

**EXECUTION VERSION**

**THE CNG FUELING FOR TRANSIT AGENCIES PARTNERSHIP  
PROJECT**

**PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP  
AGREEMENT**

**JUNE 16, 2016**

**Between**

**THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION  
as the Department**

**and**

**TRILLIUM TRANSPORTATION FUELS LLC  
(d/b/a TRILLIUM CNG)  
as the Development Entity**

**FINAL RFP: DECEMBER 14, 2015  
ADDENDUM #1: JANUARY 11, 2016  
ADDENDUM #2: JANUARY 22, 2016  
ADDENDUM #3: JANUARY 29, 2016  
ADDENDUM #4: FEBRUARY 9, 2016  
ADDENDUM #5: FEBRUARY 23, 2016**

## CONTENTS

Article	Page
1. Definitions; Project Documents .....	2
2. Effectiveness, Conditions Precedent to Closing .....	4
3. Grant of Right .....	5
4. Review of Submittals .....	8
5. Governmental Approvals; Utilities .....	11
6. Hazardous Materials .....	16
7. Design and Construction .....	18
8. Maintenance, Renewal and Handback Work .....	24
9. Contractors and Key Personnel .....	28
10. Department and Development Entity Changes .....	30
11. Noncompliance Events .....	35
12. Supervening Events .....	38
13. Change in Law .....	46
14. Payments to the Development Entity .....	46
15. CNG Commercialization Activities .....	49
16. Natural Gas Supply .....	51
17. [Not Used] .....	53
18. [Not Used] .....	53
19. Insurance .....	53
20. Development Entity Indemnity .....	53
21. Representations and Warranties .....	55
22. Development Entity Default .....	58
23. Department Default .....	61
24. Termination and Force Majeure .....	63
25. Department Step-In .....	66
26. Maintenance and Inspection of Records .....	68
27. Intellectual Property .....	69
28. Commonwealth DB Requirements .....	71
29. Assignment and Transfer; Fundamental Changes .....	71
30. Dispute Resolution Procedures .....	72
31. Sole Remedy and Liabilities .....	75
32. Miscellaneous .....	77
Signatories .....	85

<b>Schedules</b>	<b>Page</b>
1. Definitions .....	87
2. [Reserved] .....	120
3. Site Access Restrictions .....	121
4. Form of Environmental Liability Acknowledgement .....	124
5. Calculation of Handback Amounts .....	127
6. Compensation on Termination .....	129
7. Noncompliance Points Table .....	132
8. Payment Mechanism .....	134
9. Insurance Coverage Requirements .....	146
10. Disputes Review Board .....	157
Part 1 Form of Disputes Review Board Agreement .....	157
Part 2 Disputes Review Board Procedures .....	163
11. Initial Designation of Authorized Representatives .....	168
12. [Not Used] .....	169
13. Monthly Performance Report .....	170
14. Certain Public Policy Requirements .....	174
Part 1 Contractor Responsibility Provisions .....	174
Part 2 Anti-Pollution Measures .....	176
15. Commonwealth Diverse Business (DB) Requirements .....	193
16. [Not Used] .....	199
17. [Not Used] .....	200
18. Technical Provisions .....	201
19. Extra Work Costs .....	202
20. Conditions Precedent to Notices to Proceed .....	207
Part 1 Conditions Precedent to NTP1 .....	207
Part 2 Conditions Precedent to NTP2 .....	208
21. Conditions Precedent to CNG Readiness and Site Completion .....	209
Part 1 Conditions Precedent to CNG Readiness .....	209
Part 2 Conditions Precedent to Site Completion .....	211
22. Form of Guarantee .....	212

**Appendices..... Page**

1. Development Entity’s Proposal Commitments .....	221
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## THE CNG FUELING FOR TRANSIT AGENCIES PARTNERSHIP PROJECT

**THIS PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT** dated as of June 16, 2016 (this **PPA**) is entered into by and

### **BETWEEN:**

- (1) **THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION**, an executive agency of the Commonwealth of Pennsylvania (the **Department**); and
- (2) **TRILLIUM TRANSPORTATION FUELS, LLC (d/b/a TRILLIUM CNG)**, a limited liability company organized and existing under the laws of the State of Delaware (the **Development Entity**).

The Department and the Development Entity are hereinafter sometimes referred to individually as a **Party** and collectively as the **Parties**.

### **BACKGROUND:**

- (A) Each of the transit agencies in the Commonwealth of Pennsylvania (the **Commonwealth**) set forth in Table 1 (Participating Transit Agencies) of the Technical Provisions (each, a **Transit Agency**) wish to convert their fleets to accommodate compressed natural gas (**CNG**).
- (B) The Department wishes to provide a CNG fueling solution to Transit Agencies across the Commonwealth through a public-private partnership project, as contemplated herein. This project will consist of designing, constructing, financing, operating and maintaining temporary or permanent CNG fueling stations (the **CNG Fueling Station Facilities**), upgrading existing maintenance facilities and indoor vehicle storage facilities (the **CNG Maintenance and Storage Facilities** and, together with the CNG Fueling Station Facilities, the **CNG Facilities**) to ensure they are CNG-ready, supplying CNG to participating Transit Agencies, implementing a strategy for and undertaking commercial CNG sales to non-Transit Agency customers (the **Commercial Sales**) and participating in a revenue sharing arrangement with the Department in respect thereof (the **CNG Commercialization Activities**), providing back office services in connection with the operation and maintenance of the CNG Fueling Station Facilities and the CNG Commercialization Activities and all associated assets, work products and activities related to each of the foregoing, as more fully described herein (collectively, the **Project**).
- (C) On November 24, 2014, the Department issued a Request for Qualifications (collectively with all subsequently issued addenda thereto, the **RFQ**) regarding a proposed future solicitation for the Project.
- (D) On January 16, 2015, pursuant to the process outlined in the RFQ, the Department selected four (4) respondents to be "Short-listed Proposers" that would be eligible to submit proposals in response to the Request for Proposals issued by the Department based on their respective financial and technical qualifications as detailed in their responses to the RFQ.
- (E) On December 14, 2015, the Department issued to such Short-listed Proposers the Request for Proposals (including a form of this PPA) and thereafter issued a series of addenda thereto (collectively, the **RFP**).

- (F) On January 14, 2016, the Department received technical proposals in response to the RFP, and on February 4, 2016, the Department received commercialization and financial proposals in response to the RFP, including the response of Trillium Transportation Fuels, LLC (d/b/a Trillium CNG) (formerly Integrys Transportation Fuels, LLC (d/b/a Trillium CNG)) (the **Preferred Proposer**) on behalf of the Development Entity. On February 12, 2016 and February 29, 2016, the Department received amended financial proposals in response to Addendum 4 and Addendum 5 to the RFP, respectively, including the response of the Preferred Proposer on behalf of the Development Entity.
- (G) On March 28, 2016, pursuant to the evaluation process outlined in the RFP, the Department selected the Preferred Proposer's Proposal identifying the Development Entity as the "Preferred Proposer" under the RFP. The Department's decision was based on its overall evaluation of the proposals received from the Proposers and the Department's conclusion that the Proposal sufficiently satisfied all criteria required by the RFP and offered the best value Proposal.
- (H) On September 29, 2014, the Commonwealth's Public Private Transportation Partnerships Board authorized the Department, amongst other things, to advance the implementation and delivery of the Project as a public-private partnership project and enter into this PPA.

**NOW, THEREFORE**, in consideration of the sums to be paid by the Department to the Development Entity, the Project Services to be financed and performed by the Development Entity and the covenants and agreements set out herein, the Parties hereby agree as follows:

## **1. DEFINITIONS; PROJECT DOCUMENTS**

### **1.1 Definitions; Construction and Interpretation of Agreement**

- (a) Definitions for all capitalized terms used in this PPA are contained in Schedule 1 (Definitions) hereto. If any such terms are used in any other Project Document, unless expressly provided otherwise, they shall have the same respective meanings therein as defined herein.
- (b) The language in all parts of this PPA shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Party. The Parties hereto acknowledge and agree that this PPA has been prepared jointly by the Parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each Party has been given the opportunity to independently review this PPA with legal counsel, and that each Party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or Dispute regarding the interpretation of this PPA, this PPA shall not be interpreted or construed against the Party preparing it, and instead the other applicable rules of interpretation and construction set out herein shall be utilized.
- (c) Any references to any covenant, condition, obligation and/or undertaking **herein, hereunder** or **pursuant hereto** (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing in this PPA and any Exhibits, Schedules, Forms, Appendices, addenda, attachments or other documents affixed to or expressly incorporated by reference in this PPA. The words **herein, hereof** and **hereunder** and any other words of similar import shall be construed to refer to this PPA in its entirety and not to any particular provision of this PPA. All terms defined in this PPA shall be deemed to have the same meanings in all Exhibits, Schedules, Forms, Appendices, addenda, attachments or other

documents affixed to or expressly incorporated by reference in this PPA, unless the context thereof clearly requires the contrary. All references to this PPA or any other agreement shall include all Exhibits, Schedule, Forms, Appendices, addenda, attachments or other documents affixed to or expressly incorporated herein or therein by reference. Unless expressly provided otherwise, all references to Articles, Sections, subsections, clauses, Exhibits, Schedules, Forms and Appendices refer to the Articles, Sections, subsections, clauses, Exhibits, Schedules, Forms and Appendices set out in or attached to this PPA, as applicable. Unless otherwise stated in this PPA or the other Project Documents, words which have well-known technical or construction industry meanings are used in this PPA or the other Project Documents in accordance with such recognized meanings. All references to a subsection or clause **above** or **below** refer to the denoted subsection or clause within the Section in which the reference appears. Wherever the word **including**, **includes** or **include** is used in the Project Documents, it shall be deemed to be followed by the words **without limitation**. In the computation of periods of time from a specified date to a later specified date, the word **from** means **from and including** and the words **to** and **until** mean **to and including**.

- (d) As used in this PPA and as the context may require, (i) the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa; (ii) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as amended, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, supplements or modifications set out herein or therein); and (iii) any reference to a Person shall be construed to include such Person's permitted successors and assigns.
- (e) Portions of the Project Documents are written in active voice, imperative mood. In sentences using the imperative mood, unless otherwise specifically stated, the subject **Development Entity** is implied, and it is understood the Development Entity shall perform such work, comply with the requirements of, furnish such material, or take such action. The word **shall** is also implied, and when implied or stated, is to be considered mandatory and, unless otherwise specifically stated, to pertain to requirements or actions of the Development Entity.
- (f) Unless indicated to the contrary, all determinations, consents or approvals of the Department shall not be unreasonably withheld, conditioned or delayed.

## **1.2 Project Documents; Order of Precedence**

- (a) In the event of any conflict, ambiguity or inconsistency between any terms or provisions of this PPA, the order of precedence, from highest to lowest, shall, except as provided otherwise in this Section 1.2 (Project Documents; Order of Precedence) be as follows:
  - (i) the main body of this PPA;
  - (ii) the Schedules to this PPA;
  - (iii) the Appendices to this PPA other than the Development Entity's Proposal Commitments; and
  - (iv) the Development Entity's Proposal Commitments,

- (v) in each case as amended or supplemented from time to time in accordance with the terms of this PPA.
- (b) In the event of any conflict, ambiguity or inconsistency between or among any of the provisions in this PPA, or between two or more Project Documents having the same order of precedence, the more stringent standard will prevail.
- (c) If the Development Entity's Proposal Commitments include statements, terms, concepts or designs that can reasonably be interpreted as offering to provide higher quality items than otherwise required by the other Project Documents or to perform services or meet standards in addition to or better than those otherwise required, then the Development Entity's obligations hereunder shall include compliance with all such statements, terms, concepts and designs as set out in the Development Entity's Proposal Commitments.
- (d) Additional or supplemental details or requirements in a lower priority Project Document shall be given effect except to the extent they irreconcilably conflict with requirements, provisions and practices contained in the higher priority Project Document.

### **1.3 Responsibility for Related Parties**

Subject to the provisions of this PPA, in respect of the Development Entity's performance or non-performance of the Project Documents, the Development Entity shall be responsible for the acts and omissions of the Development Entity-Related Entities as if they were the acts and omissions of the Development Entity. Accordingly, the fact that the Development Entity did not select any Contractor will be no defense by the Development Entity in the event that it fails to perform its obligations or incurs any liability under this PPA.

## **2. EFFECTIVENESS, CONDITIONS PRECEDENT TO CLOSING**

### **2.1 Term and Effectiveness**

- (a) The term of this PPA shall commence on the date of this PPA and shall end on the earlier of
  - (i) the 20th anniversary of the first instance of a Project Site achieving CNG Readiness, and
  - (ii) the Early Termination Date (the **Term**).
- (b) All the provisions of this PPA shall come into effect on the Commercial Closing Date.

### **2.2 Conditions Precedent to the Commercial Closing Date**

The occurrence of the Commercial Closing Date is subject to the fulfillment (or waiver by the non-obligated Party) of the following conditions:

- (a) **Corporate Documents**

The Development Entity shall have delivered to the Department such documents and certificates as the Department may reasonably request evidencing the organization, existence and good standing of the Development Entity and the authorization of the entry by the Development Entity into the Project Documents.

(b) **Development Entity Opinions**

The Development Entity shall have provided to the Department customary legal opinions, addressed to and in form and substance satisfactory to the Department, from legal counsel as to:

- (i) organization and existence of the Development Entity;
- (ii) due authorization and execution of the Project Documents;
- (iii) enforceability of, and no violation of law or the Development Entity's organizational documents with respect to, each Project Document; and
- (iv) the absence of material litigation.

(c) **Representations and Warranties of the Development Entity**

The representations and warranties of the Development Entity set out in Section 21.1 (Development Entity Representations and Warranties) of this PPA shall be true and correct in all material respects as at the date of this PPA.

(d) **Representations and Warranties of the Department**

The representations and warranties of the Department set out in Section 21.2 (Department Representations and Warranties) of this PPA shall be true and correct in all material respects as at the date of this PPA.

(e) **Qualification to Do Business**

The Development Entity shall have provided to the Department evidence reasonably satisfactory to the Department that it is a Registered Business Partner of the Commonwealth.

(f) **Guarantee**

If the Proposal specifies a Guarantor, the Development Entity shall have provided to the Department an executed guarantee substantially in the form attached as Schedule 22 (Form of Guarantee).

(g) **Environmental Liability Acknowledgement**

The Development Entity shall have executed and delivered an acknowledgment of each Transit Agency's responsibilities in respect of Hazardous Materials, as set forth in Article 6 (such confirmation, an **Environmental Liability Acknowledgement**), substantially in the form attached as Schedule 4 (Form of Environmental Liability Acknowledgement).

**3. GRANT OF RIGHT**

**3.1 Grant of Right**

- (a) Subject to the terms and conditions of the Project Documents, the Department hereby grants to the Development Entity the exclusive right, and the Development Entity accepts such right and acknowledges its obligation, to (i) develop, design, construct, upgrade, implement and finance the

Project, (ii) maintain the CNG Fueling Station Facilities in accordance with the terms of the Project Documents; and (iii) conduct CNG Commercialization Activities in accordance with the Project Documents.

- (b) Without limiting the Development Entity's rights under this PPA, it is the express intent and agreement of the Parties that this PPA shall in no way be deemed to constitute a lease to the Development Entity (whether an operating lease or a financing lease) or, except as expressly provided herein, a grant (regardless of the characterization of such grant, including by way of easement, purchase option, conveyance, lien or mortgage), in each case, of any right, title, interest or estate in the Project, the Project Sites, or of any assets incorporated into, appurtenant to, or in any way connected with the Project. It is the express agreement and intent of the Parties that the Development Entity shall not be treated as or deemed to be the legal or equitable owner of any Project Site for any purpose. The Development Entity's rights hereunder are derived solely from its status as a Development Entity and independent contractor as described in this PPA, and not as a tenant, lessee, easement holder, optionee, lienor, mortgagee, purchaser or owner of any other interest in real property. The payments to be received by the Development Entity under this PPA are not payments in the nature of rent, fees with respect to real property or purchase price of real property.

### **3.2 Access to Project Sites**

- (a) For the purposes of performing its obligations under the Project Documents only (and exercising of its rights hereunder), the Development Entity shall, subject to the terms and conditions of the Project Documents, have the right to enter onto (and engage in the activities contemplated herein on) each Project Site.
- (b) The Department shall, at no cost to the Development Entity, arrange for the Development Entity's Access to each Project Site in accordance with the provisions of Schedule 3 (Site Access Restrictions).
- (c) The Department shall, and shall cause each Transit Agency, not to in any way materially or unduly interfere with the Development Entity in the performance of its obligations (and exercising of its rights hereunder) under the Project Documents in accordance with the terms of the Project Documents (having regard always to the interactive nature of the activities of the Transit Agencies and of the Development Entity and to the use of any of the Project Facilities and any other operations or activities carried out by the Department on any Project Site in order to perform its functions).
- (d) The Development Entity shall, in the performance of the Project Services at any Project Site, coordinate with the applicable Transit Agencies and any third parties that may from time to time have access rights to such Project Site.

### **3.3 Disclosed Information**

- (a) The Department and the Transit Agencies do not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Information. The Disclosed Information is for information purposes only, and is not mandatory or binding on the Development Entity. Subject to the terms of the Project Documents, the Development Entity is not entitled to rely on the Disclosed Information as accurately describing existing conditions, presenting design, engineering or maintenance solutions or directions, or defining means or

methods for complying with the requirements of the Project Documents, Governmental Approvals or Applicable Law.

- (b) Subject to the terms of the Project Documents, neither the Department, the Transit Agencies nor any of their respective agents, officers or employees shall have any liability to the Development Entity in respect of any:
  - (i) inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Disclosed Information;
  - (ii) failure to make available to the Development Entity any materials, documents, drawings, plans or other information relating to the Project; or
  - (iii) causes of action, claims or Losses whatsoever suffered by any Development Entity-Related Entity by reason of any use of information contained in, or any action or forbearance in reliance on, the Disclosed Information.
  
- (c) The Development Entity shall, subject to the terms of the Project Documents, be deemed to have:
  - (i) satisfied itself as to the assets to which it will receive rights (including each Project Site and, where applicable, any existing structures, Utilities or work on, over or under such Project Site) and the nature and extent of the risks assumed by it under the Project Documents;
  - (ii) satisfied itself as to the nature of the general conditions of each Project Site, the nature of the ground and subsoil, the form and nature of each Project Site, the risk of injury or damage to property near to or affecting each Project Site and to occupiers of such property, the nature of the materials (whether natural or otherwise) to be excavated, and the nature of the design, work, materials, plant, machinery or equipment necessary for the purpose of carrying out its obligations under the Project Documents; and
  - (iii) satisfied itself as to:
    - (A) the access to and through each Project Site and the adequacy of the Access in respect thereof for the purpose of carrying out its obligations under the Project Documents;
    - (B) the precautions and times and methods of working necessary to prevent or (if it is not possible to prevent) to mitigate or reduce, any nuisance or interference, whether public or private, being caused to any third parties; and
    - (C) the scope of the Disclosed Information.
  
- (d) The Development Entity acknowledges and confirms that it has not entered into this PPA on the basis of, and has not relied upon, any statement or representation (whether negligent, innocent or otherwise) or warranty or other provision (in each case whether oral, written, express or implied) made or agreed to by the Department, the Transit Agencies or any of their respective agents or employees, except those expressly repeated or referred to in the Project Documents and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this PPA.

- (e) Subject to any rights that the Development Entity has pursuant to the terms of the Project Documents, the Development Entity shall not in any way be relieved from any obligation under the Project Documents nor shall it be entitled to claim against the Department or the Transit Agencies on grounds that any information, whether obtained from the Department, the Transit Agencies or otherwise (including information made available by the Department and the Transit Agencies), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.
- (f) Notwithstanding the other terms of this Section 3.3 (Disclosed Information), nothing in this Section 3.3 (Disclosed Information) shall:
  - (i) prejudice or qualify the Development Entity's express rights and remedies under or pursuant to the Project Documents including, without limitation, the Development Entity's rights pursuant to Article 12 (Supervening Events); or
  - (ii) exclude any liability which the Department, the Transit Agencies or any of their respective agents or employees would otherwise have to the Development Entity in respect of any statements made fraudulently or in bad faith or constituting willful misconduct.

### **3.4 Collaborative Nature of the Project**

Each Party agrees to cooperate, at its own expense, with the other Party in the fulfillment of the purposes and intent of this PPA. Neither Party shall be under any obligation to perform any of the other Party's obligations under the Project Documents.

## **4. REVIEW OF SUBMITTALS**

### **4.1 General**

The terms and procedures set out in this Article 4 (Review of Submittals) shall govern all Submittals to the Department pursuant to the Project Documents.

### **4.2 No D&C Work Prior to Review**

The Development Entity shall not commence or permit the commencement of any D&C Work that is the subject of, governed by or dependent upon a Reviewable Submittal until it has submitted the relevant Reviewable Submittal to the Department and:

- (a) in respect of a Discretionary Submittal, the Department has provided its approval or consent to the relevant Discretionary Submittal;
- (b) in respect of a Non-Discretionary Submittal:
  - (i) within seven (7) days of receiving written notice from the Development Entity that the Department failed to respond to the Non-Discretionary Submittal within the initial period required under the Project Documents, the Department fails to respond to such Submittal;

- (ii) the Department approves or consents to such Non-Discretionary Submittal in accordance with this Article 4 (Review of Submittals); or
  - (iii) if the Department comments, objects or rejects the relevant Submittal in the manner contemplated in this Article 4 (Review of Submittals), the Department approves or consents to any re-submission of that Non-Discretionary Submittal in accordance with this Article 4 (Review of Submittals) or otherwise fails to respond in respect to the same within the time period required under Section 4.4(a); or
- (c) in respect of an R&C Submittal, the time period during which the Department is entitled to raise comments has expired, whether or not the Department made comments, save that in the event that the Department made comments that are disregarded by the Development Entity and it is subsequently determined that the Department's comments were permitted under Section 4.3(a), the Development Entity shall forthwith undo, modify or remove from the Project Sites and replace (in a manner complying with this PPA) the relevant parts of the Project Services to reflect the Department's comments.

For the avoidance of doubt, nothing in this Section 4.2 (No D&C Work Prior to Review) shall, in and of itself, require the Development Entity to have been issued NTP1 in accordance with Section 7.4 (Conditions Precedent to NTP1) prior to commencing any Design Work or taking any steps required to obtain any Governmental Approvals including, without limitation, communicating with the relevant Governmental Entities.

### **4.3 Grounds for Objection and/or Comment**

- (a) In respect of any Submittal that is not a Discretionary Submittal, the Department may comment on or withhold its approval or consent to that Submittal, but only to the extent that:
- (i) the portion of the Project Services that is the subject of the Submittal fails to comply with any applicable covenant, condition, requirement, term or provision of the Project Documents;
  - (ii) the portion of the Project Services that is the subject of the relevant Submittal is not to a standard equal to or exceeding Good Industry Practice; or
  - (iii) the Development Entity has not provided all content or information required in respect of the Submittal; **provided**, that the Development Entity shall have an opportunity to re-submit the Submittal with the required content or information.
- (b) The Development Entity shall respond to all of the Department's comments and objections to a Submittal provided in accordance with the terms hereof and, except as provided below, make modifications to the Submittal as necessary to fully reflect and resolve all such comments and objections, in accordance with the review processes set out in this Section 4.3 (Grounds for Objection and/or Comment). The Development Entity acknowledges that the Department may provide comments and objections, which reflect concerns regarding interpretation or its preferences or which otherwise do not directly relate to grounds set out in Section 4.3(a). The Development Entity agrees to use its Reasonable Efforts to accommodate or otherwise resolve any such comments or objections through the review processes described in this Article 4 (Review of Submittals). If the Development Entity does not accommodate or otherwise resolve

any comment or objection, the Development Entity shall deliver to the Department within thirty (30) days after receipt of the Department's comments or objections, a written explanation as to why modifications based on such comment or objection are not required or why the relevant comment or objection in relation to the Submittal does not relate (directly or indirectly) to any of the grounds set out in Section 4.3(a) (as applicable). The explanation shall include the facts, analyses and reasons that support the conclusion.

- (c) If the Development Entity fails to notify the Department within such time period, then such failure shall constitute the Development Entity's agreement to make all changes necessary to accommodate and resolve the comment or objection and full acceptance of all responsibility for such changes at the Development Entity's risk.
- (d) If the Department disagrees with the Development Entity's explanation as to why the modifications are not required or why the relevant comment or objection in relation to the Submittal does not relate (directly or indirectly) to any of the grounds set out in Section 4.3(a) (as applicable) as provided in Section 4.3(b), the Parties shall attempt in good faith to resolve the Dispute. If they are unable to resolve the Dispute, the Dispute shall be resolved according to Article 30 (Dispute Resolution Procedures), **provided**, that the Development Entity shall not be required to implement any comments or objections that do not relate (directly or indirectly) to any of the grounds set out in Section 4.3(a).

#### **4.4 Limitations on the Development Entity's Right to Rely**

Nothing in this Article 4 (Review of Submittals) (including any act or omission of the Department pursuant to this Article 4 (Review of Submittals)) shall:

- (a) relieve the Development Entity from the performance of its obligations under the Project Documents;
- (b) constitute acceptance by the Department that the Project Services satisfy the requirements of the Project Documents; or
- (c) subject to Section 4.6 (Substantially Similar Submittals), prevent the Department from subsequently raising an objection or comment on a Submittal in accordance with this Article 4 (Review of Submittals) if the same objection and/or comment was not made by the Department on a previous Submittal.

#### **4.5 Time Periods**

- (a) Except as otherwise provided in this Section 4.5 (Time Periods), whenever the Department is entitled to review and comment on, or to affirmatively approve, a Submittal, the Department shall, as soon as practicable within a period of up to fourteen (14) days after the date the Department receives an accurate and complete Submittal in conformance with the Project Documents, review, comment upon, or approve, as the case may be, the Submittal. The Department's review period in respect of any re-submission of any Submittal shall, unless provided otherwise in the Project Documents, be seven (7) days and shall be limited to a review of those matters that necessitated the re-submission; **provided**, that this reduced period of seven (7) days for Department review of a re-submission shall not apply if the reason for the re-submission was due to a rejection in accordance with the terms hereof of a prior Submittal because it was incomplete.

- (b) If any provision of the Project Documents expressly provides a longer or shorter period for the Department to act, such period shall take precedence over the time period set out in Section 4.5(a).
- (c) The Development Entity shall schedule, prioritize and coordinate all Submittals to allow an efficient and orderly Submittal review process. To the extent that the Development Entity exceeds any of the limits on Submittals set out in the Technical Provisions, the Parties shall (taking into account the number and nature of any other Submittals that the Department may concurrently be in the process of reviewing) agree in good faith to a reasonable time period for the review by the Department of the Submittals that exceed such limit.
- (d) The applicable period for the Department to act on any Submittals received during a period of Poor Maintenance Performance shall automatically be extended by ten days.

#### **4.6 Substantially Similar Submittals**

To the extent that a Submittal relating to a CNG Facility is substantially similar to a Submittal previously issued by the Development Entity in respect of another CNG Facility and the context and circumstances are substantially similar (such a Submittal being a **Substantially Similar Submittal**), the Department shall not raise a comment on such Submittal that is inconsistent with its previous comments in respect of the Substantially Similar Submittal. For the avoidance of doubt, if the Department did not previously raise any comment on the Substantially Similar Submittal, then any relevant comment raised in respect of such Submittal shall be deemed inconsistent for the purposes of this Section 4.6 (Substantially Similar Submittals).

### **5. GOVERNMENTAL APPROVALS; UTILITIES**

#### **5.1 Governmental Approvals**

##### **(a) Responsibility**

- (i) Except in respect of Department Obtained Governmental Approvals and subject to the terms of the Project Documents, the Development Entity shall be solely responsible for securing and obtaining all Governmental Approvals (including any revision, modification, amendment, supplement, renewal or extension thereof), required in connection with its performance of this PPA.
- (ii) Without prejudice to Section 5.1(b)(ii), the Department shall obtain or cause to be obtained for the Development Entity the benefit of each of the Department Obtained Governmental Approvals so as to ensure that the Development Entity shall have the use and benefit of the Department Obtained Governmental Approvals no later than the date set forth in respect thereof in Section 3.2 of the Technical Provisions.
- (iii) Notwithstanding Section 5.1(a)(i), the Development Entity shall be responsible for obtaining amendments or modifications to any Department Obtained Governmental Approval necessary to reflect the Development Entity's Final Design and/or means and methods should the Final Design in respect of any Project Site and/or means and methods deviate from the basis upon which the Department Obtained Governmental Approval was initially granted by the Governmental Entity (or, if not then granted, the basis upon which the Department sought to obtain such Department Obtained Governmental Approval). In

the event that any modifications are not permitted by the Governmental Entity, the Development Entity shall be responsible, at its own risk of delay and cost, for revising its Final Design in respect of the relevant Project Site and/or means and methods as necessary to satisfy the requirements and conditions of the relevant Governmental Entity.

- (iv) The Development Entity shall at all times perform its obligations under this PPA in compliance with all Governmental Approvals.
- (v) The Development Entity shall promptly deliver to the Department true and complete copies of all applications for Governmental Approvals and new or amended Governmental Approvals obtained by it.
- (vi) Without prejudice to Section 5.1(b), the Department shall cause each Transit Agency to obtain, at no cost to the Development Entity and within sixty (60) days after the date on which the Development Entity shall have provided to the Department and the applicable Transit Agency all information and supporting documentation necessary for such Transit Agency to complete all applicable applications therefor, all land use permits and zoning approvals (if any) required by Applicable Law for the construction, operation and maintenance of the CNG Facilities in accordance with the Technical Provisions (excluding such permits, or variations thereto, as may be necessary or appropriate in respect of facilities, or portions of such facilities, to be used by the Development Entity for CNG Commercialization Activities, except in the case of those Project Sites set forth in Section 15.2).

**(b) Cooperation with respect to Governmental Approvals**

- (i) The Department will cooperate, and will cause each Transit Agency to cooperate, with the Development Entity in relation to any application by the Development Entity for a Governmental Approval and will, at the reasonable request of the Development Entity, and where necessary to obtain, renew, replace, extend the validity of, or arrange necessary amendments to any Governmental Approval:
  - (A) execute such documents as can only be executed by the Department or any such Transit Agency, as applicable;
  - (B) make such applications as required by Applicable Law, either in its own name or jointly with the Development Entity, as can only be made by the Department, any such Transit Agency or in joint names of the Development Entity and the Department or any such Transit Agency, as the case may be; and
  - (C) attend meetings with appropriately qualified staff and cooperate with approval bodies as reasonably requested by the Development Entity,

in each case within a reasonable period of time of being requested to do so by the Development Entity.

- (ii) To the extent that the Department or a Transit Agency provides any cooperation to the Development Entity pursuant to Section 5.1(b)(i) in respect of a Department Obtained Governmental Approval or any Governmental Approval required to be issued in the name of a Transit Agency, the Development Entity shall reimburse the Department or the

Transit Agency, as applicable, in respect of its reasonable and proper costs associated with the provision of such cooperation.

- (iii) The Development Entity shall cooperate with the Department in respect of the application by the Department for any Department Obtained Governmental Approvals (including any renewals, amendments or supplements thereto), at the times and in the manner reasonably requested by the Department, including providing supporting drawings, data and technical information and the filing by the Development Entity of appropriate applications for the relevant Department Obtained Governmental Approvals with the relevant Governmental Entity.
- (iv) The Development Entity shall cooperate with each applicable Transit Agency in respect of the application by any such Transit Agency for any Governmental Approvals required to be issued in the name of any such Transit Agency (including any renewals, amendments or supplements thereto), at the times and in the manner reasonably requested by each such Transit Agency, including providing supporting drawings, data and technical information and the filing by the Development Entity of appropriate applications for the relevant Governmental Approvals with the relevant Governmental Entity.

## **5.2 Utilities**

- (a) The Development Entity shall cause, in accordance with the Technical Provisions, all Utility Relocations necessary to accommodate construction, operation, maintenance and/or use of each CNG Facility. All Utility Relocation Work performed by the Development Entity shall comply with the Project Documents. To the extent consistent with the Technical Provisions, the Development Entity shall coordinate, monitor and otherwise undertake the necessary efforts to cause Utility Owners performing Utility Relocation Work to perform such work in a timely manner, in coordination with the Project Services, and in compliance with the standards of design and construction and other applicable requirements specified in the Project Documents. However, regardless of the arrangements made by the Development Entity with the Utility Owners, to the extent consistent with the Technical Provisions, the Development Entity shall continue to be the responsible party to the Department for timely performance of all Utility Relocation Work so that upon completion of the D&C Work, all Utilities that might impact any CNG Facility (whether located within or outside the relevant Project Site) are compatible with such CNG Facility.
- (b) For the avoidance of doubt, except as expressly set forth in Section 5.2(c), the Development Entity shall be solely responsible for all costs of any Utility Relocation Work (including any compensation payable to any Utility Owner in connection with Utility Relocation Work) and the Department shall have no obligation to pay the costs of any Utility Relocation Work.
- (c) To the extent the Development Entity incurs reasonable and documented costs of D&C Work (excluding D&C Work in respect of any Project Site for which the Development Entity has elected, in accordance with the Project Documents and Table 2 (Site Specific Performance Requirements) of the Technical Provisions, to construct a CNG Equipment Compound in lieu of utilizing a Mobile CNG Solution at such Project Site, notwithstanding that the construction of such CNG Equipment Compound is not an absolute requirement of the Project Documents) (x) to install and or upgrade the connection of electricity and/or natural gas Utilities (including any Utility Relocation Work) to the Project Sites and (y) to upgrade the Utilities solely for the benefit

and at the election of the relevant Utility Owner for accommodation of the Project prior to CNG Readiness in respect thereof that are:

- (i) in excess of \$5,000,000 (the **Allowance**) in the aggregate across all Project Sites (such excess amount being the **Overage**), the Department shall pay to the Development Entity, within sixty days after the achievement of CNG Readiness in respect of the last Project Site, an amount equal to:
    - (A) fifty percent (50%) of the Overage to the extent that the Overage is less than or equal to fifty percent (50%) of the Allowance (the **Shared Risk Limit**); and
    - (B) to the extent that the Overage exceeds the Shared Risk Limit, one hundred percent (100%) of such excess amount; or
  - (ii) less than \$5,000,000 in the aggregate across all Project Sites, the Development Entity shall, within sixty days after the achievement of CNG Readiness in respect of the last Project Site, pay to the Department an amount equal to one hundred percent (100%) of the difference between \$5,000,000 and the actual cost of such D&C Work incurred across all Project Sites.
- (d) If applicable, the Development Entity is solely responsible for collecting directly from the relevant Utility Owner any payment for which the Utility Owner is responsible pursuant to any agreement for the performance of utility relocation work by the Development Entity which is outside the scope of the Project Services. Subject to the terms of the Project Documents, if for any reason the Development Entity is unable to collect any amounts due to the Development Entity from any Utility Owner for such out of scope utility relocation work, then:
- (i) the Department shall have no liability for such amounts;
  - (ii) the Development Entity shall have no right to collect such amounts from the Department or to offset such amounts against amounts otherwise owing from the Development Entity to the Department; and
  - (iii) the Development Entity shall have no right to suspend the Project Services or to exercise any other remedies against the Department on account of such failure to pay.
- (e) Failure of Utility Owners to Cooperate
- (i) The Development Entity shall use diligent efforts to obtain the cooperation of each Utility Owner as necessary for Utility Relocations to be performed in connection with the Work. The Development Entity shall notify the Department promptly if the Development Entity reasonably believes that:
    - (A) any Utility Owner would not undertake or permit a Utility Relocation in a manner consistent with the timely achievement of CNG Readiness in respect of any Project Site or in accordance with Applicable Law, any Governmental Approval or the Project Documents;
    - (B) any Utility Owner is not cooperating in a timely manner to provide agreed-upon work or approvals; or

- (C) any other dispute will arise between the Development Entity and a Utility Owner with respect to the Project, despite the Development Entity's diligent efforts to obtain such Utility Owner's cooperation or otherwise resolve such dispute.

Such Notice may include a request that the Department assist in resolving the dispute or in otherwise obtaining the Utility Owner's timely cooperation. The Development Entity shall provide the Department with such information as the Department requests regarding the Utility Owner's failure to cooperate and the effect of any resulting delay on the Development Entity's Project Working Schedule. After delivering to the Department any Notice or request for assistance, the Development Entity shall continue to use diligent efforts to pursue the Utility Owner's cooperation.

- (ii) If the Development Entity requests the Department's assistance pursuant to Section 5.2(e)(i), then the following provisions shall apply:

- (A) the Development Entity shall provide evidence reasonably satisfactory to the Department that:

- I. the subject Utility Relocation is necessary;
- II. the time for completion of the Utility Relocation in the Project Working Schedule was, at its inception, a reasonable amount of time for completion of such work;
- III. the Development Entity has made diligent efforts to obtain the Utility Owner's cooperation; and
- IV. the Utility Owner is not cooperating or is not able to undertake or permit a Utility Relocation in a manner consistent with the timely achievement of CNG Readiness in respect of any Project Site (the foregoing clauses I through IV are referred to herein as the **conditions to assistance**);

- (B) following the Department's receipt of satisfactory evidence, the Department shall take such reasonable steps as the Development Entity may request to obtain the cooperation of the Utility Owner or resolve the dispute; **provided**, that the Department shall have no obligation to prosecute eminent domain or other legal proceedings, or to exercise any other remedy available to it under Applicable Law or existing contract unless the Department elects to do so in its sole discretion; and

- (C) any assistance the Department provides shall not relieve the Development Entity of its sole responsibility for satisfactory compliance with its obligations and timely completion of all Utility Relocation Work, except as otherwise expressly set out herein.

- (iii) If the Department objects in writing to a request for assistance pursuant to Section 5.2(e)(ii), based on the Development Entity's failure to satisfy one or both of the conditions to assistance described in clauses I and II of Section 5.2(e)(ii)(A), then the Development Entity shall take such action as is appropriate to satisfy the condition(s) and

shall then have the right to submit another request for assistance on the same subject matter.

- (iv) If the Department objects in writing to a request for assistance pursuant to Section 5.2(e)(ii) based on the Development Entity's failure to satisfy one or both of the conditions to assistance described in clauses III and IV of Section 5.2(e)(ii)(A), then the Development Entity shall take such action as the Development Entity deems advisable during the next ten (10) days to obtain the Utility Owner's cooperation and shall then have the right to submit another request for assistance on the same subject matter.
- (v) Notwithstanding the foregoing, no resubmittal will be accepted unless all the Department objections have been addressed in accordance with the preceding clauses (iii) and (iv). This process shall be followed until the Development Entity succeeds in obtaining the Utility Owner's cooperation or in otherwise resolving the dispute or until the Department determines, based on evidence the Development Entity presents, that the conditions to assistance have been satisfied. The Development Entity shall have the right to submit the question of the reasonableness of the Department's determination for resolution according to the Dispute Resolution Procedures.

## **6. HAZARDOUS MATERIALS**

### **6.1 General Obligations**

- (a) Subject to the terms of the Project Documents, the Development Entity will be responsible for the management, treatment, handling, storage, monitoring, remediation, removal, transport, and disposal of any Hazardous Materials in, under or on each Project Site that are encountered during the carrying out of any Construction Work in respect of a CNG Facility, in each case to the extent required by any Applicable Law, Governmental Entity, Governmental Approvals or the Project Documents.
- (b) The relevant Transit Agency will be responsible for the management, treatment, handling, storage, monitoring, remediation, removal, transport, and disposal of any Hazardous Materials in, under or on each Project Site that are not the responsibility of the Development Entity under Section 6.1(a).
- (c) Before any Remedial Action (other than with respect to a Development Entity Release of Hazardous Materials) is taken for which the Development Entity has responsibility that would inhibit the Department's and each relevant Transit Agency's ability to ascertain the nature and extent of the relevant Hazardous Environmental Condition, the Development Entity will afford the Department and each relevant Transit Agency the reasonable opportunity to inspect areas and locations that require Remedial Action within a reasonable time period; **provided**, that in the case of a sudden Hazardous Materials Release, the Development Entity may take the minimum action necessary to stabilize and contain the relevant Hazardous Materials Release without prior notice or inspection, but will promptly notify the Department and each relevant Transit Agency of the sudden Hazardous Materials Release and its location; **provided, further**, that nothing herein shall prevent the Development Entity from complying with Applicable Law or the requirements of any Governmental Entity.
- (d) Subject to the terms of the Project Documents, the Development Entity will (without accepting or assuming responsibility under any Applicable Law) be responsible for obtaining and maintaining

all Governmental Approvals relating to any Remedial Action and will be solely responsible for compliance with all Governmental Approvals and Applicable Laws concerning or relating to Hazardous Materials in respect thereof. In carrying out any Remedial Action, the Development Entity will take such steps and actions as the relevant Transit Agency may reasonably require in order to protect and preserve the relevant Transit Agency's potential claims of contribution and indemnity, statutory or otherwise, against potentially responsible parties, **provided**, that any such steps and actions are not inconsistent with all Applicable Laws and the requirements of the Project Documents and any relevant Governmental Entities or Governmental Approvals.

- (e) The Department and the Development Entity have entered into this PPA in the expectation (and on the assumption) that the Development Entity will not encounter any Hazardous Materials during the carrying out of any Construction Work and to the extent that the Development Entity does encounter any such Hazardous Materials, a Compensation Event will be deemed to have occurred for the purposes of this PPA

## 6.2 Third Party Claims

- (a) To the extent permitted by Applicable Law, the Development Entity shall indemnify, save, protect and defend the Indemnified Parties from any claims, causes of action and Losses initiated, prosecuted, incurred or suffered by any Indemnified Party as a result of or arising out of any Hazardous Materials for which the Development Entity is deemed to be the generator or arranger pursuant to this Article 6 (Hazardous Materials).
- (b) To the extent that any Transit Agency is deemed to be the generator or arranger for Hazardous Materials pursuant to this Article 6 (Hazardous Materials), the Development Entity shall be entitled to seek contribution (in an amount net of any insurance proceeds received pursuant to the Insurance Policies or any amounts which the Development Entity is deemed to have self-insured in accordance with Schedule 9 (Insurance Coverage Requirements) of this PPA) from the relevant Transit Agency for any Losses arising from or in connection with or in respect of any Third-Party Claims initiated against the Development Entity or any Development Entity-Related Entity in connection with such Hazardous Materials; **provided** that:
  - (i) the Development Entity shall promptly notify the Department and the relevant Transit Agency of incidents, potential claims and matters which may give rise to any such Third-Party Claim;
  - (ii) the relevant Transit Agency may give written notice to the Development Entity to tender defense of any such Third-Party Claim to the relevant Transit Agency at any time, in which case the Development Entity shall promptly tender defense of such claim and cooperate with the relevant Transit Agency as necessary or reasonably requested by the relevant Transit Agency to defend such claim; **provided**, that such Transit Agency shall have agreed in writing to pay or reimburse Development Entity's reasonable and documented costs incurred in tendering such defense;
  - (iii) unless and until the relevant Transit Agency assumes defense of any such Third-Party Claim, the Development Entity shall keep the relevant Transit Agency reasonably informed at all times regarding such claim; and
  - (iv) the Development Entity shall not enter into any agreement or settlement with respect to any such claim without the prior written approval of the relevant Transit Agency.

### **6.3 Generator Status**

- (a) As among the Department, the relevant Transit Agency and the Development Entity, the Development Entity will be deemed the sole generator and arranger under 40 CFR, Part 262 in respect of any Development Entity Release of Hazardous Materials. The Development Entity agrees that it shall be identified as the sole generator and arranger of such Hazardous Materials on waste manifests and any other documentation submitted to transporters, disposal facilities and any Governmental Entity.
- (b) As among the Department, the relevant Transit Agency and the Development Entity, the relevant Transit Agency will be deemed the sole generator and arranger under 40 CFR, Part 262 in respect of any Hazardous Materials for which the Development Entity is not identified as the generator and arranger in accordance with Section 6.3(a). The relevant Transit Agency will be identified as the sole generator and arranger of such Hazardous Materials on waste manifests and any other documentation submitted to transporters, disposal facilities and any Governmental Entity.

## **7. DESIGN AND CONSTRUCTION**

### **7.1 Obligations of the Development Entity**

#### **(a) General Duties**

In addition to performing all other requirements of the Project Documents, the Development Entity shall:

- (i) furnish all design and other services, provide all materials, equipment and labor and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts which the Project Documents expressly specify will be undertaken by the Department or other Persons) to construct the Project and to achieve Site Completion in respect of all Project Sites by the Site Completion Deadline;
- (ii) ensure all Construction Work is performed in accordance with Released For Construction Documents;
- (iii) ensure that a suitably qualified foreman is present at each Project Site at all times during the performance of any Construction Work on that Project Site;
- (iv) comply with, and require that all Contractors and other Persons performing any of the Project Services comply with, all requirements of all Applicable Laws;
- (v) cooperate with the Department and Governmental Entities with jurisdiction in all matters relating to the D&C Work, including their review, inspection and oversight of the design and construction of the Project as required by Applicable Law or required herein;
- (vi) exercise Reasonable Efforts to mitigate any delay and any damages due to delay regardless of the cause of the delay, including by re-sequencing, reallocating, or redeploying the Development Entity's and its Contractors' employees to other work, as appropriate;

- (vii) remove silt, debris and any other deposits and objectionable material, and clean and remove surplus and discarded material, equipment, and temporary structures, from each Project Site and any other areas used or disturbed by the Construction Work, including waste and borrow areas, and remove paint marks or spills, stains, rust marks, oil, or any other unsuitable marks caused by the Construction Work, as directed by the Department; and
- (viii) remove and dispose of all existing structures and material which are not to remain in place or to be used in the Construction Work off the Project Site, unless otherwise directed by the Department.

(b) **Performance, Design and Construction Standards**

The Development Entity shall perform the D&C Work in accordance with (i) Good Industry Practice, (ii) the requirements, terms and conditions set out in the Project Documents, (iii) all Applicable Laws, and (iv) the requirements, terms and conditions set out in all Governmental Approvals.

**7.2 Nonconforming and Defective D&C Work**

- (a) The Development Entity shall be responsible for the rectification of all Nonconforming D&C Work and Defects, including, to the extent necessary, through removal and/or replacement, whether discovered by the Development Entity or by the Department. For the avoidance of doubt, performance of any Required Actions in accordance with Section 25.3 (Action by Department) shall not in any respect diminish or derogate from the Development Entity's obligations under this Section 7.2 (Nonconforming and Defective D&C Work).
- (b) Subject to Section 31.2 (Consequential Losses), nothing contained in the Project Documents shall in any way limit the right of the Department to assert claims for damages resulting from Defects in the D&C Work for the period of limitations prescribed by Applicable Law, and the foregoing shall be in addition to any other rights or remedies the Department may have hereunder or under Applicable Law.

**7.3 Safety Compliance**

(a) **Safety Compliance Orders**

- (i) The Department shall use good faith efforts to inform the Development Entity at the earliest practicable time of any circumstance or information relating to the Project which in the Department's reasonable judgment is likely to result in a Safety Compliance Order. Except in the case of an Emergency, the Department shall consult with the Development Entity prior to issuing a Safety Compliance Order concerning the risk to public or worker safety, alternative compliance measures, and cost impacts.
- (ii) Subject to conducting such prior consultation, the Department may issue Safety Compliance Orders to the Development Entity at any time from and after the Commercial Closing Date.

(b) **Duty to Comply**

- (i) Subject to Section 7.3(a) (Safety Compliance Orders), the Development Entity shall implement all Safety Compliance as expeditiously as reasonably possible following issuance of the Safety Compliance Order. The Development Entity shall diligently perform the work necessary to achieve such Safety Compliance until completion.
- (ii) The Development Entity shall perform all work required to implement Safety Compliance.
- (iii) The Development Entity shall undertake Reasonable Efforts to overcome any inability to comply with any Safety Compliance Order caused by a Relief Event.

#### **7.4 Conditions Precedent to NTP1**

- (a) No later than ten (10) days following satisfaction of the conditions set out in Part 1 (Conditions Precedent to NTP1) of Schedule 20(Conditions Precedent to Notices to Proceed), the Department shall issue a notice (**NTP1**) to the Development Entity authorizing commencement of the Preliminary Work.
- (b) Notwithstanding the foregoing, the Development Entity may commence the Tier 1 Initial Work in accordance with Sections 3 and 4 of the Technical Provisions (and the Project Management Plan, following approval thereof by the Department in accordance with this PPA) promptly upon the occurrence of the Commercial Closing Date; **provided**, that all Insurance Policies required to be procured under Schedule 9 (Insurance Coverage Requirements) as of NTP1 have been obtained and are in full force and effect in accordance with Article 19 (Insurance) and Schedule 9 (Insurance Coverage Requirements) and the Development Entity has delivered to the Department written verification of insurance coverage as required by Article 19 (Insurance) and Schedule 9 (Insurance Coverage Requirements); **provided further**, that the Tier 1 Initial Work shall not include any Work contemplated in Section 5 of the Technical Provisions, the commencement of which, for the avoidance of doubt, shall be conditioned up the Department's issuance of NTP2.

#### **7.5 Conditions Precedent to NTP2**

No later than ten (10) days following satisfaction of the conditions set out in Part 1 (Conditions Precedent to NTP1) of Schedule 20 (Conditions Precedent to Notices to Proceed), the Department shall issue a notice (**NTP2**) to the Development Entity authorizing commencement of the Remaining Work.

#### **7.6 CNG Readiness of CNG Facilities**

- (a) The Department will promptly issue a written certificate (the **Certificate of CNG Readiness**) that the Development Entity has achieved CNG Readiness in respect of a Project Site upon satisfaction of all of the CNG Readiness Conditions.
- (b) Approximately twenty (20) days prior to the date on which the Development Entity expects to achieve all of the CNG Readiness Conditions in respect of a Project Site, the Development Entity shall provide written notice to the Department so as to allow the Department to commence its review of those CNG Readiness Conditions amenable to being reviewed at the time of such notice. Notification shall include a list of all requirements that will be achieved to allow the Department's issuance of the relevant Certificate of CNG Readiness.

- (c) Fifteen (15) days prior to satisfying all CNG Readiness Conditions in respect of a Project Site, the Development Entity shall meet and confer with the Department to confirm that the list of requirements provided for in Section 7.6(b) is in accordance with the Project Documents. Subsequent to this initial meeting, the Development Entity and the Department will meet, confer and exchange information on a regular basis with the goal being the Department's orderly, timely inspection of the relevant Project Site, review of the Final Design Documents and final Construction Documents in respect of that Project Site and determination of whether the Development Entity has satisfied all of the CNG Readiness Conditions.
- (d) The Development Entity shall thereafter provide written notification of the day it has satisfied all requirements for the Department's issuance of a Certificate of CNG Readiness. Within five (5) days of receipt of the Development Entity's written notification and all required conditions and submittals per the Project Documents, the Department shall conduct an inspection of the relevant Project Site, a review of the Final Design Documents, Construction Documents, other Submittals and such other investigation as may be necessary to evaluate whether CNG Readiness has been achieved with respect to the relevant Project Site.
- (e) Within the period referred to in Section 7.6(d), the Department shall either: (i) issue the Certificate of CNG Readiness, effective as of the date that all of the CNG Readiness Conditions for the relevant Project Site were actually satisfied; or (ii) notify the Development Entity in writing of the reasons why CNG Readiness has not been achieved; **provided**, that in the event that any CNG Readiness Condition has not been satisfied, the Development Entity shall be entitled to resubmit the notification provided pursuant to Section 7.6(d) once the relevant CNG Readiness Condition has been satisfied, whereupon the Department shall promptly issue a Certificate of CNG Readiness in respect of the relevant Project Site in accordance with this Section 7.6(e). If the Department and the Development Entity cannot agree as to the date of CNG Readiness, such Dispute shall be resolved according to the Dispute Resolution Procedures; **provided**, that with respect to any such Dispute, the Parties may proceed directly to the Disputes Review Board.
- (f) In connection with the Department's issuance of the Certificate of CNG Readiness for the relevant Project Site, the Department shall have the right in its reasonable discretion to add or remove items to or from the Punch List. Any Dispute regarding whether an item added by the Department is appropriately included on the Punch List shall be resolved according to the Dispute Resolution Procedures; **provided**, that with respect to any such Dispute, the Parties may proceed directly to the Disputes Review Board.
- (g) The Department and Development Entity shall estimate the cost of each Punch List item in respect of a Project Site and the Department shall withhold one hundred and fifty per cent (150%) of the value of each such Punch List item (the **Punch List Holdback**) from the Milestone Payment due at CNG Readiness in respect of such Project Site in accordance with Schedule 8 (Payment Mechanism). As each Punch List item is completed, the Development Entity may invoice the Department for the portion of the Punch List Holdback attributable to the completed Punch List Item, and the Department shall pay the undisputed portion of all such amounts within thirty (30) days after receipt of such invoice. Any invoice for the release of Punch List Holdback will be separate from any other invoice required to be submitted by the Development Entity under Schedule 8 (Payment Mechanism).

- (h) The Development Entity shall complete all Punch List items in respect of the relevant Project Site in accordance with the requirements of the Project Documents within thirty (30) days after the Department's issuance of a Certificate of CNG Readiness in respect thereof.

## 7.7 Site Completion

- (a) The Department will promptly issue a written certificate that the Development Entity has achieved Site Completion in respect of a Project Site (the **Certificate of Site Completion**) upon satisfaction of all of the conditions set out in Part 2 (Conditions Precedent to Site Completion) of Schedule 21 (Conditions Precedent to CNG Readiness and Site Completion).
- (b) Within twenty (20) days prior to the date on which the Development Entity expects to achieve all of the conditions of Site Completion in respect of a Project Site, the Development Entity shall provide written notice to the Department so as to allow the Department to commence its review of those conditions amenable to being reviewed at the time of such notice. Notification shall include a list of all requirements that will be achieved to allow the Department to issue the relevant Certificate of Site Completion.
- (c) Fifteen (15) days prior to the anticipated date of satisfying all conditions of Site Completion in respect of a Project Site, the Development Entity shall meet and confer with the Department to confirm that the list of requirements provided for in Section 7.7(b) is in accordance with the Project Documents. Subsequent to this initial meeting, the Development Entity and the Department shall meet, confer and exchange information on a regular basis as necessary with the goal being to facilitate the Department's timely inspection of the relevant Project Site and determination of whether the Development Entity has satisfied all of the conditions required for the Department's issuance of a Certificate of Site Completion for the relevant Project Site.
- (d) Thereafter, the Development Entity shall provide written notification of the date it has satisfied all requirements for the Department's issuance of a Certificate of Site Completion. Within five (5) days of receipt of the Development Entity's written notification and all required conditions and submittals per the Project Documents, the Department shall conduct an inspection of the Punch List items for the relevant Project Site, a review of the As-Built Drawings and such other investigation as may be necessary to evaluate whether the Development Entity has satisfied all of the conditions to achieve Site Completion with respect to the relevant Project Site.
- (e) Within the period referred to in Section 7.7(d), the Department shall either: (i) issue a Certificate of Site Completion effective as of the date that the conditions to Site Completion were actually satisfied; or (ii) notify the Development Entity in writing of the reasons why Site Completion for the relevant Project Site has not been achieved; **provided**, that in the event that any condition has not been satisfied, the Development Entity shall be entitled to resubmit the notification provided pursuant to Section 7.7(d) once the relevant condition has been satisfied, whereupon the Department shall promptly issue a Certificate of Site Completion in accordance with this Section 7.7(e). If the Department and the Development Entity cannot agree as to the date of Site Completion, such Dispute shall be resolved according to the Dispute Resolution Procedures; **provided**, that with respect to any such Dispute, the Parties may proceed directly to the Disputes Review Board.
- (f) For the avoidance of doubt, and provided that the Development Entity shall have satisfied each of the conditions set forth in Part 1 (Conditions Precedent to CNG Readiness) and Part 2 (Conditions Precedent to Site Completion) of Schedule 21 (Conditions Precedent to CNG

Readiness and Site Completion), nothing in this PPA shall prohibit the Development Entity from simultaneously achieving CNG Readiness and Site Completion in respect of a Project Site.

