

**TOLLING SERVICES AGREEMENT**  
**IH 635 MANAGED LANES PROJECT**

**Between**

**NORTH TEXAS TOLLWAY AUTHORITY**  
**and**

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**Dated \_\_\_\_\_, 2008**

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## **TOLLING SERVICES AGREEMENT**

THIS TOLLING SERVICES AGREEMENT (the "Tolling Services Agreement") is entered into and effective as of \_\_\_\_\_, 2008 by and between the **North Texas Tollway Authority**, a regional tollway authority authorized and operating under Chapter 366 of the Texas Transportation Code ("NTTA"), and \_\_\_\_\_, a \_\_\_\_\_ ("Developer"), with reference to the following facts.

### **RECITALS**

A. Concurrently with execution of this Tolling Services Agreement, the Texas Department of Transportation ("TxDOT") and Developer have entered into a Comprehensive Development Agreement (the "Agreement") to develop, design, construct, finance, operate and maintain the IH 635 Managed Lanes Project (the "Project"), consisting of the reconstruction of general purpose lanes, construction of managed lanes, and construction of new and reconstruction of existing frontage roads, the establishment of tolling operations and maintenance and operation of the IH 635 managed lane corridor in Dallas County, Texas.

B. Pursuant to the Agreement, Developer has the right and obligation to, among other things, impose, collect and enforce tolls for use of the Project by means of an Electronic Toll Collection System.

C. Developer is entering into this Tolling Services Agreement pursuant to the Agreement to retain NTTA to provide certain toll collection, enforcement and interoperability functions and services for the Project, on and subject to the terms and conditions of this Tolling Services Agreement.

D. Pursuant to Section 366.038 (the "Statute") of the Texas Transportation Code, as amended, NTTA shall provide, for reasonable compensation, customer service and other toll collection and enforcement services for a toll project in the boundaries of the NTTA, which includes the Project.

E. Pursuant to a resolution dated November 8, 2007, the Board of Directors of NTTA resolved to support TxDOT's development of the Project and acknowledged that NTTA's sole role would be to provide the associated toll operations, as provided under applicable law.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth in this Tolling Services Agreement, NTTA and Developer agree as follows:

#### **1. Definitions and Interpretation**

- (a) Certain terms used herein have the respective definitions set forth in Attachment 1 to this Tolling Services Agreement.
- (b) Other capitalized terms used but not defined herein have the respective meanings set forth in the Agreement.

- (c) Notwithstanding anything to the contrary set forth herein, any reference made in this Tolling Services Agreement to the practices and procedures that NTTA follows in respect of its own facilities in respect of the standards or type of services to be provided pursuant to this Tolling Services Agreement shall be deemed to include at a minimum performance at a level which is consistent with the practices and procedures of NTTA at the Service Commencement Date or, if higher, at the time such evaluation is made, and with the Performance Standards under or other requirements of this Tolling Services Agreement.

## 2. Engagement and General Statement of Responsibilities.

Developer hereby engages NTTA to provide the services described herein from and after the Service Commencement Date and until the expiration or earlier termination of the Term (as defined herein), and NTTA hereby accepts such engagement. The Parties' general responsibilities under this Tolling Services Agreement include the following (with the following general description to be without limitation on the parties' respective other responsibilities and obligations provided for pursuant to the other terms and conditions of this Tolling Services Agreement):

- (a) Developer's general responsibilities include:
  - (i) Developer shall install, replace and maintain in good condition throughout the Term equipment that complies with the requirements of the Agreement and that will identify vehicles equipped with a transponder issued by NTTA (either directly by NTTA or through an NTTA-approved distributor) or another Toll Operator and video equipment and related lane controller equipment designed to capture video images of and/or data concerning vehicles passing through tolling stations as required by the Interface Control Document.
  - (ii) Developer shall be responsible for capturing data evidencing each Transponder Transaction and Video Transaction and transmitting a properly formed Transaction to NTTA (which will include all of the information required by the ICD for each such Transaction) in accordance with this Tolling Services Agreement pursuant to the ICD or any other communications protocols in effect hereunder from time to time. Without limiting the foregoing, Developer shall be responsible for (A) determining the applicable toll for each Transaction and transmitting the applicable toll information to NTTA with its transmittal of other Transaction data pursuant to the preceding sentence, and (B) conducting all video image reviews and Transaction matching required to determine Video Transactions. NTTA shall not be responsible for enforcement of high occupancy vehicle rules and requirements, and, without hereby limiting such obligations of Developer under the Agreement (if any), NTTA agrees that Developer shall not be responsible for enforcement of high occupancy vehicle rules and requirements under this Tolling Services Agreement. NTTA shall

not have any responsibility for any of the activities described in this paragraph (ii).

- (iii) Developer shall be responsible for all interoperable fees, the cost of which shall be paid in accordance with the applicable interoperability interlocal agreement.
  - (iv) Developer shall be responsible for providing reasonably detailed information to NTTA from time to time for purposes of training NTTA's customer service personnel adequately to respond to customer inquiries concerning Developer's dynamic or other toll pricing models.
  - (v) Developer shall not issue any transponders to or impose any tolls on Users in connection with the Project other than as permitted or contemplated by this Tolling Services Agreement, and Developer otherwise shall not take any actions in competition with the rights and responsibilities of NTTA hereunder (provided, however, that the foregoing shall not preclude Developer from marketing activities, from distributing NTTA-issued transponders on its own premises in its capacity as a distributor of NTTA, from exercising rights and remedies expressly provided to Developer hereunder in respect of this Tolling Services Agreement or in the Agreement in respect of the Agreement, and activities of Developer or any of its affiliates in connection with other toll roads).
- (b) NTTA's general responsibilities include:
- (i) NTTA shall post Transponder Transactions to customer accounts in accordance with Section 4(a)(iv) hereof.
  - (ii) NTTA shall provide Interoperability Functions in accordance with Section 5 hereof.
  - (iii) NTTA shall process Video Transactions in accordance with Section 8 hereof.
  - (iv) NTTA shall remit payments to Developer in respect of Video Transactions and Transponder Transactions in accordance with Section 7 hereof.
  - (v) NTTA shall utilize and make available its Customer Service Center services for handling of customer inquiries and complaints, as provided in Section 4(a)(i) hereof.
  - (vi) NTTA shall provide account management and other back office services in accordance with this Tolling Services Agreement, including Section 4(a) hereof.
  - (vii) NTTA shall provide toll collection enforcement services, which shall include transmittal of violation notices, collection efforts

(including, at NTTA's option, utilization of a third party collection agency) and other actions permitted by applicable Law (including court action) and in accordance with the Performance Standards and the practices and procedures that NTTA follows in respect of its own facilities.

- (c) Developer and NTTA acknowledge and agree that, particularly in view of the stated Term (as defined in the Agreement) of the Agreement and the potential Term of this Tolling Services Agreement, changes may occur during the Term in mobility and tolling equipment, technology and operations, interoperability standards and protocols and in business and commercial practices that may warrant the Parties' consideration and implementation of changes in the equipment, technology or practices utilized in connection with the Project and/or changes to this Tolling Services Agreement and the Parties' respective responsibilities and obligations hereunder in order to more effectively provide for the performance of the services contemplated and intended by this Tolling Services Agreement. Developer and NTTA further acknowledge that Developer may need to change equipment, technology and practices to maintain interoperability as required by Section 12.1.3 of the Agreement. Developer and NTTA agree to cooperate with each other in a commercially reasonable manner in considering any such changes and to implement the same to the extent such implementation may be achieved in a commercially reasonable manner and the proposed changes are consistent with technology and practices then used and/or followed by NTTA with respect to its own facilities. In connection therewith, Developer and NTTA also shall consider in good faith any adjustments (if any) in the compensation payable to NTTA hereunder in light of such changed circumstances. Any such changes shall be made in accordance with Section 17.
- (d) For the avoidance of doubt, NTTA will have no obligation or responsibility hereunder in respect of User based rebates (whether monitoring data related to same, payment of same or any other obligation or responsibility related to any such rebates) or in respect of the determination, assessment or collection of liquidated damages against or from Developer under the Agreement. However, if Developer at any time during the Term desires for NTTA to provide support for assessing and/or processing rebates, it may initiate a Change Order pursuant to Section 17 in respect thereof. For the avoidance of doubt, this Section does not apply to adjustments of overcharges to customer accounts pursuant to Section 11.
- (e) For the avoidance of doubt, NTTA hereby disclaims any interest in funds owing or remitted to NTTA by a User for a Transaction to the extent of amounts owed by NTTA to Developer for such Transaction that have not yet been paid to Developer. NTTA shall be deemed to be a collecting agent acting on behalf of Developer with respect to such amounts owing or remitted by the applicable Users and owed to and not yet paid to the Developer until NTTA pays Developer the applicable amounts owed to Developer with respect to the Transaction, at which time NTTA may

receive and retain the corresponding amounts from applicable Users for its own account and as its own funds.

3. Term; Transition of Services

- (a) The term (the "Term") of this Tolling Services Agreement commences on the date hereof and shall expire upon expiration of the Agreement, subject to earlier termination of this Tolling Services Agreement in accordance with Section 21.
- (b) NTTA shall commence performing system interface work in accordance with the schedule developed under Section 12(c). Unless otherwise specifically provided herein with respect to any specific service, NTTA shall commence performing all other services under this Tolling Services Agreement on the Service Commencement Date.
- (c) During the period commencing twenty-four months prior to [\_\_\_\_\_] (this date is intended to be six months prior to the anticipated substantial completion date) (or any extension thereof mutually agreed in writing), the Parties shall, at their cost, cooperate with each other in order to prepare, on or prior to the [\_\_\_\_\_] (this date is intended to be six months prior to the anticipated substantial completion date), a mutually acceptable transition plan (with each Party agreeing not to unreasonably withhold its approval or assent thereto) that sets forth protocols, procedures and terms for (i) the transition of collection and enforcement services from NTTA to Developer or its designee respecting Transponder Transactions and Video Transactions and related Transaction data transmitted to NTTA but for which tolls have not been collected prior to the expiration or earlier termination of this Tolling Services Agreement or the exercise by Developer of any step-in right pursuant to Section 19(d) hereof; and (ii) the delivery by NTTA to Developer, on or prior to the expiration or earlier termination of this Tolling Services Agreement or the exercise by Developer of any step-in right pursuant to Section 19(d) hereof, of reports of (A) Transactions occurring during the last five (5) years of the Term prior to the expiration or termination date, or the date of Developer's exercise of such step-in right hereunder, for which NTTA has collected and remitted tolls to Developer and received the related fees and other amounts payable to NTTA hereunder; (B) Transactions occurring during the last five (5) years of the Term prior to the expiration or termination date, or the date of Developer's exercise of such step-in right hereunder, for which NTTA has collected and remitted tolls to Developer hereunder but has not received all of the related fees and other amounts payable to NTTA hereunder; and (C) with respect to Transactions that have occurred and the data for which has been transmitted by Developer to NTTA but for which NTTA has not collected and remitted tolls to Developer or received any fees or other amounts payable to NTTA hereunder, NTTA shall transfer such Transactions to Developer, together with any information that NTTA has relating to such Transactions that may reasonably assist Developer in the collection of tolls for such Transactions. If NTTA has made payment to Developer under the terms of this Tolling Services Agreement with respect to any Transactions that



NTTA has not collected or with respect to which NTTA has not received Incidental Charges associated with such Transactions, at the expiration or termination date, or the date of Developer's exercise of such step-in right hereunder, then NTTA shall be entitled (and Developer shall have no obligation) to enforce and collect such Transactions in the same manner as had been in effect immediately before the expiration or termination date, or the date of Developer's exercise of such step-in right hereunder. The foregoing does not obligate NTTA to provide professional consulting services for transition planning, except pursuant to a Change Order. Other than Transaction information described above, in no event shall the transition plan require NTTA to disclose to Developer NTTA's proprietary information or processes. The Parties will cooperate to update the transition plan once every two years (or annually if reasonably requested by either Party due to any change in circumstances). With respect to any termination of this Tolling Services Agreement other than due to a default by NTTA, NTTA shall be entitled to payment from Developer of the costs and expenses incurred by NTTA in connection with the services and reports to be furnished by NTTA to Developer pursuant to provisions of this Section 3(c) and such transition plan.

4. Toll Collection and Enforcement Services

- (a) NTTA shall provide complete back office functions pertaining to toll collection and enforcement for the Project. Such functions shall include the following:
  - (i) Customer service operations providing all customer service representatives with access to all electronic account and toll violation information and ability to resolve most issues or questions with the customer (including HOV customers) through various contact channels, including (A) transponder distribution support, (B) walk-in customer service and support, (C) staffing and maintaining call center operations for customer and general inquiries with sufficient call handling capacity to answer calls in accordance with the Performance Standards, (D) operating and maintaining an industry-standard interactive voice response system in English and Spanish configured to allow customers, without charge, to obtain automated information, to transfer or be directed to a specific source of information, to access account maintenance functions and to speak in English or Spanish with a live customer service representative, (E) creating and managing an industry standard interactive web site, with the customer service center portion of the web site in English and Spanish, which may be used for disseminating information on NTTA's transponder program and allowing a customer to conduct secure account maintenance activities such as opening an account, changing information on an account, viewing account status and statements, replenishing an account balance and with a posted privacy notice, and such web site shall allow dissemination and receipt of information simultaneously with multiple users without unreasonable delay in responses, (F) maintaining an Internet e-

mail address for all inquiries and comments regarding account maintenance matters from customers and the public, (G) receipt of and response to e-mails on a timely basis during normal business hours, and (H) the ability of customers to send facsimile communications to the customer service center 24 hours per day seven days per week, and responding to such communications during normal business hours; however, notwithstanding the foregoing, Developer acknowledges that because Developer, not NTTA, is responsible for collecting in-lane data in respect of the Project, NTTA may not be able to resolve HOV customer complaints regarding whether the customer was improperly charged a single occupancy vehicle toll rate rather than an HOV toll rate, or other HOV-related disputes, questions, or inquiries, including, but not limited to, issues regarding implementation of HOV policies; therefore, NTTA shall not be adversely affected with regard to its compliance with Performance Standards in connection with its handling of any HOV disputes (it being understood and agreed that to the extent that NTTA is reasonably able to resolve such disputes, it shall do so);

- (ii) Account management and maintenance, including setting up new personal and commercial accounts, managing transponder replacement, automatic replenishing of NTTA accounts to pre-determined levels when accounts reach low balance thresholds, accepting payments (pursuant to payment methods consistent with those utilized by NTTA with respect to its own facilities) to replenish accounts, and issuing monthly statements to NTTA account holders (or other frequency as may be agreed between NTTA and such account holders) providing an activity summary that itemizes usages, related toll charges and other Incidental Charges;
- (iii) Transponder issuance and replacement;
- (iv) Transaction and payment processing for Transponder Transactions, including posting Transponder Transactions against User transponder accounts, and debiting accounts for toll charges and Incidental Charges on a "first in" basis according to the date and time received by NTTA;
- (v) Transaction and payment processing for Video Transactions consistent with NTTA's practices regarding customers of its own facilities, including issuing billing statements to Video Transaction Users with itemization of toll charges and Incidental Charges, processing of payments received including reconciliation with billing statements, and accepting payment (pursuant to payment methods consistent with those utilized by NTTA with respect to its own facilities);
- (vi) Violation processing and enforcement in accordance with Chapter 366 of the Texas Transportation Code or other Laws

applicable to NTTA and consistent with NTTA's practices regarding customers of its own facilities;

- (vii) Implementation of appropriate reporting, reconciliation, accounting, audit and quality assurance processes in accordance with Good Industry Practice, including internal controls to minimize the possibility of inadvertent and illegal diversion of Toll Revenues, and including (A) controlled access to all NTTA computer systems and subsystems, (B) control by user group scheme, (C) state of the art virus protection and firewall software and (D) maintaining a secure record of system access and breaches of security, consistent with Good Industry Practice;
  - (viii) Implementation of data backup and disaster recovery in accordance with NTTA's Business Continuity Plan (the "Business Continuity Plan") as in effect from time to time (and a summary of certain terms of the Business Continuity Plan as in effect on January 15, 2008 is attached hereto as Attachment 10) and Good Industry Practice and retention of Project-related data in accordance with Section 15(d);
  - (ix) Provision to the appropriate governmental agencies or entities of the State of Texas of the calculation and information required to be furnished by NTTA pursuant to Section 228.0055(b) of the Texas Transportation Code (or any successor law thereto); and
  - (x) Provision of all staffing, supervision, support services, data services, CSC Host equipment, and materials necessary to perform such responsibilities in a timely manner.
- (b) Provided NTTA complies with Section 4(a)(vi), decisions on whether and when to issue notices and pursue collection and enforcement actions shall be within the discretion of NTTA. NTTA shall exercise such discretion in the manner it makes such decisions with respect to its own tolled roadways and in accordance with Good Industry Practice.
- (c) NTTA shall solely choose the transponders to offer to Users, consistent with Section 21 of the Technical Provisions and in Section 12(h); provided that Developer reserves the right (but is not obligated) to issue its own transponders that are equivalent in utility, functionality and reliability to those issued by NTTA to any Person from and after the date either Party delivers written notice to the other Party exercising a right to terminate this Tolling Services Agreement (so long as any such notice is not rescinded) or during any period during which Developer is exercising step-in rights under this Tolling Services Agreement. NTTA shall issue and replace transponders expeditiously, consistent with the time periods applicable for replacement of transponders in respect of its own facilities. NTTA shall replace its transponders whenever a customer requests replacement, and shall be entitled to collect its standard charges therefor applicable to similar transponders issued by NTTA. NTTA shall include transponder mounting instructions with new transponders supplied to

customers, and provide transponder mounting assistance at NTTA's customer service center or outlets to support successful installation consistent with the level of service provided customers on NTTA's own facilities.

- (d) NTTA shall be responsible for taking reasonable steps to minimize the number of toll violations due to misuse (e.g. improper mounting or absence of transponder) by NTTA account customers. Such responsibility shall include but not be limited to (i) providing clear transponder mounting instructions and assisting with mounting, if requested, as provided in subsection (c) above, (ii) identifying and contacting NTTA account holders identified through Video Transactions or that incur violations, (iii) contacting NTTA account holders to ascertain the reasons for such Video Transactions or violations and (iv) resolving such situations if reasonably possible (e.g. providing mounting instructions/assistance or a replacement transponder or obtaining updated account information). NTTA shall take such steps consistent with its practices regarding customers of its own facilities.
- (e) NTTA shall determine the location or locations of its call center operations and NTTA's CSC Host. NTTA may change any such location from time to time. If NTTA changes any such location from the original location, it shall bear the reasonable and necessary costs of re-establishing necessary connections between the ETCS to the newly located NTTA CSC Host equipment with respect to such relocation. Developer shall provide data to, and receive data from, NTTA by means of the ETCS and its interface with NTTA's CSC Host so as to enable NTTA to enforce and collect all toll payments from Users in a timely, accurate and efficient manner.
- (f) NTTA may establish and enforce reasonable minimum amounts for opening, maintaining and replenishing electronic tolling accounts, consistent with NTTA's practices regarding customers of its own facilities.
- (g) NTTA shall provide credit card processing services to its customers and Video Transaction Users for all major credit cards consistent with its practices regarding customers of its own facilities.
- (h) NTTA shall provide the foregoing services in accordance with the Performance Standards, the applicable provisions and requirements of this Tolling Services Agreement, and to the extent equal to or better than the foregoing requirements and standards, NTTA also shall provide the foregoing services in accordance with NTTA's standard management practices, procedures and protocols with which it performs such services and functions for its own facilities.
- (i) NTTA shall be temporarily excused from complying with the requirements and standards set forth in Section 4(h) to the extent its inability to comply is directly attributable to any failure or inability of Developer to comply with the Interface Control Document, or to meet the minimum Targets of the Tolling Performance Standards or the minimum percentages of

Functional Availability set forth in Section 21.5 of the Technical Provisions. NTTA shall bear the burden of providing evidence reasonably satisfactory to Developer that NTTA exercised diligent efforts to comply.

