an adjustment to the Contract sum in the event the amount of Taxes payable by Contractor exceeds the amount estimated by Contractor, but the foregoing shall not preclude Contractor from recovering amounts payable as Taxes as otherwise expressly provided in this Agreement. Contractor shall cooperate with Concessionaire to minimize Concessionaire’s obligation to pay sales and use taxes in connection with the TTMS Work. Contractor shall

maintain all cost and other records necessary to distinguish taxable from nontaxable items, and shall assist Concessionaire in determining the appropriate amounts of sales and use taxes and any available exemptions therefrom.

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

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

2.1.22 Reserved

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

2.1.24 Coordination with Concessionaire and Other Contractors. Contractor shall cooperate with Concessionaire and any of its contractors, including the Design-Builder, to coordinate and schedule the TTMS Work with the work of any of Concessionaire's contractors working in the Project Right of Way. Contractor's obligations include supporting Concessionaire's coordination and scheduling obligations under the Technical Requirements in connection with the TTMS Work. If invited, Contractor shall attend any negotiations or meetings that Concessionaire has with a third party, including the Department, on a matter which is or shall become Contractor's responsibility hereunder, including a meeting of Contractor's Project Manager, the Concessionaire's Work Representative and the Concessionaire's Project Director within fourteen (14) days after the Commencement Date, to discuss issues affecting the administration of the TTMS Work and to implement the necessary procedures, including those relating to submittals and approvals, to facilitate the ability of the Parties to perform their obligations under this Agreement. Contractor agrees that if any such a negotiation or meeting occurs without a presence of a Contractor's representative, such event shall not constitute a

breach of this Agreement unless such events occur repeatedly due to Concessionaire's intentional exclusion of Contractor from such negotiations or meetings.

2.1.25 Coordination with Design-Builder. In addition to the coordination required above, the Contractor acknowledges that the 395 Project's success is dependent upon the ability of Design-Builder and the Contractor to perform their respective obligations in a cooperative, collaborative and integrated manner. To help accomplish this, Concessionaire, Design-Builder and Contractor agree to follow all aspects of the TTMS Special Provisions and the TTMS Interface Plan attached hereto as Exhibits N and O and will reasonably cooperate with each other to achieve timely completion of the 395 Project.

2.1.26 Documents at Project Right of Way and Electronic Document Management System. Contractor shall maintain at the Project Right of Way, on a current basis, one record copy of all of this Agreement, the 395 Design-Build Contract and the Comprehensive Agreement, in good order and marked currently to record all changes, and a complete set of all working drawings required to be maintained for the TTMS Project pursuant to Laws. These shall be available upon request of Concessionaire and the Department. Contractor shall utilize Concessionaire's electronic document management system for submittals and other documents as required by this Agreement.

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

2.1.28 Operating Manual. Not later than seven (7) months before the projected 395 Service Commencement Date as set forth on the TTMS Work Schedule, Contractor shall submit for Concessionaire's Approval a draft of the complete equipment and system instructions and procedures for the operation and maintenance of the systems and items of plant and equipment incorporated into the ETTM System. If Concessionaire does not approve the draft, it shall provide comments thereon to Contractor within thirty-five (35) days after receipt, and Contractor promptly shall incorporate or otherwise respond to Concessionaire's comments and submit a revised draft for Concessionaire's Approval. Such procedure shall be repeated until receipt of Concessionaire's Approval therefor, and the revised product shall be the "**Operating Manual.**" Not later than fifty (50) days before the projected date of 395 Service Commencement as set forth on the TTMS Work Schedule, Contractor shall prepare and provide the Operating Manual to the Concessionaire in a form reasonably acceptable by Concessionaire.

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

2.1.30 Quality Management System. In accordance with Laws, Applicable Standards and this Agreement, Contractor shall be responsible for all quality assurance and quality control activities necessary to manage the development, design and construction of the TTMS Project and shall develop and provide to Concessionaire the Quality Plan in accordance with Exhibit Q. Contractor shall fully observe and implement, and cause all Subcontractors to

fully observe and implement, the Quality Plan (including the provisions thereof relating to the non-conforming work) until 395 Final Completion. Contractor shall provide oversight and management of the TTMS Project to control the scope, quality, cost, and on-time delivery of the TTMS Work and if the TTMS Work is not being performed in compliance with the Quality Plan, Contractor shall increase and improve its management and oversight efforts such that repair or replacement of non-conforming items does not require any increase in Concessionaire's oversight of the TTMS Project. The Parties acknowledge that, pursuant to the Comprehensive Agreement, the Department has the right to review Contractor's Quality Plan, including the right to inspect TTMS Work or activities and to verify the accuracy and adequacy of quality management documentation. Contractor agrees to provide, and cause its Subcontractors to provide, the access and assistance as the Department may reasonably require conducting such reviews. All tests, inspections and quality assurance procedures required by this Agreement, or recommended by Subcontractors, shall be in addition to, and not in lieu of, applicable Quality Plan activity. Contractor shall regularly document and report to Concessionaire its compliance with the Quality Plan in accordance with the procedures contained therein.

2.1.31 Public Information. During the design and construction of the 395 Project, Contractor will assist Concessionaire with providing information relating to the TTMS Work for dissemination to the public concerning the 395 Project in accordance with the plan therefor to be developed by Concessionaire.

2.1.32 Further Assurances. Contractor shall execute and deliver all further instruments and documents, and take all further action, including but not limited to assisting Concessionaire in filing a notice of commencement and a notice of completion with the appropriate state and local lien recording offices, that Concessionaire may reasonably request in order to enable Contractor to complete performance of the TTMS Work or to effectuate the purposes or intent of this Agreement, the 395 Design-Build Contract and the Comprehensive Agreement.

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

2.2.1 Contractor's Assumption of Risk of Site Conditions. Other than with respect to failure of the Concessionaire-Supplied Equipment and Facilities to meet the requirements of this Agreement, Concessionaire expressly disclaims any responsibility for, and Contractor expressly waives its right to seek any increase in the Contract Sum or extension to the 395 Guaranteed Final Completion Date for, any conditions at or on the TTMS Work Site except as expressly provided in this Agreement.

2.2.2 No Concessionaire's Warranties for Site Information. Concessionaire makes no warranties or representations as to any surveys, data, reports or other information provided by Concessionaire, the Department or other Persons to Contractor, including the data and other information set forth in Exhibit T (Known Geotechnical Conditions) and Exhibit K (Known Pre-Existing Hazardous Substances), concerning surface or subsurface conditions, the existing condition of the roadway and other "Assets" (as defined in the Comprehensive Agreement), drainage, the presence of Utilities, Hazardous Substances, contaminated ground water, archeological, paleontological and cultural references and endangered and threatened

species, affecting the TTMS Work Site or surrounding locations. Without prejudice to Contractor's right to claim a Scope Change Order under Sections 12.5 and 12.6, Contractor acknowledges that such information is for Contractor's reference only and has not been verified by Concessionaire or the Department.

2.3 Commencement of the TTMS Work.

2.3.1 Notice to Proceed. Except for the Early Work or as may be authorized pursuant to Section 2.3.2, Contractor shall commence performance of the TTMS Work on the date specified by Concessionaire in a written notice that shall be delivered to Contractor in the form set forth as Exhibit A hereto (the "**Notice to Proceed**").

2.3.2 Limited Notice to Proceed. Concessionaire may issue one or more Limited Notices to Proceed ("**LNTP**") authorizing Contractor to commence certain portions of the TTMS Work as set forth in this Agreement, the date of the first such LNTP shall constitute the "**Commencement Date**".

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

2.5 Compliance with Laws. Contractor shall comply with and shall cause the TTMS Work and the TTMS Project and all components thereof (including without limitation the design, engineering and construction of the TTMS Project) to comply with all Laws as they may be in effect at the time of Contractor's performance hereunder. Notwithstanding the foregoing, the effect of any Change in Law (excluding therefrom any change in Governmental Approvals resulting from the acts or omissions of Contractor or any Subcontractor) shall be determined under Sections 12.5 and 12.6. In addition, Contractor shall maintain all licenses required by Law and, if the Department makes a direct payment to Contractor, comply with the requirements of the eVA Business to Government Vendor System or its successor.

2.6 Lenders' Technical Advisor. The documents which govern Concessionaire's transactions with the Financing Parties for the 395 Project may provide to the Lenders' Technical Advisor certain rights of review, inspection, certification and consultation with Concessionaire concerning the 395 Project and the TTMS Work in order for the Lenders' Technical Advisor to

regularly and completely apprise the Financing Parties of the progress and other aspects of the 395 Project and the TTMS Work. Contractor shall fully and promptly cooperate with the Lenders' Technical Advisor as reasonably requested by Concessionaire. Any acceptance or comment by the Lenders' Technical Advisor, the Department or the Financing Parties shall not be construed to impose on the Lenders' Technical Advisor, the Department or the Financing Parties any control of any portion of the TTMS Work, or relieve Contractor of any of its duties, liabilities or obligations under the Comprehensive Agreement or this Agreement. All communications to and from the Lenders' Technical Advisor regarding the TTMS Work shall be made through Concessionaire, except as Contractor is otherwise directed by Concessionaire.

2.7 Safety Precautions.

2.7.1 General Requirements. Contractor recognizes the importance of performing the TTMS Work in a safe manner so as to prevent damage, injury or loss to: (i) all individuals at the Project Right of Way, whether working or visiting; (ii) the TTMS Work, including materials and equipment incorporated into the TTMS Work or stored on-TTMS Work Site or off-TTMS Work Site; and (iii) all other property at the Project Right of Way or adjacent thereto. Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the TTMS Work. Contractor and Subcontractors shall comply with: (i) all Laws relating to safety; (ii) Contractor's Health and Safety Plan; and (iii) any Concessionaire-specific safety requirements set forth in the Scope of Work; provided that such Concessionaire-specific requirements do not violate any Laws. Contractor will immediately report in writing any safety-related injury, loss, damage or accident arising from the TTMS Work to Concessionaire's Work Representative and, to the extent mandated by Laws, to all Governmental Authorities having jurisdiction over safety-related matters involving the TTMS Project or the TTMS Work. Contractor shall, prior to commencing construction, designate a "Safety Representative" with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the TTMS Work. Contractor shall provide, for Concessionaire's Review, the Health and Safety Plan program seven (7) days before Contractor intends to commence any construction-related activities at the Project Right of Way.

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

2.8 Federal and State Requirements. In performing the TTMS Work Contractor shall comply, and cause all Subcontractors to comply, with all Laws applicable to the 395 Project as a result of the costs of the 395 Project being financed in part with State funds, federal-aid funds and State bond proceeds, including the applicable Federal Requirements attached as Exhibit V. Contractor acknowledges and agrees that the USDOT will have certain approval rights with respect to the 395 Project, including the right to provide certain oversight and technical services with respect to the Work. Contractor will (i) cooperate with USDOT and provide such access to the TTMS Project and information as USDOT may request in the exercise of USDOT's duties,

rights and responsibilities in connection with the 395 Project and (ii) upon Concessionaire's request, provide to Concessionaire data and other information regarding the TTMS Project. Furthermore, in accordance with Section 2.2-4311.1 of the VA. Code, Contractor hereby certifies that it does not and agrees that it will not, during the term hereof, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986. Contractor further agrees that it will require all of its Subcontractors to certify that they do not and will not knowingly employ an unauthorized alien as defined by such Act.

2.9 Ethical Standards. Contractor shall comply with and enforce, and cause its directors, members, officers and supervisory and management personnel, and require those of its Subcontractors to adhere to and enforce, the written policies adopted by Concessionaire. Without limiting the foregoing, Contractor further agrees: (i) no gifts, gratuities, or favors of any nature whatsoever will be given or offered by it to personnel of the Department; and (ii) it will not employ any personnel of the Department for any services during the TTMS Work Period without the prior written consent of the Department. If the Department determines, after investigation, that Contractor or any of its employees, representatives, or agents of any person acting in its behalf have violated this provision, Contractor may, at the discretion of the Department, be disqualified from bidding on future contracts with the Department for a period of six (6) months from the date of the Department's determination of such a violation. Any implicated employees, agents, or representatives of Contractor may be prohibited from working on any contract awarded by the Department for the period of disqualification.

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

2.11 Concessionaire Approvals; Technical Requirements.

2.11.1 In all cases where an approval, review, comment, consent, notification, determination, decision or other response (a "**Response**") is required to be provided hereunder, such Response will not be withheld or delayed unreasonably and such determinations will be made reasonably (and not unreasonably delayed) except in cases where a different standard (such as, by way of example only, sole discretion) is specified in this Agreement or Exhibit Q. In cases where sole discretion is specified for an approval, consent, determination or other decision, the decision will not be subject to the dispute resolution procedures hereunder; in other cases,

Contractor may refer the matter to the dispute resolution process set forth in Article 19. Concessionaire will provide within nineteen (19) days after a request by Contractor its rationale (including Concessionaire's rationale), in reasonable detail, for any disapproval or deemed disapproval of any matter where Concessionaire has sole discretion to approve or disapprove.

2.11.2 Concessionaire's review of a resubmittal or request will be limited to the issue, condition or deficiency which gave rise to the Concessionaire's disapproval and will not extend to other aspects for which a notice of disapproval was not previously provided to Contractor unless the issue, condition or deficiency which gave rise to Concessionaire's disapproval reasonably relates to Concessionaire's disapproval for which notice was previously provided. Where the Technical Requirements or the Scope of Work imposes an obligation on Concessionaire to act by or within a specified time and Contractor is obligated as part of the TTMS Work to fulfill such obligation on behalf of Concessionaire, Contractor shall fulfill such obligation within the time specified by the Technical Requirements or the Scope of Work, and, unless this Agreement or Exhibit Q provides otherwise with respect to a given item.

2.12 Department and Concessionaire Oversight. Contractor acknowledges that Concessionaire and the Department have the right to oversee the Work, including the TTMS Work, and Contractor shall cooperate with Concessionaire and Department to facilitate their conduct of such oversight of the TTMS Work. If a failure by Concessionaire to perform its obligations under the Comprehensive Agreement is a result of Contractor's failure to perform its obligations hereunder, then Contractor will, on behalf of Concessionaire if Concessionaire is required by the Comprehensive Agreement, compensate the Department for all "Allocable Costs" incurred by the Department as a result of any increased level of monitoring from and after the date on which such increased level of monitoring begins, not to exceed one million dollars (\$1,000,000) in the aggregate. If the increased monitoring is due to a delay in achieving 395 Service Commencement, Contractor will submit a cure plan to the Department (through Concessionaire) describing specific actions Contractor will undertake to improve its performance and avoid the need for increased monitoring, which the Department may accept or reject under the Comprehensive Agreement, and if the Department accepts a cure plan, the Department has agreed under the Comprehensive Agreement not to increase its monitoring or other oversight services unless Concessionaire (or Contractor for the purposes of this Agreement) fails to diligently pursue such cure plan. In addition, Contractor shall, on behalf of Concessionaire, accommodate the Department's and FHWA's rights under the Comprehensive Agreement with respect to the TTMS Work, including, but not limited to, the right of access to the TTMS Work Site and the right to inspect the TTMS Work-related records subject to and in accordance with the requirements of the Comprehensive Agreement. Notwithstanding anything to the contrary in this Agreement, this Agreement shall not impose any obligations, duties or liabilities upon Concessionaire or the Department beyond those obligations, duties, or liabilities expressly assumed by the Concessionaire or the Department under the Comprehensive Agreement and Concessionaire under this Agreement. Further, nothing in this Agreement shall create any direct cause of action by Contractor against Concessionaire or the Department.

ARTICLE 3

SUBCONTRACTS

3.1 395 Project Subcontractors. Contractor may enter into Subcontracts for any portion of the TTMS Work. The identity of vendors supplying the equipment specified in Exhibit S shall require Concessionaire's Approval, not to be unreasonably withheld. Contractor will not enter into any Subcontract with any Person if that Person or any of its affiliates (as "affiliate" is defined in 29 CFR § 98.905), or any of their respective officers, directors and employees, (i) is then suspended or debarred, subject to a proceeding to suspend or debar it, or subject to an agreement for voluntary exclusion, from bidding, proposing or contracting with any federal or State department or agency, (ii) has been convicted, pled guilty or *nolo contendere* to a violation of Law involving fraud, conspiracy, collusion, bribery, perjury, material misrepresentation, or any other violation that shows a similar lack of moral or ethical integrity or (iii) is then barred or restricted from owning, operating or providing services for the 395 Project under Law, including the Foreign Investment and National Security Act of 2007, 50 USC App. 2170 (HR556).

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

3.3 Subcontractor Warranties. Subject to Section 10.1.5, Contractor shall, for the protection of Concessionaire and the Department, obtain from all Subcontractors guarantees and warranties on all machinery, equipment, services, materials, supplies and other items used and installed hereunder, and such guarantees and warranties shall not be amended, modified or otherwise discharged without the prior written consent of Concessionaire. Contractor shall use Commercially Reasonable Efforts to cause such guarantees and warranties from Subcontractors having Subcontracts for amounts in excess of \$500,000 to cover periods of not less than two (2) years from the date of 395 Final Completion and to include parts, shipping, service and labor for

all warranty repairs with respect thereto. Contractor shall enforce guarantees and warranties to the fullest extent thereof on behalf of Concessionaire and the Department until expiration of the Warranty Period. Subject to Section 10.1.5, at Concessionaire's request or, if later, upon the expiration of the Warranty Period, Contractor shall assign to Concessionaire all guarantees and warranties of all Subcontractors then remaining in effect; provided, however, that (i) such assignment shall not relieve Contractor of its warranty obligations under either the Comprehensive Agreement or this Agreement and (ii) Contractor shall have the prior right to enforce the guarantees and warranties of Subcontractors to the extent necessary to enforce any claims of Contractor against such Subcontractor and to assure satisfaction of Contractor's warranty obligations to Concessionaire under this Agreement or the Comprehensive Agreement. Neither Contractor, nor any Subcontractor or any Person under Contractor's control, shall take any action which could release, void, impair or waive any warranties or guarantees on equipment, materials or services that it procures from others.

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

3.5 Subcontracts. In addition to the requirements set forth in Section 3.2, each Subcontract that Contractor executes for the performance of the TTMS Work will:

(i) include a provision requiring the Subcontractor to maintain all licenses required by Law and, if the Department is to make a direct payment to such Subcontractor, comply with the requirements of the eVA Business to Government Vendor System or its successor;

(ii) contain or incorporate by reference the essential terms of this Agreement;

(iii) provide that such Subcontract may be freely assigned to Concessionaire upon the request of Concessionaire following termination of this Agreement; and

(iv) name the Department as third-party beneficiaries of all Subcontractor's representations and warranties contained in such Subcontract; provided, that the Department has agreed under the Comprehensive Agreement that it will only exercise its rights under such representations and warranties only so long as Contractor, Concessionaire or any Financing Party is not pursuing remedies under such Subcontract.