## **7.8 Suspension of Construction Work**

- (a) The Department shall at any time have the right and authority to suspend, in whole or in part, the Construction Work by written order to the Development Entity. Any such written order will be supported by the Department's reasons for the required suspension of the Construction Work.
- (b) Except where any suspension of the Construction Work by the Department pursuant to this Section 7.8 (Suspension of Construction Work) is made in response to:
  - (i) any failure by the Development Entity to comply with any Applicable Law or Governmental Approval (including failure to handle, preserve and protect archaeological, paleontological or historic resources, or failure to handle Hazardous Materials, in accordance with Applicable Laws and Governmental Approvals); or
  - (ii) the existence of conditions unsafe for workers, other Project personnel or the general public, including failures to comply with Safety Standards or perform Safety Compliance, but only to the extent that such condition does not arise as a direct result of a Compensation Event or Relief Event,

any such suspension order shall constitute a Compensation Event and any suspension order made in response to matters referred to in Sections 7.8(b)(i) or 7.8(b)(ii) shall cease to apply as soon as the relevant matter has been rectified or remedied to the reasonable satisfaction of the Department.

## **7.9 Late Completion Costs**

- (a) To the extent the Development Entity fails to achieve CNG Readiness in respect of any of the Project Sites on or before the applicable CNG Readiness Deadline, the Department (or the relevant Transit Agency on behalf of the Department) may:
  - (i) provide CNG to the Transit Agency at the applicable Project Site(s) in accordance with the Technical Provisions; and/or
  - (ii) arrange for maintenance and storage in respect of the applicable Transit Agency Vehicles at an alternative location in accordance with the Technical Provisions;

in each case, until such Project Site(s) shall have achieved CNG Readiness.

- (b) The Development Entity shall reimburse the Department (or the relevant Transit Agency on behalf of the Department) for all costs incurred in connection with the provision of CNG or alternative maintenance and storage services described in clause (a) above less the pro rata portion of the Maximum Infrastructure Fee that would have been payable in respect of such Project Site during the period of such time; **provided**, that, with respect to clause (a)(i) above, the Development Entity may, at its option, provide CNG at the relevant Project Site(s) in accordance with the Technical Provisions at its sole cost and expense; **provided further**, that with respect to clause (a)(ii) above, such costs and expenses shall include the cost of ordinary wear and tear of

such Transit Agency Vehicles, the cost of CNG required for transport of such Transit Agency Vehicles, and the cost of Transit Agency employee or contractor time.

- (c) The Department shall deliver to the Development Entity an invoice in respect of all costs incurred by the Department or the relevant Transit Agency pursuant to clause (a) above as soon as practicable following the end of each month, and the Development Entity shall pay such amount to the Department on or before the date on which the next succeeding Monthly Payment becomes due and payable to the Development Entity pursuant to Section 14.1(b).
- (d) Notwithstanding any other provision in this PPA to the contrary, the Development Entity shall not be required to pay costs incurred by the Department or the relevant Transit Agency pursuant to this Section 7.9 (Late Completion Costs) in respect of any period of delay in the achievement of CNG Readiness at a Project Site that arises as a direct result of either a Compensation Event or a Relief Event.

#### **7.10 Passage of Title**

Title to all equipment furnished by the Development Entity under the Project Documents for incorporation into the Project Sites or that are required for operation or maintenance of the Project (including each CNG Equipment Compound) shall pass to the Department, free and clear of all liens or other charges of any kind or nature, upon the incorporation thereof into the applicable Project Site or, for items that will not be incorporated into any Project Site, delivery to the applicable Project Site.

### **8. MAINTENANCE, RENEWAL AND HANDBACK WORK**

#### **8.1 Commencement of Routine Maintenance and Renewal Work**

The Development Entity shall carry out Routine Maintenance and Renewal Work on each CNG Fueling Station Facility from the CNG Readiness Date for the relevant CNG Fueling Station Facility until the Termination Date.

#### **8.2 Routine Maintenance and Renewal Work Standards and Requirements**

- (a) The Development Entity shall carry out the Routine Maintenance and Renewal Work in accordance with:
  - (i) Good Industry Practice, as it evolves from time to time;
  - (ii) the requirements, terms and conditions set out in the Project Documents;
  - (iii) all Applicable Laws; and
  - (iv) the requirements, terms and conditions set out in all Governmental Approvals.
- (b) The Development Entity shall at all times undertake sufficient Routine Maintenance and Renewal Work to ensure ongoing compliance with the Maintenance Performance Requirements.

### **8.3 Maintenance Management Plan**

- (a) At the Department's request, the Development Entity shall promptly meet and confer with the Department to review and discuss any Maintenance Management Plan submitted to the Department pursuant to Section 10 (Operation & Maintenance) of the Technical Provisions.

### **8.4 Handback Requirements**

- (a) The Development Entity shall perform the Work so that as of the Termination Date, each CNG Fueling Station Facility meets all of the requirements set out in Section 10.4 (Handback Provisions) of the Technical Provisions (collectively, the **Handback Requirements**).
- (b) In the event of Early Termination, the Development Entity shall only be required to comply with the requirements of this Section 8.4 (Handback Requirements) to the extent that any Renewal Work under the Handback Requirements was scheduled to have been performed prior to the Early Termination Date.

### **8.5 Handback Reserve Account**

#### **(a) Establishment and Security**

- (i) No later than the first Business Day of the Handback Period, the Development Entity shall establish a reserve account (the **Handback Reserve Account**) to be held and controlled by a third party (the **Escrow Agent**) to be agreed between the Parties. Within three (3) Business Days of establishing the Handback Reserve Account, the Development Entity shall provide to the Department the details regarding the Handback Reserve Account, including the name, address and contact information for the depository institution and the account number.
- (ii) The Parties agree that:
  - (A) withdrawals from the Handback Reserve Account will be controlled by the operation of an account control agreement to be agreed between and entered into by the Parties no later than the first Business Day of the Handback Period; and
  - (B) any withdrawal from the Handback Reserve Account will require the prior written approval of the Department, such approval to be provided in accordance with this Section 8.5 (Handback Reserve Account).
- (iii) The Development Entity shall not grant any security interest to any third party in relation to the Handback Reserve Account or any amounts standing to the credit of it.

#### **(b) Funding**

- (i) No later than sixty (60) days prior to the commencement of the Handback Period and each 12-month anniversary thereof (each a **Handback Year**), the Development Entity shall deliver to the Department a report setting out its calculations of the Handback Reserve Amount in accordance with Schedule 5 (Calculation of Handback Amounts). Within thirty (30) days of any such report being delivered to the Department, the Parties shall seek to agree upon the Handback Reserve Amount, and in the absence of agreement,

the Handback Reserve Amount shall be finally determined pursuant to the Dispute Resolution Procedures.

- (ii) To the extent that the aggregate of the balance standing to the credit of the Handback Reserve Account, and the undrawn value of any letter of credit delivered pursuant to Section 8.5(d) (Handback Letters of Credit) is not, on the date five (5) Business Days following each date of agreement or determination of the Handback Reserve Amount (but not earlier than five (5) Business Days prior to the commencement of the Handback Period or each anniversary thereof), at least equal to the Handback Reserve Amount, the Department shall, until such time as the aggregate of the balance standing to the credit of the Handback Reserve Account and the undrawn value of any letter of credit delivered pursuant to Section 8.5(d) (Handback Letters of Credit) is equal to the Handback Reserve Amount then required, make deductions from subsequent Monthly Payments, and pay such amounts into the Handback Reserve Account.
- (iii) To the extent that the aggregate of the balance standing to the credit of the Handback Reserve Account and the undrawn value of any letter of credit delivered pursuant to Section 8.5(d) (Handback Letters of Credit), on any date of agreement or determination of the Handback Reserve Amount, exceeds the Handback Reserve Amount, such excess shall (at the request of the Development Entity) be paid by the Escrow Agent to the Development Entity in accordance with the account control agreement entered into pursuant to Section 8.5(a)(ii) above.

(c) **Withdrawal from Handback Reserve Account**

- (i) Subject to Section 8.5(c)(ii), the Development Entity shall be entitled to withdraw funds from the Handback Reserve Account in such amounts and at such times as needed only to pay for Renewal Work that was taken into account in the calculation of the Handback Reserve Amount.
- (ii) Prior to drawing funds from the Handback Reserve Account, the Development Entity shall give written notice to the Department of the amount to be drawn and the purpose for which funds will be used, together with such other supporting information as the Department may reasonably require. Within ten (10) Business Days from the date of the receipt of such notice, the Department shall either approve or withhold its approval to the Development Entity's proposed withdrawal. The Department may only withhold its approval to any proposed withdrawal from the Handback Reserve Account to the extent that:
  - (A) the Development Entity is unable to demonstrate to the reasonable satisfaction of the Department that the proposed withdrawal amount will be used to meet costs incurred by the Development Entity in undertaking any Renewal Work that was taken into account in the calculation of the Handback Reserve Amount; or
  - (B) the aggregate of (1) the balance standing to the credit of the Handback Reserve Account, (2) the undrawn value of any letter of credit delivered pursuant to Section 8.5(d) (Handback Letters of Credit), and (3) the aggregate amount of all withdrawals made from the Handback Reserve Account since the Total Handback Amount was most recently agreed is less than the Total Handback Amount,

**provided**, that if the Department fails to respond within such ten (10) Business Day period, the Department will be deemed to have given its approval to such withdrawal request.

- (iii) On the Termination Date, the Escrow Agent shall pay any amounts standing to the credit of the Handback Reserve Account to the Parties in the following order of priority:
  - (A) first, an amount equal to that required to undertake any Renewal Work that is required to be undertaken in order to for each CNG Fueling Station Facility to meet the Handback Requirements as at the Termination Date, shall be paid by the Escrow Agent to the Department; and
  - (B) second, the remaining balance standing to the credit of the Handback Reserve Account shall be paid by the Escrow Agent to the Development Entity.

(d) **Handback Letters of Credit**

In lieu of the establishment or ongoing funding of the Handback Reserve Account, the Development Entity may deliver to the Department one or more letters of credit (each in a form and from an issuer reasonably acceptable to the Department and on the basis that the Department shall be the sole beneficiary) with aggregate value equal to the ongoing Handback Reserve Amount, whereupon (to the extent that the Handback Reserve Account has already been established) the Escrow Agent shall pay all amounts standing to the credit of the Handback Reserve Account to the Development Entity.

**8.6 Poor Maintenance Performance**

To the extent that Poor Maintenance Performance occurs at any time, the Department may request the Development Entity to take such actions as may reasonably be required in order to ensure that the reasons for the relevant Noncompliance Event are adequately mitigated with a view to ensuring that in the reasonably foreseeable future, there is no reasonable prospect of a Noncompliance Event occurring for the same reasons.

**8.7 Suspension of Maintenance Work**

- (a) The Department shall at any time have the right and authority to suspend, in whole or in part, the Maintenance Work by written order to the Development Entity. Any such written order will be supported by the Department's reasons for the required suspension of the Maintenance Work.
- (b) Except where any suspension of the Maintenance Work by the Department pursuant to this Section 8.7 (Suspension of Maintenance Work) is made in response to:
  - (i) any failure by the Development Entity to comply with any Applicable Law or Governmental Approval (including failure to handle Hazardous Materials in accordance with Applicable Laws and Governmental Approvals); or
  - (ii) the existence of conditions unsafe for workers, other Project personnel or the general public, including failures to comply with Safety Standards or perform Safety Compliance, but only to the extent that such condition does not arise as a direct result of a Compensation Event or Relief Event,

any such suspension order shall constitute a Compensation Event and any suspension order made in response to matters referred to in Sections 8.7(b)(i) or 8.7(b)(ii) shall cease to apply as soon as the relevant matter has been rectified or remedied to the reasonable satisfaction of the Department.

## **9. CONTRACTORS AND KEY PERSONNEL**

### **9.1 Relationship with Contractors**

- (a) Nothing in this PPA will create any contractual relationship between the Department or any Transit Agency and any Contractor. No Contract entered into by or under the Development Entity shall impose any obligation or liability upon the Department or any Transit Agency to any Contractor or any of its employees.
- (b) The retention of Contractors by the Development Entity will not relieve the Development Entity of its obligations under the Project Documents and the Development Entity will at all times be held fully responsible under the Project Documents for the acts and omissions of all Contractors performing Work, in relation to the Project and the obligations of the Development Entity hereunder, as if they were the acts and omissions of the Development Entity.

### **9.2 Key Personnel**

- (a) The Development Entity shall retain, employ and utilize the individuals specifically listed as Key Personnel in Appendix 1 (Development Entity's Proposal Commitments) or in the Project Management Plan to fill the corresponding positions until such time as all relevant activities have been completed. The Development Entity shall not change or substitute any such individuals, except due to retirement, death, disability, incapacity, or voluntary or involuntary termination of employment or with the prior consent of the Department (such consent not to be unreasonably withheld, delayed or conditioned if the proposed substitute individual possesses equal or greater experience, skill, knowledge and professional expertise in the relevant fields than the individual being replaced).
- (b) The Development Entity shall notify the Department in writing of any proposed replacement for any Key Personnel position within seven (7) days of becoming aware of a change per Section 9.2(a). The Department shall have the right to review the qualifications and character of each individual to be appointed to a Key Personnel position (including personnel employed by Contractors to fill any such position) as set out in Section 2 (Project Management Plan) of the Technical Provisions and to approve or disapprove (acting reasonably) use of such individual in such position prior to the commencement of any Project Services by such individual in accordance with Section 9.2(a) above.
- (c) The Development Entity shall cause each individual filling a Key Personnel position to dedicate the full amount of time necessary for the proper prosecution and performance of the Project Services.
- (d) The Development Entity shall provide the Department with phone and cell phone numbers as well as e-mail addresses for all Key Personnel. The Development Entity shall provide to the Department two (2) personnel and a minimum of three (3) Key Personnel who the Department can contact twenty-four (24) hours per Day, seven (7) days per week as required, and who will be able to, in turn, contact the other Key Personnel promptly thereafter.

### **9.3 Certain Public Policy Requirements**

- (a) The Development Entity shall comply with the requirements set out in Schedule 14 (Certain Public Policy Requirements).

### **9.4 Separations Act Compliance**

- (a) The Development Entity acknowledge and agrees that the Separations Act, 71 P.S. §1618, is applicable to the Project and, accordingly, the Department may reject any design Submittal submitted by the Development that is not in compliance therewith.
- (b) When the design for the HVAC, plumbing, and/or electrical work has progressed to the point where the Department has reviewed and approved the final design under Article 5, the Development Entity must solicit prices for the separate scopes of work from all interested parties. The Development Entity shall submit its HVAC, plumbing and electrical work bid process to the Deputy Secretary for Public Works for Department review and approval within ten (10) days of final design approval. The Development Entity acknowledges and agrees that no HVAC, plumbing or electrical subcontractors have been pre-qualified.
- (c) The Development Entity must award at least one separate contract for each of the three aforementioned divisions of work, if applicable. The awards shall be made to the bidders who submitted the lowest responsible and responsive bid for each division of work. All required subcontractor provisions in the Development Entity's proposals must be included in these subcontracts.
- (d) At a minimum, the Development Entity's bidding process must include the following for each HVAC, plumbing, and electrical package:
  - (i) The work shall be publicly bid and shall have a public announcement. The public announcement shall be included in/on, but is not limited to newspaper and web page advertisement. In addition to any and all other announcements by the Development Entity, this public announcement shall also be publicly displayed on the Department' web page for the Project.
  - (ii) The Development Entity shall hold a public pre-bid meeting where all interested parties are invited.
  - (iii) There shall be question/answers, request for information process, whereby the Development Entity accepts questions from the bidding community and then formally answers said questions. The Development Entity's answers shall be in the form of a written Bulletin or other official procedure, which shall be issued to all interested parties and HVAC, plumbing and electrical bidders.
  - (iv) There shall be a public bid opening where sealed HVAC, plumbing and electrical work bids are opened. The Department or its agent will attend this public bid opening. A tab with the bid information (bid tab) shall later be made available for the Department.
  - (v) The Development Entity will be required to award its HVAC, plumbing and electrical work subcontracts to the lowest responsive and responsible bidders. No price negotiation with low bidders shall be allowed.

- (vi) The Development Entity shall have a written bid protest procedure in place before issuing any MEP packages. The Development Entity's documents will set forth the bid protest procedure. The Development Entity shall ensure that the protest procedure provides disappointed bidders with a meaningful and viable process to protest the bid award.
- (e) Multiple awards may be made in each of the selected major divisions of the Work as the Development Entity determines is in the best interest of the Project. Once the separate divisions of work are bid, the Development Entity shall certify to the Department that the Development Entity awarded the HVAC, plumbing and/or electrical work to the lowest responsible and responsive bidder for the work. The Development Entity's bidding process and selected subcontractors are subject to the Department's review in order to validate the process, the award(s) and/or that the selected subcontractors are responsible.
- (f) After the Final Design is completed (or partially completed if the Development Entity elects to have multiple separate awards for portions of the Work) and the Work has been bid, the Development Entity will be required to submit a notarized affidavit (in a form approved by the Department) for each award that names the successful bidder, states that the award has been made to the lowest responsible and responsive bidder and that the successful bidder named will perform that scope of work. Each affidavit shall also include a bid tabulation identifying the other bidders and their prices.
- (g) For purposes of this process, "responsible" shall be defined as (i) acceptable to the Department based upon clearance through the Commonwealth's Contractor Responsibility Program; and (ii) acceptable to the Development Entity based upon acceptance by the Development Entity's general liability insurance carrier.
- (h) For purposes of this process, "responsive" shall be defined as a bid which conforms in all material respects to the requirements and criteria in the Development Entity's solicitation for bids.
- (i) The Department reserves the right to reject the Development Entity's selected HVAC, plumbing and electrical subcontractors if the Department reasonably believes that the Development Entity violates the above procurement process.

## **10. DEPARTMENT AND DEVELOPMENT ENTITY CHANGES**

### **10.1 Department Changes**

- (a) The Department has the right to propose Department Changes in accordance with this Article 10 (Department and Development Entity Changes).
- (b) In order to request a Department Change, the Department shall deliver to the Development Entity a document setting forth (each, a **Department Change Request**):
  - (i) the Department's requirements for a change in the Project Services or a change to the terms and conditions of the Technical Provisions (including a change in the standards applicable to the Project Services), in sufficient detail to enable the Development Entity to calculate and provide the Development Entity's Estimate in accordance with Section 10.3 (Development Entity's Estimate of Department Change Requests); and
  - (ii) the method of compensation for the change.

- (c) The Development Entity shall be entitled to refuse a Department Change Request which:
- (i) requires the Project Services to be performed in a way that infringes Applicable Law or is inconsistent with Good Industry Practice;
  - (ii) would, if implemented, materially and adversely change the nature of the Development Entity's obligations or rights under this PPA; or
  - (iii) would, if implemented, cause any Governmental Approval then in full force and effect to be revoked.

## 10.2 Directive Letter

Subject to Section 10.1(c) and for so long as a Department Change Request has not been finally agreed between the parties, the Department may in its sole discretion deliver to the Development Entity a Directive Letter, directing the Development Entity to proceed with the performance of the Extra Work envisioned in a Department Change Request. The Directive Letter shall also set out the kind, character, and limits of the work. Upon receipt of the Directive Letter, the Development Entity shall implement and perform the work in question as directed by the Department and in accordance with any relevant procedures set out in Schedule 19 (Extra Work Costs).

## 10.3 Development Entity's Estimate of Department Change Requests

- (a) As soon as practicable and in any event within fifteen (15) Business Days after having received a Department Change Request, the Development Entity shall deliver to the Department an estimate of costs and expenses and other matters with respect to such Department Change Request (a **Development Entity's Estimate**), or confirmation as to when a Development Entity's Estimate is to be provided to the Department (**provided**, that the Development Entity shall use all Reasonable Efforts to prepare its Development Entity's Estimate within thirty (30) Business Days after having received the Department Change Request, unless further extended by the Department acting reasonably). A Development Entity's Estimate shall include the following:
- (i) whether relief from compliance with its obligations under this PPA is required during the implementation or as a result of the Department Change;
  - (ii) any impact on the provision of the Project Services, including any potential cost impact on future Maintenance Work and whether the proposed change is in contravention of Section 10.1 (Department Changes);
  - (iii) any amendment required to this PPA as a result of the Department Change;
  - (iv) any amounts that the Development Entity would propose to claim in respect of the Department Change pursuant to Section 12.2 (Compensation Events);
  - (v) any consents or permits which are required;
  - (vi) the proposed method of certification of any construction aspects of the Extra Work required by the proposed Department Change if not covered by the procedures set out in this PPA;

- (vii) a scope of work, which shall be described in sufficient detail and broken down into suitable components and activities to enable pricing. The work breakdown shall include all activities associated with the proposed modification, including a description of additions, deletions and modifications to the Technical Provisions;
  - (viii) a cost estimate that will enable the Department to review and evaluate the reasonableness of the Development Entity's Estimate. The Development Entity's cost estimate shall identify a "base amount" representing the amount established based on estimated quantities and unit rates presented according to line or pay items typically included on construction project bid sheets by the Department and separated by labor, materials and equipment. The cost estimate shall include a pricing form identifying which items have been priced based on estimated quantities and unit rates and which items have been priced on another basis, with reasons;
  - (ix) to the extent that the Development Entity believes that the relevant Department Change would result in a delay to the Project Services, a Time Impact Analysis (based on the Project Working Schedule most recently agreed pursuant to Section 2 (Project Management Plan) of the Technical Provisions) demonstrating that the proposed Department Change will result in an identifiable and measurable disruption to the Project Services;
  - (x) acceleration costs, but only when the Department requires the Development Entity pricing to accommodate an acceleration in any D&C Work; and
  - (xi) such other supporting documentation as may be reasonably required by the Department.
- (b) The Development Entity's Estimate shall be accompanied by a certification by the Development Entity stating that: (i) to the best of the Development Entity's knowledge, the amount of time and/or compensation requested is justified as to entitlement and amount, (ii) the amount of time and/or compensation requested includes all known and anticipated impacts or amount, direct, indirect and consequential, which may be incurred as a result of the event or matter giving rise to the proposed change, and (iii) the cost and pricing data is complete, accurate and current.
- (c) The Development Entity's requested compensation for the Department Change in a Development Entity's Estimate shall be subject to audit review by the Department in accordance with Section 26.2 (Audits).

#### **10.4 Review and Evaluation of the Development Entity's Estimate**

- (a) As soon as practicable after the Department receives the Development Entity's Estimate, the Development Entity shall meet with the Department to review, discuss and agree on the Development Entity's Estimate. During such discussions, the Department may modify the Department Change Request, and may (to the extent practicable, given the nature of the Extra Work) require the Development Entity to seek and evaluate competitive tenders for the relevant capital works in connection with such Department Change, as applicable. In each case the Development Entity shall, within fifteen (15) Business Days or such longer period as may be mutually agreed to by the Parties, after receipt of such modification, notify the Department of any consequential changes to the Development Entity's Estimate.

- (b) Within twenty-one (21) days from the date of meetings, or the date additional information is received, pursuant to Section 10.4(a) above, the Department shall:
  - (i) confirm in writing to the Development Entity the Development Entity's Estimate (as may be modified); or
  - (ii) withdraw the Department Change Request.
- (c) If the Department confirms the Development Entity's Estimate (as may be modified), the implementation of the relevant Extra Work shall be commenced on the later of five (5) Business Days of the Department's written confirmation and the date set out in the Development Entity's Estimate and the Development Entity may claim for a Compensation Event in accordance with and subject to the provisions of Article 12 (Supervening Events). Within this period, the Parties shall consult and agree on the remaining details as soon as practicable and shall enter into an appropriate change order to give effect to the relevant Department Change Request.
- (d) In the event that a Department Change Request is withdrawn, the Department will reimburse the Development Entity for all reasonable and documented costs incurred by the Development Entity in connection with such Department Change Request.

## **10.5 Funding**

- (a) Where a Department Change involves estimated Capital Expenditures or other costs agreed by the Parties or an adjustment in any payments, then:
- (b) the Department and the Development Entity shall agree upon a payment schedule in respect of the payment of such sums; and
- (c) the Department shall make a payment to the Development Entity within thirty (30) days of receipt by the Department of invoices presented to the Department (complete in all material respects) in accordance with the agreed payment schedule accompanied by the relevant evidence (where applicable) that the relevant part of the Department Change has been carried out.

## **10.6 Development Entity Changes**

- (a) If the Development Entity wishes to introduce a change in the Project Services (a **Development Entity Change**), it must deliver written notice (the **Development Entity Change Request**) to the Department setting out the following:
  - (i) the proposed change to the Project Services in sufficient detail to enable the Department to evaluate it in full;
  - (ii) the Development Entity's reasons for proposing the change to the Project Services;
  - (iii) a request to the Department to consult with the Development Entity with a view to deciding whether to agree to the change to the Project Services and, if so, what consequential changes the Department requires due to the Development Entity Change;
  - (iv) any implications of the change to the Project Services;

- (v) details regarding cost savings (if any) associated with proposed change to the Project Services;
  - (vi) any dates by which a decision by the Department is critical; and
  - (vii) all of the information enumerated above in Section 10.3(a).
- (b) The Department shall evaluate the Development Entity Change Request in good faith, taking into account all relevant issues, including whether:
- (i) the change affects the quality of the Project Services or the likelihood of successful delivery of the Project Services;
  - (ii) the change will adversely interfere with the relationship of the Department with third parties;
  - (iii) the financial strength of the Development Entity is sufficient to perform the changed Project Services;
  - (iv) the residual value of the Project is reduced; or
  - (v) the change materially affects the risk or costs to which the Department is exposed.
- (c) As soon as practicable after receiving the Development Entity Change Request, the Parties shall meet and discuss the matters referred to in it. During their discussions the Department may propose modifications or, subject to Section 10.6(g), approve or reject the Development Entity Change Request. Upon receipt of a Development Entity Change Request, the Department shall issue a response to the Development Entity as soon as practicable and in no event later than fifteen (15) days.
- (d) If the Department approves the Development Entity Change Request (with or without modification), the implementation of the relevant change to the Project Services shall be commenced within five (5) Business Days of the Department's acceptance. Within this period, the Parties shall consult and agree on the remaining details and shall enter into an appropriate change order to give effect to the relevant Development Entity Change Request.
- (e) If the Department rejects the Development Entity Change Request, it shall not be obliged to give its reasons for such a rejection.
- (f) Unless the Department's acceptance specifically agrees to an increase in the payments to be made to the Development Entity pursuant to this PPA, there shall be no increase in any payment to the Development Entity pursuant to this PPA as a result of a change to the Project Services proposed by the Development Entity.
- (g) The Department shall not be entitled to reject a Development Entity Change Request, which is required in order to conform to a Change in Law. The costs of introducing a change to the Project Services resulting from a Qualifying Change in Law (including any resulting variation in the Monthly Payments) shall be calculated and paid in accordance with Article 13 (Change in Law), and to the extent such costs are not compensable pursuant to Article 13 (Change in Law), they shall be borne by the Development Entity.

## **10.7 No Cost Change Order**

Changes in the Project Services, which have no net effect on the amount of compensation due to the Development Entity may be approved in writing by the Department and shall be processed as a no cost change order.

## **10.8 Commencement of Extra Work**

Other than when the Development Entity is in receipt of a Directive Letter, the Development Entity shall not be entitled or required to commence any Extra Work described in a Department Change Request prior to the Department confirming the Development Entity's Estimate in accordance with Section 10.4(b) and as set out therein.

## **10.9 Decreased Costs**

- (a) If a Development Entity Change Request results in a decrease in the Development Entity's costs, then any payment due from the Department under this PPA may be adjusted downwards (or a credit may be owed in the future) to reflect the sharing in the decrease in costs 50:50 as to the Department and the Development Entity, respectively.
- (b) If a Department Change Request results in a decrease in the Development Entity's costs, then any payment due from the Department under this PPA may be adjusted downwards (or a credit may be owed in the future) to reflect such reduction in the Development Entity's costs.

## **10.10 Performance**

The Development Entity shall not suspend performance of the Project Services during the negotiation of any Department Change Request or Development Entity Change Request, except:

- (a) as may be otherwise directed by the Department in accordance with Section 7.8 (Suspension of Construction Work); or
- (b) to the extent that such suspensions are otherwise permitted under the terms of this PPA.

## **11. NONCOMPLIANCE EVENTS**

### **11.1 Noncompliance Points System**

- (a) Schedule 7 (Noncompliance Points Table) identifies certain Development Entity obligations, the breach or failure in performance of which under the Project Documents shall generate Noncompliance Points (each, a **Noncompliance Event**).

### **11.2 Notification of Noncompliance Events**

- (a) **Notification Initiated by the Development Entity**
  - (i) The Development Entity shall notify the Department in writing of the date of the occurrence of any Noncompliance Event as soon as reasonably practicable, and in any event within forty-eight (48) hours after the earlier of the time the Development Entity first obtains knowledge of or first should have reasonably known of the occurrence of the Noncompliance Event. The notice shall provide reasonable detail of the circumstances of

the Noncompliance Event and shall identify the Noncompliance Event and Cure Period that is applicable to the relevant Noncompliance Event.

- (ii) The Development Entity shall notify the Department in writing of the occurrence of any Noncompliance Start Date and any Noncompliance Rectification Date (together with a detailed description of the manner in which the Noncompliance Event was cured and measures taken by the Development Entity to prevent the reoccurrence of the Noncompliance Event).

**(b) Notification Initiated by the Department**

If the Department believes any Noncompliance Event has occurred, or receives notice from any Patron that any Noncompliance Event has occurred, for which the Department has not received notification from the Development Entity in accordance with Section 11.2(a)(i), the Department may deliver to the Development Entity a written notice setting forth the Department's determination of the occurrence of a Noncompliance Event, the relevant Noncompliance Start Date, any applicable Cure Period and the number of Noncompliance Points to be assessed with respect thereto in accordance with Schedule 7 (Noncompliance Points Table).

**11.3 Assessment of Noncompliance Points**

- (a) Each Noncompliance Event shall accrue Noncompliance Points in accordance with the following principles:
  - (i) In respect of a Noncompliance Event that has a Cure Period, for the full Cure Period and for each full or partial Interval of Recurrence arising after the end of the Cure Period between the Noncompliance Start Date and the Noncompliance Rectification Date, the Noncompliance Event shall accrue the number of Noncompliance Points set out against that Noncompliance Event in Schedule 7 (Noncompliance Points Table).
  - (ii) All Noncompliance Points in respect of a Cure Period or Interval of Recurrence shall be deemed to accrue in the month that the relevant Cure Period or Interval of Recurrence ends (whichever is later).
  - (iii) In respect of a Noncompliance Event that has no Cure Period, that Noncompliance Event shall accrue the number of Noncompliance Points set out against that Noncompliance Event in Schedule 7 (Noncompliance Points Table) for each full or part Interval of Recurrence arising between the Noncompliance Start Date and the Noncompliance Rectification Date.
  - (iv) To the extent that any breach or failure to perform obligations under the Project Documents would cause simultaneous occurrence of more than one Noncompliance Event in respect of the same CNG Facility, Noncompliance Points shall only accrue in respect of the Noncompliance Event that accrues the highest number of Noncompliance Points (such accrual of Noncompliance Points for Noncompliance Events with a Cure Period applying up until the Noncompliance Rectification Date) and each other Noncompliance Event that simultaneously occurred as a result of the same breach or failure to perform obligations under the Project Documents shall be deemed to have not occurred.

- (v) Nothing in this PPA shall prevent the accrual of Noncompliance Points for both the occurrence of a Noncompliance Event and the failure to notify the Department of the same Noncompliance Event in accordance with this PPA.
  - (vi) To the extent that any Noncompliance Event arises as a direct result of a Relief Event or an Emergency and such Relief Event or Emergency is not attributable to any breach of this PPA or any negligent act or negligent omission of a Development Entity-Related Party, the relevant Noncompliance Event will be deemed not to have occurred for the purposes of this PPA.
- (b) The Development Entity is responsible for keeping and providing the Department with current records of all Noncompliance Events that it is required to have notified the Department about pursuant to the terms hereof and the number of Noncompliance Points assessed for all such Noncompliance Events, the date of each assessment, and each Noncompliance Start Date and Noncompliance Rectification Date.
- (c) Notwithstanding any other provision in this PPA to the contrary, Noncompliance Points will not accrue in respect of any Noncompliance Event that arises as a direct result of either a Compensation Event or a Relief Event.

#### **11.4 Liquidated Damages**

- (a) In the event that, following the achievement of CNG Readiness in respect of the relevant Project Site, any failure by the Development Entity to perform its obligations under this PPA directly results in a Transit Agency being unable to:
- (i) fuel the specified number of vehicles within the specified fueling windows as set forth in Table 2 (Site Specific Performance Requirements) to the Technical Provisions; or
  - (ii) dispatch vehicles within the specified dispatch period as set forth in Table 2 (Site Specific Performance Requirements) to the Technical Provisions;

then the Development Entity shall pay to the Department liquidated damages in an amount equal:

- (A) in the case of a failure to fuel the specified number of vehicles within the specified fueling windows as set forth in Table 2 (Site Specific Performance Requirements) to the Technical Provisions, \$50 per hour (or part thereof) during the applicable fueling window for each Transit Agency Vehicle not capable of being fueled during the applicable fueling window as specified therein, subject to a cap of \$300 per hour per Project Site; and/or
- (B) In the case of a failure to dispatch vehicles within the specified dispatch period as set forth in Table 2 (Site Specific Performance Requirements) to the Technical Provisions, \$225 per day (or part thereof) per Transit Agency Vehicle not capable of being dispatched during the applicable dispatch period.

- (b) All liquidated damages payable to the Department pursuant to this Section 11.4 (Liquidated Damages) will be paid by the Development Entity in accordance with the provisions of Schedule 8 (Payment Mechanism).
- (c) The Parties acknowledge and agree that because of the unique nature of the Project and the unavailability of substitute facilities, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by the Department (or the applicable Transit Agencies) as a result of the Development Entity's failure to fuel the specified number of vehicles within the specified fueling windows or dispatch vehicles within the specified dispatch periods, as applicable. It is understood and agreed by the Parties that the Department shall be damaged by the failure of the Development Entity to meet such obligations and that:
  - (i) it would be impracticable or extremely difficult to fix the actual damages resulting therefrom;
  - (ii) any liquidated damages that are payable under this Section 11.4 are in the nature of liquidated damages, and not a penalty, and are fair and reasonable;
  - (iii) such payments represent a genuine and reasonable estimate of the losses to the Department that may reasonably be anticipated from such failure;
  - (iv) except with respect to Noncompliance Points otherwise accruing in accordance with this Article 11 and any other express right of the Department pursuant to the Project Documents, such payments shall be the sole remedy of the Department against any Development Entity-Related Entity for Development Entity's failure to fuel the specified number of vehicles within the specified fueling windows or dispatch vehicles within the specified dispatch periods, as applicable; and
  - (v) the payment of any liquidated damages shall not be considered consequential loss or damage for the purposes of this PPA, and the Development Entity shall not be entitled to avoid payment of any delay liquidated damages by asserting that any such amounts are consequential loss or damage or are attributable to consequential loss or damage.
- (d) Notwithstanding any other provision in this PPA to the contrary, the Development Entity shall not be required to pay liquidated damages pursuant to this Section 11.4 (Liquidated Damages) in respect of any failure to fuel or dispatch that arises as a direct result of either a Compensation Event or a Relief Event.

## **12. SUPERVENING EVENTS**

### **12.1 Delays**

#### **(a) Notice**

If at any time the Development Entity becomes aware that there will be or is likely to be a delay in the Work such that:

- (i) CNG Readiness of a Project Site will not occur by the applicable CNG Readiness Deadline or (following the applicable CNG Readiness Deadline) the Development Entity

is likely to suffer further delay in the achievement of CNG Readiness in respect of such Project Site; and/or

- (ii) Site Completion of a Project Site will not occur by the Site Completion Deadline;

the Development Entity shall, as soon as reasonably practicable and in any event within ten (10) Business Days of becoming aware of the likely delay, give notice to the Department to that effect specifying:

- (iii) the reason for the delay or likely delay; and
- (iv) an estimate of the likely effect on the most recent Project Working Schedule of the delay in achieving CNG Readiness or Site Completion (as relevant) of the relevant Project Site taking into account any measures that the Development Entity proposes to adopt to mitigate the consequences of the delay in accordance with Section 12.1(c) (Duty to Mitigate).

**(b) Supply of Information**

Following delivery of a notice by the Development Entity pursuant to Section 12.1(a) (Notice), the Development Entity shall promptly supply to the Department any further information relating to the delay which:

- (i) is received by the Development Entity; or
- (ii) is reasonably requested by the Department.

**(c) Duty to Mitigate**

The Development Entity shall use Reasonable Efforts to mitigate the delay and consequences of any delay, which is the subject of a notice pursuant to Section 12.1(a) (Notice), including all reasonable steps requested by the Department.

**12.2 Compensation Events**

- (a) If, as a direct result of the occurrence of a Compensation Event, the Development Entity becomes aware that the Compensation Event has caused or is likely to cause the Development Entity to:

- (i) fail to achieve CNG Readiness in respect of any Project Site by the applicable CNG Readiness Deadline or (following the applicable CNG Readiness Deadline) suffer further delay in the achievement of CNG Readiness at such Project Site; and/or
- (ii) fail to achieve Site Completion in respect of any of the Project Sites by the Site Completion Deadline; and/or
- (iii) fail to comply with its obligations under this PPA; and/or
- (iv) incur costs or lose revenue,

then the Development Entity is entitled to claim:

- (A) an extension to the CNG Readiness Deadline in respect of such Project Site and/or (following the occurrence of the applicable CNG Readiness Deadline) the applicable Long Stop Deadline and/or the Site Completion Deadline (as relevant); and/or
- (B) relief from compliance with its obligations under this PPA; and/or
- (C) compensation for any Change in Costs that the Development Entity will incur or suffer (as relevant) as a direct result of such Compensation Event; and/or
- (D) following the achievement of CNG Readiness in respect of the first Project Site, compensation for Infrastructure Fees that would have been payable in respect of such Project Site but for the failure to achieve CNG Readiness or Site Completion in respect of the applicable Project Site as a direct result of such Compensation Event;

in each case in accordance with this Article 12 (Supervening Events).

**(b) Procedure for Relief and Compensation**

Subject to Section 12.2(d) (Late Provision of Notice or Information), any claim made by the Development Entity pursuant to Section 12.2(a) must:

- (i) be submitted to the Department as soon as practicable, and in any event within twenty (20) Business Days of the Development Entity first becoming aware that the relevant Compensation Event would have the effect that is the subject of the Development Entity's claim;
- (ii) as soon as is reasonably practicable following receipt by the Department of the claim referred to in Section 12.2(b)(i), give full details of the relevant Compensation Event (as available to it having made due enquiry) and the extension of time and/or relief from its obligations under this PPA and/or any Change in Costs claimed or reasonably likely to be claimed, including:
  - (A) to the extent the Development Entity believes that the relevant Compensation Event would result in a delay to the achievement of CNG Readiness or Site Completion (as relevant) at the applicable Project Site, a Time Impact Analysis (based on the Project Working Schedule most recently agreed pursuant to Section 2 (Project Management Plan) of the Technical Provisions) demonstrating that the relevant Compensation Event will result in an identifiable and measurable disruption to CNG Readiness or Site Completion (as relevant), which will impact a Critical Path activity (i.e., would consume all available float and would extend the time required to achieve CNG Readiness or Site Completion (as relevant));
  - (B) evidence demonstrating that no other concurrent unrelated delay to a Critical Path activity that is the Development Entity's responsibility has occurred that has contributed to the delay for which relief is being sought; and

- (C) evidence demonstrating that such event could not reasonably be avoided by the Development Entity without material cost or delay, including by re-sequencing, reallocating or redeploying its forces to other Project Sites; and
- (iii) provide evidence to the Department demonstrating that:
  - (A) the Compensation Event was the direct cause or is reasonably likely to be the direct cause of:
    - I. Change in Costs; and/or
    - II. a delay in achieving CNG Readiness at the applicable Project Site by the applicable CNG Readiness Deadline or (following the applicable CNG Readiness Deadline) further delay in the achievement of CNG Readiness; and/or
    - III. a delay in achieving Site Completion at the applicable Project Site by the Site Completion Deadline; and/or
    - IV. the Development Entity failing to comply with its obligations under this PPA; and
  - (B) the Change in Costs, extension of time and/or relief from the obligations under this PPA claimed, could not reasonably be expected to be mitigated or recovered by the Development Entity acting in accordance with Good Industry Practice or resequencing, reallocation or redeploying its forces to other Project Sites.

(c) **Giving of Relief and Compensation**

In the event that the Development Entity has complied with its obligations under Section 12.2(b) (Procedure for Relief and Compensation), then:

- (i) in the case of a delay as demonstrated pursuant to Section 12.2(b) (Procedure for Relief and Compensation),
  - (A) the applicable CNG Readiness Deadline or (following the applicable CNG Readiness Deadline) the Long Stop Deadline; and/or
  - (B) the Site Completion Deadline;

shall be extended by such time as shall be reasonable for such a Compensation Event, but only to the extent that the Development Entity demonstrates to the Department by way of Time Impact Analysis (based on the Project Working Schedule most recently agreed pursuant to Section 2 (Project Management Plan) of the Technical Provisions) that the relevant Compensation Event will result in an identifiable and measurable disruption to the Project Services, which will impact a Critical Path activity (i.e., would consume all available float and would extend the time required to achieve CNG Readiness or Site Completion (as relevant)) and (following the achievement of CNG Readiness in respect of the first Project Site) the Department shall, upon the actual achievement of CNG

Readiness or Site Completion in respect of the applicable Project Site, compensate the Development Entity in an amount equal to the pro rata portion of the Maximum Infrastructure Fee that would have been payable in respect of such Project Site during the period of such time extension, which shall be payable by the Department to the Development Entity in a lump sum within thirty (30) days after the actual achievement of CNG Readiness or Site Completion in respect of the applicable Project Site;

- (ii) in the case of:
  - (A) Capital Expenditure incurred by the Development Entity at any time; or
  - (B) any other Change in Costs arising prior to the achievement of CNG Readiness in respect of all Project Sites,

then the Department shall, within twenty (20) Business Days of its receipt of a written demand by the Development Entity (supported by all relevant information), compensate the Development Entity for the relevant Capital Expenditure or Change in Costs (each as adjusted to reflect the actual Capital Expenditure or Change in Costs incurred by the Development Entity) that the Development Entity incurs as a direct result of the relevant Compensation Event;

- (iii) to the extent that any Noncompliance Event would, but for the occurrence of the Compensation Event, have not occurred, such Noncompliance Event shall, for the purposes of this PPA, be deemed to have not occurred;
- (iv) in the case of any Change in Costs that are not the subject of Section 12.2(c)(ii), the Department shall compensate the Development Entity in such other manner as the Parties may agree (acting reasonably, and on the basis that the Development Entity should be left in no better and no worse position than it would have been if the Compensation Event had not occurred);
- (v) in the case of any categories of Change in Costs that are subject to Schedule 19 (Extra Work Costs), such Change in Costs shall be calculated in accordance with Schedule 19 (Extra Work Costs);
- (vi) to the extent that any Development Entity Default or breach of any Project Document would, but for the occurrence of the Compensation Event, have not occurred, such Development Entity Default or breach shall, for the purposes of this PPA, be deemed to have not occurred;
- (vii) the Department shall give the Development Entity such relief from its ongoing obligations under this PPA as is reasonable given the nature of both the Compensation Event and the Development Entity's ongoing obligations
- (viii) to the extent that the volume of Commercial Sales decreases as a direct result of a Compensation Event, the Guaranteed Commercial Sales Volume shall be equitably adjusted to reflect such decrease in Commercial Sales in a manner to be agreed between the Parties; and

(ix) under no circumstances shall the Department pay to the Development Entity any amount in respect of lost revenues, lost profit, opportunity cost or any other compensation in the event that the volume of Commercial Sales decreases as a result of a Compensation Event.

(d) **Late Provision of Notice or Information**

To the extent that information is not provided to the Department in accordance with the requirements of Section 12.2(b) (Procedure for Relief and Compensation), the Development Entity shall not be entitled to any extension of time, compensation or relief from its obligations under this PPA with respect to the relevant Compensation Event.

(e) **Failure to Agree**

If the Parties cannot agree on the extent of any compensation, delay incurred, relief from the Development Entity's obligations under this PPA, or the Department disagrees that a Compensation Event has occurred (or as to its consequences), or that the Development Entity is entitled to relief under this Article 12 (Supervening Events), the Parties shall resolve the matter in accordance with the Dispute Resolution Procedures.

(f) **Sole Remedy**

As between the Development Entity and the Department, the Development Entity's sole remedy in relation to any Compensation Event shall be the operation of this Section 12.2 (Compensation Events).

**12.3 Relief Events**

(a) If, as a direct result of the occurrence of a Relief Event, the Development Entity becomes aware that the Relief Event has caused or is likely to cause the Development Entity to fail to:

(i) achieve CNG Readiness in respect of any Project Site by the applicable CNG Readiness Deadline or (following the applicable CNG Readiness Deadline) suffer further delay in the achievement of CNG Readiness at such Project Site; and/or

(ii) achieve Site Completion in respect of any of the Project Sites by the Site Completion Deadline; and/or

(iii) comply with any of its obligations under this PPA,

then the Development Entity is entitled to request an extension to the applicable CNG Readiness Deadline and/or the applicable Long Stop Deadline and/or the Site Completion Deadline and/or relief from any rights of the Department arising under Section 24.5 (Termination for Development Entity Default) and/or relief from any costs or expenses that accrue pursuant to Section 7.9 (Late Completion Costs) or any liquidated damages accrue pursuant to Section 11.4 (Liquidated Damages), in each case in accordance with this Article 12 (Supervening Events).

(b) **Procedure for Relief**

Subject to Section 12.3(d) (Late Provision of Notice or Information), any request for relief made by the Development Entity pursuant to Section 12.3(a) must:

- (i) be submitted to the Department as soon as practicable, and in any event within twenty (20) Business Days of the Development Entity first becoming aware that the relevant Relief Event would have the effect that is the subject of the Development Entity's request for relief;
- (ii) as soon as is reasonably practicable following receipt by the Department of the request referred to in Section 12.3(b)(i), give full details of the relevant Relief Event (as available to it having made due enquiry), the extension of time and/or relief requested, including:
  - (A) to the extent the Development Entity believes that the relevant Relief Event would result in a delay to the achievement of CNG Readiness or Site Completion (as relevant) at the applicable Project Site, a Time Impact Analysis (based on the Project Working Schedule most recently agreed pursuant to Section 2 (Project Management Plan) of the Technical Provisions) demonstrating that the relevant Relief Event will result in an identifiable and measurable disruption to CNG Readiness or Site Completion (as relevant), which will impact a Critical Path activity (i.e., would consume all available float and would extend the time required to achieve CNG Readiness or Site Completion (as relevant));
  - (B) evidence demonstrating that no other concurrent unrelated delay to a Critical Path activity that is the Development Entity's responsibility has occurred that has contributed to the delay for which relief is being sought; and
  - (C) evidence demonstrating that such event could not reasonably be avoided by the Development Entity without material cost or delay, including by re-sequencing, reallocating or redeploying its forces to other portions of the Project Services.
- (iii) provide evidence to the Department demonstrating that:
  - (A) the Development Entity could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;
  - (B) the Relief Event was the direct cause of or is reasonably likely to be the direct cause of:
    - I. a delay in achieving CNG Readiness at the applicable Project Site by the applicable CNG Readiness Deadline or (following the applicable CNG Readiness Deadline) further delay in the achievement of CNG Readiness; and/or
    - II. a delay in achieving Site Completion at the applicable Project Site by the Site Completion Deadline; and/or

III. the Development Entity failing to comply with its obligations under this PPA;

(C) the extension of time and/or relief from the obligations under this PPA requested could not reasonably be expected to be mitigated or recovered by the Development Entity acting in accordance with Good Industry Practice; and

(D) the Development Entity is using Reasonable Efforts to perform its obligations under this PPA.

(c) **Giving of Relief**

In the event that the Development Entity has complied with its obligations under Section 12.3(b) (Procedure for Relief), then:

(i) in the case of a delay demonstrated pursuant to Section 12.3(b) (Procedure for Relief),

(A) the applicable CNG Readiness Deadline or (following the applicable CNG Readiness Deadline) the applicable Long Stop Deadline, and/or

(B) the Site Completion Deadline;

shall be extended by such time as shall be reasonable for such a Relief Event, but only to the extent that the Development Entity demonstrates to the Department by way of Time Impact Analysis (based on the Project Working Schedule most recently agreed pursuant to Section 2 (Project Management Plan) of the Technical Provisions) that the relevant Relief Event will result in an identifiable and measurable disruption to CNG Readiness or Site Completion (as relevant), which will impact a Critical Path activity (i.e., would consume all available float and would extend the time required to achieve CNG Readiness or Site Completion (as relevant));

(ii) subject to Section 12.3(c)(iii) below, to the extent that any Development Entity Default or breach of any Project Document would, but for the occurrence of any Relief Event, have not occurred, such Development Entity Default or breach shall, for the purposes of this PPA, be deemed not to have occurred; and

(iii) to the extent that the volume of Commercial Sales decreases as a direct result of a Relief Event, the Guaranteed Commercial Sales Volume shall be equitably adjusted to reflect such decrease in Commercial Sales in a manner to be agreed between the Parties.

(d) **Late Provision of Notice or Information**

In the event that information is provided after the dates referred to in Section 12.3(b) (Procedure for Relief) then the Development Entity shall not be entitled to any extension of time or relief from termination with respect to the period between the date on which the relevant information is required to have been provided pursuant to the terms hereof and the date on which the relevant information is provided.

(e) **Failure to Agree**

If the Parties cannot agree on the extent of any delay incurred or relief from the Development Entity's obligations under this PPA, or the Department disagrees that a Relief Event has occurred (or as to its consequences), or that the Development Entity is entitled to relief under this Article 12 (Supervening Events), the Parties shall resolve the matter in accordance with the Dispute Resolution Procedures.

**13. CHANGE IN LAW**

**13.1 Occurrence**

The Development Entity shall take all steps necessary to ensure that the Project Services are performed in accordance with the terms of this PPA following any Change in Law.

(a) **Notification**

- (i) If a Change in Law (other than a Qualifying Change in Law) occurs or is shortly to occur, then either Party may notify the other to express an opinion on its likely effects, giving details of its opinion of:
- (ii) any necessary change to the Project Services; and
- (iii) whether any amendments are required to the terms of this PPA to deal with the Change in Law,

in each case giving in full detail the procedure for implementing the change in the Project Services.

- (b) As soon as practicable after receipt of any notice from either Party under Section 13.1 (Occurrence), the Parties shall discuss and agree on the issues referred to in Section 13.1 (Occurrence) and any ways in which the Development Entity can mitigate the effect of the relevant Change in Law.

**13.2 Qualifying Changes in Law**

The provisions of Section 12.2 (Compensation Events) shall apply in respect of any Qualifying Change in Law.

**14. PAYMENTS TO THE DEVELOPMENT ENTITY**

**14.1 Payment Amounts**

- (a) Within thirty (30) days of the achievement of CNG Readiness in respect of each Project Site, the Department shall, subject to the receipt of a proper Invoice in the relevant month in accordance with Section 14.2 (Invoicing and Monthly Performance Reports), pay to the Development Entity the relevant Milestone Payment.
- (b) Monthly Payments shall be calculated and earned by the Development Entity according to the methodology set out in Schedule 8 (Payment Mechanism); **provided**, that no Project Site shall be included in the calculation of the Monthly Payments until the later to

occur of CNG Readiness in respect of such Project Site and the date which is thirty (30) days prior to the CNG Readiness Deadline in respect of such Project Site.

## 14.2 Invoicing and Monthly Performance Reports

Upon receipt by the Department of a monthly invoice for a Milestone Payment and/or a Monthly Payment (an **Invoice**), the Department shall pay the Development Entity such Milestone Payment and/or Monthly Payment within thirty (30) days of the receipt of such Invoice. Notwithstanding the foregoing, the Department has no obligation to pay any Milestone Payment and/or Monthly Payment until the Development Entity submits a proper Invoice in respect of the relevant amount and a Monthly Performance Report for the relevant month in accordance with the following provisions of this Section 14.2 (Invoicing and Monthly Performance Reports):

- (a) The Development Entity shall submit an Invoice and a Monthly Performance Report no later than the fifteenth day of each month following the Commercial Closing Date; **provided**, that if the Development Entity submits the invoice after the fifteenth day in a particular month, such Invoice shall be processed by the Department as soon as is reasonably practicable, and in no event later than the fifteenth day of the month following that in which such Invoice is submitted.
- (b) The Invoice must set out the amount and calculation of any Milestone Payment and/or Monthly Payment invoiced in the relevant Invoice. The Department shall return any Invoices that are incomplete and/or incorrect in any material respect to the Development Entity for correction and resubmission.
- (c) The Monthly Performance Report shall contain the information required by Schedule 13 (Monthly Performance Report).
- (d) In the event that the Development Entity has failed to file a Monthly Performance Report required to be filed for a month in the form set out in Schedule 13 (Monthly Performance Report), the Department shall be required to pay only the amounts due less the maximum possible Monthly Maintenance Payment Deduction applicable under such circumstances. If it is determined that any Monthly Performance Report submitted by the Development Entity is found to be inaccurate, which, had it been accurate, would have revealed that an event resulting in a Monthly Maintenance Payment Deduction had occurred, then the Department shall be required to pay only the amounts due less the maximum possible Monthly Maintenance Payment Deduction applicable under such circumstances, unless and until a revised Monthly Performance Report, which is accurate to the reasonable satisfaction of the Department is subsequently submitted to the Department. Once the required or revised Monthly Performance Report is filed, the Department shall process the Invoice for payment. In no event shall the Department be obligated to pay interest on any late payments arising due to delayed or resubmitted Monthly Performance Reports pursuant to this Section 14.2(d).
- (e) With respect to the final Monthly Payment to be made under this PPA, the Department may delay payment of such Monthly Payment for an additional thirty (30) days in order to verify the Monthly Performance Report in respect of such final Monthly Payment.