- (j) NTTA will provide Developer access to standardized toll collection system reports described in Section 14 hereof by means of a secure website/portal (and a summary of NTTA's audit and reconciliation procedures that are followed in preparing such reports and as in effect on January 15, 2008 is attached hereto as Attachment 11).
- (k) Developer and NTTA shall conduct regular meetings (the "Developer-NTTA Regular Meetings") at least once per month, or such other frequency as the Parties mutually approve, to review, discuss and resolve matters relating to coordination, services, quality control, performance, customer service, tolling (including any issues related to erroneous pricing set by Developer or billing by NTTA and "readability" of transferred video images), payment and other matters arising under this Tolling Services Agreement. The Parties shall schedule all meetings at a mutually convenient date, time and place. In addition to regularly scheduled meetings, Developer and NTTA shall cause their respective representatives to be available at all reasonable times (generally, during regular business hours) for consultation with one another and with the Independent Engineer.
- (l) Unless added by Change Order, NTTA shall have no right or obligation to provide under this Tolling Services Agreement (i) storefront services except such services at NTTA's customer service centers, (ii) any public relations work for the Project, other than customer relations in the ordinary course of handling customer accounts, inquiries and communications, (iii) maintenance of a Project web site (as distinguished from NTTA's own web site and web-based customer service center required by Section 4(a)(i)(E) and (F)), (iv) any marketing or promotional work or services for the Project, other than customer relations, and (v) any maintenance work on Developer's toll collection system. In no event, however, shall NTTA be prohibited from providing any such services in connection with its own facilities or those of any third party.
- (m) NTTA recognizes that Developer is not entitled to charge tolls to Users under certain circumstances and during periods of emergency evacuation or diversion of traffic to the Project due to a disaster, as more particularly set forth in Section 3.6 of the Agreement. Developer shall not transmit transaction data to NTTA during such periods. If Developer does so, and if NTTA reviews any such Transaction data, NTTA may charge Developer the Transaction fees and charges otherwise applicable to non-emergency Transactions hereunder (including, but not limited to, Base Transaction Fees and Variable Transaction Fees **[and Cost-Plus Transaction Fees]** **[this will be added if the second pricing alternative is selected]**). However, NTTA shall have no obligation to review any data transmitted in connection with Emergency Mode transactions. In the event Developer transmits to NTTA's CSC Host any Transaction that is for an Exempt Vehicle or that is a Duplicate Transaction, NTTA also may charge

Developer the Transaction fees and charges otherwise applicable to non-Exempt vehicles or non-Duplicate Transactions (as the case may be) hereunder (including, but not limited to, Base Transaction Fees and Variable Transaction Fees **[and Cost-Plus Transaction Fees]**).

- (n) NTTA shall maintain the toll account and travel records of Users as confidential information and in compliance with applicable Laws on notice of privacy practices and handle such information in accordance with this Section 4(n).
  - (i) NTTA acknowledges that the data generated by, or accumulated or collected in connection with, its services under this Tolling Services Agreement, including customer lists, customer identification numbers, customer contact information, customer account information and billing records and other customer specific information, including use and enforcement data, origin and destination information, system performance statistics, and real time traffic flow information may consist of or include information that identifies an individual who is a patron of the Project and that is exempt from disclosure to the public or other unauthorized persons under applicable Law ("Patron Confidential Information"). Patron Confidential Information includes names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or other information that relates to any of these types of information.
  - (ii) NTTA shall comply with all applicable Laws, Technical Provisions and interoperability and compatibility standards, requirements and protocols developed by NTTA, TxDOT and the state's other Toll Operators limiting, restricting or pertaining to collection, use, confidentiality, privacy, handling, retention, reporting, disclosure or dissemination of Patron Confidential Information ("Statewide Confidentiality Protocols").
  - (iii) NTTA agrees to hold Patron Confidential Information relating to the use of the Project in strictest confidence and not to make use of Patron Confidential Information relating to the use of the Project for any purpose other than the performance of this Tolling Services Agreement, including toll violation processing and collection; provided, however, that to the extent Patron Confidential Information has been provided to NTTA in connection with its operation of its own facilities or its provision of services to other Toll Operators, NTTA may use and retain such Patron Confidential Information as permitted by applicable Law and any applicable Statewide Confidentiality Protocols, notwithstanding anything to the contrary contained in this Tolling Services Agreement.

- (iv) NTTA shall not release, divulge, publish, transfer, sell or disclose Patron Confidential Information relating to the use of the Project, or otherwise make it known, to any other Person except as permitted or required by applicable Laws. NTTA shall implement physical, electronic and managerial safeguards to prevent unauthorized access to Patron Confidential Information and to implement destruction of records containing Patron Confidential Information in accordance with its practices and procedures regarding customers of its own facilities.
- (v) NTTA shall disclose in writing to each User to whom NTTA issues a transponder and for whom it holds Patron Confidential Information NTTA's policies regarding privacy of Patron Confidential Information, consistent with this Section 4(n). NTTA shall deliver such written disclosure in an applicable end user agreement, and shall maintain such disclosure on its web site. NTTA shall comply with the provisions of any applicable Law prescribing disclosure of NTTA privacy policies, including provisions on the content of disclosures and when disclosure must be given, and such compliance shall be deemed compliance with the disclosure requirements of this Section 4(n).
- (vi) NTTA's obligations relating to Patron Confidential Information shall survive expiration or termination of this Tolling Services Agreement.
- (o) In connection with any dispute regarding a Transaction, including in connection with enforcement and collection proceedings brought to collect tolls owed with respect to the Transaction, at NTTA's request Developer, at its expense, shall provide reasonable assistance and cooperation to evidence the proper operation of the ETCS and data transmission to the NTTA's CSC Host at the time of the Transaction.
- (p) Developer generally intends to obtain prepayment of tolls or otherwise handle on its own payment of tolls for operators of Special Vehicles on the Project and therefore not to involve NTTA in transaction processing for Special Vehicles. However, the Parties recognize that Video Transactions regarding Special Vehicles may be transmitted to NTTA's CSC Host because a Special Vehicle has operated on the Project without obtaining a permit and pre-paying a toll. In the event NTTA receives a Video Transaction identified in the User Classification of a Special Vehicle, and if the Special Vehicle is not an Exempt Vehicle, then NTTA shall process such Video Transaction as it customarily processes other Video Transactions.

## 5. Financial Interoperability Functions and Terms

- (a) NTTA will establish and implement Interoperability Functions to coordinate the settlement and payment of electronic toll charges for Transponder Transactions by vehicles equipped with transponders issued by Transponder Issuers other than NTTA. NTTA will allow the

Interoperability Functions to evolve to meet the needs of an increasing number of Transponder Issuers.

- (b) Developer hereby agrees to adhere to NTTA's practices and procedures concerning compliance with applicable interoperability rules and guidelines by which all Persons involved in the Interoperability Functions will provide data for the transfer of funds (provided that NTTA will keep Developer regularly informed of such practices and procedures). NTTA shall pay Developer the amount of the toll less the interoperability fee (and less the Base Transaction Fee **[or Cost Plus Transaction Fee, if applicable,]** payable to NTTA) (and subject to any adjustments provided for in Section 6(a)(ii)) for Interoperable Transactions.

6. Compensation for Services

**NOTE THAT THERE ARE TWO PRICING ALTERNATIVES, THE FIRST OF WHICH IS SET FORTH IN SUBSECTIONS (a) THROUGH (e) BELOW, AND THE SECOND OF WHICH FOLLOWS IMMEDIATELY THEREAFTER.**

**THE FIRST ALTERNATIVE IS SET FORTH IN THE FOLLOWING SUBSECTIONS (a) THROUGH (e).**

(a) Fees and Deductions.

- (i) In consideration for NTTA's services hereunder, Developer shall pay NTTA the following fees:
  - (A) The Base Transaction Fee provided for in Section 6(b); plus
  - (B) The Variable Transaction Fee provided for in Section 6(c);
- (ii) The Base Transaction Fee (as calculated pursuant to Section 6(b)) and the Variable Transaction Fee (as calculated pursuant to Section 6(c)) payable to NTTA shall be subject to reduction (pursuant to Section 6(h)) by the following:
  - (A) The Delinquent Payment Deduction, calculated in accordance with Section 6(d); and
  - (B) The Non-Compliance Deduction, if any, calculated in accordance with Section 6(e).

The amount payable to NTTA pursuant to Section 6(a)(i), net of deductions provided for in this Section 6(a)(ii), is referred to in this Tolling Services Agreement as the "NTTA Compensation."

- (iii) The NTTA Compensation is inclusive of all services required under this Tolling Services Agreement, other than those added by Change Order or Change Directive. Without limiting the foregoing, NTTA expressly acknowledges that Developer shall



have no obligation to compensate NTTA over and above the NTTA Compensation for any merchant bank charges or bank commissions or fees incurred by NTTA for account replenishment and for any other forms of User payment methods which involve a bank (such as check, credit card, debit card, internet payments and wire transfers), or in the case of Video Transactions, for back-office work and services provided by NTTA hereunder in respect of Video Transactions (including billing and processing payments for Video Transactions), costs of enforcement and collection, including costs of collection agencies and costs of pursuing collection in court, or of risks of inability to collect Video Transactions. This provision does not limit NTTA's right to charge Incidental Charges to customers and Users to the extent set forth in Section 6(f), or NTTA's right to additional compensation from Developer pursuant to Section 6(g).

(b) Base Transaction Fee Payment.

- (i) The Base Transaction Fee for each Transaction received by NTTA's CSC Host initially, as of the Service Commencement Date, shall be \$0.\_\_\_\_ and shall increase (rounded to the nearest 1/10<sup>th</sup> cent) every two years on the anniversary of the Service Commencement Date (i.e., the second anniversary, fourth anniversary, sixth anniversary, etc.) based on an escalation rate equal to two percent (2.0%) per annum.
- (ii) The applicable Base Transaction Fee shall be due and payable for each Transaction (whether a Transponder Transaction, Video Transaction or Interoperable Transaction) that is recognized by the ETCS and properly transmitted to NTTA's CSC Host in accordance with the ICD (and any other criteria that may be developed and agreed upon by the Parties pursuant to Section 8(e) or 9(e)) and shall be paid to NTTA by NTTA's deduction of the amount thereof from the amount of each toll transaction payment made by NTTA to Developer pursuant to Section 7 hereof. Base Transaction Fees shall be the same for all User Classifications and for all Transactions in the same Service Year, regardless of the amount of the toll for such Transactions.

(c) Variable Transaction Fee Payment.

- (i) The Variable Transaction Fee for each Transaction (other than Interoperable Transponder Transactions, which shall not be subject to the Variable Transaction Fee) received by NTTA's CSC Host shall be equal to \_\_\_\_\_ percent (\_\_\_\_%) of the applicable toll amount (exclusive of Incidental Charges).
- (ii) The Variable Transaction Fee shall be due and payable for each Transaction, whether a Transponder Transaction (other than an Interoperable Transponder Transaction) or a Video Transaction, that is recognized by the ETCS and properly transmitted to

NTTA's CSC Host in accordance with the ICD (and any other criteria that may be developed and agreed upon by the Parties pursuant to Section 8(e) or 9(e)) and shall be paid to NTTA by NTTA's deduction of the amount thereof from the amount of each toll transaction payment made by NTTA to Developer pursuant to Section 7 hereof.

(d) Delinquent Payment Deduction.

- (i) A Delinquent Payment Deduction will be made for any Payment Period in which NTTA fails to make a timely payment to Developer in accordance with Section 7. The Delinquent Payment Deduction shall be payable as a monthly adjustment in accordance with Section 6(h) and shall be reported to Developer in a monthly Delinquent Payment Deduction report to be delivered to Developer by NTTA pursuant to Section 14(d).
- (ii) The Delinquent Payment Deduction will be determined in accordance with the following formula (and an example of the calculation of the Delinquent Payment Deduction is attached hereto as Attachment 8):

$$\begin{array}{l} \text{Delinquent Payment Deduction} \\ n,m \\ \text{(Year } n = 1 \text{ to } \_\_\_\text{ and Month } m \\ = 1 \text{ to } 12) \end{array} = \frac{\sum \text{Daily Delinquent Payment Deduction } n,m \times \text{Duration} / 365 \text{ (or 366, in leap years)} \times \text{Interest Rate } n,m}{}$$

Where:

$$\begin{array}{l} \text{Daily Delinquent Payment} \\ \text{Deduction } n,m \end{array} = \begin{array}{l} \text{Total payments due Developer on} \\ \text{each day during Month } m \text{ of Year} \\ n \text{ that are not timely paid by} \\ \text{NTTA when due under } \underline{\text{Section 7}} \end{array}$$

$$\begin{array}{l} \text{Duration} \end{array} = \begin{array}{l} \text{The number of calendar days} \\ \text{from the date a payment under} \\ \underline{\text{Section 7}} \text{ is due until the date} \\ \text{such payment is made to} \\ \text{Developer.} \end{array}$$

$$\begin{array}{l} \text{Interest Rate } n,m \end{array} = \begin{array}{l} \text{Interest at a rate equal to the} \\ \text{LIBOR in effect on the first day of} \\ \text{Month } m \text{ in Year } n \text{ plus 400 basis} \\ \text{points} \end{array}$$

(e) Non-Compliance Deduction.

- (i) A Non-Compliance Deduction will be made for any Payment Period in which NTTA is assessed Non-Compliance Points in respect of such Payment Period. The Non-Compliance Deduction shall be payable as a monthly adjustment in accordance with Section 6(h). The Non-Compliance Deduction will be calculated as follows (and an example of the calculation of the Non-Compliance Deduction is attached hereto as Attachment 9):

$$\begin{array}{l} \text{Non-Compliance} \\ \text{Deduction} \\ \text{(Year } n = 1 \text{ to } \_\_\_\text{ and} \\ \text{Month } m = 1 \text{ to } 12) \end{array} \begin{array}{l} n,m \\ \\ \end{array} = \begin{array}{l} \text{Monthly Non-Compliance Deduction} \\ n,m \end{array}$$

Where:

$$\begin{array}{l} \text{Monthly Non-Compliance} \\ \text{Deduction } n,m \end{array} = \begin{array}{l} \text{Monthly Non-Compliance Reduction} \\ \text{Percent x NTTA Compensation } n,m \end{array}$$

$$\begin{array}{l} \text{Monthly Non-Compliance} \\ \text{Reduction Percent} \end{array} = \begin{array}{l} \text{The percent reduction to the NTTA} \\ \text{Compensation associated with the} \\ \text{Non-Compliance Points for Month } m \\ \text{as identified in Table 6(e)-1 below} \end{array}$$

$$\begin{array}{l} \text{NTTA Compensation } n,m \end{array} = \begin{array}{l} \text{Base Transaction Fee Payment for} \\ \text{Period } n,m + \text{Variable Transaction} \\ \text{Fee Payment for Period } n,m \end{array}$$

Table 6(e)-1 – Monthly Non-Compliance Reduction Percent

| Non-Compliance Points<br>for Period $n,m$ | Monthly Non-Compliance<br>Reduction Percent<br>for Period $n,m$ |
|---|---|
| 0 to 16                                   | 0%  |
| 17 to 24                                  | 2%  |
| 25 to 33                                  | 8%  |
| 34 to 44                                  | 20%   |
| 45 or more                                | 35%   |

- (ii) Subject to Sections 6(e)(iii) and (iv), each month NTTA will assign Non-Compliance Points to its performance in accordance with the Performance Standards and will report the same to Developer in the monthly Non-Compliance Deduction report to be delivered to Developer pursuant to Section 14(e) no later than 15 days after the end of such month. Any related Non-Compliance Deduction shall be paid by NTTA in connection with the monthly adjustments provided for in Section 6(h). Upon the written request of Developer, in addition to such monthly Non-Compliance Deduction report, NTTA shall furnish to Developer reasonably detailed information and support for NTTA's determination of such

Non-Compliance Points. Non-Compliance Points shall not be assessed under more than one category for any particular event or circumstance that is a breach or failure. Where a single act or omission gives rise to more than one breach or failure, it shall be treated as a single breach or failure for the purpose of assessing Non-Compliance Points, and the highest amount of Non-Compliance Points under the relevant breaches or failures shall apply. Upon the request of either Party, the Independent Engineer may review any determination of Non-Compliance Points by NTTA hereunder and advise the Parties concerning the accuracy thereof. Developer and the Independent Engineer each shall have the right to inspect and audit NTTA's books and records concerning the determination of Non-Compliance Points and Non-Compliance Deductions pursuant to Section 15(b) and (c). Any disagreement between the Parties concerning the assignment of Non-Compliance Points shall be resolved pursuant to Section 20 hereof.

- (iii) No Non-Compliance Points will be assigned to a failure of NTTA to achieve the performance required in accordance with the Performance Standards and the other standards set forth herein if such failure to perform is (A) directed by Developer, (B) planned by NTTA and consented to, in advance in writing, by Developer, (C) directly caused by the acts or omissions of Developer or (D) excused pursuant to Section 22(d).

**THE SECOND PRICING ALTERNATIVE IS SET FORTH IN SUBSECTIONS (a) THROUGH (f) BELOW. IF THE SECOND ALTERNATIVE IS SELECTED, THEN THE SUBSEQUENT SUBSECTIONS IN THIS SECTION 6 WILL NEED TO BE RE-LETTERED AND CROSS-REFERENCES CONTAINED ELSEWHERE IN THIS TOLLING SERVICES AGREEMENT WILL NEED TO BE CHANGED.**

(a) Fees and Deductions.

- (i) In consideration for NTTA's services hereunder, Developer shall pay NTTA the following fees:
  - (A) For the period from the Service Commencement Date through and including the day before the tenth anniversary of the Service Commencement Date, the Base Transaction Fee provided for in Section 6(b); plus the Variable Transaction Fee provided for in Section 6(c); and
  - (B) For the period from and after the tenth anniversary of the Service Commencement Date, the Cost Plus Transaction Fee provided for in Section 6(d);
- (ii) The Base Transaction Fee (as calculated pursuant to Section 6(b)), the Variable Transaction Fee (as calculated pursuant to Section 6(c)) and the Cost Plus Transaction Fee

payable to NTTA (as calculated pursuant to Section 6(d)) shall be subject to reduction (pursuant to Section 6(i)) by the following:

- (A) The Delinquent Payment Deduction, calculated in accordance with Section 6(e); and
- (B) The Non-Compliance Deduction, if any, calculated in accordance with Section 6(f).

The amount payable to NTTA pursuant to Section 6(a)(i), net of deductions provided for in this Section 6(a)(ii), is referred to in this Tolling Services Agreement as the "NTTA Compensation."

- (iii) The NTTA Compensation is inclusive of all services required under this Tolling Services Agreement, other than those added by Change Order or Change Directive. Without limiting the foregoing, NTTA expressly acknowledges that Developer shall have no obligation to compensate NTTA over and above the NTTA Compensation for any merchant bank charges or bank commissions or fees incurred by NTTA for account replenishment and for any other forms of User payment methods which involve a bank (such as check, credit card, debit card, internet payments and wire transfers), or in the case of Video Transactions, for back-office work and services provided by NTTA hereunder in respect of Video Transactions (including billing and processing payments for Video Transactions), costs of enforcement and collection, including costs of collection agencies and costs of pursuing collection in court, or of risks of inability to collect Video Transactions. This provision does not limit NTTA's right to charge Incidental Charges to customers and Users to the extent set forth in Section 6(g), or NTTA's right to additional compensation from Developer pursuant to Section 6(h).

(b) Base Transaction Fee Payment.

- (i) The Base Transaction Fee for each Transaction received by NTTA's CSC Host initially, as of the Service Commencement Date, shall be \$0.\_\_\_\_ and shall increase (rounded to the nearest 1/10<sup>th</sup> cent) every two years on the anniversary of the Service Commencement Date (i.e., the second anniversary, fourth anniversary, sixth anniversary, etc.) based on an escalation rate equal to two percent (2.0%) per annum. The Base Transaction Fee shall be payable in respect of each Transaction described in Section 6(b)(ii) below occurring during the period from and after the Service Commencement Date through and including the day before the tenth anniversary of the Service Commencement Date.
- (ii) The applicable Base Transaction Fee shall be due and payable for each Transaction (whether a Transponder Transaction, Video Transaction or Interoperable Transaction) that is recognized by the ETCS and properly transmitted to NTTA's CSC Host in

accordance with the ICD (and any other criteria that may be developed and agreed upon by the Parties pursuant to Section 8(e) or 9(e)) and shall be paid to NTTA by NTTA's deduction of the amount thereof from the amount of each toll transaction payment made by NTTA to Developer pursuant to Section 7 hereof. Base Transaction Fees shall be the same for all User Classifications and for all Transactions in the same Service Year, regardless of the amount of the toll for such Transactions.

(c) Variable Transaction Fee Payment.

- (i) The Variable Transaction Fee for each Transaction (other than Interoperable Transponder Transactions, which shall not be subject to the Variable Transaction Fee) received by NTTA's CSC Host shall be equal to \_\_\_\_\_ percent (\_\_\_\_\_% ) of the applicable toll amount (exclusive of Incidental Charges). The Variable Transaction Fee shall be payable in respect of each Transaction described in Section 6(c)(ii) below occurring during the period from and after the Service Commencement Date through and including the day before the tenth anniversary of the Service Commencement Date.
- (ii) The Variable Transaction Fee shall be due and payable for each Transaction, whether a Transponder Transaction (other than an Interoperable Transponder Transaction) or a Video Transaction, that is recognized by the ETCS and properly transmitted to NTTA's CSC Host in accordance with the ICD (and any other criteria that may be developed and agreed upon by the Parties pursuant to Section 8(e) or 9(e)) and shall be paid to NTTA by NTTA's deduction of the amount thereof from the amount of each toll transaction payment made by NTTA to Developer pursuant to Section 7 hereof.