3.6 Review and Approval not Relief of Contractor's Liability. Concessionaire's Review and Concessionaire's Approval of the identity of vendors supplying equipment on Exhibit S shall not relieve Contractor of any of its duties, liabilities or obligations under this Agreement or the Comprehensive Agreement. Any inspection, review or approval by Concessionaire or any other Person permitted under this Agreement or Comprehensive Agreement of any portion of the TTMS Work or of any TTMS Work in progress by Contractor or Subcontractors shall not relieve Contractor of any duties, liabilities or obligations under this Agreement or the Comprehensive Agreement.

ARTICLE 4

PRICE AND PAYMENT

4.1 Contract Sum and Allowances.

4.1.1 Contract Sum. As consideration to Contractor for the full and complete performance of the TTMS Work in accordance with the terms hereof and all costs incurred in connection therewith, Concessionaire shall pay, and Contractor shall accept, a firm, fixed-price, lump sum equal to \$23,830,000, to be paid in installments as set forth in Section 4.2 hereof (such amount, as it may be adjusted from time to time in accordance with this Agreement, herein referred to as the “**Contract Sum**”). Other than as expressly specified in this Agreement, the Contract Sum is not subject to adjustment for any reason other than pursuant to a Scope Change authorized by Concessionaire or to which Contractor is entitled to claim as specified herein.

4.2 Payment Schedule. The Contract Sum shall be paid by Concessionaire to Contractor in monthly installments (“**Scheduled Payments**”) based on percentage completion of the TTMS Work as demonstrated by Contractor and verified by Concessionaire subject to the Maximum Cumulative Drawdown Schedule and in accordance with the Payment and Values Schedule, as may be adjusted from time to time pursuant to the terms of this Agreement.

4.2.1 Request for Payment. By no later than the tenth (10) day of each month, Contractor shall submit a draft invoice for Concessionaire’s concurrence containing a brief and accurate description of all TTMS Work performed as of the first day of such month. By no later than the fifteenth (15th) day of each month, Contractor shall submit to Concessionaire a mutually agreed upon request for payment consisting of (a) a final agreed upon invoice in the amount of the applicable Scheduled Payment; (b) a certificate signed by the Contractor that Contractor has achieved the appropriate percentage of completion required for such Scheduled Payment in accordance with the Payment and Values Schedule and attaching reasonable documentary evidence of the performance of the relevant portion of the TTMS Work sufficient for Concessionaire and the Lenders’ Technical Advisor, if applicable, to reasonably determine that such portion of the TTMS Work has been properly performed; and (c) copies of the lien waivers specified in Section 4.5 or a bond meeting the requirements set forth in Section 4.5 with respect to any lien not waived. Notwithstanding anything to the contrary contained herein, Concessionaire shall not be obligated to make any payment to the extent that such payment, when added to all other previous payments, exceeds the total amount designated as the “**Maximum Cumulative Payment**” for the corresponding month on the Maximum Cumulative Drawdown Schedule. Also, with each payment request, Contractor shall furnish to Concessionaire all cost details relating to such payment request as necessary for Concessionaire to satisfy the requirements of the Financing Parties and the legal requirements of all Governmental Authorities. Such information shall be subject to audit in accordance with Section 20.2 hereof. Concessionaire and Contractor shall use all reasonable efforts to cooperate with each other to cause each request for payment to be reviewed and certified by the end of each calendar month. No request for payment pursuant to this Section 4.2.1 shall be submitted prior to the issuance of a Notice to Proceed in accordance with Section 2.3.1.

4.2.2 Conditions to Scheduled Payments. Subject to the terms of this Agreement, and provided that Concessionaire has received Contractor's request for payment in accordance with Section 4.2.1 above, Concessionaire shall make, or cause to be made, the corresponding Scheduled Payment in compliance with VA. Code § 2.2, *et seq.*, which addresses prompt payment; provided, however, that Concessionaire may withhold all or part of any Scheduled Payment upon the occurrence of any of the following events, and provided, further, that, other than upon the occurrence of an event described in (i), (ii), and (vii) below, Concessionaire will only withhold such portion of the Scheduled Payment necessary to protect itself:

(i) Contractor's request for payment does not meet the requirements of Section 4.2.1(a), (b) and (c) hereof;

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

(iii) one or more third parties have filed a mechanics' lien or similar Claim against Concessionaire, the 395 Project or Project Right of Way resulting from the actions or inactions of Contractor, any of its Subcontractor, or any person for whom Contractor is legally responsible, and Contractor has not furnished in respect thereof a bond meeting the requirements of the penultimate sentence of Section 4.5 hereof;

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

(v) Contractor fails to pay any amounts owing to Concessionaire under this Agreement or the Comprehensive Agreement;

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

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

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

shall continue to perform the TTMS Work, notwithstanding a withholding by Concessionaire under Section 4.2.2.

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

4.3 Final Payment. Following 395 Final Completion, Contractor shall submit to Concessionaire its request for the unpaid balance of the Contract Sum (the “**Final Payment**”) consisting of (i) the countersigned 395 Final Completion Certificate, (ii) a final list and summary of the TTMS Work performed by all Subcontractors, the amount due to each Subcontractor, and certification by Contractor that all undisputed amounts due to Subcontractors have been paid in full, (iii) a final lien waiver, in the form of Exhibit B, of all liens that Contractor may have against Concessionaire, the 395 Project and the Project Right of Way, (iv) final lien waivers in the form of Exhibit C (or, solely in the case of vendors providing materials or equipment valued at less than \$50,000 in the aggregate, other evidence reasonably satisfactory to Concessionaire demonstrating that such vendor has waived or is not entitled to place any lien on any part of the 395 Project or the Project Right of Way) from each Subcontractor with a Subcontract of more than \$50,000 in value (and from such other Subcontractors as may be necessary such that the aggregate value of all Subcontracts for which a final release and waiver has not been obtained does not exceed \$1,000,000) or, if Contractor is unable to obtain all such waivers, a letter of credit or bond that has received Concessionaire’s Approval to protect Concessionaire, the Department, the 395 Project and the Project Right of Way from any and all Claims made on account of such liens, (v) the satisfaction of all other conditions to a Scheduled Payment contained in this Agreement or to which Contractor has otherwise agreed and (vi) an invoice in the amount of the Final Payment. Concessionaire may withhold from the Final Payment the amount of all Subcontracts for which a final release and waiver has not been obtained or for which Contractor has not provided a satisfactory payment bond to protect the 395 Project, Department and Concessionaire. Concessionaire shall pay over to Contractor the relevant portions of such withheld amount when the statutory period by which any liens may be created has expired without such liens having been created.

4.4 Termination Payment. Upon a termination of this Agreement pursuant to Section 15.3 hereof, Contractor shall be entitled to receive a termination payment (the “**Termination Payment**”) equal to the sum of (i) that portion of the Contract Sum, which is due and payable to Contractor by Concessionaire and applicable to the TTMS Work completed up to the date of termination and which has not previously been paid to Contractor, (ii) the direct, out-of-pocket costs reasonably incurred by Contractor in withdrawing its equipment and personnel from the Project Right of Way and in otherwise demobilizing, and (iii) the direct, out-of-pocket costs reasonably incurred by Contractor in terminating contracts with Subcontractors. Representatives of Concessionaire and Contractor shall determine the Contract Sum amount referred to in clause (i) above in accordance with the Payment and Values Schedule, and Contractor shall document in detail the costs claimed under clause (ii) above to Concessionaire’s reasonable satisfaction and shall supply Concessionaire with copies of the Subcontractor invoices covering amounts claimed under clause (iii) above. Contractor shall submit an invoice to Concessionaire for the Termination Payment with the supporting information and documents referred to above, and

Concessionaire shall pay such invoice within thirty (30) days after its receipt of same subject to the provisions of this Section 4.4 and unless it disputes certain elements thereof, in which event only the undisputed portion of the Termination Payment need be made within such 30-day period and the dispute over the remainder of the claimed Termination Payment may be submitted to the appropriate dispute resolution process set forth in Article 19. The Termination Payment shall be subject to offset for amounts payable by Contractor to Concessionaire. As a condition precedent to receiving the Termination Payment, Contractor shall comply with all the provisions of Section 15.6 hereof. Payment of the Termination Payment shall be the sole and exclusive liability of Concessionaire, and the sole and exclusive remedy of Contractor, with respect to termination of this Agreement pursuant to Section 15.3 hereof, but it will not affect Contractor's right to receive amounts otherwise due and unpaid hereunder prior to termination. In no event shall Concessionaire have any further liability to Contractor in any such event for actual, incidental, consequential or other damages, notwithstanding the actual amount of damages that Contractor may have sustained in connection with a termination pursuant to Section 15.3 hereof. Calculation of the Termination Payment has been agreed upon and fixed hereunder because of the difficulty of ascertaining the exact amount of such damages Contractor will actually sustain in the event of a termination of the TTMS Work pursuant to Section 15.3 hereof, and Concessionaire and Contractor agree that the calculation of the Termination Payment is reasonable. Notwithstanding the forgoing, no Termination Payment will be due to Contractor under this Agreement unless Notice to Proceed has been issued pursuant to Section 2.3.1.

4.5 All Payments Subject to Release of Liens. At the time of each Scheduled Payment hereunder, Contractor shall (a) certify to Concessionaire that the 395 Project, the Project Right of Way and any and all interests and estates therein, and all improvements and materials placed on the Project Right of Way, are, to the extent of the most recent payment received by Contractor, free from any and all Claims, liens, security interests or encumbrances in the nature of mechanics', labor or materialmen's liens or otherwise, arising out of or in connection with performance by Contractor, or any Subcontractor, of the TTMS Work, and (b) provide an interim lien waiver, in the form of Exhibit D hereto (or, solely in the case of vendors providing materials or equipment valued at less than \$50,000 in the aggregate, other evidence reasonably satisfactory to Concessionaire demonstrating that such vendor has waived or is not entitled to place any lien on any part of the 395 Project or the Project Right of Way), of Contractor's lien Claims, to the extent of the most recent payment received by Contractor, and interim lien waivers, in the form of Exhibit E hereto, from each Subcontractor with a Subcontract in excess of \$50,000, to the extent of the most recent payment received by Contractor, as are necessary to support Contractor's certificate. If any Claim, lien, security interest or encumbrance is filed or notification of withholding money for labor or material furnished under this Agreement is served on Concessionaire, the Department or any Financing Party, Concessionaire may withhold from any Scheduled Payment or other amount payable to Contractor under this Agreement or otherwise, an amount sufficient to discharge any or all such liens or Claims, unless Contractor shall furnish a bond in form, substance and amount reasonably satisfactory to Concessionaire, the Department and the Financing Parties to protect Concessionaire, the 395 Project and the Project Right of Way against such liens or Claims, and, after thirty (30) days from the time such lien or Claim is made, unless Contractor shall have furnished a bond as described above, Concessionaire may discharge such lien or Claim with the moneys withheld, whereupon for purposes of this Agreement such moneys shall be deemed to have been paid to Contractor hereunder. In addition, Contractor shall deliver to Concessionaire a final release and

waiver of liens, in the form of Exhibit B hereto with Contractor's final invoice to Concessionaire.

4.6 Payment or Use Not Acceptance. No Scheduled Payment or other payment to Contractor or any use of the TTMS Project by Concessionaire shall alone constitute an acceptance of any of the TTMS Work or relieve Contractor of any of its obligations or liabilities with respect thereto.

4.7 Set-Off. Concessionaire may deduct and set-off against any part of the balance due or to become due to Contractor under this Agreement, any amounts due from Contractor to Concessionaire under or in connection with this Agreement, including any Late Completion Payment and Lane Closure Payment due or to become due from Contractor to Concessionaire pursuant to Article 7.

4.8 [Reserved]

4.9 Letter of Credit. On or before the Agreement Date, Contractor shall provide Concessionaire with a Letter of Credit in the form of Exhibit H hereto in an amount equal to seven-and-one-half percent (7.5%) of the Contract Sum as additional security for Contractor's performance of its obligations hereunder. Upon the Concessionaire's issuance of Notice to Proceed pursuant to Section 2.3.1, the amount of the Letter of Credit shall be increased to an amount equal to one hundred percent (100%) of the Contract Sum (as it has been adjusted hereunder), less the amount of any draws on the Letter of Credit prior to such date. Upon 395 Service Commencement of the TTMS Work, the amount of the Letter of Credit shall be adjusted to an amount equal to three percent (3%) of the Contract Sum, and will be subject to draw by Concessionaire for the first two (2) years of the Warranty Period. If any General Warranty Claims remain unresolved as of the date the Letter of Credit (or applicable portion thereof) is otherwise permitted to expire pursuant to the preceding sentence, Contractor shall cause the Letter of Credit (or applicable portion thereof) to remain in effect through the date of resolution of such General Warranty Claims; provided that the amount of the Letter of Credit (or applicable portion thereof) shall be reduced following the end of the first two (2) years of the applicable Warranty Period to an amount equal to one hundred fifty percent (150%) of the total amount of such outstanding Claims. The items on Concessionaire's Punch List shall be completed by Contractor within sixty (60) days after the 395 Guaranteed Final Completion Date, and Concessionaire may draw on the Letter of Credit and use the proceeds of such drawing to provide for the prompt completion of the items remaining on Concessionaire's Punch List after such sixty (60)-day period.

For so long as Contractor is obligated to maintain the Letter of Credit, not later than thirty (30) days prior to the stated expiration date of the Letter of Credit, Contractor shall renew, or cause the renewal of, outstanding Letter of Credit, or replace, or cause the replacement of, such Letter of Credit with one or more replacement Letters of Credit having a stated amount equal to that of the Letter of Credit being renewed or replaced (or in such lesser amount as may then be required under this Agreement). For so long as Contractor is obligated to maintain the Letter of Credit, in the event (i) the issuer of a Letter of Credit shall fail to meet the requirements of clause (b) of the definition of the "Letter of Credit" hereunder or (ii) an issuer of a Letter of Credit shall fail to honor the beneficiary's properly documented request to draw on an outstanding Letter of

Credit, then within five (5) Business Days thereafter Contractor shall provide a substitute Letter of Credit from an issuer other than the bank that has failed to honor the outstanding Letter of Credit; provided, that if the issuer of a Letter of Credit fails to maintain the ratings specified in clause (c) of the definition of the “Letter of Credit” hereunder, within fifteen (15) days thereafter Contractor shall provide a substitute Letter of Credit from an issuer other than the bank that has been downgraded. If Concessionaire does not receive a replacement Letter of Credit from an issuer within the applicable time specified in either of the two preceding sentences, it may draw on the full available amount of the Letter of Credit. Amounts drawn in such circumstances shall be held directly by Concessionaire and shall be available to be applied by Concessionaire under the conditions set forth in the Letter of Credit. In all cases, the costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing or otherwise administering a Letter of Credit shall be borne by Contractor.

ARTICLE 5

CONCESSIONAIRE’S OBLIGATIONS

5.1 Representatives. Concessionaire shall designate a representative (the “**Concessionaire’s Project Director**”) to administer this Agreement on behalf of Concessionaire. Concessionaire’s Project Director shall have the authority to (a) issue Concessionaire’s instructions and other communications to Contractor, (b) determine achievement of milestones under the Payment and Values Schedule, (c) issue Concessionaire’s determination regarding 395 Service Commencement, 395 Final Completion, the Contractor’s Punch List and the Concessionaire’s Punch List, and (d) execute Proposal Requests and Scope Change Orders. Concessionaire’s Project Director shall be the recipient of notices and other written communications from Contractor under this Agreement. In furtherance of his/her responsibilities described hereunder, Concessionaire’s Project Director may conduct observations and inspections of the TTMS Project throughout design, procurement and construction, provided that no such observations or inspections shall relieve Contractor of any of its obligations under this Agreement. Concessionaire shall also designate a representative to observe the TTMS Work on the TTMS Work Site (“**Concessionaire’s Work Representative**”). Concessionaire’s Work Representative shall have the right to be present at the TTMS Work Site at all times and to participate in weekly TTMS Project status meetings conducted by Contractor, and to participate in coordination meetings between the Design-Builder and Contractor. Concessionaire’s Work Representative shall have the right to observe and inspect the progress of procurement and construction of the TTMS Project, and may offer advice to Contractor about the conformance of the TTMS Work with this Agreement and the Comprehensive Agreement. Contractor shall notify Concessionaire’s Work Representative before commencing any significant items of construction for the TTMS Project. However, Concessionaire’s Work Representative shall not have the authority to make decisions or give instructions binding upon Concessionaire, except to the extent expressly authorized by Concessionaire in writing. In the event Concessionaire employs or designates a different Concessionaire’s Project Director or Concessionaire’s Work Representative, Concessionaire shall give Contractor written notice of the identity of the new Concessionaire’s Project Director or Concessionaire’s Work Representative. Concessionaire’s Project Director or Concessionaire’s Work Representative may delegate any or all of his/her authority to one or more delegates, but no such delegation shall

be effective unless made in a written instrument from him/her delivered to Contractor naming the delegate, his/her tenure and the extent of his/her authority. In addition, Concessionaire shall have the right to retain one or more independent consultants to monitor and inspect the TTMS Work at the TTMS Work Site or specific portions of the TTMS Work.

5.2 Project Right of Way; TTMS Work Site. Concessionaire shall furnish Contractor access to the Project Right of Way. Design-Build Contractor shall be responsible for the TTMS Work Site, including general security thereof, and the Project Right of Way. Contractor shall be responsible for the TTMS Work Site and general security at the HOT Operations Center pursuant to the Shared Facilities Agreement.

5.3 Governmental Approvals. Concessionaire shall obtain or cause to be obtained all Governmental Approvals other than the Governmental Approvals that are designated as Contractor's responsibility pursuant to Section 2.1.7 hereof. Concessionaire shall cooperate with Contractor in connection with Contractor's efforts to obtain any Governmental Approvals that are designated as Contractor's responsibility herein.

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

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

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

5.7 Concessionaire-Supplied Equipment and Facilities. Concessionaire shall cause to be provided the Concessionaire-Supplied Equipment and Facilities. In the event that Contractor's requirements or specifications for the Concessionaire-Supplied Equipment and Facilities materially differ from those requirements and specifications defined in the Scope of Work, Contractor shall compensate Concessionaire for any incremental cost in complying with such requirements or specifications.