### **14.3 Disputed Amounts**

- (a) Both the Development Entity and the Department shall have the right to dispute, in good faith, any amount specified in an Invoice or Monthly Performance Report submitted pursuant to Section 14.2(a). The Party disputing any such amount will pay the amount of the Invoice in question that is not in dispute and will be entitled to withhold the balance pending resolution of the Dispute.
- (b) Any amount determined to be due pursuant to the Dispute Resolution Procedures will be paid within thirty (30) days following resolution of the Dispute.

### **14.4 Set Off Right in respect of Commonwealth Liability**

The Development Entity agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Development Entity or its subsidiaries to the Commonwealth against any payments due to the Development Entity under this PPA.

### **14.5 Appropriations and Source of Funds**

#### **(a) Appropriations**

- (i) The Department hereby covenants and agrees to:
  - (A) include in its budgetary request, which the Department shall submit to the Commonwealth's Office of the Budget no later than November 1 each Calendar Year during the Term, a request for appropriation (including executive authorization) of funds sufficient to pay the amounts due and owing or scheduled to become due and owing from the Department to the Development Entity during the succeeding fiscal year; and
  - (B) use its best efforts to cause the General Assembly of the Commonwealth to appropriate (and the Governor of the Commonwealth to implement executive authorization of) amounts that will be sufficient to enable the Department to pay all such amounts to the Development Entity under this PPA, including exhausting all available reviews and appeals and doing all other things lawfully within its power to do if such amounts are not appropriated.
- (ii) The obligation of the Department to pay all amounts due and owing or scheduled to become due and owing from the Department to the Development Entity hereunder is a contractual commitment of the Commonwealth and does not constitute a debt or pledge of the Commonwealth or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. The Department has no taxing power. The Development Entity has no right to have taxes levied or compel appropriations by the General Assembly of the Commonwealth for any payment of any amounts due and owing or scheduled to become due and owing from the Department to the Development Entity hereunder.

(b) **Source of Funds**

- (i) Except with respect to those sources of funds, if any, that are available for payments required to be made by the Department hereunder that as a matter of law are not subject to appropriations, the Parties acknowledge that:
  - (A) the source of funds for payment of all amounts due and owing or scheduled to become due and owing from the Department to the Development Entity hereunder is subject to the availability of funds appropriated to the Department by the General Assembly of the Commonwealth and approved by the Governor of the Commonwealth (including funds available pursuant to executive authorization in accordance with appropriations theretofore made by the General Assembly of the Commonwealth); and
  - (B) the Department's obligations to provide funding under this PPA are subject to the appropriation of funds for such purposes by the General Assembly of the Commonwealth (including funds available pursuant to executive authorization in accordance with appropriations theretofore made by the General Assembly of the Commonwealth) and the certification of the availability of such funds by the Commonwealth's Office of the Budget pursuant to Section 327 of the Commonwealth Procurement Code, 62 Pa.C.S. §327.
- (ii) The Department shall notify the Development Entity in writing promptly upon becoming aware of any failure of (i) the Governor of the Commonwealth to approve such appropriation, or (ii) the Commonwealth's Office of the Budget to certify as to the availability of such funds.
- (iii) Notwithstanding anything to the contrary set out herein, the obligations of the Department under this PPA will survive any failure to appropriate sufficient amounts to pay the amounts due and owing or scheduled to become due and owing from the Department to the Development Entity under this PPA and any expiration or termination of this PPA and such obligations shall not be impaired, reduced or otherwise affected by any such failure.

**15. CNG COMMERCIALIZATION ACTIVITIES**

**15.1 CNG Commercialization Management Plan**

From time to time the Development Entity may submit to the Department for the Department's review and approval in its sole discretion an update to the then-current CNG Commercialization Management Plan to reflect any proposed changes in the Development Entity's management of the CNG Commercialization Activities in accordance with the requirements set forth in Section 9 (CNG Commercialization Activities) of the Technical Provisions (such updated CNG Commercialization Management Plan, as approved, the **Updated CNG Commercialization Management Plan**).

**15.2 CNG Commercialization Rights**

- (a) Except as set forth in clause (c) below, solely with respect to those Project Sites identified by the Development Entity in the CNG Commercialization Management Plan most recently approved by

the Department as Project Sites at which the Development Entity will undertake Commercial Sales, the Development Entity shall have the exclusive right, but not the obligation, to undertake Commercial Sales in accordance with this PPA and the CNG Commercialization Management Plan; **provided**, that if the Development Entity shall have failed to undertake Commercial Sales at any such Project Site on or before the date which is five (5) years after the achievement of CNG Readiness in respect of such Project Site, the Development Entity shall (i) have forfeited the Development Entity's right to undertake Commercial Sales at such Project Site and the Department and/or the relevant Transit Agency shall have the right, in each of their sole discretions, to authorize other Persons to undertake such Commercial Sales at such Project Site (subject to the Development Entity and such other Person entering into a mutually satisfactory agreement pursuant to which such Person shall compensate the Development Entity for the reasonable costs of normal wear and tear at the applicable CNG Equipment Compound resulting from such Person's undertaking of such Commercial Sales, if applicable), (ii) have no right to compensation in respect of such forfeiture and (iii) not be relieved of any portion of the Development Entity's obligation to pay for revenue from the Guaranteed Commercial Sales Volume as a result of such forfeiture.

- (b) At all times during the Term, any Commercial Sales undertaken, delivered or fulfilled, directly or indirectly, by the Development Entity (including its Affiliates) at or through facilities located within a radius of two (2) miles from each Project Site (excluding any such Commercial Sales of CNG occurring at facilities (i) in existence as of the Proposal Due Date or (ii) constructed after the Proposal Due Date on real property which is owned by a private entity that is the sole and exclusive customer in respect of such Commercial Sales) shall, for purposes of this PPA, be treated as Commercial Sales at the applicable Project Site and shall be subject to the MRF in accordance with Section 1.2 of Schedule 8 (Payment Mechanism).
- (c) The Development Entity shall undertake CNG Commercialization Activities in accordance with this PPA and the CNG Commercialization Management Plan at those Project Sites identified on Table 1 (Participating Transit Agencies) of the Technical Provisions as requiring CNG Commercialization Activities at all times from the date of CNG Readiness in respect of such Project Sites until the expiration of the Term.

### **15.3 Subordinate Nature of CNG Commercialization Activities**

The Development Entity acknowledges and accepts that the Commercial Sales at any Project Site are subordinate to the provision of CNG to the relevant Transit Agency, and accordingly the Development Entity shall ensure that such Commercial Sales do not disrupt, hinder or interfere with the provision of CNG to Transit Agency customers at such Project Site (including in respect of the volume of CNG available to Transit Agency customers during the relevant fueling windows, and the speed of its distribution (in each case as specified in the Technical Provisions)). The Development Entity shall promptly take all actions necessary and appropriate to eliminate any such disruption, hindrance or interference (including, if appropriate, scheduling all such Commercial Sales at such Project Site during time periods when Transit Agency Vehicles are not scheduled to be fuelled at such Project Site).

### **15.4 CNG Commercialization Taxes**

To the extent that any Transit Agency incurs or is assessed any real property, ad valorem, sales, income or other tax, duty or charge by any Governmental Entity as a consequence of the conduct of CNG Commercialization Activities by the Development Entity from time to time (any such

tax, duty or charge, **CNG Commercialization Taxes**), the Department shall notify the Development Entity in writing thereof (including the amount of such CNG Commercialization Taxes) and the Development Entity shall promptly, but in any event within 30 days after receipt of such written notice from the Department, pay to the Transit Agency the amount of such CNG Commercialization Taxes.

## **16. NATURAL GAS SUPPLY**

### **16.1 Supply for Participating Transit Agencies**

The Department shall, at its own cost and expense, supply (or procure the supply of) natural gas to each CNG Fueling Station Facility in such quantities and at such times as shall enable the Development Entity to comply with its obligations under this PPA including to supply CNG to Transit Agency customers, beginning not later than the later to occur of (a) the Fuel Supply Commencement Date and (b) the date on which the Development Entity shall have completed all equipment and infrastructure necessary for the delivery of natural gas to the applicable CNG Fueling Station Facility. The Department (or, in the case of natural gas supplied by any Transit Agency, the applicable Transit Agency) shall have no obligation to design, build, finance, operate or maintain any equipment or infrastructure necessary for the delivery of natural gas to the CNG Fueling Station Facilities and shall have no liability for the content or quality of such natural gas (except to the extent expressly set out in this PPA).

### **16.2 Supply for Commercial Sales**

The Department shall, at the Development Entity's cost and expense, supply (or procure the supply of) natural gas to each CNG Fueling Station Facilities to enable the Development Entity to conduct Commercial Sales in accordance with this PPA, beginning not later than the later to occur of (a) the Fuel Supply Commencement Date and (b) the date on which the Development Entity shall have completed all equipment and infrastructure necessary for the delivery of natural gas to the applicable CNG Fueling Station Facility; **provided**, that the Development Entity shall provide to the Department not less than 30 days' prior notice detailing the quantities of natural gas that the Development Entity requires to enable it to conduct Commercial Sales. Except to the extent expressly set out in this PPA, the Department (or, in the case of natural gas supplied by any Transit Agency, the applicable Transit Agency) shall have no obligation to design, build, finance, operate or maintain any equipment or infrastructure necessary for the delivery of natural gas to the CNG Fueling Station Facilities and shall have no liability for the content, quality, delivery or terms of delivery of such natural gas.

### **16.3 Notice of Gas Quality Issues**

- (a) The Development Entity shall monitor the content and quality of the natural gas supplied to the CNG Fueling Stations Facilities at each Project Site in accordance with the applicable gas monitoring protocol prepared by the Development Entity and approved by the Department in accordance with Section 2.4.3.G of the Technical Provisions.
- (b) To the extent the Department (or the applicable Transit Agency) receives notice from any Utility Owner supplying natural gas to any Project Site in respect of any pending or anticipated changes in the content or quality of such natural gas, the Department shall (or shall cause the applicable Transit Agency to) promptly provide a copy of such notice to the Development Entity. The Department shall (or shall cause the applicable Transit Agency to ) use reasonable efforts to cause

each Utility supplying natural gas to any Project Site to (a) provide any such notice directly to the Development Entity, and (b) permit the Development Entity to communicate directly with such Utility Owner on a regular and customary basis.

- (c) If at any time the content or quality of natural gas supplied at any Project Site is such that the use thereof for the fueling of Transit Agency Vehicles could, or could reasonably be expected to, pose a material risk of damage to such Transit Agency Vehicles, the Development Entity shall promptly notify the applicable Transit Agency (with a copy to the Department), such notice to include reasonable details regarding the content or quality of such natural gas and the nature of the risk to Transit Agency Vehicles resulting therefrom.
- (d) To the extent the Transit Agency notifies the Development Entity to cease compressing natural gas as a result of a notice delivered by the Development Entity pursuant to Section 16.3(b), the Development Entity shall promptly comply with such notice (and shall take remedial measures at its own cost and expense consistent with Good Industry Practice in respect of any natural gas compressed prior to receipt of such notice from the applicable Transit Agency). Notwithstanding a Transit Agency's failure to notify the Development Entity to cease compressing natural gas following delivery by the Development Entity of a notice pursuant to Section 16.3(b), the Development Entity shall automatically cease compressing natural gas at the applicable Project Site if the Development Entity's gas chromatograph at such Project Site shall at any time register natural gas content or quality measurements in excess of the threshold established in the applicable gas monitoring protocol prepared by the Development Entity and approved by the Department in accordance with Section 2.4.3.G of the Technical Provisions.
- (e) Following receipt of a notice from a Transit Agency instructing the Development Entity to cease compressing natural gas (or following an automatic shutdown as described above), the Development Entity and the applicable Transit Agency shall continuously monitor the content and quality of the natural gas supplied to the relevant Project Site, and upon receipt of notice from the applicable Transit Agency (or if the Development Entity's gas chromatograph at the applicable Project Site shall have registered natural gas content or quality measurements not in excess of the thresholds established in the applicable gas monitoring protocol prepared by the Development Entity and approved by the Department in accordance with Section 2.4.3.G of the Technical Provisions), the Development Entity shall re-commence the compression of natural gas in accordance with the Project Documents.
- (f) During any period in respect of which the applicable Transit Agency shall have notified the Development Entity to cease compressing natural gas at any Project Site or the Development Entity's gas chromatograph at any Project Site shall have registered natural gas content or quality measurements in excess of the threshold established in the applicable gas monitoring protocol prepared by the Development Entity and approved by the Department in accordance with Section 2.4.3.G of the Technical Provisions:
  - (i) a Relief Event shall be deemed to have occurred for the purposes of this PPA; and
  - (ii) The Development Entity acknowledges and agrees that the Department may issue a Directive Letter to the Development Entity instructing the Development Entity to implement temporary fueling alternatives during such period, and the Development Entity shall promptly comply with such Directive Letter so as to minimize any disruption to the fueling of Transit Agency Vehicles during such period.

- (g) Provided that the Development Entity shall have complied with its obligations under this Section 16.3, to the extent the Development Entity (or any third party having access to the relevant Project Site) suffers any Loss as a direct result of the content or quality of natural gas supplied to a Project Site, upon the request of the Development Entity and at the Development Entity's sole cost and expense, the Department shall (or shall cause the applicable Transit Agency to) diligently pursue a claim against the Utility Owner that shall have supplied the natural gas to the applicable Project Site seeking the full recovery of such Loss; **provided**, for the avoidance of doubt, that the Department (or the applicable Transit Agency) shall have no obligation to pursue any claim to the extent the Department (or the applicable Transit Agency) reasonably determines such claim is frivolous or without merit; **provided further** that the Department (or the applicable Transit Agency) shall have no obligation to pay any amount to the Development Entity in respect of such claim unless and until, and only to the extent that, the applicable Utility Owner shall have actually paid the same to the Department (or the applicable Transit Agency), it being acknowledged and agreed that in no event shall the Department (or the applicable Transit Agency) have any greater liability to the Development Entity than such Utility Owner shall have to the Department (or the applicable Transit Agency), except to the extent expressly provided in this PPA.
- (h) Provided that the Development Entity shall have complied with its obligations under this Section 16.3, the Development Entity shall have no liability for or obligation to repair or replace any Transit Agency Vehicle to the extent such Transit Agency Vehicle shall have been damaged as a result of the content or quality of natural gas supplied to a Project Site.

**17. [NOT USED]**

**18. [NOT USED]**

**19. INSURANCE**

**19.1** The Development Entity shall at all times comply with the requirements of Schedule 9 (Insurance Coverage Requirements).

**20. DEVELOPMENT ENTITY INDEMNITY**

**20.1 Indemnified Losses**

Subject to Section 20.2 (Exclusions from Indemnity), to the fullest extent permitted by Applicable Law, the Development Entity shall release, defend, indemnify and hold harmless the Indemnified Parties on demand from and against any and all liability to third parties for Losses arising from:

- (a) death or personal injury;
- (b) loss of or damage to any Indemnified Party's property, including loss of use thereof;
- (c) third party actions, claims, fines, penalties and/or demands brought against any Indemnified Party;

which may arise out of, or in consequence of, the performance or non-performance by the Development Entity of its obligations under the Project Documents.

## **20.2 Exclusions from Indemnity**

The Development Entity shall not be responsible or be obliged to indemnify an Indemnified Party in respect of any Losses under Section 20.1 (Indemnified Losses) to the extent that the same arise as a direct result of:

- (a) a Compensation Event or Relief Event;
- (b) the presence of Hazardous Materials on any Project Site that a Transit Agency is deemed to be the sole generator and arranger of pursuant to Section 6.3 (Generator Status), but only to the extent that the relevant Loss does not arise as a direct result of the negligence of the Development Entity or the Development Entity failing to comply with the terms of the Project Documents;
- (c) the fraud, negligence, recklessness, bad faith or willful misconduct of an Indemnified Party;
- (d) any performance or non-performance by an Indemnified Party of its obligations under the Project Documents; or
- (e) any Losses suffered by an Indemnified Party with respect to the use of the Project Data or any Intellectual Property related thereto other than specifically for the CNG Facilities.

## **20.3 Limitation of Indemnity**

An indemnity by the Development Entity under any provision of the Project Documents shall be without limitation to any indemnity by the Development Entity under any other provision of the Project Documents.

## **20.4 Conduct of Third-Party Claims**

- (a) Pursuant to the Commonwealth Attorneys Act (71 P.S. § 732-101, et. seq.), the Office of Attorney General shall have the sole authority to represent the Department in any Third-Party Claim brought against the Department. The Office of Attorney General may, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense of any Third-Party Claim. If the Office of Attorney General delegates the defense of any Third-Party Claim, the Department shall cooperate with all reasonable requests of the Development Entity made in the defense of such Third-Party Claim.
- (b) The Development Entity shall, if it wishes to have conduct of any Third-Party Claim (at its own cost and expense), submit a request to the Department, and the Department shall notify the Office of Attorney General of such request. If the Office of Attorney General consents (in its sole discretion) to the Development Entity's conduct and control of any Third-Party Claim, the Department shall cooperate with all reasonable requests of the Development Entity made in respect of such Third-Party Claim.
- (c) Notwithstanding the foregoing, neither Party shall enter into any settlement in respect of a Third-Party Claim without the other Party's written consent.

## 21. REPRESENTATIONS AND WARRANTIES

### 21.1 Development Entity Representations and Warranties

The Development Entity hereby represents and warrants to the Department that:

- (a) The Development Entity has all required authority, license status, professional ability, skills and capacity to perform the Project Services.
- (b) Without limiting its rights and remedies expressly granted hereunder, the Development Entity has evaluated the constraints affecting design and construction of the Project, including each of the Project Sites and each of the CNG Facilities, as well as the conditions of the Governmental Approvals then in effect, and has reasonable grounds for believing, and does believe, that the Project can be designed and built within such constraints.
- (c) Without limiting its rights and remedies expressly granted hereunder as of the Setting Date, the Development Entity has, in accordance with Good Industry Practice, examined each Project Site and surrounding locations, investigated and reviewed the Disclosed Information, and other available public and private records, and undertaken other activities sufficient to familiarize itself with each Project Site or surrounding locations; and as a result of such review, inspection, examination and other activities the Development Entity is familiar with and, subject to the provisions of this PPA, accepts the physical requirements of the Project Services; **provided**, that the same shall not diminish, reduce or otherwise affect any of the Development Entity's rights under this PPA, including, without limitation, its rights pursuant to Article 12 (Supervening Events).
- (d) To the extent given access on or prior to the date hereof, the Development Entity has familiarized itself with the requirements of any and all Applicable Laws and the conditions of any required Governmental Approvals then in effect prior to entering into this PPA. Except as specifically permitted in this PPA, the Development Entity shall be responsible for complying with all Applicable Laws at its sole cost and without any increase in compensation or extension of any deadlines in the Project Working Schedule on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the Project Documents. The Development Entity has no reason to believe that any Governmental Approval required to be obtained by the Development Entity will not be granted in due course and, thereafter, remain in effect so as to enable the Project Services to proceed in accordance with the Project Documents.
- (e) All Project Services furnished by the Development Entity will be performed by or under the supervision of Persons who hold all necessary, valid licenses to practice in the Commonwealth, by personnel who are skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Project Services in accordance with the Project Documents.
- (f) The Development Entity is a limited liability company duly organized and validly existing under the laws of the State of Delaware, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this PPA and to perform each and all of the obligations of

the Development Entity provided for herein. The Development Entity is duly qualified to do business, and is in good standing, in the Commonwealth.

- (g) The execution, delivery and performance of this PPA have been duly authorized by all necessary Board of Directors' action of the Development Entity; each person executing this PPA on the Development Entity's behalf has been duly authorized to execute and deliver the PPA on the Development Entity's behalf; and this PPA has been duly executed and delivered by the Development Entity.
- (h) Neither the execution and delivery by the Development Entity of this PPA, nor the consummation of the transactions contemplated hereby, is (or at the time of execution will be) in conflict with or has resulted or will result in a default under or a violation of the organizational documents of the Development Entity or any other material agreements or instruments to which it is a party or which are binding on the Development Entity or any of its property or assets or in a material default or violation of any Applicable Law.
- (i) This PPA constitutes the legal, valid and binding obligation of the Development Entity, enforceable against the Development Entity and, if applicable, each member of the Development Entity, in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.
- (j) There is no action, suit, proceeding, investigation or litigation pending or served on the Development Entity or, to the Development Entity's knowledge, threatened which (i) would reasonably be expected to have a material adverse effect on the ability of the Development Entity to perform its obligations under any Project Document or (ii) challenges the Development Entity's authority to execute, deliver or perform, or the validity or enforceability of, this PPA, or which challenges the authority of the Development Entity's representative executing this PPA; and the Development Entity has disclosed to the Department any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Development Entity is aware.
- (k) The audited consolidated financial statements of the Development Entity (and, if applicable, each Guarantor) for the most recent reporting year prior to submission of the Proposal for which such audited statements are available have been prepared on a basis consistently applied and using GAAP or equivalent accounting principles utilized and generally accepted in the country of incorporation of such party, and audited by an independent certified public accountant (applying GAAP or equivalent auditing standards utilized and generally accepted in the country of incorporation of such party) and give a true and fair view of the consolidated financial condition of each such entity or group (as applicable) and are unqualified for the accounting period in question; **provided**, that in the case of the Development Entity, such financial statements shall be on a *pro forma* basis.
- (l) As of the date hereof, there has been no material adverse change in the financial condition of the Development Entity, the parent company of the Development Entity or, if applicable, any Guarantor since the date of its most recent audited financial statements

that would have a material adverse effect on the Development Entity's ability to perform its obligations under this PPA and the other Project Documents.

- (m) All written information and certifications furnished by or on behalf of the Development Entity to the Department, or any of its representatives or advisors, as part of or in connection with the Proposal and the negotiation of this PPA or the Project Documents or delivered by or on behalf of the Development Entity to the Department or any Person on its behalf pursuant to this PPA was true and accurate in all material respects when given and is true on the date on which this representation is made or repeated and taken as a whole and there are no other facts or matters the omission of which made any statement or information contained in the written information provided to the Department or to any of its representatives or advisors misleading in any material respect as of the relevant date of delivery thereof or the date on which this representation is made or repeated and all expressions of opinion contained therein were honestly made on reasonable grounds after due and careful enquiry.

## **21.2 Department Representations and Warranties**

The Department hereby represents and warrants to the Development Entity that:

- (a) The Department is an executive agency of the Commonwealth, and has the requisite power and all required licenses to carry on its present activities and those proposed under the Principal Department Documents.
- (b) The Department has the full power and authority to execute, deliver and perform each Principal Department Document and to carry out the transactions contemplated thereby. The execution, delivery and performance of each Principal Department Document, and the performance of the transactions contemplated thereby, have been duly and validly authorized by all necessary action of the Department. Each Principal Department Document has been duly and validly executed and delivered by the Department, and each constitutes a valid and binding obligation of the Department, enforceable against the Department in accordance with its terms, subject only to:
  - (i) the effect of bankruptcy, insolvency, reorganization, moratorium, or other similar Laws now or hereafter in effect affecting, generally, the enforcement of creditor's rights and remedies;
  - (ii) the effect of Applicable Laws governing equitable remedies and defenses, and the discretion of any court of competent jurisdiction in awarding equitable remedies, including, without limitation, the doctrine of sovereign immunity;
  - (iii) the effect of Applicable Law governing enforcement and collection of damages against the Department, including, without limitation, the doctrine of sovereign immunity; and
  - (iv) Applicable Law concerning the review and approval of contracts, as to form and legality, by the Office of General Counsel of the Commonwealth and the Office of the Attorney General of the Commonwealth.

- (c) The execution, delivery and performance of each Principal Department Document by the Department do not:
  - (i) violate any Applicable Law applicable to the Department or the Department's ability to fully perform its obligations thereunder;
  - (ii) require any consent, approval, or authorization of, notice to, or declaration, filing, or registration with any Person not obtained or accomplished as of the Commercial Closing Date; or
  - (iii) to the knowledge of the Department, conflict with, or result in a default under or a violation of, any other agreement or instruments to which the Department is a party or by which it is bound.
- (d) To the knowledge of the Department, there is no material action, suit, proceeding, investigation or litigation pending and served upon the Department that challenges either the Department's authority to execute, deliver, or perform any of the Principal Department Documents, the validity or enforceability of any of the Principal Department Documents, or the authority of the Department official executing any of the Principal Department Documents.

### **21.3 Repetition and Survival of Representations and Warranties**

The representations and warranties of the Development Entity and the Department contained herein are made on the date of this PPA and repeated on the Commercial Closing Date.

## **22. DEVELOPMENT ENTITY DEFAULT**

### **22.1 Development Entity Default**

The occurrence of any one or more of the following events or conditions shall constitute a **Development Entity Default**:

- (a) the Development Entity fails to comply with any Governmental Approvals or Applicable Law, in any material respect;
- (b) the Development Entity fails in any material respect to make a payment to the Department under this PPA when due, or fails to deposit funds in the Handback Reserve Account in the amount and within the time period required by this PPA, in either case provided that the relevant payment or deposit (as applicable) is not subject to a good faith Dispute;
- (c) the Development Entity fails to obtain, provide and maintain the Insurance Policies in accordance with the requirements of this PPA;
- (d) any failure by the Development Entity to comply with Article 29 (Assignment and Transfer; Fundamental Changes);
- (e) any representation or warranty made by the Development Entity in the Project Documents or any certificate, schedule, report, instrument or other document delivered to

the Department pursuant to the Project Documents is false in any material respect or materially misleading or inaccurate in any material respect when made or omits material information when made;

- (f) an Insolvency Event arises with respect to the Development Entity or any Guarantor;
- (g) the Development Entity fails to comply with any written suspension of Construction Work order issued by the Department pursuant to Section 7.8 (Suspension of Construction Work) as soon as is practicable, except to the extent that such failure arises as a direct result of a Relief Event;
- (h) the Development Entity fails to (a) achieve CNG Readiness in respect of any Project Site by the applicable Long Stop Deadline in respect thereof or (b) achieve Site Completion in respect of all Project Sites (but excluding any expansion of the CNG Equipment Compound consisting of the installation of hydraulic intensifier compressors or additional dispensers to support Commercial Sales at any Project Site that is scheduled to occur after the date of CNG Readiness at such Project Site in accordance with Appendix 1 (Development Entity's Proposal Commitments)) by the Site Completion Deadline;
- (i) a Persistent Breach occurs;
- (j) a Persistent Fueling Failure occurs; and
- (k) without limitation to clauses (a) to (j) (inclusive), any breach (other than (i) any breach for which a Noncompliance Point could have been assessed, (ii) any breach for which liquidated damages are payable, or (iii) any breach that arises as a direct result of the occurrence of a Compensation Event or a Relief Event) by the Development Entity of any other material obligation under this PPA or any written repudiation of this PPA by the Development Entity.

## 22.2 Termination for Persistent Breach by the Development Entity

### (a) Warning Notice

If the Development Entity commits a breach of this PPA (other than (i) any breach for which a Noncompliance Point could have been assessed or (ii) any breach that arises as a direct result of the occurrence of a Compensation Event or a Relief Event) that continues for more than thirty (30) consecutive days or occurs more than three (3) times in any six (6)-month period then the Department may serve a notice (an **Initial Warning Notice**) on the Development Entity:

- (i) specifying that it is an Initial Warning Notice;
- (ii) giving reasonable details of the relevant breach; and
- (iii) stating that the relevant breach is a breach which, if it recurs frequently or continues, may result in termination of this PPA for Persistent Breach.

(b) **Final Notice**

If the breach specified in an Initial Warning Notice continues beyond thirty (30) consecutive days or recurs in three (3) or more months within the six (6)-month period after the date of service of the Initial Warning Notice, then the Department may serve another notice (a **Final Warning Notice**) on the Development Entity:

- (i) specifying that it is a Final Warning Notice;
- (ii) stating that the breach specified has been the subject of an Initial Warning Notice served within the six (6)-month period prior to the date of service of the Final Warning Notice; and
- (iii) stating that if the breach continues for more than thirty (30) consecutive days or recurs in three (3) or more months within the six (6)-month period after the date of service of the Final Warning Notice, this PPA may be terminated for Persistent Breach.

(c) **Currency of Warning Notices**

An Initial Warning Notice may not be served in respect of any incident of breach which has previously been the subject of an Initial Warning Notice.

**22.3 Initial Notice and Cure Periods**

The Department shall provide written notice to the Development Entity of the occurrence of a Development Entity Default. Upon receipt of the Department's notice (if required), the Development Entity shall have the following cure periods:

- (a) For a Development Entity Default under Sections 22.1(b), through 22.1(d), a period of thirty (30) days after the Development Entity receives written notice from the Department of such Development Entity Default.
- (b) For a Development Entity Default under Sections 22.1(a), 22.1(e) or 22.1(k) a period of thirty (30) days after the Development Entity receives written notice from the Department of such Development Entity Default; **provided**, that:
  - (i) if such Development Entity Default cannot be cured within such time period, despite the Development Entity's commencement of meaningful steps to cure immediately after receiving the default notice, then the Development Entity shall have such additional period of time, up to a maximum cure period of one hundred twenty (120) days, as is reasonably necessary to effect cure; and
  - (ii) with respect to a Development Entity Default under Section 22.1(e), cure will be regarded as complete when the adverse effects of the breach are cured.
- (c) For any other Development Entity Default not referred to in Section 22.3(a) or Section 22.3(b), there is no cure period.

## 22.4 Department Remedies for Development Entity Default

### (a) Remedial Plan

- (i) In the event that a Development Entity Default occurs and it has not been cured within any relevant cure period set out in Section 22.3 (Initial Notice and Cure Periods) the Department may, without prejudice to any other right or remedy available to it, require the Development Entity to prepare and submit, within twenty (20) Business Days of being notified of such requirement, a remedial plan that shall set out a schedule and specific actions to be taken by the Development Entity to cure the relevant Development Entity Default and reduce the likelihood of such defaults occurring in the future. Such actions may, amongst other things, include improvements to the Development Entity's quality management practices, plans and procedures, revising and restating management plans, changes in organizational and management structure, increased monitoring and inspections, changes in Key Personnel and other important personnel, and replacement of Contractors.
- (ii) Within twenty (20) Business Days of receiving any remedial plan pursuant to Section 22.4(a)(i), the Department shall notify the Development Entity whether or not the relevant remedial plan is, in the Department's sole discretion, acceptable. If Department notifies the Development Entity that the relevant remedial plan is acceptable, the Development Entity shall implement such remedial plan in accordance with its terms.

### (b) Right of Termination

In the event that a Development Entity Default occurs and it has not been cured within any relevant cure period set out in Section 22.3 (Initial Notice and Cure Periods) or (if relevant) in accordance with any remedial plan accepted by the Department pursuant to Section 22.4(a) (Remedial Plan), the Department may terminate this PPA in accordance with, and subject to the terms of, Section 24.5 (Termination for Development Entity Default).

## 23. DEPARTMENT DEFAULT

### 23.1 Department Default

The occurrence of any one or more of the following events or conditions shall constitute a **Department Default**:

- (a) the Department fails to make any payment due to the Development Entity under this PPA when due; **provided**, that such payment is not subject to a good faith Dispute;
- (b) any representation or warranty made by the Department under Section 21.2 (Department Representations and Warranties) is false or materially misleading or inaccurate when made in each case in any material respect or omits material information when made;
- (c) the Department or any other Governmental Entity confiscates, sequesters, condemns or appropriates any of the CNG Facilities, or the Development Entity's Interest or any material part thereof, excluding the exercise of any right set out in this PPA;

- (d) the Department has ceased to perform substantially all of its obligations under this PPA, which substantially frustrates or renders it substantially impossible for the Development Entity to perform its obligations under this PPA for a continuous period of two (2) months;
- (e) any failure by the Department to comply with Article 29 (Assignment and Transfer; Fundamental Changes); or
- (f) funds sufficient to make any payments under this PPA required to be made by the Department are not appropriated (including funds available pursuant to executive authorization in accordance with appropriations theretofore made by the General Assembly of the Commonwealth) to the Department.

### **23.2 Initial Notice and Cure Periods**

The Development Entity shall provide written notice to the Department of the occurrence of a Department Default. Upon receipt of the Development Entity's notice, the Department shall have the following cure periods with respect to the following Department Defaults:

- (a) for a Department Default under Section 23.1(a), a period of thirty (30) days after the Development Entity delivers to the Department written notice of such a Department Default;
- (b) for a Department Default under Section 23.1(d) or Section 23.1(f), a period of sixty (60) days after the Development Entity delivers to the Department written notice of such a Department Default;
- (c) for a Department Default under Section 23.1(b) or Section 23.1(c), a period of thirty (30) days after the Development Entity delivers to the Department written notice of such a Department Default; **provided**, that if such Department Default cannot be cured within such time period, despite the Department's commencement of meaningful steps to cure immediately after receiving the default notice, then the Department shall have such additional period of time, up to a maximum cure period of one hundred twenty (120) days, as is reasonably necessary to effect cure; and
- (d) for any other Department Default not referred to in Sections 23.2(a), (b) and (c), there is no cure period.

### **23.3 Right of Termination**

In the event that a Department Default occurs and it has not been cured within any relevant cure period set out in Section 23.2 (Initial Notice and Cure Periods), the Development Entity may terminate this PPA in accordance with Section 24.2 (Termination for Department Default).

### **23.4 Right of Suspension**

For so long as a Department Default set out in Section 23.1(a) has occurred and remains uncured, the Development Entity may suspend performance of the Project Services.

## **24. TERMINATION AND FORCE MAJEURE**

### **24.1 Termination for Convenience**

- (a) Without prejudice to the other provisions of this Article 24 (Termination and Force Majeure), the Department may terminate this PPA at any time on or before the last day of the Term by complying with its obligations under Section 24.1(b).
- (b) If the Department wishes to terminate this PPA under this Section 24.1 (Termination for Convenience), it must give a Termination Notice to the Development Entity stating:
  - (i) that the Department is terminating this PPA under this Section 24.1 (Termination for Convenience); and
  - (ii) that this PPA will terminate on the date specified in the notice, which must be a minimum of twenty (20) Business Days after the date of receipt of the notice.
- (c) This PPA will terminate on the date specified in the Termination Notice referred to in Section 24.1 (Termination for Convenience).
- (d) If this PPA is terminated pursuant to this Section 24.1 (Termination for Convenience), the Department shall pay the Department Termination Sum to the Development Entity in accordance with Schedule 6 (Compensation on Termination).

### **24.2 Termination for Department Default**

- (a) If a Department Default occurs and it has not been cured within any relevant cure period set out in Section 23.2 (Initial Notice and Cure Periods), the Development Entity may serve a Termination Notice (**Development Entity Termination Notice**) on the Department at any time during the continuance of that Department Default.
- (b) A Development Entity Termination Notice must specify the type of Department Default which has occurred entitling the Development Entity to terminate.
- (c) This PPA will terminate on the date falling twenty (20) Business Days after the date the Department receives the Development Entity Termination Notice.
- (d) If this PPA is terminated pursuant to this Section 24.2 (Termination for Department Default), the Department shall pay the Department Termination Sum to the Development Entity in accordance with Schedule 6 (Compensation on Termination).

### **24.3 Termination by Court Ruling**

- (a) Termination by Court Ruling becomes effective and automatically terminates this PPA upon issuance of the final, non-appealable court order by a court of competent jurisdiction.
- (b) If this PPA is terminated pursuant to this Section 24.3 (Termination by Court Ruling), the Department shall pay the Department Termination Sum to the Development Entity in accordance with Schedule 6 (Compensation on Termination).

## 24.4 Force Majeure

### (a) Effect of Force Majeure on Obligations

No Party shall be entitled to bring a claim for a breach of obligations under this PPA by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and the Affected Party is prevented from carrying out obligations by that Force Majeure Event (except as contemplated below). During the continuance of any Force Majeure Event, the Affected Party shall be excused from performing those of its obligations directly affected by such Force Majeure Event; **provided**, that the occurrence or continuance of any Force Majeure Event shall not excuse any Party from performing any payment obligations contemplated under this PPA or any other Project Document.

### (b) Notification for Force Majeure

On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

### (c) Consultation

As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all Reasonable Efforts to agree to appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this PPA.

### (d) Mitigation

The Parties shall at all times following the occurrence of a Force Majeure Event use all Reasonable Efforts to prevent and mitigate the effects of any delay and the Development Entity shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimize the consequences of the Force Majeure Event.

### (e) Cessation of Force Majeure Event

The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this PPA. Following such notification this PPA shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

## 24.5 Termination for Development Entity Default

- (a) If a Development Entity Default occurs and it has not been cured within any relevant cure period set out in Section 22.3 (Initial Notice and Cure Periods) or (if relevant) in accordance with any remedial plan accepted by the Department pursuant to Section 22.4(a) (Remedial Plan), the Department may serve a Termination Notice (the **Department Termination Notice**) on the Development Entity at any time during the continuance of that Development Entity Default.

- (b) The Department Termination Notice must specify the type of Development Entity Default which has occurred and entitled the Department to serve the Department Termination Notice.
- (c) This PPA will terminate on the date falling twenty (20) Business Days after the date the Development Entity receives the Department Termination Notice.
- (d) If this PPA is terminated pursuant to this Section 24.5 (Termination for Development Entity Default), the Department shall pay the Development Entity Termination Sum to the Development Entity in accordance with Schedule 6 (Compensation on Termination).

## **24.6 Termination Procedures and Duties**

Upon expiration of the Term or any Early Termination for any reason, the provisions of this Section 24.6 (Termination Procedures and Duties) shall apply. Except as expressly provided otherwise in this Section 24.6 (Termination Procedures and Duties), the Development Entity shall timely comply with such provisions independently of, and without regard to, the timing for determining, adjusting, settling and paying any amounts due the Development Entity or the Department on account of termination.

### **(a) Transition Plan**

- (i) Within three (3) days after receipt by the relevant Party of a Termination Notice, the Parties shall meet and confer with each other for the purpose of developing an interim transition plan for the orderly transition of Project Services, demobilization and transfer of control of the Project and the CNG Facilities to the Department. The Parties shall use diligent efforts to complete preparation of the interim transition plan within fifteen (15) days after the date the relevant Party receives the Termination Notice.
- (ii) The Parties shall use diligent efforts to complete a final transition plan within thirty (30) days after receipt by the relevant Party of a Termination Notice. The final transition plan shall be in form and substance reasonably acceptable to the Department and shall include and be consistent with the other provisions and procedures set out in this Section 24.6 (Termination Procedures and Duties), all of which procedures the Development Entity shall promptly follow, regardless of any delay in preparation or acceptance of the interim or final transition plan. The final transition plan shall include an estimate of costs and expenses to be incurred by both Parties in connection with implementation of the transition plan.

### **(b) Handback of the Project**

- (i) On the Termination Date, or as soon thereafter as is possible as provided in the final transition plan, the Development Entity shall relinquish and surrender full control of, and Access to, the Project and the CNG Facilities to the Department or the Department's Authorized Representative, and shall cause all Persons claiming under or through the Development Entity to do likewise, in at least the condition required by the Handback Requirements.
- (ii) On the later of the Termination Date or the date the Development Entity relinquishes control and Access as provided in the final transition plan, the

Department shall assume responsibility, at its expense (subject to the right to recover damages under this PPA), for the Project and the CNG Facilities.

## **24.7 Exclusive Termination Rights**

This Article 24 (Termination and Force Majeure) and Schedule 6 (Compensation on Termination) contain the entire and exclusive provisions and rights of the Department and the Development Entity regarding termination of this PPA, and any and all other rights to terminate under Applicable Law are hereby waived to the maximum extent permitted by Applicable Law.

## **25. DEPARTMENT STEP-IN**

### **25.1 Right to Step-in**

If the Department reasonably believes that it needs to take action in connection with the Project Services because:

- (a) an Emergency has arisen;
- (b) a Development Entity Default has arisen and has not been cured within any relevant cure period set out in Article 22 (Development Entity Default); or
- (c) the Development Entity has failed to meet any Safety Standard or comply with any Safety Compliance Order within a reasonable period of time under the circumstances,

then the Department shall be entitled to take action in accordance with Sections 25.2 (Notice to the Development Entity) through 25.5 below.

### **25.2 Notice to the Development Entity**

If Section 25.1 (Right to Step-in) applies and the Department wishes to take action, the Department shall notify the Development Entity in writing of the following:

- (a) the action it wishes to take;
- (b) the reason for such action;
- (c) the date it wishes to commence such action;
- (d) the time period which it believes will be necessary for such action; and
- (e) to the extent practicable, the effect on the Development Entity and its obligation to carry out the Project Services during the period such action is being taken;

**provided**, that in the case of an Emergency, the Department shall have the right to take any action it reasonably believes is necessary in order to mitigate or contain such Emergency without prior notice to the Development Entity.

### 25.3 Action by Department

- (a) Following service of such notice or the occurrence of an Emergency, the Department shall take any of the actions referred to in Section 25.2 (Notice to the Development Entity) and any consequential additional action as it reasonably believes is necessary (together, the **Required Action**) and the Development Entity shall use Reasonable Efforts to give all assistance to the Department while it is taking the Required Action. The Department shall provide the Development Entity with notice of completion of the Required Action and shall use Reasonable Efforts to provide such advance notice as is reasonably practicable of its anticipated completion.
- (b) The Department shall undertake all Required Actions in accordance with Good Industry Practice and, if applicable, the requirements of any manufacturer's warranty in respect of any equipment installed or used at any Project Site.

### 25.4 Step-in without Development Entity Breach

If the Development Entity is not in breach of its obligations under this PPA, then for so long as and to the extent that the Required Action is taken, and to the extent this prevents the Development Entity from performing its obligations under this PPA:

- (a) the Development Entity shall be relieved from performing its relevant obligations under this PPA; and
- (b) in respect of the period in which the Department is taking the Required Action and; **provided**, that the Development Entity provides the Department with reasonable assistance (such assistance to be at the expense of the Department to the extent that incremental costs are incurred):
  - (i) such Required Action shall be deemed to be a Compensation Event for the purposes of this PPA; and
  - (ii) any Noncompliance Event that arise as a direct result of the Required Action shall, for the purposes of this PPA, be deemed not to have occurred.

### 25.5 Step-in on Development Entity Breach

If the Required Action is taken as a result of a breach of the obligations of the Development Entity under this PPA, then for so long as and to the extent that the Required Action is taken, and this prevents the Development Entity from carrying out any part of the Project Services:

- (a) the Development Entity shall be relieved of its obligations to carry out such part of the Project Services; and
- (b) in respect of the period in which the Department is taking the Required Action, any Noncompliance Event that arises as a direct result of the Required Action shall, for the purposes of this PPA, be deemed to have not occurred, but an amount equal to all the Department's reasonable and proper costs in taking the Required Action shall be deducted from the Monthly Payment.

## 26. MAINTENANCE AND INSPECTION OF RECORDS

### 26.1 Maintenance and Inspection of Records

- (a) The Development Entity shall keep and maintain within the Commonwealth (or other location approved by the Department in writing in its sole discretion) all books, records and documents relating to the Project, Project Sites, the CNG Facilities, or Project Services, including copies of all original documents delivered to the Department. The Development Entity shall keep and maintain such books, records and documents in accordance with applicable provisions of the Project Documents and in accordance with Good Industry Practice. The Development Entity shall notify the Department where such records and documents are kept.
- (b) The Development Entity shall make all its books, records and documents available for inspection by the Department and by the Commonwealth in connection with the Commonwealth audits under Section 26.2 (Audits), at the Development Entity's offices within the Commonwealth (or other location approved by the Department in writing in its sole discretion) at all times during normal business hours, without charge. The Development Entity shall provide to the Department copies thereof as and when reasonably requested by the Department. The Department may conduct any such inspection upon forty-eight (48) hours' prior written notice, or unannounced and without prior notice where there is good faith suspicion of fraud or criminal activity. Such inspection shall be conducted in a manner that does not unreasonably interfere with the Development Entity's business activities and each Party shall pay its own costs and expenses in connection with such inspection. The right of inspection includes the right to make extracts and take notes.
- (c) The Development Entity shall retain records and documents for a minimum of six (6) years after the date the record or document is generated; **provided**, that if the Project Documents specify any different time period for retention of particular records, such time period shall control. Notwithstanding the foregoing, all records, which relate to Disputes being processed or actions brought under the Dispute Resolution Procedures shall be retained and made available until any later date that such Disputes and actions are finally resolved; **provided**, that the Development Entity reserves the right to assert exemptions from disclosure of information that would be exempt under Applicable Law from disclosure or introduction into evidence in legal actions.

### 26.2 Audits

- (a) In addition to any other specific audit rights that the Department may have under the Project Documents, the Commonwealth shall (at its own cost expense, unless a Development Entity Default shall have occurred and be continuing) have such rights to review and audit the Development Entity, its Contractors and their respective books and records as the Commonwealth deems necessary for purposes of verifying compliance with the Project Documents and Applicable Law. Without limiting the foregoing, the Commonwealth shall have the right (at its own cost expense, unless a Development Entity Default shall have occurred and be continuing) to audit the Development Entity's Project Management Plan and compliance therewith, including the right to inspect Project Services and/or activities and to verify the accuracy and adequacy of the Project Management Plan and other relevant Project Documents.
- (b) The Commonwealth's audit rights include the right to observe the business operations of the Development Entity and its Contractors to confirm the accuracy of books and records.

- (c) The Development Entity shall include in the Project Management Plan internal procedures to facilitate review and audit by the Commonwealth and, if applicable, the federal government and any agency thereof.
- (d) The Development Entity represents and warrants the completeness and accuracy in all material respects of all information it or its agents provides in connection with the Commonwealth audits, and shall use Reasonable Efforts to cause all Contractors to warrant the completeness and accuracy in all material respects of all information such Contractors provide in connection with the Commonwealth audits.
- (e) The Development Entity's internal and third-party quality and compliance auditing responsibilities shall be set out in the Project Management Plan.
- (f) The Development Entity shall (and shall procure that any Contractor or subcontractor shall) include appropriate terms in each Contract in order to provide the Department and the Commonwealth with access and audit rights (as applicable) in accordance with the terms of this Article 26 (Maintenance and Inspection of Records).

## **27. INTELLECTUAL PROPERTY**

### **27.1 Intellectual Property**

- (a) The Development Entity shall make available to the Department free of charge (and hereby, for itself and on behalf of each Development Entity-Related Entity, irrevocably licenses the Department to use) all Project Data in its ownership or possession or the ownership or possession of a Development Entity-Related Entity that might reasonably be required by the Department and the Development Entity shall ensure that it obtains all necessary licenses, permissions and consents to ensure that it can make the Project Data available to the Department on these terms, for the purposes of
  - (i) the Department and/or the Transit Agencies making the CNG Facilities available for use by the Transit Agencies and operating the Project generally; and
  - (ii) following termination of this PPA, the design or construction of the CNG Facilities, the maintenance or improvement of the CNG Facilities and/or the provision of works and/or services the same as or similar to the Work (it being understood and agreed between the parties that any use of the Project Data, including but not limited to the Intellectual Property associated with such Project Data, other than in connection with any CNG Facility, is on an "AS IS" basis, and no representations or warranties, express or implied, are provided as to such Project Data and related Intellectual Property, including no representation or warranty against infringement or fitness for particular purpose).

In this Section 27.1(a) "use" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly. As between the Parties, the Project Data, and all Intellectual Property encompassed therein, is and shall remain the property of the Development Entity-Related Entities and their licensors, notwithstanding the Development Entity licensing and otherwise making that Project Data available to the Department.

- (b) The Department shall have and is hereby granted by the Development Entity, for itself and on behalf of each Development Entity-Related Entity, a nonexclusive, transferable (subject to Section 27.1(d)), royalty-free, irrevocable, worldwide, fully paid up right and license to use, reproduce, modify, adapt, disclose to and sublicense to other persons engaged by or on behalf of the Department (directly or indirectly), the Intellectual Property owned or licensable by any Development Entity-Related Entity; **provided**, that the Department shall have the right to exercise such license only for the Licensed Purposes.
- (c) The Department shall have no right to sell any Intellectual Property of the Development Entity or to use, reproduce, modify, adapt and disclose, or allow any party to use, reproduce, modify, adapt and disclose, any such Intellectual Property for any other purpose other than the Licensed Purposes and must ensure that any Person to which it discloses any Intellectual Property pursuant to the licenses granted under this Section 27.1 (Intellectual Property) agrees to be bound by the provisions of this Section 27.1 (Intellectual Property) and the confidentiality obligations set out in Section 32.19 (Confidentiality) of this PPA with respect to that Intellectual Property.
- (d) The right to transfer any of the licenses granted to the Department in this Article 27 (Intellectual Property) is limited to any Transit Agency or to any Governmental Entity that succeeds to the power and authority of the Department generally or with respect to the Project.
- (e) The Development Entity shall continue to have a full and complete right to use any and all duplicates or other originals of its Intellectual Property in any manner it chooses.
- (f) With respect to any Intellectual Property that is not owned or licensable by a Development Entity-Related Entity, the Development Entity shall use Reasonable Efforts to obtain from the owner of that Intellectual Property (or any person entitled to license that Intellectual Property), concurrently with execution of any contract, subcontract or purchase order with such Person or with the first use or adaptation of the Intellectual Property in connection with the Project, both for the Development Entity and the Department, a nonexclusive, transferable (subject to Section 27.1(d)), irrevocable, royalty-free license to use, reproduce, modify, adapt and disclose such Intellectual Property solely in connection with the Project of at least identical scope, purpose, duration and applicability as the license granted under Section 27.1(b). Any such license shall be subject to the terms of this Article 27 (Intellectual Property).

## **27.2 Maintenance of Data**

- (a) To the extent that any data, materials and documents referred to in this Article 27 (Intellectual Property) are generated by or maintained on a computer or similar system, the Development Entity shall use Reasonable Efforts to procure for the benefit of the Department, at no charge or at the lowest reasonable fee, the grant of a license or sublicense for any relevant software to enable the Department or its nominee to access and otherwise use (subject to the payment by the Department of the relevant fee, if any) such data for the purposes set out in Section 27.1 (Intellectual Property). As an alternative, the Development Entity may provide such data, materials or documents in a format which may be read by software generally available in the market at the relevant time or in hard copy format.
- (b) The Development Entity shall ensure the back-up and storage in safe custody of the data, materials and documents referred to in Section 27.2(a) in accordance with Good Industry Practice. Without prejudice to this obligation, the Development Entity shall submit to the Department's Authorized Representative for approval its proposals for the back-up and storage in

safe custody of such data, materials and documents and the Department shall be entitled to object if the same is not in accordance with Good Industry Practice. The Development Entity shall comply, and shall use Reasonable Efforts to cause all the Development Entity-Related Entities to comply, with all procedures to which the Department's Authorized Representative has given its approval. The Development Entity may vary its procedures for such back-up and storage subject to submitting its proposals for change to the Department's Authorized Representative, who shall be entitled to object on the basis set out above.

### **27.3 Indemnity**

Where a claim or proceeding is made or brought against the Department, which alleges that the use of any Intellectual Property provided to the Department under the terms hereof or that the use of any materials, plant, machinery or equipment in connection with the Project Services or the Project by the Department or a Development Entity-Related Entity, infringes any intellectual property of a third party then, unless such infringement has arisen out of the use of any Intellectual Property by or on behalf of the Department otherwise than in accordance with the terms of this PPA, the Development Entity shall indemnify the Department at all times from and against all Losses arising as a result of such claims and proceedings and the provisions of Article 20 (Development Entity Indemnity) shall apply.

## **28. COMMONWEALTH DB REQUIREMENTS**

The Development Entity shall, and shall cause all Development Entity-Related Entities (to the extent applicable thereto) to, comply with the Disadvantaged Business Enterprise requirements set forth in Schedule 15 (Commonwealth Diverse Business (DB) Requirements) at all times during the performance of the D&C Work (including D&C Work performed in connection with any Renewal Work, but excluding, for the avoidance of doubt, the procurement and supply of the CNG Equipment Compound).

## **29. ASSIGNMENT AND TRANSFER; FUNDAMENTAL CHANGES**

### **29.1 Assignment by the Development Entity**

The Development Entity shall not assign or transfer any of its rights or obligations under this PPA without the written consent of the Department.

### **29.2 Assignment by the Department**

The Department may assign all or any portion of its rights, title and interests in and to this PPA, the Project, the Project Sites, the CNG Facilities, appropriations, Project Documents, guarantees, letters of credit and other security for payment or performance:

- (a) without the Development Entity's consent, to any other Governmental Entity of the Commonwealth that:
  - (i) succeeds to the governmental powers and authority of the Department, including the power and authority to request appropriations; and

- (ii) has the sources of funding for the Milestone Payments and the Monthly Payments that are at least as adequate and secure as the Department's at the time of the assignment; and

- (b) to others with the prior written consent of Development Entity.

### **29.3 Change of Organization or Name**

- (a) The Development Entity shall not change the legal form of its organization without providing prior written notice to the Department.
- (b) If either Party changes its name, such Party agrees to promptly furnish the other Party with written notice of change of name and appropriate supporting documentation.

## **30. DISPUTE RESOLUTION PROCEDURES**

### **30.1 General**

The Parties agree to use Reasonable Efforts to resolve promptly any Dispute pursuant to the terms of this Article 30 (Dispute Resolution Procedures).

### **30.2 Consultation**

If any Dispute arises in relation to any aspect of the Project Documents, the Development Entity and the Department shall consult in good faith in an attempt to come to an agreement. Participation in consultation shall not excuse a failure to comply with the time limits set out in Sections 30.3 (Written Protest to Department) and 30.4 below.

