## EXHIBIT 12

## NONCOMPLIANCE POINTS SYSTEM AND PERSISTENT DEVELOPER DEFAULT

1. Noncompliance Points System

Tables 12.2 and 12.3 in Attachment 1 to this Exhibit 12 identify Developer failures and breaches that may result in the assessment of Noncompliance Points, the number of Noncompliance Points that may be assessed for each such failure or breach, and the NCE Cure Period available to Developer for each such failure or breach, other than for Developer's failure to submit a deliverable by its due date.

2. Trigger Points for Persistent Developer Default and Uncured Noncompliance Points

2.1 A Persistent Developer Default under clause (a) of the definition thereof shall exist entitling IFA to require submittal of Developer's remedial plan under Section 19.2.6 of the Agreement, on any date (whether before or after the Substantial Completion Date) that:

(a) The cumulative number of Noncompliance Points assessed during any consecutive 365-day period (excluding any Noncompliance Points for Noncompliance Events assessed during the period prior to the Substantial Completion Date and subsequently cured) equals or exceeds the following:

(i) For any consecutive 365-day period ending prior to the Substantial Completion Date, 100

(ii) For any consecutive 365-day period a portion of which includes any days prior to the Substantial Completion Date, 100 and

(iii) For any other consecutive 365-day period, 80.

(b) The cumulative number of Noncompliance Points, cured or uncured, assessed during any consecutive 1095-day period (excluding any Noncompliance Points for Noncompliance Events assessed during the period prior to the Substantial Completion Date and subsequently cured) equals or exceeds the following:

(i) For any consecutive 1095-day period ending prior to the Substantial Completion Date, 250;

(ii) For any consecutive 1095-day period starting before the Substantial Completion Date, and including not more than 365 days after the Substantial Completion Date, 250; and

(iii) For any consecutive 1095-day period starting before the Substantial Completion Date, and including more than 365 and not more than 730 days after the Substantial Completion Date, 250; and

(iv) For any consecutive 1095-day period starting before the Substantial Completion Date, and including more than 730 and not more than 1094 days after the Substantial Completion Date, 225; and

(v) For any other consecutive 1095-day period, 200.

2.2 A Persistent Developer Default under clause (b) of the definition thereof shall exist entitling IFA to require submittal of Developer's remedial plan under Section 19.2.6 of the Agreement, on any date (whether before or after the Operating Period commences) that the cumulative number of breaches or failures to perform within clause (b) of the definition of Persistent Developer Default during any consecutive 365-day period equals or exceeds the following:

(a) For any consecutive 365-day period ending prior to the Substantial Completion Date, 75

(b) For any consecutive 365-day period a portion of which includes any days prior to the Substantial Completion Date, 75 and

(c) For any other consecutive 365-day period, 50

2.3 The number of cured Noncompliance Points that would otherwise then be counted under this Section 2 is subject to reduction in accordance with Section 19.2.6.3 of the Agreement.

## ATTACHMENT 1 TO EXHIBIT 12

**Table 12.1**
**NONCOMPLIANCE EVENT ASSESSMENT CATEGORIES**

| Category | NCE Cure Periods | Assessment of Noncompliance Points |
|---|---|---|
| A | The NCE Cure Period shall be deemed to start upon the date and time Developer first obtained knowledge of, or reason to know of, the Noncompliance Event. For this purpose Developer shall be deemed to first obtain knowledge of the Noncompliance Event not later than the date of delivery of the Notice of Determination to Developer, as described in Section 11.2.3.2 of the PPA. | If a category "A" Noncompliance Event is not fully and completely cured within the NCE Cure Period, Noncompliance Points shall first be assessed at the end of the first NCE Cure Period, and shall be assessed again at the end of each subsequent NCE Cure Period (of duration equal to the prior NCE Cure Period), as described in Sections 11.3.5 and 11.3.6 of the PPA. |
| B | NCE Cure Period shall be deemed to start upon the date and time on which the Noncompliance Event occurred, regardless of whether IFA delivered a Notice of Determination to Developer, as described in Section 11.2.3.3 of the PPA. | If a category "B" Noncompliance Event is not fully and completely cured within the NCE Cure Period, Noncompliance Points shall first be assessed at the end of the first NCE Cure Period, and shall be assessed again at the end of each subsequent NCE Cure Period (of duration equal to the prior NCE Cure Period), as described in Sections 11.3.5 and 11.3.6 of the PPA. |
| C | No NCE Cure Period applicable. | Noncompliance Points shall first be assessed on the date of the initial Notice under Section 11.2 of the PPA, as described in Section 11.3.8 of the PPA. |