(d) Cost Plus Transaction Fee Payment.

- (i) The Cost Plus Transaction Fee (as defined herein) for each Transaction received by NTTA's CSC Host shall be determined as set forth in Section 6(d)(iii) and (iv) below for each Service Year during the Term, commencing with the eleventh Service Year during the Term (i.e., the Service Year commencing on the tenth anniversary of the Service Commencement Date). The applicable Cost Plus Transaction Fee shall be payable in respect of each Transaction described in Section 6(d)(ii) below occurring during the eleventh and each subsequent Service Year during the Term.
- (ii) The applicable Cost Plus Transaction Fee shall be due and payable for each Transaction (whether a Transponder Transaction, Video Transaction or Interoperable Transaction) that is recognized by the ETCS and properly transmitted to NTTA's CSC Host in accordance with the ICD (and any other criteria that may be developed and agreed upon by the Parties pursuant to

Section 8(e) or 9(e)) and shall be paid to NTTA by NTTA's deduction of the amount thereof from the amount of each toll transaction payment made by NTTA to Developer pursuant to Section 7 hereof. Cost Plus Transaction Fees shall be the same for all User Classifications and for all Transactions in the same Service Year, regardless of the amount of the toll for such Transactions.

- (iii) The Cost Plus Transaction Fee payable hereunder in respect of the eleventh and each subsequent Service Year during the Term shall be separately determined for each such Service Year in accordance with the provisions of this Section 6(d)(iii) and Section 6(d)(iv). NTTA shall annually determine the Cost of NTTA's Services (as defined herein) and the number of Transactions recognized by the ETCS and properly transmitted to NTTA's CSC Host in accordance with the ICD (and any other criteria that may be developed and agreed upon by the Parties pursuant to Section 8(e) or 9(e)) for the 12 full calendar month period (each such period, a "Measurement Period") ending on the last full day of the calendar month that is six full calendar months before the anniversary date of the Service Commencement Date (for example, if the Service Commencement Date is December 6, the period for which the Cost of NTTA's Services and the number of such Transactions is to be determined shall be the 12 full calendar month period ending on, and including, the preceding May 31); provided, however, that the first such determination shall be made in respect of the eleventh Service Year hereunder. The Cost Plus Transaction Fee payable in accordance with Section 6(d)(ii) for Transactions that are recognized by the ETCS and properly transmitted to NTTA's CSC Host in accordance with the ICD (and any such other criteria referenced above) during the Service Year immediately following such determination shall be determined by (A) multiplying the Cost of NTTA's Services, as so determined for the applicable Measurement Period, by one hundred and ten percent (110%) and (B) dividing the result in clause (A) by the number of Transactions recognized by the ETCS and properly transmitted to NTTA's CSC Host in accordance with the ICD (and any such other criteria referenced above) during such Measurement Period. Upon NTTA's determination of the applicable Cost Plus Transaction Fee, NTTA shall advise Developer thereof by delivering to Developer a statement of the calculation of the Cost Plus Transaction Fee and the related Cost of NTTA's Services, together with the cost model utilized by NTTA in determining the Cost of NTTA's Services, which statement and cost model in any event shall be delivered to Developer by the last day of the calendar month that is three full calendar months before the anniversary date of the Service Commencement Date. Notwithstanding the foregoing, if there shall have occurred, or if there is reasonably expected to occur, any significant change in technology, the toll rates applicable hereunder, the number of Transactions or other circumstances (such as, for example, major

reconstruction) that could reasonably be expected to cause the Cost of NTTA's Services actually incurred or the number of such Transactions actually occurring during any applicable Service Year to vary materially from the Cost of NTTA's Services incurred or such Transactions occurring during the Measurement Period immediately preceding such Service Year, then the Parties shall cooperate in good faith to make such adjustment to the Cost Plus Transaction Fee payable for such Service Year to take into account such changes and to provide for a Cost Plus Transaction Fee reflecting the relative level of compensation that would have been payable to NTTA hereunder, in the absence of such changes, by the payment of the Cost Plus Transaction Fee as calculated based on such immediately preceding Measurement Period.

- (iv) Unless otherwise agreed by the Parties, each of the determinations of the Cost Plus Transaction Fee pursuant to Section 6(d)(iii) shall be reviewed by an independent auditor (the "Independent Auditor"), who shall verify whether the cost model utilized by NTTA in determining the applicable Cost of NTTA's Services is in accordance with industry standards and whether the applicable Cost of NTTA's Services and Cost Plus Transaction Fee, determined pursuant to such cost model, are accurately calculated. The Independent Auditor shall be mutually selected by the Parties and shall be engaged on or before the first day of the ninth full calendar month before the end of the tenth Service Year. The Independent Auditor shall be neutral and independent of the Parties, shall be a national or international auditing firm and shall have at least ten years' experience in providing auditing services in respect of the operation of toll roads and the provision of tolling services of similar type and magnitude as those provided under this Tolling Services Agreement. If the Parties cannot agree on the selection of the Independent Auditor by the date referenced above, or if any dispute should arise between the Parties concerning any determination of the Cost of NTTA's Services or the number of Transactions in respect of any Measurement Period or the Cost Plus Transaction Fee for any Service Year, either Party may initiate a proceeding under Section 20 to resolve such disagreement or dispute.
- (v) The "Cost of NTTA's Services" in respect of any applicable period shall be the cost of all labor, supervision, materials, supplies, services, equipment, fees, licenses, maintenance, information technology, utilities, facilities, insurance, professional services (including, but not limited to, NTTA's costs relating to the services of the Independent Engineer and the Independent Auditor) and other expenses incurred in connection with the performance of NTTA's services under this Tolling Services Agreement, which costs and expenses shall include NTTA's costs and expenses directly related to NTTA's services hereunder and an allocated portion (allocated in a reasonable and non-discriminatory manner)



of NTTA's overhead and shared services, to the extent relating to the services provided by NTTA hereunder. The Parties acknowledge that the types of such costs may change from time to time during the Term due to changes in mobility and tolling equipment, technology and operations or other circumstances. The Cost of NTTA's Services shall not include the following: (1) NTTA's costs to prepare cost data for purposes of establishing the Cost of NTTA's Services; (2) NTTA's costs to negotiate or enforce this Tolling Services Agreement or resolve disputes with Developer hereunder (but such exclusion shall not impair any right of NTTA's to recover any such enforcement costs pursuant to Section 20 or any other right or remedy provided to it hereunder); (3) NTTA's costs of financing, including costs NTTA may incur due to any breach of covenants or default under NTTA indebtedness; (4) the cost of the letter of credit or other performance security to be provided pursuant to Section 16 hereof, if Developer otherwise reimburses NTTA for the cost thereof; (5) NTTA's Video Transaction collection risk; and (6) interoperability fees (which are the responsibility of Developer hereunder).

(e) Delinquent Payment Deduction.

- (i) A Delinquent Payment Deduction will be made for any Payment Period in which NTTA fails to make a timely payment to Developer in accordance with Section 7. The Delinquent Payment Deduction shall be payable as a monthly adjustment in accordance with Section 6(i).
- (ii) The Delinquent Payment Deduction will be determined in accordance with the following formula (and an example of the calculation of the Delinquent Payment Deduction is attached hereto as Attachment 8):

$$\begin{array}{l} \text{Delinquent Payment Deduction} \\ n,m \\ \text{(Year } n = 1 \text{ to } \_\_\_\_\_\_ \text{ and Month } m \\ = 1 \text{ to } 12) \end{array} = \frac{\sum \text{Daily Delinquent Payment Deduction } n,m \times \text{Duration} / 365}{\text{(or 366, in leap years)} \times \text{Interest Rate } n,m}$$

Where:

$$\begin{array}{l} \text{Daily Delinquent Payment} \\ \text{Deduction } n,m \end{array} = \begin{array}{l} \text{Total payments due Developer on} \\ \text{each day during Month } m \text{ of Year} \\ n \text{ that are not timely paid by} \\ \text{NTTA when due under } \underline{\text{Section 7}} \end{array}$$

$$\begin{array}{l} \text{Duration} \end{array} = \begin{array}{l} \text{The number of calendar days} \\ \text{from the date a payment under} \\ \underline{\text{Section 7}} \text{ is due until the date} \\ \text{such payment is made to} \\ \text{Developer.} \end{array}$$

Interest Rate  $n,m$  = Interest at a rate equal to the LIBOR in effect on the first day of Month  $m$  in Year  $n$  plus 400 basis points

(f) Non-Compliance Deduction.

- (i) A Non-Compliance Deduction will be made for any Payment Period in which NTTA is assessed Non-Compliance Points in respect of such Payment Period. The Non-Compliance Deduction shall be payable as a monthly adjustment in accordance with Section 6(i). The Non-Compliance Deduction will be calculated as follows (and an example of the calculation of the Non-Compliance Deduction is attached hereto as Attachment 9):

Non-Compliance Deduction  $n,m$  (Year  $n = 1$  to \_\_\_\_ and Month  $m = 1$  to 12) = Monthly Non-Compliance Deduction  $n,m$

Where:

Monthly Non-Compliance Deduction  $n,m$  = Monthly Non-Compliance Reduction Percent x NTTA Compensation  $n,m$

Monthly Non-Compliance Reduction Percent = The percent reduction to the NTTA Compensation associated with the Non-Compliance Points for Month  $m$  as identified in Table 6(f)-1 below

NTTA Compensation  $n,m$  = Base Transaction Fees for Period  $n,m$  + Variable Transaction Fees for Period  $n,m$ ; or the Cost Plus Transaction Fees for Period  $n,m$ , as the case may be

Table 6(f)-1 – Monthly Non-Compliance Reduction Percent

| Non-Compliance Points for Period $n,m$ | Monthly Non-Compliance Reduction Percent for Period $n,m$ |
|--|---|
| 0 to 16                                | 0%  |
| 17 to 24                               | 2%  |
| 25 to 33                               | 8%  |
| 34 to 44                               | 20%   |
| 45 or more                             | 35%   |

- (ii) Subject to Sections 6(f)(iii) and (iv), each month NTTA will assign Non-Compliance Points to its performance in accordance with the Performance Standards and will report the same to Developer in the monthly Non-Compliance Deduction report to be delivered to

Developer pursuant to Section 14(e) no later than 15 days after the end of such month. Any related Non-Compliance Deduction shall be paid by NTTA in connection with the monthly adjustments provided for in Section 6(i). Upon the written request of Developer, in addition to such monthly Non-Compliance Deduction report, NTTA shall furnish to Developer reasonably detailed information and support for NTTA's determination of such Non-Compliance Points. Non-Compliance Points shall not be assessed under more than one category for any particular event or circumstance that is a breach or failure. Where a single act or omission gives rise to more than one breach or failure, it shall be treated as a single breach or failure for the purpose of assessing Non-Compliance Points, and the highest amount of Non-Compliance Points under the relevant breaches or failures shall apply. Upon the request of either Party, the Independent Engineer may review any determination of Non-Compliance Points by NTTA hereunder and advise the Parties concerning the accuracy thereof. Developer and the Independent Engineer each shall have the right to inspect and audit NTTA's books and records concerning the determination of Non-Compliance Points and Non-Compliance Deductions pursuant to Section 15(b) and (c). Any disagreement between the Parties concerning the assignment of Non-Compliance Points shall be resolved pursuant to Section 20 hereof.

- (iii) No Non-Compliance Points will be assigned to a failure of NTTA to achieve the performance required in accordance with the Performance Standards and the other standards set forth herein if such failure to perform is (A) directed by Developer, (B) planned by NTTA and consented to, in advance in writing, by Developer, (C) directly caused by the acts or omissions of Developer or (D) excused pursuant to Section 22(d).

**THIS IS THE END OF THE SECOND ALTERNATIVE.**

- (f) Incidental Charges to Users.

In addition to the NTTA Compensation, NTTA shall have the right to impose on and collect from Users, and retain as additional compensation, Incidental Charges consistent with NTTA's practices concerning customers of its own facilities; provided that Developer shall have no liability for NTTA's inability to collect the same from Users.

- (g) Additional Fees and Charges Payable By Developer.

In addition to the NTTA Compensation, Developer shall pay to NTTA its demonstrated and actual additional administrative and processing costs and expenses, except those capable of being reasonably mitigated, incurred to perform services under this Tolling Services Agreement directly attributable to any failure or inability of Developer to meet the

minimum Targets of the Tolling Performance Standards or the minimum percentages of Functional Availability set forth in Section 21.5 of the Technical Provisions. (Developer recognizes and acknowledges that such additional costs and expenses will not be compensated by any Non-Compliance Points liquidated damages that may be assessed and paid to TxDOT under the Agreement by reason of any such failure, because the same were estimated and agreed to only to cover damages to TxDOT in its capacity as a Party to the Agreement and not NTTA's capacity as a provider of the services set forth in this Tolling Services Agreement.) In addition, Developer shall pay to NTTA all sums due in accordance with the terms of any Change Orders or Change Directives. Amounts payable to NTTA pursuant to this Section 6(g) (other than amounts payable under the previous sentence) shall be payable by monthly adjustments pursuant to Section 6(h).

(h) Monthly Adjustments.

For each calendar month during the Term, NTTA shall deliver to Developer, by the 15<sup>th</sup> day of the immediately succeeding calendar month, a report of adjustments made in respect of Transactions during such month and adjustments owing in respect of other matters processed during such month, in each case as contemplated hereunder and with each such report to be in reasonable detail. The report shall cover each of the following, with the related adjustment to be made as follows:

- (i) Such report shall set forth all Transaction adjustments made during such calendar month in respect of (A) Unpostable Transponder Transactions that have not been reclassified as a Video Transaction, (B) Duplicate Transactions previously paid by NTTA, (C) unpursuable Video Transactions (e.g., Transactions involving vehicles that are not Candidate Vehicles), (D) adjustments resulting from User disputes and (E) adjustments relating to refunds to accounts or Video Transaction Users due to inaccurate toll charges and inaccurate Transactions transmitted from Developer to NTTA. Such adjustment shall be made each Business Day during the applicable calendar month as contemplated by Section 7(a) and (b). Such adjustments shall be applied on a daily basis to the toll Transaction payment owing to Developer pursuant to Section 7.
- (ii) Such report also shall set forth all adjustments to be made in respect of the calendar month covered thereby for (A) any amounts owing to NTTA from Developer pursuant to Section 6(g); (B) Delinquent Payment Deductions and Non-Compliance Deductions owing to Developer from NTTA; and (C) any other amounts subject to adjustment pursuant to the terms of this Tolling Services Agreement (including, but not limited to, any refunds provided for in Section 11(c) hereof). Such report shall reasonably describe the basis for the amounts owing for each of the foregoing items and the net amount owing in respect thereof shall be payable by the applicable payor Party to the applicable

payee Party within 15 days after the due date for delivery of such report. For the avoidance of doubt, however, the delivery of such report shall not be a condition to any adjustment otherwise required for Delinquent Payment Deductions and Non-Compliance Deductions hereunder.

NTTA Compensation and other amounts payable in accordance with this Section 6(h) not paid when due (other than as a consequence of NTTA's failure to timely deduct payments owing to it when it has the right hereunder to make such deductions from toll payments to be made to Developer hereunder) shall bear interest and late charges as provided in Section 19(f).

(i) Disputed Amounts.

- (i) In the event either Party disputes any amount that is to be payable by or to such Party pursuant to a monthly adjustment in accordance with Section 6(h), such Party shall (A) within 14 days after receipt of notice or an invoice or statement for such amount, deliver written notice to the other Party of the amount in dispute and the reasons for dispute and (B) if such Party is the Party from which the amount is payable, then within the time period for payment of the invoice, deposit into the Toll Operator Dispute Account under the Project Trust Agreement an amount equal to 105% of the amount in dispute and notify the other Party in writing that such deposit has been made.
- (ii) The amount so deposited under clause (i) above shall be maintained in the Toll Operator Dispute Account until the dispute is finally determined, at which time all amounts due the payee Party, if any, shall be immediately released from the Toll Operator Dispute Account to pay the amount due, including any late charge and interest. If the amount in the Toll Operator Dispute Account is insufficient to pay the amount finally determined to be due, including any late charge and interest, the payor Party shall immediately satisfy the balance of the amount due from other sources. If the amount in the Toll Operator Dispute Account exceeds the amount finally determined to be due, if any, the excess shall be immediately released to the payor Party, together with any interest earnings in the Toll Operator Dispute Account attributable to the excess funds so released to the payor Party.

7. Toll Transaction Payments to Developer

- (a) Subject to Sections 7(c) and 7(d), and except as provided otherwise in Section 22(d), for each Transponder Transaction, NTTA shall deposit or cause to be deposited with the trustee under the Project Trust Agreement an amount equal to the toll for the Transponder Transaction (i.e., the toll charge indicated by Developer as contemplated by Section 11(a)), less fees payable under Section 6 and adjustments made pursuant to Section 6(h), within two Business Days after the date the Transponder

Transaction has been received by NTTA in accordance with the ICD. Such amount shall be due and payable regardless of whether NTTA actually collects the applicable toll amount from the applicable User.

- (b) Subject to Sections 7(c) and (d), and except as provided otherwise in Section 22(d), for each Video Transaction, NTTA shall deposit or cause to be deposited with the trustee under the Project Trust Agreement an amount equal to the toll for the Video Transaction (i.e., the toll charge indicated by Developer as contemplated by Section 11(a)), less fees payable under Section 6 and adjustments made pursuant to Section 6(h), within two Business Days after the date the Video Transaction has been received by NTTA in accordance with the ICD. Such amount shall be due and payable regardless of whether NTTA actually collects the applicable toll amount from the applicable User. For the avoidance of doubt, the toll to be remitted to Developer pursuant to this Section 7(b) does not include any Incidental Charges.
- (c) If Developer transmits to NTTA's CSC Host on any given day more than two full days of Transactions, NTTA shall be entitled to reasonable extensions of the deadlines for payment set forth in Sections 7(a) and (b) to the extent that NTTA bears the burden of providing evidence reasonably satisfactory to Developer that despite diligent efforts to process the Transactions NTTA was unable to complete processing within the deadlines provided due to the added volume of Transactions transmitted during the day.
- (d) If (A) for any reason other than a delay attributable to NTTA (including any delay resulting from NTTA's failure to include in the applicable report referenced in Section 14(a) information concerning the reclassification of any Transponder Transaction) Developer first transmits to NTTA's CSC Host sets of Transaction data more than 30 days after the date the Transactions occurred, and (B) NTTA bears the burden of providing evidence reasonably satisfactory to Developer that NTTA's rate of collection of the toll charges associated with such set of Transaction data (despite its commercially reasonable efforts to collect) is lower than the rate of collection it would have realized had transmission occurred without such delay, using the same billing, collection and enforcement practices and procedures, then NTTA shall have the right to recover from Developer NTTA's loss of toll charge collections so proven.
- (e) NTTA acknowledges that the requirement to make payments to the trustee under the Project Trust Agreement in accordance with the terms hereof is for the benefit and protection of TxDOT, Developer and Developer's Lenders, and is necessary for Developer to comply with the Agreement and the Project Trust Agreement. Accordingly, NTTA shall not make any payments directly to Developer, or to any Person other than such trustee, without TxDOT's and Developer's prior written approval.

## 8. Video Transactions

- (a) Developer's obligations regarding transmission of video imagery data to NTTA's CSC Host are as follows:
- (i) For Transponder Transactions where the status of the transponder indicated in the Consolidated Master List at the time of the Transaction is other than "Good", Developer shall transmit to NTTA the Transponder Transaction, video images of license plates and video data as required by the ICD;
  - (ii) For all other Transponder Transactions where the status of the transponder indicated in the Consolidated Master List at the time of the Transaction is "Good" and the User Classification determined by Developer does not match the User Classification associated with the transponder as indicated in the Consolidated Master List at the time of the Transaction, Developer shall transmit to NTTA the Transponder Transaction, video images of license plates and video data as required by the ICD;
  - (iii) For all Video Transactions where a transponder is recorded but not listed in the Consolidated Master List, Developer shall transmit to NTTA the video images of license plates and video data as required by the ICD, as well as the transponder information;
  - (iv) For all Video Transactions where license plates match a current customer account record, NTTA shall make an attempt to post the Transaction to the customer account and reclassify the Video Transaction to a Transponder Transaction;
  - (v) For all Video Transactions, in the event a license plate in a Video Transaction is on the Consolidated Master List, the Video Transaction shall be denoted as such in accordance with the ICD, shall state license plate's alpha-numeric or personalized information, and shall include video images of the license plates and video data as required by the ICD; and
  - (vi) For all other Video Transactions, Developer shall transmit to NTTA the video images of license plates and video data as required by the ICD.
- (b) NTTA shall issue a statement to each Video Transaction User (for whom NTTA has necessary registration and mailing address information) consistent with NTTA's practices regarding customers of its own facilities.
- (c) For the purpose of Section 8(b), "issue" means the billing statement accurately sets forth the toll charges, including the Incidental Charges, and is deposited in the U.S. mail, proper postage prepaid.
- (d) The reports provided for in Section 14(a) will include information referencing each Transponder Transaction that has been reclassified to a Video Transaction within one Business Day following such reclassification (and with any such reclassification to be made within 31 days after

NTTA's receipt of the applicable Transponder Transaction or such other time period as applies from time to time under the applicable interoperability agreement).