### **30.3 Written Protest to Department**

- (a) Without prejudice to Section 30.2 (Consultation), the Development Entity shall submit a Dispute by way of a written protest to the Department within fifteen (15) days of the Dispute arising, outlining in detail the basis of the Dispute, the Development Entity's position relative to the Dispute and submitting all relevant documentation. Such written protest shall not constitute a claim for purposes of 62 Pa. C.S. § 1712.1. The Department shall have fifteen (15) days following the receipt of such written protest from the Development Entity to render a written decision on the Dispute taking into consideration the relevant Project Documents and the Development Entity's submission, together with the facts and circumstances involved in the Dispute. Such written decision shall not constitute a determination by the relevant contracting officer of the Department for purposes of 62 Pa. C.S. § 1712.1.
- (b) If the Development Entity objects to the Department's written decision, the Development Entity may file a written rebuttal with the Department within ten (10) days after its receipt of the written decision, stating clearly and in detail the basis for the objection. Such written rebuttal shall not constitute a claim for purposes of 62 Pa. C.S. § 1712.1.
- (c) The Department will review the Development Entity's written rebuttal and issue a final written decision to the Development Entity within ten (10) days after receipt of the rebuttal. Such final written decision shall not constitute a determination by the contracting officer of the Department for purposes of 62 Pa. C.S. § 1712.1.

- (d) The Department's final written decision in response to the Development Entity's rebuttal is final and conclusive on the Dispute, unless within fifteen (15) days of the Department's final written decision, the Development Entity (i) files a claim in relation to the Dispute with the contracting officer pursuant to 62 Pa. C.S. § 1712.1(d) (a **Chapter 17 Claim**) and (ii) submits such Dispute to the Disputes Review Board as set out in Section 30.4 (Disputes Review Board).

### **30.4 Disputes Review Board**

- (a) In the event that the Parties are unable to reach agreement on a Dispute pursuant to Section 30.2 (Consultation), and in the case of a Dispute raised by the Development Entity, which is submitted to the Department under Section 30.3 (Written Protest to Department), and properly filed by the Development Entity in accordance with Section 30.3(d), then the Department or the Development Entity may submit such Dispute to the Disputes Review Board, subject to the terms of this Article 30 (Dispute Resolution Procedures); **provided**, that the Parties shall not refer Disputes with respect to the legal validity of this PPA to the Disputes Review Board for determination nor shall the Disputes Review Board make any determination relating to the legal validity of this PPA.
- (b) [Reserved]
- (c) The Department and administrative procedures with respect to the Disputes Review Board are set out in Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board Procedures). Unless otherwise agreed by the Parties, any Dispute may be submitted for resolution by the Disputes Review Board in accordance with the following procedures:
  - (i) Upon submittal by either Party of the matter to Disputes Review Boards, the Disputes Review Board will decide when to conduct the hearing; **provided**, that the Disputes Review Board shall hold the hearing within twenty (20) days of the referral, unless the Parties agree to a longer time period.
  - (ii) Either Party may furnish written evidence or documentation to the Disputes Review Board regarding the Dispute. If either Party furnishes such information to the Disputes Review Board, it will furnish copies of such information to the other Party promptly after having provided it to the Disputes Review Board and in any event prior to the date the Disputes Review Board sets to convene the hearing for the Dispute. If the Disputes Review Board requests any additional documentation or evidence prior to, during, or after the hearing, the relevant Party will provide the requested information to the Disputes Review Board and to the other Party, in accordance with the deadlines set by the Disputes Review Board.
  - (iii) The Development Entity and the Department will each be afforded a reasonable opportunity to be heard by the Disputes Review Board and to offer evidence. Neither the Department nor the Development Entity may present information at the hearing that was not previously distributed to both the Disputes Review Board and the other Party.
  - (iv) The Disputes Review Board's recommendations for resolution of the Dispute will be given in writing to both the Department and the Development Entity within fifteen (15) days after completion of the hearings. In cases of substantial complexity, both Parties may agree to allow additional time for the Disputes Review Board to formulate its recommendations.

- (v) Within fifteen (15) days of receiving the Disputes Review Board's recommendations, both the Department and the Development Entity will respond to the other and to the Disputes Review Board in writing, signifying either acceptance or rejection of the Disputes Review Board's recommendations. The failure of the Development Entity to respond within the fifteen (15) day period will be deemed an acceptance of the Disputes Review Board's recommendations by the Development Entity. The failure of the Department to respond within the fifteen (15) day period or before the 120th day after its receipt of the related Chapter 17 Claim, whichever is earlier, will be deemed (A) a rejection of the Disputes Review Board's recommendations by the Department and (B) a denial of the Chapter 17 Claim in accordance with 62 Pa. C.S. § 1712.1(d).
- (vi) The recommendations of the Disputes Review Board shall be final and binding only to the extent the Parties accept such recommendations, either expressly or to the extent deemed accepted by virtue of that Party's failure to respond within such fifteen (15) day period. If the Parties accept (or if the Development Entity is deemed to have accepted) any recommendation of the Disputes Review Board in accordance with this Section 30.4(c)(vi), each Party shall (unless otherwise specified in the relevant recommendation) give effect to such recommendation as soon as is reasonably practicable.
- (vii) Should the Dispute remain unresolved, either Party may seek reconsideration of the decision by the Disputes Review Board only when there is new evidence to present.

### **30.5 Right to Litigate Dispute**

- (a) The Department and the Development Entity agree that the right of the Department or the Development Entity to proceed to litigation of any unresolved Dispute is subject to:
  - (i) the submission of such Dispute to the Disputes Review Board under this Article 30 (Dispute Resolution Procedures); and
  - (ii) where such Dispute is raised by the Development Entity:
    - (A) the proper filing of the related Chapter 17 Claim by the Development Entity in accordance with Section 30.3(d); and
    - (B) such claim remaining unresolved for at least 120 Days after the receipt thereof by the Department pursuant to 62 Pa. C.S. § 1712.1;

**provided, that:**

- (iii) to the extent provided by Applicable Law, either Party may seek specific performance of any obligation under the Project Documents or injunctive relief following consultation as set out in Section 30.2 (Consultation); and
- (iv) such condition shall not apply if there is a good faith determination by the disputing Party that a statute of limitations would expire pending any such process.

- (b) If a recommendation of the Disputes Review Board is:
- (i) not accepted (or deemed to have been accepted) by both Parties pursuant to Section 30.4(c)(v); or
  - (ii) accepted by both Parties, but a Party does not give effect to such recommendation in accordance with the requirements of Section 30.4(c)(vi), then

either Party may proceed to litigation of such unresolved Dispute, and all records and written recommendations of the Disputes Review Board will be admissible as evidence in any subsequent proceedings.

### **30.6 Continuance of Project Services During Dispute**

During the course of the dispute resolution process, the Development Entity will continue with the Project Services (including any portion of the Project Services that is the subject of the Dispute) in a diligent manner and without delay or otherwise conform to the Department's decision or order, and will be governed by all applicable provisions of this PPA, and the Department shall continue to make payments of any amounts not in dispute pursuant to the terms of this PPA. Throughout any disputed Project Services, the Development Entity will keep complete records of extra costs and time incurred. The Development Entity will provide the Department and any Disputes Review Board members access to these and any other records needed for evaluating the Dispute.

### **30.7 Costs of Dispute Resolution**

Each Party will bear its own attorneys' fees and costs in any Dispute arising out of or pertaining to this PPA and no Party will seek or accept an award of attorneys' fees or costs, except as otherwise expressly provided herein.

## **31. SOLE REMEDY AND LIABILITIES**

### **31.1 Common Law Rights of the Department**

Without prejudice to:

- (a) any entitlement of the Department to specific performance of any obligation under the Project Documents;
- (b) any entitlement of the Department to injunctive relief;
- (c) any other express right of the Department pursuant to the Project Documents; and
- (d) the Department's right to claim, on or after termination of this PPA, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of the Project Documents by the Development Entity, save to the extent that the same has already been recovered by the Department pursuant to this PPA or has been taken into account to calculate any compensation payable pursuant to Schedule 6 (Compensation on Termination),

the sole remedy of the Department in respect of Noncompliance Events shall be the Department's ability to assess Noncompliance Points, in each case in accordance with Article 11 (Noncompliance Events) and Schedule 8 (Payment Mechanism).

### **31.2 Consequential Losses**

Save where stated to the contrary, neither Party shall have the right to claim damages, including punitive and incidental damages, against the other Party for breach of this PPA, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is for Indirect Losses. The Parties agree that, notwithstanding the foregoing limitation on each Party's liability, such limitation shall not apply to or limit either Party's right to recover from the other Party:

- (a) any Losses (excluding defense costs) to the extent that they are either covered by the proceeds of insurance carried by the relevant Party or are required to be insured against pursuant to Article 19 (Insurance) and Schedule 9 (Insurance Coverage Requirements) or the Development Entity is deemed to have self-insured the Loss pursuant to Schedule 9 (Insurance Coverage Requirements);
- (b) Losses arising out of fraud, criminal conduct, intentional misconduct, recklessness or bad faith on the part of the relevant Party;
- (c) Losses arising out of any Third-Party Claims in respect of a Hazardous Materials Release or Pre-Existing Hazardous Materials;
- (d) amounts payable by the Development Entity to the Department under an indemnity set out in this PPA;
- (e) amounts payable by the Department to the Development Entity pursuant to Section 12.2 (Compensation Events);
- (f) any Monthly Maintenance Payment Deduction; or
- (g) interest, late charges, fees, transaction fees and charges, penalties and similar charges that the Project Documents expressly state are due from the relevant Party.

Notwithstanding the foregoing, this Section 31.2 (Consequential Losses) shall not in any way be construed to limit the doctrine of sovereign immunity as applicable to the Department or the Commonwealth.

### **31.3 No Double Recovery**

Notwithstanding any other provisions of this PPA to the contrary, neither Party shall be entitled to recover compensation or make a claim under this PPA in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this PPA or otherwise.

### **31.4 Contractor Losses**

Where:

- (a) a Contractor is entitled to claim any compensation and/or relief from the Development Entity under any Contract; and
- (b) the Development Entity subsequently makes a claim against the Department under this PPA in relation to such compensation and/or relief,

the Department waives any right to defend the Development Entity's claim on the ground that the Development Entity is only required to pay compensation or grant relief to the Contractor under the relevant Contract to the extent that the same is recoverable from the Department.

## **32. MISCELLANEOUS**

### **32.1 Amendments**

The Project Documents may be amended only by a written instrument duly executed by the Parties or their respective permitted successors or assigns.

### **32.2 Waiver**

Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of any Project Document at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision thereof, any course of dealing or custom of the trade notwithstanding (other than the waived breach or failure in accordance with the terms of such waivers). Furthermore, if the Parties make and implement any interpretation of the Project Documents without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes.

### **32.3 Independent Contractor**

- (a) The Development Entity is an independent contractor, and nothing contained in the Project Documents shall be construed as constituting any relationship with the Department other than that of the Development Entity of the Project and independent contractor. It is the express intent and agreement of the Parties that nothing in the Project Documents is intended or shall be construed to create any landlord-tenant, lessor-lessee of real property, optionor-optionee, vendor-purchaser, or mortgagor-mortgagee relationship between the Department and the Development Entity; and in no event shall either Party take a position in any tax return, insurance application or questionnaire, financial statement, financial report, regulatory filing, securities filing, loan document, or other writing of any kind that any such relationship exists.
- (b) Nothing in the Project Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between the Department and the Development Entity; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists. While the term "public-private partnership" may be used on occasion to refer to contractual relationships of the type hereby created, the Parties do not thereby express any intention to form or hold themselves out as a *de jure* or *de facto* partnership, joint venture or similar relationship, to share net profits or net losses, or to give the Department control or joint control over the Development Entity's financial decisions or discretionary actions concerning the Project and Project Services.

- (c) In no event shall the relationship between the Department and the Development Entity be construed as creating any relationship whatsoever between the Department and the Development Entity's employees. Neither the Development Entity nor any of its employees is or shall be deemed to be an employee of the Department. Except as otherwise specified in the Project Documents, the Development Entity has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Contractors and for all other Persons that the Development Entity or any Contractor hires to perform or assist in performing the Project Services.

#### **32.4 Successors and Assigns**

The Project Documents shall be binding upon and inure to the benefit of the Department and the Development Entity and their respective permitted successors and assigns.

#### **32.5 Designation of Representatives; Cooperation with Representatives**

The Department and the Development Entity shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to the Project Documents (each, an **Authorized Representative**). Schedule 11 (Initial Designation of Authorized Representatives) to this PPA provides the initial Authorized Representative designations. Such designations may be changed by a subsequent writing delivered to the other Party in accordance with Section 32.10 (Notices and Communications).

#### **32.6 Survival**

The Development Entity's and the Department's representations and warranties, the Dispute Resolution Procedures contained in Article 30 (Dispute Resolution Procedures), the indemnifications and releases contained in Article 20 (Development Entity Indemnity), the rights to all indemnities and compensation contained in Article 24 (Termination and Force Majeure) and any other obligations to pay amounts hereunder and under the other Project Documents, Article 27 (Intellectual Property), Article 32 (Miscellaneous) and all other provisions, which by their inherent character should survive expiration or Early Termination and/or completion of the Project Services under this PPA, shall survive the expiration or Early Termination and/or the completion of the Project Services under this PPA. The Department's obligation to pay compensation to the Development Entity upon Early Termination as provided in Article 24 (Termination and Force Majeure) and any other payment obligations of the Department arising prior to expiration or Early Termination shall survive the expiration or Early Termination.

#### **32.7 Limitation on Third-Party Beneficiaries**

It is not intended by any of the provisions of the Project Documents to create any third party beneficiary hereunder or to authorize anyone not a Party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof. Except as otherwise provided in this Section 32.7 (Limitation on Third-Party Beneficiaries), the duties, obligations and responsibilities of the Parties with respect to third parties shall be determined and governed by Applicable Law. The Project Documents shall not be construed to create a contractual relationship of any kind between the Department and any Person other than the Development Entity.

### 32.8 Waiver of Jury Trial

**EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT THAT IT MAY HAVE TO A JURY TRIAL IN RESPECT OF ANY CLAIM, CAUSE OF ACTION OR OTHER PROCEEDING IN CONNECTION WITH THIS PPA OR ANY TRANSACTION CONTEMPLATED HEREBY. Each of the Parties hereby (a) certifies that no representative, agent or attorney of any other has represented, expressly or otherwise, that such other would not, in the event of any suit, action or proceedings relating to this PPA, seek to enforce the foregoing waiver and (b) acknowledges that it has been induced to enter into this PPA by, among other things, the mutual waivers and certifications in this Section 32.8 (Waiver of Jury Trial).**

### 32.9 Governing Law and Jurisdiction

This PPA shall be governed by, and interpreted and enforced in accordance with, the Laws of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Development Entity consents to the jurisdiction of any court of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Development Entity agrees that any such court shall have *in personam* jurisdiction over it, and consents to service of process in any manner authorized by Applicable Law.

### 32.10 Notices and Communications

(a) Notices under the Project Documents shall be in writing and: (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (iv) sent by facsimile or e-mail communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

(i) All notices, correspondence and other communications to the Development Entity shall be delivered to the following address or as otherwise directed by the Development Entity's Authorized Representative:

Trillium Transportation Fuels, LLC (d/b/a Trillium CNG)  
1111 Bagby, Suite 2400  
Houston, TX 77002 USA  
Tel: 713-332-5726  
Fax: 713-354-5357  
Email: [JRDeTapia@trilliumcng.com](mailto:JRDeTapia@trilliumcng.com)

(ii) In addition, copies of all notices regarding Disputes, and termination and default notices shall be delivered to the following person:

Legal Office  
10601 North Pennsylvania Ave.  
Oklahoma City, OK 73120  
Attention: Assistant General Counsel – Wholesale Fuel and Transportation

- (iii) All notices, correspondence and other communications to the Department shall be marked as regarding the Project and shall be (A) delivered to the following address or as otherwise directed by the Department's Authorized Representative and (B) with the exception of notices regarding Disputes, and termination and default notices, posted on the Collaboration Portal:

Pennsylvania Department of Transportation  
8th Floor, Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120-0041  
E-mail: P3ForPA@pa.gov  
Attention: Secretary

- (iv) In addition, copies of all notices regarding Disputes, and termination and default notices shall be delivered to the following person:

Pennsylvania Department of Transportation  
Office of Chief Counsel  
P.O. Box 8212  
17105-8212  
Attention: Chief Counsel

- (b) Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m., Eastern Standard or Daylight Time (as applicable), and all other notices (including by e-mail communication) received after 5:00 p.m., Eastern Standard or Daylight Time (as applicable), shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m., Eastern Standard or Daylight Time (as applicable)). Any technical or other communications pertaining to the Project Services shall be conducted by the Development Entity's Authorized Representative and technical representatives designated by the Department.

### **32.11 Integration of Project Documents; Compliance**

- (a) The Department and the Development Entity agree and expressly intend that this PPA (including all Exhibits, Schedules, Forms and Appendices hereto) and other Project Documents constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible, such that, among other things, no part of this PPA could be separated from any other part for the purposes of assumption or rejection under Section 365 of title 11 of the United States Bankruptcy Code.
- (b) Notwithstanding anything contained in this PPA to the contrary, the Development Entity and the Department shall comply with all terms and conditions set out in this PPA and the other Project Documents, including all Exhibits, Schedules, Forms and Appendices hereto and thereto (including, without limitation, the Technical Provisions).

### **32.12 Severability**

If any clause, provision, Section or part of the Project Documents is ruled invalid by a court having proper jurisdiction, then the Parties shall:

- (a) promptly meet and negotiate a substitute for such clause, provision, Section or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including any adjustment to the Department's compensation to the Development Entity's account for any change in the Project Services resulting from such invalidated portion; and
- (b) if necessary or desirable, apply to the court or other decision maker (as applicable), which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations.

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

### **32.13 Headings**

The captions of the Articles, Sections and subsections of this PPA are for convenience purposes only and shall not be deemed part of this PPA or considered in construing this PPA.

### **32.14 Entire Agreement**

The Project Documents contain the entire understanding of the Parties with respect to the subject matter thereof and supersede all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to their subject matter.

### **32.15 Counterparts**

This PPA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

### **32.16 No Commonwealth Obligations**

The Development Entity acknowledges and agrees that, notwithstanding any concurrence by the Commonwealth in, or approval of, the solicitation or award of this PPA, the Commonwealth shall not incur any liability to any person pursuant to the terms of this PPA. For the avoidance of doubt, nothing in this Section 32.16 (No Commonwealth Obligations) shall have the effect of limiting the Department's rights, obligations or liabilities under this PPA.

### **32.17 No Personal Liability**

No officer, agent, representative or employee of the Department or of the Commonwealth or of the Development Entity shall be held personally liable under any term or provision of this PPA or because of the execution or attempted execution of this PPA, or because of any breach thereof.

### 32.18 Public Release of Information

- (a) The Development Entity shall not, and shall cause (by way of contract and enforcement thereof) all the Development Entity-Related Entities not to, issue or permit to be issued any press release, advertisement, public statement or literature of any kind, or make any statements or comments through the media (including print, television or internet) which refers to the Department, the Project or any of the services or obligations to be performed in connection with the Project Documents, without first obtaining the written approval of the Department. Such approval may be withheld if for any reason the Department believes that the publication of such information would be harmful to the public interest or is any way undesirable.
- (b) This provision shall survive termination or expiration of this PPA.

### 32.19 Confidentiality

- (a) In this Section 32.19 (Confidentiality), **Information** means all information relating to the other Party which is supplied by or on behalf of the other Party (whether before or after the date of this PPA), either in writing, orally or in any other form, directly or indirectly from or pursuant to discussions with the other Party or which is obtained through observations made by the receiving Party and such term includes all, analyses, compilations, studies and other documents whether prepared by or on behalf of a Party which contain or otherwise reflect or are derived from such information.
- (b) Each Party will maintain the confidentiality of any Information, except that Information may be disclosed or provided:
  - (i) by either Party to its and its Affiliates' directors, officers, employees, consultants and agents, including accountants, legal counsel and other advisors;
  - (ii) by the Department, to any Governmental Entity or otherwise as the Department may require for the maintenance or improvement of the Project in the event of, or following, termination of this PPA;
  - (iii) by the Development Entity, to any Contractor to the extent such Information is necessary for the performance by the Development Entity of its obligations under this PPA;
  - (iv) by either Party to the extent:
    - (A) it is required to disclose such Information pursuant to an Applicable Law or by any subpoena or similar legal process or by any Governmental Entity;
    - (B) the other Party confirms in writing that such Information is not required to be treated as confidential (such confirmation not to be unreasonably withheld or delayed);
    - (C) such Information is or comes into the public domain otherwise than through any disclosure prohibited by this PPA;

**provided**, that, in the cases of Sections 32.19(b)(i), 32.19(b)(ii) and 32.19(b)(iii) of this Section 32.19 (Confidentiality), the Persons to whom such disclosure is made will be

informed of the confidential nature of such Information and will so provide such Information subject to the same or similar requirements to maintain confidentiality as contained in this PPA.

### **32.20 Right-to-Know Law**

- (a) The Development Entity acknowledges that the Department is required to comply with the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104 (the **RTKL**). The Department's policy in relation to the RTKL in operation as at the date of this PPA is available online at <ftp://ftp.dot.state.pa.us/public/bureaus/BOS/PennDOTRTKLAgencyPolicy.pdf>.
- (b) Upon written notification from the Department that it requires the Development Entity's assistance in responding to a request under the RTKL for information related to this PPA that may be in the Development Entity's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (**Requested Information**), the Development Entity shall:
  - (i) provide the Department, within ten (10) days after receipt of written notification, access to, and copies of, any document or information in the Development Entity's possession arising out of this PPA that the Department reasonably believes is Requested Information and may be a public record under the RTKL; and
  - (ii) provide such other assistance as the Department may reasonably request, in order to comply with the RTKL with respect to this PPA.
- (c) If the Development Entity considers the Requested Information to include a request for a "Trade Secret" or "Confidential Proprietary Information" (as those terms are defined by the RTKL) or other information that the Development Entity considers exempt from production under the RTKL, the Development Entity must notify the Department and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Development Entity explaining why the requested material is exempt from public disclosure under the RTKL.
- (d) The Department will rely upon the written statement from the Development Entity in denying a RTKL request for the Requested Information unless the Department determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Department determine that the Requested Information is clearly not exempt from disclosure, the Development Entity shall provide the Requested Information within five (5) Business Days of receipt of written notification of the Department's determination.
- (e) If the Development Entity fails to provide the Requested Information within the time period required by these provisions, the Development Entity shall indemnify and hold the Department harmless for any damages, penalties, costs, detriment or harm that the Department may incur as a result of the Development Entity's failure, including any statutory damages assessed against the Department.
- (f) The Department will reimburse the Development Entity for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

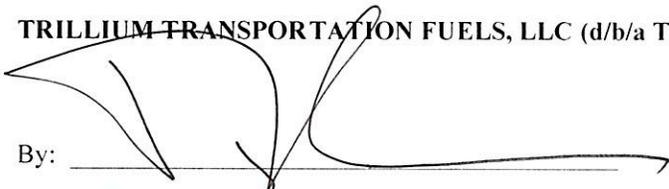
- (g) The Development Entity may file a legal challenge to any Department decision to release a record to the public with the Office of Open Records, or in the Pennsylvania courts; however, the Development Entity shall indemnify the Department for any legal expenses incurred by the Department as a result of such a challenge and shall hold the Department harmless for any damages, penalties, costs, detriment or harm that the Department may incur as a result of the Development Entity's failure, including any statutory damages assessed against the Department, regardless of the outcome of such legal challenge. As between the parties, the Development Entity agrees to waive all rights or remedies that may be available to it as a result of the Department's disclosure of Requested Information pursuant to the RTKL.

**IN WITNESS WHEREOF**, the Parties have caused this PPA to be executed by their respective duly authorized officers as of the date first written above.

*[Signature Pages to Follow]*

SIGNATORIES

TRILLIUM TRANSPORTATION FUELS, LLC (d/b/a TRILLIUM CNG)

By:   
Name: DOUGLAS J. STUSSI  
Title: MANAGER

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

By: Louis S. Ecker  
Secretary of Transportation

APPROVED AS TO FORM AND LEGALITY

By: [Signature] 5/17/16  
Department Agency Counsel

By: [Signature] 6/14/16  
Deputy Attorney General  
Office of Attorney General

By: [Signature] 5/24/16  
Deputy General Counsel  
Office of General Counsel

CERTIFIED FUNDS AVAILABLE UNDER 3900037982  
SAP NO. 2633900080 / 81  
SAP COST CENTER 7866201000  
GL. ACCOUNT 6343117  
AMOUNT \$168,965,311

By: [Signature] 5/24/16  
Comptroller

## SCHEDULE 1

### DEFINITIONS

As used in this PPA or any other Project Document, the capitalized terms set out in this Schedule 1 (Definitions) shall have the respective meanings below. Unless expressly provided otherwise, all references to Articles, Sections, Exhibits, Schedules and Appendices refer to the Articles, Sections, Exhibits, Schedules and Appendices of or attached to this PPA, as applicable.

**Access** means, in relation to any Project Site, the right to access and use such Project Site in accordance with the terms of this PPA, subject to:

- (a) its state and condition at the time access is first granted to the Development Entity;
- (b) the rights of Governmental Entities, Utility Owners, Transit Agencies or third parties to have access to any of the Project Sites existing as of the Proposal Due Date and communicated in writing to the Development Entity or included in the Disclosed Information prior to the Setting Date, including any restrictions set forth on Schedule 3 (Site Access Restrictions);
- (c) the statutory rights or public franchise rights of Governmental Entities and Utility Owners to have access to such of the Project Sites existing as of the Proposal Due Date;
- (d) the rights, including rights of access, granted to the Department and its employees, agents, consultants and contractors and to other Persons under any Project Document;
- (e) restrictions of use set out in easement deeds and/or right of entry permits of record applicable to any Governmental Approval (other than Department Obtained Governmental Approvals obtained or modified subsequent to the Setting Date); and
- (f) restrictions set out in any title commitments or ALTA maps related to any of the Project Sites included in the Disclosed Information on or prior to the Setting Date.

**Affected Party** has the meaning set out in the definition of Force Majeure Event.

**Affiliate** of any Person means any entity which, directly or indirectly, through one or more intermediaries, (a) has a ten percent (10%) or more voting or economic interest in such Person or (b) Controls, is Controlled by, or is under common Control with such Person.

**Allowance** has the meaning set out in Section 5.2(c)(i).

**Applicable Law** means any statute, law, code, regulation, ordinance, rule, common law, judgment, judicial or administrative order, decree, directive, or other requirement having the force of law or other governmental restriction (including those resulting from the initiative or referendum process) or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Entity, which is applicable to the Project, Project Services or any relevant Person, whether taking effect before or after the date of this PPA. **Applicable Laws**, however, excludes Governmental Approvals.

**Area of Work** means the physical area impacted by the Development Entity's Construction Work within a Project Site, as defined within the Development Entity's Construction Documents.

**Archaeological Remains** means antiquities, fossils, coins, articles of value, precious minerals, cultural artifacts, human burial sites, paleontological and human remains and other similar remains of archaeological or paleontological interest discovered at any of the Project Sites.

**As-Built Drawings** means, in respect of each CNG Facility, the Final Design Documents submitted by the Development Entity, revised to incorporate all changes made in the specifications and working drawings during construction and show the dimensions, geometry, and location of each Element in respect of such CNG Facility.

**As-Built Schedule** means, in respect of each Project Site, the schedule developed and submitted by the Development Entity in accordance with Section 2.2 of the Technical Provisions.

**Authorized Representative** has the meaning set out in Section 32.5 (Designation of Representatives; Cooperation with Representatives).

**Blue Book** has the meaning set out in Section 1.1.1.1.1(i) of Schedule 19 (Extra Work Costs).

**Bus Vehicle** means a Transit Agency Vehicle other than a Paratransit Vehicle.

**Business Day** means any day that is not a Saturday, Sunday or other day on which:

- (a) the Department is officially closed for business;
- (b) banks located in New York City are required or authorized by law or executive order to close; or
- (c) the New York Stock Exchange is closed.

**Calendar Year** means the consecutive 12-month period starting on January 1 and ending on December 31.

**Capital Expenditure** means any expenditure which is treated as a capital expenditure in accordance with GAAP or equivalent auditing standards utilized and generally accepted in the country of incorporation of such party.

**Certificate of CNG Readiness** has the meaning set out in Section 7.6(a).

**Certificate of Site Completion** has the meaning set out in Section 7.8(a).

**Change in Costs** means, in respect of any Compensation Event, the effect of that Compensation Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of the Development Entity, including, as relevant, the following:

- (a) the reasonable costs of complying with the requirements of Articles 10 (Department and Development Entity Changes), 12 (Supervening Events) or 13 (Change in Law), including the reasonable costs of preparation of design and estimates;
- (b) the costs of continued employment of, or making redundant, staff who are no longer required;
- (c) the costs of employing additional staff;
- (d) reasonable professional fees;

- (e) the costs to the Development Entity of financing any Compensation Event (and the consequences thereof) including commitment fees and capital costs, interest and hedging costs, lost interest on any of the Development Entity's own capital employed and any finance required pending receipt of a lump-sum payment;
- (f) the effects of costs on implementation of any insurance reinstatement in accordance with this PPA, including any adverse effect on the insurance proceeds payable to the Development Entity (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement;
- (g) operating costs, or life cycle, maintenance or replacement costs;
- (h) Capital Expenditure;
- (i) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy; and
- (j) Losses,

**provided** that in no circumstances shall Change in Costs include any costs or other Losses that arise in consequence of the Development Entity receiving Monthly Payments later than the date that it would have received them in the absence of the Compensation Event.

**Change in Law** means the introduction or repeal (in whole or in part) of or amendment, alteration or modification to or change in interpretation of (in each case including, to the extent applicable, by retroactive effect), any Law or standards, practices or guidelines issued or published by any Governmental Entity that occur at any time after the Setting Date and that are either binding on the Development Entity or if non-binding on the Development Entity are both typically complied with in the construction and/or CNG industries and are necessary in order to comply with Good Industry Practice, **excluding** however, any such introduction, repeal, amendment, alteration, modification or change in relation to federal Law (other than any federal Law that imposes liability or standards of conduct for or otherwise regulates, concerns or relates to the protection of public health, safety, or welfare and the Environment; Hazardous Substances; or pollution as defined by any federal Applicable Law), standards, practices and guidelines.

**Chapter 17 Claim** has the meaning set out in Section 30.3(d).

**Closing Conditions Precedent** means the conditions set out in Section 2.2 (Conditions Precedent to the Commercial Closing Date).

**CNG** has the meaning set out in clause (A) of the Background to this PPA.

**CNG Commercialization Activities** has the meaning set out in clause (B) of the Background to this PPA.

**CNG Commercialization Management Plan** means the Initial CNG Commercialization Management Plan or the Updated CNG Commercialization Management Plan, as applicable.

**CNG Commercialization Taxes** has the meaning set out in Section 15.4 (CNG Commercialization Taxes).

**CNG Equipment Compound** means infrastructure necessary to supply CNG to the CNG Fueling Islands, which may include gas dryer(s), particulate filter(s), CNG compressor skid(s), CNG-buffer and dispensing systems, CNG piping, electrical distribution and motor control, programmable control systems and related equipment.

**CNG Equipment Compound Handback Amount** has the meaning set out in Section 3 of Schedule 5 (Calculation of Handback Amounts).

**CNG Facilities** has the meaning set out in clause (B) of the Background to this PPA.

**CNG Fueling Island** means the CNG dispensers, fuel management terminal and related infrastructure, including the canopy, lighting and other elements.

**CNG Fueling Station Facilities** has the meaning set out in clause (B) of the Background to this PPA.

**CNG Fueling Station Facilities Handback Amount** has the meaning set out in Section 2 of Schedule 5 (Calculation of Handback Amounts).

**CNG Maintenance and Storage Facilities** has the meaning set out in clause (B) of the Background to this PPA.

**CNG Readiness** means, in respect of a Project Site, the occurrence of all events and satisfaction of all conditions set out in Part 1 (CNG Readiness) of Schedule 21 (Conditions Precedent to CNG Readiness and Site Completion) with respect to that Project Site.

**CNG Readiness Conditions** means all of the conditions set out in Part 1 (Conditions Precedent to CNG Readiness) of Schedule 21 (Conditions Precedent to CNG Readiness and Site Completion).

**CNG Readiness Date** means, in respect of a Project Site, the date upon which the Development Entity achieves CNG Readiness in respect of that Project Site.

**CNG Readiness Deadline** means, in respect of a Project Site, the applicable date set forth on Table 1 (Participating Transit Agencies) of the Technical Provisions in respect of that Project Site.

**Collaboration Portal** means the secure collaborative program website to communicate, store, share and/or distribute documentation related to the Project (including during the period prior to the date of this PPA).

**Commercial Closing Date** means the date on which all of the Closing Conditions Precedent are satisfied or otherwise waived in accordance with this PPA.

**Commercial Sales** has the meaning set out in clause (B) of the Background to this PPA.

**Commonwealth** has the meaning set out in clause (A) of the Background to this PPA.

**Compensation Event** means any of the following:

- (a) any material breach of an obligation in this PPA by the Department, including:
  - (i) any failure by the Department to deliver a Department Obtained Governmental Approval to the Development Entity by the date set forth in respect thereof in this PPA;
  - (ii) any failure (in whole or in part) by the Department to provide or arrange for Access to the Project in accordance with the Project Documents;
  - (iii) any failure by the Department to issue any certificate that it is required to issue pursuant to Article 7 (Design and Construction), but only to the extent that such failure represents a breach by the Department of its obligations thereunder;
  - (iv) any failure by the Department to cause a Transit Agency to act (or refrain from acting) as expressly set forth in this PPA;
  - (v) any failure by the Department to comply with its obligations under Sections 16.1 or 16.2;
  - (vi) the occurrence of any Department Default;
- (b) violation of any Applicable Law by the Department;
- (c) any Qualifying Change in Law;
- (d) any Department Change or the issuance of any Directive Letter;
- (e) the issuance of any preliminary or permanent injunction or temporary restraining order or other similar order, legal restraint or prohibition by a Governmental Entity of competent jurisdiction under Applicable Law, which injunction, order, restraint or prohibition materially and adversely affects the Department's or the Development Entity's performance under this PPA, except to the extent resulting from the negligence, willful misconduct, recklessness, breach of contract or Applicable Law, or violation of a Governmental Approval, by any Development Entity-Related Entity;
- (f) the issuance by the Department of any Safety Compliance Order in respect of the implementation of any Safety Compliance that does not arise as a direct result of any Development Entity-Related Entity's failure to comply with any Safety Standards;
- (g) any Required Action taken by the Department that is the subject of Section 25.4 (Step-in without Development Entity Breach);
- (h) the discovery of any (i) Hazardous Environmental Condition by the Development Entity during the carrying out of the Construction Work, except to the extent that such Hazardous Environmental Condition that arises as a direct result of a Development Entity Release of Hazardous Materials or (ii) Hazardous Material by the Development Entity during the carrying out of the Construction Work in respect of which the Development Entity is required to prepare an investigative site work plan or site investigation report in accordance with Section 3.4.2.1 of the Technical Provisions, except to the extent that such Hazardous Material is the subject of a Development Entity Release of Hazardous Materials;

- (i) any suspension of the Construction Work or Maintenance Work has occurred and is considered a Compensation Event pursuant to Section 7.8(b) or 8.7(b), respectively;
- (j) any physical damage to a CNG Facility following the achievement of CNG Readiness in respect thereof, except to the extent caused or exacerbated by the act or omission of a Patron in connection with any Commercial Sales;
- (k) a change in the Work required to comply with the environmental mitigation measures required by any Department Obtained Governmental Approval as compared to the Work that would have been required to comply with the environmental mitigation measures reflected in the Conceptual Drawing submitted by the Department in applying for such Department Obtained Governmental Approval;
- (l) any damage, interruption or interference to the Construction Work caused by a capital works project (other than the Project) by the Department or a Transit Agency (or any contractor on behalf of the Department or a Transit Agency) within a Project Site;
- (m) the discovery during the carrying out of the Construction Work of an Undisclosed Utility, to the extent such Undisclosed Utility adversely affects the location of the foundation of any structure constructed as part of the Work or the footprint of any CNG Equipment Facility;
- (n) any failure of a Utility Owner (i) to cooperate with the Development Entity in relation to a Utility Relocation or (ii) to undertake or permit a Utility Relocation in a manner consistent with the timely achievement of CNG Readiness in respect of any Project Site and, in each case, such failure continues for a period of not less than forty-five (45) Days following the Development Entity's request for the Department's assistance pursuant to Section 5.2(e)(i) and satisfaction of the "conditions to assistance" set forth in Section 5.2(e)(ii); **provided**, that the Development Entity shall have continued to satisfy the "conditions to assistance" for the duration of such failure to cooperate by the Utility Owner;
- (o) the discovery of any Archaeological Remains by the Development Entity during the carrying out of the Construction Work;
- (p) the occurrence of any of the following events:
  - (i) any failure by the Pennsylvania Labor and Industry Department to issue a Pennsylvania L&I Approval within forty-five (45) days of the date of the Development Entity's submission of a complete application therefor, together with all required supporting materials and information;
  - (vii) in the event that any inspection is required in connection with any Pennsylvania L&I Approval, any failure by the Pennsylvania Labor and Industry Department to carry out such inspection within thirty (30) days of the Development Entity's submission of the relevant request for such inspection, together with all required supporting materials and information; and
  - (i) any change in the D&C Work that is required as a direct result of any inconsistent application or interpretation of applicable National Fire Prevention Association code by the Pennsylvania Labor and Industry Department in connection with a Pennsylvania L&I Approval as compared with the D&C Work that would have been required in connection

with such Pennsylvania L&I Approval if the application or interpretation of such had been consistent with similar projects elsewhere in the State;

**provided** that the Development Entity shall have included sufficient information in the application package for the Pennsylvania Department of Labor and Industry to make decisions about code compliance;

- (q) the occurrence of any event or circumstance that results in any Key Assumptions being incorrect in relation to the Project; and
- (r) a change in the D&C Work that is required as a direct result of any condition or requirement contained in any land use permit or zoning approval obtained by the Department or any Transit Agency pursuant to Section 5.1(a)(vi) of this PPA as compared with the D&C Work that would have been required if the conditions or requirements contained in such land use permit or zoning approval had been consistent with those imposed on similar projects elsewhere in the State;

except, in each case, to the extent attributable to any breach of this PPA by, or any negligent act or negligent omission of, a Development Entity-Related Entity.

**Conceptual Drawings** means the limits, layout, and configurations depicted in the plan set "CNG Fueling Site Plan Layouts" dated January 30, 2015, as updated from time to time prior to the Setting Date, contained in Folder 02 – Design of the RID portion of the Disclosed Information contained on the Collaboration Portal.

**Construction Documents** means all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for construction of the Project in accordance with the Project Documents.

**Construction Manager** has the meaning set out in Section 2.3.1 of the Technical Provisions.

**Construction Period** means the period starting on the Commercial Closing Date and ending on the date on which all Project Sites shall have achieved CNG Readiness.

**Construction Period Insurance** means the Insurance Policies described in Schedule 9 (Insurance Coverage Requirements), but only in respect of the Construction Period.

**Construction Quality Plan** has the meaning set out in Section 2.4.2 of the Technical Provisions.

**Construction Work** means all work and services required to upgrade, build, construct, make, form, manufacture, furnish, install, supply, deliver, landscape or equip the Project, excluding Design Work.

**Consumables** means any Element that has a useful life less than two (2) years.

**Consumer Price Index** or **CPI** means the annual "Consumer Price Index – for all Urban Consumers" for the U.S. City Average area (not seasonally adjusted) as published by the U.S. Department of Labor, Bureau of Labor Statistics; **provided**, that if the CPI is changed so that the base year of the CPI changes, the CPI shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics. 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 Federal Register 846-847 (January 6, 1997), or if no such securities are outstanding, will be determined by the Parties in accordance with general market practice at the time.

**Contract** means any agreement, and any supplement or amendment thereto, by the Development Entity with any other Person, Contractor or Supplier to perform any part of the Project Services or provide any materials, equipment or supplies for any part of the Project Services, or any such agreement, supplement or amendment at a lower tier, between a Contractor and its lower tier Contractor or a Supplier and its lower tier Supplier, at all tiers.

**Contractor** means any Person with whom the Development Entity has entered into any Contract to perform any part of the Project Services or provide any materials, equipment or supplies for the Project, on behalf of the Development Entity, and any other Person with whom any Contractor has further subcontracted any part of the Project Services, at all tiers.

**Critical Path** means the longest (in terms of time) unbroken chain or path of logically connected activities in the Preliminary Project Baseline Schedule, Project Baseline Schedule or (as the case may be) Project Working Schedule ending with the achievement of Site Completion.

**Cure Period** means, in respect of any applicable Noncompliance Event, the period of  $x$  hours or days commencing on the Noncompliance Start Date for that Noncompliance Event, where  $x$  equals the number of hours or days referred to in Schedule 7 (Noncompliance Points Table) as the Cure Period for that Noncompliance Event, which Cure Period may be extended by the Department in accordance with the Project Documents.

**D&C Work** means the Design Work and the Construction Work.

**Day or day** means calendar days unless otherwise expressly specified as a Business Day.

**Defect** means any defect in any of the D&C Work attributable to:

- (a) defective design;
- (b) defective workmanship or defective materials, plant or machinery used in such construction having regard to Good Industry Practice and to appropriate industry standards and codes of practice current at the date of construction;
- (c) the use of materials in the D&C Work which (whether defective or not defective in themselves) prove to be defective in the use to which they are put;
- (d) defective installation of anything in or on a Project Site; or
- (e) defective preparation of a Project Site.

**Department** has the meaning set out in the introductory paragraph to this PPA.

**Department Change** means any change in the Project Services by the Department that the Development Entity is required to implement pursuant to Article 10 (Department and Development Entity Changes).

**Department Change Request** has the meaning set out in Section 10.1(b) (Department Changes).

**Department Default** has the meaning set out in Section 23.1(Department Default).

**Department Obtained Governmental Approvals** means, in respect of each Project Site, the NEPA approval applicable to such Project Site.

**Department Termination Notice** has the meaning set out in Section 24.5(a).

**Department Termination Sum** means the amount calculated in accordance with Section 1.2 of Schedule 6 (Compensation on Termination).

**Design Documents** means all drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams), design criteria, specifications, reports, studies, calculations, electronic files, records and submittals necessary for, or related to, the design of the Project and developed specifically for the Project. Design Documents include the Final Design Documents.

**Design Lead** has the meaning set out in Section 2.3.1 of the Technical Provisions.

**Design Quality Plan (DQP)** has the meaning set out in Section 2.4.1 of the Technical Provisions.

**Design Work** means all work and services related to the design, redesign, engineering or architecture for the Project.

**Development Entity** has the meaning set out in the introductory paragraph to this PPA.

**Development Entity Change** has the meaning set out in Section 10.6(a).

**Development Entity Change Request** has the meaning set out in Section 10.6(a).

**Development Entity Default** has the meaning set out in Section 22.1 (Development Entity Default).

**Development Entity-Related Entity** means:

- (a) the Development Entity;
- (b) Contractors (including Suppliers);
- (c) the Guarantor(s);
- (d) any other Persons performing any of the Project Services for or on behalf of the Development Entity;
- (e) any other Persons for whom the Development Entity may be legally or contractually responsible; and

the employees, agents, officers, directors, shareholders, representatives, consultants, successors, assigns and invitees of any of the foregoing, excluding, for the avoidance of doubt, any Patrons.

**Development Entity Release of Hazardous Material** means any Hazardous Materials Release:

- (a) to the extent attributable to the acts, omissions, negligence, willful misconduct or breach of Applicable Law or contract by any Development Entity-Related Entity, **provided**, that the

removal of Hazardous Materials, or any Remedial Action in respect of Hazardous Materials, by a Development Entity-Related Entity in accordance with the requirements of the Project Documents shall not be a Development Entity Release of Hazardous Material;

- (b) involving any Hazardous Materials arranged to be brought onto a Project Site or elsewhere by any Development Entity-Related Entity, regardless of cause (unless brought onto a Project Site pursuant to a removal of Hazardous Materials, or any Remedial Action in respect of Hazardous Materials, by a Development Entity-Related Entity in accordance with the requirements of the Project Documents); or
- (c) to the extent attributable to the use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any Development Entity-Related Entity in breach of any of the requirements of the Project Documents or any Applicable Law or Governmental Approval.

**Development Entity Termination Notice** has the meaning set out in Section 24.2(a).

**Development Entity Termination Sum** means the amount calculated in accordance with Section 2.2 of Schedule 6 (Compensation on Termination).

**Development Entity's Estimate** has the meaning set out in Section 10.3(a).

**Development Entity's Initial Design** means the conceptual design of the Project forming part of the Development Entity's Proposal Commitments.

**Development Entity's Interest** means all rights, title, and/or interest of the Development Entity derived from this PPA and the other Project Documents.

**Development Entity's Final Design** means the design prepared by the Development Entity and Signed and Sealed by the Engineer of Record, in compliance with the Technical Provisions, consistent with the Development Entity's Initial Design and subject to the Department's review.

**Development Entity's Proposal Commitments** means those commitments made by the Development Entity in its Proposal and attached as Appendix 1 (Development Entity's Proposal Commitments) to this PPA.

**Directive Letter** has the meaning set out in Section 10.2 (Directive Letter).

**Disclosed Information** means all written information provided to the Development Entity or any Development Entity-Related Entity by the Department or any of its employees, agents, officers, directors, shareholders, representatives, consultants, successors and assigns prior to the date of this PPA, including: (a) the RFP and its contents; and (b) all contents of the Collaboration Portal.

**Discretionary Submittal** means any Submittal that is expressed in the Project Documents to be subject to the approval or consent of the Department in its sole or absolute discretion.

**Discriminatory Change in Law** means a Change in Law, the terms of which apply to:

- (a) the Project or projects substantially the same as the Project;
- (b) private operators of CNG maintenance and storage facilities or CNG fueling stations; or

(c) the Development Entity,

**provided**, that in each case, such Change in Law is not of general application to other Persons.

**Dispute** means any dispute, disagreement or controversy between the Department and the Development Entity concerning their respective rights and obligations under any Project Document, including in respect of any claim, alleged breach or failure to perform and any remedy.

**Dispute Resolution Procedures** means the procedures for resolving Disputes set out in Article 30 (Dispute Resolution Procedures).

**Disputes Review Board** means the disputes review board established to aid in the resolution of Disputes pursuant to Section 30.4 (Disputes Review Board).

**Disputes Review Board Agreement** means the agreement in the form attached to this PPA as Part 1 (Form of Disputes Review Board Agreement) of Schedule 10 (Disputes Review Board).

**Diverse Business or DB** has the meaning set out in 74 Pa.C.S. Section 303.

**Document and Data Management Plan (DDMP)** has the meaning set out in Section 2.3.2 of the Technical Provisions.

**Dollars** or \$ refers to the lawful money of the United States of America.

**Early Termination** means the termination of this PPA for any reason prior to the expiration of the Term.

**Early Termination Date** means the effective date of termination of this PPA for any reason prior to the stated expiration of the Term, as specified in the relevant provisions of Article 24 (Termination and Force Majeure).

**Electronic Document Management System (EDMS)** has the meaning set out in Section 2.3.2 of the Technical Provisions.

**Element** or **Project Element** means an individual component, system or subsystem of the Project.

**Emergency** means any unplanned event affecting the Project that:

- (a) presents an immediate or imminent hazard to Patrons, or a risk of immediate or imminent structural failure, or an immediate or imminent risk of damage to a third party's property or equipment, or an immediate or imminent risk of damage to the Environment or a threat to the long term integrity of any part of the Project;
- (b) has jeopardized the safety of the public using the CNG Facility;
- (c) is a declared state of emergency pursuant to Commonwealth or federal Law; or
- (d) is recognized or declared by any law enforcement agency or any other Governmental Entity (other than the Department) as an Emergency.

**Engineer of Record** or **EOR** means the Professional Engineer employed by the Development Entity responsible for preparing Final Design Documents, all specifications, certification of all shop drawings and providing As-Built Drawings for the Project.

**Environment** means air, soils, surface waters (including wetlands), groundwater, land, stream sediments, surface or subsurface strata, biological resources, including endangered, threatened and sensitive species, natural systems, including ecosystems, and cultural, historic, archaeological and paleontological resources.

**Environmental Approval** means a Governmental Approval required under any Applicable Law for the Project or any Project Site that imposes liability or standards of conduct for or otherwise regulates, concerns or relates to the protection of public health, safety, or welfare and the Environment; Hazardous Materials; or pollution as defined by any Applicable Law.

**Environmental Commitment** means each of the environmental requirements of the Development Entity as further described in Section 3 of the Technical Provisions.

**Environmental Liability Acknowledgement** has the meaning set out in Section 2.2(g) (Environmental Liability Acknowledgement).

**Escrow Agent** has the meaning set out in Section 8.5(a) (Establishment and Security).

**Extra Work** means any work which is required by the Department to be performed by the Development Entity and which at that time is not otherwise covered or included in the Project by the Project Documents, whether it is in the nature of additional work, altered work, deleted work, or otherwise, including by means of a Department Change and/or Directive Letter.

**Final Design** means, depending on the context:

- (a) the Final Design Documents;
- (b) the design concepts set out in the Final Design Documents; or
- (c) the process of developing the Final Design Documents.

**Final Design Documents** means the complete final construction drawings, including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams, design criteria, specifications, reports, studies, calculations, electronic files, records and submittals prepared by the Development Entity, necessary or related to construction and maintenance of the Project and developed specifically for the Project.

**Final Warning Notice** has the meaning set out in Section 22.2(b) (Final Notice).

**Force Majeure Event** means the occurrence after the date of this PPA of:

- (a) war, civil war, invasion, violent act of foreign enemy or armed conflict;
- (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is brought to or near a Project Site by the Development Entity or its Contractors or is as a result of any breach by the Development Entity of the terms of this PPA;

- (c) ionizing radiation unless the source or cause of the ionizing radiation is brought to or near a Project Site by the Development Entity or its Contractors or is as a result of any breach by the Development Entity of the terms of this PPA;
- (d) any blockade or embargo;
- (e) any:
  - (i) official or unofficial strike;
  - (ii) lockout;
  - (iii) go-slow; or
  - (iv) other dispute,generally affecting the construction industry or a significant sector of it; or
- (f) any act of Terrorism,

which directly causes either Party (the **Affected Party**) to be unable to comply with all or a material part of its obligations under this PPA.

**Fuel Supply Commencement Date** means, in respect of each Project Site, the date set forth in the Project Baseline Schedule for the initial delivery of natural gas to such Project Site by the Department (or the applicable Transit Agency) for purposes of testing and commissioning the CNG Fueling Station Facilities at such Project Site; **provided**, that such date shall be no earlier than the date which is sixty (60) days before the CNG Readiness Deadline in respect of such Project Site.

**GAAP** means the Generally Accepted Accounting Principles approved and adopted by the American Institute of Certified Public Accountants.

**General Change in Law** means a Change in Law which is not a Discriminatory Change in Law.

**Global Positioning System (GPS)** means a system of satellites, computers and receivers that is able to provide the latitude and longitude of a receiver on Earth.

**Good Industry Practice** means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, constructor, maintenance contractor or operator or developer seeking in good faith to comply with its contractual obligations, complying with all Applicable Laws and Governmental Approvals, using accepted design and construction standards and criteria normally used on similar projects in the Commonwealth, and engaged in the same type of undertaking in the United States under similar circumstances and conditions, including environmental conditions.

**Governmental Approval** means all approvals, permits, permissions, consents, licenses, certificates (including sales tax exemption certificates) and authorizations (whether statutory or otherwise) which are required from time to time in connection with the Project to be issued by the Department, or any Governmental Entity.

**Governmental Entity** means the government of the United States of America, the Commonwealth, the cities and counties within the Commonwealth and any other agency, or subdivision of any of the foregoing, including any federal, state, or municipal government, and any court, agency, special district, commission or other authority exercising executive, legislative, judicial, regulatory, administrative or taxing functions of, or pertaining to, the government of the United States of America, the Commonwealth or the cities and counties within the Commonwealth. Governmental Entity does not include the Department.

**Guaranteed Commercial Sales Volume** means, with respect to each calendar year, the number of gasoline gallon equivalents set forth in the table below in respect of such calendar year

<b>Year</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>GGE</b>	<b>18,896.55</b>	<b>204,519.40</b>	<b>304,759.18</b>	<b>324,488.76</b>
<b>Year</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
<b>GGE</b>	<b>340,713.19</b>	<b>357,748.85</b>	<b>375,636.30</b>	<b>394,418.11</b>
<b>Year</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>
<b>GGE</b>	<b>414,139.02</b>	<b>434,845.97</b>	<b>456,588.27</b>	<b>479,417.68</b>
<b>Year</b>	<b>2028</b>	<b>2029</b>	<b>2030</b>	<b>2031</b>
<b>GGE</b>	<b>503,388.56</b>	<b>528,557.99</b>	<b>554,985.89</b>	<b>582,735.19</b>
<b>Year</b>	<b>2032</b>	<b>2033</b>	<b>2034</b>	<b>2035</b>
<b>GGE</b>	<b>611,871.95</b>	<b>642,465.54</b>	<b>674,588.82</b>	<b>694,925.44</b>
<b>Year</b>	<b>2036</b>			
<b>GGE</b>	<b>512,344.23</b>			

**Guarantor** means any Person guaranteeing the Development Entity’s performance of its obligations under the Project Documents.

**Handback Period** means the period beginning on the date thirty-six (36) months before the scheduled end of the Term and ending on the Termination Date.

**Handback Plan** has the meaning set out in Section 10.4 of the Technical Provisions.

**Handback Requirements** has the meaning set out in Section 8.4(a).

**Handback Reserve Account** has the meaning set out in Section 8.5(a) (Establishment and Security).

**Handback Reserve Amount** has the meaning set out in Section 4(b) of Schedule 5 (Calculation of Handback Amounts).

**Handback Year** has the meaning set out in Section 8.5(b)(i).

**Hazardous Environmental Condition** means the presence of any Hazardous Materials on, in, under or about a Project Site at concentrations or in quantities that are required to be removed or remediated as a matter of Law or in accordance with the requirements of the Project Documents or any Governmental Entity.