## ATTACHMENT 1 TO EXHIBIT 12

**Table 12.2**
**CONSTRUCTION NONCOMPLIANCE EVENTS (APPLICABLE BEFORE SUBSTANTIAL COMPLETION)**

| Ref | Main Heading | Subheading | Failure to: | Assess-ment Category | NCE Cure Period | Number of Points |
|---|---|---|---|---|---|---|
| 1 | Design and Construction | Access to Adjacent Properties | Maintain ingress and egress to adjacent properties as required under Section 12 of the Technical Provisions. | B | 4 Hours | 5 |
| 2 | Environmental Compliance | Noise | Comply with Section 7.12 of the Technical Provisions with respect to noise. | B | 1 Hour | 2 |
| 3 | Environmental Compliance | Contraventio n of Environment al Approvals | Comply with the Environmental Approvals and the requirements provided in Section 7 of the Technical Provisions. | A | 1 Day | 2 |
| 4 | Environmental Compliance | Erosion and Sediment Control Measures | Rebuild or repair damaged temporary erosion and sediment control measures in accordance with Section 7 of the Technical Provisions and Section 205.07 of the Standard Specifications. | B | 48 hours | 3 |
| 5 | Project Management | Inspection | Comply with a requirement of any Section of the Technical Provision or of the PPA with regard to inspection, except where provided elsewhere in this Attachment 1. | B | 2 Days | 2 |
| 6 | Design and Construction | Traffic Management | Conform to the restrictions of Sections 12.4.3 (Construction Access and Haul Routes) and 12.4.7 (Restrictions) of the Technical Provisions. | B | 20 Minutes | 1 |
| 7 | Project Management | Safety | Observe the requirements of the Safety Plan; or to carry out any construction, operation or maintenance activity; in contravention of (or in absence of) the Safety Plan or in a manner that represents a hazard | A | 1 Day | 2 |

| Table 12.2<br>CONSTRUCTION NONCOMPLIANCE EVENTS (APPLICABLE BEFORE SUBSTANTIAL COMPLETION) | | | | | | |
|---|---|---|---|---|---|---|
| **Ref** | **Main Heading** | **Subheading** | **Failure to:** | **Assess-ment Category** | **NCE Cure Period** | **Number of Points** |
| | | | to project workers or the general public in accordance with Section 6.5.5 of the Technical Provisions. | | | |
| 8 | Project Management | Quality Management | Establish, maintain updated and comply with the requirements of a Quality Management Plan in accordance with Section 2 of the Technical Provisions. | B | 7 Days | 2 |
| 9 | Contracting and Labor Practices | Compliance with DBE plan | Comply with the requirements of Section 7.10 of the PPA in connection with the Disadvantaged Business Enterprise (DBE) Program. | B | 30 Days | 2 |
| 10 | Contracting and Labor Practices | Compliance with Workforce Diversity and Small Business Performance Plan | Comply with the requirements of Section 7.11 of the PPA in connection with the Workforce Diversity and Small Business Performance Plan | B | 30 Days | 2 |
| 11 | Contracting and Labor Practice | Compliance with Federal Requirements | Comply with any of the Federal Requirements in Exhibit 22 | B | 30 Days | 2 |
| 12 | General | IFA access | Comply with any of the provisions of Section 3.4 (Oversight, Inspection and Testing), Section 7.1 (Disclosure of Contracts and Contractors), Section 12.1 (Financial Model Updates), and Article 23 (Records and Audits; Intellectual Property) of the | C | None | 2 |