- (e) Following the execution of this Tolling Services Agreement and at least six months before the projected Service Commencement Date, Developer and NTTA shall cooperate with each other to discuss whether there should be implemented any objective criteria, in addition to the requirements of the ICD, for the rejection of Video Transactions that may require further review by Developer before acceptance and processing by NTTA. Neither party shall be obligated to accept such additional requirements.
- (f) Notwithstanding anything to the contrary set forth in this Tolling Services Agreement, any reference in this Tolling Services Agreement to the delivery of video data or images of license plates shall be deemed to be a reference to an image of either the front or the back license plate as provided in clause (b) of the definition of "Candidate Vehicle" (except that, as provided in such clause (b), the image must be of the front license plate in the case of a vehicle with a trailer).

9. Transponder Transactions

- (a) Before Developer transmits a Transaction to NTTA's CSC Host, Developer shall compare the transponder to the most recently updated version of the Consolidated Master List. If the transponder is listed as "Good" in the Consolidated Master List, Developer shall transmit the Transponder Transaction as required by the ICD, but if such Transponder Transaction is determined to be an Unpostable Transponder Transaction, then NTTA shall, for NTTA accounts, request from Developer video images and video data (as required by the ICD) within seven days of NTTA's receipt of the applicable Transponder Transaction (but without prejudice to the right of Developer to submit such video images at any time following the date on which the reclassification of the applicable Transponder Transaction to a Video Transaction is included in a report provided for in Section 14(a), as provided in Section 8(d). If Developer elects not to send such video images and video data, and the Transaction is not postable, the Transaction will be adjusted as one not involving a Candidate Vehicle until such time as Developer resubmits the Transaction with the video images and video data.
- (b) If a Transponder Issuer (including NTTA) rejects due to insufficient funds NTTA's settlement of a Transponder Transaction on the Project by the Transponder Issuer's customer, NTTA will resubmit the Transaction for settlement consistent with NTTA's practices regarding customers of its own facilities prior to mailing a Video Transaction billing statement to the customer on account of the rejected transaction. NTTA shall advise Developer, within seven days of such rejection, of any such Transaction that is rejected due to insufficient funds, unless funds shall become available for settlement pursuant to any such resubmission prior to the time NTTA advises Developer of the initial rejection. For the avoidance of



doubt, a Transponder Transaction is automatically reclassified as a Video Transaction if (i) both the video image is available, and (ii) the account persists to have insufficient funds to pay the full toll for the Transponder Transaction through the Business Day prior to the Business Day on which NTTA would mail a Video Transaction billing statement in accordance with NTTA's practices regarding customers of its own facilities.

- (c) If a vehicle is associated with a transponder issued by NTTA or by another Toll Operator or Transponder Issuer and associated with an account that is not closed at the time of transmission, but it is evident that a Transponder Transaction is not recorded because the transponder is not properly mounted or not properly functioning, NTTA shall use reasonable efforts, in accordance with NTTA's practices regarding customers of its own facilities, to notify the account holder and rectify or cause to be rectified the problem with the transponder.
- (d) The Base Transaction Fee Payment and Variable Transaction Fee Payment **[or Cost Plus Transaction Fee Payment, as applicable,]** are inclusive of any transaction fees and charges by other Toll Operators and Transponder Issuers, including TxDOT, in connection with account management and fund transfers for Transponder Transactions on the Project by their account holders (other than any interoperability fees required to be paid by Developer hereunder) and Developer shall not be responsible for any such additional charges or fees.
- (e) Following the execution of this Tolling Services Agreement and at least six months before the projected Service Commencement Date, Developer and NTTA shall cooperate with each other to discuss whether there should be implemented any objective criteria, in addition to the requirements of the ICD, for the rejection of Transponder Transactions that may require further review by Developer before acceptance and processing by NTTA. Neither party shall be obligated to accept such additional requirements.

10. No Duty to Enforce, Collect or Pay

- (a) Developer shall be responsible for determining whether a vehicle is a Candidate Vehicle. NTTA shall have no duty to attempt to collect or enforce a toll, or to pay Developer for Transactions, respecting a vehicle traveling on the Project where the vehicle is not a Candidate Vehicle; provided, however, that if NTTA does collect a toll respecting any such vehicle, it shall pay Developer the toll collected and shall be entitled to NTTA Compensation for such Transaction. Whether NTTA has received an unobstructed readable video image (as defined in the definition of Candidate Vehicle) shall be determined in accordance with Good Industry Practice. NTTA shall provide Developer access to NTTA's standard exception reports indicating Transactions that involve vehicles that are not Candidate Vehicles. If NTTA shall pay Developer a toll for any such Transaction, it shall be entitled to reimbursement or adjustment in respect thereof pursuant to Sections 6(g) and (h), and NTTA shall have no obligation to pursue collection or enforcement of such Transaction.

- (b) NTTA shall have no duty to accept for processing transmissions of Transaction data not in the format and having the content required by the Interface Control Document (or by any other criteria that may be developed and agreed upon by the Parties pursuant to Section 8(e) or 9(e)). If NTTA accepts such data for processing, then the matter shall be treated as a Transaction for all purposes under this Tolling Services Agreement, except as provided otherwise in Section 10(a). If NTTA does not accept such data, (i) NTTA shall reject the data in accordance with the ICD, and (ii) NTTA shall not be entitled to process the matter for collection or enforcement unless and until it subsequently accepts transmission of the data.

11. Overcharges; Credits to Account Holders

- (a) NTTA shall charge the toll charge indicated by Developer. Developer shall be responsible for determining the applicable toll charge that corresponds to each Transaction based upon User Classification, Developer's applicable toll schedule or dynamic pricing model, and any applicable high occupancy vehicle discount and correctly communicating such information to NTTA. For the avoidance of doubt, if Developer states a toll charge for a Transponder Transaction or a Video Transaction different from the toll charge for the User Classification associated with the applicable customer account, NTTA shall charge the toll charge as indicated by Developer.
- (b) Under no circumstances shall NTTA charge any User a toll in addition to or higher than the toll charge transmitted from Developer to NTTA, except that NTTA may charge for the Incidental Charges authorized hereunder. NTTA shall refund to any User any toll or Incidental Charge NTTA charges in violation of this provision.
- (c) If any account or Video Transaction User is overcharged or incorrectly charged for use of the Project by reason of inaccurate toll charges transmitted from Developer to NTTA, including but not limited to by reason of incorrect transmission by Developer of dynamic pricing information or failure to properly account for an applicable high occupancy vehicle discount, NTTA shall have the right (and, to the extent NTTA is aware that a refund is due, the obligation) to arrange for a refund to the subject account or Video Transaction User as part of the monthly adjustment provided for in Section 6(h). Alternately, NTTA shall have the right to invoice Developer or the trustee under the Project Trust Agreement, in writing or electronically, for the overcharge or incorrect charge, and Developer shall pay, or cause the trustee under the Project Trust Agreement to pay from the Toll Revenue Account, such invoiced amount within two Business Days after receipt of the invoice. Notwithstanding the foregoing, however, in connection with each refund or reimbursement, NTTA shall have no obligation to recalculate or adjust its Transaction fees in accordance with Section 6 (i.e. based on the correct toll charges). The determination of whether there has been an overcharge or incorrect charge in connection with a customer dispute shall be made pursuant to written guidelines furnished by Developer, or if

Developer does not furnish such guidelines, in accordance with NTTA's practices and procedures utilized with respect to its own facilities.

12. System Technology Interface; Interoperability

- (a) Developer at its expense shall design, install, operate and maintain the ETCS and interconnections of the ETCS with NTTA's CSC Host. Such design and installation shall be consistent with, and meet all requirements of, the Interface Control Document attached hereto as Attachment 3. NTTA shall reasonably cooperate with Developer in fulfilling its obligations under this Section 12(a).
- (b) NTTA at its expense shall supply, operate and maintain NTTA's CSC Host and facilitate interconnection of the ETCS to NTTA's CSC Host. NTTA's CSC Host shall be consistent with, and meet all requirements of, the Interface Control Document attached hereto as Attachment 3.
- (c) NTTA shall diligently cooperate and coordinate with Developer in its efforts to conduct and satisfy all demonstration and performance testing of interconnection and interoperability of the ETCS with the NTTA's CSC Host, in accordance with Developer's testing and commissioning plans. Without limiting the foregoing, NTTA shall cooperate with Developer in preparing and adhering to a reasonable schedule for interconnecting the ETCS with NTTA's CSC Host and for conducting such testing, so that NTTA does not cause delay to Developer's critical path for meeting Completion Deadlines under the Agreement. In addition, NTTA shall conduct testing prior to Service Commencement, pursuant to a plan and schedule reasonably acceptable to Developer, to demonstrate to Developer the capability of NTTA's information technology and management systems and personnel to effectively receive, track, process and report Transaction data for both Transponder Transactions and Video Transactions. Unless otherwise agreed in writing by NTTA and Developer, NTTA and Developer shall conduct demonstration and performance testing of interconnection and interoperability of the ETCS with NTTA's CSC Host at least 90 days before the projected Service Commencement Date, with a view to the Parties' identification and correction of any problems no later than 60 days before the Service Commencement Deadline. The Independent Engineer shall participate with, and assist and advise, the Parties in connection with the development of the interconnection schedule and the demonstration and performance testing of interconnection and interoperability of the ETCS with NTTA's CSC Host as contemplated by this Section 12(c), including advising the Parties concerning the resolution of disagreements or problems related to such interconnection and interoperability and certification of operational readiness of the toll system. The Independent Engineer shall provide the same services in connection with the resumption or recovery of tolling services following any major interruption thereof at any time during the Term.
- (d) NTTA will consolidate the Transponder Issuers' master lists and updates (such consolidation being the "Consolidated Master List") of all known

transponders and their current known status and electronically distribute the consolidated information to Developer. Status designations shall be in accordance with the certain Interface Control Document issued by NTTA and entitled "Interop-ICD-02: TVL," Revision 2.04 (September 2007) (or any successor thereto). NTTA will make such electronic distribution of the Consolidated Master List to Developer daily.

- (e) Developer shall be responsible for transmitting toll rates for each Transaction corresponding to Developer's dynamic pricing model and for identifying all Transactions that qualify for a high occupancy vehicle discount.
- (f) So long as this Tolling Services Agreement is in effect, Developer shall deploy toll system technology for the Project that does not adversely affect reliability of, or ability to meet applicable standards in the Technical Provisions or most recently issued Interface Control Document for, transmission of data to NTTA's CSC Host (provided, however, that if NTTA modifies the requirements of NTTA's systems and such modifications are not attributable to a change required by this Tolling Services Agreement or by a Change Order or Change Directive benefiting the Project, then NTTA shall reimburse Developer for Developer's reasonable costs of any modifications Developer is required to make to comply with such modified requirements).
- (g) NTTA acknowledges and agrees that Developer may create and apply its own business rules for assisting in the proper determination of trips and transactions by Users and tolls due from Users, so long as the business rules are consistent with the Agreement, Technical Provisions, Project Management Plan, this Tolling Services Agreement and Good Industry Practice. Developer may implement such business rules through logical routines incorporated into its tolling system. Subject to Section 11(c), NTTA shall accept and process data developed from application of such business rules and transmitted to NTTA's CSC Host.
- (h) So long as this Tolling Services Agreement is in effect, NTTA shall adopt and issue new types or models of transponders in accordance with applicable Texas statewide interoperability requirements. NTTA and Developer acknowledge that the benchmark performance standards for transponders under interoperability requirements in effect as of the date of execution hereof limit the types and models of transponders to those that are ATA (American Trucking Association)-compliant and equal to or better than the performance levels of the transponders listed in Attachment 4 to this Tolling Services Agreement.
- (i) NTTA acknowledges that pursuant to a certain Texas statewide interoperability Interlocal Agreement, NTTA and TxDOT have agreed to maintain interoperability with each other regarding the deployment of tolling technology, including transponders. During the term of this Tolling Services Agreement, if NTTA, or any statewide interoperability group of which NTTA is a party or member, desires to initiate or propose any changes in interoperability standards, protocols, rules or procedures,

NTTA will use reasonable efforts to notify Developer 90 days in advance of such changes; provided that if NTTA determines that a change is required to be implemented in a shorter time period, NTTA will use reasonable efforts to notify Developer as soon as possible following such determination. Following such notice, NTTA shall consult with Developer in good faith to explain the proposed change and obtain Developer's analysis of the potential impacts on Developer's revenues and expenses, and Developer's alternative approaches, if any. NTTA also will discuss any updates or other information NTTA may have with respect thereto during the NTTA-Developer Regular Meetings. NTTA shall take Developer's analysis and suggested alternatives into consideration and shall attempt in good faith to inform the other members of such statewide interoperability group of Developer's concerns (without any obligation to act as an advocate of any of Developer's positions); but Developer shall have no right to prevent, disapprove or modify any proposed change. During the term of this Tolling Services Agreement, NTTA shall promptly deliver to Developer written notice of any change in interoperability standards, protocols, rules or procedures agreed to with TxDOT.

- (j) In the event that Developer shall exercise its step-in rights hereunder (either directly or through its designee), NTTA agrees that any interoperable fees payable to NTTA in respect of each of the first 18 months from and after the date Developer or its designee commences the performance of services pursuant to its exercise of such step-in rights shall not exceed the average monthly NTTA Compensation paid to NTTA hereunder for the six full calendar months prior to the date Developer or its designee so commences the performance of such services.

13. Intellectual Property and Licensing; Promotional Plan

- (a) If Developer utilizes any tolling system architecture, design, process, method or invention that is protected by Intellectual Property Rights of another Person, then before requiring NTTA to provide any services under this Tolling Services Agreement that utilize any such protected item, Developer shall obtain and provide to NTTA, without cost to NTTA, any licenses that are required in order for NTTA to accept data and transactions derived from the matter so protected and to otherwise perform services using such protected items. Developer shall indemnify, protect, defend and hold harmless NTTA from any loss, cost, liability, obligation or expense arising out of any infringement by NTTA of any such Intellectual Property Rights in the performance of this Tolling Services Agreement (except to the extent that any such loss, cost, liability, obligation or expense relates to a modification to such Intellectual Property Rights made by NTTA without authorization by Developer).
- (b) If Developer by Change Order or Change Directive requires NTTA to modify any portion of NTTA's RITE (Regional Integrated Toll Enhancements) System, Developer shall have no right, title, or interest in or to any such modification.

- (c) NTTA hereby grants to Developer a fully paid up, non-exclusive, license to use NTTA's name, logos, trademarks and brands during the term of this Tolling Services Agreement in connection with the Project and Developer's operation thereof, including maintenance of NTTA's name, logos, trademarks and brands on the roadway, on the Project web site and in Developer's promotional and marketing materials for the Project; provided that the location, context and appearance of all displays of NTTA's name, logos, trademarks and brands shall be subject to NTTA's prior review and approval. NTTA shall not unreasonably withhold its approval; and NTTA shall be deemed to approve unless it delivers to Developer written objection or disapproval, including the reasons therefor and any changes needed to obtain approval, within 14 days after NTTA receives written request for approval including the proposed usage. The license granted hereby shall automatically expire upon expiration or earlier termination of this Tolling Services Agreement, unless NTTA otherwise agrees in writing.
- (d) At least 120 days prior to the Service Commencement Date, Developer and NTTA shall prepare a mutually acceptable plan for promoting and advertising NTTA's association with the Project. Such plan shall include a signage and display plan for placing and maintaining on the Project Right of Way, in accordance with applicable Laws, signs and displays of NTTA's name, logo and brand, as well as other measures for informing the public of NTTA's involvement with the Project and availability of NTTA transponders for use on the Project, consistent with NTTA's marketing activities in respect of its own facilities (and a summary of NTTA's marketing and distribution activities in effect on January 15, 2008 is attached hereto as Attachment 12). Developer and NTTA shall update the plan as reasonably required from time to time, and shall diligently implement the plan and updates thereto. Lack of agreement on the plan or updates shall not affect continuance of the license granted under Section 13(c). Unless otherwise mutually agreed in writing, Developer shall bear the cost of obtaining, erecting, maintaining, replacing and removing (unless removal is being effected as a consequence of a default hereunder by NTTA or exercise of Developer's step-in rights hereunder) such signs and displays required or authorized by the approved plan, and shall at all times keep them in good and safe condition and repair. On or prior to expiration or earlier termination of this Tolling Services Agreement, Developer at its expense (except in the case of a termination attributable to a default hereunder by NTTA) shall remove from the Project Right of Way all such signs and displays containing NTTA's name, logos, trademarks and brands, and Developer shall cease use of NTTA's name, logos, trademarks and brands, unless the parties otherwise agree in writing. Developer reserves the right to conduct additional marketing.
- (e) The plan for promoting and advertising NTTA's association with the Project shall be subject to TxDOT's prior written approval for compliance with prohibitions under the Agreement on Developer's naming or branding of the Project.

- (f) Nothing in this Section 13 grants to NTTA any exclusive rights regarding use or display of names, logos, trademarks or brands of Transponder Issuers, or regarding marketing and promotion by Transponder Issuers, in connection with the Project. NTTA reserves the right to challenge other Transponder Issuers that use logos, trademarks or brands that infringe upon NTTA's rights in its own logos, trademarks or brands.
- (g) Subject to Section 13(b), any systems that may be developed on Developer's behalf that do not incorporate any technology owned or licensed by NTTA and that are paid for by Developer shall be Developer's intellectual property, but Developer shall grant NTTA a paid-up, non-exclusive license to use the same during the Term to the extent such systems are required for NTTA's performance of its responsibilities under this Tolling Services Agreement.

14. Reports; Developer Protection of Patron Confidential Information

- (a) NTTA shall provide access to reports Developer may utilize to prepare reconciliation reports, in summary or in detail, by reporting period selected by Developer. Such reports to which access is provided by NTTA shall reflect the Transactions as transmitted from Developer to NTTA for the applicable reporting period and shall be adequate for purposes of Developer's reconciliation of Transaction fees and other amounts paid by Developer to NTTA and NTTA to Developer. Such reports shall be broken down to support the reconciliation of the fees paid to NTTA and the tolls paid to Developer. Such reports shall reflect the Transactions received by NTTA, the breakdown of Transponder Transactions, Interoperable Transactions, Transponder Transactions posted to customer accounts, Transponder Transactions and Interoperable Transactions converted to Video Transactions, Transponder Transaction variances that are unpursuable, Video Transactions, Transactions that cannot be pursued as a result of not involving a Candidate Vehicle and Transaction adjustments. NTTA shall post Transactions from the Project in accordance with NTTA's standards and practices for its own facilities, and Developer shall have access to reports reflecting such Transactions upon such posting. Upon the request of either Party, the Independent Engineer may review reconciliation reports and underlying Transaction data and assist and advise the Parties in connection with any disagreement with respect thereto, including any disagreement with respect to verifying reconciliations.
- (b) Without prejudice to or limitation on the right of Developer to dispute whether a vehicle is a "Candidate Vehicle" as defined in this Tolling Services Agreement, NTTA shall provide Developer with a summary and detail to support the reported vehicles that have been deemed "Not a Candidate Vehicle".
- (c) NTTA shall reconcile Transactions for each calendar month not later than 15 days after the end of such month. NTTA shall make reconciled reports

available to Developer through direct access to NTTA's reporting system, as in (a) above or through other electronic means.