ARTICLE 6

COMMISSIONING, COMPLETION AND ACCEPTANCE OF TTMS PROJECT

6.1 TTMS Project Commissioning. At least ninety (90) days before Commissioning of the TTMS Project is scheduled to begin, and after significant discussion, interface and cooperation with the Design-Builder, Contractor shall propose, for Concessionaire's Approval, a Performance Testing and Commissioning Plan and Program for the ETTM System, including a Commissioning schedule, an organization chart of Contractor's personnel conducting the Commissioning, and a comprehensive procedure for the review of the Operating Manual and the application of its contents to the ETTM System. Concessionaire through the Contractor shall coordinate with the Design-Builder and OS&S Contractor for the provision of all labor necessary

to start-up and Commission the ETTM System. Concessionaire shall provide its personnel or its Subcontractors' personnel as defined in the Performance Testing and Commissioning Plan and Program to participate in the commissioning of the Concessionaire-Supplied Equipment and Facilities. Concessionaire shall hand over Concessionaire-Supplied Equipment and Facilities in accordance with the requirements of the Performance Testing and Commissioning Plan and Program. Upon Concessionaire's acceptance of the Performance Testing and Commissioning Plan and Program for the ETTM System, Contractor shall proceed to commission the ETTM System. As Commissioning progresses, Contractor shall provide Concessionaire and the OS&S Contractor's personnel with comprehensive classroom and on-the-job training in the operation and maintenance of the TTMS Project or the applicable portion thereof. Contractor shall coordinate all training sessions in a manner sufficient to provide Concessionaire and the OS&S Contractor's personnel with an adequate understanding of the basic and principal design, and the operation and maintenance aspects, of each dimension of the TTMS Project as an integrated whole.

6.2 TTMS Project Start-Up. Contractor shall present to Concessionaire for Concessionaire's Approval a completed checklist of all documentation, equipment and systems reviewed during the Commissioning of the ETTM System. Following confirmation by Concessionaire that such checklist is complete and accurate and that 395 Service Commencement has been achieved, Contractor shall start up the TTMS Project in accordance with the Standard of Care, this Agreement, the Comprehensive Agreement and a schedule of start-up procedures delivered by Contractor to, and approved by, Concessionaire at least ninety (90) days prior to start-up.

6.3 Performance Tests. Provided the TTMS Project and all TTMS Project systems included therein are capable of safe and continuous operation in accordance with the Standard of Care, the Operating Manual, the Comprehensive Agreement and any other provisions of this Agreement, subject to Concessionaire's Approval, Contractor shall conduct the Performance Tests. At least ninety (90) days prior to the date Contractor wishes to commence a Performance Test, Contractor shall provide to Concessionaire, for Concessionaire's Approval complete test procedures developed in accordance with the Performance Testing and Commissioning Plan and Program. Thereafter, Contractor shall give Concessionaire at least seven (7) Business Days' prior written notice of the date on which Contractor intends to commence each Performance Test. A Performance Test shall consist of the operation of the equipment and applicable systems included in the TTMS Work in accordance with the Comprehensive Agreement, this Agreement and the Performance Testing and Commissioning Plan and Program. Concessionaire shall designate and make available qualified and authorized representatives to observe the Performance Tests and to monitor the taking of measurements to determine the level of achievement of the conditions required to achieve 395 Service Commencement, all in accordance with the Comprehensive Agreement, this Agreement and the Performance Testing and Commissioning Plan and Program. Concessionaire and the Department may observe each Performance Test. The Department will be included in such Performance Tests for purposes of demonstrating effective information transfer across system interfaces, where applicable. Contractor shall not attempt to perform a Performance Test if any Commissioning, start-up or initial test procedures have not been completed as required prior to the Performance Test or any aspect of the TTMS Project has not been completed sufficiently to assure the safe and continuous operation of all or any part of the TTMS Project during the Performance Test in accordance with

the Standard of Care, the Operating Manual, the Comprehensive Agreement, this Agreement and the Performance Testing and Commissioning Plan and Program.

6.4 Completed Performance Test. When Contractor believes it has successfully completed a Performance Test, Contractor shall provide Concessionaire a written report of the test results as part of the 395 Service Commencement delivered under Section 6.5 hereof. The performance results will be calculated in accordance with the Performance Testing and Commissioning Plan and Program Guarantees, including any adjustments in the Performance Testing and Commissioning Plan and Program.

6.5 395 Service Commencement of the TTMS Project.

6.5.1 Conditions to 395 Service Commencement. 395 Service Commencement of the TTMS Project shall be achieved hereunder if the following conditions have been met:

(i) the need for temporary traffic controls or for lane closures at any time which are part of the TTMS Project has ceased (except for any then required for routine maintenance, and except for temporary lane closures during hours of low traffic volume in accordance with and as permitted by a Department-approved traffic management plan solely in order to complete Concessionaire's Punch List items);

(ii) Contractor has completed the toll commissioning process described in the Technical Requirements, and the ETTM System is completed, has passed all demonstration and performance testing in accordance with the Construction Documentation and the Technical Requirements, including demonstration of interoperability with E-ZPass or any successor to E-ZPass then utilized on State Highways, and is formally accepted and approved by the Department as ready for normal operation;

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

(iv) Contractor has delivered either (i) (A) an interim lien waiver, in the form of Exhibit D hereto, of Contractor's lien Claims to the extent of most recent payment received by Contractor and (B) interim lien waivers, in the form of Exhibit E hereto, from each Subcontractor with respect to a Subcontract in excess of \$50,000, to the extent of the most recent payment received by such Contractor, as are necessary to support Contractor's certificate (or solely in the case of vendors providing materials or equipment valued at less than \$50,000 in the aggregate, other evidence reasonably satisfactory to Concessionaire demonstrating that such vendor has waived or is not entitled to place any lien on any part of the Project Right of Way; or (ii) written evidence of posting of a bond by Contractor in the amount equal to the aggregate of amounts of all liens on any part of the 395 Project or the Project Right of Way that remain

outstanding as of the 395 Service Commencement Date (or, if earlier, the date of the most recent payment to Contractor);

(v) Contractor has otherwise completed the TTMS Work in accordance with this Agreement, including the Technical Requirements, the Comprehensive Agreement and the Construction Documentation, such that the TTMS Project is in a physical condition that it can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit, except for any remaining items listed in Concessionaire's Punch List; and

(vi) as provided in Section 6.5.3, Contractor has delivered to Concessionaire the 395 Service Commencement Certificate for the TTMS Work signed by Contractor and countersigned by Concessionaire.

6.5.2 Notice and Report of 395 Service Commencement of the TTMS Project. At least forty-five (45) days prior to the date when Contractor anticipates to achieve 395 Service Commencement, it shall deliver to Concessionaire a notice thereof (the "**Notice of 395 Service Commencement**"). The Notice of 395 Service Commencement shall contain a report of results of the Performance Test and a description of all TTMS Work completed in a form reasonably acceptable to Concessionaire and with sufficient detail to enable Concessionaire to establish whether 395 Service Commencement has been achieved, as well as a 395 Service Commencement Certificate signed by Contractor.

6.5.3 Achievement of 395 Service Commencement of the TTMS Project. Within twenty-five (25) days after Contractor has provided the Notice of 395 Service Commencement to Concessionaire, then Contractor shall meet with Concessionaire (and the Department at Concessionaire's invitation) to confer and exchange information on a regular basis with the goal being Concessionaire obtaining concurrence from the Department in order to enable Concessionaire to countersign the 395 Service Commencement Certificate. Prior to the 395 Service Commencement Date, Concessionaire shall inspect the TTMS Project and all TTMS Work completed by Contractor, review the results of the Performance Test and the report submitted by Contractor, and either (a) deliver to Contractor the countersigned 395 Service Commencement Certificate, or (b) if reasonable cause exists for doing so (i.e., inability to obtain concurrence from the Department), notify Contractor that 395 Service Commencement has not been achieved stating in reasonable detail the reasons therefor. If Concessionaire notifies Contractor that 395 Service Commencement has not been achieved, Contractor shall promptly, at its own cost, take such action or perform such additional TTMS Work as will permit achievement of 395 Service Commencement, conduct another Performance Test, if necessary, and issue to Concessionaire a revised 395 Service Commencement Certificate signed by Contractor. For all purposes of this Agreement, the date of achievement of 395 Service Commencement shall be the date on which Concessionaire issues to Contractor such 395 Service Commencement Certificate that is countersigned by Concessionaire.

6.6 395 Final Completion of the TTMS Project. 395 Final Completion of the TTMS Project may be achieved hereunder pursuant to Section 6.6.1 below.

6.6.1 Conditions to 395 Final Completion. 395 Final Completion of the TTMS Project shall be achieved hereunder if the following conditions have been met:

(i) the TTMS Project is free and clear of all liens, Claims, security interests or encumbrances arising out of or in connection with the performance of the TTMS Work by Contractor or any Subcontractor during the TTMS Work Period;

(ii) all items on Concessionaire's Punch List have been completed by Contractor in accordance with the Comprehensive Agreement and this Agreement;

(iii) all Construction Documentation, including Final As-Built Drawings and Documentation as required by Section 17.2, to be submitted on or before 395 Final Completion have been submitted and approved by Concessionaire and the Department , as applicable;

(iv) Contractor has paid for all TTMS Work required to achieve 395 Final Completion which was performed by third parties that Contractor is obligated to pay (other than disputed amounts and amounts that are not yet due and payable);

(v) Contractor has delivered all certifications, if any, required under Section 2.1.2;

(vi) Contractor has made all deliveries of Work Product to Concessionaire that are required to be made pursuant to this Agreement;

(vii) Contractor has otherwise performed all of the TTMS Work required by the Comprehensive Agreement and this Agreement;

(viii) 395 Service Commencement has occurred in accordance with Section 6.6.3; and

(ix) Reserved

(x) as provided in Section 6.6.3, Concessionaire has delivered to Contractor the 395 Final Completion Certificate signed by Contractor and countersigned by Concessionaire

6.6.2 Notice and Report of 395 Final Completion of the TTMS Project. At least forty-five (45) days prior to the date when Contractor anticipates achieving 395 Final Completion, it shall deliver to Concessionaire a notice thereof (the "**Notice of 395 Final Completion**"). The Notice of 395 Final Completion shall contain a report in a form reasonably acceptable to Concessionaire and with sufficient detail to enable it to establish that Contractor has completely performed all of the TTMS Work under the Comprehensive Agreement and this Agreement, including the items listed in Concessionaire's Punch List, as well as a 395 Final Completion Certificate signed by Contractor.

6.6.3 Achievement of 395 Final Completion of the TTMS Project. Within twenty-five (25) days after Contractor has provided the Notice of 395 Final Completion to Concessionaire, then Contractor shall meet with Concessionaire (and the Department at Concessionaire's invitation) to confer and exchange information with the goal being Concessionaire's countersigning the 395 Final Completion Certificate. Prior to the 395 Final Completion Date Concessionaire shall inspect the TTMS Project and all TTMS Work hereunder and review the report submitted by Contractor and either (a) deliver to Contractor the countersigned 395 Final Completion Certificate, or (b) if reasonable cause exists for doing so (i.e., inability to obtain concurrence from Concessionaire and the Department), notify Contractor that 395 Final Completion has not been achieved, stating in reasonable detail the reasons therefor. If Concessionaire notifies Contractor that 395 Final Completion has not been achieved, Contractor shall, at its own cost, promptly take such action or perform such additional TTMS Work as will permit achievement of 395 Final Completion, conduct another Performance Test, if necessary, and issue to Concessionaire and a revised 395 Final Completion Certificate signed by Contractor. The foregoing process shall be repeated until Concessionaire is satisfied with the Notice of 395 Final Completion and concurs that 395 Final Completion has occurred, whereupon it shall countersign the 395 Final Completion Certificate and forward the same to Contractor; provided, that Contractor is obligated to achieve 395 Final Completion within two hundred and thirty (230) days after the 395 Service Commencement Date, as such date may be extended hereunder (the "**395 Guaranteed Final Completion Date**").

6.7 Concessionaire's Punch List. At any time after the commencement of TTMS Project start-up, Concessionaire may submit Concessionaire's Punch List to Contractor, and may thereafter revise the same from time to time; provided, that Concessionaire does not have the right to submit or revise Concessionaire's Punch List after Concessionaire issues fully countersigned 395 Final Completion Certificate; notwithstanding the foregoing, Concessionaire shall retain the right to confirm that punch list items performed by Contractor are properly completed. Concessionaire shall not be precluded from listing any item of TTMS Work on the Concessionaire's Punch List that was not included on Contractor's Punch List.

6.8 Failure to Achieve 395 Service Commencement by 395 Guaranteed Service Commencement Date; 395 Service Commencement Recovery Plan. Contractor will achieve 395 Service Commencement of the TTMS Project by the 395 Guaranteed Service Commencement Date. The 395 Guaranteed Service Commencement Date will be extended one time if (i) Contractor submits to Concessionaire for Concessionaire's Approval a written recovery plan (the "**395 Service Commencement Recovery Plan**") not later than ninety (90) days prior to the 395 Guaranteed Service Commencement Date, (ii) the 395 Service Commencement Plan outlines the actions Contractor proposes to take in order to cause 395 Service Commencement to occur as promptly as reasonably possible, which plan may include increasing work hours to the extent permitted under applicable Law and utilizing additional labor and equipment and other appropriate acceleration techniques to improve schedule progress and will set forth a proposed new 395 Guaranteed Service Commencement Date, (iii) such 395 Service Commencement Recovery Plan and new 395 Guaranteed Service Commencement Date is subject to Concessionaire's Approval within twenty (20) days in its reasonable discretion, (iv) Contractor diligently implements the 395 Service Commencement Recovery Plan and (v) Contractor agrees to continue to pay any Late Completion Payments or Additional Contractor Delay Payments pursuant to Section 7.2 (at the same daily rate for up to the number of additional days by which

the 395 Guaranteed Service Commencement Date is so extended at Contractor's request) notwithstanding the limit on Contractor's liability for such payments as set forth in Section 7.6. If all the conditions to the approval of the 395 Service Commencement Recovery Plan set out in the preceding sentence have been satisfied, the 395 Service Commencement Date hereunder shall be extended for the same number of days the 395 Baseline Schedule has been extended under the 395 Design-Build Contract. In addition, Concessionaire may, in its sole discretion, consent to a second 395 Service Commencement Recovery Plan upon such terms and conditions as it may establish in its sole discretion.

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

ARTICLE 7

LATE COMPLETION PAYMENTS; LANE CLOSURE PAYMENT

7.1 395 Guaranteed Service Commencement Date and 395 Guaranteed Final Completion Date. Subject only to the adjustments permitted in accordance with this Agreement, Contractor guarantees that 395 Service Commencement and 395 Final Completion will be achieved on or before the 395 Guaranteed Final Completion Date.

7.2 Late Completion Payments. If 395 Service Commencement has not occurred on or before the 395 Guaranteed Service Commencement Date, then for each calendar day (or portion thereof) by which 395 Service Commencement occurs after the Guaranteed 395 Service Commencement Date, subject to the limitation set forth in Section 7.6 hereof, Contractor hereby agrees to pay to Concessionaire, as part of the consideration for awarding the contract, an amount of liquidated damages equal to fifty thousand dollars (\$50,000) (the "**Late 395 Service Commencement Payment**"); provided, however, that Contractor shall not be obligated to pay such amount, or a portion of such amount for any calendar days that the Concessionaire determines its contractors, other than Contractor and its Subcontractors, are responsible such delay in 395 Service Commencement. In addition, if 395 Final Completion has not occurred on or before the 395 Guaranteed Final Completion Date, then for each calendar day (or portion thereof) by which 395 Final Completion occurs after the 395 Guaranteed Final Completion Date, Contractor hereby agrees to pay to Concessionaire, as part of the consideration for awarding the contract, an amount of liquidated damages equal to five thousand dollars (\$5,000) (the "**Late 395 Final Completion Payment**," and collectively with the Late 395 Service Commencement Payment "**Late Completion Payments**"); provided, however, that Contractor shall not be obligated to pay such amount, or a portion of such amount, of Late 395 Final Completion Payment for any calendar days the Concessionaire determines its contractors, other than Contractor and its Subcontractors, are responsible for such delay in 395 Final Completion.

7.2.1 The above notwithstanding, Contractor shall not be responsible for Late Completion Payments for that period of a delay in achieving 395 Financial Completion by the 395 Guaranteed Final Completion Date solely attributable to theft to or damage to Contractor ETTM Equipment or Concessionaire-Supplied Equipment and Facilities, not caused by Contractor or its Subcontractors, once such materials are physically installed into the permanent facilities at the TTMS Work Site. For the avoidance of doubt in the application of this Section 7.2, a failure by the Contractor to provide protection of property on the gantries located on the Project Right of Way where Contractor ETTM Equipment or Concessionaire-Supplied Equipment and Facilities has been installed in accordance with Section 2.1.23 will not be deemed to be Contractor-caused theft or damage.

7.2.2 In the event that Contractor is responsible for any delay that causes the 395 Service Commencement Date to occur after the 395 Guaranteed Service Commencement Date or the 395 Final Completion Date to occur after the 395 Guaranteed Final Completion Date, as applicable, and such delay causes Concessionaire's contractors (other than Contractor or its Subcontractors) to incur additional reasonable and documented costs and expenses required to achieve 395 Service Commencement or 395 Final Completion, as applicable, then, in addition to any Late Completion Payments otherwise payable under Section 7.2 above, Contractor hereby agrees to pay to Concessionaire, as part of the consideration for awarding the contract, an amount equal to such additional reasonable and documented costs and expenses of Concessionaire's contractors (other than Contractor or its Subcontractors) that has been previously approved by the Concessionaire required to achieve 395 Service Commencement or 395 Final Completion, as applicable (the "**Additional Contractor Delay Payments**").

7.3 Payment of Late Completion Payments. Late Completion Payments and Additional Contractor Delay Payments shall be paid by Contractor or withheld by Concessionaire, as applicable, in arrears at the payment intervals applicable to Scheduled Payments beginning after the 395 Guaranteed Final Completion Date with the last such payment to occur on the date on which 395 Final Completion, as applicable, actually occurs. Concessionaire's rights of set-off under Section 4.7 hereof expressly apply to any amounts of the Late Completion Payment not timely paid to Concessionaire hereunder.

7.4 Late Completion Payments for Delay Only. The Late Completion Payments and Additional Contractor Delay Payments shall be the full measure of Contractor's liability only for delay in achieving 395 Final Completion, and shall not limit Contractor's liability for defects or deficiencies in the TTMS Work or for Contractor's failure to perform its other obligations under either the Comprehensive Agreement or this Agreement. The Late Completion Payments and Additional Contractor Delay Payments are in lieu of Concessionaire's right to terminate this Agreement solely as a result of any schedule delay, except to the extent such delay otherwise constitutes a Contractor Default under Section 15.2.1(v)(A).

7.5 Lane Closure Liquidated Damages. In its performance of the "395 Work" (as defined in the 395 Design-Build Contract) Design-Builder may temporarily close existing lanes on the Project Right of Way only in accordance with the Technical Requirements, and any such closure that does not conform with or exceeds the time period permitted therefor in the Technical Requirements is a "Non-Permitted Closure." Contractor agrees that it will completely abide with

the conditions of the closure to allow Design-Builder to close and then fully reopen the closed lanes to traffic by the required time, and that if Contractor fails to do so Contractor shall pay to Concessionaire, on behalf of Design-Builder the amount of liquidated damages (and not as penalty) to be paid over to the Department by Concessionaire pursuant to the Comprehensive Agreement (the “**Lane Closure Payment**”), not to exceed \$100,000 per incident for any Non-Permitted Closure. The Lane Closure Payment shall be the measure of Contractor’s liability only for delay in re-opening the lanes pursuant to this Section 7.5, and shall not limit Contractor’s liability for defects or deficiencies in the TTMS Work or for Contractor’s failure to perform its other obligations under either the Comprehensive Agreement or this Agreement. The Lane Closure Payment shall be paid by Contractor or withheld by Concessionaire, as applicable, in arrears at the payment intervals applicable to Scheduled Payments beginning after the designated time for re-opening of the affected lanes. Concessionaire’s rights of set-off under Section 4.7 hereof expressly apply to any amounts of the Lane Closure Payment not timely paid to Concessionaire hereunder. Contractor is liable for any liquidated damages assessed as a result of Contractor’s violation of the closure limitations defined in the Technical Requirements.