| Table 12.2<br>CONSTRUCTION NONCOMPLIANCE EVENTS (APPLICABLE BEFORE SUBSTANTIAL COMPLETION) | | | | | | |
|---|---|---|---|---|---|---|
| **Ref** | **Main Heading** | **Subheading** | **Failure to:** | **Assess-ment Category** | **NCE Cure Period** | **Number of Points** |
| | | | PPA, with respect to access for IFA's Authorized Representative(s) to the Project, Developer's Project offices and operations buildings, and Developer's data. | | | |
| 13 | General | Notice of breach | Provide Notice to IFA of the occurrence of any Noncompliance Event specified in this Attachment 1 in accordance with Sections 11.2.1 and 19.1.1.12 of the PPA. | A | 1 Day | 2 |
| 14 | Insurance | Verification of coverage | Comply with the requirements of Article 17 of the PPA. | B | 15 Days | 1 |
| 15 | Project Management | Deliverables | Prepare, implement, maintain, update or submit a plan, a report, a deliverable or a submittal required by, or compliant with, any Section of the Technical Provisions or of the PPA, except where provided elsewhere in this Attachment 1. | B | 7 Days | 1 |
| 16 | General | Governmental Approval | Deliver to IFA any executed copy of a Governmental Approval prior to beginning construction activities as required by Section 5.6 and Section 4.3 of the PPA. | B | 7 Days | 1 |
| 17 | General | Governmental Approval | Submit any application for a Governmental Approval to IFA for approval or review and comment prior to submitting to any Governmental Entity as required by Section 4.3.3 of the PPA. | B | 7 Days | 1 |
| 18 | Environmental Compliance | Notice | Promptly provide Notice to IFA of Hazardous Materials as set forth in Section 5.9.3 of the PPA. | B | 1 Day | 2 |
| 19 | Environmental Compliance | Mitigation | Take reasonable steps to mitigate the effects of Hazardous Materials as set forth in Sections 5.9.2 | B | 2 Days | 5 |

| Table 12.2<br>CONSTRUCTION NONCOMPLIANCE EVENTS (APPLICABLE BEFORE SUBSTANTIAL COMPLETION) | | | | | | |
|---|---|---|---|---|---|---|
| **Ref** | **Main Heading** | **Subheading** | **Failure to:** | **Assess-ment Category** | **NCE Cure Period** | **Number of Points** |
| | | | and 15.14 of the PPA. | | | |
| 20 | Utility Adjustments | Maintain Service | Use Good Industry Practice to prevent damage to or interruption of a utility service in accordance with Section 18.1.4 of the Technical Provisions. | C | None | 3 |
| 21 | Design and Construction | Construction Warranties | Ensure extension of third parties warranties to IFA or failure to correct any defective Work that would void any such warranty as required by Section 5.11.2 and of the PPA. | A | 30 Days | 1 |
| 22 | Design and Construction | Implementati on of Directive Letters | Proceed with Directive Letters in accordance with Section 16.3 of the PPA. | A | 5 Days | 3 |
| 23 | Design and Construction | Traffic Management | Comply with the requirements of the Traffic Management Plan FOR Construction Work. | B | 4 Hours | 2 |
| 24 | O&M | Category 1 Defect | Mitigate a hazard for a Category 1 defect within the time period shown in the Performance and Measurement Table. | A | See Perform. and Msrmt. Table | 3 |
| 25 | O&M | Category 1 Defect | Implement a permanent remedy for a Category 1 defect within the time period shown in the Performance and Measurement Table. | A | See Perform. and Msrmt. Table | 2 |
| 26 | O&M | Category 2 Defect | Implement a permanent repair for a Category 2 defect within the time period shown in the Performance and Measurement Table. | A | See Perform. and Msrmt. Table | 1 |

## OPERATING PERIOD NONCOMPLIANCE POINTS SYSTEM

**Table 12.3**
**O&M NONCOMPLIANCE EVENTS (APPLICABLE DURING THE OPERATING PERIOD)**

| Ref | Main Heading | Subheading | Failure to: | Assess-ment Category | NCE Cure Period | Number of Points |
|---|---|---|---|---|---|---|
| 1 | General | IFA access | Comply with any of the provisions of Section 3.4 (Oversight, Inspection and Testing), Section 7.1 (Disclosure of Contracts and Contractors), Section 12.1 (Financial Model Updates), and Article 23 (Records and Audits; Intellectual Property) of the PPA, with respect to access for IFA's Authorized Representative(s) to the Project, Developer's Project offices and operations buildings, and Developer's data. | C | None | 2 |
| 2 | General | Final Acceptance | Achieve Final Acceptance by the Final Acceptance Deadline as described in Section 5.8.5 of the PPA. | B | 1 Day | 5 |
| 3 | General | Notice of breach | Notify IFA of the occurrence of any Noncompliance Event specified in this Attachment 1 in accordance with Sections 11.2.1 and 19.1.1.12 of the PPA. | A | 1 Day | 2 |
| 4 | Insurance | Verification of coverage | Comply with the requirements of Article 17 of the PPA. | B | 15 Days | 1 |
| 5 | Contracting and Labor Practices | Affiliates | Submit a copy of the proposed contract with an Affiliate in accordance with Section 7.6.2 of the PPA. | B | 7 Days | 2 |
| 6 | Contracting and Labor Practices | Disclosure of Contracts and Contractors | Provide IFA with a list of all Contracts, Contractors, guarantees of Key Contracts and the guarantors with each monthly report required under this PPA or the Technical Provisions in accordance with Section 7.1.1 of the PPA. | B | 7 Days | 2 |
| 7 | Contracting and Labor | Notice of | Comply with the requirements of Section 7.7 of the | B | 14 Days | 2 |