- (d) NTTA shall provide Developer with a monthly Delinquent Payment Deduction report for each calendar month not later than 15 days after the end of such month. Such report shall state (A) for each instance in the applicable calendar month in which a payment due under Section 7 was not timely made, the amount of the delinquent payment, the number of calendar days or partial calendar days from the date the payment was due under Section 7 until the date the payment was made to Developer (or until the end of the calendar month if not yet paid) and (B) NTTA's calculation of the Delinquent Payment Deduction, if any, for that calendar month.
- (e) NTTA shall provide Developer with a monthly Non-Compliance Deduction report for each calendar month not later than 15 days after the end of such month. Such report shall state (A) a comparison of actual performance during such calendar month to each of the Performance Standards, (B) NTTA's calculation of the Non-Compliance Points, if any, for such calendar month and (C) NTTA's calculation of the Non-Compliance Deduction, if any, for that calendar month.
- (f) NTTA also will prepare and provide to Developer any other specific report that is required to be delivered by Developer under the Agreement in respect of the tolling services operation of the Project (provided that such report relates to the general scope of the services provided by NTTA hereunder).
- (g) NTTA shall make available its reports to Developer in a format reasonably approved in writing by Developer. In no event shall Developer have the right to require report formatting that NTTA's system is not capable of generating. Not later than nine months before the scheduled Service Commencement Date, NTTA shall deliver to Developer sample report formats including fictitious data sets. Developer shall deliver its comments on such sample report formats to NTTA within not more than 60 days thereafter.
- (h) NTTA also shall deliver to Developer such other information as Developer may reasonably request to evaluate NTTA's compliance with this Tolling Services Agreement.
- (i) Developer shall make available to NTTA, no later than the 15th day of each calendar month, a record of Exempt Vehicle, non-billable transactions for the preceding calendar month.
- (j) Developer also shall deliver to NTTA such information as NTTA may reasonably request to evaluate Developer's compliance with this Tolling Services Agreement, including but not limited to, such information as NTTA may reasonably request from time to time concerning the compliance of the in-lane ETCS equipment utilized for the Project with the



requirements of the Agreement. NTTA shall maintain the confidentiality of such information.

- (k) Developer shall maintain any and all information relating to NTTA account holders that may be reported under this Section 14 as confidential information and in compliance with applicable Laws on notice of privacy practices.
  - (i) Developer acknowledges that Patron Confidential Information may consist of or include information that identifies or concerns an individual who is an NTTA patron.
  - (ii) Developer shall comply with all applicable Laws, Technical Provisions and NTTA interoperability and compatibility standards (including, but not limited to, Statewide Confidentiality Protocols), NTTA privacy policies, requirements and protocols limiting, restricting or pertaining to collection, use, confidentiality, privacy, handling, retention, reporting, disclosure or dissemination of Patron Confidential Information.
  - (iii) Developer's obligations relating to Patron Confidential Information shall survive expiration or termination of this Tolling Services Agreement.
  - (iv) NTTA shall have the right to monitor and review Developer's systems, practices and procedures concerning Patron Confidential Information regarding NTTA account holders.

15. Records and Audit Rights

- (a) NTTA shall maintain, in accordance with Good Industry Practice, accurate and complete books and records, including electronic data, of or relating to (i) all Transponder Transactions and Video Transactions received via the NTTA's CSC Host, (ii) all actions and dispositions by NTTA with respect to each Transponder Transaction and Video Transaction received via the NTTA's CSC Host, (iii) all data, information and calculations relevant to NTTA Compensation and other fees and charges that NTTA charges to Developer, itemized by each Transponder Transaction and Video Transaction, and itemized by type, date and amount, (iv) all User violations by User, date and amount, (v) all Incidental Charges directly relating to Project usage, itemized by User, type, date and amount, (vi) NTTA's performance of this Tolling Services Agreement, including books and records relating to compliance or lack of compliance with Performance Standards (including information concerning assignment of Non-Compliance Points) and other obligations of NTTA under this Tolling Services Agreement, and (vii) all correspondence and other written or electronic communications with Developer relating to this Tolling Services Agreement. NTTA shall notify Developer where such records and documents are kept.

- (b) NTTA shall make all its books and records described in Section 15(a) available for audit and inspection by Developer, TxDOT and the Independent Engineer and/or their respective Authorized Representatives or designees, at the location where such books and records are customarily maintained, at all times during normal business hours, without charge. NTTA shall provide to Developer, TxDOT and the Independent Engineer and their designees copies thereof upon request and at no expense to NTTA. Developer, TxDOT and/or the Independent Engineer may conduct any such inspection upon two Business Days' prior written notice, or unannounced and without prior notice where there is good faith suspicion of fraud by NTTA in connection with performance of this Tolling Services Agreement. The right of inspection includes the right to make extracts and take notes, which will be subject to the confidentiality provisions of this Tolling Services Agreement. Without limiting the foregoing, NTTA shall afford Developer and its Authorized Representative, TxDOT and its Authorized Representative and the Independent Engineer, and their designees, access during normal business hours to NTTA's customer service center and other NTTA offices and operations buildings for the purpose of carrying out their oversight and audit functions.
- (c) The rights of Developer, TxDOT and the Independent Engineer to audit and inspect under this Tolling Services Agreement shall include the right to monitor, audit and investigate NTTA's books and records related to its services hereunder and to monitor and review NTTA's systems, practices and procedures concerning Patron Confidential Information obtained and held in connection with this Tolling Services Agreement. Without limiting the foregoing, Developer and the Independent Engineer may exercise such audit and inspection rights to determine the accuracy of the reports provided by NTTA pursuant to Section 14(d) and (e) and any Delinquent Payment Deduction, Non-Compliance Deduction or Non-Compliance Points stated therein or made or calculated pursuant thereto.
- (d) NTTA shall retain the books and records described in Section 15(a) for a minimum of five years after the date the record or document is generated. Notwithstanding the foregoing, (i) all records which relate to claims and disputes between NTTA and Developer shall be retained and made available until any later date that such claims or disputes and actions are finally resolved, and (ii) the time period for retention of Patron Confidential Information shall be as set forth in Section 8.8.3 of the Agreement.

16. Performance Security.

- (a) Not later than six months prior to the Service Commencement Date and as a condition to the right to receive compensation for services, NTTA shall deliver to Developer a letter of credit in the face amount described in Section 16(b). Such letter of credit shall have an expiry date at 11:59 p.m. on the day before the first anniversary of the Service Commencement Date.

- (b) The face amount of such letter of credit for each of the first and second Service Years shall be equal to fifty percent (50%) of the Toll Revenues that TxDOT's financial model projects will be earned during the third Service Year. The face amount of such letter of credit for each of the third and succeeding Service Years shall be equal to fifty percent (50%) of the Toll Revenues that Developer's Base Case Financial Model projects will be earned in the applicable Service Year.
- (c) Not later than 30 days prior to each anniversary of the Service Commencement Date, NTTA shall deliver to Developer a replacement letter of credit in the applicable face amount required pursuant to Section 16(b). Each such letter of credit shall have an expiry date at 11:59 p.m. on the day that is one year after the expiry date of the immediately preceding letter of credit; provided that the letter of credit for the final 12-month period of the Term of this Tolling Services Agreement shall have an expiry date no earlier than 11:59 p.m. on the day that is 60 days after the expiration of the Term or such longer period of time required to give effect to all transition services required of NTTA hereunder and payment of all amounts owed in respect thereof, but in any event no longer than 120 days after the expiration of the Term. Upon receipt of each replacement letter of credit in the proper amount, Developer shall release and return the prior letter of credit to NTTA.
- (d) Each letter of credit shall:
  - (i) Be an irrevocable standby letter of credit;
  - (ii) Be issued by a financial institution with a credit rating of "AA" or better according to Standard & Poors and with an office in Dallas, Texas at which the letter of credit can be presented for payment;
  - (iii) Be in the form of Attachment 6 to this Tolling Services Agreement or other form previously approved by Developer in its good faith discretion (and if Developer's Lender's approval is required with respect to any such other form, and such Lender refuses to approve such other form, then Developer's refusal to approve such form shall be deemed to be in good faith). Developer shall deliver its approval or disapproval within 10 Business Days after Developer receives a written request for approval of changes to the letter of credit form;
  - (iv) Be payable immediately, conditioned only on written presentment from Developer to the issuer of a sight draft drawn on the letter of credit stating that Developer has the right to draw under the letter of credit in the amount of the sight draft, up to the amount due to Developer, without requirement to present the original letter of credit;
  - (v) Provide an expiration date as set forth above;
  - (vi) Allow for multiple draws; and

- (vii) Name Developer or Developer's designee payee.
- (e) Subject to Section 16(h), Developer shall have the right to draw on any letter of credit after not less than five Business Days' prior written notice to NTTA if (i) NTTA has failed to make any payment required to be made by NTTA under this Tolling Services Agreement, including the payment obligations under Section 7 and the obligation to refund to Developer any excessive billing of fees and charges, interest and damages, or (ii) NTTA for any reason fails to deliver to Developer a new or replacement letter of credit, in the applicable amount required under Section 16(b) and otherwise on the same terms, or at least a one year extension of the expiration date of the existing letter of credit plus a supplemental letter of credit to provide the applicable amount required under Section 16(b) and otherwise on the same terms, by not later than 30 days before such expiration date. For all draws conditioned on prior written notice from Developer to NTTA, no such notice shall be required if it would preclude draw before the expiration date of the letter of credit. Draw on the letter of credit shall not be conditioned on prior resort to any other security or to NTTA, except as provided in Section 16(h).
- (f) For draws under Section 16(e)(i), Developer shall include in its written notice a statement and description of the amount claimed. Developer shall have the right to use and apply the proceeds of each such draw toward satisfaction of NTTA's relevant payment obligations under this Tolling Services Agreement. If Developer receives proceeds of such a draw in excess of the relevant obligation or liability, Developer shall promptly refund the excess to NTTA, together with interest on such excess amount at a floating rate equal to the LIBOR in effect from time to time, after all relevant obligations and liabilities are satisfied in full. For draws under Section 16(d)(ii), Developer shall have the right to hold the proceeds as cash security, without interest, and apply it from time to time to amounts that are due and unpaid hereunder, until NTTA delivers a replacement letter of credit.
- (g) NTTA acknowledges that the improper presentment of sight drafts drawn upon a letter of credit could not under any circumstances cause NTTA injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy, provided, however, that NTTA acknowledges and agrees that any draw that is properly made hereunder shall not entitle NTTA to any claim whatsoever, except for any claims to refunds in accordance with the terms hereof. Accordingly, NTTA covenants (i) not to request or instruct the issuer of any letter of credit to refrain from paying any sight draft drawn under the letter of credit and (ii) not to commence or pursue any legal proceeding seeking, and NTTA irrevocably waives and relinquishes any right, to enjoin, restrain, prevent, stop or delay any draw on any letter of credit.
- (h) In the event that Developer shall give notice to NTTA pursuant to Section 16(e) of Developer's intent to draw on any letter of credit established hereunder and, either prior to Developer's notice of its intent to draw on

such letter of credit or prior to the expiration of the five-Business Day period provided for in Section 16(e) following such notice from Developer, NTTA shall have funded cash into an account designated in writing by Developer that is available for withdrawal by Developer (without conditions) and for Developer's use and application (free and clear of any liens, security interests or claims by NTTA or any third party and free and clear of any conditions and limitations) to pay NTTA's relevant payment obligations hereunder, then Developer shall first withdraw and so apply such funds prior to making a draw against any such letter of credit. To the extent that the balance of the funds on deposit in any such account is not sufficient to pay in full the related obligations or in the event that Developer for any reason is denied the right to withdraw and so apply such funds free and clear of any liens, security interests or claims by NTTA or any third party or is hindered or otherwise limited in withdrawing such funds in any manner, Developer may draw on such letter of credit, it being the intent of the parties that there shall be no condition on Developer's right of withdrawal of such funds from any such account, other than the conditions to Developer's draw on any letter of credit stated in Section 16(e). The account designated by Developer into which funds may be deposited by NTTA for purposes of this Section 16(h) may be either an account under the control of Developer or an account established with an escrow agent or other independent third party for purposes hereof. If Developer shall withdraw from any such account funds that are in excess of the relevant obligation or liability, Developer shall promptly return the excess to such account or, upon request of NTTA, to NTTA, but in either case only after all relevant obligations and liabilities are satisfied in full.

- (i) If Developer draws against any letter of credit after giving the five day prior notice required pursuant to Section 16(e), then NTTA shall cause the issuer of the letter of credit to issue to Developer, not later than five Business Days after the draw occurs, a replenishment of the letter of credit to its full face amount.
- (j) The cost of all letters of credit and replacements and replenishments thereof obtained by NTTA hereunder, and all charges imposed in connection with the establishment and maintenance of any account established pursuant to Section 16(h) shall be reimbursed to NTTA by Developer within 30 days following NTTA's delivery to Developer of an invoice, together with reasonable supporting information, for such cost, and NTTA shall not include any cost in respect thereof in the calculation or charge of the NTTA Compensation payable hereunder. NTTA shall pay, however, all charges imposed in connection with Developer's presentment of sight drafts and drawing against letters of credit or replacements or replenishments thereof and all charges imposed in connection with Developer's withdrawal of funds from any account established pursuant to Section 16(h).
- (k) In the event any dispute should arise between the Parties concerning a draw or draws by Developer under any letter of credit or from any account established pursuant to Section 16(h) and it shall be determined pursuant

to Section 20 both that (i) Developer shall have drawn or withdrawn an amounts or amounts in excess of the amounts it was entitled to draw and/or withdraw hereunder and (ii) Developer shall have drawn or withdrawn such amounts other than in good faith, then Developer shall be required to repay such excess to NTTA, together with interest thereon from the date of the applicable draw(s) or withdrawal(s) to the date of repayment at a floating rate equal to the LIBOR in effect from time to time, plus 400 basis points. The provisions hereof concerning establishment of a letter of credit and cash account and the ability of Developer to draw funds thereunder or therefrom shall not constitute a waiver by NTTA of any right to dispute the amount or amounts of funds drawn (however, such right to dispute such withdrawal or draw shall not in any event be a condition to such withdrawal or draw).

- (l) NTTA at any time or from time to time during the Term may propose to provide substitute performance security hereunder in lieu of the letter of credit and/or cash account provided for herein. Such substitute performance security may be in the form of a letter of credit, cash collateral or other form of performance security and may be provided by NTTA or on behalf of NTTA by another party. Developer shall consider in good faith such substitute performance security, which may be provided only with Developer's prior written approval, which shall not be unreasonably withheld (and if Developer's Lender's approval is required with respect to such substitute performance security, and such Lender refuses to approve such substitute performance security, then Developer's approval shall be deemed to be reasonably withheld).

## 17. Change Orders and Change Directives

### (a) General

- (i) Developer and NTTA may (but shall not be obligated to) agree on Change Orders at any time and without limitation as to the subject matter thereof; provided, however, that to the extent the consent of TxDOT is required under the Agreement for any such Change Order, it shall be the responsibility of Developer to obtain such consent, and NTTA shall have no duty or responsibility to determine whether any such consent is required or has been duly obtained (NTTA being entitled to rely on any statement or representation from Developer in respect thereof).
- (ii) The following may be adjusted by Change Orders or Change Directives: provisions for additional or supplemental services from NTTA that (A) are generally within the scope of the back office services set forth in this Tolling Services Agreement, (B) are consistent with applicable Law and (C) do not adversely affect NTTA's ability to maintain its performance in accordance with the Performance Standards, including additional or supplemental services to assist Developer in implementing its ideas, programs and packages for marketing, promotion and enhanced customer service.

- (iii) The following may be adjusted by Change Order or Change Directive: terms and provisions of this Tolling Services Agreement (A) as necessary for Developer to implement Change Orders and Directive Letters under the Agreement that relate to or affect the pre-existing terms of this Tolling Services Agreement, including changes in User Classification, provided the adjustment is consistent with applicable Law; and (B) as necessary to comply with applicable Law.
  - (iv) Where the provisions above expressly permit Developer to issue a Change Directive, Developer may issue it whenever the Parties are unable to agree as to the adjustment to any portion of the compensation for NTTA or to Performance Standards after having attempted in good faith for a period not exceeding ten Business Days to agree on such matters (which period may be extended, however, for an additional ten Business Days if either Party elects to have the proposed Change Directive evaluated by the Independent Engineer pursuant to Section 17(f)). All Change Directives shall provide a written detailed description of the changes, and the proposed basis for adjustments in compensation and Performance Standards (if any). NTTA shall proceed immediately with the Change Directive, and the Parties shall then negotiate a Change Order expeditiously and in good faith. If the Parties are unable to reach agreement upon the Change Order, NTTA may assert a claim or cause of action to resolve such dispute under Section 20.
  - (v) Except as expressly provided above or otherwise mutually agreed in writing by the Parties, no provisions of this Tolling Services Agreement may be modified or amended by Change Order or Change Directive.
- (b) Effectiveness of Change Orders.
- Change Orders shall only be effective upon execution in writing by both Parties. The foregoing shall not preclude Developer or NTTA from granting written waivers, in general or in specific instances, of provisions of this Tolling Services Agreement or related Performance Standards.
- (c) Developer-Initiated Change Orders.
- (i) Developer Change Order Notice. If Developer wishes to make a change pursuant to Section 17(a) or to evaluate whether to make any such change, other than due to a Change Directive, Developer shall deliver to NTTA a written notice of the proposed change.
  - (ii) Evaluation of Proposed Change Order. Within 30 days after receipt of such notice, or longer or shorter period as the Parties may mutually agree depending upon the complexity of the proposed change, NTTA shall deliver to Developer a written

evaluation of the proposed change, together with NTTA's analysis and supporting documentation supporting estimated adjustments to any applicable element of compensation or any applicable Performance Standard required as a result of such proposed change.

- (iii) Developer Determination. Within 30 days after receipt of NTTA's evaluation, Developer shall provide written notice of Developer's intent to proceed or not to proceed with the change. If Developer elects to proceed with the change and accepts NTTA's evaluation, Developer shall prepare a Change Order for execution. If Developer elects to proceed with the Change Order but does not accept the evaluation in total, Developer shall negotiate a mutually acceptable Change Order with NTTA or issue a Change Directive where permitted under Section 17(a).
- (d) Change Order Pricing.
  - (i) Modifications or adjustments of NTTA's compensation under this Tolling Services Agreement as a consequence of a Change Order or Change Directive shall be based upon the increase or decrease in (A) where applicable, NTTA's marginal costs directly attributable to the change and a reasonable rate of return commensurate with the risks undertaken by NTTA under the terms of this Tolling Services Agreement respecting the affected services and under the method of pricing such services, and (B) where marginal costs are not applicable because the change requires additional or supplemental services beyond those NTTA is already providing generally for itself, its road system, its customers, Developer and other developers, or because the change reduces services originally priced other than on a marginal cost basis, then NTTA's reasonable costs directly attributable to the change and a reasonable rate of return commensurate with the foregoing risks.
  - (ii) Modifications or adjustments (whether an increase or decrease) of NTTA's compensation shall be determined in the order of preference set forth below:
    - (A) Adjustments to rates using the pricing structure and methodology set forth in Section 6;
    - (B) If there is no agreement to rate adjustments or the Parties mutually agree that the adjustment is best done with unit prices, then an adjustment shall be negotiated using the unit prices agreed upon;
    - (C) If there is no agreement to unit pricing or the Parties mutually agree that the adjustment is best done with lump sum pricing, then an adjustment shall be negotiated using a lump sum; or



- (D) If the Parties cannot reach agreement using the above methods and Developer has the right to, and does, issue a Change Directive to perform the changed services, NTTA shall promptly proceed with the changed services, and the adjustment shall be determined on a time and materials basis applying marginal costs or cost savings, or the actual, reasonable direct costs or savings, as applicable, for the services attributed to the Change Directive, plus or minus an amount reflecting a reasonable rate of return commensurate with the risks described in Section 17(d)(i). In such case, (I) payments shall be due monthly within 30 days after NTTA delivers to Developer written invoices and back-up documentation reasonably required by Developer, and (II) NTTA shall keep and present, in such form as Developer may reasonably require, an itemized accounting together with appropriate supporting data, which shall be subject to audit by Developer in accordance with the provisions of Section 15.

(e) Impact to Performance Standards and Measures.

- (i) If as a result of a Change Order or Change Directive, it is determined that such change will or does materially impair NTTA's ability to meet the Performance Standards, then Developer and NTTA will negotiate as part of the Change Order (or, in the case of a Change Directive, NTTA shall be entitled to) an appropriate adjustment to the affected Performance Standards. The adjustment shall be limited to the minimum extent reasonably necessary under the circumstances.
- (ii) If it is possible to avoid an adjustment to Performance Standards through a Change Order adjusting price (or through a price adjustment in connection with a Change Directive) but Developer prefers not to incur the price adjustment, then NTTA shall cooperate with and assist Developer with analyzing trade-offs between price and Performance Standards to give Developer a range of choices on how to proceed with the Change Order or Change Directive.
- (iii) If it is not possible to adjust a Performance Standard in a manner that enables Developer to remain in compliance with its obligations under the Agreement, then Developer either may (A) incur the price adjustment to the extent needed to preserve the Performance Standard and remain in compliance with the Agreement or (B) modify or withdraw the Change Order or Change Directive.