**Hazardous Materials** means any element, chemical, compound, mixture, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed, classified or otherwise regulated in any way under any Applicable Law, or any other such substances or conditions (including mold and other mycotoxins, fungi or fecal material) which may create any unsafe or hazardous condition or pose any threat or harm to the Environment or human health and safety. Hazardous Materials includes the following:

- (a) hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances, ignitable, corrosive and reactive substances or related materials, whether solid, liquid, or gas, including substances defined as or included in the definition of hazardous substance, hazardous waste, hazardous material, extremely hazardous waste, acutely hazardous waste, radioactive waste, radioactive materials, bio-hazardous waste, pollutant, toxic pollutant, contaminant, restricted hazardous waste, infectious waste, toxic substance, toxic waste, toxic material, or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor Environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, TCLP toxicity or EP toxicity or words of similar import under any Applicable Law);
- (b) any petroleum product, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto;
- (c) any solvent, solvent waste, including any refined solvent product, and any waste solvent or waste solvent byproduct, including any additive, byproduct or fraction of any of the foregoing;
- (d) any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;
- (e) any flammable substances or explosives;
- (f) any radioactive materials;
- (g) any asbestos or asbestos-containing materials;
- (h) silica;
- (i) any lead, cadmium, or lead-based paint or any other heavy metal-based paint or material, or any metal listed in or regulated by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.);
- (j) any radon or radon gas;
- (k) any methane gas or similar or regulated gaseous materials;

- (l) any urea formaldehyde foam insulation;
- (m) electrical equipment and components which contain any oil or dielectric fluid containing polychlorinated biphenyls;
- (n) pesticides, herbicides or fungicides;
- (o) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety of the owners, operators, Patrons or any Persons in the vicinity of the Project or to the indoor or outdoor Environment; and
- (p) soil, or surface water or groundwater, containing any of the Hazardous Materials as defined above.

**Hazardous Materials Release** means any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, surface water, groundwater or indoor or outdoor Environment, including any of the foregoing that exacerbates an existing release or condition of Hazardous Materials contamination.

**Incident** means a localized disruption to the Project, any Project Site or safety of the Project (including the safety of users of the Project).

**Indemnified Parties** means the Department and its respective successors, assigns, agencies, divisions, officers, agents, representatives, employees, and the Commonwealth.

**Indexable Element** means any financial amount referred to in this PPA that is expressed to be subject to indexation in accordance with Section 2.2 (Indexation) of Schedule 8 (Payment Mechanism).

**Indexation Base Date** means January 1, 2016.

**Indexation Formula** has the meaning set out in Section 2.2 (Indexation) of Schedule 8 (Payment Mechanism).

**Indexation Review Date** means the date on which CNG Readiness shall have been achieved in respect of all Project Sites, and each anniversary thereof.

**Indirect Losses** means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity or any claim for consequential loss or for indirect loss of any nature, including losses arising out of CNG Commercialization Activities, but excluding any of the same that relate to payments expressly provided for under this PPA.

**Information** has the meaning set out in Section 32.19(a).

**Infrastructure Fee** means the amount earned by the Development Entity in each given year during the Term as determined in accordance with Section 1.2 of Schedule 8 (Payment Mechanism).

**Initial CNG Commercialization Management Plan** means the portion of the Project Management Plan addressing CNG Commercialization Activities as described in Section 2.6 of the Technical Provisions.

**Initial Warning Notice** has the meaning set out in Section 22.2(a) (Warning Notice).

**Insolvency Event** means in respect of any Person:

- (a) any involuntary bankruptcy, insolvency, liquidation, company reorganization, restructuring, suspension of payments, scheme of arrangement, appointment of provisional liquidator, receiver or administrative receiver, resolution, or petition for winding up or similar proceeding, under any Applicable Law, in any jurisdiction, except to the extent that the same has been dismissed within sixty (60) days;
- (b) any voluntary bankruptcy, insolvency, liquidation, company reorganization, restructuring, suspension of payments, scheme of arrangement, appointment of provisional liquidator, receiver or administrative receiver, resolution, or petition for winding up or similar proceeding, under any Applicable Law, in any jurisdiction; or
- (c) any general inability on the part of that Person to pay its debts as they fall due.

**Insurance Broker** means the Development Entity's insurance broker, such broker to be a reputable international insurance broker of good standing.

**Insurance Policies** means all of the insurance policies the Development Entity is required to carry pursuant to Schedule 9 (Insurance Coverage Requirements).

**Insurance Proceeds** means all proceeds from insurance payable to the Development Entity (or that should have been payable to the Development Entity but for the Development Entity's breach of any obligation under this PPA to take out or maintain such insurance) on or after the Early Termination Date.

**Insurance Term** means any terms and/or conditions required to be in a policy of insurance by Schedule 9 (Insurance Coverage Requirements).

**Intellectual Property** means any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United States or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by any Development Entity-Related Entity for the purposes of carrying out the Project Services and/or otherwise for the purposes of this PPA.

**Interval of Recurrence** means for each Noncompliance Event, each continuous period of time after the Cure Period (including where there is no Cure Period), after which, unless already cured, such Noncompliance Event will continue to accrue Noncompliance Points. The Intervals of Recurrence are set out in Schedule 7 (Noncompliance Points Table).

**Invoice** has the meaning set out in Section 14.2 (Invoicing and Monthly Performance Reports).

**Key Assets** means all assets and rights to enable the Department or a successor contractor to own, operate and maintain each CNG Facility in accordance with this PPA including:

- (a) any land or buildings;
- (b) any core equipment;

- (c) any books and records (including operations and maintenance manuals, health and safety manuals and other know how);
- (d) any contractual rights; and
- (e) to the extent set forth in Article 27 (Intellectual Property), any Intellectual Property,

but excluding (i) any assets and rights in respect of which the Department is full legal and beneficial owner, and (ii) any of the above to the extent that the relevant asset or right is not owned by the Development Entity).

**Key Assumptions** shall mean each of the following:

- (a) each Transit Agency is sufficiently staffed to fuel and dispatch Transit Agency Vehicles at the applicable Project Sites;
- (b) the number of vehicles per Project Site shall not increase by more than 10% from the number indicated in the document titled "Overall vehicle inventory and fuel use\_121615" included in the Disclosed Information December 16, 2015;
- (c) the Conceptual Drawings shall not have changed since November 23, 2015;
- (d) each Transit Agency shall provide a continual supply of electricity to the applicable Project Site following the Development Entity's completion of all D&C Work associated with the electrical transmission equipment necessary for the CNG Fueling Facilities; and
- (e) the pressure of the natural gas supplied to any Project Site shall not fall by more than 10% below the pressure set out in the relevant gas supply agreement between the Utility Owner and the Transit Agency.

**Key Personnel** has the meaning set out in Section 2 (Project Management Plan) of the Technical Provisions.

**Law** means any federal, state, local and municipal laws, rules and regulations, orders, codes, directives, permits, approvals, decisions, decrees, ordinances or by-laws having the force of law and any common or civil law, whether adopted or enacted prior to or after the date of this PPA including binding court and judicial decisions having the force of law, and includes any amendment, extension or re-enactment of any of the same in force from time to time and all other instruments, orders and regulations made pursuant to statute, including those made by any Governmental Entity.

**Licensed Purposes** means the design, construction, operation, maintenance, management, provision, carrying out, replacement and/or operation of the CNG Facilities and/or the Project Services.

**Long Stop Deadline** means, in respect of any Project Site, the date that is 270 days after the CNG Readiness Deadline in respect of such Project Site (as such date may be extended pursuant to the terms of this PPA).

**Loss or Losses** means any loss, damage, injury, liability, obligation, cost, response cost, expense, fee, charge, judgment, penalty, or fine. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources.

**Maintained Element** means any Element of a CNG Fueling Station Facility that is to be maintained by the Development Entity as further described in Section 10 (Operation & Maintenance) of the Technical Provisions.

**Maintenance Management Plan** means the plan developed by the Development Entity that identifies the approach, methods, staffing, systems, schedule and procedures for performing the Maintenance Work, as described in more detail in Section 10 (Operation & Maintenance) of the Technical Provisions.

**Maintenance Performance Requirements** means in respect of each Element of the Project, the minimum performance requirements set out in Section 10 (Operation & Maintenance) of the Technical Provisions.

**Maintenance Period** means, in respect of a CNG Fueling Station Facility, the period starting on the CNG Readiness Date for that CNG Fueling Station Facility and ending on the last day of the Term.

**Maintenance Quality Plan** has the meaning set out in Section 2.4.3 of the Technical Provisions.

**Maintenance Work** means all Routine Maintenance and Renewal Work.

**Management & Staffing Plan** has the meaning set out in Section 2.3.1 of the Technical Provisions.

**Maximum Aggregate Payment** means the aggregate of the Milestone Payments and the Maximum Infrastructure Fees, each as determined from Schedule 8 (Payment Mechanism) on or prior to the Commercial Closing Date.

**Maximum Infrastructure Fee** means the maximum Infrastructure Fee that the Development Entity can earn in a given year, as calculated in accordance with Schedule 8 (Payment Mechanism) and as may be further adjusted in accordance with this PPA.

**Milestone Payment** means the amount calculated according to the methodology set out in Section 1.1 (Milestone Payments) of Schedule 8 (Payment Mechanism).

**Mobile CNG Solution** means, with respect to a Project Site, the provision of CNG fuel by one or more mobile fueling unit(s) and corresponding Mother Station.

**Month or month** means a time period comprised of one calendar month and pertaining to the invoice period defined for that period.

**Monthly Maintenance Payment Deduction** means an amount calculated as provided in Section 2.1 (Payment Deductions) of Schedule 8 (Payment Mechanism).

**Monthly Payment** means the amount earned by the Development Entity in any given month, calculated in accordance with Schedule 8 (Payment Mechanism) and taking into account the calculations, adjustments and deductions provided for in this PPA.

**Monthly Performance Report** means the monthly report required to be delivered by the Development Entity to the Department for a given month as further described in Schedule 13 (Monthly Performance Report).

**Mother Station** means, with respect to a Mobile CNG Solution, the source of the CNG fuel that will be made available at the relevant CNG Fueling Station Facility(ies) by one or more mobile fueling station(s).

**Non-Discretionary Submittal** means any Submittal that is expressed in the Project Documents to be subject to the approval or consent of the Department, but which is not a Discretionary Submittal.

**Noncompliance Event** has the meaning set out in Section 11.1(a).

**Noncompliance Points** means the points that may be assessed for certain Noncompliance Events by the Development Entity, as set out in Schedule 7 (Noncompliance Points Table) to this PPA.

**Noncompliance Rectification Date** means, in respect of any Noncompliance Event, the date and time that the Noncompliance Event has been cured and reasonable measures have been taken by the Development Entity to prevent the reoccurrence of that Noncompliance Event.

**Noncompliance Start Date** means, in respect of any Noncompliance Event, the earlier of the date and time that the Development Entity:

- (a) first obtains knowledge of the Noncompliance Event; or
- (b) first should have reasonably known of the occurrence of the Noncompliance Event.

**Nonconforming D&C Work** means any D&C Work that does not conform to the requirements of the Project Documents.

**NTP1** has the meaning set out in Section 7.4 (Conditions Precedent to NTP1).

**NTP2** has the meaning set out in Section 7.5 (Conditions Precedent to NTP2).

**Operations and Maintenance Manager** has the meaning set out in Section 2.3.1 of the Technical Provisions.

**Overage** has the meaning set out in Section 5.2(c)(i).

**Paratransit Vehicle** means a Transit Agency Vehicle having a capacity of approximately 15 passengers that is designed to provide service to persons with disabilities.

**Party** means the Development Entity or the Department, as the context may require, and **Parties** means the Development Entity and the Department, collectively.

**Patron** means any user of the Project Facilities, including Transit Agencies, motorists, pedestrians and cyclists.

**Pavement Condition Index** means a numerical index which is used to indicate the general condition of pavement.

**Pennsylvania L&I Approval** means, for each Project Site, the approval of the construction plan by Pennsylvania Department of Labor and Industry pursuant to the Fire and Panic Act and the Pennsylvania Construction Code Act.

**Persistent Breach** means a breach for which a Final Warning Notice has been issued, which has continued for more than thirty (30) consecutive days or recurred in three (3) or more months within the six (6)-month period after the date on which such Final Warning Notice is served on the Development Entity.

**Persistent Fueling Failure** means:

- (a) in any rolling three (3) month period, the number of days that the Development Entity is required to pay liquidated damages pursuant to Section 11.4(a)(i) (Liquidated Damages) in respect of all of the Project Sites is greater than 10% of the aggregate number of days that all of the Transit Agencies operate Transit Vehicles from the Project Sites during that three (3) month period; or
- (b) in any rolling twelve (12) month period, the number of days that the Development Entity is required to pay liquidated damages pursuant to Section 11.4(a)(i) (Liquidated Damages) in respect of all of the Project Sites is greater than 10% of the aggregate number of days that all of the Transit Agencies operate Transit Vehicles from the Project Sites during that twelve (12) month period; or
- (c) in any rolling three (3) month period, the number of days that the Development Entity is required to pay liquidated damages pursuant to Section 11.4(a)(i) (Liquidated Damages) in respect of a single Project Sites is greater than 20% of the aggregate number of days that the relevant Transit Agency operates Transit Vehicles from that Project Site during that three (3) month period; or
- (d) in any rolling twelve (12) month period, the number of days that the Development Entity is required to pay liquidated damages pursuant to Section 11.4(a)(i) (Liquidated Damages) in respect of a single Project Sites is greater than 20% of the aggregate number of days that the relevant Transit Agency operates Transit Vehicles from that Project Site during that twelve (12) month period; or
- (e) in any rolling three (3) month period, the number of days that the Development Entity is required to pay liquidated damages pursuant to Section 11.4(a)(ii) (Liquidated Damages) in respect of all of the Project Sites is greater than 5% of the aggregate number of days that all of the Transit Agencies operate Transit Vehicles from the Project Sites during that three (3) month period; or
- (f) in any rolling twelve (12) month period, the number of days that the Development Entity is required to pay liquidated damages pursuant to Section 11.4(a)(ii) (Liquidated Damages) in respect of all of the Project Sites is greater than 5% of the aggregate number of days that all of the Transit Agencies operate Transit Vehicles from the Project Sites during that twelve (12) month period; or
- (g) in any rolling three (3) month period, the number of days that the Development Entity is required to pay liquidated damages pursuant to Section 11.4(a)(ii) (Liquidated Damages) in respect of a single Project Sites is greater than 10% of the aggregate number of days that the relevant Transit Agency operates Transit Vehicles from that Project Site during that three (3) month period; or
- (h) in any rolling twelve (12) month period, the number of days that the Development Entity is required to pay liquidated damages pursuant to Section 11.4(a)(ii) (Liquidated Damages) in respect of a single Project Sites is greater than 10% of the aggregate number of days that the relevant Transit Agency operates Transit Vehicles from that Project Site during that twelve (12) month period.

**Person** or **Persons** means any natural person, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization or Governmental Entity or other type of entity.

**Planned Maintenance** means Maintenance Work that has been properly scheduled as part of the Maintenance Management Plan in cooperation with the Department, for which the proper notices and notice periods have been provided to the Department, and for which the Department has provided the relevant approvals, in each case in accordance with Section 10 (Operation & Maintenance) of the Technical Provisions.

**Poor Maintenance Performance** means:

- (a) the cumulative number of Noncompliance Points assessed at all Project Sites during any rolling three (3) month period equals or exceeds 545; or
- (b) the cumulative number of Noncompliance Points assessed at all Project Sites during any rolling twelve (12) month period equals or exceeds 2,175; or
- (c) the cumulative number of Noncompliance Points assessed at any Project Site during any rolling three (3) month period equals or exceeds 19; or
- (d) the cumulative number of Noncompliance Points assessed at any Project Site during any rolling twelve (12) month period equals or exceeds 75.

**Pre-Existing Hazardous Materials** means Hazardous Materials that exist in, on or under a Project Site prior to the date at which the Development Entity gains vacant possession to a relevant portion of the Project Site, including those that manifest themselves after that date.

**Preferred Proposer** has the meaning set out in clause (F) of the Background to this PPA.

**Preliminary Project Baseline Schedule** means the logic-based summary schedule as provided in the Development Entity's Proposal Commitments and is the basis of the Project Baseline Schedule.

**Preliminary PMP** means the Development Entity's preliminary plan (included as part of the Development Entity's Proposal Commitments) describing the Work necessary to manage the development, design, construction, and maintenance of the Project, and containing the component parts, plans and documentation required under the Project Documents.

**Preliminary Work** means:

- (a) the Design Work; and
- (b) any work or services that the Development Entity is required to undertake in order to satisfy the conditions precedent listed in Part 2 (Conditions Precedent to NTP2) of Schedule 20 (Conditions Precedent to Notices to Proceed).

**Principal Department Documents** means each Project Document to which the Department is expressed to be a party.

**Professional Engineer** means an engineer who is licensed in the Commonwealth.

**Professional Land Surveyor** means a land surveyor who is licensed in the Commonwealth.

**Project** has the meaning set out in clause (B) of the Background to this PPA.

**Project Baseline Schedule** means the logic-based critical path schedule for all D&C Work as described in the Technical Provisions, as may be revised and updated in accordance with the Project Documents.

**Project Chief Financial Officer** has the meaning set out in Section 2.3.1 of the Technical Provisions.

**Project Controller** has the meaning set out in Section 2.3.1 of the Technical Provisions.

**Project Data** means:

- (a) Design Documents; and
- (b) any other information, documents or data acquired or brought into existence or used specifically in relation to the Project Services or this PPA,

in each case that is used by or on behalf of any Development Entity-Related Entity in connection with the provision of the Project Services or the performance of the Development Entity's obligations under this PPA. Project Data shall not include information, documents or data used generally by any Development Entity-Related Entity in the course of their wider business operations, except to the extent such information, documents or data have been brought into existence specifically for the Project.

**Project Documents** means this PPA, the Technical Provisions, the Development Entity's Proposal Commitments, any amendments to the foregoing undertaken in accordance with the terms hereof or thereof and any other document that the Department and the Development Entity may deem to be a **Project Document** from time to time after the date hereof.

**Project Executive** has the meaning set out in Section 2.3.1 of the Technical Provisions.

**Project Facilities** means all Elements of the Project including Maintained Elements and any other Elements in respect of which the Development Entity is required to perform Project Services, as required by the Technical Provisions.

**Project Management Plan (PMP)** means the document approved by the Department, in accordance with the terms of the Project Document, describing the Project Services necessary to manage the development, design, construction, and maintenance of the Project, and containing the component parts, plans and documentation required under the Project Documents.

**Project Manager** has the meaning set out in Section 2.3.1 of the Technical Provisions.

**Project Services** means all work and services required to be furnished, performed and provided by the Development Entity in order to design, construct, upgrade, implement, operate and maintain the Project in accordance with the Project Documents.

**Project Site** means each of the locations where CNG Facilities will be designed, constructed, operated and maintained at the addresses referred to in Appendix 1 (Participating Transit Agencies) to the Technical Provisions.

**Project Status Schedule Update** has the meaning set out in Section 2.2.2 of the Technical Provisions.

**Project Working Schedule** means a copy of the most current approved Project Baseline Schedule that is to be or is in the process of being revised and updated by the Development Entity to reflect current project status in accordance with the Technical Provisions.

**Proposal** means the proposal submitted by the Development Entity to the Department in response to the RFP.

**Proposal Due Date** means January 14, 2016.

**Proposers** means the proposers shortlisted by the Department on January 16, 2015 for the Project.

**Protection in Place** means any action taken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of the Utility, exposing the Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. The term includes both temporary measures and permanent installations meeting the foregoing definition.

**Punch List** means an itemized list of Construction Work which remains to be completed, corrected, adjusted, or modified, 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 relevant Project Site.

**Punch List Holdback** has the meaning set out in Section 7.6(g).

**Qualifying Change in Law** means:

- (a) a Discriminatory Change in Law; or
- (b) a General Change in Law which involves Capital Expenditure,

which, in each case, was not foreseeable at the Proposal Due Date.

**Quality Management Plan** has the meaning set out in Section 2.4 of the Technical Provisions.

**R&C Submittal** means any Submittal that is expressed in the Project Documents that is not a Discretionary Submittal or a Non-Discretionary Submittal.

**Reasonable Efforts** means all those steps in the power of the relevant Party that are capable of producing the desired result, being steps which a prudent, determined and reasonable person desiring to achieve that result would take; **provided**, that subject to its other express obligations under this PPA, the relevant Party shall not be required to expend funds except for those necessary to meet the reasonable costs reasonably incidental or ancillary to the steps to be taken by the relevant Party (including its reasonable travel expenses, correspondence costs and general overhead expenses).

**Registered Business Partner of the Commonwealth** means a person that has obtained "SAP-Vendor Number" through the Department's "Supplier Portal Website" at [www.pasupplierportal.state.pa.us](http://www.pasupplierportal.state.pa.us) (or otherwise in accordance with the instructions set out in page 5 (Vendor Registration) of Department Publication IV (12-13), *Conducting Business with the Pennsylvania Department of Transportation*).

**Released For Construction Documents** means all drawings, specifications, revisions thereto, and any other items necessary to upgrade the CNG Maintenance and Storage Facilities and construct the CNG Fueling Station Facilities, Signed and Sealed by the Engineer of Record.

**Relief Event** means any of the following:

- (a) any Force Majeure Event;

- (b) any change in Law that is not a Qualifying Change in Law;
- (c) fire, explosion, unusually adverse weather, flood, earthquakes, riot and civil commotion;
- (d) named windstorm and any ensuing storm surge, including the direct action of wind originating from a named windstorm;
- (e) any accidental loss or damage to any roads servicing a Project Site (including obstructed waterways);
- (f) any delay in obtaining any Governmental Approval (other than any Department Obtained Governmental Approval); **provided**, that such delay is beyond the reasonable control of any Development Entity-Related Entity; and
- (g) any of the circumstances referred to in Section 16.3(f).

except, in each case, to the extent attributable to any breach of this PPA or any negligent act or negligent omission of a Development Entity-Related Entity.

**Remaining Work** means, in respect of a CNG Facility, any Construction Work that is not Preliminary Work.

**Remedial Action** means any remediation or removal of a Hazardous Environmental Condition that the Development Entity is responsible for pursuant to Article 6 (Hazardous Materials).

**Renewal Work** means maintenance, repair, reconstruction, rehabilitation, restoration, renewal or replacement of any worn-out, deficient, damaged or under-performing Element that is not Routine Maintenance so that such Element does not prematurely deteriorate and remain fully functional.

**Requested Information** has the meaning set out in Section 32.20(b).

**Required Action** has the meaning set out in Section 25.3(a).

**Residual Life** means the calculated duration that any Element of the Project, subject to Routine Maintenance, will continue to comply with any applicable Maintenance Performance Requirement or standard before Renewal Work is required.

**Reviewable Submittal** means any Submittal that is a Discretionary Submittal, Non-Discretionary Submittal or R&C Submittal.

**Risk Management Plan** has the meaning set out in Section 2.3.3 of the Technical Provisions.

**RFP** has the meaning set out in clause (E) of the Background to this PPA.

**RFQ** has the meaning set out in clause (C) of the Background to this PPA.

**Routine Maintenance** means work and services to preserve the current condition of assets, including any inspection, that is routine in nature and includes matters that are typically included as an annually or bi-annual recurring cost in CNG fueling station maintenance budgets.

**RTKL** has the meaning set out in Section 32.20(a).

**Safety and Training Officer** has the meaning set out in Section 2.3.1 of the Technical Provisions.

**Safety Compliance** means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement and changes in configuration or procedures respecting the Project to correct a specific safety condition of the Project that the Department or a Governmental Entity has reasonably determined to exist by investigation or analysis (including if the condition exists despite prior compliance with Safety Standards).

**Safety Compliance Order** means a written order or directive from the Department to the Development Entity to implement Safety Compliance.

**Safety Plan** has the meaning set out in Section 2.5 of the Technical Provisions.

**Safety Standards** means those provisions of the Technical Provisions that are measures to protect public safety or worker safety. As a matter of clarification, provisions of the Technical Provisions primarily directed at durability of materials or equipment, where the durability is primarily a matter of life cycle cost rather than protecting public or worker safety, are not Safety Standards.

**Service Line** means:

- (a) a Utility line, the function of which is to directly connect the improvements on an individual property to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system; or
- (b) any cable or conduit that supplies an active feed from a Utility Owner's facilities to activate or energize the Department's or a local agency's lighting and electrical systems, traffic control systems, communications systems and/or irrigation systems.

**Setting Date** means the date falling thirty (30) days before the Proposal Due Date.

**Shared Risk Limit** has the meaning set out in Section 5.2(c)(i)(A).

**Signed and Sealed** means the signature and seal of a Professional Engineer on a document indicating that the licensee takes professional responsibility for the work and, to the best of the licensee's knowledge and ability, the work represented in the document is accurate, in conformance with applicable codes at the time of submission and has been prepared in conformity with normal and customary standards of practice and with a view to the safeguarding of life, health, property and public welfare. The Professional Engineer certifies that the documents have been signed and sealed in accordance with laws, rules and regulations of the Commonwealth.

**Site Completion** means, in respect of a Project Site, the occurrence of all the relevant events and satisfaction of all the relevant conditions set out in Part 2 (Conditions Precedent to Site Completion) of Schedule 21 (Conditions Precedent to CNG Readiness and Site Completion) in respect of that Project Site.

**Site Completion Deadline** means the date which is ten (10) years after the date on which the first Project Site shall have achieved CNG Readiness.

**Submittal** means any document, work product or other written or electronic product or item required under the Technical Provisions to be delivered or submitted to the Department for approval, review, comment or otherwise.

**Supplier** means any Person not performing work at or on a Project Site which supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the Project to the Development Entity or to any Contractor in connection with the performance of the Project Services. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from a Project Site shall not be deemed to be performing Project Services at such Project Site.

**Target Revenue** means, in any Calendar Year during the Term, the revenue from Commercial Sales that the Development Entity expects to generate within such Calendar Year.

**Technical Provisions** means the Technical Provisions set out in Schedule 18 (Technical Provisions).

**Term** has the meaning set out in Section 2.1(a).

**Termination by Court Ruling** means any of the following:

- (a) issuance of a final, non-appealable order by a court of competent jurisdiction to the effect that this PPA is void and/or unenforceable or impossible to perform in their entirety, except where void, unenforceable or impossible to perform by reason of the Development Entity's acts, omissions, negligence, willful misconduct, fraud or breach of warranty or representation; or
- (b) issuance of a final, non-appealable order by a court of competent jurisdiction upholding the binding effect on the Development Entity or the Department of a Change in Law that causes impossibility of performance of a fundamental obligation by the Development Entity or the Department under the Project Documents or impossibility of exercising a fundamental right of the Development Entity or the Department under the Project Documents.

**Termination Date** means:

- (a) the date of expiration of the Term; or
- (b) if applicable, the Early Termination Date.

**Termination Notice** means a Development Entity Termination Notice or a Department Termination Notice.

**Termination Sum** means the Department Termination Sum or the Development Entity Termination Sum, as applicable.

**Terrorism** means activities against Persons or property of any nature:

- (a) that involve the following or preparation for the following:
  - (i) use or threat of force or violence; or
  - (ii) commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system;

- (b) when one or both of the following applies:
  - (i) it appears that the intent is to intimidate or coerce the Department or a Governmental Entity or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
  - (ii) it appears that the intent is to intimidate or coerce the Department or a Governmental Entity, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology; and
- (c) that are criminally defined as terrorism for purposes of Commonwealth, federal or international Law.

**Third-Party Claims** means any and all claims, disputes, disagreements, causes of action, demands, suits, actions, investigations or administrative proceedings brought by a Person that is not an Indemnified Party or the Development Entity with respect to damages, injuries, liabilities, obligations, losses, costs, penalties, fines or expenses (including attorneys' fees and expenses) sustained or incurred by such Person.

**Tier 1 Initial Work** means Design Work in respect of the Project Sites referred to on Table 1 (Participating Transit Agencies) of the Technical Provisions as "Tier 1", together with administrative work necessary to obtain Governmental Approvals required in respect of the Work to be performed at such "Tier 1" Project Sites.

**Time Impact Analysis** means a time impact analysis prepared in accordance with Section 2 (Project Management Plan) of the Technical Provisions.

**Total Handback Amount** means, as of any date of calculation, the sum of:

- (a) the CNG Fueling Station Facilities Handback Amount; plus
- (b) the CNG Equipment Compound Handback Amount.

**Transit Agency** has the meaning set out in clause (A) of the Background to this PPA.

**Transit Agency Vehicle** means a public transit vehicle owned and/or operated by a Transit Agency.

**Transition and Coordination Plan** has the meaning set out in Section 2.4.3 of the Technical Provisions.

**Tribunal** means a court, tribunal, agency, special district, commission or other authority exercising judicial or regulatory functions.

**Undisclosed Utility** means any Utility present on a Project Site that was not identified or was materially incorrectly shown, identified or described in the Disclosed Information, in each case excluding any Utility that:

- (a) could reasonably have been identified or discovered through review and analysis of the Disclosed Information by an appropriately qualified and experienced contractor or engineer exercising due care and skill and Good Industry Practice in the same or equivalent circumstances; or
- (b) is located at or less than five (5) feet distant from the horizontal centerline indicated therefore in the Disclosed Information (without regard to vertical location).

**Updated CNG Commercialization Management Plan** has the meaning set out in Section 15.1.

**Utility** means a privately, publicly, or cooperatively owned line, facility, or system for transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, a combined storm water and sanitary system, or other similar commodities, including wireless telecommunications, television transmission signals and publicly owned fire and police signal systems, which directly or indirectly serve the public. The necessary appurtenances to each Utility facility shall be considered part of such Utility. Without limitation, any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line.

**Utility Incorporated Work** means, in respect of each CNG Facility, Utility Relocation Work that is the subject of an incorporated work agreement between the Department and the relevant Utility Owner or is otherwise incorporated into the Construction Work and required to be performed by the Development Entity.

**Utility Owner** means the owner or operator of any Utility (including both privately held and publicly held entities, cooperative Utilities, and municipalities and other governmental agencies (including, without limitation, the Department)).

**Utility Relocation** means each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate construction, maintenance and/or use of the Project or the Project Services; **provided**, that the term Utility Relocation shall not refer to any of the work associated with facilities owned by any railroad. The Utility Relocation Work for each crossing of a Project Site by a Utility that crosses such Project Site more than once shall be considered a separate Utility Relocation. For any Utility installed longitudinally within a Project Site, the Utility Relocation Work for each continuous segment of that Utility located within such Project Site shall be considered a separate Utility Relocation.

**Utility Relocation Work** means all efforts and costs necessary to accomplish the required Utility Relocations during the Construction Period, including all coordination, design, design review, permitting, construction, inspection and maintenance of records, whether provided by the Department, the Development Entity or by the Utility Owners. For the avoidance of doubt, Utility Relocation Work includes Utility Incorporated Work.

**Work** means the D&C Work and Maintenance Work, and all other work and services required to be furnished, performed and provided by the Development Entity under the Project Documents.

## **ACRONYMS**

As used in this PPA to which this Schedule 1 (Definitions) is attached and in the other Project Documents (unless otherwise specified therein), the following acronyms shall have the meanings set out below (unless the context requires otherwise).

ACHP – Advisory Council of Historic Preservation

ACM – Asbestos-containing Materials

ACORD – Association for Cooperative Operations Research and Development

ADA – Americans With Disabilities Act

AHJ – authority having jurisdiction

AISC – American Institute of Steel Construction

ALTA – American Land Title Association

ANSI – American National Standards Institute

AREMA – American Railway Engineering and Maintenance-of-Way Association

ASCE – American Society of Civil Engineers

ASHRAE – American Society of Heating, Refrigerating, and Air-Conditioning Engineers

ASME – American Society of Mechanical Engineers

ASTM – American Society for Testing and Materials

AWS – American Welding Society

CAD – computer-assisted drafting

CFR – Code of Federal Regulations

CWI – Certified Welding Inspector

D&C – Design and Construction

DB – Diverse Business

DbA – decibel

DNCR – Pennsylvania Department of Conservation & Natural Resources

DWG – CAD design file format supported by Autodesk, Inc.

ECM – environmental compliance manager

ECMS – electronic collaborative management system

EDMS – electronic document management system

EEO – Equal Employment Opportunity

EIS – Environmental Impact Statement

EOR – Engineer of Record

EPA – Environmental Protection Agency (see USEPA)

ESA – environmental site assessment

ESD –Emergency Shut Down

FAA – Federal Aviation Administration

FEMA – Federal Emergency Management Agency

FHWA – Federal Highway Administration

FTA – Federal Transit Administration

GFI –Ground Fault Interrupter

GGE – gasoline gallon equivalent

HVAC – heating, ventilation, and air conditioning

IBC – International Building Code

ID – identification number

IES, IESNA – Illuminating Engineering Society (of North America)

JEDEC – Joint Electron Devices Engineering Council

LAN –local area network

LDD – lamp dirt depreciation

LED – light-emitting diode

LLD – lamp lumens depreciation

MMSCF – one million standard cubic feet

MFM – Metal Finishes Manual

NAAMM – National Association of Architectural Metal Manufacturers

NCR – Non-conformance Report

NEC – National Electric Code

NEMA – National Electrical Manufacturers Association

NEPA – National Environmental Policy Act, 42 U.S.C. s 4321 *et seq.* as amended from time to time

NFPA – National Fire Protection Agency

NGV – natural gas vehicle

O&M – operations and maintenance

OD – outside diameter

OSHA – Occupational Safety and Health Administration (United States)

P&ID –Piping and Instrumentation Diagram

PADEP - Pennsylvania Department of Environmental Protection

PBS – Project Baseline Schedule

PDF – Portable Document File format

PFBC – Pennsylvania Fish & Boat Commission

PGC - Pennsylvania Game Commission

PHMC – Pennsylvania Historic and Museum Commission

PI – pavement index

PLC – programmable logic controller

PLS – Professional Land Surveyor

PPA – Public-Private Transportation Partnership Agreement

Psig – pounds per square inch gauge

PVC – polyvinyl chloride

RSPL – recommended spare parts list

SAE – Society of Automotive Engineers Standard

SBE – Small Business Enterprise

SCF – standard cubic feet

SCFM –Standard cubic feet per minute

TIA – Time Impact Analysis

TP – Technical Provisions

USACOE – United States Army Corps of Engineers

USCG – United States Coast Guard

USDA – United States Department of Agriculture

USDOL – United States Department of Labor

USDOT – United States Department of Transportation

USEPA – United States Environmental Protection Agency

USFWS – United States Fish and Wildlife Service

WBS – Work Breakdown Structure

XER – Oracle Primavera Project Management electronic compressed file format

**SCHEDULE 2**

**[RESERVED]**

### SCHEDULE 3

#### SITE ACCESS RESTRICTIONS

<i>Project Site</i>	<i>Access Restrictions</i>
AMTRAN	<ul style="list-style-type: none"> <li>• No specific restrictions.</li> <li>• Development Entity shall cooperate and coordinate with AMTRAN to accommodate bus traffic.</li> </ul>
ATA - Johnsonburg	Project work shall be limited to the hours between 8am and 4pm
ATA - Bradford	No specific restrictions.
BCTA	<p>The exact nature of restrictions will be determined by Development Entity final design plans for the facility. General guidance below:</p> <p style="padding-left: 40px;">Development Entity shall take care to limit impacts to BCTA’s operation and on the operation of other lessee’s of the property (including but not limited to BCRC).</p> <p style="padding-left: 40px;">Development Entity shall submit for BCTA approval a staging plan to delineate parts of the property (parking lot) to be used for storage of construction equipment, etc. that minimizes the impact of the construction.</p> <p style="padding-left: 40px;">Main entrance and exit to and Pleasant Drive is busy. Construction traffic may be limited at this location and may require off hours construction.</p> <p style="padding-left: 40px;">Development Entity shall submit for BCTA approval a detour plan for non-construction traffic during construction at this location.</p>
BTA	No specific restrictions are anticipated at this time. Development Entity shall cooperate and coordinate with BTA to accommodate bus traffic.
CAMTRAN - Johnstown	Access to main gate shall be maintained at all times in case of emergency.
CAMTRAN – Ebensburg	No specific restrictions.
CAT	No specific restrictions.
CATA	<ul style="list-style-type: none"> <li>• Driveway shall not be completely blocked at any time.</li> <li>• Traffic flow must be available at all times.</li> </ul>

<i>Project Site</i>	<i>Access Restrictions</i>
	<ul style="list-style-type: none"> <li>Any lane restrictions would need to be coordinated with Gannett Fleming the CM and CATA.</li> </ul>
COLT/LT	<p>Although COLT/LT will make every effort to accommodate construction activities, the following should be noted:</p> <ul style="list-style-type: none"> <li>Access in and out of COLT/LT facility may be limited between the hours of 6 am and 7:30 am during morning pullout.</li> <li>Access in and out of COLT/LT facility may be limited between the hours of 5 pm and 6:30 pm.</li> </ul>
COLTS	No specific restrictions.
CRATA	<p>Morning pull out is between 6:00am – 8:00am</p> <p>Main shift change with drivers and vehicles is between 2:30 – 4:00pm.</p> <p>CRATA maintenance facility will be under construction in spring/summer 2016. It is anticipated that the facility will be designed and built to meet CNG standards.</p>
DuFAST	No specific restrictions.
EMTA	No specific restrictions.
FACT	No specific restrictions, assuming construction operations occur during regular business hours .
INDIGO	During winter months, access shall be maintained to the wash bay in the evening and 1 maintenance bay for daily repairs.
LANTa – Allentown & Easton	<ul style="list-style-type: none"> <li>Access/egress to both doors of Maintenance garage shall be maintained during peak hours (<b>to be determined</b>).</li> <li>Access to/from the main door from the interior of the property shall be maintained at all times.</li> <li>Access/egress to/from the Allentown property from either Lehigh St or Cumberland St shall be maintained at all times.</li> </ul>
LCTA	No specific restrictions.
MCRCOG	No specific restrictions, assuming the construction phase is completed outside of existing MCRCOG footprint.
MCTA	No specific restrictions.

<i>Project Site</i>	<i>Access Restrictions</i>
MMVTA	No specific restrictions.
NCATA	No specific restrictions.
PAAC	No specific restrictions.
STS	No specific restrictions.
TAWC	No specific restrictions.
WCTA	No specific restrictions.
YATA – York & Gettysburg	Shared driveway (located between transit buildings) shall be kept open at all times.

## SCHEDULE 4

### FORM OF ENVIRONMENTAL LIABILITY ACKNOWLEDGEMENT

**THIS ENVIRONMENTAL LIABILITY ACKNOWLEDGEMENT** dated as of [●], 2016 (this **Acknowledgement**) is entered into by and

**BETWEEN:**

- (1) [●], a [*describe form and jurisdiction of formation*] (the **Transit Agency**); and
- (2) **TRILLIUM TRANSPORTATION FUELS, LLC (d/b/a TRILLIUM CNG)**, a limited liability company organized under the laws of the State of Delaware (the **Development Entity**).

This Acknowledgement is entered into pursuant to Section 2.2(g) of the Public-Private Transportation Partnership Agreement dated as of [●], 2016 (the **PPA**) is entered into by and between THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, an executive agency of the Commonwealth of Pennsylvania (the **Department**) and the Development Entity. Capitalized terms used but not defined herein have the meanings given to them in the PPA.

The Parties hereto acknowledge and agree that the delivery of this Acknowledgement is a condition precedent the achievement of Commercial Close under the PPA. The Transit Agency hereby acknowledges and agrees as follows:

- (a) The Transit Agency will be responsible for the management, treatment, handling, storage, monitoring, remediation, removal, transport, and disposal of any Hazardous Materials in, under or on the Project Site that are not the responsibility of the Development Entity under Section 6.1(a) of the PPA.
- (b) To the extent that any Transit Agency is deemed to be the generator or arranger for Hazardous Materials pursuant to Article 6 (Hazardous Materials) of the PPA, the Transit Agency acknowledges and agrees that the Development Entity shall be entitled to seek contribution (in an amount net of any insurance proceeds received pursuant to the Insurance Policies or any amounts which the Development Entity is deemed to have self-insured in accordance with Schedule 9 (Insurance Coverage Requirements) of the PPA) from the Transit Agency for any Losses arising from or in connection with or in respect of any Third-Party Claims initiated against the Development Entity or any Development Entity-Related Entity in connection with such Hazardous Materials; **provided**, that:
  - (i) the Department shall cause the Development Entity to promptly notify the Transit Agency of incidents, potential claims and matters which may give rise to any such Third-Party Claim;
  - (ii) the Transit Agency may give written notice to the Development Entity to tender defense of any such Third-Party Claim to the Transit Agency at any time, in which case the Department shall cause the Development Entity to promptly tender defense of such claim and cooperate with the Transit Agency as necessary or reasonably requested by the Transit Agency to defend such claim; **provided**, that such Transit Agency shall have agreed in writing to pay or reimburse

Development Entity's reasonable and documented costs incurred in tendering such defense.

- (iii) unless and until the Transit Agency assumes defense of any such Third-Party Claim, the Department shall cause the Development Entity to keep the Transit Agency reasonably informed at all times regarding such claim; and
  - (iv) the Department shall cause the Development Entity not to enter into any agreement or settlement with respect to any such claim without the prior written approval of the Transit Agency.
- (c) As among the Department, the Transit Agency and the Development Entity, the Transit Agency will be deemed the sole generator and arranger under 40 CFR, Part 262 in respect of any Hazardous Materials for which the Development Entity is not identified as the generator and arranger in accordance with Section 6.3(a) of the PPA. The Transit Agency will be identified as the sole generator and arranger of such Hazardous Materials on waste manifests and any other documentation submitted to transporters, disposal facilities and any Governmental Entity.

**IN WITNESS WHEREOF**, each of the Transit Agency and the Development Entity have caused this Acknowledgement to be executed by their respective duly authorized officers as of the date first written above.

*[Name of Transit Agency]*

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TRILLIUM TRANSPORTATION FUELS, LLC (d/b/a TRILLIUM CNG)**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## SCHEDULE 5

### CALCULATION OF HANDBACK AMOUNTS

- (1) This Schedule sets forth the methodology for calculating the Handback Reserve Amount.
- (2) The **CNG Fueling Station Facilities Handback Amount** means the aggregate amount, which shall be calculated prior to the beginning of each Handback Year and at the end of the Term, of the estimated cost (in real dollars) to improve, repair, renew or replace each CNG Fueling Station Facility so that as of the relevant Handback Date, each CNG Fueling Station Facility Project Element complies with Section 10.4, Handback Provisions, of the Technical Provisions.
- (3) The **CNG Equipment Compound Handback Amount** means the aggregate amount, which shall be calculated prior to the beginning of each Handback Year and at the end of the Term, of the estimated cost to improve, repair, renew or replace each CNG Equipment Compound so that as of the relevant Handback Date, each CNG Equipment Compound Project Element complies with Section 10.4, Handback Provisions, of the Technical Provisions.
- (4) As required by Section 8.5(b)(i) of the PPA, no later than sixty (60) days prior to the commencement of each Handback Year, the Development Entity shall deliver to the Department a report setting out its calculations of:
  - (a) the Total Handback Amount in respect of the remaining Handback Period, which shall include the Development Entity's calculations of the (i) CNG Fueling Station Facilities Handback Amount and (ii) CNG Equipment Compound Handback Amount; and
  - (b) the amount required to be reserved in the Handback Reserve Account (the **Handback Reserve Amount**) for such Handback Year, which shall be calculated as follows:
    - (i) If, as of the date of calculation, the aggregate amount of the Maximum Aggregate Payments projected to be paid to the Development Entity, during the period commencing on such date and ending upon the expiration of the Term, is less than two times the Total Handback Amount calculated on such date, then the Handback Reserve Amount shall be equal to the Total Handback Amount.
    - (ii) If, as of any date of calculation, the aggregate amount of the Maximum Aggregate Payments projected to be paid to the Development Entity, during the period commencing on such date and ending upon the expiration of the Term, is more than or equal to two times the Total Handback Amount calculated on such date, then the Handback Reserve Amount shall be equal to the percentage of the Total Handback Amount set out below for the applicable Handback Year.

<b>Handback Years</b>	<b>Handback Reserve Amount</b>
First Handback Year (i.e., the 12-month period beginning on the first Business Day of the Handback Period)	75% of the Total Handback Amount

<b>Handback Years</b>	<b>Handback Reserve Amount</b>
Second Handback Year	100% of the Total Handback Amount
Third Handback Year	120% of the Total Handback Amount

## SCHEDULE 6

### COMPENSATION ON TERMINATION

#### **1. COMPENSATION ON TERMINATION FOR CONVENIENCE, FOR DEPARTMENT DEFAULT AND TERMINATION BY COURT RULING**

1.1 On termination of this PPA pursuant to Section 24.1 (Termination for Convenience), Section 24.2 (Termination for Department Default) or Section 24.3 (Termination by Court Ruling), the Department shall pay to the Development Entity the Department Termination Sum in accordance with and subject to Section 3 of this Schedule 6, as provided in the PPA.

1.2 The Department Termination Sum shall be an amount equal to:

- (a) if the Early Termination Date occurs on or after the fifth anniversary of the date on which CNG Readiness shall have been achieved for all Project Sites, \$0; and
- (b) if the Early Termination Date occurs prior to the fifth anniversary of the date on which CNG Readiness shall have been achieved for all Project Sites, the sum of
  - (i) with respect to each Project Site that shall have achieved CNG Readiness as of the Early Termination Date:
    - (A) any Milestone Payment which is then due and payable in accordance with the PPA but which has not yet been paid to the Development Entity in respect of such Project Site, plus
    - (B) to the extent not already paid to the Development Entity, the net present value of the Maximum Infrastructure Fees in respect of such Project Site scheduled to have been paid by the Department to the Development Entity from the Early Termination Date until the fifth anniversary of the date on which CNG Readiness shall have been achieved in respect of such Project Site (determined without regard to the effect of the Department Default, termination for convenience or court ruling, as applicable), calculated using a discount rate of seven percent (7%); and
  - (ii) with respect to each Project Site which shall not have achieved CNG Readiness as of the Early Termination Date, the aggregate amount of reasonable and documented external costs and expenses actually incurred by the Development Entity in performing the D&C Work in accordance with the PPA in respect of the relevant Project Sites, together with Contract Termination Costs.

#### **2. COMPENSATION ON TERMINATION FOR DEVELOPMENT ENTITY DEFAULT**

2.1 On termination of this PPA pursuant to Section 24.5 (Termination for Development Entity Default), the Department shall pay to the Development Entity the Development Entity Termination Sum in accordance with and subject to Section 3 of this Schedule 6, as provided in the PPA.

2.2 The Development Entity Termination Sum shall be an amount equal to:

- (a) if the Early Termination Date occurs on or after the fifth anniversary of the date on which CNG Readiness shall have been achieved for all Project Sites, \$0; and
- (b) if the Early Termination Date occurs prior to the fifth anniversary of the date on which CNG Readiness shall have been achieved for all Project Sites, fifty percent (50%) of the sum of:
  - (i) with respect to each Project Site that shall have achieved CNG Readiness as of the Early Termination Date:
    - (A) any Milestone Payment which is then due and payable in accordance with the PPA but which has not yet been paid to the Development Entity in respect of such Project Site, plus
    - (B) to the extent not already paid to the Development Entity, the net present value of the Maximum Infrastructure Fees in respect of such Project Site scheduled to have been paid by the Department to the Development Entity from the Early Termination Date until the fifth anniversary of the date on which CNG Readiness shall have been achieved in respect of such Project Site (determined without regard to the effect of the Development Entity Default), calculated using a discount rate of seven percent (7%); and
  - (ii) with respect to each Project Site which shall not have achieved CNG Readiness as of the Early Termination Date, the aggregate amount of reasonable and documented external costs and expenses actually incurred by the Development Entity in performing the D&C Work in accordance with the PPA in respect of the relevant Project Sites, together with Contract Termination Costs.

### **3. MISCELLANEOUS COMPENSATION PROVISIONS**

#### **3.1 Timing of Payment of Department Termination Sum**

Any Termination Sum shall be due and payable by the Department forty (40) Business Days after such amount is finally agreed or determined.

#### **3.2 Transfer of Key Assets**

As a condition precedent to the payment of any Termination Sum, the Department may require the Development Entity to transfer its rights, title and interest in and to the Key Assets to the Department.

#### **3.3 Exclusivity of Remedy**

Any Termination Sum irrevocably paid by the Department to the Development Entity shall be in full and final settlement of each Party's rights and claims against the other for breaches and/or termination of this PPA or any other Project Document whether under contract, tort, restitution or otherwise, but without prejudice to:

- (a) any antecedent liability of either Party to the other that arose prior to the Early Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in the calculation of the Termination Sum; and
- (b) any liabilities arising in respect of any breach by either Party after the Early Termination Date of any obligation under this PPA that survives the Early Termination Date, to the extent not taken into account in the calculation of any Termination Sum.

### 3.4 **Contract Termination Costs**

For purposes of this Schedule 6 (Compensation on Termination), the term "Contract Termination Costs" means the net costs that have been or will be incurred by the Development Entity as a direct result of termination of this PPA arising from termination of Contracts for D&C Work, including reasonable and documented out of pocket and demobilization costs, but only to the extent (i) such costs are incurred in connection with the Project and relate to the provision of services or the completion of D&C Work required to be provided by the Development Entity, (ii) such costs are incurred under arrangements and/or agreements that are consistent with the terms of the Project Documents, have been entered into in the ordinary course of business, and in the case of Contracts with Affiliates, are on commercially reasonable terms, and (iii) each of the Development Entity and the relevant Contractor has used commercially reasonable efforts to mitigate such costs, excluding in all cases any Indirect Losses of any Person.

## SCHEDULE 7

### NONCOMPLIANCE POINTS TABLE

ELEMENT CATEGORY, DESCRIPTION, AND MINIMUM PERFORMANCE REQUIREMENT					POINTS	CURE PERIOD AND INTERVAL OF RECURRENCE	
Element	General Requirement	Reference	Performance Requirement ID	Minimum Performance Requirement	Noncompliance Points per Occurrence	Cure Period	Interval of Recurrence
Category or requirement category							
<b>1. Fuel Quality at Nozzle</b>							
Moisture Content and Methane Number	Reporting	Technical Provisions 5.1.27	1	The reporting requirements shall be in accordance with TPs Article 5.1.27.	6	24 hrs	24 hrs
Particulate, Foreign Material and Oil Content	Maintenance	Technical Provisions 5.1.28	2	The maintenance requirements shall be in accordance with TPs Article 5.1.28.	10	24 hrs	24 hrs
Fill Time	Fill time	Technical Provisions 10.3.1.B	3	Fueling facilities are capable of performing as set forth in TPs Article 10.3.1.B.	4	48 hrs	24 hrs
Fuel Dispenser System Calibration	Recalibrated annually	Technical Provisions 2.4.3.H	4	Comply with Development Entity's approved PMP requirements as described in TPs Article 2.4.3.H.	4 per non-calibrated dispenser	7 days	7 days
<b>2. Administration</b>							
Key Personnel	Provide Key Personnel	PPA 9.2 and Technical Provisions 2.3.1	5	Comply with Section 9.2 of the PPA and Article 2.3.1 of the TPs.	10	7 days	7 days
Sales (volume) Reporting for Transit Agency sites and for Third Party Customer Sites	PennDOT shall have 24/7 access to FMT data	Technical Provisions 10.1	6	FMT data available on a 24/7 basis, updated no less frequently than once per day.	4	24 hrs	24 hrs
Reporting Requirements	Reports required by the PPA and TPs	Technical Provisions 2.3.4(f)	7	A failure to comply with Development Entity's approved PMP requirements as described in TPs Article 2.4.3(f), except for	4	24 hrs	24 hrs

ELEMENT CATEGORY, DESCRIPTION, AND MINIMUM PERFORMANCE REQUIREMENT					POINTS	CURE PERIOD AND INTERVAL OF RECURRENCE	
Element	General Requirement	Reference	Performance Requirement ID	Minimum Performance Requirement		Noncompliance Points per Occurrence	Cure Period
Category or requirement category							
				Sales (volume) as specified in Item #6 above.			
Emergency response	Respond to safety-related emergencies	Technical Provisions 8.3	8	Contact first responders within 15 minutes of emergency occurrence.	10	15 min	15 min
Annual Training, CNG Fueling Facilities and New-Employee training	Conduct annual training as required	Technical Provisions 2.7 and 8.4	9	Comply with Sections 2.7 and 8.4 of the Technical Provisions.	6	7 days	7 days
<b>3. Maintenance and Repair</b>							
Maintain and Repair CNG Fueling Stations	Maintain CNG Fueling Facilities in good repair and operating condition	Technical Provisions 2.4.3.C	10	Comply with Development Entity's approved PMP requirements as described in TPs Article 2.4.3C.	4	14 days	7 days
Security Equipment	Maintain in good working condition	Technical Provisions 5.1.26	11	Provide 24/7 coverage.	6	48 hrs	24 hrs
Equipment Sound Emissions	Minimize sound impact	Technical Provisions 4.8	12	Conform with the Technical Provisions Section 4.8.	6	7 days	7 days
<b>4. Other</b>							
Unauthorized closure of Maintenance or Storage Facilities during Modifications	Do not shut down outside permitted times	Technical Provisions 4.10.4	13	Facilities will remain in operations consistent with Section 4.10.4 of the Technical Provisions.	10	1 hr	1 hr
Equipment & Property Damage	Pursue insurance claim unless otherwise directed by PennDOT	PPA Schedule 9	14	Comply with insurance claim/filing requirement.	4	48 hrs	24 hrs

## SCHEDULE 8

### PAYMENT MECHANISM

#### 1. PAYMENT

##### 1.1 Milestone Payments

- (a) A Milestone Payments shall be payable upon the achievement of CNG Readiness at each Project Site.
- (b) The amount of the Milestone Payment in respect of each Project Site shall be equal to the amount set forth in respect of such Project Site in Table 1 below.