| Table 12.3<br>O&M NONCOMPLIANCE EVENTS (APPLICABLE DURING THE OPERATING PERIOD) | | | | | | |
|---|---|---|---|---|---|---|
| **Ref** | **Main Heading** | **Subheading** | **Failure to:** | **Assess-ment Category** | **NCE Cure Period** | **Number of Points** |
| | Practices | Contractors | PPA. | | | |
| 8 | Contracting and Labor Practice | Compliance with Federal Requirements | Comply with any of the Federal Requirements in Exhibit 22 | B | 30 Days | 2 |
| 9 | Project Management | Audit | Carry out internal audits of the Project Management Plan at the times prescribed in the Project Management Plan in accordance with Section 3.2.7 of the PPA. | B | 7 Days | 2 |
| 10 | Project Management | Deliverables | Prepare, implement, maintain, update or submit a plan, a report, a deliverable or a submittal required by, or compliant with, any Section of the Technical Provisions or of the PPA, except where provided elsewhere in this Attachment 1. | B | 7 Days | 1 |
| 11 | Project Management | Document Management | Manage documents in accordance with Section 1.5.2.6 and 18.6 of the Technical Provisions. | A | 7 Days | 1 |
| 12 | Project Management | Inspection | Comply with a requirement of any Section of the Technical Provisions or of the PPA with regard to inspection, except where provided elsewhere in this Attachment 1. | B | 2 Days | 2 |
| 13 | Project Management | Key Personnel | Comply with a requirement with regard to Key Personnel of any Section of the Technical Provisions or of Section 7.4 of the PPA, except where provided elsewhere in this Attachment 1. | A | 30 Days | 2 |
| 14 | Project Management | Quality Management | Establish, maintain updated and comply with the requirements of the Quality Management Plan in | A | 7 Days | 2 |

| Table 12.3<br>O&M NONCOMPLIANCE EVENTS (APPLICABLE DURING THE OPERATING PERIOD) | | | | | | |
|---|---|---|---|---|---|---|
| **Ref** | **Main Heading** | **Subheading** | **Failure to:** | **Assess-ment Category** | **NCE Cure Period** | **Number of Points** |
| | | | accordance with Section 2 of the Technical Provisions. | | | |
| 15 | Project Management | Safety | Observe the requirements of the safety plan; or to carry out any construction, operation or maintenance activity; in contravention of (or in absence of) the safety plan or in a manner that represents a hazard to project workers or the general public in accordance with Section 6.5.5 of the Technical Provisions. | A | 1 Day | 3 |
| 16 | Project Management | Submission | Develop and submit a part of, or change, addition or revision to, the PMP at the time required in accordance with Sections 3.2.2 or 3.2.4 of the PPA. | B | 14 Days | 1 |
| 17 | Environmental Compliance | Notice | Notify IFA of Hazardous Materials or a Recognized Environmental Condition as set forth in Section 5.9.3 of the PPA. | A | 1 Day | 1 |
| 17a | Environmental Compliance | Contravention of Environmental Approvals | Comply with the Environmental Approvals and requirements provided in Section 7 of the Technical Provisions. | A | 1 Day | 2 |
| 18 | O&M | Category 1 Defect | Mitigate a hazard for a Category 1 defect within the time period shown in the Performance and Measurement Table. | A | See Performan ce and Measurem ent Table | 4 |
| 19 | O&M | Category 1 Defect | Implement a permanent remedy for a Category 1 defect within the time period shown in the Performance and Measurement Table. | A | See Performan ce and Measurem | 2 |