(f) Involvement of Independent Engineer

Upon the request of either Party, the Independent Engineer shall evaluate any Change Order contemplated or proposed by either Party or any

Change Directive contemplated or proposed by Developer and simultaneously report to the Parties concerning the advisability thereof and the anticipated effect (economic and otherwise) of the same on this Tolling Services Agreement, the services provided hereunder and the operation of the Project. If so requested by either Party, the Independent Engineer also shall participate in, and facilitate, discussions between the Parties concerning any Change Order contemplated or proposed by either Party or any Change Directive contemplated or proposed by Developer.

(g) Open Book Basis

All negotiations of Change Orders shall be conducted on an Open Book Basis. Except as required to be disclosed by judicial order or applicable Law, both Parties shall maintain the confidentiality of confidential records obtained or reviewed on an Open Book Basis in connection with such negotiations.

18. Representations and Warranties; Covenant Regarding Developer Existence and Good Standing

- (a) NTTA represents and warrants to Developer that, as of the Effective Date:
  - (i) NTTA is duly organized and validly existing under the laws of the state of Texas and has full power, right and authority to execute, deliver and perform this Tolling Services Agreement and each and all of the obligations of NTTA provided for herein.
  - (ii) NTTA is a governmental entity and as such has no issued or outstanding capital stock (including options, warrants and other rights to acquire capital stock).
  - (iii) The execution, delivery and performance of this Tolling Services Agreement have been duly authorized by all necessary action of NTTA; each person executing this Tolling Services Agreement on behalf of NTTA has been duly authorized to execute and deliver it on behalf of NTTA; and this Tolling Services Agreement has been duly executed and delivered by NTTA.
  - (iv) Neither the execution and delivery by NTTA of this Tolling Services Agreement, nor the consummation of the transactions contemplated hereby, is in conflict with or has resulted or will result in a default under, or a violation of, the governing instruments or governing statutes of NTTA or any approvals or laws applicable to NTTA.
  - (v) This Tolling Services Agreement constitutes the legal, valid and binding obligation of NTTA, enforceable against NTTA in accordance with its terms, subject only to applicable bankruptcy,

insolvency and similar laws affecting the enforceability of the rights of creditors generally and general principles of equity.

- (vi) There is no action, suit, proceeding, investigation or litigation pending and served on NTTA which challenges NTTA's authority to execute, deliver or perform, or the validity or enforceability of, this Tolling Services Agreement or which challenges the authority of the NTTA official executing this Tolling Services Agreement; and NTTA has disclosed to Developer any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which NTTA is aware.
  - (vii) NTTA is not in breach of any applicable Law that would have a material adverse effect on the operations of the Project or NTTA's ability to perform its obligations under this Tolling Services Agreement.
  - (viii) NTTA has all necessary expertise, qualifications, experience, competence, skills and know-how to perform its obligations under this Tolling Services Agreement.
  - (ix) The provisions of Section 228.0111 of the Texas Transportation Code do not apply to the Project.
- (b) Developer represents and warrants to NTTA that, as of the Effective Date:
- (i) Developer is a \_\_\_\_\_ duly organized and validly existing under the laws of \_\_\_\_\_, 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 Tolling Services Agreement and to perform each and all of the obligations of Developer provided for herein. Developer is duly qualified to do business, and is in good standing, in the State of Texas.
  - (ii) The execution, delivery and performance of this Tolling Services Agreement have been duly authorized by all necessary corporate action of Developer; each person executing this Tolling Services Agreement on behalf of Developer has been duly authorized to execute and deliver it on behalf of Developer; and this Tolling Services Agreement has been duly executed and delivered by Developer.
  - (iii) Neither the execution and delivery by Developer of this Tolling Services Agreement, nor the consummation of the transactions contemplated hereby, is in conflict with or has resulted or will result in a default under, or a violation of, the governing instruments of Developer or any approvals or laws applicable to Developer.

- (iv) This Tolling Services Agreement constitutes the legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and general principles of equity.
  - (v) There is no action, suit, proceeding, investigation or litigation pending and served on Developer which challenges Developer's authority to execute, deliver or perform, or the validity or enforceability of, this Tolling Services Agreement or which challenges the authority of the Developer official executing this Tolling Services Agreement; and Developer has disclosed to NTTA any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Developer is aware.
  - (vi) Developer is not in breach of any applicable law that would have a material adverse effect on the operations of the Project or Developer's ability to perform its obligations under this Tolling Services Agreement.
  - (vii) Developer is the "Developer" named in the Agreement and is the legal and valid holder of the Developer's Interest under the Agreement.
- (c) The foregoing representations and warranties of NTTA and Developer shall survive for a period of two years following the expiration or earlier termination of this Tolling Services Agreement.
  - (d) Developer covenants and agrees that it will maintain its existence and will remain in good standing in the State of Texas throughout the Term of this Tolling Services Agreement and will maintain its existence for as long thereafter as any obligations remain outstanding under this Tolling Services Agreement. The provisions of this Section 18(d) shall survive the expiration or earlier termination of this Tolling Services Agreement.

## 19. Default and Remedies

- (a) Developer Default and NTTA Remedies; Lender Right to Cure.
  - (i) Developer shall be in default under this Tolling Services Agreement in the event (A)(1) subject to Section 6(i), Developer fails to make any payment to NTTA when due hereunder or (2) Developer fails to perform any other obligation of Developer hereunder (i.e., any obligation other than payment obligations covered by the preceding clause (1)), and either such failure continues for 30 days (or, with respect to obligations covered by clause (2) above, if such failure cannot be cured within 30 days but Developer has begun diligently pursuing a cure within such 30 days and continues to diligently pursue such cure, 90 days) after NTTA delivers written notice thereof to Developer, (B) Developer

shall file a voluntary petition in bankruptcy or insolvency or a petition for reorganization under any bankruptcy law, (C) Developer shall consent to an involuntary petition in bankruptcy against it or fail to vacate within 90 days from the date of entry thereof any order approving an involuntary petition in bankruptcy against it, (D) an order, judgment or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating Developer as bankrupt or insolvent or appointing a receiver, trustee or liquidator of all or a substantial part of such party's assets, and such order, judgment or decree shall continue unstayed and in effect for 90 days after its entry, (E) any representation or warranty of Developer hereunder was not true when made and such failure has a material adverse effect on Developer's ability to perform its obligations in accordance with the requirements of this Tolling Services Agreement, or (F) Developer assigns its rights and obligations under this Tolling Services Agreement in violation of this Tolling Services Agreement.

- (ii) In the event of a default by Developer under this Tolling Services Agreement, NTTA shall be entitled to all rights and remedies available under this Tolling Services Agreement, at Law or in equity, including the right to terminate this Tolling Services Agreement for failure of Developer to pay any sum when due (each of which rights and remedies shall be cumulative and in addition to any such other rights and remedies); provided that NTTA shall have the right to terminate this Tolling Services Agreement in the event of a default by Developer only as provided in Section 21 and provided further, that NTTA shall have the right to terminate this Agreement (subject to Section 21) due to a default described in Section 19(a)(i)(A)(2) only if it is a material default. NTTA's recoverable damages (following any termination of this Tolling Services Agreement) shall include the unamortized portion of all NTTA's reasonable direct costs to prepare and mobilize for performance of this Tolling Services Agreement incurred from and after the commencement of the then-effective Service Period, including equipment costs, costs of interface coordination, hiring and training costs, and similar costs directly attributable to such preparation and mobilization. Such costs shall be deemed amortized on a straight-line basis over the number of years in the applicable Service Period.
- (iii) Provided that Developer shall have given written notice to NTTA of any Lender that Developer desires should have the right to cure any default by Developer hereunder, and the address for notice to such lender, NTTA shall give such Lender written notice of any default by Developer hereunder. Such Lender shall have the right (but not the obligation) to cure such default within the same period of time granted to Developer hereunder. If such default has not been cured by the expiration of the cure period provided herein, regardless of whether an event of default has occurred and is continuing under any loan documents between such Lender and

Developer, or whether such Lender has exercised any rights or remedies with respect thereto, NTTA shall have and may exercise all the rights and remedies otherwise available to it under, or referenced in, this Tolling Services Agreement.

(b) NTTA Default.

NTTA shall be in default under this Tolling Services Agreement in the event:

- (i) (A) NTTA at any time during the term fails to provide and maintain performance security as required under Section 16; or (B) Developer draws on the letter of credit in accordance with Section 16 (or on cash security held after a draw thereon under Section 16(e)(ii)) and thereafter NTTA fails to replenish the letter of credit as and when required under Section 16; or (C) NTTA fails to replace the letter of credit as and when required under Section 16; or
- (ii) Subject to Section 6(i), NTTA fails to perform any other obligation of NTTA hereunder, and the failure to perform such other obligation continues for 30 days after Developer delivers written notice thereof to NTTA (or if such failure cannot be cured within 30 days but NTTA has begun diligently pursuing a cure within such 30 days and continues to diligently pursue such cure, 90 days); or
- (iii) NTTA shall file a voluntary petition in bankruptcy or insolvency or a petition for reorganization under any bankruptcy law (and a default under this clause (iii) shall be a "Step-In Trigger Default"); or
- (iv) An order, judgment or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating NTTA as bankrupt or insolvent or appointing a receiver, trustee or liquidator of all or a substantial part of such party's assets, and such order, judgment or decree shall continue unstayed and in effect for 90 days after its entry (and a default under this clause (iv) shall be a "Step-In Trigger Default"); or
- (v) Any representation or warranty of NTTA hereunder was not true when made and such failure has a material adverse effect on NTTA's ability to perform its obligations in accordance with the requirements of this Tolling Services Agreement; or
- (vi) NTTA assigns its rights and obligations under this Tolling Services Agreement in violation of this Tolling Services Agreement; or
- (vii) NTTA shall cease to be a body politic and corporate and a political subdivision of the State of Texas and its obligations and interests under this Tolling Services Agreement are not transferred to any other Person that succeeds to the governmental powers and authority of NTTA as contemplated by Section 23(c)(i); or

- (viii) There occurs any of the other defaults listed in Section 19(d)(i) that are not set forth above in this Section 19(b).

(c) Developer's Right to Damages.

In the event of a default by NTTA under this Tolling Services Agreement, subject to Section 19(d), Developer shall be entitled to recover all losses and damages incurred as a result of NTTA's default, with the amount of such damages to include, and not involve double counting of, all Delinquent Payment Deductions and Non-Compliance Deductions from the NTTA Compensation made pursuant to Section 6 by reason of such default. For the avoidance of doubt, the application of Delinquent Payment Deductions and Non-Compliance Deductions under this Tolling Services Agreement shall constitute only a monetary offset and not a cure for the relevant event (and shall not be deemed to be an exclusive remedy).

(d) Developer's Suspension and Step-in Rights.

- (i) Developer shall have and may exercise the rights set forth in this Section 19(d) to require suspension of NTTA's services hereunder and, at Developer's option, to step in and perform such services itself or to arrange for a designee of Developer (which NTTA acknowledges and agrees may include TxDOT) to step in and perform such services in any of the following circumstances:

- (A) A default arises under Section 19(b)(i);
- (B) A default arises under Section 12(c), as a direct result thereof Developer is unable to achieve Service Commencement by the Service Commencement Deadline;
- (C) There occurs or exists a Step-in Trigger Default (as provided in Sections 19(b)(iii), 19(b)(iv), 19(e)(iii), 19(e)(v) and 22(e)); or
- (D) There occurs any other material default by NTTA that is not cured within any applicable cure period provided for in this Tolling Services Agreement.

- (ii) Upon the occurrence of any of the foregoing circumstances described in Section 19(d)(i), without waiving or releasing NTTA from any obligations, and without waiver of or prejudice to any other rights and remedies available to Developer, including damages, Developer shall have the right, but not the obligation, to require NTTA to suspend the performance of NTTA's services hereunder, and if Developer exercises such right, then either Developer or Developer's designee (which NTTA acknowledges and agrees may include TxDOT) shall step in and take control and charge of, and carry out, all (but not less than all) the services, functions, rights, and responsibilities of NTTA set forth in

Sections 4(a) and (g), to the exclusion of NTTA but at the same level of service required of NTTA hereunder (with the determination as to whether it is Developer or Developer's designee that is to be the party who is to so step in, to be at Developer's sole option and, if TxDOT is the party who is to step in, TxDOT's performance hereunder, as between Developer and NTTA, shall be deemed to comply with the requirements hereof that the party so stepping in shall carry out all of NTTA's responsibilities hereunder and at the same level of service of NTTA hereunder), including:

- (A) Paying and performing all such services, functions, rights and responsibilities;
  - (B) Making decisions respecting, assuming control over and continuing performance of such services, functions, rights and responsibilities as may be reasonably required;
  - (C) Curing any then-existing breaches or failures to perform such services, functions, rights and responsibilities by NTTA;
  - (D) Hiring and retaining contractors, employees and consultants, and designating any other party or parties, including TxDOT, to assist Developer (or Developer's designee) in carrying out such services, functions, rights and responsibilities;
  - (E) Paying fees, charges and other compensation to such contractors, employees, consultants and designees, including TxDOT, for services rendered, in such amounts and on such terms and conditions as Developer (or Developer's designee) determines to be acceptable;
  - (F) Collecting and retaining all tolls, Incidental Charges and other amounts from Users, for Developer's own account or that of its contractors or designees, and free from any right, title, interest or claim of or by NTTA;
  - (G) Taking any and all other actions as may be reasonably required or incident to such services, functions, rights and responsibilities; and
  - (H) Prosecuting and defending any action or proceeding incident to such services, functions, rights and responsibilities.
- (iii) Developer shall exercise such suspension and step-in rights by delivering to NTTA written notice of election to do so at least ten days prior to the intended step-in date.



- (iv) If Developer has the right to step-in under this Section and delivers such notice, the Parties shall thereafter cooperate in such transition of services and transfer of data to Developer (or Developer's designee), with such cooperation and transfer to be effected according to Section 21(g) (as if the same applied to the exercise of such step in rights rather than to termination of this Tolling Services Agreement) until the performance of such services, functions, rights and responsibilities are transferred to Developer or its contractors or designees. NTTA shall use diligent efforts to accomplish such transfer as quickly as possible without materially compromising customer service. Developer shall use reasonable efforts to exercise such rights in a manner that does not materially interfere with or disrupt NTTA's operations regarding other projects (including, but not limited to, NTTA's own facilities). NTTA shall reimburse Developer or TxDOT all costs and expenses Developer or TxDOT incurs in connection with the transfer of the services, functions, rights and responsibilities to Developer, its contractors or designee; provided, however, that NTTA shall not be liable for any such transfer costs and expenses in excess of the amount that is equal to two hundred percent (200%) of the amount that could reasonably be expected to be incurred in connection with any such transfer to TxDOT. NTTA shall not engage in any action or make any statements to customers that would or could reasonably be expected to harm Developer's relations with such customers or their patronage of the Project.
- (v) Developer may continue to exercise its suspension and step-in rights until, in the absence of an agreement between Developer and NTTA concerning a specified date for the termination thereof, the later of (A) five years after all services, functions, rights and responsibilities of NTTA hereunder have been properly transferred from NTTA to Developer or its contractors or designees or (B) the date all the circumstances that were the basis for Developer's exercise of its step-in rights are fully cured and NTTA has paid in full any damages owing hereunder to Developer, NTTA has completed implementation of any applicable remedial plan required under Section 19(e) and, for a period of six consecutive calendar months, NTTA has conducted tolling services in respect of its own facilities and under any other tolling services agreements to which it is then a party at a level in compliance with the Performance Standards applicable under this Tolling Services Agreement (and, upon Developer's written request, NTTA shall furnish to Developer supporting data confirming such compliance). At the conclusion of this period, the Parties shall transition the services, functions, rights and responsibilities back to NTTA in accordance with a transition plan and schedule reasonably approved by the Parties. NTTA shall reimburse Developer all reasonable costs and expenses Developer incurs in connection with the transfer of the services, functions, rights and responsibilities back to NTTA. Notwithstanding the foregoing

provisions of this Section 19(d)(v), unless otherwise agreed in writing by Developer, NTTA shall not be eligible to re-assume the responsibility for the services, functions, rights and responsibilities under this Tolling Services Agreement more than one time during any five-year period during the Term or more than three times in the aggregate during the Term.

- (vi) During any period after properly exercising step-in rights to assume all (but not less than all) of NTTA's responsibilities set forth in Section 4(a) and (g), until transfer of such services, functions, rights and responsibilities back to NTTA:
  - (A) Developer shall have no obligation to promote or advertise NTTA's association with the Project, and at its election may remove from the Project Right of Way and the Project web site, at NTTA's expense, any signs, displays and banners bearing NTTA's name, logos, trademarks or brands (and Developer shall remove such signs, displays and banners it so requested by NTTA so long as NTTA bears the expenses thereof);
  - (B) NTTA shall not be entitled to any NTTA Compensation or other compensation (and for the avoidance of doubt, NTTA shall not be entitled to any NTTA Compensation or other compensation for any period in which both (1) Developer has commenced exercising its step-in rights but it or its designee has not completed the transition to assumption of all of such responsibilities of NTTA and (ii) NTTA is not performing services hereunder), except with respect to Transactions it processes before transition of the applicable services, functions, rights and responsibilities to Developer, its contractors or designees and except to the extent, if any, that Developer engages NTTA to provide any professional services during such period;
  - (C) NTTA's obligations under Sections 7, 8, 9 and 14 shall be suspended, except for reports respecting matters occurring outside such period, and except with respect to Transactions it processes before transition of the services, functions, rights and responsibilities to Developer, its contractors or designees.
- (vii) Developer's step-in rights do not entitle Developer to take control, management or possession of any portion of NTTA's customer service center or NTTA's CSC Host or of NTTA's responsibilities in respect of any project or facilities other than the Project.

Except as set forth below in this paragraph, no remedy referred to in this Section 19(d) is intended to be exclusive, but, to the extent permissible hereunder and under applicable Laws, each remedy shall be cumulative and in addition to any other remedy referred to above or otherwise

available to Developer under applicable Laws; provided, however, that notwithstanding the foregoing, the Parties expressly agree that the right of either Party to terminate this Tolling Services Agreement before the end of the Term shall be limited solely to the express rights forth in Section 21 of this Tolling Services Agreement.

(e) Remedial Measures.

- (i) In the event that the number of Non-Compliance Points (determined pursuant to Attachment 2), cured or uncured, assessed against NTTA is greater than thirty percent (30%) of the total assessable Non-Compliance Points for each month in any period of three consecutive calendar months during the Term, then, at the Developer-NTTA Regular Meeting following the third such calendar month, Developer may request NTTA to prepare a plan for the correction of the applicable non-compliance and, in such case, NTTA shall deliver to Developer such corrective plan no later than 15 days following Developer's request, and NTTA thereafter shall implement such plan and exercise diligent efforts to correct the applicable non-compliance. In the event that the number of Non-Compliance Points, cured or uncured, assessed against NTTA is not reduced to or below thirty percent (30%) of the total assessable Non-Compliance Points for the calendar month that is the second full calendar month following NTTA's delivery of such corrective plan to Developer, then NTTA shall prepare and submit to Developer for Developer's approval a remedial plan complying with the requirements of Section 19(e)(ii). Notwithstanding the foregoing, in the event that the number of Non-Compliance Points (determined pursuant to Attachment 2), cured or uncured, assessed against NTTA is greater than fifty percent (50%) of the total assessable Non-Compliance Points for any month during the Term, then NTTA shall thereupon prepare and submit to Developer for Developer's approval a remedial plan complying with the requirements of Section 19(e)(ii). Developer shall not unreasonably withhold or delay its approval of a remedial plan delivered pursuant to this Section 19(e)(i).
- (ii) The remedial plan shall set forth a schedule and specific actions to be taken by NTTA to (A) reduce the number of monthly Non-Compliance Points in any calendar month to no more than thirty percent (30%) of the total assessable Non-Compliance Points, (B) reasonably assure performance at levels required by this Tolling Services Agreement, and (C) reasonably assure prevention of recurrence of Non-Compliance Points in excess of thirty percent (30%) of the total assessable Non-Compliance Points in any calendar month. Such actions may include improvements to NTTA'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, changes in training programs, and replacement of contractors.