<i>Project Site</i>	<i>Milestone Payment</i>	<i>Project Site</i>	<i>Milestone Payment</i>
CATA	\$2,079,882	LCTA	\$2,521,680
EMTA	\$2,723,877	MCTA	\$1,112,212
YATA –York	\$3,120,605	CRATA	\$1,478,419
YATA – Gettysburg	\$1,403,933	COLT/LT	\$1,781,158
CAMTRAN – Johnstown	\$2,598,905	STS	\$1,213,098
CAMTRAN - Ebensburg	\$1,537,890	ATA – Bradford	\$1,364,197
INDIGO	\$1,883,472	ATA – Johnsonburg	\$1,095,483
MMVTA	\$1,878,930	BTA	\$2,279,529
LANTa – Allentown	\$2,674,140	MCRCOG	\$1,601,012
LANTa – Easton	\$1,488,489	FACT	\$1,629,846
WCTA	\$2,501,609	DuFast	\$1,456,285
COLTS	\$3,068,060	TAWC	\$1,917,956
NCATA	\$2,440,327	CAT	\$2,191,393
AMTRAN	\$1,972,909	PAAC	\$3,950,978
BCTA	\$2,178,312	<b>AGGREGATE</b>	\$59,114,585

## 1.2 Monthly Payments After CNG Readiness

(a) Monthly Payments for any Month ( $m$ ) in a Calendar Year ( $y$ ) during the Term shall be calculated using the following formula:

(b)  $MP_{my} = IF_{my} + CF_{my} - MMPD_{m-1} - MRF_{m-1} - MLA_{m-1} - MEA_{m-1} - NGC_{m-1}$

(c) Where:

- (a) IF = the Infrastructure Fee for Month (M) in a Calendar Year (Y) calculated as set forth in Section 1.2.1 below;
- (b) CF = the Compression Fee for Month (M) in a Calendar Year (Y) calculated as set forth in Section 1.2.2 below;
- (c)  $MMPD_{m-1}$  = the Monthly Maintenance Payment Deduction for Month (m-1) calculated in accordance with Section 2.1 (Payment Deductions) of this Schedule 8 (Payment Mechanism);
- (d)  $MRF_{m-1}$  = the Monthly Royalty Fee for Month (m-1) calculated in accordance with Section 2.1 (Payment Deductions) of this Schedule 8 (Payment Mechanism);
- (e)  $MLA_{m-1}$  = the Monthly Liquidated Damages Amount for Month (m-1) calculated in accordance with Section 2.1 (Payment Deductions) of this Schedule 8 (Payment Mechanism);
- (f)  $MEA_{m-1}$  = the Monthly Energy Adjustment for Month (m-1) calculated in accordance with Section 2.1 (Payment Deductions) of this Schedule 8 (Payment Mechanism); and
- (g)  $NGC_{m-1}$  = the cost of natural gas supplied to any CNG Fueling Station Facilities for Month (m-1) to enable the Development Entity to conduct Commercial Sales in accordance with Section 16.2 (Supply for Commercial Sales) of the PPA, calculated in accordance with Section 2.1 (Payment Deductions) of this Schedule 8 (Payment Mechanism);

**provided**, that to the extent the sum of the Monthly Maintenance Payment Deduction, Monthly Royalty Fee, Monthly Liquidated Damages Amount Monthly Energy Adjustment and the cost of natural gas supplied to CNG Fueling Station Facilities to enable the Development Entity to conduct Commercial Sales in accordance with Section 16.2 (Supply for Commercial Sales) of the PPA, in each case for Month (m-1), exceeds the aggregate value of CF and IF for Month (m), such excess shall be added to the calculation of MMPD, MRF, MLA, MEA and NGC in respect of the succeeding Month.

### 1.2.1 Infrastructure Fee

The Infrastructure Fee (IF) for any Month (m) in a Calendar Year (y) during the Term shall be calculated using the following formula:

$$IF_{m,y} = \sum_1^x (MIF_{m,y})$$

Where, in respect of each Project Site (x):

$MIF_{m,y}$  = the Maximum Infrastructure Fee for Month (m) in Calendar Year (y) in respect of each Project Site which shall have achieved CNG Readiness calculated as:

$$MIF_{m,y} = \left( \frac{d_{m,y}}{d_y} \right) \times MIF_y$$

where:

- (A)  $d_{m,y}$  = the number of days in Month (m) in Calendar Year (y) from the start of Month (m) (or the date on which CNG Readiness in respect of such Project Site occurs, if later than the first day of such Month (m)) to the end of Month (m) (or the Termination Date if earlier);
- (B)  $d_y$  = the number of days in Calendar Year (y) from the start of Calendar Year (y) (or the date on which CNG Readiness in respect of such Project Site occurs, if later than the first day of such Calendar Year (y)) to the end of Calendar Year (y) (or the Termination Date, if earlier); and
- (C)  $MIF_y$  = the Maximum Infrastructure Fee for any Calendar Year (y) in respect of such Project Site (x) as set forth in the table below (including, in respect of any Project Site which shall have achieved Site Completion, the applicable increase in the Maximum Infrastructure Fee in respect of such Project Site set forth in the table below):

*[table begins on following page]*

*Maximum Infrastructure Fee*

Project Site	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036
CATA	\$199,283	\$199,283	\$199,283	\$199,283	\$199,283	\$248	\$253	\$258	\$263	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,373	\$45,210
EMTA		\$237,391	\$260,987	\$260,987	\$260,987	\$260,987	\$23,596	\$1,030	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,689	\$45,210
YATA –York	\$299,000	\$299,000	\$299,000	\$299,000	\$299,000	\$990	\$1,010	\$1,030	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,480	\$45,210
YATA – Gettysburg	\$32,800	\$134,517	\$134,517	\$134,517	\$134,517	\$101,717	\$1,010	\$1,030	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,689	\$45,210
CAMTRAN – Johnstown	\$249,013	\$249,013	\$249,013	\$249,013	\$249,013	\$990	\$1,010	\$1,030	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,480	\$45,210
CAMTRAN – Ebensburg	\$122,121	\$147,352	\$147,352	\$147,352	\$147,352	\$25,232	\$1,010	\$1,030	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,689	\$45,210
INDIGO	\$149,563	\$180,464	\$180,464	\$180,464	\$180,464	\$30,901	\$1,010	\$1,030	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,689	\$45,210
MMVTA	\$170,015	\$186,353	\$186,353	\$186,353	\$186,353	\$16,338	\$1,010	\$1,030	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,689	\$45,210
LANTa – Allentown	\$169,527	\$256,222	\$256,222	\$256,222	\$256,222	\$86,694	\$1,010	\$1,030	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,689	\$45,210
LANTa – Easton	\$46,693	\$142,619	\$142,619	\$142,619	\$142,619	\$95,926	\$1,010	\$1,030	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,689	\$45,210
WCTA	\$158,590	\$239,691	\$239,691	\$239,691	\$239,691	\$81,101	\$1,010	\$1,030	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,689	\$45,210
COLTS	\$158,590	\$239,691	\$239,691	\$239,691	\$239,691	\$81,101	\$1,010	\$1,030	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,689	\$45,210
NCATA	\$154,705	\$233,819	\$233,819	\$233,819	\$233,819	\$79,114	\$1,010	\$1,030	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,689	\$45,210
AMTRAN	\$125,073	\$189,034	\$189,034	\$189,034	\$189,034	\$63,961	\$1,010	\$1,030	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,689	\$45,210
BCTA	\$103,213	\$208,714	\$208,714	\$208,714	\$208,714	\$105,501	\$1,010	\$1,030	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,689	\$45,210
LCTA	\$38,724	\$241,614	\$241,614	\$241,614	\$241,614	\$202,889	\$1,010	\$1,030	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,689	\$45,210
MCTA			\$78,830	\$106,566	\$106,566	\$106,566	\$106,566	\$27,736	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,689	\$45,210
CRATA	\$22,703	\$141,654	\$141,654	\$141,654	\$141,654	\$118,951	\$1,010	\$1,030	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,689	\$45,210
COLT/LT		\$126,710	\$170,661	\$170,661	\$170,661	\$170,661	\$43,951	\$1,030	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,689	\$45,210
STS		\$86,299	\$116,232	\$116,232	\$116,232	\$116,232	\$29,934	\$1,030	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,689	\$45,210
ATA – Bradford			\$96,690	\$130,710	\$130,710	\$130,710	\$130,710	\$34,020	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,689	\$45,210
ATA – Johnsonburg			\$77,644	\$104,963	\$104,963	\$104,963	\$104,963	\$27,319	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,689	\$45,210
BTA			\$177,507	\$239,963	\$239,963	\$239,963	\$239,963	\$62,456	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,689	\$45,210
MCRCOG			\$113,474	\$153,400	\$153,400	\$153,400	\$153,400	\$39,926	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,689	\$45,210
FACT			\$115,518	\$156,163	\$156,163	\$156,163	\$156,163	\$40,645	\$1,051	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,689	\$45,210
DuFast				\$103,216	\$139,533	\$139,533	\$139,533	\$139,533	\$36,317	\$18,203	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$30,878	\$39,974	\$40,689	\$45,210
TAWC					\$135,435	\$183,768	\$183,768	\$183,768	\$183,768	\$48,334	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$7,720	\$9,197	\$9,381	\$10,424
CAT					\$135,435	\$183,768	\$183,768	\$183,768	\$183,768	\$48,334	\$13,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$7,720	\$9,197	\$9,381	\$10,424
PAAC					\$247,361	\$378,561	\$378,561	\$378,561	\$378,561	\$131,200	\$133,591	\$20,171	\$18,936	\$26,301	\$24,690	\$32,892	\$10,878	\$19,974	\$20,689	\$22,987



### 1.2.2 Compression Fees

The Compression Fee (CF) for any Month (m) in a Calendar Year (y) during the Term shall be calculated using the following formula:

$$CF_{m,y} = \sum_1^x (V_{m,y} \times F_{y})$$

Where, in respect of each Project Site (x):

- (a)  $V_{m,y}$  = the actual volume of natural gas compressed for Transit Agency Vehicles by the CNG Equipment Compound located at such Project Site for Month (m-1) in Calendar Year (y); and
- (b)  $F_y$  = \$0.35 (subject to Indexation in accordance with Section 2.2 of this Schedule 8 (Payment Mechanism)):

## 2. PAYMENT ADJUSTMENTS

### 2.1 Payment Deductions

- (a)  $MMPD_{m,y}$  = the Monthly Maintenance Payment Deduction (MMPD) for any Month (m) in Calendar Year (y) during the Term shall be calculated as follows:

$$MMPD_{m,y} = \sum_1^x (NCPV \times NCP_m)$$

where:

- (i)  $NCPV$  = the unit value of \$25 for each Noncompliance Point accrued during Month (m), subject to indexation in accordance with Section 2.2 (Indexation) of this Schedule 8 (Payment Mechanism); and
  - (ii)  $NCP_m$  = the aggregate number of Noncompliance Points accrued in Month (m) in accordance with Article 11 (Noncompliance Events) and Schedule 7 (Noncompliance Points Table).
- (b)  $MRF_{m-1}$  = Monthly Royalty Fee for Month (m – 1), calculated as the greater of (a) the Guaranteed Commercial Sales Volume multiplied by (i) "RF" as set forth below and (ii) the weighted average price per GGE during the Month (m-1) at all Project Sites at which the Development Entity is undertaking CNG Commercialization Activities, exclusive of federal, state and local fuel and sales taxes; **provided**, that the Development Entity shall be responsible for reporting the weighted average price per GGE exclusive of such taxes to the Department; and (b) an amount calculated in accordance with the following formula:

$$MRF_{m-1} = RF \times DGEP_{m-1} \times AVS_{m-1}$$

Where:

- (i) RF = the percentage of the price per GGE set forth below:  
15.00%
- (ii)  $DGEP_{m-1}$  = the weighted average of the price per GGE of CNG charged during Commercial Sales at the applicable Project Site for Month (m-1), exclusive of federal, state and local fuel and sales taxes; **provided**, that the Development Entity shall be responsible for reporting the weighted average price per GGE exclusive of such taxes to the Department; and
- (iii)  $AVS_{m-1}$  = the actual volume of Commercial Sales at the applicable Project Site for Month (m-1); and
- (c)  $MLA_{m-1}$  = the Monthly Liquidated Damages Amount, calculated as the cumulative amount of all costs and expenses due and payable by the Development Entity to the Department pursuant to Section 7.9 (Late Completion Costs), together with all liquidated damages due and payable by the Development Entity to the Department pursuant to Section 11.4 (Liquidated Damages), in each case as of the end of Month (m-1).
- (d)  $MEA_{m-1}$  = the Monthly Energy Adjustment for Month (m-1) is equal to the greater of zero and the amount calculated in accordance with the following formula:

$$MEA_{m-1} = [EPCT_{m-1}] - [TA\$_{m-1}]$$

Where:

- (i)  $EPCT_{m-1}$  = the portion of Transit Agency's monthly energy invoice allocated to applicable CNG Fueling Station Facilities calculated in accordance with the following formula:

$$EPCT_{m-1} = [TAP_{m-1}] X ([KwHC_{m-1}]/[KwHT_{m-1}])$$

- (ii)  $TAP_{m-1}$  = the actual amount paid by the applicable Transit Agency in respect of energy costs, including both per kwh and fixed costs, at the applicable Project Site (including Transit Agency operations and all CNG operations) for Month (m-1) as evidenced by an electrical providers invoice;
- (iii)  $KwHT_{m-1}$  = total kwh consumed by applicable Transit Agency for Month (m-1) as evidenced by an electrical providers invoice;
- (iv)  $KwHC_{m-1}$  = total kwh consumed by the applicable CNG Fueling Station Facility for Month (m-1) pursuant to Section 5.1.29 of the Technical Provisions;
- (v)  $TA\$_{m-1}$  = the amount that would have been paid by the applicable Transit Agency in respect of energy costs, including both per kwh and fixed costs, at the applicable Project Site for Month (m-1) in respect of the fueling of Transit Agency Vehicles if the CNG Fueling Station Facilities consumed the volume of energy per GGE guaranteed by the Development Entity, calculated as follows:

$$TA\$_{m-1} = ([GEG_{m-1}]/[KwHC_{m-1}]) \times EPCT_{m-1}$$

- (vi)  $GEG_{m-1}$  = the total kwh that would have been consumed by the applicable CNG Fueling Station Facility for Month (m-1) to fuel Transit Agency Vehicles if the CNG Fueling Station Facilities had consumed the volume of energy per GGE guaranteed by the Development Entity, calculated as follows:

$$GEG_{m-1} = [GEV_{m-1}] \times [VTS_{m-1}]$$

- (vii)  $VTS_{m-1}$  = the actual volume of CNG dispensed to Transit Agency Vehicles at the applicable Project Site for Month (m-1);
- (viii)  $GEV_{m-1}$  = the guaranteed energy consumption per GGE in respect of the applicable Project Site for each Month (m-1) in each Calendar Year set forth in the table below:

*[table begins on following page]*

**Energy Consumption Target (kW/GGE)**

Project Site	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036
CATA	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14
EMTA			1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25
YATA – York	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07
YATA – Gettysburg		1.21	1.21	1.21	1.21	1.21	1.21	1.21	1.21	1.21	1.21	1.21	1.21	1.21	1.21	1.21	1.21	1.21	1.21	1.21	1.21
CAMTRAN – Johnstown	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07
CAMTRAN – Ebensburg		1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34
INDIGO		1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26
MMVTA		0.81	0.81	0.81	0.81	0.81	0.81	0.81	0.81	0.81	0.81	0.81	0.81	0.81	0.81	0.81	0.81	0.81	0.81	0.81	0.81
LANTa – Allentown		1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34
LANTa – Easton		1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34
WCTA		0.93	0.93	0.93	0.93	0.93	0.93	0.93	0.93	0.93	0.93	0.93	0.93	0.93	0.93	0.93	0.93	0.93	0.93	0.93	0.93
COLTS		1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26	1.26
NCATA		0.83	0.83	0.83	0.83	0.83	0.83	0.83	0.83	0.83	0.83	0.83	0.83	0.83	0.83	0.83	0.83	0.83	0.83	0.83	0.83
AMTRAN		1.11	1.11	1.11	1.11	1.11	1.11	1.11	1.11	1.11	1.11	1.11	1.11	1.11	1.11	1.11	1.11	1.11	1.11	1.11	1.11
BCTA		1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07
LCTA		1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34
MCTA				1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14
CRATA		1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14
COLT/LT			1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34
STS			1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14
ATA – Bradford				1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14
ATA –				1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14

***Energy Consumption Target (kW/GGE)***

Project Site	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036
Johnsonburg																					
BTA				1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07	1.07
MCRCOG				1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14
FACT				0.96	0.96	0.96	0.96	0.96	0.96	0.96	0.96	0.96	0.96	0.96	0.96	0.96	0.96	0.96	0.96	0.96	0.96
DuFast					1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14	1.14
TAWC						1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25
CAT						1.02	1.02	1.02	1.02	1.02	1.02	1.02	1.02	1.02	1.02	1.02	1.02	1.02	1.02	1.02	1.02
PAAC						0.99	0.99	0.99	0.99	0.99	0.99	0.99	0.99	0.99	0.99	0.99	0.99	0.99	0.99	0.99	0.99

- (e)  $NGC_{m-1}$  = the cost of natural gas supplied to any CNG Fueling Station Facilities for Month (m-1) to enable the Development Entity to conduct Commercial Sales in accordance with Section 16.2 (Supply for Commercial Sales) of the PPA, calculated in accordance with the following formula:

$$NGC_{m-1} = [NGCT_{m-1}] X [PCF_{m-1}]$$

Where:

- (i)  $NGCT_{m-1}$  = the portion of Transit Agency's monthly natural gas invoice allocated to the applicable CNG Fueling Station Facilities calculated in accordance with the following formula:

$$NGCT_{m-1} = [TAGP_{m-1}] X ([VF_{m-1}]/[VT_{m-1}])$$

- (ii)  $TAGP_{m-1}$  = the actual amount paid by the applicable Transit Agency in respect of natural gas consumed by the applicable Project Site for Month (m-1), as evidenced by the natural gas provider's invoice;
- (iii)  $VT_{m-1}$  = the total volume of natural gas consumed by the applicable Project Site for Month (m-1), as evidenced by the natural gas supplier's invoice;
- (iv)  $VF_{m-1}$  = the volume of natural gas consumed by the applicable CNG Fueling Station Facilities for Month (m-1), as evidenced by the natural gas supplier's invoice or installed meter or sub-meter;
- (v)  $PCF_{m-1}$  = the portion of the natural gas consumed by the applicable CNG Fueling Station Facilities allocated to Commercial Sales, calculated in accordance with the following formula:

$$PCF_{m-1} = VCF_{m-1} / VF_{m-1}$$

- (vi)  $VCF_{m-1}$  = the volume of natural gas notified by the Development Entity to the Department in respect of Month (m-1) to enable the Development Entity to conduct Commercial Sales pursuant to Section 16.2 (Supply for Commercial Sales).

## 2.2 Indexation

- (a) On each Indexation Review Date, each Indexable Element shall be adjusted by applying to it the Indexation Formula set forth in Section 2.2(c) below; **provided**, that the Indexable Elements shall not be adjusted in the event that the value of CPI as of the relevant Indexation Review Date is less than the value of CPI as of the Indexation Base Date.
- (b) On each occasion that an Indexable Element is to be adjusted in accordance with this Section 2.2(b), the Indexation Formula shall be applied to the Indexable Element applicable immediately before the relevant Indexation Review Date.
- (c) For the purposes of calculating indexation pursuant to Section 2.2(a), the following definitions apply:

- (a) **Indexation Formula** means  $IE_m = IE_{base} \times \left(\frac{b}{a}\right)$ ;
- (b) **IE<sub>m</sub>** means the Indexable Element applicable on or immediately after the relevant Indexation Review Date;
- (c) **IE<sub>base</sub>** means the Indexable Element applicable as of the Indexation Base Date;
- (d) **a** means the value of CPI as of the Indexation Base Date; and
- (e) **b** means the value of CPI as of the relevant Indexation Review Date.

## **SCHEDULE 9**

### **INSURANCE COVERAGE REQUIREMENTS**

#### **1. GENERAL INSURANCE REQUIREMENTS**

##### **1.1 Insurers**

All insurance required hereunder shall be procured from insurers that at the time coverage commences have a current financial strength and financial size category rating of not less than "A-/VIII" according to A.M. Best's Insurance Reports Key Rating Guide (or an equivalent rating issued by Standard and Poor's), except as approved in writing by the Department in its reasonable discretion. All Insurance Policies shall be issued by insurers authorized to do business in the Commonwealth.

##### **1.2 Deductibles and Self-Insured Retentions**

Except to the extent expressly provided otherwise in the Project Documents, the Development Entity or its Contractor, as the case may be, shall be responsible for paying all insurance deductibles and self-insurance retentions and neither the Department nor any Transit Agency shall have any liability for deductibles, self-insured retentions and/or claim amounts in excess of the required coverage.

##### **1.3 Primary Coverage**

Each insurance policy, except workers compensation and professional liability, required herein shall provide that the coverage thereof is primary and noncontributory with respect to all named and additional insureds and/or loss payees as their interests may appear, except for coverage that by its nature cannot be written as primary. Any insurance or self-insurance beyond that specified in this PPA that is maintained by an insured or any such additional insured shall be excess of such insurance and shall not contribute with it.

##### **1.4 Verification of Coverage**

- (a) At each time the Development Entity is required to initially obtain or cause to be obtained each Insurance Policy, and thereafter not less than five (5) Business Days prior to the expiration date of each Insurance Policy, the Development Entity shall deliver to the Department a written certificate(s) of insurance. The certificate of insurance shall be on the most recent ACORD form consistent with the required coverage. Each certificate must be in standard form, state the identity of all insurers, named insureds and additional insureds, state the type and limits of coverage, include as attachments all additional insured endorsements, and be signed by an authorized representative of the insurance company shown on the binder, including its licensed agent or broker.
- (b) In addition, as soon as they become available, but not to exceed 90 days from the effectiveness of each Insurance Policy, the Development Entity shall, if requested by the Department, deliver to the Department (A) a true and complete certified copy of each such Insurance Policy or modification, or renewal or replacement Insurance Policy and all endorsements thereto either electronically or by hard copy and (B) evidence of

payment of any premium then due that is satisfactory to the Department (acting reasonably).

- (c) If the Development Entity has not provided the Department with the foregoing proof of coverage via certificate of insurance and payment within ten (10) days after receipt of written request therefor, or otherwise fails or refuses to obtain or maintain in force the insurance required by this Schedule 9 (Insurance Coverage Requirements), the Department may, upon three (3) Business Days' written notice to the Development Entity, in addition to any other available remedy, without obligation and without further inquiry as to whether such insurance is actually in force, obtain such an Insurance Policy; and the Development Entity shall reimburse the Department for the cost thereof upon demand. In addition, the Department shall have the right, without obligation or liability, to suspend all or any portion of Work during any time that such proofs of coverage, in compliance with this Schedule 9 (Insurance Coverage Requirements), have not been provided as required herein.

### **1.5 Contractor Insurance Requirements**

The Development Entity shall cause each Contractor to obtain (prior to commencing any Work) and maintain all insurance that is required by this Schedule 9 (Insurance Coverage Requirements), to the extent that such Contractor is not covered by the Development Entity-provided liability insurance. The Development Entity shall cause each such Contractor to include the additional insureds specified in the applicable insurance policies as required under this Schedule 9 (Insurance Coverage Requirements). The Development Entity shall cause each such Contractor to require that its insurer agree to waive any subrogation rights the insurers may have against such additional insureds. If requested by the Department, the Development Entity shall promptly provide certificates of insurance evidencing coverage for each Contractor.

### **1.6 Endorsements and Waivers**

All Insurance Policies the Development Entity is required to provide hereunder shall contain or be endorsed to comply with all requirements specified in the Project Documents, as well as the following provisions; **provided**, that for the workers' compensation and professional liability policies, only Section 1.6(c) and 1.6(f) below shall be applicable:

- (a) any failure on the part of a named insured to comply with reporting provisions or other conditions of the policies, any breach of warranty, any action or inaction of a named insured or others, or any change in ownership of all or any portion of the Project or the Development Entity's Interest shall not affect coverage provided to the other named insureds or additional insureds (and their respective members, directors, officers, employees, agents and Project consultants);
- (b) the commercial general liability insurance and excess liability insurance shall apply separately to each named insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability;
- (c) each policy shall be endorsed to state that coverage cannot be canceled or reduced in coverage or in limits (except with respect to payments under the policy which by their nature erode or deplete the limits of such policy) except after thirty (30) days' (or for non-payment of premium, ten (10) days') prior written notice by registered or certified

mail, return receipt requested, has been given to the Department. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice;

- (d) endorsements adding additional insureds to required policies for both on-going operations and completed operations shall be ISO endorsement CG 20 10 11 85 or equivalent, or in the alternative CG 20 33 10 01 and GC 20 37 04 13 or their equivalent (to ensure coverage for both operations and completed operations), shall contain no additional limitations, conditions, restrictions or exceptions to coverage beyond those that apply under the policy generally, and the interests and protections of each additional insured shall not be affected by any misrepresentation, act or omission of a named insured or any breach by a named insured of any provision in the policy which would otherwise result in forfeiture or reduction of coverage;
- (e) the liability policy(ies) must contain, and the certificates of insurance must evidence, the following endorsement for the liability coverages required by this Schedule 9 (Insurance Coverage Requirements):

*"The insurer(s) shall not, without obtaining the express advance written permission from the Office of Chief Counsel of the Pennsylvania Department of Transportation (the Department), raise any defense involving in any way the jurisdiction of a Tribunal over the person of the Department, the immunity of the Department, its officers, agents or employees, the governmental nature of the Department, or the provisions of any statutes respecting suits against the Department.";*

- (f) the Department, and each appropriate Transit Agency, shall be named as an additional insured on the Commercial General Liability, Business Automobile Liability, Umbrella/Excess and Pollution Liability policies of the Development Entity and any Contractors. In addition, the Department shall be named as an "alternate employer" on the Workers' Compensation and Employer's Liability insurance policy;
- (g) unless specified otherwise in this Schedule 9 (Insurance Coverage Requirements), each policy shall provide coverage on an "occurrence" basis and not a "claims made" basis.

## **1.7 Waivers of Subrogation**

The Department and the Development Entity waive all rights against each other, against each of their agents, employees and Project consultants, against each Transit Agency and against Contractors and their respective members, directors, officers, employees, subcontractors, consultants and agents for any claims to the extent covered and paid by insurance, except such rights as they may have to the proceeds of such insurance; *provided*, that the Development Entity shall have the right, but not the obligation, to waive its rights of subrogation against the Development Entity's own Contractors and their respective members, directors, officers, employees, subcontractors, consultants and agents. The Development Entity shall require all Contractors to provide similar waivers in writing each in favor of all other parties specified above. Each policy for which the Development Entity is required to provide coverage for the additional insureds shall include a waiver of any right of subrogation against the additional insureds (and their respective members, directors, officers, employees, agents and Project consultants).

## **1.8 No Recourse**

Except as expressly stated otherwise in the Project Documents, there shall be no recourse against the Department or any Transit Agency for payment of premiums or other amounts with respect to the insurance the Development Entity is required to provide hereunder.

## **1.9 Support of Indemnifications**

The insurance coverage the Development Entity is required to provide hereunder shall support but is not intended to limit the Development Entity's indemnification obligations otherwise set out under the Project Documents.

## **1.10 Alternative Insurance Terms**

There is no provision for alternate or other replacement insurance that provides less coverage than that provided in accordance with the provisions herein and in Schedule 9 (Insurance Coverage Requirements), unless the Development Entity demonstrates to the Department's reasonable satisfaction that the required insurances are no longer available in the worldwide insurance market with reputable insurers of good standing at a cost which contractors in North America are (at such time) generally prepared to pay. If there is such unavailability, the Development Entity may, with the Department's prior written consent and at the Development Entity's sole cost and expense, procure and maintain alternative or replacement insurance with differing terms and conditions that would fully or partially address the Development Entity's exposures.

## **1.11 Defense Costs**

Unless otherwise agreed to in writing by the Department in its reasonable discretion, no defense costs shall be included within or erode the limits of coverage of any of the Insurance Policies, except that defense costs may be included within the limits of coverage of professional liability, contractor's pollution and environmental impairment liability policies.

## **1.12 Contesting Denial of Coverage**

If any insurer under an Insurance Policy described in this Schedule 9 (Insurance Coverage Requirements) denies coverage with respect to any claims reported to such insurer, the Development Entity and the Department shall cooperate in good faith to establish whether and to what extent to contest, and how to fund the cost of contesting, the denial of coverage; **provided**, that if the reported claim is a matter covered by an indemnity in favor of the Department or the denial is the result of the Development Entity's failure to comply with an insurance requirement, then the Development Entity shall bear all costs of contesting the denial of coverage.

## **1.13 Prosecution of Claims**

- (a) Unless otherwise directed by the Department in writing with respect to the Department's insurance claims, the Development Entity shall be responsible for reporting and processing all potential claims by the Department, any Transit Agency or the Development Entity against the Insurance Policies required to be provided by the Development Entity hereunder. The Development Entity agrees to report timely to the insurer(s) under such policies any and all matters which may give rise to an insurance claim by the Development Entity, any Transit Agency or the Department and to promptly and diligently pursue such insurance claims in accordance with the claims procedures

specified in such policies, whether for defense or indemnity or both. The Development Entity shall enforce all legal rights against the insurer under the applicable Insurance Policies and Applicable Laws in order to collect thereon, including pursuing necessary litigation and enforcement of judgments; **provided**, that the Development Entity shall be deemed to have satisfied this obligation if a judgment is not collectible through the exercise of lawful and diligent means or, in relation to the pursuit of litigation, if there is no reasonable likelihood of success for the litigation. The Development Entity and their insurer(s) shall not, without obtaining the advance written consent from the General Counsel of the Department, raise any defense involving in any way the jurisdiction of a Tribunal over the person of Department, the immunity of Department, its Commissioners, Directors, officers, agents or employees, the governmental nature of Department, or the provisions of any statutes respecting suits against Department.

- (b) The Department agrees to, and each Transit Agency will, promptly notify the Development Entity of the Department's or such Transit Agency's incidents, potential claims, and matters which may give rise to a Department or Transit Agency insurance claim, to tender to the insurer the Department's or the applicable Transit Agency's defense of the claim under such Insurance Policies, and to cooperate with the Development Entity as necessary for the Development Entity to fulfill its duties hereunder.
- (c) If in any instance the Development Entity has not performed its obligations respecting insurance coverage set out in the PPA or this Schedule 9 (Insurance Coverage Requirements) or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the Insurance Policies or to prosecute claims diligently, then for purposes of determining the Development Entity's liability and the limits thereon or determining reductions in compensation due from the Department to the Development Entity on account of available insurance, the Development Entity shall be treated as if it has elected to self-insure up to the full amount of insurance coverage which would have been available had the Development Entity performed such obligations. Nothing in this Schedule 9 (Insurance Coverage Requirements) shall be construed to treat the Development Entity as electing to self-insure where the Development Entity is unable to collect due to the bankruptcy or insolvency of any insurer which at the time the Insurance Policy is written meets the rating qualifications set out in Section 1(a) (Insurers) of this Schedule 9 (Insurance Coverage Requirements).
- (d) In the event that an insurer providing any of the Insurance Policies required by this Schedule 9 (Insurance Coverage Requirements) becomes the subject of bankruptcy proceedings, becomes insolvent, or is the subject of an order or directive limiting its business activities given by any Governmental Entity, the Development Entity shall exercise best efforts to promptly and at its own cost and expense secure alternative coverage in compliance with the insurance requirements contained in this Schedule 9 (Insurance Coverage Requirements) so as to avoid any lapse in insurance coverage.
- (e) If in any instance the Development Entity has not promptly performed its obligation to report to applicable insurers and process any potential insurance claim tendered by the Department or any Transit Agency, then the Department or the applicable Transit Agency may, but is not obligated to, report the claim directly to the insurer and thereafter process the claim.

## **1.14 Notices**

The Development Entity shall provide the Department and each applicable Transit Agency with the following written notices:

- (a) within thirty (30) days of the occurrence thereof, any claim made by the Development Entity or any other party under any insurance obtained in connection with the Project or any other party under any insurance obtained or maintained by the Development Entity in connection with the Project; and
- (b) the expiration of any Insurance Policy at least ten (10) days (if due to non-payment of premium) or thirty (30) days (if by its terms or otherwise) prior to such expiration, including notification of the date of such expiration.

## **1.15 Compliance with Insurance Policies**

The Development Entity shall:

- (a) comply with the terms, conditions and requirements of all Insurance Policies; and
- (b) not do or omit to do anything, or permit (insofar as it is within its power) any other person to do or omit to do anything, on or with respect to the Project Sites or the Project or with respect to the Work that results in or could reasonably be expected to result in the cancellation of any Insurance Policies or that would entitle any insurer to refuse to pay any claim under any Insurance Policy (in whole or in part) or that would otherwise prejudice an Insurance Policy or claim under any Insurance Policy.

## **2. CONSTRUCTION PERIOD INSURANCE**

### **2.1 "All Risk" Builders' Risk**

- (a) With respect to each Project Site, at all times from the issuance of NTP2 until CNG Readiness in respect of such Project Site (and thereafter during any period during which the Development Entity is performing D&C Work at such Project Site), the Development Entity shall procure and maintain, or cause to be procured and maintained with each Transit Agency and the Department to be covered as their interest may appear, Builders' Risk insurance for "all risks" of direct physical loss or damage including, but not limited to the following perils: loss or damage by fire, collapse, lightning, windstorm, flood, earthquake, hail, ice flow, explosion, riot, vandalism and malicious mischief, civil commotion, aircraft, vehicle impact, and smoke. Such policy shall contain extensions of coverage that are typical for a project of the nature of the Project including, but not limited to those listed below and including coverage for physical damage resulting from faulty workmanship or faulty materials (but not for repairing the faulty workmanship or faulty materials themselves). The Development Entity may include interest of contractors, as appropriate.
- (b) The policy shall provide coverage up to the full replacement cost of the CNG Facilities under construction at any given time. In no case shall the limit of insurance provided be less than \$15 million. In addition, coverage will be provided, on a sublimited basis for the exposures noted below, as follows:

- (i) Flood and Earthquake - \$5 million each;
- (ii) Professional Fees, Expediting Expenses, Property in Transit, Property Stored Offsite - \$1 million each;
- (iii) Demolition and Debris Removal – 25% of loss amount with maximum of \$1 million;
- (iv) Increased Cost of Construction – 25% of loss amount with maximum of \$1 million;
- (v) Soft Costs (including, but not limited to, engineering and architectural fees, legal costs and related permitting charges, etc. ) - \$1 million;
- (vi) Existing Transit Agency Property - \$5 million; and
- (vii) Roads, Foundations and Pilings - \$5 million.

"Soft Cost" coverage for design fees, attorney's fees, revised government approvals, etc. shall also be included on a sublimited basis.

- (c) The policy shall cover all roads, property, buildings and other structures, materials, supplies, foundations, pilings, machinery and equipment that are a part of or related to the portion or elements of the Project under construction at such Project Site, as well as the works of improvement, including permanent and temporary structures, works and materials and any goods intended for incorporation into the Project at such Project Site. Coverage shall be extended to include, with appropriate sublimit as noted above, materials, equipment and property in transit or storage.

## **2.2 Commercial General Liability**

- (a) With respect to each Project Site, at all times from the issuance of NTP2 until CNG Readiness shall have been achieved in respect of the applicable Project Site (and thereafter during any period during which the Development Entity is performing D&C Work at such Project Site), the Development Entity shall procure and keep in force commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring as a result of work or other activities associated with the applicable Project Site. The Development Entity shall maintain coverage on an "occurrence" basis and coverage shall include premises and operations, products and completed operations, independent contractors, broad form property damage, contractual liability and other coverage extensions typical of a project of this type and scope. Coverage shall be extended for non-owned and hired automobile liability unless coverage is provided separately under Section 2.4 below.
- (b) The policy shall have limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate with the General Aggregate applying on a per project basis (with all Work under this PPA to be considered a single project) and per location basis (with the applicable Project Site to be considered a single location). Coverage at this level shall be provided throughout the period from the issuance of NTP2 until CNG Readiness shall have been achieved in respect of the applicable Project Site and the Department and other

Indemnified Parties shall be named as additional insureds under the policy solely with respect to the applicable Project Site.

- (c) The commercial general liability policy shall cover liability arising out of the acts or omissions of the Development Entity's employees and for any others for whom the Development Entity is responsible on the terms and to the extent the Development Entity is provided coverage under such liability policy.

### **2.3 Workers' Compensation and Employers' Liability Insurance**

At all times from the issuance of NTP1, the Development Entity shall procure and keep in force Workers' Compensation insurance, as required by any Governmental Entity or legal requirement, including Employers' Liability coverage with limits of not less than \$1,000,000. This shall include, as required, coverage for any claims under the United States Longshore and Harbor Workers' Compensation Act and the Jones Act. The Department will be named as an alternate employer on the policy.

### **2.4 Automobile Liability Insurance**

Should the Development Entity have any owned or leased vehicles, at all times from the issuance of NTP1, the Development Entity shall procure and keep in force automobile liability insurance with a limit of at least \$1,000,000 shall be procured and maintained covering all owned, non-owned, hired, or borrowed vehicles on or off-site. Coverage shall be extended to the Department and other Indemnified Parties as required, but solely in respect of the Project. The automobile liability insurance policy for Contractors who will at any time transport Hazardous Materials shall be endorsed as required to include Motor Carrier Act Endorsement-Hazardous Materials Clean-up (MCS-90) for those Contractors who will at any time transport Hazardous Materials.

### **2.5 Umbrella/Excess Liability Insurance**

At all times from the issuance of NTP1 until CNG Readiness shall have been achieved in respect of all Project Sites, the Development Entity shall procure and cause to be kept in force, in excess of underlying limits noted above for commercial general liability, employer's liability and automobile liability, a following-form umbrella/excess liability policy with limits of at least \$25 million per occurrence, \$25 million general aggregate, applicable on an annual basis, and \$25 million completed operations aggregate. The Department and other Indemnified Parties shall be additional insureds under the policy solely with respect to the Project and coverage shall be written on an occurrence basis.

### **2.6 Professional Errors and Omissions**

- (a) As of the issuance of NTP1, the Development Entity shall carry or cause to be carried Professional Liability insurance providing protection from claims arising from acts, errors or omissions arising from design, engineering, surveying, inspection and related work undertaken in connection with the Project. If another Person is providing the coverage, the Development Entity shall be named as an insured or carry separate coverage.
- (b) Coverage may be provided on a claims-made basis and may be provided either through a project-specific professional liability insurance policy covering all such professionals working on the Project or through utilization of the Development Entity's practice

professional liability policy; **provided**, that, in either instance, coverage must remain in force from the date of this PPA to the earlier of six years after CNG Readiness shall have been achieved in respect of all Project Sites or ten years after the date of this PPA. The Department will also consider other alternatives such as utilizing the practice policies of the professionals for primary coverage and placing a Contractor Professional Protective Liability Insurance (CPPI) policy covering the Development Entity above the practice policy limits carried by the professionals.

- (c) The policy, if provided on a project-specific basis, covering all design professionals must have a limit of at least \$10 million per claim and in the aggregate. If the "practice policy" option is selected, the Development Entity shall maintain professional liability coverage with a minimum of at least \$5 million in the aggregate.
- (d) If the 'practice policy' option is selected, any other subconsultants or professionals engaged on the Project must, in turn, carry their own professional liability insurance from the date they start work on a Project Site until either six years after CNG Readiness shall have been achieved in respect of the applicable Project Site or ten years after the date they start work, whichever comes first. Such sub consultants and other professionals shall carry professional liability limits, on a claims-made basis, as follows:

Estimated Contract Value	Minimum Limit Required
\$10 million or more	\$5 million per claim/aggregate
\$5 million to \$9.99 million	\$2 million per claim/aggregate
\$500,000 to \$5 million	\$1 million per claim/aggregate
<\$500,000	\$500,000 per claim/aggregate

## 2.7 Contractor’s Pollution Liability Insurance

At all times from the issuance of NTP2 in respect of the first Project Site until CNG Readiness shall have been achieved in respect of all Project Sites (and thereafter during any period during which the Development Entity is performing D&C Work at any Project Site), the Development Entity shall procure and maintain Contractor’s Pollution Liability Insurance covering activities associated with such Project Site with a limit of at least \$5,000,000. Coverage shall include third-party property damage and bodily injury and environmental impairment/clean-up costs, as well as coverage for off-site transportation and disposal at a non-owned disposal site. Such insurance shall include the Development Entity as Named Insured and list the Department and the other Indemnified Parties as Additional Insureds. Coverage may be written on a claims-made basis and shall be carried for the period from the issuance of NTP2 until six years after CNG Readiness shall have been achieved in respect of the applicable Project Site.

## 2.8 Option to Procure Project-Specific Coverage

The Development Entity and its Contractors performing D&C Work shall retain the option to procure a consolidated or coordinated insurance program covering the activities of the Development Entity, such Contractors, and other contractors and consultants working at each Project Site; **provided**, that the activities of such other contractors and consultants shall not be required to be covered in the event they maintain their own insurance policies compliant with the relevant terms in this Schedule 9 (Insurance Coverage Requirements). If such coverage is purchased and includes both the Development Entity and the Contractors as Named Insureds, the requirement for separate insurance programs and limits as noted above will be waived, however, the Commercial General Liability Insurance Completed Operations coverage must be continued

for a period of at least six (6) years after CNG Readiness shall have been achieved in respect of the applicable Project Site. Such project-specific insurance must provide each of the coverages noted above in Sections 2.2 (Commercial General Liability), 2.3 (Workers' Compensation and Employers' Liability Insurance), 2.4 (Automobile Liability Insurance), and 2.5 (Umbrella/Excess Liability Insurance). Should such an approach be utilized by the Development Entity, the limit for the Umbrella/Excess Liability shall be at least \$50 million per occurrence, \$50 million general aggregate, reinstated annually and \$50 million completed operations aggregate and aggregate reinstated annually. If such consolidated insurance program does not provide all required insurances (e.g., only Commercial General Liability is provided on a consolidated or coordinated basis), then the Development Entity and the relevant Contractor must separately comply with all other insurance requirements.

**2.9 Other Construction Insurance Coverage Required of Other Contractors and Consultants**

- (a) If the Development Entity and its Contractors performing D&C Work determine that they will not purchase a consolidated or coordinated, project-specific insurance program covering all project participants in respect of a Project Site, then the following additional insurance requirements shall apply to all other Contractors and consultants with respect to each Project Site from issuance of NTP2 until CNG Readiness shall have been achieved in respect of the applicable Project Site (and thereafter during any period during which the Development Entity is performing D&C Work at such Project Site):
  - (i) Commercial General Liability Insurance including premises and operation, products/completed operations, contractual liability, and related coverages with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate applicable on a per project basis (with all Work at each Project Site to be considered a single project). The Department and all indemnified parties shall be added as additional insured.
  - (ii) Workers' Compensation and Employer's Liability Insurance with statutory workers' compensation coverage and employer's liability limits of \$500,000.
  - (iii) Automobile Liability Insurance with at least \$1,000,000 combined single limit. The Department and all indemnified parties shall be added as additional insured.
- (b) For those contractors or consultants with estimated contract values above \$5,000,000, such contractors and consultants shall additionally be required to carry \$5,000,000 of umbrella/excess liability insurance above the underlying commercial general liability, employer's liability and automobile liability limits noted above. Contractors and consultants performing work on the project shall carry the following umbrella/ excess liability insurance above the underlying commercial general liability, employer's liability and automobile liability insurance coverage noted above:

<u>Estimated Contractor Contract Value</u>	<u>Minimum Limit Required</u>
\$10 million or more	\$5 million per claim/aggregate
\$5 million to \$9.99 million	\$2 million per claim/aggregate
\$1 to \$5 million	\$1 million per claim/aggregate

- (c) If any aircraft or watercraft is utilized in the course of completing construction, appropriate aircraft liability and/or hull and protection and indemnity insurance will be procured and maintained in an amount not less than \$5,000,000.

- (d) Railroad Protective Liability Insurance, as required by any railroads, if such coverage is not already provided under the 'Commercial General Liability' insurance referred to above.

### **3. MAINTENANCE PERIOD INSURANCE**

#### **3.1 Commercial General Liability**

- (a) At all times from the commencement of the Maintenance Period in respect of each CNG Fueling Station Facility, the Development Entity shall procure and keep in force commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring as a result of work or other activities associated with the applicable CNG Fueling Station Facility. The Development Entity shall maintain coverage on an "occurrence" basis and coverage shall include premises and operations, products and completed operations, independent contractors, broad form property damage, contractual liability and other coverage extensions typical of a project of this type and scope. Coverage shall be extended for non-owned and hired automobile liability unless coverage is provided separately under Section 3.4 below.
- (b) The policy shall have limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate with the General Aggregate applying on a per project basis (with all Work at the applicable CNG Fueling Station Facility to be considered a single project). Coverage at this level shall be provided from the commencement of the Maintenance Period in respect of the applicable CNG Fueling Station Facility until the last day of the Term and the Department and other Indemnified Parties as provided for in the PPA shall be named as additional insureds under the policy, but solely in respect of the applicable CNG Fueling Station Facility.

#### **3.2 Other Insurances**

At all times from the commencement of the Maintenance Period in respect of the first CNG Fueling Station Facility, the Development Entity shall procure and keep in force all insurances as required by any Governmental Entity or legal requirement, including workers' compensation insurance (including employers' liability coverage) and automobile liability insurances, with limits not less than those required by such Governmental Entities or legal requirements and Good Industry Practice.

## SCHEDULE 10

### DISPUTES REVIEW BOARD

#### PART 1

#### FORM OF DISPUTES REVIEW BOARD AGREEMENT

**THIS DISPUTES REVIEW BOARD AGREEMENT (DRB Agreement)** is made and entered into this [ ] day of [ ], 2016, among The Pennsylvania Department of Transportation (the **Department**), Trillium Transportation Fuels, LLC (d/b/a Trillium CNG) (the **Development Entity**), and [ ] (collectively, the **Board Members**), with reference to the following facts:

- (I) The Department and the Development Entity have entered into that certain Public-Private Transportation Partnership Agreement dated [●] (the **PPA**). Pursuant to the PPA, the Development Entity has agreed, among other things, to design, construct, finance and maintain the CNG Fueling for Transit Agencies Partnership Project (**Project**).
- (J) Article 30 (Dispute Resolution Procedures) of the PPA provides for the establishment and operation of a Disputes Review Board to assist in resolving Disputes that may arise among the Department, the Development Entity and others in respect to the Project.

**NOW, THEREFORE**, in consideration of the terms, conditions, covenants and agreements contained herein, the parties hereto agree as follows:

#### 1. ESTABLISHMENT OF BOARD

- (a) The Dispute Review Board (the **Board**) shall begin operation upon execution of this DRB Agreement by the Department, the Development Entity and all three Board Members. The Board Members' tenure shall terminate upon completion of all work required to be performed by the Board hereunder unless sooner terminated in accordance with this DRB Agreement or applicable law.
- (b) Each member of the Board represents, warrants and covenants on his/her behalf that he/she complies with the criteria and limitations for membership described in Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board) to the PPA.
- (c) All three Board Members must have submitted and received approval of disclosure statements according to the requirements of Section 1.5 (Additional Criteria Applicable to any Disputes Review Board Members) of Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board) to the PPA.
- (d) If during the term of this DRB Agreement, a Board Member has a discussion regarding employment or enters into any agreement for employment with the Department, the Development Entity or a Development Entity-Related Entity, the Board Member shall promptly disclose such discussion or agreement to both the Department and the Development Entity and the Board Member shall be disqualified from serving on the Board.

## **2. BOARD RESPONSIBILITIES**

- (a) The Board shall fairly and impartially consider and provide written decisions for resolution of disputes in accordance with Article 30 (Dispute Resolution Procedures) of the PPA and Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board Procedures Disputes Review Board) attached thereto. The Board Members shall perform the services necessary to participate in the Board's actions in accordance with this DRB Agreement.
- (b) Board Members will be kept informed monthly of Project-related activities and other developments by means of regular progress reports, minutes of progress meetings, and other relevant information prepared by the Department and the Development Entity.
- (c) All Board Members are to act independently in the consideration of facts and conditions surrounding any Dispute. Seeking the Board Members' advice or consultation, *ex parte*, is expressly prohibited; **provided**, that either the Department or the Development Entity may seek such advice or consultation from the entire Board, at a Board meeting, after first giving notice to all interested parties. A Board Member who has *ex parte* contact with the Department or the Development Entity or a representative of either party shall be subject to removal from the Board for cause.
- (d) Board Members may withdraw from the Board upon delivery of written notice of withdrawal to the Department, the Development Entity and the other Board Members, which notice shall specify a withdrawal date at least 30 days following the date of delivery of the notice. In addition, a Board Member may be terminated by the Department or the Development Entity if at any time that Board Member fails to meet the relevant qualifications set out in Sections 1.2 (Board Membership) through 1.5 (Additional Criteria Applicable to any Disputes Review Board Members) of, or is otherwise disqualified pursuant to Section 1.10 (Disqualification and Replacement of Board Members) of Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board) to the PPA. Should the need arise to appoint a replacement Board Member, the replacement member shall be appointed in the same manner as provided by the PPA for appointment of the original member. The selection of a replacement Board Member shall begin promptly upon notification of the necessity for a replacement and shall be completed within 30 days thereafter. The change in Board membership shall be evidenced by the new member's signature on this DRB Agreement.
- (e) The personal services of the Board Member are a condition to receiving payment hereunder. No Board Member shall assign any of his or her work pursuant to this DRB Agreement without the prior written consent of both the Department and the Development Entity.
- (f) Each Board Member will keep matters related to the DRB Agreement confidential.
- (g) Each Board Member, in the performance of his or her duties on the Board, is acting as an independent contractor and not as an employee of either the Department or the Development Entity. No Board Member will be entitled to any employee benefits.

## **3. HEARINGS AND DECISIONS**

- (a) Each Dispute under the PPA shall be heard and decided by the Board in accordance with the procedures and timelines established in Section 30.4 (Disputes Review Board) of the PPA.

- (b) Within the limits set by Section 30.4 (Disputes Review Board) of the PPA, the Board shall have the right to establish its own procedures and time limits, including the right to establish or to waive evidentiary rules and procedures. Each party involved in the Dispute shall retain the right to discovery, within the parameters set by the Board.

#### **4. PROVISION OF DOCUMENTS TO BOARD**

- (a) The Department shall furnish each Board Member one copy of Project-related documents in accordance with Section 2.2 (The Department's Responsibilities) of Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board) to the PPA.
- (b) The Development Entity shall furnish to each Board Member one copy of all Project-related documents it might have, other than those furnished by the Department, in accordance with Section 2.1 (The Development Entity's Responsibilities) of Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board) to the PPA.

#### **5. PAYMENT**

- (a) The Department and the Development Entity shall each pay its portion of the costs related to the services rendered by each Board Member in accordance with Section 3 (Basis of Payment) of Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board) to the PPA.
- (b) Invoices for payment for Board Member work completed under this DRB Agreement shall be submitted monthly. Such invoices shall be in a format approved by the Department and the Development Entity and accompanied by a general description of activities performed during the relevant period. The value of work accomplished for payment shall be established from the billing rate and hours expended by the Board Member together with direct, reasonable, non-salary expenses. Billings for expenses shall include an itemized listing supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data.
- (c) Each Board Member shall keep available for inspection, for a period of five years after final payment, the cost records and accounts pertaining to this DRB Agreement.

#### **6. MISCELLANEOUS**

- (a) This DRB Agreement shall commence upon execution hereof by the Development Entity, the Department and all three Board Members. The foregoing is subject to the right of the Department and the Development Entity to terminate the services of Board Members as specified herein.
- (b) This DRB Agreement shall terminate automatically upon termination of the PPA.
- (c) Capitalized terms used but not defined herein shall have the meanings set out in the PPA.
- (d) The parties to this DRB Agreement intend for Article 30 (Dispute Resolution Procedures) and Part 2 (Disputes Review Board Procedures) of Schedule 10 to the PPA and the other terms of this DRB Agreement to be complementary. Except as otherwise specifically provided herein, in the event of any conflict between this DRB Agreement and said Article 30 (Dispute Resolution Procedures) and Part 2 (Disputes Review Board Procedures) of Schedule 10 to the PPA, Article 30 (Dispute Resolution Procedures) and Part 2 (Disputes Review Board Procedures) of Schedule 10 to the PPA shall control.

- (e) Notices hereunder shall be sent as provided in Section 32.10 (Notices and Communications) of the PPA. The addresses for the Board Members are set out on the signature pages hereof.
- (f) Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the Board of Claims established pursuant to 62 Pa.C.S. §1721 for the settlement of any dispute in connection with this DRB Agreement. In the event of an appeal by a party hereto from a decision of the Board of Claims pursuant to 62 Pa.C.S. § 1711.1(g), such appeal shall be brought in any Commonwealth Court of Pennsylvania in accordance with such section. Each of the parties hereto waives objection to such court on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this DRB Agreement.
- (g) EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION IN CONNECTION WITH THIS DRB AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY. THIS DRB AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO TRIAL BY A COURT.
- (h) The Development Entity irrevocably consents to service of process by personal delivery, certified mail, postage prepaid or overnight courier in relation to any proceedings before any court located in the Commonwealth of Pennsylvania. Each of the Board Members irrevocably appoints the person named below as its respective agent for service of process in any proceedings before any court located in the Commonwealth:
  - (i) [Board Member #1] \_\_\_\_\_ irrevocably appoints \_\_\_\_\_ as its agent for service of process;
  - (ii) [Board Member #2] irrevocably appoints \_\_\_\_\_ as its agent for service of process; and
  - (iii) [Board Member #3] irrevocably appoints \_\_\_\_\_ as its agent for service of process.
- (i) This clause does not affect any other method of service allowed by applicable law.
- (j) If any person appointed as process agent is unable for any reason to act as agent for service of process, the Development Entity or the relevant Board Member, as the case may be, must promptly appoint another agent on terms acceptable to the Department. Failing this, the Department may appoint another agent for this purpose. The Development Entity and each of the Board Members agree that failure by its respective process agent to notify it of any process will not invalidate the relevant proceedings. This clause does not affect any other method of service allowed by law.
- (k) This DRB Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in the Commonwealth of Pennsylvania (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction).

**IN WITNESS WHEREOF**, the parties hereto have executed this DRB Agreement as of the day and year first above written.

**Board Members**

**MEMBER #1**

\_\_\_\_\_  
Signature

Name/Address:  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

**MEMBER #2**

\_\_\_\_\_  
Signature

Name/Address:  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

**TRILLIUM TRANSPORTATION FUELS,  
LLC (d/b/a TRILLIUM CNG)]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Development Entity**

APPROVED AS TO FORM

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

THE DEPARTMENT

**PENNSYLVANIA DEPARTMENT OF  
TRANSPORTATION**

ATTEST:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM

By: \_\_\_\_\_

## PART 2

### DISPUTES REVIEW BOARD PROCEDURES

#### 1. ESTABLISHMENT OF DISPUTES REVIEW BOARD

##### 1.1 Purpose

The Parties shall establish the Disputes Review Board to provide special expertise and assist in and facilitate the timely and equitable resolution of Disputes between the Department and the Development Entity as set out under Section 30.4 (Disputes Review Board) of the PPA and any Disputes Review Board Agreement for the Disputes Review Board.

##### 1.2 Board Membership

The Disputes Review Board will consist of one member selected by the Department, one member selected by the Development Entity, and a third member selected in accordance with Section 1.8 below. The third member will act as chairman. Once established, each Disputes Review Board will remain active and in full force and effect until all Disputes submitted to such Disputes Review Board have been decided by it.

##### 1.3 Neutral and Impartial

The members of the Disputes Review Board shall be neutral, act impartially, and not have any conflict of interest (as further provided in Section 1.5 (Additional Criteria Applicable to any Disputes Review Board Members) of this Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board)).

##### 1.4 Experience Criteria for any Disputes Review Board Members

- (a) Each party-selected member of the Disputes Review Board shall be a nationally recognized expert in matters pertinent to the nature of the Project.
- (b) The Chair of the Disputes Review Board shall be a nationally recognized expert in matters pertinent to the resolution of commercial disputes outside of litigation and shall have served on at least one Disputes Review Board, preferably as Chair.