| Table 12.3<br>O&M NONCOMPLIANCE EVENTS (APPLICABLE DURING THE OPERATING PERIOD) | | | | | | |
|---|---|---|---|---|---|---|
| **Ref** | **Main Heading** | **Subheading** | **Failure to:** | **Assess-ment Category** | **NCE Cure Period** | **Number of Points** |
| | | | | | ent Table | |
| 20 | O&M | Category 2 Defect | Implement a permanent repair for a Category 2 defect within the time period shown in the Performance and Measurement Table. | A | See Performan ce and Measurem ent Table | 1 |
| 20a | O&M | Rehabilitatio n Work | Perform Rehabilitation Work in accordance with the schedule set forth in the Rehabilitation Work Schedule per Sections 6.7 and 6.8 of the PPA and Section 18 of the Technical Provisions. | A | 7 Day | 1 |
| 20b | O&M | Rehabilitatio n Work | Prepare and submit a Rehabilitation Work Schedule per Section 6.8 of the PPA | A | 14 Days | 1 |
| 21 | O&M | Reporting Records Accuracy | Report Defects or Noncompliance points in the Operations Reports as required per Section 18.6 of the Technical Provisions. | A | 7 Days | 5 |
| 21a | O&M | Maintenance Records | Comply with the requirements of the Maintenance Management System in accordance with Section 18.4.1.4 of the Technical Provisions. | A | 7 Days | 1 |
| 22 | O&M | Traffic Operations Restrictions | Comply with traffic operations restrictions set forth in Article 6 of the PPA (each instance). | B | 1 Day | 3 |
| 23 | O&M | Availability Payment Documentati on | Provide supporting documentation with the draft Availability Payment invoice. | B | 7 Days | 5 |

| Table 12.3<br>O&M NONCOMPLIANCE EVENTS (APPLICABLE DURING THE OPERATING PERIOD) | | | | | | |
|---|---|---|---|---|---|---|
| **Ref** | **Main Heading** | **Subheading** | **Failure to:** | **Assess-ment Category** | **NCE Cure Period** | **Number of Points** |
| 24 | O&M | O&M Plan | Comply with the requirements of Operations and Maintenance Plan not specifically identified elsewhere in this Attachment 1. | B | 14 Days | 1 |
| 25 | O&M | O&M Work Files | Maintain current and accurate files, and make them available for inspection and audit, related to the O&M Work per requirements of Sections 18.1.10 and 18.7.2 of the Technical Provisions. | B | 15 Days | 3 |
| 26 | O&M | Operations Report | Submit Operations Report per requirements of Section 18.2.2 of the Technical Provisions. | B | 7 Days | 5 |
| 27 | O&M | Maintenance Work Report | Submit Maintenance Work Report per requirements of Section 18.4.1.3 of the Technical Provisions. | B | 7 Days | 5 |
| 28 | O&M | Maintenance Plan | Submit an annual Maintenance Plan per requirements of Section 18.4.1 of the Technical Provisions. | B | 14 Days | 3 |
| 29 | O&M | Notification Regarding Planned Maintenance Closures | Notify and/or coordinate with public agencies (INDOT, etc.) regarding Planned Maintenance per the requirements of Section 18.2.3 of the Technical Provisions. | C | None | 3 |
| 30 | O&M | Operations Staffing Levels | Maintain the operations staffing levels in accordance with the requirements of Section 18 of the Technical Provisions and the PMP. | A | 30 Days | 4 |
| 31 | O&M | Hazardous Materials Management Plan | Implement a Hazardous Materials policy in accordance with the requirements of Section 7.9 of the Technical Provisions. | B | 14 Days | 4 |

| Table 12.3<br>O&M NONCOMPLIANCE EVENTS (APPLICABLE DURING THE OPERATING PERIOD) | | | | | | |
|---|---|---|---|---|---|---|
| **Ref** | **Main Heading** | **Subheading** | **Failure to:** | **Assess-ment Category** | **NCE Cure Period** | **Number of Points** |
| 32 | O&M | Inspection Obligations | Perform Developer's inspection obligations per the requirements of Section 18 and Section 19 of the Technical Provisions. | A | 1 Day | 2 |
| 33 | O&M | Snow and Ice Control Plan | Submit an annual Snow and Ice Control Plan per the requirements of Section 18.3.1.9.2 of the Technical Provisions. | B | 14 Days | 5 |
| 34 | O&M | Winter Patrol Diary | Make available the Winter Patrol Diary per the requirements of Section 18.3.1.9.4 of the Technical Provisions. | B | 1 day | 4 |
| 35 | O&M | Closure | Any Closure that is not a Permitted Closure of one or more travel lanes within the O&M Limits, any part of which takes place during Unavailability Period A as defined in Table 3, Section 3.5.3 of Exhibit 10. | C | None | 1 |
| 36 | O&M | Closure | Any Closure that is not a Permitted Closure of one or more travel lanes lasting four (4) consecutive hours or more within the O&M Limits that takes place entirely during any Unavailability Period B as defined in Table 3, Section 3.5.3 of Exhibit 10. | C | None | 1 |
| 37 | O&M | Closure | Any Closure that is not a Permitted Closure of one or more travel lanes within the O&M Limits any part of which takes place during an Event Period. | C | None | 1 |