- (iii) NTTA shall diligently and in good faith carry out all actions described in the approved remedial plan according to the schedule set forth in the remedial plan. If NTTA shall fail to take any action described in the approved remedial plan in accordance with the schedule set forth in the remedial plan, then such failure shall constitute a "Step-In Trigger Default."
- (iv) NTTA shall deliver to Developer a monthly written report, in reasonable detail, of NTTA's progress in carrying out the approved remedial plan. At Developer's request, NTTA shall allow Developer to inspect NTTA's books and records, and monitor NTTA's procedures and practices, to the extent relating to, and as reasonably required to verify proper implementation of, the remedial plan.
- (v) Notwithstanding the foregoing provisions of this Section 19(e) with respect to NTTA's preparation, submittal and implementation of the remedial plan provided for in the next to last sentence of Section 19(e)(i), if at the time NTTA is required to submit such remedial plan to Developer hereunder, Developer is able to, and does, provide to NTTA written evidence reasonably demonstrating that NTTA's non-performance under this Tolling Services Agreement has caused traffic on, and revenue from, the Project to decrease, then NTTA shall have 30 days thereafter to correct its non-performance, with the determination concerning whether such non-performance has been corrected to be based on whether NTTA has reduced the number of Non-Compliance Points for such 30-day period to no more than thirty percent (30%) of the total assessable Non-Compliance Points. If NTTA shall fail to correct such non-performance by the end of such 30-day period, then such failure shall constitute a "Step-In Trigger Default."
- (f) Interest and Late Charges.
  - (i) Except as provided with respect to the Delinquent Payment Deduction and except as provided in Section 16(k), any sum owing from one Party to the other that is not paid when due shall bear interest at a floating rate equal to the LIBOR in effect from time to time, commencing on the date due and continuing until paid.
  - (ii) In addition to interest, in the event either Party fails to pay to the other Party when due any amount set forth in an invoice received pursuant to Section 6(h) that is undisputed or is disputed but finally determined to be payable, such Party shall owe and pay to the other Party a one-time late charge equal to 3% of the undisputed amount or the amount finally determined to be payable, as applicable; provided, however, that if in connection with the resolution of any dispute between the Parties concerning any amount payable hereunder, the applicable Party from whom payment is owed shall deposit an amount equal to the amount in

controversy into the Toll Operator Dispute Account and such amount is held therein and disbursed in accordance with the resolution of the related dispute, then such late charge shall not apply.

(g) Limitations on Liability.

- (i) Notwithstanding any other provision of this Tolling Services Agreement and except as set forth in Section 19(g)(ii), to the extent permitted by applicable Law, neither Party shall be liable for punitive damages or special, indirect, incidental or consequential damages or loss of profit or income arising out of breach of this Tolling Services Agreement, tort (including negligence) or any other theory of liability, and each Party hereby releases the other Party from any such liability.
- (ii) The foregoing limitation on liability for special, indirect, incidental and consequential damages or loss of profit or income shall not apply to or limit any right of recovery one Party may have against the other Party respecting the following:
  - (A) Losses, damages, debts, obligations and liabilities (including defense costs) to the extent covered by the proceeds of insurance actually carried by or insuring the liable Party;
  - (B) Losses, damages, debts, obligations and liabilities arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith or gross negligence;
  - (C) Developer's obligation to pay compensation to NTTA under this Tolling Services Agreement; provided, however, that the aggregate amount of damages, if any, that may be payable to NTTA for lost compensation in respect of the remaining period of the stated Term of this Tolling Services Agreement (without regard to any early termination hereof) following the date of any such termination hereof shall not exceed the NTTA Prospective Compensation Damages Limit (and for the avoidance of doubt, it is acknowledged that such limitation applies only in respect of NTTA's prospective compensation that would be lost as a consequence of the early termination of this Tolling Services Agreement, and such limitation shall not apply to limit any claims of NTTA relating to (i) any compensation accrued and owing to NTTA under this Tolling Services Agreement as of the date of any termination of this Agreement by NTTA due to a default by Developer hereunder, or (ii) amounts owing to NTTA in connection with any such termination in respect of NTTA's recoverable unamortized costs and expenses related to its services hereunder);

- (D) Loss of Toll Revenues owing to Developer, attributable to a NTTA breach or failure to perform;
- (E) Damages that are owing by a Party under another agreement or contract pertaining to the Project (including, without limitation, the Agreement) or the services under this Tolling Services Agreement and that are incurred due to the other Party's breach of this Tolling Services Agreement;
- (F) Transition costs incurred by (1) Developer upon its proper exercise of a right to terminate this Tolling Services Agreement under Section 21(e)(i) or upon its proper exercise of step-in rights under this Tolling Services Agreement (subject to the limitation on the amount of such costs that may be recovered pursuant to Section 19(d)(iv)) or (2) NTTA upon its proper exercise of a right to terminate this Tolling Services Agreement under Section 21(f)(i);
- (G) In the event of Developer's proper exercise of a right to terminate this Tolling Services Agreement under Section 21(e)(i), costs Developer incurs to procure, hire, transition to and compensate a replacement service provider for comparable services for the remainder of the term after termination, to the extent the compensation exceeds that which would be owing to NTTA for the remainder of the term (subject to the limitation in Section 19(d)(iv) and subject to the further limitation that damages related to any difference in level of compensation of the replacement service provider shall not exceed the Replacement Provider Compensation Damages Limit); provided, however, that if TxDOT is the replacement service provider, NTTA shall not be liable for damages for any such excess compensation.
- (H) In the event of Developer's proper exercise of its step-in right under this Tolling Services Agreement, reasonable costs Developer incurs to transition services, functions, rights and responsibilities from and to NTTA, and to procure, hire transition to and compensate a replacement service provider for the duration of the step-in period, to the extent the compensation exceeds that which would be owing to NTTA for the same period (subject to the limitation in Section 19(d)(iv) and subject to the further limitation that damages related to any difference in level of compensation of the replacement service provider shall not exceed the Replacement Provider Compensation Damages Limit); provided, however, that if TxDOT is the replacement service provider, NTTA shall not be liable for damages for any such excess compensation;

- (I) Specific amounts either Party may owe or be obligated to reimburse to the other Party under the express provisions of this Tolling Services Agreement in respect of any period prior to termination;
- (J) Interest, late charges, fees, transaction fees and charges, penalties and similar charges that this Tolling Services Agreement expressly states are due from one Party to the other Party; and
- (K) Any credits, deductions or offsets that this Tolling Service Agreement expressly provides to a Party against amounts owing to the other Party.

(h) Mitigation of Damages.

Each Party acknowledges its duty at law to mitigate damages arising out of the other Party's breach or failure to perform. For the benefit of TxDOT, both Parties also shall use reasonable efforts to mitigate damages in the event this Tolling Services Agreement is terminated by reason of a Termination for Convenience of the Agreement or termination of the Agreement due to TxDOT Default or suspension of work.

20. Dispute Resolution

- (a) Each Party covenants that any claim or dispute shall be made in good faith and not for the purpose of delaying payments due to the other Party.
- (b) As a condition to any Party pursuing a claim or dispute against the other Party through arbitration, the claiming Party shall first initiate informal resolution procedures by serving a written notice on the other Party's Authorized Representative. The notice shall contain (i) a concise statement describing the claim or matter in dispute, including a description of its nature, circumstances and cause, (ii) an explanation of the basis and justification for the claim, including reference to any pertinent provision(s) of this Tolling Services Agreement, (iii) if applicable, the estimated dollar amount of the claim and how that estimate was determined, (iv) the claiming Party's desired resolution, and (v) any other information the claiming Party deems relevant. Commencing within ten days after the notice is served and concluding ten Business Days thereafter, the Chief Executive Officer or Chief Financial Officer of Developer and the Executive Director of NTTA or the Executive Director's designate whose rank is not lower than Assistant Executive Director, shall meet and confer, in good faith, to seek to resolve the claim or dispute raised in the claiming Party's notice. If they succeed in resolving the claim or dispute, Developer and NTTA shall memorialize the resolution in writing. If the claim or dispute is not resolved within 30 days (or such longer period as the Parties may mutually agree) under the foregoing procedures, then the claiming Party may initiate arbitration to resolve the claim or dispute.

- (c) On the advice of their respective counsel, the Parties agree that all questions as to rights and obligations arising under the terms of this Tolling Services Agreement and not resolved by means of the procedures set forth in Section 20(b), including unresolved claims for damages and any unresolved controversy between the Parties involving the construction, interpretation or application of any of the terms, covenants or conditions of this Tolling Services Agreement, are subject to final and binding arbitration.
- (d) Such arbitration shall be governed by the provisions of the Texas General Arbitration Act (Texas Civil Practice and Remedies Code Section 171.001 et seq.). Arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, subject to the specific provisions of this Section 20.
- (e) Any arbitration brought under the terms of this Tolling Services Agreement shall be conducted in the following manner:
  - (i) The Parties may agree on one arbitrator, but in the event that they cannot so agree, there shall be three arbitrators, one named in writing by each of the Parties within 15 days after demand for arbitration is made by either Party, and a third to be chosen by the two so named within ten days after they are named. Should either Party fail to timely join in the appointment of the arbitrator(s), the arbitrator(s) shall be appointed in accordance with the provisions of Texas Civil Practice and Remedies Code Section 171.041.
  - (ii) The Parties shall be entitled to conduct reasonable discovery in preparation for arbitration hearings. On application of either Party, the arbitrator(s) may issue orders and set time limits concerning the conduct of discovery and responses to discovery requests. The Parties express their mutual interest in full and fair discovery consistent with obtaining timely final resolution of disputes. The arbitrator(s) shall issue orders and set time limits regarding discovery so as to carry out such mutual interest.
  - (iii) Arbitration hearings conducted under the terms of this Tolling Services Agreement shall be at the time and place within Collin County, Texas selected by the arbitrator(s). Notice of hearing shall be given and the hearing conducted in accordance with the provisions of Section 171.044 et seq. of the Texas Civil Practice and Remedies Code.
  - (iv) At the hearing, any relevant evidence may be presented by either Party, and the formal rules of evidence applicable to judicial proceedings shall not govern. Evidence may be admitted or excluded in the sole discretion of the arbitrator(s), who shall balance the Parties' mutual interest in receiving a full and fair hearing with the Parties' interest in obtaining timely final resolution of disputes.



- (v) The arbitrator(s) shall hear and determine the matter expeditiously. The arbitrator(s) shall execute, acknowledge and deliver to the Parties a written decision and, if applicable, award, not later than 30 days after conclusion of the hearing. Delivery shall be made by registered or certified mail.
- (vi) In deciding on the dispute in arbitration, the arbitrator(s) shall apply the applicable Laws, including judicial precedent, and the terms of this Tolling Services Agreement. The arbitrator shall have authority to grant legal and equitable relief, including interlocutory orders.
- (vii) The costs and expenses of arbitration, including the fees of the arbitrator(s), shall be borne by the losing party or in such proportions as the arbitrator(s) shall determine. The prevailing Party shall be entitled to recover its attorneys' and expert witness fees and costs from the losing Party, in such amount as the arbitrator(s) determine is reasonable.
- (f) If there is only one arbitrator, his or her decision shall be binding and conclusive on the Parties. If there are three arbitrators, the decision of any two shall be binding and conclusive. The submission of a dispute to the arbitrator(s) and the rendering of their decision shall be a condition precedent to any right of legal action on the dispute. A judgment confirming the award or other relief granted by the arbitrator(s) may be entered by any court having jurisdiction; or the court may vacate, modify, or correct the award in accordance with the provisions of the Texas General Arbitration Act (Texas Civil Practice and Remedies Code Section 171.087 et seq.).

21. Termination; Transition of Services at Termination.

- (a) If the Agreement terminates prior to the normal expiration of the Term (as defined in the Agreement) thereunder and TxDOT does not grant a replacement agreement to a Substituted Entity, then NTTA and Developer agree and acknowledge that, regardless of the reason for such early termination, TxDOT shall have the right and option to (i) take an assignment of Developer's right, title and interest under this Tolling Services Agreement, and to assume Developer's remaining obligations accruing after the date of assignment, in which event, notwithstanding Section 2(a) and Section 3(a) of this Tolling Services Agreement, this Tolling Services Agreement shall not terminate, but shall remain in full force and effect between TxDOT and NTTA, with the Term hereof expiring on the stated expiration date of the Agreement, and Developer shall have no further obligations hereunder with respect to the period from and after TxDOT's assumption of Developer's remaining obligations, or (ii) enter into a new tolling services agreement with NTTA for customer service, toll collection, enforcement and related services pursuant to the Statute. If TxDOT and NTTA enter into such a new tolling services agreement, whether prior to or after the effective date that the Agreement is terminated, then this Tolling Services Agreement shall automatically

terminate concurrently with the effective date of the new tolling services agreement, without prejudicing any claims NTTA may have against (i) Developer for accrued amounts or damages (subject to the limitations set forth in Section 19(g) and Section 24(d)) or (ii) against TxDOT for amounts payable to NTTA by TxDOT in accordance with the terms hereof in respect of the period, if any, from and after the date that TxDOT assumed Developer's obligations under this Tolling Services Agreement to the date that this Tolling Services Agreement is so terminated. If TxDOT elects to take an assignment of this Tolling Services Agreement, then Developer shall thereupon be automatically relieved of and from any obligation or liability under this Tolling Services Agreement arising in respect of this period from and after the effective date of such assignment.

- (b) Except as provided in Section 21(a), neither Party shall have the right to terminate this Tolling Services Agreement unless and until (i) a right to terminate vests in such Party pursuant to Section 21(c) or (d), as applicable, and (ii) there occurs or exists one of the termination events set forth in Section 21(e) or (f).
- (c) The right to terminate shall vest in Developer upon the first to occur of any of the following:
  - (i) The Statute ceases to have legal effect or is amended such that it no longer obligates Developer to utilize NTTA to provide customer service, toll collection or enforcement services for the Project and no other Law then in effect obligates Developer to utilize NTTA to provide customer service, toll collection or enforcement services for the Project;
  - (ii) A final, non-appealable decision is entered by a court holding that (A) the Statute does not impose obligations on the owner, developer or operator of a project within the boundaries described in the Statute to utilize an authority to provide customer service, toll collection or enforcement services, or (B) this Tolling Services Agreement may be terminated and a provider other than NTTA may be engaged to provide customer service, toll collection and enforcement services for the Project; or
  - (iii) NTTA's board of directors shall have adopted a rule, policy or directive adopting, approving, or establishing a practice incorporating its determination of the correctness of, any of the conclusions described in Section 21(c)(i) or (ii).
- (d) The right to terminate shall vest in NTTA upon the first to occur of either of the following:
  - (i) The Statute ceases to have legal effect or is amended such that it no longer obligates NTTA to provide customer service, toll collection or enforcement services for the Project, and no other

Law then in effect obligates NTTA to provide customer service, toll collection or enforcement services for the Project;

- (ii) A final, non-appealable decision is entered by a court holding that (A) the Statute does not impose obligations on NTTA to provide customer service, toll collection or enforcement services for the Project, or (B) this Tolling Services Agreement may be terminated and a provider other than NTTA may be engaged to provide customer service, toll collection and enforcement services for the Project;
  - (iii) NTTA's board of directors shall have adopted a rule, policy or directive adopting, approving, or establishing a practice incorporating its determination of the correctness of, any of the conclusions described in Section 21(d)(i) or(ii).
- (e) If Developer has a vested right to terminate this Tolling Services Agreement, it may exercise such right in one or the other of the following events, but not otherwise unless by mutual written termination:
  - (i) At any time from and after the right to terminate vests that Developer is exercising or entitled to exercise step-in rights under Section 19(d); provided that (A) Developer shall first deliver to NTTA written notice of election to terminate, (B) termination shall be effective the first to occur of (I) a date specified in such notice, which shall not be earlier than 6 months after the date Developer delivers such notice to NTTA and (II) the date Developer and/or its replacement contractor for toll collection and enforcement services is ready to commence performing such services at the same level of performance required of NTTA hereunder, and (C) pending the effective date of termination NTTA shall continue to diligently perform the services for which Developer has not exercised step-in rights, including assisting with transition of services as set forth in Section 21(g), and to receive amounts due to it, in accordance with this Tolling Services Agreement; or
  - (ii) By delivering to NTTA written notice of Developer's election to terminate this Tolling Services Agreement without cause, in which case termination shall be effective upon the later to occur of (A) the date specified in such notice, which shall not be earlier than 12 months after the date the notice is delivered or (B) the end of the then-current Service Period (or with respect to any termination right under this clause (ii) prior to the Service Commencement Date, the end of the ten year period commencing on the Service Commencement Date and ending on the day before the tenth anniversary of the Service Commencement Date), unless Developer specifies a later effective date for termination in its notice or other written notice to NTTA.

- (f) If NTTA has a vested right to terminate this Tolling Services Agreement, it may exercise such right in one or the other of the following events, but not otherwise unless by mutual written termination:
- (i) In the event a default by Developer under this Tolling Services Agreement occurs or continues from and after the date the right to terminate vests, including for failure of Developer to pay any sum when due; provided that (A) NTTA shall first deliver to Developer written notice of election to terminate, (B) termination shall be effective the first to occur of 6 months after NTTA delivers such notice to Developer or the date Developer and/or its replacement contractor for toll collection and enforcement services is ready to commence performing such services, (C) pending the effective date of termination NTTA shall continue to diligently perform the services hereunder, including assisting with transition of services as set forth in Sections 21(g); or
  - (ii) By delivering to Developer written notice of NTTA's election to terminate this Tolling Services Agreement without cause, in which case termination shall be effective the later to occur of (A) on the date specified in such notice, which shall not be earlier than 12 months after the date the notice is delivered or (B) the end of the then-current Service Period (or with respect to any termination right under this clause (ii) prior to the Service Commencement Date, the end of the ten year period commencing on the Service Commencement Date and ending on the day before the tenth anniversary of the Service Commencement Date), unless NTTA specifies a later effective date for termination in its notice or other written notice to Developer.
- (g) If either Party gives notice of election to terminate this Tolling Services Agreement prior to expiration of the full term, then NTTA shall reasonably assist and cooperate with Developer and its replacement contractor for toll collection, enforcement and related services to provide a smooth transition of services from NTTA to Developer and such contractor at the end of the term, pursuant to the transition plan developed pursuant to Section 3(c). The foregoing does not obligate NTTA to provide professional consulting services for service transition, except pursuant to Change Order. The reasonable expenses incurred by NTTA in connection with transition services provided by it pursuant to this Section 21(g) shall be paid by Developer, unless the related termination is due to a default by NTTA or the exercise by NTTA to terminate this Tolling Services Agreement without cause, in which case such expenses shall be paid by NTTA. Following the termination of this Agreement, except as provided in Section 3(c), NTTA shall have no further rights under this Tolling Services Agreement, including for the avoidance of doubt no right to receipt of any NTTA Compensation; provided, however, that this sentence shall not limit any claim for damages NTTA may have (including, but not limited to, any claim for lost NTTA Compensation) in connection with any termination of this Tolling Services Agreement as a consequence of a default by

Developer hereunder or any claim or rights NTTA may have with respect to amounts accrued or arising in respect of the period prior to termination.