##### 1.5 Additional Criteria Applicable to any Disputes Review Board Members

In addition to the criteria set out in Section 1.4 (Experience Criteria for any Disputes Review Board Members) of this Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board), the criteria for membership for all members of the Disputes Review Board includes the following:

- (a) No member shall have an ownership interest in any party involved in the PPA, or a financial interest in the PPA, except for payment for services on any Disputes Review Board; **provided**, that for purposes of determining conflicts of interests and disqualification, the term **member** shall include the member's current primary or full-time employer, and **involved** shall mean having a contractual relationship with the Department or the Development Entity at any tier.

- (b) Except for fee-based consulting services on other projects, no member shall have been previously employed by, or have had financial ties to, any party involved in the PPA within a period of eight (8) years prior to award of the PPA.
- (c) No member shall have provided to either Party fee-based consulting services within the two (2) years prior to award of the PPA, where the consulting fees paid by that Party have exceeded 20% of that member's total consulting revenue in either year.
- (d) No member shall have had a close professional or personal relationship with any key member of any party involved in the PPA which, in the judgment of either Party, could suggest partiality, or give an appearance of impropriety.
- (e) No member shall have had prior involvement in the Project, of a nature which could compromise his or her ability to participate impartially in the activities of either board.
  - (i) Each member shall have completed any Disputes Review Board training course provided by the Department for the Project.
  - (ii) During his or her tenure as a member of the Disputes Review Board, no member shall be employed, including fee-based consulting services, by any party involved in this PPA except with express approval of both Parties.
  - (iii) During his or her tenure as a member of the Disputes Review Board, no member shall engage in any discussion or make any agreement with any Party regarding employment after the Project is completed.
  - (iv) No member shall currently be a member of any other Disputes Review Board that involves issues related to either of the Parties.

## **1.6 Disclosure Statement**

Before their appointments are final, the first two (2) prospective members of the Disputes Review Board shall submit complete disclosure statements for the approval of both the Department and the Development Entity. Each statement shall include a resume of experience, together with a declaration describing all past, present and anticipated or planned future relationships (including indirect relationships through the prospective member's primary or full-time employer) to this Project and with all Parties involved in this PPA. This disclosure shall also include any financial relationship relative to the criteria in Section 1.5 (Additional Criteria Applicable to any Disputes Review Board Members) of this Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board), and disclosure of close relationships, either professional or personal, with all key members of all Parties to this PPA. The third member of the Disputes Review Board shall supply such a statement to the first two (2) members and to the Department and the Development Entity before his or her appointment is final.

## **1.7 Selection of First Two Members**

The Department and the Development Entity shall each select a proposed member for the Disputes Review Board and convey the selected member's name and reference information to the other Party within three (3) weeks after execution of the PPA. If either Party reasonably believes that the member appointed by the other Party does not meet the criteria for membership as set out in this Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board), that

Party shall notify the other Party of such failure and the reason therefor. If either Party's member fails to meet the criteria, the other Party may require substitution of that member pursuant to Section 1.10 (Disqualification and Replacement of Board Members) of this Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board).

### **1.8 Nomination and Approval of Third Member**

Immediately after the Department and the Development Entity selections for a Disputes Review Board are final, the Department will provide a list of five (5) proposed members acceptable to both Parties and will notify the first two (2) members of the Disputes Review Board to begin the process of selecting the third member from this list. The first two (2) members shall select the third member from the list provided by the Department and shall ensure that the third member meets all of the relevant criteria listed above. The first two (2) members shall select the third member within two (2) weeks after they receive the notice from the Department to begin the selection process.

If the first two (2) members of the Disputes Review Board do not select a third member within these two (2) weeks after their selections are final, the Department and the Development Entity shall select the third member by mutual agreement. In so doing, the Parties may, but are not required to, consider other nominees offered by the first two (2) members of the Disputes Review Board. In the event of failure to agree on the appointment of the third member of the Disputes Review Board within two weeks following such four-week period, such person may be appointed by the International Institute for Conflict Prevention and Resolution, upon the request of either Party.

### **1.9 Execution of Three-Party Agreement**

The Department, the Development Entity and all three members of the Disputes Review Board shall execute its respective Disputes Review Board Agreement substantially in the form attached as Part 1 (Form of Disputes Review Board Agreement) of Schedule 10 within four (4) weeks after the selection of the third member.

### **1.10 Disqualification and Replacement of Board Members**

If (i) any member of the Disputes Review Board has a discussion regarding employment or enters into any employment agreement with the Development Entity, the Department or any Contractor on the Project during his or her tenure on any Disputes Review Board, (ii) any member of the Disputes Review Board is discovered not to meet the relevant qualifications set out in this Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board) or (iii) any member cannot continue to serve because of death, illness or permanent disability, that member shall be disqualified from serving on the Disputes Review Board. In the event of such a disqualification, a replacement member meeting the qualifications in this Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board) will be selected by the Department if the disqualified member was originally selected by the Department, by the Development Entity if the disqualified member was originally selected by the Development Entity or by both the Department and the Development Entity if the disqualified member was the third member.

## **2. THE DEPARTMENT AND THE DEVELOPMENT ENTITY RESPONSIBILITIES**

### **2.1 The Development Entity's Responsibilities**

Except for its participation in the Disputes Review Board's activities as provided in its Disputes Review Board Agreement, the Development Entity will not solicit advice or consultation from any Disputes Review Board or any member on matters dealing in any way with the Project, the conduct of the Project Services or resolution of problems.

The Development Entity shall furnish to the Disputes Review Board member a set of all pertinent documents which are or may become necessary for the Disputes Review Board to perform its function, except documents furnished by the Department. Pertinent documents are any drawings or sketches, calculations, procedures, schedules, estimates, or other documents used in the performance of the Project Services or in justifying or substantiating the Development Entity's position regarding a particular Dispute. The Development Entity shall furnish a copy of such documents to the Department.

### **2.2 The Department's Responsibilities**

Except for its participation in the Disputes Review Board's activities as provided in its Disputes Review Board Agreement, the Department will not solicit advice or consultation from the Disputes Review Board or any members on matters dealing in any way with the Project, the conduct of the Project Services or resolution of problems.

The Department shall furnish the following services and items:

- (a) **Contract-Related Documents:** The Department shall furnish each Disputes Review Board member and the Development Entity a copy of all Project Documents, written instructions issued by the Department to the Development Entity, or other documents pertinent to the performance of the PPA and necessary for either board to perform its function.
- (b) **Coordination and Services:** The Department, in cooperation with the Development Entity, shall coordinate the operations of the Disputes Review Board. The Department shall arrange or provide conference facilities at or near a Project Site, provide any Disputes Review Board training course, for the Project, and provide secretarial and copying services for the Disputes Review Board.

### **2.3 Reports to any Disputes Review Board**

The Department and the Development Entity shall provide any Disputes Review Board members monthly with regular progress reports, minutes of progress meetings, and other relevant information they each prepare in order to keep the Disputes Review Board informed of Project-related activity and other developments.

## **3. BASIS OF PAYMENT**

The Department and the Development Entity are each responsible to pay the fees and expenses of any Disputes Review Board member it selected without recourse to the other Party. The Development Entity shall also pay the fees and expenses invoiced by the third member of the Disputes Review Board, after approval by both Parties, and the Development Entity will then

invoice the Department for 50% of the payment it made to the third member of any Disputes Review Board. The Department will review and process payment of the invoice promptly upon receipt.

The Department will prepare and mail minutes and progress reports, will provide administrative services, such as conference facilities and secretarial services for meetings with the Disputes Review Board for any Dispute hearing, and will bear the cost of these services. If the Disputes Review Board desires special services, such as, but not limited to, legal consultation, accounting, and data research, both Parties must agree, and the costs will be shared by them as mutually agreed.

## **SCHEDULE 11**

### **INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES**

#### **DEPARTMENT**

Deputy Secretary for Multimodal Transportation (as of the date hereof, Toby Fauver) (or such person's designee, as notified by the Department to the Development Entity in writing in accordance with this PPA)

Tel: 717 787 8197

Email: tfauver@pa.gov

#### **DEVELOPMENT ENTITY**

Bill Cashmareck

Tel: 713-332-5713

Email: Bill.Cashmareck@musketcorp.com

**SCHEDULE 12**

**[NOT USED]**

## SCHEDULE 13

### MONTHLY PERFORMANCE REPORT

[DATE]

I, [NAME], authorized signatory of TRILLIUM TRANSPORTATION FUELS, LLC (d/b/a TRILLIUM CNG), deliver this monthly performance report (the **Monthly Performance Report**) in connection with the CNG Fueling for Transit Agencies Public-Private Transportation Agreement, entered into by and between The Pennsylvania Department of Transportation and TRILLIUM TRANSPORTATION FUELS, LLC (d/b/a TRILLIUM CNG) on [●], (the **PPA**). Terms defined in the PPA have the same meanings when used in this Monthly Performance Report except where otherwise defined. This Monthly Performance Report is delivered pursuant to Section 14.2 (Invoicing and Monthly Performance Reports) of the PPA.

On behalf of the Development Entity, I hereby certify the following with respect to the period from [DATE] to [DATE] (the **Reporting Period**):

1. Monthly Infrastructure Fee

- (a) The Monthly Maintenance Payment Deduction for the Reporting Period is equal to \$[\_\_\_\_\_].
- (b) The Monthly Energy Adjustment for the Reporting Period is equal to \$[\_\_\_\_\_].
- (c) The volume of Commercial Sales during the Reporting Period was [\_\_\_\_\_], resulting in a Monthly Royalty Fee in respect of the Reporting Period equal to \$[\_\_\_\_\_], as calculated in accordance with Schedule 8 (Payment Mechanism) to the PPA.
- (d) The cumulative amount of all costs and expenses due and payable by the Development Entity to the Department pursuant to Section 7.9 (Late Completion Costs), together with all liquidated damages due and payable by the Development Entity to the Department pursuant to Section 11.4 (Liquidated Damages), in each case as of the end of Month (m-1) was \$ [\_\_\_\_\_].
- (e) The aggregate sum of the dollar amounts stated in 1(a), 1(b), 1(c) and 1(d) above is equal to \$[\_\_\_\_\_].

2. Monthly Compression Fees

The volume of natural gas compressed during the Reporting Period was [\_\_\_\_\_], resulting in Monthly Compression Fees in respect of the Reporting Period equal to \$[\_\_\_\_\_], as calculated in accordance with Schedule 8 (Payment Mechanism) to the PPA.

3. Milestone Payments

- (a) The following Project Sites achieved CNG Readiness during the Reporting Period:  
[\_\_\_\_\_]

- (b) The aggregate sum of the Milestone Payments in respect of the Project Sites referred to in 3(a) above is equal to \$[\_\_\_\_\_], as calculated in accordance with Schedule 8 (Payment Mechanism) to the PPA.
4. Appended to this Monthly Performance Report as Annex 1 is a detailed summary of the calculation of each of the amounts set out in Sections 1 and 2 above, using the methodology set out in Schedule 8 (Payment Mechanism) to the PPA, and setting forth each of the component calculations required thereby.
  5. Appended to this Monthly Performance Report as Annex 2 is:
    - (a) a description of each Noncompliance Event resulting in a Monthly Maintenance Payment Deduction in respect of the Reporting Period;
    - (b) the start and end (in date and time) of each Noncompliance Event (including the Noncompliance Start Date and Noncompliance Rectification Date) that occurred during the Reporting Period, each determined in accordance with the PPA;
    - (c) a description of the events, circumstances and factors resulting in the Monthly Energy Consumption Deduction (if any) during the Reporting Period;
    - (d) a statement of any adjustments to reflect previous over-payments and/or under-payments;
    - (e) any other information that could be used by the Department to verify the amounts stated in Sections 1, 2 and 3 above; and
    - (f) to the extent not already provided hereunder, all other information required under Section 2.2.2 (Project Status Schedule Updates) of the Technical Provisions.

I have executed and delivered this Monthly Performance Report as of the first date written above, and all matters certified herein are true, correct and complete on such date.

\_\_\_\_\_

**TRILLIUM TRANSPORTATION FUELS, LLC (d/b/a TRILLIUM CNG)**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ANNEX 1**  
**CALCULATION SUMMARY**

**ANNEX 2**  
**EVENTS AND ADJUSTMENTS**

## SCHEDULE 14

### CERTAIN PUBLIC POLICY REQUIREMENTS

#### PART 1

#### CONTRACTOR RESPONSIBILITY PROVISIONS

1. The Development Entity certifies in writing, for itself and any Contractor required to be disclosed or approved by the Commonwealth (prior to the performance of any portion of the Project Services by any Contractor), that as of the date of the Development Entity's execution of this PPA or such Contractor's execution of any relevant Contract (as applicable), the Development Entity and any such Contractor is not under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Development Entity cannot so certify in respect of any such Contractor, then it agrees to submit, along with such Contract, a written explanation of why such certification cannot be made.
2. The Development Entity certifies in writing, for itself and any Contractor required to be disclosed or approved by the Commonwealth (prior to the performance of any portion of the Project Services by any Contractor) that as of the date of the Development Entity's execution of this PPA or such Contractor's execution of any relevant Contract (as applicable), the Development Entity and each such Contractor has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
3. The Development Entity's obligations pursuant to these provisions are ongoing from and after the effective date of this PPA through the termination date thereof. Accordingly, the Development Entity shall have an obligation to inform the Commonwealth if, at any time during the term of this PPA, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Development Entity, any of its Contractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
4. The failure of the Development Entity to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute a Development Entity Default under Section 22.1(k) of this PPA.
5. The Development Entity agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Development Entity or any Contractor's compliance with the terms of this PPA or any other agreement between such Contractor and the Commonwealth, that results in the suspension or debarment of the Development Entity or such Contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Development Entity shall not be responsible for investigative costs for investigations that do not result in its or any Contractor's suspension or debarment.
6. The Development Entity may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

Department of General Services  
Office of Chief Counsel  
603 North Office Building  
Harrisburg, PA 17125  
Telephone No: (717) 783-6472  
FAX No: (717) 787-9138

7. For purposes of these Contractor Responsibility Provisions, the following terms shall have the meanings found in this Paragraph 6.
- (a) "Contract" means Contract (as defined under this PPA), excluding contracts with Suppliers.
  - (b) "Contractor" means Contractor (as defined under this PPA), excluding Suppliers.

## **PART 2**

### **ANTI-POLLUTION MEASURES**

#### **PART I, SECTION A PENNSYLVANIA STATUTES**

- Act Relating to Abandoned Mines, Act of May 7, 1935, 52 Pa. Stat. §§ 809 et seq., as amended.
- Act Relating to Black Powder, Act of May 31, 1974, 73 Pa. Stat. §§ 169 et seq., as amended.
- Act Relating to Camp Regulation, Act of Nov. 10, 1959, 35 Pa. Stat. §§ 3001 et seq., as amended.
- Act Relating to Cave-in or Subsidence of Surface Above Mines, Act of July 2, 1937, 52 Pa. Stat. §§ 1407 et seq., as amended.
- Act Relating to Caving-in, Collapse, Subsidence, Act of May 27, 1921, 52 Pa. Stat. §§ 661 et seq., as amended.
- Act Relating to Coal Land Improvement, Act of July 19, 1965, 52 Pa. Stat. § § 30.101 et seq., as amended.
- Act Relating to Coal Mine Subsidence Insurance Fund, Act of Aug. 23, 1961, 52 Pa. Stat. §§ 3201 et seq., as amended.
- Act Relating to Coal Stripping, Act of June 18, 1941, 52 Pa. Stat. §§ 1471 et seq., as amended.
- Act Relating to Coal Under State Lands, Act of June 1, 1933, 52 Pa. Stat. §§ 1501 et seq., as amended.
- Act Relating to Control and Drainage of Water from Coal Formations, Act of July 7, 1955, 52 Pa. Stat. §§ 682 et seq., as amended.
- Act Relating to Delaware River Pollution, Act of Apr. 19, 1945, 32 Pa. Stat. §§ 815.31 et seq., as amended.
- Act Relating to Discharge of Coal into Banks of Streams, Act of June 27, 1913, 52 Pa. Stat. §§ 631 et seq., as amended.
- Act Relating to Excavation and Demolition, Act of Dec. 10, 1974, 73 Pa. Stat. §§ 176 et seq., as amended.
- Act Relating to Explosives, Act of July 1, 1937, 73 Pa. Stat. §§ 151 et seq., as amended.
- Act Relating to Explosives, Act of July 10, 1957, 73 Pa. Stat. §§ 164 et seq., as amended.
- Act Relating to Flood Control, Act of Aug. 7, 1936, 32 Pa. Stat. §§ 653 et seq., as amended.
- Act Relating to General Safety, Act of May 18, 1937, 43 Pa. Stat. §§ 25-1 et seq., as amended.
- Act Relating to Hazardous Materials Transport, Act of June 30, 1984, 75 Pa. C.S.A. §§ 8301 et seq., as amended.
- Act Relating to Junkyards along Highways, Act of July 28, 1966, 36 Pa. Stat. § § 2719.1 et seq., as amended.
- Act Relating to Land Use, Act of Jan. 13, 1966, 16 Pa. Stat. § § 11941 et seq., as amended.
- Act Relating to Maps and Plans, Act of June 15, 1911, 52 Pa. Stat. §§ 823, as amended.
- Act Relating to Mine Fires and Subsidence, Act of April 3, 1968, 52 Pa. Stat. §§ 30.201 et seq., as amended.

Act Relating to Mining Safety Zones, Act of Dec. 22, 1959, 52 Pa. Stat. §§ 3101 et seq., as amended.

Act Relating to Noise Pollution, Act of June 2, 1988, 35 Pa. Stat. §§ 4501 et seq., as amended.

Act Relating to Pollution Control Devices, Act of March 4, 1971, 72 Pa. Stat. § § 7602.1 et seq., as amended.

Act Relating to Pollution From Abandoned Mines, Act of Dec. 15, 1965, 35 Pa. Stat. §§ 760.1 et seq., as amended.

Act Relating to Potomac River Pollution, Act of May 29, 1945, 32 Pa. Stat. § § 741 et seq., as amended.

Act Relating to Preservation and Acquisition of Land for Open Space Uses, Act of Jan. 19, 1968, 32 Pa. Stat. §§ 5001 et seq., as amended.

Act Relating to Public Eating and Drinking Places, Act of May 23, 1945, 35 Pa. Stat. §§ 655.1 et seq., as amended.

Act Relating to Schuylkill River Pollution, Act of Apr. 19, 1945, 32 Pa. Stat. §§ 815.31 et seq., as amended.

Act Relating to Stream Clearance, Act of June 5, 1947, 32 Pa. Stat. §§ 701 et seq., as amended.

Act Relating to Water Power and Water Supply Permits, Act of June 14, 1923, 32 Pa. Stat. §§ 591 et seq., as amended.

Act Relating to Weather Modification, Act of Jan. 19, 1968, 3 Pa. Stat. § § 1101 et seq. as amended.

Administrative Code of April 9, 1929, 71 Pa. Stat. § § 194, 510 et seq., as amended.

Agricultural Liming Material Act of March 17, 1978, 3 Pa. Stat. §§ 132-1 et seq., as amended.

Air Pollution Control Act of Jan. 8, 1960, 35 Pa. Stat. §§ 4001 et seq., as amended.

Anthracite Strip Mining and Conservation Act of June 27, 1947, 52 Pa. Stat. § § 681.1 et seq., as amended.

The Bituminous Mine Subsidence and Land Conservation Act of Apr. 27, 1966, 52 Pa. Stat. §§ 1406.1 et seq., as amended.

Bluff Recession and Setback Act of May 13, 1980, 32 Pa. Stat. §§ 5201 et seq., as amended.

Brandywine River Valley Compact Act of Sept. 9, 1959, 32 Pa. Stat. §§ 818 et seq., as amended.

Cave Protection Act of Nov. 21, 1990, 32 Pa. Stat. §§ 5601 et seq., as amended.

Chesapeake Bay Commission Agreement, Act of June 25, 1985, 32 Pa. Stat. §§ 820.11 et seq., as amended.

The Clean Streams Law of June 22, 1937, 35 Pa. Stat. §§ 691.1 et seq., as amended.

Coal and Gas Resource Coordination Act of Dec. 18, 1984, 58 Pa. Stat. §§ 501 et seq., as amended.

The Coal Mine Sealing Act of June 30, 1947, 52 Pa. Stat. §§ 28.1 et seq., as amended.

Coal Refuse Disposal Control Act of September 24, 1968, 52 Pa. Stat. §§ 30.51 et seq., as amended.

Conservation and Natural Resources Act of June 28, 1995, 71 Pa. Stat. §§ 1340.101 et seq., as amended.

Conservation District Law, Act of May 15, 1945, 3 Pa. Stat. §§ 849 et seq., as amended.

The Crimes Code, Act of Dec. 6, 1972, 18 Pa. C.S.A. §§ 101 et seq., as amended.

Dam Safety and Encroachments Act of Nov. 26, 1978, 32 Pa. Stat. §§ 693.1 et seq. as amended.

Delaware River Basin Compact, Act of July 7, 1961, 32 Pa. Stat. § § 815.101 et seq., as amended.

Fish and Boat Code, Act of October 16, 1980, 30 Pa. C.S.A. §§ 101 et seq., as amended.

Flood Plain Management Act of Oct. 4, 1978, section 302 and 402, 32 Pa. Stat. §§ 679 et seq., as amended.

The Game and Wildlife Code, Act of July 8, 1986, 34 Pa. C.S.A. §§ 101 et seq., as amended.

Great Lakes Protection Fund Act of July 6, 1989, 32 Pa. Stat. §§ 817.11 et seq., as amended.

Hazardous Material Emergency Planning and Response Act of Dec. 7, 1990, 35 Pa. Stat. §§ 6022.101 et seq., as amended.

Hazardous Sites Cleanup Act of Oct. 18, 1988, 35 Pa. Stat. §§ 6020.101 et seq., as amended.

Highway Vegetation Control Act of Dec. 20, 1983, 36 Pa. Stat. §§ 2720.1 et seq., as amended.

History Code, Act of May 26, 1988, 37 Pa. C.S.A. §§ 101 et seq., as amended.

Interstate Mining Compact, Act of May 5, 1966, 52 Pa. Stat. §§ 3251 et seq., as amended.

Land Recycling and Environmental Remediation Standards Act of May 19, 1995, 35 Pa. Stat. §§ 6026.101 et seq., as amended.

Land and Water Conservation and Reclamation Act of Jan. 19, 1968, 32 Pa. Stat. §§ 5101 et seq., as amended.

Low-Level Radioactive Waste Disposal Act of February 9, 1988, 35 Pa. Stat. §§ 7130.101 et seq.

Noncoal Surface Mining Conservation and Reclamation Act of Dec. 19, 1984, 52 Pa. Stat. §§ 3301 et seq., as amended.

Noxious Weed Control Law, Act of April 7, 1982, 3 Pa. Stat. §§ 255.1 et seq., as amended.

Nutrient Management Act of May 20, 1993, 3 Pa. Stat. § 1701 et seq.

Ohio River Valley Water Sanitation Compact, Act of Apr. 2, 1945, 32 Pa. Stat. §§ 816.1 et seq., as amended.

Oil and Gas Act of Dec. 19, 1984, 58 Pa. Stat. §§ 601.101 et seq., as amended.

Oil and Gas Conservation Law, Act of July 25, 1961, 58 Pa. Stat. §§ 401 et seq., as amended.

Oil Spill Responder Liability Act of June 11, 1992, 35 Pa. Stat. §§ 6023.1 et seq., as amended.

Pennsylvania Anthracite Coal Mine Act of Nov. 10, 1965, 52 Pa. Stat. §§70-101 et seq., as amended.

Pennsylvania Appalachian Trail Act of Apr. 28, 1978, 64 Pa. Stat. §§ 801 et seq., as amended.

Pennsylvania Bituminous Coal Mine Act of July 17, 1961, 52 Pa. Stat. §§ 701-101 et seq., as amended.

Pennsylvania Fertilizer Law of May 29, 1956, 3 Pa. Stat. §§ 68.1 et seq., as amended.

Pennsylvania Occupational Disease Act of June 21, 1939, 77 Pa. Stat. §§ 1201 et seq., as amended.

Pennsylvania Pesticide Control Act of 1973, Act of March 1, 1974, 3 Pa. Stat. §§ 111.21 et seq., as amended.

Pennsylvania Safe Drinking Water Act of May 1, 1984, 35 Pa. Stat §§ 721.1 et seq., as amended.

Pennsylvania Scenic Rivers Act of Dec. 5, 1972, 32 Pa. Stat. §§ 820.21 et seq., as amended.

Pennsylvania Sewage Facilities Act of Jan. 24, 1966, 35 Pa. Stat. §§ 750.1 et seq., as amended.

Pennsylvania Solid Waste Management Act of July 7, 1980, 35 Pa. Stat. §§ 6018.101 et seq., as amended.

Pennsylvania Solid Waste-Resource Recovery Development Act of July 20, 1974, 35 Pa. Stat. §§ 755.1 et seq., as amended.

Pennsylvania Used Oil Recycling Act of Apr. 9, 1982, 58 Pa. Stat. §§ 471 et seq., as amended.

Pennsylvania Workmen's Compensation Act of June 2, 1915, 77 Pa. Stat. §§ 1 et seq., as amended.

Phosphate Detergent Act of July 5, 1989, 35 Pa. Stat. §§ 722.1 et seq., as amended.

Plant Pest Act of Dec. 16, 1992, 3 Pa. Stat. §§ 258.1 et seq.

Plumbing System Lead Ban and Notification Act of July 6, 1989, 35 Pa. Stat. §§ 723.1 et seq., as amended.

Project 70 Land Acquisition and Borrowing Act of June 22, 1964, 72 Pa. Stat. §§ 3946.1 et seq., as amended.

The Public Bathing Law, Act of June 23, 1931, 35 Pa. Stat. §§ 672 et seq., as amended.

Publicly Owned Treatment Works Penalty Law, Act of March 26, 1992, 35 Pa. Stat. §§ 752.1 et seq., as amended.

Radiation Protection Act of July 10, 1984, 35 Pa. Stat. §§ 7110.101 et seq., as amended.

Rails to Trails Act of Dec. 18, 1990, 32 Pa. Stat. §§ 5611 et seq.

Seasonal Farm Labor Act of June 23, 1978, 43 Pa. Stat. §§ 1301.101 et seq., as amended.

Sewage System Cleaner Control Act of May 28, 1992, 35 Pa. Stat. §§ 770.1 et seq., as amended.

Sewage Treatment Plant and Waterworks Operators' Certification Act of Nov. 18, 1968, 63 Pa. Stat. §§ 1004 et seq., as amended.

Site Development Act of May 6, 1968, 73 Pa. Stat. §§ 361 et seq., as amended.

Snowmobile Law, Act of June 17, 1976, 75 Pa. C.S.A. §§ 7701 et seq., as amended.

State Highway Law, Act of June 1, 1945, 36 Pa. Stat. §§ 670-101 et seq., as amended.

Storage Tank and Spill Prevention Act of July 6, 1989, 35 Pa. Stat. §§ 6021.101 et seq., as amended.

Storm Water Management Act of Oct. 4, 1978, 32 Pa. Stat. §§ 680.1 et seq., as amended.

Surface Mining Conservation and Reclamation Act of May 31, 1946, 52 Pa. Stat. §§ 1396.1 et seq., as amended.

Susquehanna River Basin Compact, Act of July 17, 1968, 32 Pa. Stat. §§ 820.1 et seq., as amended.

Vehicle Code, Act of June 17, 1976, 75 Pa. C.S.A. §§ 101 et seq., as amended.

Water Power and Water Supply Act of June 14, 1923, 32 Pa. Stat. § 597, as amended.

Water Well Drillers License Act of May 29, 1956, 32 Pa. Stat. §§ 645.1 et seq., as amended.

Wheeling Creek Watershed Protection and Flood Prevention District Compact, Act of Aug. 2, 1967, 32 Pa. Stat. §§ 819.1 et seq., as amended.

Wild Resource Conservation Act of June 23, 1982, 32 Pa. Stat. §§ 5301 et seq., as amended.

**PART I, SECTION B**  
**PENNSYLVANIA REGULATIONS**

Pursuant to the above statutes, regulations are promulgated by State agencies and are published in the Pennsylvania Code (PA. Code). The following are the sections of the PA. Code that are assigned to the following State agencies:

Pennsylvania Department of Environmental Protection—Title 25 of the PA. Code;

Pennsylvania Department of Conservation and Natural Resources—Title 17 of the PA. Code;

Pennsylvania Department of Transportation—Title 67 of the PA. Code;

Pennsylvania Department of Labor and Industry—Title 34 of the PA. Code;

Pennsylvania Department of Agriculture—Title 7 of the PA. Code;

Pennsylvania Historical and Museum Commission—Title 46 of the PA. Code;

Public Utility Commission—Title 52 of the PA. Code;

Pennsylvania Fish and Boat Commission—Title 58, Part II of the PA. Code;

Pennsylvania Game Commission—Title 58, Part III of the PA. Code;

Delaware River Commission—Title 4 of the PA. Code.

**PART II**  
**FEDERAL STATUTES AND REGULATIONS**

Abandoned Mine Reclamation Act of 1990, 30 U.S.C.<sup>1</sup> §§ 1231 et seq.

Acid Precipitation Act of 1980, 42 U.S.C. §§ 8901-8905, 8911, 8912.

Act to Prevent Pollution from Ships, 33 U.S.C. §§ 1901-1915, as amended.  
40 C.F.R.<sup>2</sup>. Part 122

Agricultural Act of 1970, 16 U.S.C. §§ 1501-1510.

Airport and Airway Development Act of 1970, 49 U.S.C. §§ 1701-1703, 1711-1727.

Anadromous Fish Conservation Act, 16 U.S.C. §§ 757a-757g et seq., as amended.

Appalachian Regional Development Act of 1965, 40 app. §1, 2, 101-109, 201-208, 211-214, 221-225, 226, 301-304, 401-405, as amended.

Asbestos Hazard Emergency Response Act of 1986 (See Toxic Substances Control Act, Sections 201-214 (15 U.S.C. §§ 2641-2654)).

Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 et seq., as amended.

10 C.F.R. Parts 1, 2, 4, 10, 15, 19, 20, 21, 25, 26, 30-36, 39, 40, 50, 52-55, 60-62, 70-76, 95, 100,110, 150, 171, 605, 707, 710, 730, 760, 768, 770-777, 779, 782, 785-791, 799, 810, 820, 862, 960, 962, 1004, 1009, 1017, 1046, 1047

32 C.F.R. Part 518

37 C.F.R. Part 5

40 C.F.R. Parts 23, 191, 192

48 C.F.R. Parts 901, 910, 912, 917, 919-933, 935-937, 942-945, 949-952

Aviation Safety and Noise Abatement Act of 1979, 49 App. U.S.C. §§ 47501 et seq., as amended.

Bankhead-Jones Farm Tenant Act, 7 U.S.C. §§ 1000 et seq., as amended.

Clean Air Act 42 U.S.C. §§ 7401 et seq., as amended.

40 C.F.R. Parts 2, 6, 9, 15, 22, 23, 30, 31, 34, 35, 40, 42, 45, 46, 50, 51, 52, 55, 56, 57, 58, 60, 61, 62, 63, 65, 67, 69, 70, 72-74, 76-78, 80, 81, 82, 85, 86, 87, 88, 89, 90, 93, 122-124, 144, 145, 233, 270, 271, 450, 600, 613, 771, 1500, 1503-1507

10 C.F.R. Parts 101, 201

14 C.F.R. Parts 34, 1216

18 C.F.R. Parts 101, 201

19 C.F.R. Part 12

23 C.F.R. Part 450

29 C.F.R. Part 24

Clean Vessel Act of 1992, Pub. L. 102-587, Title V, 106 Stat. 5086.

Coastal Wetlands Planning, Protection and Restoration Act, 16 U.S.C. §§ 3951-3956

Coastal Zone Management Act of 1972, 16 U.S.C. §§ 1451-1464, as amended.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, 42 U.S.C. §§ 9601 et seq., as amended.

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<sup>1</sup> U.S.C. refers to the United States Code.

<sup>2</sup> Pursuant to the above statutes, regulations are promulgated by the Federal agencies and are published in the Code of Federal Regulations (C.F.R.).

40 C.F.R. Parts 9, 51, 279, 300

Department of Transportation Act, 49 U.S.C. §§ 503, 20302, 20304, 20305, 20701-20703, 20901, 20902, 21302, as amended.

Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001 et seq., as amended.

40 C.F.R. Part 17

Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1544, as amended.

Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. §§ 791-798, as amended.

10 C.F.R. Parts 303, 305

18 C.F.R. Parts 157, 270, 271, 275, 290, 292

Environmental Quality Improvement Act of 1970, 42 U.S.C. §§ 4371-4375, as amended.

40 C.F.R. Parts 1500-1508, 1515

Federal Agriculture Improvement and Reform Act of 1996, 7 U.S.C. §§ 1932, 2204f, 3224, 3319d, 2279c, 1101, 7201-7491.

Federal Aid in Fish Restoration Act (of 1950), 16 U.S.C. §§ 777 et seq., as amended.

43 C.F.R. Part 17

*Note: also known as "Fish Restoration and Management Projects Act" and the "Dingell-Johnson Sport Fish Restoration Act".*

Federal Facility Compliance Act of 1992, Pub. L. 102-386, 106 Stat. 1505.

Federal-Aid Highway Act, 23 U.S.C.A. §§101 et seq., as amended.

Federal Aid in Wildlife Restoration Act, 16 U.S.C. §§ 669, 669a-669i, as amended.

Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136-136y, as amended.

19 C.F.R. Part 12

29 C.F.R. Part 1440

40 C.F.R. Parts 2, 16, 23, 30-32, 34, 35, 152, 153, 155-158, 160, 162, 166, 168, 169, 170-173

Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701-1785, as amended.

7 C.F.R. Part 1

36 C.F.R. Parts 222, 242, 251, 254

43 C.F.R. Parts 37, 1600, 1820, 1860, 1880, 2090, 2200, 2210, 2300, 2540, 2710, 2740, 2800, 2810, 2910, 2920, 3000, 3110, 3120, 3130, 3140, 3150, 3160, 3200, 3400, 3410, 3420, 3430, 3450, 3460, 3470, 3500, 3510, 3520, 3530, 3540, 3550, 3560, 3570, 3580, 3590, 3730, 3800, 3830, 4100, 4200, 4300, 4700, 5000, 8000, 8200, 8300, 8340, 8350, 8360, 8370, 8560, 9180, 9210, 9260

Federal Power Act, 16 U.S.C. §§ 791a et seq., as amended.

10 C.F.R. Part 205

18 C.F.R. Parts 1b, 2, 3, 4, 6, 8, 9, 11, 12, 16, 20, 24, 32-35, 45, 46, 101, 116, 125, 131, 141, 154, 225, 290, 292, 294, 375, 381, 385

33 C.F.R. Parts 208, 209, 221, 222

Federal Water Project Recreation Act, 16 U.S.C. §§ 4601-5, 4601-12 to -21, 662, as amended.

36 C.F.R. Part 297

43 C.F.R. Part 17

Fish and Game Sanctuary Act, 16 U.S.C. §§ 694-694b

Fish and Wildlife Act of 1956, 15 U.S.C. §§ 713c-3; 16 U.C.S.A. §§ 742a-742j, as amended.

30 C.F.R. Part 773

33 C.F.R. Part 209

43 C.F.R. Parts 17, 21

50 C.F.R. Parts 25-33, 70, 71

16 U.S.C. §§ 742a – 742j

50 C.F.R. Parts 10, 19, 20, 36, 217, 250, 251, 260

Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-666c, as amended.

30 C.F.R. Part 773

33 C.F.R. Part 209

43 C.F.R. Parts 17, 21

50 C.F.R. Parts 25-33, 70, 71

Flood Control, 33 U.S.C. §§ 701 et seq., as amended

7 C.F.R. Parts 622, 624, 654

33 C.F.R. Parts 208, 222

Fishermen's Protective Act of 1967 (Pelly Amendment), 22 U.S.C. §§ 1971 – 1980, as amended.

22 C.F.R. Part 33

50 C.F.R. Part 611

Food Quality Protection Act of 1996, 7 U.S.C. §§ 136-136y.

Forest and Rangeland Renewable Resources Planning Act of 1974, 16 U.S.C. §§ 1600-1614, as amended.

Forest Ecosystems and Atmospheric Pollution Control Act of 1988, 16 U.S.C. § 1641.

Game and Wildlife Act, 16 U.S.C. §§ 141 b, 715d-1, 715d-3, 715e, 715e-1, 715k-1, 715s, 718b – 718e, as amended.

Geothermal Energy Research, Development, and Demonstration Act of 1974 (GERDDA), 30 U.S.C. §§ 1101, 1102, 1121-1126, 1141-1144, 1161-1164, as amended.

Global Climate Protection Act of 1987, 15 U.S.C. § 2901, as amended.

Hazardous Material Transportation Act, 46 U.S.C. § 170; 49 U.S.C. §§ 103, 104, 106; 49 App. §§ 1471, 1472, 1801- 1819, as amended.

Hazardous Substance Response Revenue Act of 1980, 26 U.S.C. §§ 4611, 4612, 4661, 4662.

Hazardous Materials Transportation Authorization Act of 1994, 49 U.S.C. §§ 5101-5127, as amended.

Hazardous Materials Transportation Uniform Safety Act of 1990, 49 App. §§ 1801-1819, 2509.

Intermodal Surface Transportation Efficiency Act of 1991 (see Transportation Equity Act of the 21st Century (TEA 21)).

Lacey Act Amendments of 1981 16 U.S.C. §§ 3371 et seq., as amended.

Land and Water Conservation Fund Act of 1965, 16 U.S.C. §§460d, 460l-4 – 460l-11, as amended.

Lead-Based Paint Exposure Reduction Act, 15 U.S.C. §§ 2681-2692.

Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. §§ 4801, 4811, 4821, 4822, 4831, 4841-4843, as amended.

Lead Contamination Control Act of 1988, 42 U.S.C. §§ 201 note, 247b-1, 300j-4, 300j-21 to -26.

Low-Level Radioactive Waste Policy Amendments Act of 1985, 42 U.S.C. §§ 2021b-2021j, as amended.

Magnuson-Stevens Fisheries Conservation and Management Act, 16 U.S.C. §§ 1801 et seq., as amended.

Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. §§ 1401-1445, as amended.

Migratory Bird Conservation Act, 16 U.S.C. §§ 715-715r, as amended.

Migratory Bird Treaty Act, 16 U.S.C. §§703-708, 709a, 710, 711.

Mining and Mineral Resources Research Institutes Act, 30 U.S.C. 1221-1230.

Multiple-Use Sustained-Yield Act of 1960, 16 U.S.C. §§ 475, 528, 531, as amended.

National Climate Program Act, 15 U.S.C. §§ 2901-2908, as amended.

National Coastal Monitoring Act, 33 U.S.C. §§ 2801-2805.

National Contaminated Sediment Assessment and Management Act, 33 U.S.C. §§ 1271.

National Emission Standards Act, 42 U.S.C. §§7521-7550, as amended.

National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 306, as amended.

National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321, 4331-4335, 4341-4347, as amended.

National Invasive Species Act of 1996, 16 U.S.C. §§ 4701-4751.

National Ocean Pollution Planning Act of 1978, 33 U.S.C. §§ 1701-1709, as amended.

National Trails System Act, 16 U.S.C. §§ 1241-1249, as amended.

National Wildlife Refuge System Administration Act of 1966, 16 U.S.C. §§ 668dd, 668ee, 715s, as amended.

Noise Control Act of 1972, 42 U.S.C. §§ 4901-4918.

Nuclear Waste Policy Act of 1982, 42 U.S.C. §§ 10101 -1 0270, as amended.

Oil Pollution Act, 1961, 33 U.S.C. §§ 1001-1015, as amended.

Oil Pollution Act of 1990, 33 U.S.C. §§ 2701-2761, as amended.

Organotin Antifouling Paint Control Act of 1988, 33 U.S.C. §§ 2401-2410, as amended.

Outer Continental Shelf Lands Act Amendments of 1978, 43 U.S.C. §§ 1801-1866, as amended.

Pollution Prevention Act of 1990, 42 U.S.C. §§ 13101-13109.

Public Health Service Act, 42 U.S.C. §§ 300f-300j-11.

Radon Gas and Indoor Air Quality Research Act of 1986, 42 U.S.C. § 7401.

Recreation Use of Conservation Areas Act, 16 U.S.C. § 560k.

Refuse Act of 1899, 33 U.S.C. §§ 401 et seq., as amended.

Renewable Resources extension Act of 1978, 16 U.S.C. §§ 1671-1676 as amended.

Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901-6991.

River and Harbor Act of 1958, 33 U.S.C. §610 as amended.

Safe Drinking Water Act (see Public Health Service Act Sections 1401-1451 (42 U.S.C. §§ 300f - 300j-11, as amended)).

Shore Protection Act of 1988, 33 U.S.C. §§2601-2609, 2622, 2623.

Soil and Water Resources Conservation Act of 1977, 16 U.S.C. §§ 2001-2009, as amended.  
Soil Conservation and Domestic Allotment Act, 16 U.S.C. §§ 590a et seq., as amended.  
Solid Waste Disposal Act, 42 U.S.C. §§ 6901 et seq., as amended.  
Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §§ 1201 et seq., as amended.  
Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692, as amended.  
Transportation Equity Act of the 21st Century (TEA 21), Pub. L. 105-178, 112 Stat. 107, as amended.  
Travel and Transportation Reform Act of 1998, 5 U.S.C. §§ 5701 et seq.  
United States Public Vessel Medical Waste Anti-Dumping Act of 1988, 33 U.S.C. §§ 2501-2504.  
Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. §§ 7901 - 7942.  
Water Bank Act, 16 U.S.C. §§ 1301-1311, as amended.  
Water Pollution Prevention and Control Act, 33 U.S.C. §§ 1251 et seq., as amended.  
*Commonly known as the Clean Water Act.*  
14 C.F.R. Part 1204  
40 C.F.R. Parts 7, 9, 15, 30 - 32, 34, 104, 108, 110, 113, 116, 117, 122, 124, 125, 129, 130, 131 -  
133, 136, 144, 145, 270, 271, 401, 403, 405 - 413, 415, 417 - 429, 436, 440, 443,  
446, 447, 454, 457-460, 501, 503  
Water Resources Research Act of 1984, 42 U.S.C. §§ 10301-10309.  
Water Resources Development Act of 1996, 33 U.S.C. §§ 467-467j.  
Watershed Protection and Flood Prevention Act, 16 U.S.C. §§ 1001-1008; 33 U.S.C. § 701 b.  
Wetlands Loan Act, 16 U.S.C. §§ 715k-3-715k-5, as amended.  
Wilderness Act, 16 U.S.C. §§ 1331-1336, as amended.  
Wood Residue Utilization Act of 1980, 16 U.S.C. §§ 1681-1687

**PART 4**  
**CONTRACTOR INTEGRITY PROVISIONS**

It is essential that those who seek to contract with the Commonwealth observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

In furtherance of this policy, the Development Entity shall agree, and shall ensure that each Contractor agrees, to the following:

1. The Development Entity and each Contractor shall maintain the highest standards of honesty and integrity during the performance of this PPA and any relevant Contract (as applicable) and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to the Development Entity or such Contractor or that govern contracting with the Commonwealth.
2. The Development Entity and each Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Development Entity and such Contractor's employee activity with the Commonwealth and Commonwealth employees, and which is made known to all of the Development Entity and Contractor's employees (as applicable). Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
3. The Development Entity and each Contractor, and their respective affiliates, agents and employees and anyone in privity with the Development Entity and each Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this PPA, except as provided in this PPA.
4. The Development Entity and each Contractor, shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this PPA, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Development Entity's or such Contractor's financial interest prior to Commonwealth execution of this PPA. The Development Entity and each Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than the Development Entity's submission of the contract signed by the Development Entity.
5. The Development Entity certifies to the best of its knowledge and belief that within the last five (5) years the Development Entity, Development Entity Related Parties and each Contractor have not:
  - (a) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;

- (b) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
- (c) had any business license or professional license suspended or revoked;
- (d) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
- (e) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If the Development Entity cannot so certify to the above, then it must submit a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Development Entity. The Development Entity's obligation pursuant to this certification is ongoing from and after the effective date of this PPA through the termination date thereof. Accordingly, the Development Entity shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Development Entity's certification or explanation to change. The Development Entity acknowledges that the Commonwealth may, in its sole discretion, terminate this PPA pursuant to Section 22.1(k) if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into this PPA.

6. The Development Entity and each Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award. If this PPA was awarded on a Non-bid Basis, the Development Entity and each Contractor must also comply with the requirements of the Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).
7. When the Development Entity or any Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, the Development Entity or such Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
8. The Development Entity and each Contractor, by submission of its bid or proposal and/or execution of this PPA and by the submission of any bills, invoices or requests for payment pursuant to this PPA, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of this PPA, to include any extensions thereof. The Development Entity shall, and shall cause each Contractor to, immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. The Development Entity and each Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Development Entity's and each Contractor's compliance with the terms of this or any other agreement between the Development Entity and the Commonwealth that results in the suspension or debarment of the the Development Entity or any Contract. The Development Entity shall not be responsible for investigative costs for investigations that do not result in the Development Entity's suspension or debarment.

9. The Development Entity and each Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Development Entity or Contractor non-compliance with these Contractor Integrity Provisions. The Development Entity and each Contractor agrees to make identified Development Entity or Contractor employees available for interviews at reasonable times and places. The Development Entity and each Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to the Development Entity's or such Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, the Development Entity's or such Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. The Development Entity and each Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.
10. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this PPA and any other contract with the Development Entity, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend the Development Entity or any other applicable Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.
11. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph 16.
  - (a) "Affiliate" means two or more entities where (i) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (ii) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (iii) the entities have a common proprietor or general partner.
  - (b) "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
  - (c) "Contract" means Contract (as defined under this PPA), excluding contracts with Suppliers.
  - (d) "Contractor" means Contractor (as defined under this PPA), excluding Suppliers.
  - (e) "Development Entity Related Parties" means any affiliates of the Development Entity and the Development Entity's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Development Entity.
  - (f) "Financial interest" means:

- (i) Ownership of more than a five percent interest in any business; or
  - (ii) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- (g) "Gratuity" means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor's Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.
- (h) "Non-bid Basis" means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

## PART 5

### NON-DISCRIMINATION / SEXUAL HARASSMENT CLAUSE

The Development Entity agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under this PPA or any Contract, the Development Entity and each Contractor, or any person acting on behalf of the Development Entity, Contractor or subcontractor shall not discriminate in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Development Entity nor any Contractor nor any person on their behalf shall in any manner discriminate in violation of the PHRA and applicable federal laws against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
3. The Development Entity and each Contractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
4. The Development Entity and each Contractor shall not discriminate in violation of PHRA and applicable federal laws against any subcontractor or supplier who is qualified to perform the work to which this PPA relates.
5. The Development Entity and each Contractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment. The Development Entity and each Contractor further represents that it has filed a Standard Form 100 Employer Information Report (“EEO-1”) with the U.S. Equal Employment Opportunity Commission (“EEOC”) and shall file an annual EEO-1 report with the EEOC as required for employers subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Development Entity and each Contractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Small Business Opportunities (BSBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
6. The Development Entity and each Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
7. The Development Entity’s and each Contractor’s obligations pursuant to these provisions are ongoing from and after the effective date of this PPA through the termination date thereof. Accordingly, the Development Entity and each Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

8. The Commonwealth may cancel or terminate this PPA pursuant to Section 22.1(k) and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Development Entity or applicable Contractor in the Contractor Responsibility File.

## PART 6

### AMERICANS WITH DISABILITIES ACT

During the term of this agreement, the Development Entity agrees as follows:

1. Pursuant to federal regulations promulgated under the authority of the *Americans with Disabilities Act*, 28 C. F. R. § 35.101 et seq., the Development Entity understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this agreement or from activities provided for under this agreement. As a condition of accepting and executing this PPA, the Development Entity agrees to comply with the "*General Prohibitions Against Discrimination*," 28 C. F. R. § 35.130, and all other regulations promulgated under *Title II* of the *Americans with Disabilities Act* which are applicable to the benefits, services, programs, and activities provided by the Commonwealth through contracts with outside contractors.
2. The Development Entity shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth as a result of the Development Entity's failure to comply with the provisions of paragraph 1.

## SCHEDULE 15

### COMMONWEALTH DIVERSE BUSINESS (DB) REQUIREMENTS

#### For Non-Federally Funded Construction Projects

#### 1. GENERAL GOOD FAITH EFFORT REQUIREMENTS

Section 303 of Title 74 of the Pennsylvania Consolidated Statutes, 74 Pa.C.S. §303, requires the Development Entity and each Development Entity Related Entity, pursuant to the provisions of Title 74 (*Transportation*) and 75 (*Vehicle Code*) administered and issued by the Department, to make good faith efforts to solicit subcontractors that are Diverse Businesses (**DBs**) as defined in Section 303. The DB requirements of Section 303 apply to this contract.

Under the statute, the Development Entity and each Development Entity Related Entity must make good faith efforts as set forth below to ensure that DBs have the opportunity to compete for and perform contracts. With respect to subcontracts for portions of the D&C Work valued at \$17,500 or less, the Development Entity and each Development Entity Related Entity will have no obligation to competitively solicit such subcontracts; **provided**, that if the Development Entity or Development Entity Related Entity does competitively subcontract such portions of the D&C Work, the Development Entity or Development Entity Related Entity, as applicable, must make good faith efforts as set forth below to not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts. Failure to exert good faith efforts in the solicitation of subcontractors that are DBs may constitute a Development Entity Default under Article 22 of the Agreement.

Document and submit to the Department all good faith efforts to solicit subcontractors that are DBs as more fully described below. The Development Entity and each Development Entity Related Entity are encouraged to utilize and give consideration to second-tier or lower-tier subcontractors offering to utilize DBs in the selection and award of contracts.

Good faith efforts to solicit and use DBs are in addition to all other equal opportunity requirements of the contract.

The Department requires that all DB contractors self-perform at least 50% of the D&C Work subcontracted to them.

#### 2. DEFINITIONS

The following definitions apply for terms used in this specification:

**Disadvantaged Business.** A business that is owned or controlled by a majority of persons, not limited to members of minority groups, who are subject to racial or ethnic prejudice or cultural bias.

**Diverse Business (DB).** A disadvantaged business, minority-owned or women-owned business or service-disabled veteran-owned or veteran-owned small business that has been certified by a third-party certifying organization.

**ECMS.** The Department's Engineering and Construction Management System.

**ECMS Business Partner.** An individual, firm, partnership, or corporation that has a valid Registered Business Partner Identification issued by the Department through ECMS.

**Good Faith Effort Review Officer.** The Department's Executive Deputy Secretary for Administration or his/her designee, who reviews good faith efforts submitted by bidders.

**Minority-owned Business.** A business owned and controlled by a majority of individuals who are African Americans, Hispanic Americans, Native Americans, Asian Americans, Alaskans or Pacific Islanders.

**Professional Services.** An industry of infrequent, technical or unique functions performed by independent contractors or consultants whose occupation is the rendering of the services, including design professional services as defined in Section 901 of the Procurement Code, 62 Pa.C.S. §901 (relating to definitions); legal services; advertising or public relations services; accounting, auditing or actuarial services; security consulting services; computer and information technology services; and insurance underwriting services.

**Service-disabled Veteran.** Being in possession of a disability rating letter issued by the United States Department of Veterans Affairs or a disability determination from the United States Department of Defense or, if approved by the Department of General Services, a surviving spouse or permanent caregiver of a such a service-disabled veteran.

**Service-disabled Veteran-owned Small Business.** A business in the United States which is independently owned and controlled by a service-disabled veteran or veterans, not dominant in its field of operation, and employs 100 or fewer employees.

**Subcontractor.** Any individual, partnership, firm, or corporation entering into a contract with the prime contractor for D&C Work under the contract, including those providing professional and other services.

**Third-party Certifying Organization.** An organization that certifies a small business, minority-owned business, women-owned business or veteran-owned small business as a DB, including the National Minority Supplier Development Council; the Women's Business Enterprise Council, the Small Business Administration; the Department of Veterans Affairs; and the Pennsylvania Unified Certification Program.

**Veteran.** An individual who served on active duty in the United States Armed Forces, including a reservist or member of the National Guard who was discharged or released from the service under honorable conditions, a reservist or member of the National Guard who completed an initial term of enlistment or qualifying period of service, and a reservist or member of the National Guard who was disabled in the line of duty during training.

**Veteran-owned Small Business.** A business in the United States which is independently owned and controlled by a veteran or veterans, is not dominant in its field of operation, and employs 100 or fewer employees.

### **3. ACTIONS REQUIRED BY THE DEVELOPMENT ENTITY AND DEVELOPMENT ENTITY RELATED ENTITIES**

#### **3.1 Submission Requirements**

The Development Entity and applicable Development Entity Related Entities shall demonstrate their respective good faith efforts to solicit subcontractors that are DBs through the Department's CNG P3 document management system by 3:00 P.M. prevailing local time within 7 calendar days after the award of any subcontract (other than subcontracts awarded to Affiliates of the Development Entity) for the performance of the D&C Work. The Development Entity and each applicable Development Entity Related Entity shall present good faith efforts by submitting paper documentation into the "Program Management/DB Documentation" folder of the Department's CNG P3 document management system.

The paper documentation of good faith efforts must include the business name and business address of each DB, and for those DBs that are ECMS Business Partners please include the ECMS Business Partner ID. Supporting documentation must also include a DB acknowledgment for each DB providing construction or professional services, proof of certification for DBs that are not ECMS Business Partners, and any explanation of good faith efforts the Development Entity would like the Department to consider. Any services to be performed by a DB are required to be readily identifiable to the project.

The Development Entity or Development Entity Related Entity may contact the Contractor Evaluation & Pre-Qualification Officer in the Bureau of Project Delivery at (717) 787-3733 with respect to any questions about using a non-EMCS listed DB.

#### **3.2 Good Faith Efforts Requirements**

Good faith efforts are demonstrated by seeking out DB participation in the project given all relevant circumstances. The following illustrate the types of efforts that may be taken, but they are not deemed to be exclusive or exhaustive. The Good Faith Review Officer may consider other factors and types of efforts included in a bidder's submission of good faith efforts if deemed relevant.

Efforts made to solicit through all reasonable and available means (e.g., use of the DB Directory, attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBs with the capability to perform subcontracted D&C Work. The Development Entity or applicable Development Entity Related Entity should provide written notification, at least 15 calendar days before the award of a sub-contract, to allow the DBs to respond to the solicitation. The Development Entity or applicable Development Entity Related entity must determine with certainty if the DBs are interested by taking appropriate steps to follow up initial solicitations.