7.6 Limitation on Liquidated Damages. Contractor’s liability to Concessionaire under this Agreement for Late Completion Payments and Additional Contractor Delay Payments shall not exceed an amount equal to forty percent (40%) of the Contract Sum. This Section 7.6 shall not be construed to limit Contractor’s other obligations or liabilities arising under or in connection with this Agreement.

7.7 Liquidated Damages Reasonable. Concessionaire and Contractor hereby acknowledge and agree that the terms, conditions and amounts fixed pursuant to Section 7.2 for Late Completion Payments, pursuant to Section 7.2.2 for Additional Contractor Delay Payments, and pursuant to Section 7.5 for Lane Closure Payment are fair and reasonable, considering the reduction in value of the TTMS Project to Concessionaire and the actual costs that Concessionaire will incur in the event of Contractor’s failure to achieve 395 Final Completion by the 395 Guaranteed Final Completion Date or to re-open the lanes to traffic after the temporary closure thereof. The amount of liquidated damages is agreed upon and fixed hereunder because of the difficulty of ascertaining the exact amount of Losses that will be actually incurred by Concessionaire for late occurrence of 395 Final Completion or lane re-opening, and Concessionaire and Contractor agree that the liquidated damages amounts specified in Sections 7.2, 7.2.2 and 7.5 represent a reasonable estimate of fair compensation of Losses that may be reasonably anticipated for such late occurrences and shall be applicable regardless of the amount of such costs actually incurred by Concessionaire.

ARTICLE 8

[Reserved]

ARTICLE 9

LIABILITY AND DAMAGES

9.1 Limitation of Certain Contractor Liabilities. Notwithstanding anything herein to the contrary, the total liability of Contractor in contract, tort, equity or otherwise (including negligence, warranty, strict liability or otherwise and including any liquidated damages that may be payable pursuant to Article 7 hereof) relative to or arising out of this Agreement shall not exceed an amount equal to one hundred percent (100%) of the Contract Sum; provided, that the foregoing limitation shall not apply to or include:

(i) the proceeds of insurance, not to exceed amounts required to be maintained by Contractor in accordance with the terms of this Agreement;

(ii) costs, liabilities or obligations that arise from the gross negligence, willful misconduct or actual fraud of Contractor;

(iii) costs, liabilities or obligations that arise from Contractor's abandonment of the TTMS Work or from a Contractor Default described in Section 15.2.1(vii);

(iv) Contractor's breach of its obligations in Section 10.3; or

(v) Contractor's indemnity obligations under Article 13.

9.2 CONSEQUENTIAL DAMAGES. NEITHER CONCESSIONAIRE NOR CONTRACTOR SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING LOSS OF USE OR LOSS OF PROFIT, AND CONCESSIONAIRE AND CONTRACTOR EACH HEREBY RELEASES THE OTHER AND ITS CONTRACTORS AND AGENTS FROM ANY SUCH LIABILITY. THE FOREGOING EXCLUSION (I) SHALL NOT PRECLUDE RECOVERY, WHERE APPLICABLE, OF LIQUIDATED DAMAGES PURSUANT TO SECTIONS 7.2 AND 7.5 AND (II) SHALL NOT BE CONSTRUED TO LIMIT RECOVERY UNDER ANY INDEMNITY IN ARTICLE 13 FOR THIRD PARTY CLAIMS FOR DAMAGE TO OR DESTRUCTION OF PROPERTY OF, OR DEATH OF OR BODILY INJURY TO, ANY PERSON.

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

ARTICLE 10

WARRANTIES

10.1 Warranties.

10.1.1 Contractor warrants and guarantees (the “**General Warranty**”) to Concessionaire and the Department as follows:

(i) The design of the TTMS Project shall satisfy the requirements of this Agreement, the Comprehensive Agreement and the Technical Requirements;

(ii) All TTMS Work (except as described in Section 10.1.1(i) hereof), including materials and equipment furnished as part of the construction, shall be (A) complete and conform to Good Industry Practice, (B) new unless otherwise specified herein or in the Technical Requirements, of good quality, in conformance with the Standard of Care, Laws, Applicable Standards, the Technical Requirements, this Agreement, and the Comprehensive Agreement, and (C) once completed, free of all defects and deficiencies in design, materials and workmanship and fit for its intended purpose; and

(iii) The Final As-Built Drawings and Documentation shall be accurate and complete, comply with the requirements of the Comprehensive Agreement and this Agreement, and accurately reflect the condition of the TTMS Project as of 395 Project Completion.

10.1.2 If Concessionaire notifies Contractor in writing during the Warranty Period, or no later than fifteen (15) days after the expiration of the Warranty Period, that a breach of the General Warranty has occurred during the Warranty Period, Contractor shall promptly investigate and determine the source of the deficiency or defect (including any inaccuracy or other deficiency in the Final As-Built Drawings and Documentation), and promptly rectify any defects or deficiencies in the TTMS Work at its expense without recourse to Concessionaire or the Department. Contractor’s liability for such defects shall include labor, parts, transportation, factory repair and testing, dismantling, re-designing, re-construction, re-erecting, re-testing and re-Commissioning associated with the correction of such defects which are needed or appropriate to assure the continued performance of the TTMS Project for its intended functions as a complete operating system. If Contractor fails to repair or replace a defect or deficiency within reasonable time following Concessionaire’s notice of a breach of the General Warranty, Concessionaire (or the Department pursuant to the Comprehensive Agreement) shall have the right to employ another contractor to correct the deficiency or defect and complete the TTMS Work at Contractor’s expense; provided, that the Department has agreed under Section 8.11(a)(iii) of the Comprehensive Agreement that it will only have the right to exercise remedies under the General Warranty so long as Concessionaire or any Financing Party is not pursuing such remedies.

10.1.3 The “**Warranty Period**” for all TTMS Work shall be twenty-four (24) months commencing on the date of 395 Final Completion; provided, however, that:

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

(ii) the Warranty Period as to the individual pieces of equipment shall be twenty-four (24) months from the date of incorporation of the specific piece of equipment into the TTMS Project unless Contractor is able to obtain from the vendor thereof longer durations on commercially reasonable terms; and

(iii) any warranties from third party suppliers longer than the Warranty Period shall be passed through to Concessionaire and the Department.

10.1.4 Following the expiration of the first year of the Warranty Period, the General Warranty shall extend only to repairs which exceed \$15,000 per single occurrence (but such threshold shall not apply if the same type of defect causes same type of repair more than twice), subject to an aggregate annual exclusion of \$60,000 in each of the third, fourth and fifth year of the Warranty Period.

10.1.5 If and to the extent Contractor obtains general or limited warranties from any Subcontractor with respect to design, materials, workmanship, construction, equipment, tools, supplies, software or services in accordance with Section 3.3, Contractor will cause such warranties to be expressly extended to Concessionaire. Concessionaire agrees that it will only have the right to exercise remedies under any such warranty so long as Contractor is not pursuing such remedies. The foregoing requirement will not apply to standard, pre-specified manufacturer warranties of mass-marketed materials, products (including software products), equipment or supplies where the warranty cannot be extended to Concessionaire using Commercially Reasonable Efforts.

10.1.6 The duties, liabilities and obligations of Contractor under this Section 10.1 do not extend to any repairs, adjustments, alterations, replacements or maintenance of materials which are required as a result of normal corrosion, erosion, or wear and tear in the operation of the TTMS Project other than as caused by the negligence of or breach of this Agreement by Contractor.

10.2 Concessionaire’s Right to Proceed. If, within fourteen (14) days after notification by Concessionaire of a breach of any warranty hereunder, Contractor has not, to the reasonable satisfaction of Concessionaire, commenced re-performance, repair, replacement or other performance as required herein or notified Concessionaire of its disagreement with such alleged breach and, within seven (7) days after such notice, provide reasonable evidence in support of its position, Concessionaire may retain a third party to undertake such re-performance, repair, replacement or other performance and the costs of retaining such third party shall be for the account of Contractor. Concessionaire’s retention of such third-party contractor shall not in any

way diminish Contractor's obligations or liabilities under this Agreement or reduce its warranty obligations under this Article 10 with respect to the work undertaken by such third party. Nothing herein shall be deemed to preclude Concessionaire from retaining a third-party contractor at its own cost to undertake any re-performance, repair, replacement or other performance of warranty claims hereunder.

10.3 No Liens or Encumbrances. Contractor warrants and guarantees that title to the TTMS Project, any portion or component of the TTMS Project, and all TTMS Work provided hereunder shall pass to the Department as provided under Section 24.15 hereof, free and clear of all liens, Claims, security interests and other encumbrances (other than inchoate liens provided by Laws to secure payments not yet delinquent), and that none of such TTMS Work, materials, supplies or equipment shall be acquired by Contractor subject to any agreement under which a security interest or other lien or encumbrance is retained by any Person. Such warranty shall become effective as title to TTMS Work passes to the Department under Section 24.15 hereof, subject to Concessionaire's obligation to pay for such TTMS Work in accordance with the Comprehensive Agreement and this Agreement.

10.4 EXCLUSIVE REMEDIES. ARTICLE 8, THIS ARTICLE 10 AND SECTION 15.2 HEREOF SET FORTH CONCESSIONAIRE'S EXCLUSIVE REMEDIES AGAINST CONTRACTOR, AND CONCESSIONAIRE HEREBY WAIVES ALL OTHER REMEDIES, REGARDING DEFECTS OR DEFICIENCIES IN THE TTMS WORK, WHETHER PATENT OR LATENT OR ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR PURSUANT TO OTHER LEGAL THEORY, EXCEPT FOR DEFECTS AND DEFICIENCIES IN THE TTMS WORK RESULTING FROM THE FRAUD OR DECEIT OF CONTRACTOR. CONTRACTOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE QUALITY OF THE TTMS WORK, PROVIDED, HOWEVER, THAT CONTRACTOR SHALL CONTINUE TO BE RESPONSIBLE FOR ALL OF ITS OTHER OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING THE DESIGN AND CONSTRUCTION OF THE TTMS PROJECT, NOTWITHSTANDING THE PARTIES' AGREEMENT TO EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY UNDER THIS SECTION 10.4.

ARTICLE 11

EXCUSED PERFORMANCE

11.1 Excused Performance Events. If Contractor is delayed in the performance of the TTMS Work due to acts, omissions, conditions, events, or extreme circumstances beyond its control and due to no fault of its own, including, by way of example, wars or other significant events relating to national security such as terrorist attacks, floods in excess of the base flood (as defined in the Design-Build Contract), hurricane force winds, tornados, labor disputes, and earthquakes that cause ground accelerations in excess of AASHTO bridge design standards for the Project Right of Way ("**Excused Performance Events**"), Contractor may initiate a Scope Change in accordance with Article 12 only to the extent necessary to account for such schedule delay caused by an Excused Performance Event. For the avoidance of doubt, Contactor may not request any adjustment to the Contract Sum in connection with an Excused Performance Event,

except in conjunction with another provision of this Agreement. It is specifically understood that other than floods in excess of the base flood, hurricane force winds and tornados, Contractor assumes the risk, and will not be entitled to a scope change for any costs or delays caused by weather-related events or conditions resulting from weather-related events. It is also understood that Contractor shall take all reasonable actions necessary to mitigate the effects of such Excused Performance Events to the extent practical.

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

ARTICLE 12

SCOPE CHANGES

12.1 Scope Change Orders. A “**Scope Change**” means a material addition to, deletion from, suspension of or other modification to, the quality, function or intent of the TTMS Project as delineated in the Scope of Work, or a material change to the requirements of this Agreement, but shall not include refinement, correction or detailing of the TTMS Work by Concessionaire and Contractor from time to time. Concessionaire may order Scope Changes to the TTMS Work, in which event, as more specifically set forth in this Article 12, one or more of the Contract Sum, the Payment and Values Schedule, the Maximum Cumulative Drawdown Schedule, the TTMS Work Schedule, the 395 Guaranteed Final Completion Date, the 395 Guaranteed Service Commencement Date, the Scope of Work and any other applicable terms and conditions of the Comprehensive Agreement or this Agreement shall be adjusted accordingly, if necessary, as agreed by Concessionaire and Contractor or determined pursuant to dispute resolution under Article 19; provided, that Contractor shall use reasonable efforts to mitigate the impacts of any Scope Change. If either Concessionaire or Contractor believes a Scope Change is necessary, it shall proceed as set forth in this Article 12. If Concessionaire believes that a particular item of TTMS Work is within the then-existing Scope of Work but Contractor believes that such TTMS Work constitutes a Scope Change, the Contractor shall diligently proceed with such TTMS Work as directed in writing by Concessionaire; provided, that if the disputed item of TTMS Work is subsequently determined to constitute a Scope Change (whether by mutual agreement of the Parties or by operation of the dispute resolution provisions hereunder), then such TTMS Work shall be deemed to have been the subject of a Work Order under Section 12.9 and Concessionaire shall issue a Scope Change Order with respect thereto as provided in Section 12.10 hereof; otherwise, Contractor shall not be entitled to a Scope Change Order with respect to such item of TTMS Work. All Scope Changes may be subject to the Concessionaire and Department’s consent, as described in Section 24.8 hereof. In the event the Concessionaire and Department require modifications to either the Comprehensive Agreement or the 395 Design-Build Contract as a condition of its approval of any Scope Change, the Parties shall cooperate to effect such modifications.

As a condition to Concessionaire's obligation under this Article 12 to make payments to Contractor in respect to a Scope Change Order or Work Order, Contractor shall increase the amount of the Letter of Credit by an amount equal to the Applicable Security Rate of the increase in the Contract Sum resulting from the Scope Change Order or Work Order to the extent the aggregate increase in the Contract Sum resulting from all Scope Changes exceeds \$5,000,000 in lieu of increasing the Letter of Credit by the full amount required, Contractor may notify Concessionaire to withhold as retainage from payments of the Contract Sum the amount not provided pursuant to a Letter of Credit, such retainage not to exceed the Applicable Security Rate of each installment payment of the Contract Sum. Amounts withheld as retainage may be applied by Concessionaire to the same purposes for which draws on the Letter of Credit may be applied, and shall be released to Contractor in whole or in part if the Letter of Credit is increased as required, or otherwise at the time the amount of the Letter of Credit may be reduced pursuant to Section 4.9 hereof, it being understood that the Parties intend that the Letter of Credit is to be the primary form of additional security during the first two (2) years of the Warranty Period, and that amounts withheld as retainage will continue to be withheld during the first two (2) years of the Warranty Period only to the extent the amount of the Letter of Credit does not satisfy the requirements of Section 4.9.

12.2 Scope Change by Concessionaire. If a Scope Change is initiated by Concessionaire (including a Scope Change resulting from a change in Applicable Standards after the Agreement Date that Concessionaire determines should apply to the TTMS Work, if such changes do not otherwise constitute a Change in Law covered by Section 12.5 hereof or a Technical Requirements Revision), Concessionaire shall give Contractor a written "Proposal Request" (herein so called) setting forth in detail the nature of the requested change. Within fourteen (14) days after receipt of a Proposal Request, Contractor shall provide Concessionaire with a preliminary written response, and within a reasonable time thereafter (not to exceed fourteen (14) days) provide to Concessionaire two (2) completed copies of its definitive "**Change Order Proposal**" (herein so called) setting forth in detail, to the extent known at such time, with a separate pay item (addition or deletion) for purchase and installation of equipment and materials and an otherwise suitable breakdown of costs by trades and TTMS Work classifications, a stipulated sum proposed as an adjustment to the Contract Sum for the performance of the Scope Change set forth in the Proposal Request, together with any proposed adjustment to the 395 Guaranteed Final Completion Date, the Scope of Work and the Payment and Values Schedule or other changes in either the Comprehensive Agreement or this Agreement necessary because of such proposed Scope Change. The stipulated sum set forth in each Change Order Proposal shall equal the amount obtained by (a) calculating the difference of (i) Contractor's good faith estimate of the actual costs of the proposed Scope Change, but including only such costs as are directly attributable to and necessarily incurred as part of the proposed Scope Change and are not included in Contractor's existing administrative and overhead expenses, and (ii) Contractor's good faith estimate of the cost savings, if any, that will result from the replacement or obviation of previously planned TTMS Work by the performance or supply of the proposed Scope Change, then (b) provided the difference obtained in clause (a) is a positive number, adding to such difference an amount to cover the total of Contractor's overhead costs and Contractor's profit for services rendered calculated through application of the overhead and profit percentages set forth in Section 12.9 hereof. The adjustment, if any, to the 395 Guaranteed Final Completion Date and the Payment and Values Schedule specified in any Change Order Proposal shall be limited to the delays to the Critical Path directly attributable to

and necessarily incurred as a result of the proposed Scope Change. Each Change Order Proposal shall be accompanied by appropriate data reasonably acceptable to Concessionaire supporting the proposed adjustments therein, including but not limited to bids, cost estimates, quotations from suppliers and wage schedules. If Concessionaire approves Contractor's Change Order Proposal, Concessionaire will issue and Contractor will execute and accept a written Scope Change Order in the form attached to this Agreement as Exhibit G, and the Contract Sum, the Payment and Values Schedule, the 395 Guaranteed Final Completion Date and any other appropriate and necessary changes in either the Comprehensive Agreement or the 395 Design-Build Contract shall be adjusted as set forth in such Scope Change Order. If Concessionaire does not approve Contractor's Change Order Proposal, Concessionaire may, at its option, execute and deliver to Contractor a Work Order in accordance with Section 12.8 hereof in lieu of the Scope Change Order.

12.3 Reserved

12.4 Scope Change by Contractor. If Contractor desires to initiate a Scope Change because of an Excused Performance Event or otherwise, Contractor shall, within seven (7) Business Days after first becoming aware (or should have been aware, using all reasonable due diligence) that a Scope Change may be necessary, provide notice thereof to Concessionaire. Except as otherwise specified in Sections 12.5 and 12.6, within five (5) Business Days thereafter, Contractor shall deliver to Concessionaire (i) a Change Order Proposal meeting the requirements specified in Section 12.2, together with a detailed description of the proposed Scope Change, a reasonably detailed explanation of why Contractor believes the proposed Scope Change is necessary, all relevant back up documentation, including drawings (original vs. latest), relevant technical/commercial agreement references, and a description of the critical activity which is directly affected, and by how long, or (ii) such of the foregoing information as is known to Contractor at the time, together with its estimate of the date by which a full Change Order Proposal will be submitted to Concessionaire. Subject to the final sentence of this Section 12.4, Concessionaire shall approve a Change Order Proposal evidencing Contractor's entitlement to claim a Scope Change Order under Sections 12.5, 12.6, 12.8 and 12.10 due to any of the causes specified therein, but if Concessionaire has a reasonable basis for objecting to any such Change Order Proposal, Concessionaire shall state such objections in writing to Contractor within ten (10) days of receipt of Contractor's Change Order Proposal and the Parties promptly shall meet to resolve their differences; Concessionaire is under no obligation to approve any other Change Order Proposal initiated by Contractor. Contractor shall not be entitled to submit a package of one or more Change Order Proposals more than once in any month (other than a Change Order Proposal which Concessionaire must approve as set forth in the second preceding sentence, as to which there shall be no limits).

12.5 Scope Changes Due to CA Delay Events.

12.5.1 Delay Event Notice and Determination.

12.5.1.1 If Contractor is affected by a CA Delay Event, it will give written notice to Concessionaire within fifteen (15) days following the date on which Contractor first became aware (or should have become aware using all reasonable due diligence) that an event has occurred and that it is or will become a CA Delay Event (provided, that in the case of

the same CA Delay Event being a continuing cause of delay, only one notice will be necessary) (a “**CA Delay Event Notice**”). Such CA Delay Event Notice will include, in such form and substance as is required to satisfy Concessionaire’s obligations under the Comprehensive Agreement: (i) a detailed description of the CA Delay Event, (ii) details of the circumstances from which the CA Delay Event arises and (iii) an estimate of the duration of the delay in the performance of obligations pursuant to this Agreement attributable to such CA Delay Event and information in support thereof, if known at that time. Based on the CA Delay Event Notice provided by Contractor to Concessionaire hereunder, Concessionaire shall assert its rights thereunder to seek the Department’s approval under Section 13.01 of the Comprehensive Agreement with respect to the CA Delay Event claimed by Contractor. Contractor will also provide such further information relating to the CA Delay Event as Concessionaire or the Department may reasonably require. Contractor will bear the burden of proving the occurrence of a CA Delay Event and the resulting impacts in accordance with the Comprehensive Agreement.

12.5.1.2 If for any reason Contractor fails to deliver a CA Delay Event Notice within such fifteen (15) day period, Contractor will be deemed to have irrevocably and forever waived and released any Claim or right to time extensions or any other relief with respect to such CA Delay Event pursuant to this Agreement.

12.5.1.3 Upon the occurrence of a CA Delay Event, Contractor will promptly undertake efforts to mitigate the effects of such CA Delay Event, including all steps that would generally be taken in accordance with Good Industry Practice. Within three (3) days following the date on which it first became aware of the occurrence of such CA Delay Event, Contractor will deliver to Concessionaire an explanation of the measures being undertaken to mitigate the delay and other consequences of the CA Delay Event. Contractor will notify the Concessionaire within fifteen (15) days following the date on which it first became aware (or should have become aware using all reasonable due diligence) that such a CA Delay Event has ceased.

12.5.1.4 Notwithstanding the occurrence of a CA Delay Event, Contractor will continue its performance and observance pursuant to this Agreement of all of its obligations and covenants to be performed to the extent that it is reasonably able to do so and will use its reasonable efforts to minimize the effect and duration of the CA Delay Event. Without limiting the foregoing, the occurrence of a CA Delay Event will not excuse Contractor from timely payment of monetary obligations that are due and payable by Contractor pursuant to this Agreement (including liquidated damages and amounts payable as indemnities), from compliance with Law, or from compliance with the Technical Requirements, except temporary inability to comply with the Technical Requirements as a direct result of the CA Delay Event.

12.5.1.5 Subject to Contractor’s giving the notice required in Section 12.5.1.1 and to the provisions of Section 12.5.2, but solely to the extent performance by Concessionaire is excused by the Department under the Comprehensive Agreement, a CA Delay Event will result in an extension of the 395 Guaranteed Final Completion Date, and the 395 Guaranteed Service Commencement Date and the TTMS Work Schedule shall be adjusted accordingly. All changes to the 395 Guaranteed Final Completion Date or the 395 Guaranteed Service Commencement Date and conforming changes to the TTMS Work Schedule shall be

reflected in a Scope Change Order entered into pursuant to Section 12.1.

12.5.2 Delays Affecting Performance of the TTMS Work. Contractor acknowledges and agrees that a CA Delay Event occurring during the TTMS Work Period will excuse Contractor from performance of its obligations to perform the TTMS Work pursuant to this Agreement but only to the extent that such obligations are directly affected by such CA Delay Event. In addition, during the TTMS Work Period, extensions of milestones or activities identified on the TTMS Work Schedule for CA Delay Events affecting the TTMS Work will be made based on Time Impact Analysis, using the then current Concessionaire approved TTMS Work Schedule and taking into account impacts of the CA Delay Events on Critical Path items, in accordance with the Technical Requirements, and will extend the 395 Guaranteed Final Completion Date and the 395 Guaranteed Service Commencement Date. For avoidance of doubt, the 395 Long Stop Date may be extended in accordance with this Agreement by reason of a CA Delay Event that occurs during the period after the 395 Guaranteed Service Commencement Date.

12.6 Scope Changes Due to CA Compensation Events.

12.6.1 CA Compensation Event Notice.

12.6.1.1 If Contractor is affected by a CA Compensation Event, it will give written notice to Concessionaire within fifteen (15) days following the date on which Contractor first became aware (or should have become aware using all reasonable due diligence) that an event has occurred and that it is or will become a CA Compensation Event (a “**CA Compensation Event Notice**”). The CA Compensation Event Notice will set forth, in such form and substance as is required to satisfy Concessionaire’s obligations under the Comprehensive Agreement for such notice: (A) the CA Compensation Event and its date of occurrence in reasonable detail, (B) the amount by which Contractor claims the Contract Sum should be adjusted as a result of the CA Compensation Event and (C) details of the calculation thereof; provided, that if the amount of such Contract Sum adjustment and details of such calculation are not available within the fifteen (15)-day notice period, Contractor may submit an estimate of the amount claimed, or if known, the actual amount claimed, and details thereof no later than twenty-one (21) days from the submission of a CA Compensation Event Notice, and Contractor may update the amount of claimed Contract Sum adjustment and details thereof every thirty (30) days. Based on the CA Compensation Event Notice submitted by Contractor and such other information provided by Contractor pursuant to this Section 12.6.1.1 Concessionaire shall submit a “CA Compensation Event Notice” to Department, and seek the Department’s approval, under Section 14.01(a)(i) of the Comprehensive Agreement with respect to the CA Compensation Event claimed by Contractor.

12.6.1.2 If, for any reason, Contractor fails to deliver such CA Compensation Event Notice within such fifteen (15) day period, Contractor will be deemed to have irrevocably and forever waived and released any Claim or right to an adjustment to the Contract Sum or other adverse effects on costs, expenses and liabilities attributable to such CA Compensation Event.

12.6.1.3 After Concessionaire submits a “CA Compensation Event

Notice” under the Comprehensive Agreement based on a CA Compensation Event claimed by Contractor, under Section 14.01(a)(iii) of the Comprehensive Agreement the Department may but it is not required to obtain, at its sole cost, (A) a comprehensive report as to Concessionaire’s estimate of the net cost impact attributable to the CA Compensation Event (which will incorporate the adjustment to the Contract Sum sought by Contractor) and (B) from a traffic and revenue consultant a traffic and revenue study, prepared in accordance with Good Industry Practice, analyzing and calculating the estimated net revenue impact attributable to the CA Compensation Event. Under the Comprehensive Agreement, within 90 days after receiving a “Compensation Event Notice” and the supporting documentation, the Department is to provide to Concessionaire a copy of such reports as it has elected to obtain and, if obtained from Concessionaire, Concessionaire will provide a copy of such report to Contractor. Under Section 14.01(a)(iii) of the Comprehensive Agreement, if the Department disagrees with the entitlement to or the amount of “Concessionaire Damages” claimed by Concessionaire (which will incorporate the adjustment to the Contract Sum sought by Contractor), Concessionaire and the Department are to commence good faith negotiations to resolve the dispute within 120 days after the delivery of the “Compensation Event Notice.” All changes to the Contract Sum and corresponding changes to the Payment and Values Schedule and other appropriate changes to either the Comprehensive Agreement or the 395 Design-Build Contract shall be reflected in a Scope Change Order entered into pursuant to Section 12.1.

12.6.2 Contract Sum Adjustment Determination.

12.6.2.1 The Contract Sum shall be adjusted only in an amount necessary to compensate Contractor for all reasonable, unavoidable costs and expenses (including additional Taxes) attributable to the CA Compensation Event and mitigate or avoid the effects of the CA Compensation Event (net of any savings incurred by Contractor as a result of the CA Compensation Event) (the “**Contract Sum Adjustment**”).

12.6.2.2 The Contract Sum Adjustment associated with a CA Compensation Event will be net of all applicable insurance proceeds payable to Contractor associated with such CA Compensation Event (or that would be payable to Contractor but for the failure by Contractor to comply with the insurance requirements set forth herein), except as any payment of such insurance proceeds is affected by the bankruptcy or insolvency of the provider of such insurance, and will include all costs of asserting a Claim for such insurance proceeds and any increased insurance premiums resulting from such Claim; provided, that any portion of an increased insurance premium resulting from any such Claim is certified in writing by Contractor’s insurance provider prior to payment by Concessionaire.

12.6.2.3 Contractor will share with Concessionaire and the Department all data, documents and information pertaining to the proposed Contract Sum Adjustment on an Open Book Basis. Contractor will take all steps reasonably necessary to mitigate the amount of the Contract Sum Adjustment attributable to, and other consequences of, any CA Compensation Event, including all steps that would generally be taken in accordance with Good Industry Practice, including filing a timely claim for insurance and pursuing such claims.

12.6.2.4 Under the Comprehensive Agreement, if Concessionaire and the Department are unable to agree upon the amount of the “Concessionaire Damages” within

120 days after the delivery of the “Compensation Event Notice,” then either party, by written notice to the other party, may terminate the negotiations and request the dispute be resolved in accordance with Article 21 of the Comprehensive Agreement. Under the Comprehensive Agreement the Department is to make payment to Concessionaire of the undisputed portion of the “Concessionaire Damages” in accordance with Section 14.01(b)(vi) of the Comprehensive Agreement without regard to the dispute resolution procedures, and solely to the extent received by Concessionaire from the Department under the Comprehensive Agreement Concessionaire shall pay the portion thereof attributable to the Contract Sum Adjustment over to Contractor.

12.6.2.5 The Parties acknowledge that under Section 14.01(b)(vii) of the Comprehensive Agreement Concessionaire is not entitled to “Concessionaire Damages” which are *de minimis*, and, as a result, Contractor will not be entitled to a Contract Sum Adjustment under this Agreement.

12.6.2.6 All payments to Contractor of amounts claimed in respect of a CA Compensation Event are strictly subject to Concessionaire’s receipt thereof from the Department under the Comprehensive Agreement; provided, however, that if the amount of “Concessionaire Damages” payable (through Concessionaire) by the Department under Section 14.01 of the Comprehensive Agreement is less than the amount to which Contractor is entitled hereunder in respect of such CA Compensation Event (as agreed by the Parties or determined pursuant to the dispute resolution process set forth in Article 19 hereof) as a result of the application of the proviso to Section 14.01(b)(i) of the Comprehensive Agreement, Contractor shall only be entitled to such lesser amount payable by the Department.

12.6.3 Sole Remedy and Release of Claims. Without limiting Contractor’s rights with respect to non-monetary relief for CA Delay Events in accordance with Section 12.5, the Contract Sum Adjustment as expressly provided in this Agreement will represent the sole right to compensation and damages for the adverse effects of a CA Compensation Event.

12.6.4 Additional Provisions for Certain CA Compensation Events.

12.6.4.1 If Contractor is affected by a CA Compensation Event described in clause (l) of the definition thereof, Contractor will be entitled to claim a Contract Sum Adjustment under this Agreement for such CA Compensation Event; provided, however, that:

- (i) Contractor may not claim a Contract Sum Adjustment for the first \$3 million in aggregate increased costs for such CA Compensation Event;
- (ii) the Department has agreed pursuant to Section 14.01(f)(ii) of the Comprehensive Agreement to be responsible for such costs in excess of \$3,000,000 but less than or equal to \$6,000,000 for such CA Compensation Event; and
- (iii) the Department and Contractor will share evenly the costs in excess of \$6 million for such CA Compensation Event.

The provisions of this Section 12.6.4.1 apply to each event and not in the aggregate. The costs to Contractor attributable to the CA Compensation Event described in this Section 12.6.4.1 for which the Department bears responsibility pursuant to Section 14.01(f)(ii) of the Comprehensive Agreement are to be paid by the Department to Concessionaire, which in turn shall promptly pay over the amount received to Contractor. Concessionaire shall not be liable to Contractor for the payment of any such costs for which the Department is responsible under the Comprehensive Agreement except, to the extent the same are actually received by Concessionaire from the Department.

12.7 Scope Changes Due to Concessionaire-Caused Delay. Except to the extent another consequence is expressly provided in this Agreement, Contractor shall be entitled to claim a Scope Change Order adjusting one or more of the Contract Sum, the Payment and Values Schedule, the 395 Guaranteed Final Completion Date the 395 Guaranteed Service Commencement Date and other appropriate changes to the Comprehensive Agreement to the extent Contractor's performance of the TTMS Work is adversely affected by a Concessionaire-Caused Delay and in respect of which Contractor cannot, in the absence of incurring material cost or impacting the Critical Path, overcome the effect thereof. If the Parties cannot agree upon the appropriate adjustment(s), such adjustment(s) shall be determined pursuant to the dispute resolution process set forth in Article 19.

12.8 Work Orders. If Contractor's Change Order Proposal delivered pursuant to Section 12.2 hereof is not agreed to by Concessionaire, Concessionaire may, at its option, issue to Contractor a Work Order in lieu of the Scope Change Order ordinarily issued under certain other sections of this Article 12. A "**Work Order**" is a written instruction from Concessionaire to Contractor to proceed with the Scope Change that is the subject of a Change Order Proposal. Concessionaire shall make corresponding payments to Contractor on a monthly basis for the reasonable costs of the TTMS Work demonstrated by Contractor. Contractor shall be entitled to claim a Scope Change Order pursuant to Section 12.10 with respect to Work Orders issued by Concessionaire.

12.9 Performance of Scope of Changes. If Concessionaire executes and delivers to Contractor a Work Order, or if Concessionaire and Contractor agree to a Scope Change Order, Contractor promptly shall perform the TTMS Work described in the Work Order or Scope Change Order. With respect to TTMS Work performed pursuant to a Work Order, Contractor shall deliver to Concessionaire, within thirty (30) days after completion, invoices, statements, payroll data and other evidence of the actual cost of the TTMS Work attributable to the Work Order that Concessionaire may reasonably require.

12.10 Scope Changes Due to Contractor Error. Notwithstanding anything in this Article 12 to the contrary, no Scope Change Order shall be issued and no adjustment of the Contract Sum, the 395 Guaranteed Service Commencement Date or the Payment and Values Schedule shall be made in connection with any correction of errors, omissions, deficiencies, project management inefficiencies or inaction, or improper or defective TTMS Work on the part of Contractor or any Subcontractor in the performance of the TTMS Work hereunder, or correction of any improper, defective or deficient equipment supplied by Contractor or any Subcontractor.

12.11 Familiarity with Conditions. Except as otherwise expressly provided in Sections 2.1.17, 12.5 and 12.6, Contractor accepts the risk of mistake or error relating to all matters within the scope of the TTMS Work and acknowledges and agrees that no increase or adjustment in the Contract Sum, the 395 Guaranteed Service Commencement Date or the Payment and Values Schedule will be authorized by Concessionaire as a result of any such mistake or error. Contractor has received from Concessionaire and the Department, for its reference purpose only, certain information pertinent to the TTMS Work Site and the TTMS Work. Neither Concessionaire nor the Department has made and will not make any express or implied warranty to Contractor as to the accuracy and completeness of such information, and neither Concessionaire nor the Department shall be liable to Contractor with respect to such information.

12.12 Compliance with 395 Guaranteed Service Commencement Date. With respect to any Scope Change proposed by Concessionaire or Contractor or required hereunder, Contractor shall whenever possible provide Concessionaire with the option to cause Contractor to perform the Scope Change without an adjustment in the 395 Guaranteed Service Commencement Date or the TTMS Work Schedule; provided that the Contract Sum is adjusted to compensate Contractor for any reasonable additional costs incurred in performing the Scope Change in accordance with such time limitation. If Concessionaire disputes Contractor's estimate of such reasonable additional costs, such costs shall nonetheless be paid pending the resolution of the dispute. Amounts that are subsequently determined not to have been properly payable to Contractor shall be refunded to Concessionaire together with interest at the Bank Rate. Subject to the foregoing, Concessionaire shall have the right to elect to cause such Scope Change to be performed without an adjustment in the 395 Guaranteed Service Commencement Date or any schedule for the TTMS Project whenever possible, or to cause such Scope Change to be performed upon any other terms and conditions set forth in the Change Order Proposal.

12.13 395 Design-Build Contract Modifications. If an amendment to the 395 Design-Build Contract that materially increases Contractor's obligations or diminishes its rights is made without Contractor's consent, then Concessionaire shall issue a Scope Change Order reasonably acceptable to Contractor addressing the impacts to Contractor of such amendment to the 395 Design-Build Contract.

ARTICLE 13

INDEMNIFICATION

13.1 Indemnities of Contractor. In addition to the Contractor's indemnity obligations as set forth elsewhere in this Agreement, Contractor will indemnify, defend, and hold harmless each Contractor Indemnitee from and against any Losses actually suffered or incurred by such Contractor Indemnitee (except to the extent such Losses are solely caused by the misconduct, negligence or other culpable act, error or omission of a Contractor Indemnitee), due to Third Party Claims that are based upon:

- (i) any actual or alleged failure by Contractor to comply with, observe or perform any of its covenants, obligations, agreements, terms or conditions in this Agreement, the Comprehensive Agreement, or the Technical

Requirements, or, any actual or alleged breach by Contractor of its representations or warranties set forth herein or therein;

(ii) any actual or alleged misconduct, negligence or other culpable act, error or omission of a Contractor Party in connection with the 395 Project;

(iii) any actual or alleged patent or copyright infringement or other actual or alleged improper appropriation or use by a Contractor Party of trade secrets, patents, proprietary information, know-how, trade-marked or service marked materials, equipment, devices or processes, copyright rights or inventions in connection with the TTMS Project;

(iv) any actual or alleged inverse condemnation, trespass, nuisance or similar taking of or harm to real property committed or caused by a Contractor Party in connection with the TTMS Project arising from any actual or alleged (A) failure by Contractor to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement; (B) breach by Contractor of its representations or warranties set forth in this Agreement or (C) misconduct, negligence or other culpable act, error or omission of a Contractor Party;

(v) any actual or alleged claim for brokerage commissions, fees or other compensation by any Person who acted on behalf of Contractor, its Affiliates, excluding Concessionaire, or their respective Representatives in connection with this Agreement;

(vi) payments of, or failure to pay, Taxes relating to Contractor's income or other Taxes required to be paid by Contractor without reimbursement under this Agreement; or

(vii) nonpayment of amounts due as a result of furnishing materials to Contractor or any Subcontractor in connection with the TTMS Work to the extent Concessionaire has paid Contractor all undisputed amounts then due and payable from Concessionaire to Contractor under this Agreement.