Efforts made to select portions of the D&C Work to be performed by DBs. This includes, where appropriate, breaking out contract D&C Work items into economically feasible units to facilitate DB participation.

Efforts made to provide interested DBs with adequate information about the scope of work, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

Efforts made to negotiate in good faith with interested DBs. The Development Entity and Development Entity Related Entities are encouraged to make a portion of the D&C Work available to DBs and to select those portions of the D&C Work needs consistent with the available DBs so as to facilitate participation of DBs. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBs that were considered; a description of the information provided regarding the plans and specifications for the D&C Work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBs to perform the D&C Work. The Development Entity and each applicable Development Entity Related Entity should consider a number of factors in negotiating with subcontractors, including DB subcontractors, and would take a firm's price and capabilities into consideration as well as its own ability or desire to perform the D&C Work with its own work force.

Efforts made to thoroughly investigate DBs for qualification based on their capabilities. The Development Entity and applicable Development Entity Related Entities cannot reject or withhold solicitation of DBs as being unqualified without sound reasons based on this investigation of their capabilities. The DB's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Development Entity's or Development Entity Related Entity's efforts to meet the good faith efforts requirement.

Efforts to assist interested DBs in obtaining bonding, lines of credit, or insurance.

Efforts to assist interested DBs in obtaining necessary equipment, supplies, materials, or related assistance or services.

Efforts to effectively use existing databases and the resources of supportive services to assist in finding DBs.

#### **4. ACTIONS REQUIRED DURING DESIGN AND CONSTRUCTION**

##### **4.1 DB Participation**

Continue good faith efforts for the life of the project.

##### **4.2 Subcontractor Approval**

DB firms are not to commence D&C until they are approved. The Department's approval of a DB shall be based on the DB's compliance with the Commonwealth's contractor responsibility program, as more particularly described in Management Directive 215.9, issued October 25, 2010 by the Governor's Office of the Commonwealth of Pennsylvania.

All firms listed in the good faith efforts submission, including those providing professional and other services, must be submitted for subcontractor approval after a subcontract is executed and approved before the DB's actual performance of D&C Work. Submit for subcontractor approval any DB to be utilized whether or not they are listed in the good faith efforts submission approved by the Good Faith Review Officer.

Attach the good faith effort documentation along with the Public Works Employment Verification Form to the CNG P3 subcontractor request.

When submitting a request for subcontractor approval, provide a copy of the subcontract or agreement or:

- (a) A copy of the executed signature page,
- (b) A copy of the description of the scope of D&C Work, and
- (c) A copy of the unit prices as they appear in the subcontract or agreement.

#### **4.3 Conditional Approval Resolution**

Continually monitor conditional approval of DB subcontractors. Examples of these conditional approvals may include pending DB certifications.

#### **4.4 Replacement of DB**

If it becomes necessary to replace a subcontractor that is a DB at any time, immediately notify the Department of the need to replace the DB. Include the reasons for the replacement in the notice.

#### **4.5 Additional Work**

The obligation to make good faith efforts to solicit subcontractors that are DBs extends to additional D&C Work required for any classification of D&C Work which is identified as to be performed by a DB.

#### **4.6 Progress Payments**

Make payments to DB subcontractors in accordance with the prompt payment requirements of Chapter 39, Subchapter D of the Procurement Code, 62 Pa.C.S. §§3931 et seq. Performance of D&C Work by a DB subcontractor in accordance with the terms of the contract entitles the subcontractor to payment. Include DB progress payments as part of the Monthly Performance Reports of the design and construction activities submitted to the Department no later than the tenth day of each month. Bring to the attention of the Department, in writing, any situation in which regularly scheduled progress payments are not made to DB subcontractors.

#### **4.7 Records and Reports**

Keep such project records as are necessary to perform the reporting function discussed below. These records can be used as documentation of good faith efforts. Design these records to indicate:

- (a) The number of DB and non-DB subcontractors and the type of D&C Work or services performed on the project.
- (b) The progress and efforts made in seeking out DB contractor organizations and individual DBs for D&C Work on the project.
- (c) Documentation of all correspondence, personal contacts, telephone calls, etc., to obtain the services of DBs for the project. Submit reports, as required by the Department. Certify that the amounts were actually paid to the DB for D&C Work performed on the project and keep cancelled checks on file in the home office to reflect payment for the

specific project and for inspection and audit by the Department. Provide DB progress payments no later than the tenth day of each month and include the following:

- (i) The number of contracts awarded (with approved subcontractor requests) to DBs, noting the type of D&C Work and amount of each contract executed with each firm and including the execution date of each contract.
- (ii) The amount paid to each DB during the month and the amount paid to date. If no payments are made to a DB during the month, enter a zero (\$0.00) payment.
- (iii) Paid invoices or a certification attesting to the actual amount paid to each firm, upon completion of the individual DB's D&C Work. In the event the actual amount paid is less than the award amount, provide a complete explanation of the difference.

Maintain all such records for a period of 3 years following acceptance of final payment. Make these records available for inspection by the Department.

**5. ACTIONS REQUIRED BY THE DEVELOPMENT ENTITY FOLLOWING CNG READINESS AT THE LAST PROJECT SITE**

When requested, or within 30 days of achieving CNG Readiness at the last Project Site submit a report to the Department summarizing the use of approved subcontractors not on the ECMS DB Listing.

Identify in the report the name of the subcontractor; the nature of the D&C Work performed by the subcontractor (i.e. prime contractor, direct or tiered subcontractor; who certified the subcontractor as a DB; the subcontractor's ECMS Business Partner number; the subcontractor's ECMS contract number; and the amount of their subcontract.

For direct and tiered subcontractors, provide the amount of the contract that is performed, managed and supervised by the DB's own forces. Include the cost of supplies and materials obtained by the DB for the D&C Work of the subcontract, including supplies purchased or equipment leased by the DB. The amount a DB subcontracts or leases to another non-DB firm must be excluded. The value of the subcontracted D&C Work may be counted only if the DB's subcontractor is itself a DB; D&C Work that a DB subcontracts to a non-DB firm does not count.

**6. ACTIONS TO BE TAKEN BY THE DEPARTMENT FOLLOWING CNG READINESS AT EACH PROJECT SITE**

Upon achieving CNG Readiness at each Project Site, the Department will review the actual DB participation and make a determination regarding the contractor's compliance with Section 303 and this special provision in respect of such Project Site. A breach of the requirements of this Schedule 15 may constitute a Development Entity Default under Article 22 of the Agreement.

**SCHEDULE 16**

**[NOT USED]**

**SCHEDULE 17**

**[NOT USED]**

**SCHEDULE 18**  
**TECHNICAL PROVISIONS**

*[See Separate Document.]*

## SCHEDULE 19

### EXTRA WORK COSTS

#### 1. GENERAL

##### 1.1. Design Work

- (a) For Extra Work consisting of Design Work, an amount equal to the salaries paid to technical employees for time actually spent in performing such services, plus one hundred seventy-five percent (175%) of the portion of such salaries representing "straight time" payments.
- (b) As used in this Section 1.1 (Design Work), **salaries paid to technical employees** means salaries actually paid (excluding payments and factors for holidays, vacations, sick time, bonuses, profit participations and other similar payments) to architects, engineers, designers, draftsmen and other technical employees of the Contractor performing such design services, excluding however, any partners, corporate officers and clerical or administrative personnel.

##### 1.2. Construction Work

- (a) For Extra Work consisting of Construction Work, an amount equal to the sum of all applicable costs calculated in accordance with Section 2.

#### 2. CONSTRUCTION EXTRA WORK COSTS

##### 2.1. Records

The Development Entity shall keep records of the Extra Work costs set out in this Section 2 (Construction Extra Work Costs) on a force account basis. The Development Entity shall compare force account records with those kept by the Department, at the end of each day or as otherwise directed, to ensure accuracy and obtain concurrence. The Development Entity shall report any unresolved disagreements with such records to the Department. Failure to review the Department's records or to report disagreements with such records shall create a presumption that Department's records are complete and accurate.

##### 2.2. Labor

- (a) Wages of forepersons; equipment operators; and skilled, semiskilled, and common laborers directly assigned to the specific operation will be reimbursed, as direct labor costs, at the actual base pay rate and fringe benefit rate paid, for each hour that such employees are engaged in the performance of Extra Work and, if directed, overtime as provided for in existing laws and regulations.
- (b) Indirect labor costs will be allowed as a percentage of the total base labor cost. However, if certified payroll records indicate that the relevant Contractor's method of making payment is such that fringe benefits are paid directly to the worker, indirect labor costs will be allowed as a percentage of the total direct labor cost. Compute indirect labor costs as follows:
  - (i) Social Security Tax at the percentage legally required;

- (ii) Medicare Tax at the percentage legally required; and
  - (iii) Unemployment Taxes at the estimated effective rate.
- (c) Compute estimated effective rates for the current Calendar Year by dividing the relevant Contractor's total, company-wide Unemployment Tax payments for the previous Calendar Year by the total wages and salaries paid to all employees for the same period. Recompute estimated effective rates each year thereafter, for the duration of the Project, based on the previous Calendar Year's total wages and salaries and total tax payments.

### **2.3. Material**

The cost of material used will be reimbursable, including applicable sales tax and transportation costs charged by the relevant Supplier.

### **2.4. Equipment**

Reasonable rental rates for equipment, including trucks and machinery, mutually considered necessary, will be allowed, computed as follows:

- (a) Owned Equipment
  - (i) For any Contractor-owned equipment, an hourly rental rate will be determined using the monthly rate listed in the applicable edition of the Rental Rate Blue Book for Construction Equipment (the **Blue Book**), Volume 1. The Blue Book edition in effect as of the first day that Extra Work is performed is the edition that will remain applicable throughout the performance of such Extra Work. The applicable edition of the Blue Book will be authorized for use state-wide on a specified date.
  - (ii) The hourly rental rate for owned equipment will be computed by dividing the monthly rate listed in the Blue Book by 176. Apply to this rate, the area adjustment percentage for the Commonwealth and the age adjustment percentage for the model year of the piece of equipment, as shown on the "Regional Adjustment Maps" and in the "Rate Adjustment Tables," respectively, located at the beginning of each section of the Blue Book.
  - (iii) An allowance will be made for operating costs by adding, to the above adjusted hourly rate, the estimated operating cost per hour, as listed in the Blue Book, for each hour that the equipment or machinery is actually in operation on the Extra Work. If equipment or machinery is required at the Project Site on a standby basis, but is not operating, compensation will be at 50% of the adjusted hourly rate, exclusive of operating costs.
  - (iv) Equipment used for maintenance and protection of traffic on a 24-hour basis will be reimbursed at a daily rental rate, which will be determined by dividing the monthly rate listed in the Blue Book by 22.
  - (v) Where Contractor-owned equipment or machinery is not listed in the Blue Book, a rental rate will be determined based on the manufacturer's list price for sale (new) of such equipment. In these cases, the monthly rate will be computed as

6% of the sale price (new), and the total hourly rate determined by dividing the monthly rate by 160, when operating, and by 352, when required at the Project Site on a standby basis, but not operating, with no adjustment percentages applied. For equipment used for maintenance and protection of traffic on a 24-hour basis, with no listing in the Blue Book, the daily rental rate will be computed as 6% of the manufacturer's list price for sale (new) of the equipment divided by 22, with no adjustment percentages applied.

- (vi) The rates established above include the cost of fuel; oil; lubrication; supplies; necessary attachments; repairs; overhaul and maintenance of any kind; storage; all costs of moving equipment on to and away from the Project Site, except as specified below; and all incidentals.
- (vii) The Department will not approve any costs in excess of those outlined above unless such costs were incurred for the convenience of the Department, as directed, and are supported by an acceptable cost breakdown. If a piece of owned equipment, not already on or near the Project Site, is needed specifically for the Extra Work, the cost of moving the equipment on, to and away from the Project Site will be reimbursed; **provided**, that the equipment will not be used immediately thereafter in the performance of original D&C Work.
- (viii) The term "owned equipment," as used above applies to equipment (including trucks and machinery) which the relevant Contractor is required to provide for the proper execution of the Project Services whether the equipment is actually owned directly by the Contractor, is leased, or has been obtained in some other manner.

(b) Rented Equipment

- (i) If a piece of equipment needed for the Extra Work is not of the type required to be provided by a Contractor for the proper execution of such work, or if the piece of equipment needed is "owned" but not currently available, and the equipment can be obtained by rental, the Development Entity shall discuss the need to rent the equipment with the Department and obtain approval of the rental rate to be paid before renting the equipment for the Extra Work.
- (ii) Additionally, if an item is purchased specifically for the Extra Work, but does not become a permanent part of such Extra Work, the item will be considered rented equipment for cost reimbursement purposes. If the item's useful life is completely expended in the performance of the Extra Work, as determined by the Department, the full cost of the item will be reimbursed, including applicable sales tax and transportation costs. Otherwise, that portion of the item's useful life expended in the performance of the Extra Work will be determined and reimbursement made at a prorated cost.
- (iii) The Development Entity will be reimbursed the actual invoiced cost for rented equipment, plus the cost of transporting the equipment to and from the relevant Project Site. An allowance will be made for operating costs by adding, to the rental cost, the estimated operating cost per hour, as listed in the Blue Book, for each hour the rented equipment is actually in operation on the Extra Work. The

Development Entity shall furnish a copy of the invoice, receipt, or cancelled check as support for the rental expense incurred.

- (iv) Transportation charges for each piece of rented equipment, to and from the relevant Project Site, will be paid; **provided**, that:
  - (A) Equipment is obtained from the nearest available source;
  - (B) Return charges do not exceed the delivery charges;
  - (C) Haul rates do not exceed the established rates of licensed haulers; and
  - (D) Charges are restricted to those units of equipment not readily available and not on or near the project.

## **2.5. Services by Others**

For specialized construction analyses, engineering services, or work not considered subcontract work requiring prequalification, the Development Entity will be reimbursed the invoice price plus 2% to cover administration and all other costs. The Development Entity shall furnish a copy of the invoice, receipt, or cancelled check as support for the expense incurred. The markup on service by others costs will be limited to 2% only, regardless of whether the service was arranged by the Development Entity or any other Contractor performing any or all of the Extra Work. The overhead and profit allowances specified in Section 2.7 (Overhead and Profit) below are not applicable to service by others costs.

## **2.6. Permits and Insurance**

When specifically required for the force account Extra Work, as directed, the securing of permits or specialized insurance coverage, of a type not already required by this PPA, will be considered a service by others, as specified in Section 2.5 (Services by Others) above, and reimbursement of the permit fee or insurance premium paid will be allowed plus the specified markup.

## **2.7. Overhead and Profit**

Except for Extra Work considered to be service by others, as specified in Section 2.5 (Service by Others) above, to cover all administration, general and project superintendence, other overhead, bonds, insurance, anticipated profit, and use of small tools and equipment for which no rental is allowed, 20% will be added to the total material cost, 35% will be added to the total labor cost, and 5% will be added to the total equipment cost.

# **3. STATEMENTS AND FINAL PAYMENT**

## **3.1. Statements**

- (a) The Development Entity shall furnish for Department review an itemized statement of all Extra Work costs, in the form of a properly completed force account record, detailed as follows:
  - (i) Name, classification, work dates, daily hours, total hours, base pay rate, fringe benefit rate, total pay rate and extension (as relevant) for each foreperson; equipment operator; and skilled, semi-skilled, and common laborer in respect of Extra Work consisting of

Construction Work and for each architect, engineer, designer, draftsman and other technical employee of the Contractor in respect of Extra Work consisting of Design Work;

- (ii) Description (year, make, model, capacity, etc.), use dates, daily hours, total hours, rental rates (operating and standby) and extension for each piece of rented equipment and/or description, rental cost, transportation costs (if separate), and extension for each piece of rented equipment;
  - (iii) Description, quantity, unit price and extension for all materials, applicable sales tax, and transportation costs charged by any relevant Supplier;
  - (iv) Name, description, unit price and extension for all services by others; and
  - (v) Rates (legally required, estimated effective, or policy percentage) paid for unemployment taxes, medicare tax, and social security tax.
- (b) Statements of labor costs are to be supported by certified payroll records.
- (c) Statements of material costs (including sales tax and transportation costs), rented equipment costs and service by others costs are to be supported and accompanied by invoices.
- (d) If materials used in the Extra Work are not specifically purchased for such Extra Work but are taken from the relevant Contractor's stock or provided by entities that are divisions, affiliates, subsidiaries or in any other way related to such Contractor or its parent company, such Contractor shall furnish an affidavit certifying that the materials were obtained as described above, that the quantity claimed was actually used, and that the price and transportation costs claimed were actually incurred.

### **3.2. Final Payment**

- (a) Final payment will not be made for Extra Work performed until the Development Entity has furnished to the Department all statements and applicable supporting documentation described in Section 3.1 (Statements).
- (b) Payment for all Extra Work is accepted as payment in full for all profit and for all equipment, labor, material, field overhead, home office and general administrative expenses, and every other expense incurred as a result of the Extra Work. No claims for additional compensation of any kind arising out of or relating to such Extra Work can be asserted against the Department with the Board of Claims.

## **SCHEDULE 20**

### **CONDITIONS PRECEDENT TO NOTICES TO PROCEED**

#### **PART 1**

##### **CONDITIONS PRECEDENT TO NTP1**

- (1) The Commercial Closing Date has occurred.
- (2) The Development Entity has demonstrated its exercise of "Good Faith Efforts" to the Department's satisfaction in accordance with the requirements of Schedule 15 (Commonwealth Diverse Business (DB) Requirements).
- (3) All Insurance Policies required to be procured under Schedule 9 (Insurance Coverage Requirements) as of NTP1 have been obtained and are in full force and effect and the Development Entity has delivered to the Department written verification of insurance coverage as required by Schedule 9 (Insurance Coverage Requirements).
- (4) The Development Entity has caused to be developed and delivered to the Department, and the Department has approved, in accordance with the terms of the Project Documents:
  - (a) the Project Management Plan (including all sub-component plans) as set out in Section 2 of the Technical Provisions; and
  - (b) the Project Baseline Schedule and all component parts thereof.
- (5) The Development Entity has satisfied all other requirements of the Project Documents that are required to be satisfied prior to commencement of Design Work, in the form and content required therein.

## **PART 2**

### **CONDITIONS PRECEDENT TO NTP2**

- (1) NTP1 has been issued.
- (2) All necessary Governmental Approvals necessary to begin the applicable elements of the Construction Work have been obtained and the Development Entity has furnished to the Department fully executed copies of such Governmental Approvals.
- (3) To the extent that any Governmental Approvals contain conditions that must be satisfied before the relevant elements of the Construction Work can commence, satisfaction of such conditions and demonstration of the same to the Department.
- (4) The Development Entity has caused to be developed and delivered to the Department, and the Department has approved, in accordance with the terms of the Project Documents, each of items 18 through 50 set out in Table 3 (Required Development Entity Submittals) to the Technical Provisions in respect of the relevant Project Site.
- (5) The Development Entity has satisfied all other requirements of the Project Documents that are required to be satisfied prior to commencement of the applicable elements of the Construction Work, including delivery to the Department of all Submittals relating to the applicable elements of the Construction Work required by the Project Management Plan or the Project Documents, in the form and content required therein.
- (6) All Insurance Policies required to be procured under Schedule 9 (Insurance Coverage Requirements) as of NTP2 have been obtained and are in full force and effect and the Development Entity has delivered to the Department written verification of insurance coverage as required by Schedule 9 (Insurance Coverage Requirements).
- (7) The Department shall have approved Project Site-specific gas monitoring protocol delivered by the Development Entity in accordance with Section 2.4.3.G of the Technical Provisions.
- (8) The Development Entity has issued a written notice to the Department requesting the issuance of NTP2 in respect of the relevant Project Site.
- (9) The Development Entity has complied to the Department's satisfaction with its ongoing obligations to use "Good Faith Efforts" in accordance with the requirements of Schedule 15 (Commonwealth Diverse Business (DB) Requirements).

## **SCHEDULE 21**

### **CONDITIONS PRECEDENT TO CNG READINESS AND SITE COMPLETION**

#### **PART 1**

##### **CONDITIONS PRECEDENT TO CNG READINESS**

1. The relevant CNG Fueling Station Facility set out in the Final Design Documents is available for normal and safe use and operation, including compliance with all applicable codes and standards (such compliance to be determined by the applicable Governmental Entities).
2. All upgrades of the relevant CNG Maintenance and Storage Facility set out in the Final Design Documents are in their final configuration and such upgraded CNG Maintenance and Storage Facility is available for normal and safe use and operation, including compliance with all applicable codes and standards (such compliance to be determined by the applicable Governmental Entities).
3. The relevant CNG Fueling Station Facility is able to pass an inspection pursuant to Section 7 of the Technical Provisions.
4. The relevant CNG Maintenance and Storage Facility is able to pass an inspection pursuant to Section 7 of the Technical Provisions.
5. The Development Entity has caused to be developed and delivered to the Department, and the Department has approved, in accordance with the terms of the Project Documents, items 53 set out in Table 3 (Required Development Entity Submittals) to the Technical Provisions in respect of the relevant Project Site.
6. The Development Entity has otherwise completed the Design Work and Construction Work with respect to the relevant Project Site in accordance with the Project Documents, Final Design Documents and Construction Documents (excluding any such Design Work or Construction Work solely applicable to the satisfaction of the requirements of Part 2 (Conditions Precedent to Site Completion) of this Schedule 21 (Conditions Precedent to CNG Readiness and Site Completion) in respect of the Project Site).
7. All Utility Relocation Work relating to the relevant Project Site has been completed in accordance all relevant agreements and utility clearances in respect of such Utility Relocation Work (excluding any such Utility Relocation Work solely applicable to the satisfaction of the requirements of Section 1 of Part 2 (Conditions Precedent to Site Completion) of this Schedule 21 (Conditions Precedent to CNG Readiness and Site Completion) in respect of the Project Site).
8. All Insurance Policies required under Article 19 (Insurance) and Schedule 9 (Insurance Coverage Requirements) for the Maintenance Work to be performed on the relevant Project Site have been obtained and are in full force and effect, and the Development Entity has delivered to the Department verification of insurance coverage as required by Article 19 (Insurance) and Schedule 9 (Insurance Coverage Requirements).
9. The Department has received a complete set of the As-Built Drawings for the relevant Project Site, in the form required under the Project Documents.

10. If any Governmental Entity with jurisdiction requires any form of certification of design, engineering or construction with respect to the relevant Project Site, including any certification from the Engineer of Record for the Project, the Development Entity has caused such certificates to be delivered and has concurrently issued identical certificates to the Department.
11. With respect to the relevant Project Site, the Development Entity has restored to their original condition any lands provided by the Department for temporary access and other activities not forming part of the relevant CNG Maintenance and Storage Facility or the CNG Fueling Station Facility.
12. All of the conditions of the Governmental Approvals relating to the relevant Project Site that relate to Design Work or Construction Work have been satisfied in full.
13. The Development Entity has certified to the Department in writing that no overdue amounts owing to any first-tier Contractor with respect to the relevant Project Site remain unpaid (except for amounts relating to good faith disputes).
14. All demobilization from the relevant Project Site is complete, including the removal of temporary work and equipment used in the performance of the Construction Work.
15. All initial training has been completed as required by Section 8.1 of the Technical Provisions.

## **PART 2**

### **CONDITIONS PRECEDENT TO SITE COMPLETION**

1. With respect to each Project Site specified in Appendix 1 (Development Entity's Proposal Commitments) as a Project Site at which the Development Entity has committed to design and construct an expansion to the CNG Equipment Compound at such Project Site after the date of CNG Readiness in respect of such Project Site, the Development Entity shall have designed and constructed, in accordance with the requirements of this PPA and Sections 3, 4, 5, 6 and 7 of the Technical Provisions, an expanded CNG Equipment Compound at such Project Site and the CNG Fueling Station Facilities at such Project Site are available for normal and safe use and operation, including compliance with all applicable codes and standards (such compliance to be determined by the applicable Governmental Entities).
2. The Development Entity shall have satisfied each of the conditions set forth in Section 3 and Sections 5 through 15 of Part 1 (Conditions Precedent to CNG Readiness) of this Schedule 21 (Conditions Precedent to CNG Readiness and Site Completion) with respect to the portions of the Work applicable to the satisfaction of Section 1 of this Part 2 (Conditions Precedent to Site Completion) of this Schedule 21 (Conditions Precedent to CNG Readiness and Site Completion).

## SCHEDULE 22

### FORM OF GUARANTEE

THIS **GUARANTEE** (the **Guarantee**), is made and entered into this [●] day of [●], 2016, by and between LOVE'S TRAVEL STOPS AND COUNTRY STORES, INC. (**Guarantor**), to and for the benefit of The Pennsylvania Department of Transportation, an executive agency of the Commonwealth of Pennsylvania (the **Department**). Capitalized terms not otherwise defined herein shall have the meaning given such terms in the Agreement (as such term is defined below).

#### RECITALS:

WHEREAS, the Department and TRILLIUM TRANSPORTATION FUELS, LLC (d/b/a TRILLIUM CNG), a limited liability company organized under the laws of the State of Delaware (the **Development Entity**) entered into that certain Public Private Transportation Partnership Agreement dated as of \_\_\_\_\_, 2016 (as such agreement may be modified, amended or supplemented from time to time, the **Agreement**) for the design, construction, financing, operation and maintenance of the Project (as defined in the Agreement);

WHEREAS, the Development Entity is a commonly owned and controlled affiliate company of Guarantor; and

WHEREAS, Section 2.2(f) of the Agreement requires that this Guarantee be executed and delivered by Guarantor concurrently with the effectiveness of the Agreement;

NOW THEREFORE, for valuable consideration and as an inducement to The Department to enter into the Agreement, Guarantor covenants with the Department as follows:

1. Guarantee. Guarantor hereby irrevocably, absolutely and unconditionally guarantees to the Department, its successors and permitted assigns, as primary obligor and not merely as surety, the full and timely performance when due, the payment of all amounts when due and owing, and observance when due of all warranties, covenants, duties, terms, obligations and agreements to be performed, paid or observed, as applicable, by the Development Entity under the Agreement and all other present or future agreements and instruments between the Department and the Development Entity in connection with the performance of the Agreement, all whether presently existing or from time to time hereafter created, incurred or arising (such obligations of the Development Entity collectively the **Obligations**). For the avoidance of doubt, the Obligations include all amounts that would become due but for the operation of an automatic stay under section 362(a) of the U.S. Bankruptcy Code of 1978 (the **U.S. Bankruptcy Code**). The Department expressly acknowledges and agrees that, notwithstanding anything to the contrary on this Guarantee, the liability of Guarantor under this Guarantee shall in no event be greater than that of the Development Entity under the Agreement (other than with respect to Guarantor's obligation hereunder to reimburse the Department for its costs and expenses of enforcing this Guarantee, if any, in accordance with Section 4 hereof) and that Guarantor shall be entitled to the benefit of all limitations on the Development Entity's liability specified in the Agreement. Subject to the provisions of this Guarantee, including without limitation any defenses expressly waived in this Guarantee, Guarantor may, as a defense to the performance of the Obligations, assert any defense available to the Development Entity under the Agreement that would excuse the Development Entity from performing the obligation in respect of which a claim is made under this Guarantee. Notwithstanding any other provisions of this Guarantee to the contrary, this Guarantee shall not modify the Obligations under the Agreement. This Guarantee is a continuing guarantee, and shall apply to all Obligations whenever arising, and shall remain in full force and effect until the irrevocable and indefeasible payment in full of the ultimate balance of the

Obligations, regardless of any intermediate payment or discharge in whole or in part. Guarantor covenants to the Department that if at any time the Development Entity should default in the payment or performance when due of any of its Obligations, Guarantor shall, upon demand by the Department, pay or perform in the Development Entity's stead as if the Guarantor instead of the Development Entity were expressed to be the principal obligor, or cause the payment or performance of, such Obligations.

2. Nature of Guarantor's Obligations. It is expressly understood and agreed by Guarantor that, to the extent Guarantor's obligations hereunder relate to Obligations which require performance other than the payment of money, the Department may proceed against Guarantor to effect specific performance thereof (to the extent such relief is available) or for payment of damages (as limited by the Agreement) resulting from the Development Entity's nonperformance. Guarantor hereby covenants to perform or cause to be performed all of the obligations, terms and conditions on the part of the Development Entity to be performed thereunder for the balance of the term thereof. Should the Agreement be disaffirmed by the trustee in bankruptcy for the Development Entity, or at the option of the Department, Guarantor shall, in the event of the Development Entity's bankruptcy, make and enter into a new contract performing or causing to be performed the balance of the Obligations, which said new agreement shall be in form and substance identical to the Agreement.

3. Payments. All payments by Guarantor to the Department shall be made in the United States in United States Dollars and shall be paid within 5 Business Days (as such term is defined in the Agreement) after receipt by Guarantor from the Department of written demand for such payment and shall not be the subject of any offset against any amounts which may be owed by the Department to Guarantor for any reason unrelated to the Project. Each and every default or failure by the Development Entity in making a payment or otherwise discharging or performing any of the Obligations set forth in the Agreement shall give rise to a separate liability of the Development Entity to the Department and a separate cause of action hereunder and a separate suit may be brought hereunder as each liability or cause of action arises.

4. Costs and Expenses. Guarantor agrees to pay all costs, expenses and fees, including all reasonable attorneys' fees, which may be incurred by the Department in enforcing this Guarantee, whether by suit or otherwise, to the extent the Department is the prevailing party.

5. Waiver of Defenses. The obligations of Guarantor under this Guarantee shall be irrevocable, absolute and unconditional and shall remain in full force and effect until such time as set forth in Section 18 hereof. The obligations of Guarantor shall not be affected, modified, impaired or prejudiced (i) by any security now or hereafter held by the Department as security for the Obligations of the Development Entity under the Agreement; or (ii) by the happening from time to time of any one or more of the following whether or not with notice to or consent of the Development Entity or Guarantor:

(a) the compromise, composition, settlement, release, change, modification, or termination of any of the Obligations (except for the payment or performance of such obligations in full in accordance with the Agreement), or any time, forbearance, extension or waiver granted to the Development Entity or any other person;

(b) the waiver by the Department of the payment, performance or observance of any of the Obligations, except to the extent expressly set out in such waiver;

(c) the extension of time for payment of any amounts due or of the time for performance of any of the Obligations, except to the extent expressly set out in such extension;

(d) the modification or amendment (whether material or otherwise) of any of the Obligations or restatement, replacement or novation of the Agreement or any other document, Guarantee

or security so that references to the Agreement shall include each amendment, variation, restatement, replacement and novation;

(e) the failure, omission, delay or lack on the part of the Department to enforce, ascertain or exercise any right, power or remedy under or pursuant to the terms of the Agreement or this Guarantee;

(f) the fact that Guarantor may at any time in the future dispose of all or any part of its interest in the Development Entity, or otherwise alter its investment in the Development Entity in any manner;

(g) the avoidance, postponement, discharge, reduction, non-provability or other similar circumstance affecting any Obligation of the Development Entity under the Agreement resulting from the bankruptcy, insolvency, receivership, winding up, dissolution, liquidation, administrations, reorganization or other similar or dissimilar failure or financial disability of the Development Entity or Guarantor or any legal limitation, disability, incapacity, or any law, regulation or order, or other circumstances relating to the Development Entity or Guarantor;

(h) the addition, substitution or partial or entire release of any guarantor, maker or other party (including the Development Entity) primarily or secondarily liable or responsible for the performance and observance of any of the Obligations or by any extension, waiver, amendment or thing whatsoever which may release or discharge (in whole or part) a guarantor, maker or third party (other than as a result of the payment and performance of the Obligations in full);

(i) the invalidity, nonbinding effect or unenforceability of (x) the Obligations or (y) the Agreement in its entirety, to the intent that the Guarantor's obligations under this Guarantee shall remain in full force and be construed accordingly, as if there were no invalidity, illegality, nonbinding effect or unenforceability;

(j) the taking, variation, compromise, exchange, renewal, addition, substitution, subordination, non-perfection or partial or entire release of any security for the Obligations or the enforcement or refusal or neglect to perfect or enforce any such security, or the non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realize the full value of any security;

(k) any sale, lease or transfer of the assets or change in the ownership of any shares in the capital of the Guarantor; or

(l) any disability, incapacity or lack of powers, authority or legal personality of or dissolution or change in the members or status of the Development Entity or any other person.

6. Waiver of Subrogation. Guarantor irrevocably and absolutely waives, at all times prior to the Obligations being indefeasibly paid or performed in full, any and all right of subrogation, contribution, indemnification, reimbursement or similar rights against the Development Entity with respect to the Guarantee, whether such rights arise under an express or implied contract or by operation of law, it being the intention of Guarantor and the Department that, at all times prior to the Obligations being indefeasibly paid or performed in full, Guarantor shall not be deemed to be a "creditor" (as defined in section 101 of the U.S. Bankruptcy Code or any other applicable law) of the Development Entity by reason of the existence of this Guarantee in the event that the Development Entity becomes a debtor in any proceeding under the U.S. Bankruptcy Code or any other applicable law. In addition, Guarantor will not exercise any rights which it may acquire by way of subrogation under this Guarantee by any payment made hereunder or otherwise, until all of the Obligations shall have indefeasibly been paid or performed

in full. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all such liabilities and obligations shall not have been indefeasibly paid in full, such amount shall be held in trust for the benefit of the Department and shall forthwith be paid to the Department and applied to such liabilities and obligations, whether matured or unmatured.

7. Election of Remedies. The Department shall have the right, in its sole judgment and discretion, from time to time, to make demand for payment or performance and to proceed against Guarantor for recovery of the total of any and all amounts due, or for the performance of any nonmonetary obligation owed, to the Department pursuant to and in accordance with this Guarantee, or to proceed from time to time against Guarantor for such portion of any and all such amounts, or for the performance of any and all such nonmonetary obligations, as the Department may determine.

8. Bankruptcy Proceedings. So long as any Obligations are owed to the Department, Guarantor shall not, without the prior written consent of the Department, commence, or join with any other Person in commencing, any bankruptcy, reorganization, or insolvency proceeding against the Development Entity. The obligations of Guarantor under this Guarantee shall not be altered, limited or affected by any proceeding, voluntary or involuntary, involving the winding up, dissolution, administration, bankruptcy, reorganization, insolvency, receivership, liquidation or arrangement or similar proceeding of the Development Entity, or by any defense which the Development Entity may have by reason of any order, decree or decision of any court or administrative body resulting from any such proceeding.

9. Waivers. With respect to all Obligations, this is a guarantee of payment and performance and not of collection, and Guarantor hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including without limitation:

(a) any right to require the Department to proceed against the Development Entity or any other person or to proceed against or exhaust any security held by the Department at any time or to pursue any other remedy in the Department's power before proceeding against Guarantor;

(b) any defense based upon any right of setoff, counterclaim or other right, defense, or claim based on, or in the nature of, any obligation now or later owed to the Guarantor by the Development Entity or any other person;

(c) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or the failure of the Department to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person;

(d) promptness, diligence, demand, presentment, protest and notice of any kind, including without limitation notice of the existence, creation or incurring of any new or additional Obligations or of any action or non-action on the part of the Development Entity, the Department, any creditor of the Development Entity or Guarantor or on the part of any other person under this or any other instrument in connection with any obligation or evidence of indebtedness held by the Department as collateral or in connection with any Obligations hereby guaranteed;

(e) any defense based upon an election of remedies by the Department which destroys, releases or otherwise impairs the subrogation, exoneration, contribution or indemnification rights of Guarantor or the right of Guarantor to proceed against the Development Entity for reimbursement;

(f) any duty on the part of the Department to disclose to Guarantor any facts the

Department may now or hereafter know about the Development Entity, regardless of whether the Department has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume, or has reason to believe that such facts are unknown to Guarantor, or has a reasonable opportunity to communicate such facts to Guarantor, since Guarantor acknowledges that Guarantor is fully responsible for being and keeping informed of the financial condition of the Development Entity and of all circumstances bearing on the risk of non-payment of any Obligations hereby guaranteed; and

(g) any defense arising because of the exercise of any right or remedy available to, or election made by, the Department pursuant to the U.S. Bankruptcy Code, whether as an unsecured or undersecured creditor, seeking adequate protection, or otherwise.

10. No marshaling. Except to the extent required by applicable law, the Department will not be required to marshal any collateral securing, or any guaranties of, the Obligations, or to resort to any item of collateral or any guarantee in any particular order, and the Department's rights with respect to any collateral and guaranties will be cumulative and in addition to all other rights, however existing or arising. To the extent permitted by applicable law, the Guarantor irrevocably waives, and agrees that it will not invoke or assert, any law requiring or relating to the marshaling of collateral or guaranties or any other law which might cause a delay in or impede the enforcement of the Department's rights under this Guarantee or any other agreement.

11. Successors and Assigns. This Guarantee shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, **provided**, that Guarantor may not make an assignment or other transfer of this Guarantee or any interest herein by operation of law or otherwise unless it has obtained the prior written consent of the Department to such assignment or other transfer.

12. Notices. All notices to the parties hereto required to be served under this Guarantee shall be in writing and shall be served by registered mail and shall be addressed as follows:

LOVE'S TRAVEL STOPS AND COUNTRY STORES, INC.  
10601 North Pennsylvania Ave  
Oklahoma City, OK 73120 USA  
Attention: Director of Credit  
Fax: 405-463-3764

or at such other address such party may from time to time designate in writing.

13. Governing law. This Guarantee shall be governed by the laws of the Commonwealth of Pennsylvania (without regard to any conflict of law principles) and the decisions of the Pennsylvania Courts. All agreements, instruments and notices referred to herein or supplementary hereto shall be prepared, furnished in, and governed, and controlled by the English language. EACH PARTY HERETO WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO OR ARISING OUT OF THIS GUARANTEE. Guarantor irrevocably consents to the personal jurisdiction of any court of Pennsylvania and any federal courts located in Pennsylvania. Guarantor waives any objection which Guarantor may now or hereafter have regarding the choice of forum whether on personal jurisdiction, venue, forum non conveniens or on any other ground. Guarantor irrevocably consents to the service of process outside of the territorial jurisdiction of such courts by mailing copies thereof by registered or certified United States mail, postage prepaid, to Guarantor's last known address as shown in the records of the Department with the same effect as if Guarantor were a resident of the Commonwealth of Pennsylvania and had been lawfully served in such state. In addition,

Guarantor consents to the service of process at 1111 Bagby, Suite 2400, Houston, TX 77002 USA. Nothing in this Guarantee shall affect the right to service of process in any other manner permitted by law. If any person appointed by the Guarantor as process agent is unable for any reason to act as agent for service of process, the Guarantor must immediately appoint another agent on terms acceptable to the Department. Failing this, the Department may appoint another agent for this purpose. The Guarantor agrees that failure by a process agent to notify it of any process will not invalidate the relevant proceedings.] Guarantor further agrees that final judgment against it in any action or proceeding shall be conclusive and may be enforced in any other jurisdiction within or outside the Commonwealth of Pennsylvania by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and the amount of such judgment. Any finding of fact by, and any interim or final award or judgment made by an arbitrator, a court or tribunal with jurisdiction over a claim (in either case, brought pursuant to Section 30 of the Agreement) under the Agreement shall be binding on the Guarantor to the same extent that it is binding on the Department for the purposes of this Guarantee.

14. Tolling. Guarantor agrees that payment or performance of any of the Obligations or other acts which toll any statute of limitations applicable to the Obligations or the Agreement shall also toll the statute of limitations applicable to Guarantor's liability under this Guarantee.

15. Representations and Warranties. Guarantor represents and warrants to and with the Department that:

(a) Guarantor is a corporation duly organized, validly existing, authorized to do business and in good standing under the laws of Oklahoma;

(b) Guarantor has the requisite corporate power and authority to own its property and assets, transact business in which it is engaged and to enter into this Guarantee and carry out its obligations hereunder;

(c) the execution and delivery of this Guarantee and its performance have been duly authorized by all necessary corporate action on the part of Guarantor and no other corporate proceedings on the part of Guarantor or its affiliates are necessary to authorize this Guarantee or the transactions contemplated thereby;

(d) this Guarantee is the legal, valid and binding obligation of Guarantor, enforceable against it in accordance with its terms, subject to the application of bankruptcy and similar laws and of general equitable principles;

(e) the execution, delivery and performance of this Guarantee does not violate any law or any provision of any security issued by the Guarantor or of any agreement, instrument or undertaking to which the Guarantor is a party or by which it or any of its property is bound, and do not require any license, consent, authorization or approval of, or any notice to or filing with, any governmental authority;

(f) no litigation, investigation or proceeding of or before any arbitrator or governmental authority is pending or, to Guarantor's knowledge, threatened by or against the Guarantor or any of its subsidiaries or against any of such parties' properties or revenues which, if adversely determined, would be reasonably likely to have a material adverse effect on the ability on the Guarantor to perform its obligations hereunder;

(g) it has established adequate means of obtaining financial and other information pertaining to the business, operations and condition (financial or otherwise) of the Development Entity and its respective properties on a continuing basis, and Guarantor is completely familiar with the

business, operations and condition (financial and otherwise) of the Development Entity and its respective properties; and

(h) the execution, delivery, and performance of this Guarantee does not and will not (i) result in a default, breach or violation of the certificate of incorporation or bylaws of Guarantor, or (ii) constitute an event which would permit any person or entity to terminate rights or accelerate the performance or maturity of any indebtedness or obligation of Guarantor, the effect of which would materially affect Guarantor's ability to meet its obligations under this Guarantee, or (iii) constitute an event which would require any consent of a third party or under any agreement to which Guarantor is bound, the absence of which consent would materially and adversely affect Guarantor's ability to meet its obligations under this Guarantee.

16. Covenants. Guarantor covenants and agrees to and with the Department that:

(a) the execution, delivery and performance of this Guarantee will not violate any law or any provision of any security issued by the Guarantor or of any agreement, instrument or undertaking to which the Guarantor is a party or by which it or any of its property is bound, and do not require any license, consent or approval of any governmental authority; and

(b) it has established adequate means of obtaining financial and other information pertaining to the business, operations and condition (financial or otherwise) of the Development Entity and its respective properties on a continuing basis, and Guarantor will maintain complete familiarity with the business, operations and condition (financial and otherwise) of the Development Entity and its respective properties.

17. Consents, Compliance with Laws, Delivery of Information. Guarantor agrees that:

(a) It will maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Guarantee and will obtain any that may become necessary in the future for the payment and performance of the Obligations;

(b) It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform the Obligations; and

(c) Guarantor will, or will cause the Development Entity to, deliver to the Department from time to time, such other reasonable information or documents regarding Guarantor (that may be relevant to any event that may materially or adversely affect Guarantor's ability to perform the Obligations) as the Department may reasonably request and as may be available to Guarantor without undue cost or effort; **provided**, that Guarantor may impose reasonable confidentiality requirements in connection with the disclosure of such information and documents.

18. Termination; Reinstatement of Guarantee.

(a) This Guarantee will terminate upon the last day of the Term of the Agreement.

(b) Notwithstanding the provisions of Section 18(a), this Guarantee shall be reinstated if at any time following the termination of this Guarantee under Section 18(a), any payment by Guarantor or the Development Entity of the Obligations is rescinded or must otherwise be returned by the Department or other Person upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of the Development Entity, Guarantor or otherwise, and is so rescinded or returned to the party or parties making such payment, all as though such payment had not been made. Such period of reinstatement shall

continue until satisfaction of the conditions contained in, and shall continue to be subject to, the provisions of this Section 18.

(c) This Guarantee shall remain in effect notwithstanding any assignment of the Agreement to any Person. Upon request by the Department after any such assignment, Guarantor shall acknowledge the continuing effectiveness of this Guarantee notwithstanding such assignment.

19. Severability. The invalidity or unenforceability of any portion or provision of this Guarantee shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Guarantee and the balance of this Guarantee shall be construed and enforced as if this Guarantee did not contain such invalid or unenforceable portion or provision. If any such provision of this Guarantee is so declared invalid, the parties hereto shall promptly negotiate in good faith new provisions to eliminate such invalidity and to restore this Guarantee as near as possible to its original intent and effect.

20. No Waiver. No failure on the part of the Department to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Department of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power. Each and every right, remedy and power hereby granted to the Department or allowed it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by the Department at any time or from time to time. No waiver of any provision of this Guarantee, and no consent to any departure by Guarantor therefrom, shall be effective unless it is in writing and signed by the Department.

21. Counterparts. This Guarantee may be executed in any number of counterparts, and any party hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

22. Entire Agreement. This Guarantee constitutes the entire agreement and supersedes any other agreements, whether written or oral, that may have been made or entered into between the Department and Guarantor or by any office or officer of such parties relating to the subject matter hereof. No oral or written amendment or modification of this Guarantee by any officer, agent, member, manager or employee of the Department or Guarantor, either before or after execution of this Guarantee, shall be of any force or effect unless such amendment or modification is in writing and is signed by a duly authorized representative of the party to be bound thereby.

IN WITNESS WHEREOF, Guarantor and the Department have caused this Guarantee to be executed as of the date first above written.

**LOVE'S TRAVEL STOPS AND COUNTRY STORES, INC., an OKLAHOMA CORPORATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACCEPTED AND AGREED:

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Secretary of Transportation

## **APPENDIX 1**

### **DEVELOPMENT ENTITY'S PROPOSAL COMMITMENTS**

The attached (i) Development Entity's Technical Proposal and Commercialization Proposal and (ii) Non-Exhaustive Proposal Commitments constitute this Appendix 1 (Development Entity's Proposal Commitments).

For the avoidance of doubt:

- (f) the provisions of Section 1.2 of the PPA apply in the event of any conflict between the contents of this Appendix 1 (Development Entity's Proposal Commitments) and the Technical Provisions, meaning that the Development Entity shall be required to undertake such Work as may be necessary to comply with the Technical Provisions and the other requirements of the PPA, whether or not such Work is referenced or set forth in this Appendix 1 (Development Entity's Proposal Commitments);
- (g) in entering into the PPA, the Department makes no actual or implied representation or warranty relating to the extent to which the contents of this Appendix 1 (Development Entity's Proposal Commitments) comply with any requirement of the PPA, including, without limitation, the Technical Provisions; and
- (h) nothing in this Appendix 1 (Development Entity's Proposal Commitments) is intended to qualify or prejudice the provision of Section 3.3 (Disclosed Information) of the PPA.

## **PART 1**

### **DEVELOPMENT ENTITY'S TECHNICAL PROPOSAL AND COMMERCIALIZATION PROPOSAL**

The "Technical Proposal" delivered by the Development Entity on January 14, 2016 and the "Commercialization Proposal" delivered by the Development Entity on February 4, 2016, in each case in the form attached to this Part 1.

**PART 2**

**NON-EXHAUSTIVE PROPOSAL COMMITMENTS**

<i><b>ID.</b></i>	<i><b>Proposal Reference</b></i>	<i><b>Description</b></i>
1.	Technical Proposal, Volume 1, Section 1.1, page 6	The Development Entity shall utilize SharePoint as its Electronic Document Management System (EDMS).
2.	Technical Proposal, Volume 1, Section 1.1, page 9; Technical Proposal, Volume 2, Section 2.1(ii), page 4	The Development Entity shall utilize 3-D drafting for the design of fueling stations and 3-D scanning for the design of the maintenance and storage facilities. The Development Entity will provide Revit files to the Department of all 3-D scanned areas.
3.	Technical Proposal, Volume 1, Section 1.1, page 9; Technical Proposal, Volume 2, Section 2.1(iv)(A), page 7	The Development Entity shall provide 60% designs for the Department's information when such designs are prepared.
4.	Technical Proposal, Volume 1, Section 1.1, page 10	The Development Entity shall provide remote, real-time monitoring of stations to the Department and the Transit Agencies.
5.	Technical Proposal, Volume 2, Section 2.1(ii), page 5	The Development Entity shall provide to the Department a copy of the weekly contractor's report.
6.	Technical Proposal, Volume 2, Section 2.1(iv)(B), page 8	The Development Entity shall achieve Site Completion in respect of each Project Site concurrently with CNG Readiness of such Project Site, with the exception of future dispensers or Hy-C compressors to support Commercial Sales.
7.	Technical Proposal, Volume 2, Section 2.1(v), page 9	The Development Entity shall communicate delays to schedule events to the Department and the Transit Agencies within 20 days, unless the delay will impact CNG Readiness or Site Completion.
8.	Technical Proposal, Volume 1, Section 2.7, page 71	All maintenance garages shall be considered "major repair garages" per 2012 NFPA 30A.
9.	Technical Proposal, Volume 2, Section 2.2, page 26	The Development Entity shall employ a permit expeditor if needed to mitigate the risk of delayed issuance of Governmental Approvals.

AMENDMENT TO THE CNG FUELING FOR TRANSIT AGENCIES PARTNERSHIP  
PROJECT  
PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT  
BETWEEN  
THE COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF TRANSPORTATION  
AND  
TRILLIUM TRANSPORTATION FUELS LLC

THIS FIRST AMENDMENT TO THE CNG FUELING FOR TRANSIT AGENCIES PARTNERSHIP PROJECT PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT, (the **Amendment**) is entered into the 17<sup>th</sup> day of August, 2017 by and between the Commonwealth of Pennsylvania, Department of Transportation (the **Department**) and Trillium Transportation Fuels LLC (d/b/a Trillium CNG), a limited liability company organized and existing under the laws of the State of Delaware (the **Development Entity**). The Department and the Development Entity are hereinafter sometimes referred to collectively as the **Parties**.

**WITNESSETH:**

**WHEREAS**, the Department and the Development Entity entered into Agreement No. 220909 (the **Original Agreement**) on June 16, 2016 in furtherance of a public-private transportation partnership Project;

**WHEREAS**, by way of this Amendment, the Department and the Development Entity intend to revise the definition of "Indemnified Parties" set forth in the Original Agreement; and

**WHEREAS**, the Department and the Development Entity further intend, under this Amendment, to revise Table 1 in Section 1.1 (Milestone Payments) of Schedule 8 (Payment Mechanism).

**NOW, THEREFORE**, for and in consideration of the foregoing premises and the mutual promises set forth below, the Parties agree, with the intention of being legally bound, to amend the Original Agreement as follows:

1. **Recitals.**

The foregoing recitals are incorporated by reference as a material part of this Amendment.

2. **Amendments to the Original Agreement.**

- a) The definition of "Indemnified Parties" in Schedule 1 (Definitions) is hereby struck in its entirety and is replaced with the following definition:

**Indemnified Parties** means the Department, the Transit Agencies and their respective successors, assigns, agencies, divisions, officers, agents, representatives, employees, and the Commonwealth.

**AGREEMENT NO. 220909A  
AMENDMENT 1**

b) Table 1 in Section 1.1 (Milestone Payments) of Schedule 8 (Payment Mechanism) is hereby struck in its entirety and is replaced with the following Table 1 below:

<i>Project Site</i>	<i>Milestone Payment</i>	<i>Project Site</i>	<i>Milestone Payment</i>
CATA	\$2,079,882	LCTA	\$2,521,680
EMTA	\$2,723,877	MCTA	\$1,112,212
YATA – York	\$3,120,605	CRATA	\$1,478,419
YATA – Gettysburg	\$1,403,933	COLT/LT	\$1,781,158
CAMTRAN – Johnstown	\$2,598,905	STS	\$1,213,098
CAMTRAN - Ebensburg	\$1,537,890	ATA – Bradford	\$1,364,197
INDIGO	\$1,883,472	ATA – Johnsonburg	\$1,095,483
MMVTA	\$1,878,930	BTA	\$2,279,529
LANTa – Allentown	\$2,674,140	MCRCOG	\$1,601,012
LANTa – Easton	\$1,488,489	FACT	\$1,629,846
WCTA	\$2,501,609	DuFast	\$1,456,285
COLTS	\$3,068,060	TAWC	\$1,917,956
NCATA	\$2,440,327	CAT	\$2,191,393
AMTRAN	\$1,972,909	PAAC	\$3,950,978
BCTA	\$2,178,312	<b>AGGREGATE</b>	\$59,144,586

**3. Governing Law and Jurisdiction.**

This Amendment shall be governed by, and interpreted and enforced in accordance with, the Laws of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts.

**4. Counterparts.**

This Amendment may be executed in counterparts, consistent with Section 32.15 of the Original Agreement.

**AGREEMENT NO. 220909A  
AMENDMENT 1**

5. **Severability.**

Any provision of this Amendment which is held to be invalid or unenforceable shall not affect the validity or enforceability of the remaining provisions of the Original Agreement, as amended, which shall be construed and enforced as if this Amendment did not contain such invalid or unenforceable clause.

6. **Headings.**

The captions of the paragraphs of this Amendment are for convenience purposes only and shall not be deemed part of this Amendment or considered in construing this Amendment.

7. **Reference to and Effect on the Original Agreement.**

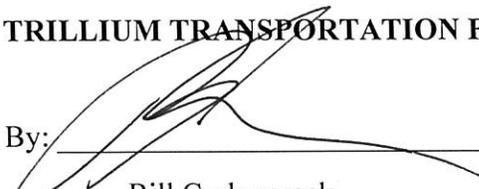
- a) Capitalized terms used in this Amendment but not otherwise defined herein shall have the respective meanings assigned thereto in the Original Agreement, except as amended hereby.
- b) On and after the date hereof, each reference in the Original Agreement to “this PPA,” “this Agreement,” “hereunder,” “hereof,” “herein,” “hereby” or words of like import, shall mean and be a reference to the Original Agreement as amended hereby.
- c) All other terms and conditions of the Original Agreement, which have not been modified by this Amendment, shall remain in full force and effect.

**[Remainder of page intentionally left blank.]**

**AGREEMENT NO. 220909A  
AMENDMENT 1**

**IN WITNESS WHEREOF**, and intending to be bound hereby, the Parties subscribe their signatures to this Amendment herein below:

**TRILLIUM TRANSPORTATION FUELS, LLC (d/b/a TRILLIUM CNG)**

By:  \_\_\_\_\_

Name: Bill Cashmareck

Title: President

Date: May 26, 2017

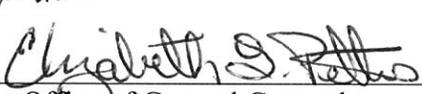
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

By:  ~~Andrew...~~  
Secretary of Transportation

Date: 6/26/17

APPROVED AS TO FORM AND LEGALITY

By:  7/6/2017  
Office of Chief Counsel Date  
Department of Transportation  
*at 7/6/17*

By:  7/21/17  
Office of General Counsel Date

By:  8/4/17  
Office of Attorney General Date

CERTIFIED FUNDS AVAILABLE UNDER  
SAP NO. 39000 37982  
SAP COST CENTER \_\_\_\_\_  
GL. ACCOUNT \_\_\_\_\_  
AMOUNT N/A

By:  7/10/17  
Comptroller Date