13.2 Indemnities of Concessionaire. Concessionaire will indemnify, defend, and hold harmless Contractor Parties from and against any Losses actually suffered or incurred by Contractor Parties (except to the extent such Losses are solely caused by the misconduct, negligence or other culpable act, error or omission of a Contractor Party), due to Third Party Claims that are based upon (i) any actual or alleged failure by Concessionaire to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement, the Comprehensive Agreement, or, any actual or alleged breach by Concessionaire of its representations or warranties set forth herein or therein, or (ii) any actual or alleged misconduct, negligence, violation of Law, or other culpable act, error or omission of Concessionaire or a Concessionaire Contractor in connection with the 395 Project.

13.3 Defense and Indemnification Procedures.

13.3.1 In the event that either Party becomes aware of any Claim for which a Party (the “**Indemnifying Party**”) may be required to indemnify an Indemnitee hereunder, it will as promptly as practicable notify the other Party in writing of such Claim, and such notice will include a copy of the Claim (if available) and any related correspondence or documentation; provided, that if the Party required to give notice is the Indemnitee, any failure to give such prompt notice will not constitute a waiver of any rights of the Indemnitee, except to the extent that the rights of the Indemnifying Party are actually and materially prejudiced thereby. If any Third Party Claim for which Contractor may be required to indemnify a State Indemnitee hereunder is asserted in writing against a State Indemnitee other than the Department, a failure by such State Indemnitee to give Concessionaire prompt notice in writing of such Claim, together with a copy of the Claim and any related correspondence or documentation from the third party asserting the Claim, will constitute a waiver of any rights of such State Indemnitee to indemnification to the extent, and only to the extent, that the rights of Contractor are actually and materially prejudiced thereby.

13.3.2 The Indemnifying Party will be entitled and obligated to appoint counsel of its choice at the expense of the Indemnifying Party to represent an Indemnitee in any action for which indemnification is sought (in which case the Indemnifying Party will not thereafter be responsible for the fees and expenses of any separate counsel retained by that Indemnitee except as set forth below); provided, that such counsel will be satisfactory to such Indemnitee. Notwithstanding the Indemnifying Party’s appointment of counsel to represent an Indemnitee in any action, such Indemnitee will have the right to employ separate counsel, and the Indemnifying Party will bear the reasonable fees, costs and expenses of such separate counsel, if:

- (i) the use of counsel chosen by the Indemnifying Party to represent the Indemnitee would present such counsel with a conflict of interest;
- (ii) the actual or potential defendants in, or targets of, any such action include both the Indemnitee and the Indemnifying Party and the Indemnitee will have reasonably concluded that there may be legal defenses available to it or other Indemnitees which are different from or additional to those available to the Indemnifying Party, and the Indemnifying Party has not provided the Indemnitee with its own separate counsel satisfactory to such Indemnitee;
- (iii) the Indemnifying Party will not have employed counsel to represent the Indemnitee within a reasonable time after notice of the institution of such action; or
- (iv) the Indemnifying Party authorizes the Indemnitee to employ separate counsel at the Indemnifying Party’s expense.

13.3.3 The Indemnifying Party will not be liable for any settlement or compromise by an affected Indemnitee of a Third Party Claim except with the Indemnifying Party’s prior written consent, which consent will not be unreasonably withheld or delayed, or except where the settlement or compromise is approved by the court after the Indemnifying Party

receives reasonable notice and the opportunity to be heard and such court approval has become final and non-appealable.

13.4 Action in Case of Injunction. If, in any claim, suit or proceeding identified in Section 13.1(iii), a temporary restraining order or preliminary injunction is granted, Contractor shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraining order. If, in any such claim, suit or proceeding, the TTMS Project or any part, combination or process thereof is held to constitute an infringement and its use is permanently enjoined, Contractor shall at its own expense and without impairing performance requirements, either replace the infringing TTMS Work or part, combination or process thereof with non-infringing components or parts or modify the same so that they become non-infringing. If Contractor is unable to do so within a reasonable time, Contractor shall promptly make every reasonable effort to secure for Concessionaire, or both, as applicable, a license, at no cost to Concessionaire, authorizing continued use of the infringing TTMS Work. No 395 Guaranteed Service Commencement Date or any of Contractor's scheduling requirements under this Agreement shall be extended due to any temporary restraining order or injunction described in this Section 13.4.

13.5 Survival. The provisions of this Article 13 shall survive 395 Final Completion and the termination of this Agreement.

ARTICLE 14

INSURANCE

14.1 Contractor-Provided Insurance.

14.1.1 Contractor's Responsibilities. Contractor and its Subcontractors are required to cooperate with Concessionaire, the OCIP administrator, and the OCIP insurance carriers in all aspects of the OCIP operation and administration. The Contractor's responsibilities include:

14.1.1.1 Include OCIP contract provisions and requirements in all tiered Subcontracts; every contractor is required to incorporate OCIP insurance provisions into their tiered subcontract(s).

14.1.1.2 Assisting in securing the required OCIP enrollment or payroll/premium information from their tiered contractors.

14.1.1.3 Notifying OCIP administrator of all Subcontracts awarded by completing the notice of subcontract award.

14.1.1.4 Attending all meetings, as required.

14.1.1.5 Maintaining and reporting payroll, receipts, labor-hours, or payments made to contractors as required by the OCIP.

14.1.1.6 Notifying Concessionaire and the OCIP administrator immediately of any insurance cancellation or non-renewal of Contractor Required Coverage.

14.1.1.7 Completing and submitting to Concessionaire and OCIP administrator the following administrative forms within the time frames specified below:

(i) Form 1 – Notice of Subcontract Award Form – Upon execution of tiered Subcontract and prior to starting TTMS Work on the Project Right of Way; and

(ii) Insurance safety and claim forms.

14.1.1.8 Contractor and its Subcontractors of all tiers are responsible for insurance covering their property including rented, owned, leased or borrowed equipment and tools, and are responsible for reporting damage claims to such property to their own insurance carrier. Up to \$25,000 per incident may be assessed by Concessionaire against a contractor for any third party property damage.

14.2 General Liability Owner Controlled Insurance Program. The Concessionaire will provide an Owner Controlled Insurance Program (“OCIP”) for the 395 Project. The Contractor and all subcontractors of every tier are required to participate as described below and in accordance with the 395 Project’s OCIP manual attached hereto as Exhibit R.

14.2.1 Owner Controlled Insurance Program and Covered Entities. The Concessionaire will procure a General Liability OCIP that will provide coverage for the Department, the Concessionaire, the Design-Builder, the Contractor and the eligible Subcontractors on the 395 Project. The Contractor and its contracting parties shall enroll in the OCIP. Participation in the OCIP is subject to several Contractor responsibilities under the terms of this Agreement. The Contractor and its contracting parties must enroll in the OCIP before commencing the TTMS Work. Contractor insurance costs include Workers’ Compensation and Employer’s Liability, Automobile Liability, and Excess Liability for the Automobile Liability and Worker’s Compensation and Employer’s Liability will continue to be the responsibility of each party to provide coverage for its interests. Eligible parties include Subcontractors performing labor or services within the Project Right of Way, suppliers that perform installation and temporary labor services, and leasing companies providing direct labor.

14.2.2 Excluded Parties. Vendors, suppliers, material dealers and others who solely furnish, transport, pick up, deliver, or carry materials, personnel, parts or equipment to or from the Project Right of Way will not be enrolled parties to the OCIP. The OCIP will not cover losses arising out of operations conducted away from the Project Right of Way, nor will it cover certain on-site activities including transport, pickup, delivery, or loading or unloading of materials, personnel, parts or equipment or any other items or persons to or from the Project Right of Way; by parties who do not otherwise work at the Project Right of Way. Each enrolled party will be required to provide its own insurance for losses arising out of Excluded Operations, and will be required to report such claims to its own insurance carriers. Any party described below is not required to be enrolled in the OCIP and will be enrolled in the OCIP only at the Concessionaire’s discretion:

14.2.2.1 Hazardous materials, remediation, removal or transport companies and their consultants;

14.2.2.2 Any Subcontractor performing structural demolition (including the removing or relocating of load bearing beams, columns or walls);

14.2.2.3 Architects, engineers, and soil testing engineers, and their consultants;

14.2.2.4 Vendors, suppliers, fabricators, material dealers, truckers, haulers, drivers and others who merely transport, pickup, deliver, or carry materials, personnel, parts or equipment or any other items or persons to or from the Project Right of Way; however, if such party has a subcontractor who performs work at the Project Right of Way they and their subcontractor may be considered an eligible party;

14.2.2.5 Subcontractors, and any of their respective tiered subcontractors, who do not perform any actual labor on the Project Right of Way; and

14.2.2.6 Building implosion subcontractors including subcontractors involved with blasting or the use of explosives.

14.2.3 OCIP Coverage Amounts. The OCIP coverages will be set forth in full in the respective policy forms, the following description of such coverage is not intended to be all-inclusive, nor alter or amend any provision of the actual policies. In matters, if any, in which the said description may be conflicting with the actual policy language, the provisions of the insurance policies shall govern. Subject to the exclusions, limitations, terms and conditions of the policies, OCIP coverage shall be as follows:

14.2.3.1 **Commercial General Liability Insurance** in an “occurrence” form, with annual limits for all insureds combined of \$2,000,000 each occurrence limit; \$4,000,000 general aggregate limit and \$4,000,000 products/completed operations aggregate limit. A separate single limit shall apply to the entire five (5) year term beyond the expiration or cancellation of the date of the policy for the “completed operations extension” for all insureds combined as follows: \$2,000,000 each occurrence limit and \$4,000,000 products-completed operations aggregate limit. Coverage shall apply to bodily injury and property damage for operations (including explosion, collapse and underground coverage), elevators, independent contractors, contractual liability for “insured contracts” and covered personal and advertising injury liability offenses.

14.2.3.2 **Excess Liability Insurance** in an occurrence form such that the total shared annual limits for all insureds combined, including the completed operations extension, shall not be less than \$100,000,000 and each occurrence and \$100,000,000 annual aggregate limit.

14.2.3.3 The OCIP policy includes the following terms:

- Products completed operations extension for ten (10) years or the applicable statute of repose, whichever is less, after 395 Final Completion.
- General aggregate limit reinstates annually.
- Products/completed operations aggregate limit applies once to entire completed operations term.
- Limits are shared among all enrolled parties.

14.3 Builder's Risk. Concessionaire shall obtain, pay for and maintain, from the effective date of this Agreement until the completion of the TTMS Work, builder's risk insurance for the 395 Project. The builder's risk insurance shall be on an "all risk" form (or equivalent policy) and shall include insurance against the perils of fire (with extended coverage) and physical loss or damage including, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, and excavation collapse, but not including insurance for the machinery, tools, or equipment used by Contractor in the performance of the 395 TTMS Work, or coverage for underground/subsurface structures and conditions. Concessionaire shall add Contractor and its Subcontractors as additional insureds on the builder's risk insurance policy.

Concessionaire shall include a waiver of subrogation against Contractor and its Subcontractors in the builder's risk insurance policy. No limitations or requirements are imposed on Concessionaire with respect to the amount of deductible(s) under the builder's risk insurance policy. Contractor shall be responsible to pay, or otherwise satisfy, the deductible portion of any loss, claim or occurrence under the builder's risk insurance policy that arises out of, or relates to, any act, omission, fault, default or negligence of Contractor or Contractor's employees, agents representatives, Subcontractors, or any other Person performing a portion of the 395 TTMS Work by, through or under Contractor or Contractor's failure to fully and correctly perform its obligations under either the Comprehensive Agreement or this Agreement; provided, however, that Contractor's obligation to pay, or satisfy the deductible portion of a loss, claim or occurrence under the builder's risk insurance policy shall not exceed \$50,000 per deductible, per loss, claim or occurrence.

Contractor shall, at all times, comply with the terms of the builder's risk insurance policy. In addition, Contractor shall be responsible for any losses, claims, damages, costs and expenses are not indemnified under the builder's risk insurance policy due to Contractor's failure to perform its obligations under the builder's risk insurance policy.

All insurance proceeds received by Concessionaire for any insured loss under the builder's risk insurance policy shall be paid into a separate insurance proceeds account and shall be held in trust for the purpose of distribution to Contractor or its Subcontractors, as applicable, as if they were otherwise named as loss payees on the builder's risk insurance policy, and in accordance with this Agreement.

14.4 Pollution Liability Policy. Concessionaire shall obtain, pay for and maintain, from the effective date of this Agreement until the 395 Final Completion date, Pollution Liability

insurance for the 395 Project with limits not less than \$10,000,000 per occurrence and in the aggregate. Concessionaire shall add Contractor and its Subcontractors as additional insureds on the policy, on a primary and non-contributory basis.

14.5 Contractor Provided Coverage Amounts. Contractor (or with respect to Errors and Omissions Insurance, its Subcontractors) shall file certificates of insurance with Concessionaire evidencing the coverages and limits below:

14.5.1 **Workers' Compensation and Employer Liability Insurance**, with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$1,000,000 for each accident, \$1,000,000 for each employee, with a \$1,000,000 policy limit. If necessary, coverage shall be extended to cover any claims under the United States Longshoreman's Act and Harbor Workers Act and Jones' Act as may be appropriate for the 395 TTMS Work.

14.5.2 **Automobile Liability Insurance**, with a limit of at least \$1,000,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired or borrowed vehicles on-site or off

14.5.3 **Reserved.**

14.5.4 **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability of limits of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate applicable on a per project basis.

14.5.5 **Errors and Omissions/Professional Liability Insurance**, for acts, errors or omissions arising in connection with the 395 TTMS Work for not less than: \$2,000,000 per claim and \$2,000,000 in the aggregate. Such insurance shall be maintained in full force and effect during the performance of such professional services and with an extended reporting period for two years after completion of such professional services. In addition, if the Contractor's Subcontractor's maintain the Errors and Omissions Insurance policy, the Contractor must be named as an indemnified party on the Errors and Omissions Insurance policy.

14.6 **Contractor General Requirements** – Contractor shall ensure that all insurances required contain the following provisions:

14.6.1 With the exception of workers' compensation and errors and omissions/professional liability insurance, the Concessionaire and the Department shall be named as an additional insured on all policies. Each such policy shall also include the appropriate severability of interest and cross-liability clauses to allow one insured to bring claim against another insured party.

14.6.2 All insurance coverages shall be considered primary and non-contributory with regard to other insurances that might be available to Contractor or the Concessionaire.

14.6.3 All insurers shall waive rights of subrogation against the Concessionaire for any claims covered by insurance required herein.

14.6.4 Any inadvertent errors or omissions by Contractor in procuring the insurance required herein shall in no way prejudice the rights of the Concessionaire to collect under such policies.

14.6.5 Any deductibles shall be the sole responsibility of Contractor.

14.6.6 The insurance shall remain in full force and in effect and will remain in effect for the duration required by this Agreement; and

14.6.7 No insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Concessionaire.

14.6.8 With the exception of Workers' Compensation and Automobile Insurance, the insurance policies shall specifically delete any design-build or similar exclusions that could compromise coverages because of the TTMS Work.

14.6.9 With the exception of errors and omissions/professional liability and builder's risk insurance, Contractor shall require all Subcontractors to carry the same insurance required by Section 14.5 above, in the same amounts as outlined in Section 14.5 above.

14.6.10 Contractors shall file certificates of insurance with the Concessionaire evidencing the coverages and limits described above within the times required by this Agreement. The certificates shall be executed by approved insurance companies authorized to do business in Virginia with a minimum "Best Rating" of "A-VII" or greater, and shall cover this Agreement.

14.6.11 The insurance coverage limits shall not be construed to relieve Contractor or Subcontractor(s) of liability in excess of such coverage, nor shall it preclude the Concessionaire from taking such actions as are available to it under any other provision of this Agreement or otherwise in law.

14.7 Insurance Closeout Process. Unless otherwise directed by Concessionaire, general liability/excess liability coverage for operations under the OCIP will terminate at 395 Final Completion. General liability/excess liability coverage for completed operations will commence upon completion of the work according to the OCIP insurance policy provisions and will be provided for ten (10) years or through the applicable statute of repose, whichever is less. Should a Contractor or a Subcontractor return to the Project Right of Way for any reason after their coverage under the OCIP has ceased, the Contractor or a Subcontractor is required to provide its own insurance coverage in compliance with the Contractor Required Coverage and must provide a certificate of insurance evidencing such coverage.

ARTICLE 15

SUSPENSION OF TTMS WORK; TERMINATION

15.1 Suspension of the TTMS Work.

15.1.1 Concessionaire's Right to Suspend the TTMS Work. Concessionaire may elect to suspend completion of all or any part of the TTMS Work upon ten (10) days' prior written notice to Contractor (or, in emergency situations, upon such prior notice as circumstances may permit) indicating (a) the portion of the TTMS Work the completion of which Concessionaire has elected to defer, (b) Concessionaire's estimate of the duration of such suspension; and (c) the effective date of such suspension of the TTMS Work. Upon receipt of and consistent with the effective date of such notice, Contractor shall stop performance of the portion of the TTMS Work which Concessionaire has elected to defer and shall continue to complete performance of the balance of the TTMS Work hereunder. In the event of a suspension of the TTMS Work pursuant to this Section 15.1.1, Concessionaire will authorize a Scope Change Order or, at its option, a Work Order if appropriate, making required adjustments to one or more of the 395 Guaranteed Final Completion Date, the Contract Sum or the Payment and Values Schedule, and such other adjustments as are appropriate, with any disputes being resolved pursuant to the dispute resolution process set forth in Article 19. Contractor shall mitigate to the fullest extent reasonable possible any additional expenses to be borne by Concessionaire as a result of suspension of the TTMS Work pursuant to this Section 15.1.1. In the event the entire TTMS Work is suspended pursuant to this Section 15.1.1 for a period of one hundred and eighty (180) consecutive days, Contractor may terminate this Agreement upon written notice to Concessionaire. In the event Contractor terminates this Agreement pursuant to this Section 15.1.1, Concessionaire shall pay the Termination Payment to Contractor in accordance with Section 4.4 as Contractor's sole and exclusive remedy, but it will not affect Contractor's right to receive amounts otherwise due but unpaid hereunder prior to termination.

15.1.2 Department's Right to Suspend the TTMS Work.

15.1.2.1 Contractor acknowledges and agrees that under the Comprehensive Agreement the Department has the right and authority, without liability to Concessionaire or Contractor, to suspend any affected portion of the TTMS Work by written order to Concessionaire to comply with any court order or judgment, to protect against a risk to the public health, safety or welfare (as more particularly set forth in the Comprehensive Agreement and Section 15.1.2.2 hereof), including to workers, other personnel or the general public from unsafe or dangerous conditions, or upon the occurrence of the events described in the Comprehensive Agreement. In accordance with the Comprehensive Agreement, the Department is to lift the suspension order promptly after it is permitted by the terms of the court order or judgment, after the dangerous or unsafe condition is rectified, or after Contractor (acting on behalf of Concessionaire) fully cures and corrects the applicable breach or failure to perform. Contractor may request Concessionaire to dispute the Department's suspension order by written notice to Concessionaire, which notice will provide supporting information for Contractor's position. Unless directed otherwise by Concessionaire after receipt of such notice, Contractor will carry out the TTMS Work required by the Department. If it is determined in accordance with the dispute resolution procedures in the Comprehensive Agreement that Contractor was in

compliance with its obligations under this Agreement, then the suspension order and any additional TTMS Work required by the Department under the Comprehensive Agreement will be treated as a Department Change and Contractor shall be entitled to a corresponding Scope Change Order hereunder.

15.1.2.2 The Parties acknowledge that the Department under Section 24.04(b) of the Comprehensive Agreement may require Concessionaire to suspend any TTMS Work or other activities related to the TTMS Project, which, in the sole discretion of the Department, presents a risk to the public health, safety or welfare, and to take such other actions as the Department may require to prevent such risk; provided, that if it is determined in accordance with the dispute resolution procedures in the Comprehensive Agreement that Contractor was in compliance with its obligations under this Agreement, then the suspension order will be treated as a Department Change and Contractor shall be entitled to a corresponding Scope Change Order hereunder. If the TTMS Work is so suspended for reasons attributable to Contractor, then Contractor shall not be relieved of any of its obligations under this Agreement and shall be fully liable to Concessionaire for any failure to timely and fully fulfill such obligations in accordance with the terms of this Agreement.

15.1.3 Contractor Right to Suspend the TTMS Work. Contractor may suspend performance of the TTMS Work pursuant to Section 15.3.2 hereof and as otherwise expressly permitted in this Agreement.

15.2 Termination of Contractor for Cause.

15.2.1 Concessionaire may elect, by ten (10) Business Days written notice to Contractor, at Concessionaire's sole option, to terminate this Agreement if any of the following events ("**Contractor Defaults**") shall occur:

(i) Contractor makes a general assignment for the benefit of its creditors, is generally unable to pay its debts as they become due, or becomes the subject of any voluntary or involuntary bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding under any Law, now in existence or hereafter becoming effective, and, in the case of any such involuntary proceeding, it is not dismissed or stayed within sixty (60) days after it is commenced;

(ii) Contractor fails to pay to Concessionaire when due any undisputed amount in excess of \$100,000, adjusted annually by the percentage increase in CPI, payable to Concessionaire pursuant to this Agreement in the amount and within the time period required by this Agreement, and such failure, including any failure to pay interest at the Bank Rate from the date due, continues without cure for a period of thirty (30) days following the date Concessionaire delivers to Contractor written notice thereof (which notice requirement shall be waived if Law prohibits the giving of such notice);

(iii) Contractor fails, for any reason other than failure of Concessionaire to make payments to Contractor when obligated and in

accordance with this Agreement, to make undisputed payments due to Subcontractors, which failure continues for thirty (30) days after written notice of such non-payment (which notice requirement shall be waived if Law prohibits the giving of such notice);

(iv) Contractor intentionally or negligently disregards Laws in the performance of the TTMS Work and such failure continues for fifteen (15) days after written notice from Concessionaire (which notice requirement shall be waived if Law prohibits the giving of such notice), or, if such failure is not capable of being cured within such fifteen (15) day period, if Contractor has not commenced the cure within such period and thereafter diligently pursued the same until a cure is effected, not to exceed an additional thirty (30) days unless the failure is not susceptible of cure;

(v) (A) Contractor fails to achieve 395 Final Completion of the TTMS Project by the 395 Long Stop Date, as such date may be extended pursuant to this Agreement;

(vi) Contractor fails to diligently implement a corrective action plan adopted pursuant to Section 2.1.1.4;

(vii) Contractor abandons the TTMS Work;

(viii) Contractor fails to maintain (A) the Letter of Credit in effect in the amount required hereunder or (B) insurance in the amount, terms and coverage required hereunder, and such failure continues without cure for six (6) Business Days following the date Concessionaire delivers to Contractor written notice thereof;

(ix) [Reserved];

(x) Contractor otherwise is in default of any provision of or has failed to perform its obligations under either the Comprehensive Agreement or this Agreement and such failure continues for thirty (30) days after written notice from Concessionaire (which notice requirement shall be waived if Law prohibits the giving of such notice), or, if such failure is not capable of being cured within such thirty (30)-day period, if Contractor has not commenced the cure within such period and thereafter diligently pursued the same until a cure is effected, not to exceed an additional ninety (90) days unless the failure is not susceptible of cure; provided, that a debarment pursuant to the provisions set forth in Section 24.16.2 (relating to SWaM participation) will not constitute a Contractor Default, and provided, further, that that this Section 15.2.1(x) will not apply to events covered by other provisions of this Section 15.2.1; or

(xi) the Department terminates the Comprehensive Agreement or Concessionaire terminates the 395 Design-Build Contract as a result of a breach by Contractor of its obligations hereunder.

15.2.2 With respect to any termination by Concessionaire pursuant to Section 15.2.1 (a “**Termination For Cause**”):

(a) If Concessionaire terminates this Agreement in accordance with Section 15.2.1, Concessionaire may cause the TTMS Work to be completed by other contractors, and Contractor shall pay for the cost of such completion and Losses suffered by Concessionaire to the extent the same exceeds the Contract Sum. Concessionaire shall, within a reasonable period of time after the TTMS Project is fully and finally completed by the work of one or more other contractors, determine the total cost (including contractor fees) to Concessionaire for completing the TTMS Work, including all sums previously paid or then owned to Contractor pursuant to this Agreement. If the Contract Sum is less than the sum of (i) the cost incurred by Concessionaire to fully and finally complete the TTMS Work, (ii) all other Losses suffered by Concessionaire as a result of a default or breach by Contractor of its obligations under either the Comprehensive Agreement or this Agreement, and (iii) all amounts previously paid to Contractor pursuant to this Agreement, Contractor shall pay to Concessionaire on demand the amount of such difference. Any amount owed by Concessionaire to Contractor, including for the month and level of completion of the TTMS Work shall be retained by Concessionaire until after completion of the TTMS Work and applied by Concessionaire to pay any amounts and Losses owed by Contractor pursuant to this Section 15.2.2 or otherwise. Any excess shall be remitted to Contractor within sixty (60) days after the TTMS Project is fully and finally completed.

(b) If a Contractor Default has occurred for which a cure period is envisioned above in Section 15.2.1, Contractor shall prepare a remedial program and submit the same for Concessionaire’s Approval, and Contractor shall remedy such Contractor Default in accordance with the agreed remedial program. To the extent Contractor fails to cure such Contractor Default and Concessionaire elects not to exercise its termination rights hereunder, Concessionaire may remedy such Contractor Default with the cost thereof to be borne by Contractor.

(c) No compensation shall be payable to Contractor in the event of a Termination For Cause except to the extent provided in Section 15.2.2(a).

15.3 Concessionaire Default.

15.3.1 The following events shall constitute “**Concessionaire Defaults**”:

(i) Concessionaire makes a general assignment for the benefit of its creditors, is generally unable to pay its debts as they become due, or becomes the subject of any voluntary or involuntary bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding under any Law, now in existence or hereafter becoming effective, and, in the case of any such involuntary proceeding, it is not dismissed or stayed within sixty (60) days after it is commenced;

(ii) Concessionaire fails to pay to Contractor any portion of a Scheduled Payment which is not in dispute and such failure continues for thirty (30) days after written notice of such non-payment (which notice requirement shall be waived if Law prohibits the giving of such notice); or

(iii) only if relief cannot be provided by issuance of a Scope Change Order under Section 12.8, Concessionaire otherwise is in default or has failed to perform any of its other material obligations under either the Comprehensive Agreement or this Agreement and such failure continues for thirty (30) days after written notice from Contractor (which notice requirement shall be waived if Law prohibits the giving of such notice), or, if such failure is not capable of being cured within such thirty (30) day period, if Concessionaire has not commenced the cure within such period and thereafter diligently pursued the same until a cure is effected, not to exceed an additional ninety (90) days unless the failure is not susceptible of cure.

15.3.2 Upon the occurrence of a Concessionaire Default under Section 15.3.1(ii), Contractor may suspend performance of the TTMS Work hereunder and, if Concessionaire fails to pay the undisputed portion of the Scheduled Payment within ninety (90) days after written notice of such non-payment (which notice requirement shall be waived if Law prohibits the giving of such notice), terminate this Agreement upon ten (10) Business Days written notice to Concessionaire. In the case of any other Concessionaire Default, Contractor may terminate this Agreement upon ten (10) Business Days written notice to Concessionaire. Any right of Contractor to terminate this Agreement shall be subject to any cure rights of the Department under the Comprehensive Agreement and of the Financing Parties that are applicable to this Agreement. In the event Contractor terminates this Agreement by Contractor pursuant to this Section 15.3.2, Concessionaire shall pay the Termination Payment to Contractor in accordance with Section 4.4 hereof as Contractor's sole and exclusive remedy, but it will not affect Contractor's right to receive amounts otherwise due but unpaid hereunder prior to termination. If Contractor suspends the TTMS Work under the first sentence of this Section 15.3.2 but subsequently resumes performance of the TTMS Work following Concessionaire's payment of the undisputed portion of the Scheduled Payment, then such suspension shall be treated as a Concessionaire -Caused Delay entitling Contractor to claim a Scope Change Order pursuant to Section 12.8.

15.4 Termination Due to Significant Force Majeure Event. If a Significant Force Majeure Event occurs under the Comprehensive Agreement and the Department or Concessionaire terminates the Comprehensive Agreement as a result thereof pursuant to Section 20.03(a) of the Comprehensive Agreement and the 395 Design-Build Contract automatically terminates, then this Agreement shall automatically terminate effective as of the termination date of the 395 Design-Build Contract. If this Agreement is terminated pursuant to the preceding sentence prior to 395 Final Completion of the entire TTMS Project (and Concessionaire's payment therefor), Contractor shall be entitled to receive a termination payment (the "**FM Termination Payment**") equal to that portion of the Contract Sum and any other amounts that are then due and payable to Contractor by Concessionaire and applicable to the TTMS Work completed up to the date of termination and which have not previously been paid to Contractor, plus all Demobilization Costs but less proceeds of insurance that is required to be carried by

Contractor hereunder. Representatives of Concessionaire and Contractor shall determine the Contract Sum amount in accordance with the Payment and Values Schedule. Contractor shall submit an invoice to Concessionaire for the FM Termination Payment, and Concessionaire shall pay such invoice within 30 days after its receipt of same subject to the provisions of this Section 15.4 unless it disputes certain elements thereof, in which event only the undisputed portion of the FM Termination Payment need be made within such 30-day period and the dispute over the remainder of the claimed FM Termination Payment may be submitted to the appropriate dispute resolution process set forth in Article 19. The FM Termination Payment shall be subject to offset for amounts payable by Contractor to Concessionaire. As a condition precedent to receiving the FM Termination Payment, Contractor shall comply, on behalf of Concessionaire, with all the provisions of the Comprehensive Agreement with respect to the TTMS Work. Payment of the FM Termination Payment shall be the sole and exclusive liability of Concessionaire, and the sole and exclusive remedy of Contractor, with respect to termination of this Agreement pursuant to this Section 15.4 and the events (including the applicable Concessionaire Default) giving rise to such termination, but it will not affect Contractor's right to receive amounts otherwise due but unpaid hereunder prior to termination. In no event shall Concessionaire have any further liability to Contractor in any such event for actual, incidental, consequential or other damages, notwithstanding the actual amount of damages that Contractor may have sustained in connection with a termination pursuant to this Section 15.4. Calculation of the FM Termination Payment has been agreed upon and fixed hereunder because of the difficulty of ascertaining the exact amount of such damages Contractor will actually sustain in the event of a termination pursuant to this Section 15.4 and Concessionaire and Contractor agree that the calculation of the FM Termination Payment is reasonable.

15.5 Requirements Following Termination. Upon termination of this Agreement, Concessionaire shall be immediately released from any and all obligations to Contractor (except for Concessionaire's obligation to pay the Termination Payment or any amount payable under this Agreement by Concessionaire to Contractor that is due but unpaid as of the termination date), Contractor shall immediately discontinue the TTMS Work and remove its personnel and construction equipment from the TTMS Work Site, and Concessionaire shall be entitled to take exclusive possession of the TTMS Project and all or any part of the equipment and materials delivered or enroute to the TTMS Project, to the extent that Concessionaire has paid Contractor all undisputed amounts hereunder then due and payable from Concessionaire to Contractor. If requested by Concessionaire, Contractor will make every reasonable effort to cancel any existing Subcontracts upon terms satisfactory to Concessionaire. Except as otherwise expressly provided in this Agreement or where pursuant to the dispute resolution process under Article 19 it is determined that termination by Concessionaire was wrongful, any payments to be made to a Subcontractor as a result of any such termination shall be at the expense of Contractor. Contractor shall also, upon request by Concessionaire, (i) deliver and assign to Concessionaire (but in no event shall Concessionaire be liable for any action or default of Contractor occurring prior to such delivery and assignment except to the extent such action or default was caused by Concessionaire, and each Subcontract shall so provide) any and all Subcontracts, purchase order, bonds and options made by Contractor in performance of the TTMS Work, and (ii) deliver to Concessionaire originals of all Construction Documentation and, if the termination occurs at a time when the design of the TTMS Project is incomplete, originals of all Design Documentation in process (except that Contractor may keep for its records copies, and, if sufficient originals exist, an original set, of the Agreement, the Comprehensive Agreement and related documents

executed by Concessionaire), all other materials relating to the TTMS Work which belong to Concessionaire, and all papers and documents relating to the Governmental Approvals for the TTMS Work, orders placed, bills and invoices, lien releases and financial management under this Agreement. All deliveries hereunder shall be made free and clear of any liens, security interests or encumbrances, except such as may be created by Concessionaire. Contractor shall also fulfill Concessionaire's obligations under Section 20.08(b)-(e) of the Comprehensive Agreement to the extent they relate to the TTMS Work. Notwithstanding any termination of Contractor's retention or this Agreement pursuant to this Article 15, Contractor shall for a period not to exceed five (5) days take such steps as are reasonably necessary to preserve and protect TTMS Work completed and in progress and to protect materials, equipment and supplies at the Project Right of Way, stored off-site, or in transit. Except as provided herein, no action taken by Concessionaire or Contractor after the termination of Contractor's retention of this Agreement shall prejudice any other rights or remedies of Concessionaire or Contractor provided by law, the Comprehensive Agreement, this Agreement, or otherwise upon such termination.

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

15.7 Termination Prior to Notice to Proceed. Notwithstanding any other provision contained in this Article 15, the Concessionaire may terminate this Agreement at any time prior to Notice to Proceed upon ten (10) days written notice to the Contractor. In the event of such early termination, Concessionaire shall be liable to the Contractor for the amount of any Termination Payment required under Section 4.4.

ARTICLE 16

ASSIGNMENTS

16.1 Assignment. Neither Party shall have the right, power or authority to assign or delegate this Agreement or any portion thereof, either voluntarily or involuntarily, or by operation of law, without the prior written consent of the other Party, which consent may be granted or withheld in the sole discretion of such other Party. Notwithstanding the foregoing, Concessionaire may assign to a State Party (as defined in the Comprehensive Agreement) or a nonprofit special purpose entity established by the Commonwealth to deliver the 395 Project without Contractor's consent. Nothing in this Section 16.1 shall be deemed to preclude Contractor from subcontracting portions of the TTMS Work in accordance with Article 3 hereof.

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

ARTICLE 17

DESIGN DOCUMENTATION

17.1 Concessionaire's Review. All design information and calculations shall be subject to Concessionaire's Review, but neither (a) the review of such information or calculations by Concessionaire, or (b) Concessionaire's acceptance of 395 Final Completion shall constitute a waiver of, or release Contractor from, any liability for errors or omissions contained in any designs or calculations by Contractor or by any Subcontractor, including any errors or omissions contained in the Final As-Built Drawings and Documentation. Notwithstanding anything to the contrary herein contained, except with respect to the Concessionaire-Supplied Equipment and Facilities, Concessionaire shall not be liable for and makes no representation with respect to any designs and specifications prepared by Contractor and reviewed or accepted by Concessionaire, and including any designs and specifications set forth in either the Comprehensive Agreement or this Agreement. With respect to all aspects of TTMS Project design, Contractor must create designs and solutions that comply with Laws and other requirements of this Agreement. The acceptance of the TTMS Project by Concessionaire shall not relieve Contractor of its obligation for such compliance.

17.2 Final As-Built Drawings and Documentation. As a condition to achievement of 395 Final Completion, Contractor shall furnish for Concessionaire's Approval hard copies and electronic files of the Final As-Built Drawings and Documentation meeting the requirements of the Technical Requirements (plus one extra hard and electronic copy of each file). Together with the Final As-Built Drawings and Documentation, Contractor shall furnish to Concessionaire a TTMS Project library in an electronic format that can be searched easily to include, without limitation: all Design Documentation, inspection and test reports, electronic management system and other documents prepared by Contractor and used in the performance of the TTMS Work hereunder. Contractor shall incorporate into the Final As-Built Drawings and Documentation all changes or corrections to the TTMS Work made at the TTMS Work Site prior to 395 Final Completion so as to accurately represent the completed TTMS Project and will certify, as required by the Technical Requirements, that the Final As-Built Drawings and Documentation reflect the actual condition of the TTMS Project as of 395 Final Completion. Contractor shall establish such systems and retain such personnel as are necessary to maintain full quality control and quality assurance with respect to the Final As-Built Drawings and Documentation. If Contractor fails to provide Final As-Built Drawings and Documentation which in all material respects comply with the provisions of this Section 17.2, Concessionaire, without limiting any other right or remedy it may have under the Comprehensive Agreement or this Agreement or under Laws, may engage a third party engineer to produce Final As-Built Drawings and Documentation complying herewith, and Contractor shall pay all fees and costs of such engineer.

17.3 Ownership. Subject to Section 2.1.8, Contractor agrees that all Design Documentation, the Final As-Built Drawings and Documentation, and other documents prepared or required to be prepared by Contractor as deliverables under this Agreement shall be the sole

and exclusive property of the Department and Concessionaire and shall not be used by Contractor in connection with any other project without Concessionaire's prior written consent. The foregoing does not apply to Contractor's pre-existing technical experience, expertise, standard formats or the like. Contractor agrees that all such documents, as well as any drawings, tracings, specifications, calculations, memoranda, data, notes and other materials which are supplied by Concessionaire and come into the possession of Contractor, shall be delivered to Concessionaire at the earlier of 395 Final Completion or termination of the TTMS Work hereunder if not previously delivered hereunder, except to the extent Concessionaire shall instruct Contractor not to deliver such materials. Concessionaire shall not, copy or disseminate such materials in connection with any project other than the 395 Project unless Contractor's name is deleted from such materials. Concessionaire shall defend, indemnify and hold Contractor harmless from any Claim, demand or liability arising from reuse of Contractor's documents if such reuse is not in connection with the 395 Project.

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

ARTICLE 18

CONFIDENTIAL INFORMATION

18.1 Except as set forth in this Article 18, each Party shall hold in confidence for a period ending five (5) years after the earlier of (i) 395 Final Completion or (ii) the earlier termination hereof, any confidential information (marked as such) supplied to it by the other Party or otherwise related to this Agreement or the 395 Project; *provided*, non-public financial statements shall be held in confidence for as long as such statements remain confidential information. The Contractor shall inform its Subcontractors, suppliers, vendors and employees of its obligations under this Article 18 and shall require each of its Subcontractors, suppliers, vendors and employees to execute confidentiality arrangements consistent with this Article 18. In addition, each Party shall keep in the strictest confidence any and all information received from United States federal government employees relating to the Pentagon facility located in Arlington County, Virginia, and each Party will adhere to all instructions provided by United States federal government employees relating to confidentiality or classification of such information.

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

18.3 Publicity Releases; Information. The Contractor shall not issue any press or similar media release or any advertisement, or publish, release or disclose any photograph or other information concerning this Agreement or the Project without the express prior written consent of the Developer, which consent shall not be unreasonably withheld. The Contractor shall include this restriction in all Subcontracts and purchase orders.

18.4 Confidential DoD Information. The Department, through the federal Department of Defense, will provide information regarding the location of utilities and other underground assets in and around the Pentagon Reservation for use in connection with the 395 Project. The Contractor must protect and keep confidential any documents marked by the federal Department of Defense “for official use only” as required by United States government policy, specifically 32 CFR Part 2001 and Department of Defense Manual Number 5200.01, Volume 4, and will not share such documents with any individuals or entities not directly involved in the 395 Project. Further, documents marked “for official use only” must be destroyed or returned to the federal Department of Defense, Washington Headquarters Services after 395 Final Completion. DOCUMENTS MARKED FOR OFFICAL USE ONLY MAY BE EXEMPT FROM PRODUCTION UNDER FEDERAL FREEDOM OF INFORMATION ACT (5 U.S.C 552, AS AMENDED) AND THE VIRGINIA FREEDOM OF INFORMATION ACT (CODE OF VIRGINIA (1950) SEC. 2.2-3700 ET SEQ., AS AMENDED) AND SHALL BE LABELLED AS SUCH.

ARTICLE 19

DISPUTE RESOLUTION

19.1 Arbitration; Other Actions. Any Claim or controversy between Concessionaire and Contractor not exceeding One Million Dollars (\$1,000,000) in value shall be submitted to binding arbitration in accordance with this Section 19.1 upon written notice of either Party delivered to the other of such Party’s intention to arbitrate, the nature of the dispute, the amount claimed and the decision sought. Arbitration under this Section 19.1 shall be conducted by JAMS, its successor or any other Arbitration provider agreed to by the parties in accordance with its Streamlined Arbitration Rules and the Federal Arbitration Act, 9 USC Section 1 *et seq.* Concessionaire and Contractor shall proceed with any arbitration expeditiously. All conclusions and decisions of the arbitration shall be made consistent with applicable legal principles and the arbitrators’ good faith interpretation of the terms and provisions of this Agreement. The award of the arbitrators will be final and binding on both Parties and may be enforced in any court having jurisdiction over the Party against which enforcement is sought. Each Party shall bear its own expenses, including but not limited to counsel fees and witness fees. If the arbitrators determine that the Claim or defense of either Party was frivolous (i.e., without justifiable merit), they may require that the Party at fault pay or reimburse the other Party for costs of the arbitration in whole or in part, except that all expenses of the arbitration shall be apportioned in the award of the arbitrators based upon the respective merit of the positions of the Parties.

NOTWITHSTANDING THE FOREGOING, EQUITABLE REMEDIES, INCLUDING INJUNCTION AND SPECIFIC PERFORMANCE, SHALL BE AVAILABLE TO THE PARTIES BY JUDICIAL PROCEEDINGS AT ANY TIME AND, FOR THIS PURPOSE AND FOR THE PURPOSE OF ENFORCING ANY ARBITRAL AWARD OR DECISIONS, THE PARTIES HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE FEDERAL AND STATE COURTS IN RICHMOND, VIRGINIA. THE PARTIES ALSO SUBMIT TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE FEDERAL AND STATE COURTS IN RICHMOND, VIRGINIA, REGARDING ANY DISPUTE BETWEEN THE PARTIES WHERE THE AMOUNT IN CONTROVERSY EXCEEDS ONE MILLION DOLLARS (\$1,000,000). EACH OF THE PARTIES HEREBY IRREVOCABLY AND

UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING UNDER THIS AGREEMENT AND FOR ANY COUNTERCLAIM IN SUCH AN ACTION OR PROCEEDING. THE PROVISIONS OF THIS SECTION 19.1 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

19.2 Common Issue in Dispute under the Comprehensive Agreement or the 395 Design-Build Contract. Notwithstanding any other provision in this Agreement to the contrary, if any issue in dispute between the Parties to this Agreement is also the subject of a concurrent dispute under the Comprehensive Agreement or the 395 Design-Build Contract, the Parties shall seek to cause the dispute hereunder to be consolidated with the dispute resolution process occurring under the Comprehensive Agreement or the 395 Design-Build Contract. If such consolidation does not occur, then any ongoing proceeding regarding the dispute hereunder shall be stayed pending final resolution of the dispute under the Comprehensive Agreement or the 395 Design-Build Contract, which resolution shall be binding on the Parties for all purposes of this Agreement.

19.3 Continuation of TTMS Work. Contractor shall continue its performance of the TTMS Work on a timely basis in accordance with the TTMS Work Schedule during any dispute which may arise between Concessionaire and Contractor concerning the TTMS Project.

ARTICLE 20

COST RECORDS

20.1 Maintenance of Records. Contractor shall maintain fiscal records, books and accounts pertaining to the TTMS Project and will maintain or cause to be maintained such books, records and accounts in accordance with applicable Law, including such Laws applicable to the 395 Project as a result of the costs of the 395 Project being financed in part with State funds, federal-aid funds and State bond proceeds.

20.2 Inspection of Books, Records and Audit Rights. Contractor covenants and agrees to keep and maintain full, complete and detailed records of all its costs and allowances pertaining to Scope Changes. Contractor agrees to make available to Concessionaire, the Department, and FHWA (to the extent required under Section 18.07 of the Comprehensive Agreement) and independent third parties designated by Concessionaire and allow to each of them access to, such books, records and documents as they may reasonably request in connection with the TTMS Project for any purpose related to the 395 Project, this Agreement or the Comprehensive Agreement, including but not limited to monitoring compliance with the terms and conditions of this Agreement. Contractor will fulfill all of Concessionaire's obligations relating to Concessionaire's obligations under Section 18.07 of the Comprehensive Agreement with respect to any books, records and documents in connection with the TTMS Project and will cooperate with Concessionaire, the Department, FHWA and other parties mentioned in this Section 20.2 in the exercise of their rights hereunder. Any records, books and documents in connection with the TTMS Project shall be preserved by Contractor for a period of three (3) years after 395 Final Completion, at no additional cost to Concessionaire, and subject to Concessionaire inspection and audit during such period. All expenses of an audit by Concessionaire shall be paid by Concessionaire. No audit rights (or, in the case of Concessionaire and its designees, inspection

rights) shall extend to the make-up of the lump-sum Contract Sum or to any unit price or rate used under this Agreement after such amount, price or rate has been agreed by the Parties.

ARTICLE 21

INDEPENDENT CONTRACTOR

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

ARTICLE 22

REPRESENTATIVES AND WARRANTIES OF CONTRACTOR

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

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

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

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

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

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

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

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

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

22.1.8 Prequalification. As required by the Comprehensive Agreement, Contractor is prequalified with the Department in accordance with the Department's applicable Rules Governing Prequalification Privileges, and covenants that it will not subcontract any part of the TTMS Work to a Subcontractor who is not prequalified with the Department in accordance with the Department's applicable Rules Governing Prequalification Privileges, unless otherwise indicated in the Comprehensive Agreement; provided, that this restriction does not apply to contract specialty items, consultants, manufacturers, suppliers, haulers or snow removal service providers.

22.1.9 Disbarment/Suspension. None of Contractor or any of its affiliates (as "affiliate" is defined in 29 CFR 98.905) is suspended or debarred, subject to a proceeding to suspend or debar it, or subject to an agreement for voluntary exclusion, from bidding, proposing or contracting with any federal or State department or agency.

22.1.10 No Default. To the best of Contractor's knowledge after diligent inquiry, no event which, with the passage of time or the giving of notice, would constitute a Contractor Default has occurred.

22.1.11 No CA Delay Event or CA Compensation Event. To the best of Contractor's knowledge after diligent inquiry, no event which, with the passage of time or the giving of notice, would constitute a CA Delay Event or a CA Compensation Event under this Agreement has occurred.

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

22.1.13 Department as Third-Party Beneficiary. Contractor acknowledges that the Department is a third-party beneficiary of all Contractor's representations and warranties made in this Article 22; *provided*, that, in accordance with the Comprehensive Agreement, the Department agreed to exercise its rights under such representations and warranties only so long as Concessionaire or the Financing Parties are not pursuing remedies related thereto.

ARTICLE 23

REPRESENTATIVES AND WARRANTIES OF CONCESSIONAIRE

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

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

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

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

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

23.1.5 Litigation. There are no actions, suits, proceedings or investigations pending or, to the knowledge of Concessionaire, threatened against Concessionaire at law or in

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

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

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

ARTICLE 24

MISCELLANEOUS

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

24.2 Waivers. No failure to exercise, and no delay in exercising, any right, power or remedy under this Agreement, the Comprehensive Agreement or the 395 Design-Build Contract shall impair any right, power or remedy which any Party hereto may have, nor shall such failure or delay be construed to be a waiver of any such rights, powers or remedies, or an acquiescence in any breach or default under this Agreement, the Comprehensive Agreement or the 395 Design-Build Contract, nor shall any waiver of any breach or default be deemed a waiver of any default or breach subsequently occurring under this Agreement, the Comprehensive Agreement or the 395 Design-Build Contract.

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

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

24.5 Notice. Unless otherwise expressly required or permitted by either the Comprehensive Agreement or this Agreement, any notice required or permitted to be given by Contractor to Concessionaire hereunder shall be in writing and shall be addressed to Concessionaire at:

95 Express Lanes LLC
6440 General Green Way
Alexandria, VA 22312
Attention: Kevin Ginnerty

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

Transurban (USA) Inc.
6440 General Green Way
Alexandria, VA 22314
Attention: Vice President of Technology
Telephone: (571) 419-6100
Facsimile: (571) 419-6101

24.5.1 Delivery. Delivery shall be made in a manner reasonably acceptable by both the Parties.

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

24.7 Entire Agreement. This Agreement contains the entire agreement between Concessionaire and Contractor with respect to the TTMS Project, and supersede any and all prior

and contemporaneous written and oral agreements, proposals, negotiations, understandings and representations pertaining to the TTMS Project.

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

24.9 Conflicting Provisions. In the event of any inconsistencies between this Agreement the 395 Design-Build Contract and the Comprehensive Agreement, , the following order of precedence in the interpretation hereof or resolution of such conflict hereunder shall prevail:

- (i) the Comprehensive Agreement;
- (ii) Technical Requirements;
- (iii) Duly authorized and executed Scope Change Orders and written amendments to this Agreement executed by both Parties;
- (iv) This Agreement, excluding Exhibits hereto;
- (v) The Scope of Work;
- (vi) The TTMS Interface Plan;
- (vii) The TTMS Special Provisions;
- (viii) Exhibits hereto (other than the Scope of Work, TTMS Interface Plan and TTMS Special Provisions); and
- (ix) Design Documentation, including drawings produced and delivered pursuant hereto (in respect of which, precedence shall be given to drawings of a larger scale over those of smaller, figured dimensions on the drawings shall control over scaled dimensions, and noted materials shall control over undimensioned graphic indications).

Where an irreconcilable conflict exists among Laws, this Agreement, the drawings included in the Design Documentation, and the specifications in the Design Documentation, the earliest item mentioned in this sentence involving a conflict shall control over any later mentioned item or items subject to such conflict, and if a conflict exists within or between parts of 395 Design-Build Contract, or between 395 Design-Build Contract and Laws, or among Laws themselves, the more stringent or higher quality requirements shall control. All obligations imposed on Contractor and each Subcontractor under the 395 Design-Build Contract or under Laws or Applicable Standards and not expressly imposed or addressed in this Agreement shall be in addition to and supplement the obligations imposed on Contractor under this Agreement, and shall not be construed to create an “irreconcilable conflict.” Where a conflict exists among codes and standards applicable to the TTMS Project or Contractor’s performance of the TTMS Work, the most stringent provision of such codes and standards shall govern.

24.10 No Third Party Rights. This Agreement and all rights thereunder are intended for the benefit of Concessionaire and Contractor, Design-Builder (to the extent set forth in the 395 Design-Build Contract), the Financing Parties (to the extent provided in Articles 13 and 16 hereof), the Department (to the extent set out in the Comprehensive Agreement), and the Indemnitees (to the extent provided in Article 13 hereof), and shall not imply or create any rights on the part of, or obligations to, any other Person or any other rights on the part of, or other obligations to, the Financing Parties, the Department and the Indemnitees beyond the rights and obligations expressly set forth herein.

24.11 Rule of Interpretation. Wherever the work “or” is used herein it shall be read to include the work “and”.

24.12 Source Code Escrow.

24.12.1 Concessionaire and Contractor acknowledge that Contractor or its Software suppliers may not wish to disclose directly to the Department and Concessionaire at the time of installation the Source Code and Source Code Documentation which is Proprietary Intellectual Property of Contractor or its Software suppliers, as public disclosure could deprive Contractor or its Software suppliers of commercial value, but that the Department must be ensured access to such Source Code and Source Code Documentation in either of the following circumstances:

(i) if the Comprehensive Agreement is terminated for “Concessionaire Default” thereunder or upon assignment by Concessionaire of its rights pursuant to the Comprehensive Agreement, the Department assumes this Agreement or Subcontract with such Software supplier, and either (A) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of the Software supplier occurs or (B) the Software supplier fails or ceases to provide services as necessary to permit continued use of the Software by the Department as contemplated by the Comprehensive Agreement; or

(ii) (A) if this Agreement is terminated for Contractor Default, (B) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of Contractor occurs or (C) Contractor fails or ceases to provide services as necessary to permit continued use of the Software by Concessionaire as contemplated by this Agreement.

24.12.2 Under the Comprehensive Agreement, by no later than the 395 Service Commencement Date, the Department and Concessionaire will establish one or more escrows (the “**Source Code Escrows**”) with the Escrow Agent on terms and conditions reasonably acceptable to the Department, Concessionaire into which such Source Code and Source Code Documentation will be escrowed, including all relevant commentary, explanations and other documentation, as well as instructions to compile such Source Code and Source Code Documentation and all modifications, additions or substitutions made to such Source Code and Source Code Documentation. Contractor will cooperate with Concessionaire in escrowing the Source Code and Source Code Documentation and will submit to Concessionaire all Source

Code and Source Code Documentation in its possession or control that is part of the TTMS Work.

24.12.3 The escrows provided for herein will survive any termination of this Agreement regardless of the reason. Concessionaire will pay the reasonable costs and expenses of the Escrow Agent related to the Source Code Escrows and interim escrows.

24.13 Survival of Provisions. All provisions of either the Comprehensive Agreement or the 395 Design-Build Contract which are expressly or by implication to come into or continue in force and effect after the expiration or termination of this Agreement shall remain in effect and be enforceable following such expiration or termination.

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

24.15 DBE, SWAM and Veteran and Local Hiring Programs.

24.15.1.1 General.

(a) The Parties recognize the importance of pursuing, inviting and developing the participation of (i) disadvantaged business enterprises, (ii) minority, women-owned and small businesses and (iii) Veteran and local hires through DBE, SWaM and Veteran and Local Hiring programs.

(b) Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement and will not permit its Subcontractors to discriminate on the basis of race, color, national origin, or sex in the performance of their respective Subcontracts. Contractor shall carry out applicable requirements of 49 CFR part 26 in the administration of this Agreement and perform in a manner that will not result in a violation of the Comprehensive Agreement and shall cause its Subcontractors to do the same with respect to their respective Subcontracts.

(c) Contractor shall make Good Faith Efforts to develop and implement a plan to include DBE, SWaM or Veteran and local Hiring in their contracting structure that takes into account the specialized nature of the TTMS Work.

24.16 Contracting Requirements.

24.16.1 Contractor covenants and agrees that it will not discriminate and it will require all Subcontractors not to discriminate against any person, or group of persons, on account of age, sex, marital status, race, creed, color, national origin, religion or the presence of any sensory, mental or physical handicap in the permitting, design, acquisition, construction,

maintenance, operation or management of the 395 Project, nor will Contractor establish or permit any such practice or practices of discrimination or segregation with reference to the selection, use, hiring, firing, promotion or termination of employees, Subcontractors, and vendors; provided, that the prohibition against discrimination on the basis of sensory, mental or physical handicap will not apply if the particular disability prevents the proper performance of the particular person involved.

24.16.2 Contractor will comply, and will require all Subcontractors to comply, with all construction safety and health standards established by Law. Neither Contractor nor any Subcontractor will require any worker to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous to his or her health or safety, as determined under construction safety and health standards promulgated by the U.S. Secretary of Labor in accordance with Section 107 of the Contract Work Hours and Safety Standards Act.

24.16.3 Contractor acknowledges that in accordance with Section 24.02(f)(ix) of Comprehensive Agreement no liens or Claims will attach at any time to any interest of the Department in the 395 Project or the Project Right of Way.

24.16.4 Coordination with the Department and Financing Parties. Contractor acknowledges that each of the Department and the Financing Parties shall have the right to review this Agreement, and that they may have rights (a) to receive notices of default by Contractor and notices of inspections and tests and (b) to approve 395 Service Commencement and 395 Final Completion. Contractor agrees to make changes to this Agreement and to otherwise cooperate with each of the Department and the Financing Parties to the extent reasonably required in order for Concessionaire and Concessionaire to obtain the Department's approval.

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

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

[Remainder of this page intentionally left blank. Signature page follows.]

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

CONCESSIONAIRE

95 Express Lanes, LLC

By: _____
Name: _____
Title: _____
Date: _____

CONTRACTOR

Transurban (USA), Inc.

By: _____
Name: _____
Title: _____
Date: _____