22. Malfunction, Damage or Destruction of NTTA Facilities

- (a) Without derogating from NTTA's payment obligations under Section 7 (but subject to Section 22(d)) If a Transaction is properly transmitted to NTTA's CSC Host but is not received by NTTA due to problems, downtime, other malfunction of NTTA's CSC Host, or due to damage or destruction of NTTA's CSC Host or the facilities in which it is located, Developer shall attempt re-transmission every two hours for a period of 24 hours. If transmission remains unsuccessful, Developer shall thereafter attempt re-transmission expeditiously after NTTA notifies Developer that NTTA's CSC Host is functioning and ready to receive transmissions. During the continuance of any period beyond the first 24 hours that NTTA is unable to so receive Transactions at NTTA's CSC Host, at NTTA's request, Developer shall deliver Transaction data to NTTA in digital form once per day, and NTTA shall reimburse Developer for its reasonable costs of such delivery.
- (b) NTTA shall be entitled to the relief set forth in Section 22(d) in the following circumstances:
  - (i) NTTA's customer service center or information technology system used to provide the services set forth in this Tolling Services Agreement, or the building in which such customer service center or information technology system is housed, is physically damaged or destroyed or otherwise precluded from processing Transactions due to a state of public emergency and as a result thereof NTTA is rendered unable to normally receive or process Transactions for payment;
  - (ii) The event causing the damage, destruction or state of public emergency (and the effects of such event) (A) are not caused by the negligence or willful misconduct or other culpability of NTTA or its officers, employees, agents or representatives, and (B) could not have been avoided by the exercise of caution, due diligence or reasonable care or efforts by NTTA; and
  - (iii) The inability to render such services continues for a period in excess of two consecutive days.
- (c) NTTA shall take all steps reasonably necessary to mitigate the consequences of the foregoing circumstances, including implementing its emergency backup and recovery systems and procedures. NTTA shall bear the costs of repair to and restoration of its own facilities required as a consequence of the events and occurrences contemplated by this Section.
- (d) If NTTA establishes that the circumstances described in Section 22(b) exist, then:

- (i) NTTA shall be entitled to an extension of time to make payments to Developer regarding Transactions that it is rendered unable to normally receive or process for payment due to such circumstances, provided that such extension of time shall apply only to Transactions that occur up to the 30<sup>th</sup> consecutive day that NTTA is unable to normally receive or process Transactions for payment. For those Transactions for which NTTA is entitled to an extension of time, it shall make payment to Developer for the toll charges associated with such Transactions on the first to occur of (I) five Business Days after NTTA restores service and receives the Transaction at NTTA's CSC Host or NTTA's back-up system, or (II) the date that is the later of (1) 30 days after the Transaction occurs and (2) five Business Days after the date Developer delivers to NTTA in digital form the data for the Transaction that would have been received at NTTA's CSC Host absent the foregoing circumstances.
- (ii) All toll charges whose payment is deferred pursuant to this Section 22(d) beyond the date payment would otherwise be due under Section 6 shall bear interest at a floating rate equal to the LIBOR in effect from time to time, commencing on the date it would be due absent the deferral and continuing until paid. NTTA shall pay such interest concurrently with its payment of the deferred toll charges.
- (iii) Non-Compliance Points shall not be assessed against NTTA as a result of inability to perform its obligations due solely and directly to the circumstances described in Section 22(b).
- (iv) For the avoidance of doubt, if any payments owing by NTTA are delayed due to a malfunction that is not attributable to the circumstances described in Section 22(b), then NTTA shall not be excused from any penalties or other consequences of such delayed payment provided for in this Tolling Services Agreement, (including, as applicable, the Delinquent Payment Deductions and any rights and remedies Developer may have pursuant to the provisions hereof concerning performance security and other remedies available to Developer hereunder).
- (e) During any period that NTTA is unable to normally receive or process Transactions for payment, or to render other services hereunder, due to the circumstances described in Section 22(b), Developer shall be free to seek and obtain temporary substitute services elsewhere. NTTA shall have no right to compensation, and no liability for payment to Developer, respecting Transactions that Developer chooses to process through any such substitute service provider. If NTTA remains unable to normally receive or process Transactions for payment, or to render other services hereunder, due to the circumstances described in Section 22(b), for more than 90 consecutive days, then such non-performance shall constitute a Step-In Trigger Default hereunder.

23. Assignment

- (a) Developer shall have the right to assign this Tolling Services Agreement and any letter of credit in favor of Developer as follows, and only as follows:
  - (i) Without NTTA's consent, to any Person that succeeds to the Developer's Interest pursuant to the Agreement and assumes in writing Developer's obligations under the Agreement and this Tolling Services Agreement accruing after the date of assignment;
  - (ii) Without NTTA's consent, to any Lender that succeeds to the Developer's Interest and assumes in writing Developer's obligations under the Agreement and this Tolling Services Agreement accruing after the date of succession to the Developer's Interest;
  - (iii) Without NTTA's consent, following termination or expiration of the Agreement, to TxDOT with liability of TxDOT only for those remaining obligations of Developer accruing after the date of assignment, and to TxDOT's successor, assign or designee that assumes in writing Developer's obligations under this Tolling Services Agreement accruing after the date of assignment; and
  - (iv) To any other Person only with the prior written consent of NTTA in its sole discretion.
- (b) Any acceptance by TxDOT or a Lender or any of their respective successors, assigns or designees of assignment of this Tolling Services Agreement shall not operate to make the assignee responsible or liable for any breach hereof by Developer or for any amounts due and owing hereunder for work or services rendered prior to assumption (but without restriction on NTTA's rights to suspend work or demobilize due to Developer's uncured default).
- (c) NTTA acknowledges that this Tolling Services Agreement is for the personal services of NTTA. Accordingly, NTTA shall have the right to assign this Tolling Services Agreement only as follows:
  - (i) Without Developer's or TxDOT's consent, to any other Person that succeeds to all the governmental powers and authority of NTTA; and
  - (ii) To any other Person only with the prior written consent of Developer and TxDOT each in its sole discretion.
- (d) No assignment shall relieve the assigning Party from any liability under this Tolling Services Agreement arising prior to the effective date of assignment, or impair any of the other Party's rights or remedies due to the assigning Party's default occurring prior to the effective date of assignment.

24. Special Provisions for Compliance with Agreement

- (a) At Developer's request NTTA shall participate in meetings between Developer and TxDOT concerning matters pertaining to this Tolling Services Agreement, NTTA's services hereunder or the coordination of such services with other contractors, provided that, absent an assignment of this Tolling Services Agreement to TxDOT, NTTA shall take direction regarding its services only from Developer.
- (b) At Developer's or TxDOT's request, NTTA shall give evidence in any dispute resolution proceeding pursuant to Section 17.8 of the Agreement.
- (c) NTTA agrees to recognize and attorn to any Lender or TxDOT upon receipt of written notice from the Lender or TxDOT that it has exercised step-in rights under the Agreement. If NTTA receives any such notice, it shall have no obligation to obtain Developer's consent or approval, and no obligation to determine whether the Lender or TxDOT validly exercised its step-in rights. Developer hereby waives and releases any claim or cause of action against NTTA arising out of or relating to its recognition and attornment in reliance on any such written notice.
- (d) Subject to TxDOT's consent, Developer shall have the right to terminate this Tolling Services Agreement upon any termination of the Agreement, without liability of Developer or TxDOT for NTTA's lost profits, lost business opportunity or any other loss, damage, cost or expense, except for NTTA's unamortized costs described in Section 19(a)(ii). Developer and NTTA recognize and acknowledge that upon termination of the Agreement TxDOT may elect to take an assignment from Developer of Developer's right, title and interest under this Tolling Services Agreement, and to assume Developer's remaining obligations accruing after the date of assignment, or to enter into a new service agreement with NTTA.
- (e) Any purported amendment with respect to any of the foregoing matters or any other provision of this Tolling Services Agreement mandated by Section 10.3.2 of the Agreement without the prior written consent of TxDOT shall be null and void.

25. Labor Practices

- (a) NTTA at all times shall comply, and require by contract that all its subcontractors and vendors performing services under this Tolling Services Agreement comply, with all applicable federal and State labor, occupational safety and health standards, rules, regulations and federal and State orders.
- (b) NTTA shall not, and shall cause any subcontractor to not, discriminate on the basis of race, color, national origin, sex, age, religion or handicap in the performance of the services under this Tolling Services Agreement. NTTA shall carry out, and shall cause its subcontractors to carry out, applicable requirements of 49 CFR Part 26. Failure by NTTA to carry out these requirements is a material breach of this Tolling Services



Agreement, which may result in termination hereof or such other remedy permitted hereunder as Developer deems appropriate. NTTA shall include this provision in every subcontract (including purchase orders) pertaining to the services under this Tolling Services Agreement.

- (c) NTTA confirms for itself and all subcontractors providing services under this Tolling Services Agreement that NTTA and each such subcontractor has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap; and that NTTA and each such subcontractor maintains no employee facilities segregated on the basis of race, color, national origin, sex, age, religion or handicap. NTTA shall comply with all applicable Equal Employment Opportunity and nondiscrimination provisions set forth in Exhibit 8 to the Agreement, and shall require such subcontractors to comply with such provisions.

26. Designation of Authorized Representatives

NTTA and Developer shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to this Tolling Services Agreement ("Authorized Representative"). Attachment 7 to this Tolling Services Agreement provides the initial Authorized Representative designations. A Party may change such designations by a subsequent writing delivered to the other Party in accordance with Section 27. The Parties shall cause their respective Authorized Representatives to cooperate and coordinate with one another in the administration of this Tolling Services Agreement.

27. Notices

- (a) Any communication, notice or demand of any kind whatsoever under this Tolling Services Agreement shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by facsimile or electronic-mail (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the Developer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: (    ) \_\_\_\_\_  
Facsimile: (    ) \_\_\_\_\_

With copies to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: (    ) \_\_\_\_\_  
Facsimile: (    ) \_\_\_\_\_

If to NTTA by U.S. mail:

North Texas Tollway Authority  
P.O. Box 260729  
Plano, TX 75026  
Attention: Clayton K. Howe  
Telephone: (214) 461-2000  
Facsimile: (214) 528-4826

If to NTTA by personal delivery or express or courier service:

North Texas Tollway Authority  
5900 W. Plano Parkway, Suite 100  
Plano, TX 75093  
Attention: Clayton K. Howe  
Telephone: (214) 461-2000  
Facsimile: (214) 528-4826

or to such other addresses and such other places as any party hereto may from time to time designate by written notice to the others.

- (b) All notices and other communications required or permitted under this Tolling Services Agreement which are addressed as provided in this Section 27 are effective upon delivery, if delivered personally or by overnight mail, facsimile or electronic mail and, are effective five days following deposit in the United States mail, postage prepaid if delivered by mail.

28. TxDOT's Rights

Each provision hereof that expressly requires a consent or approval of TxDOT or states specific rights in favor of TxDOT is for the express benefit of TxDOT as an intended third party beneficiary and may be enforced by TxDOT against the Parties.

29. Amendment

Except as provided under the Change Order provisions of Section 17, this Tolling Services Agreement may be amended only if in writing executed by Developer, NTTA and TxDOT.

30. Independent Engineer

As soon as practicable following the Parties' execution and delivery of this Agreement, and in any event no later than the date that is 12 months before the projected Service Commencement Date, the Parties shall engage an independent third party engineering firm (the "Independent Engineer") to provide the services that this Tolling Services Agreement states are to be provided by the Independent Engineer. The Independent Engineer shall have at least ten years' experience in the provision of services that are the same as those contemplated to be provided by the Independent Engineer hereunder. The Parties shall engage the Independent Engineer pursuant to a three-party agreement among, and containing terms and conditions reasonably acceptable to, Developer, NTTA and the Independent Engineer (the "Independent Engineer Agreement"). The Independent Engineer Agreement shall include provision for the equal allocation, between Developer and NTTA, of the costs and expenses of the Independent Engineer in the performance of its services under the Independent Engineer Agreement. The Independent Engineer engaged by the Parties pursuant to the terms hereof may be, but shall not be required to be, the same Person engaged as the Independent Engineer (as defined in the Agreement) under the Agreement. The Independent Engineer is to perform the functions provided for under this Tolling Services Agreement and the Independent Engineer Agreement and to assist and advise the Parties concerning its findings and recommendations. The Independent Engineer's determinations are not final and binding. If there is a continuing disagreement between the Parties concerning any matter subject to review by the Independent Engineer following the Independent Engineer's review and recommendation in respect thereof, such disagreement shall be resolved pursuant to Section 20 hereof.

31. Independent Auditor **[include this Section 31 if cost plus pricing is selected.]**

On or before the first day of the ninth full calendar month before the end of the tenth Service Year, the Parties shall mutually select and engage the Independent Auditor for purposes of providing the services described in Section 6(d)(iv). The Independent Auditor shall have the qualifications set forth in Section 6(d)(iv). The Parties shall engage the Independent Auditor pursuant to a three-party agreement among, and containing terms and conditions reasonably acceptable to, Developer, NTTA and the Independent Auditor (the "Independent Auditor Agreement"). The Independent Auditor Agreement shall include provision for the equal allocation, between Developer and NTTA, of the costs and expenses of the Independent Auditor in the performance of its services under the Independent Auditor Agreement. The Independent Auditor's determinations are not final and binding. If there is a continuing disagreement between the Parties concerning any matter subject to review by the Independent Auditor following the Independent Auditor's review in respect thereof, such disagreement shall be resolved pursuant to Section 20 hereof.

32. Governing Law

The laws of the State of Texas shall govern this Tolling Services Agreement.

33. Interpretation

- (a) The title headings of the respective paragraphs of this Tolling Services Agreement are inserted for convenience only, and shall not be deemed to be part of this Tolling Services Agreement or considered in construing this Tolling Services Agreement.
- (b) Wherever the word “including,” “includes” or “include” is used in this Tolling Services Agreement, it shall be deemed to be followed by the words “without limitation”.
- (c) All references to “Section” or “subsection” means the Section or subsection of this Tolling Services Agreement unless specifically provided otherwise.
- (d) This Tolling Services Agreement includes all the Attachments hereto.

34. Counterparts

This Tolling Services Agreement may be executed in one or more counterparts, all of which together shall be deemed an original.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Tolling Services Agreement as of the date first written above.

Attest:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM:

Locke Lord Bissell & Liddell LLP,  
General Counsel to NTTA

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

**NTTA**

**NORTH TEXAS TOLLWAY AUTHORITY,**  
a regional tollway authority and a  
subdivision of the State of Texas

By: \_\_\_\_\_  
Name: Jorge C. Figueredo  
Title: Executive Director

**Developer**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## Attachment 1

### Definitions

#### Definitions from Agreement

The following lists the capitalized terms that are used in this Tolling Services Agreement and defined in the Agreement:

Affiliate  
Contractor  
Customer Groups  
Day or day  
Developer's Interest  
Directive Letter  
Electronic Toll Collection System, or ETCS  
Exempt Vehicles  
Force Majeure Event  
Functional Availability  
Good Industry Practice  
Incidental Charges  
Laws  
Lender  
LIBOR  
Person  
Project  
Project Trust Agreement  
Service Commencement Date  
Special Vehicles  
Substituted Entity  
Target  
Technical Documents  
Technical Provisions  
Termination for Convenience  
Toll Revenue  
Toll Revenue Account  
User  
User Classification  
Video Transaction User  
Additional Definitions

**Agreement** means the certain Comprehensive Development Agreement dated \_\_\_\_\_, 2008 between Developer and TxDOT concerning the Project.

**Authorized Representative** means the individuals authorized to make decisions and bind the Parties on matters relating to this Tolling Services Agreement pursuant to Section 26. Where the term is used with reference to TxDOT, it has the meaning set forth in the Agreement.

**Average Monthly NTTA Compensation** means (i) after this Tolling Services Agreement has been in effect for a period of at least 12 full calendar months following the Service Commencement Date, one twelfth (1/12) of the total NTTA Compensation for the 12 full calendar months immediately preceding the termination of this Tolling Services Agreement requiring a determination of the Average Monthly NTTA Compensation or (ii) prior to such time as this Tolling Services Agreement has been in effect for 12 full calendar months following the Service Commencement Date, the monthly average of the NTTA Compensation for the number of full calendar months during which this Tolling Services Agreement has been in effect following the Service Commencement Date.

**Average Monthly NTTA Cost of Services** means (i) after this Tolling Services Agreement has been in effect for a period of at least 12 full calendar months following the Service Commencement Date, one twelfth (1/12) of NTTA's total cost of providing services hereunder for the 12 full calendar months immediately preceding the termination of this Tolling Services Agreement requiring a determination of the Average Monthly NTTA Cost of Services or (ii) prior to such time as this Tolling Services Agreement has been in effect for 12 full calendar months following the Service Commencement Date, the monthly average of NTTA's total cost of providing services hereunder for the number of full calendar months during which this Tolling Services Agreement has been in effect following the Service Commencement Date. [With respect to any determination of the Average Monthly NTTA Cost of Services during the eleventh or any subsequent Service Year for which the Cost of NTTA's Services has been determined in accordance with Section 6(d), then the Average Monthly NTTA Cost of Services means (i) after this Tolling Services Agreement has been in effect for a period of at least 12 full calendar months following the end of the tenth Service Year, one twelfth (1/12) of NTTA's total cost of providing services hereunder for the 12 full calendar months immediately preceding the termination of this Tolling Services Agreement requiring a determination of the Average Monthly NTTA Cost of Services (with NTTA's total cost of providing such services to be calculated using the Cost of NTTA's Services determined pursuant to Section 6(d)) or (ii) prior to such time as this Tolling Services Agreement has been in effect for 12 full calendar months following the end of the tenth Service Year, the monthly average of NTTA's total cost of providing services hereunder for the number of full calendar months during which this Tolling Services Agreement has been in effect (with NTTA's total cost of providing such services to be calculated using the Cost of NTTA's Services determined pursuant to Section 6(d)).] **[Bracketed portion will be included in the form of Tolling Services Agreement adopting Cost Plus Transaction Fee.]**

**Base Transaction Fee** has the meaning set forth in Section 6(b).

**Base Transaction Fee Payment** has the meaning set forth in Section 6(b).

**Business Continuity Plan** has the meaning set forth in Section 4(a)(viii).

**Business Day** means a day on which NTTA is officially open for business.

**Candidate Vehicle** means a vehicle for which Developer transmits one of the following to NTTA's CSC Host:

- (a) A valid Transponder Transaction; or

- (b) (i) a Video Transaction with an unobstructed readable video image of a license plate that bears a serialized or personalized plate number and means to identify the issuing jurisdiction, which in the case of a vehicle with a trailer (including a truck with a trailer) must be the front license plate, and (ii) video data as required by the ICD.

For this purpose, a “readable video image” means an image produced by the VES and transmitted to NTTA’s CSC Host in which both plate number and issuing jurisdiction can be reliably read electronically or by the human eye.

**Change Directive** means a written direction signed by Developer directing a change in the services that complies with the requirements of Section 17(a).

**Change Order** means a written order issued by Developer to NTTA delineating changes in services or in technical terms and conditions (including changes in the standards) applicable to the services in accordance with Section 17 and establishing, if appropriate, an adjustment to NTTA’s compensation in accordance with Section 17.

**Consolidated Master List** has the meaning set forth in Section 12(d).

**Cost of NTTA’s Services** has the meaning set forth in Section 6(d)(v).

**Cost Plus Transaction Fee** has the meaning set forth in Section 6(d)(iii).

**Delinquent Payment Deduction** has the meaning set forth in Section 6(d).

**Developer** means \_\_\_\_\_.

**Developer-NTTA Regular Meeting** has the meaning set forth in Section 4(k).

**Duplicate Transaction** means any circumstances resulting in more than one Transaction generated from the same vehicle within two minutes at the same general location (e.g., same or adjacent lane).

**Emergency Mode** means the period and circumstances of emergency evacuation or diversion of traffic to the Project due to a disaster or other emergency.

**Incidental Charges** means:

- (a) Reasonable amounts for the purchase or rental of transponders or other electronic toll devices;
- (b) Reasonable, refundable security deposits for the distribution of transponders or other electronic toll devices;
- (c) Reasonable administrative fees for account maintenance and account statements;
- (d) Reasonable fees, penalties and interest for toll violations, including costs of collection;



- (e) Amounts, with respect to Video Transactions, reasonably necessary for NTTA to recover (i) its reasonable out-of-pocket costs and expenses and (ii) a reasonable amount to reflect its collection risk.
- (f) Other reasonable fees and charges for customary incidental services to Users for whom NTTA manages electronic tolling accounts (on the same basis as uniformly charged with respect to NTTA's own facilities).

Without limiting the requirements in the preceding provisions of this definition to charge reasonable fees, charges, penalties, interest or other amounts, NTTA shall determine and assess Incidental Charges under this Tolling Services Agreement consistent with its practices in respect of its own facilities.

**Independent Auditor** has the meaning set forth in Section 6(d)(iv).]

**Independent Auditor Agreement** has the meaning set forth in Section 31.]

**Independent Engineer** has the meaning set forth in Section 30.

**Independent Engineer Agreement** has the meaning set forth in Section 30.

**Intellectual Property Rights** means all intellectual property rights throughout the world, including all copyrights, copyright registrations and applications, patent rights, know-how, trade secrets, author's rights, algorithms, computer software and other intellectual property rights, as may exist now or hereafter come into existence, and all renewals and extensions thereof.

**Interface Control Document** or **ICD** means the document attached as Attachment 3 to this Tolling Services Agreement setting forth interface standards for NTTA's CSC Host and the ETCS, including the manner in which data shall be transmitted and received between NTTA's CSC Host and the ETCS, as such document may be revised or updated by NTTA from time to time.

**Interoperability Functions** means electronic funds transfer and clearing functions and capabilities established and operated by NTTA to enable the settlement and payment to the trustee under the Project Trust Agreement of electronic toll charges for Transponder Transactions on the Project by vehicles equipped with transponders issued by Toll Operators and Transponder Issuers other than NTTA.

**Interoperable Transactions** means Transactions involving Toll Operators other than NTTA; except that if NTTA's provision of services under this Tolling Services Agreement has been suspended or terminated, whether due to the Developer's exercise of step-in rights under Section 19 or for any other reason, "**Interoperable Transactions**" means Transactions involving Toll Operators other than an entity that is providing tolling services under this Tolling Services Agreement at the time of such a Transaction.

**Interoperable Transponder Transactions** means Transponder Transactions involving transponders of Transponder Issuers other than NTTA; except that if NTTA's provision of services under this Tolling Services Agreement has been suspended or terminated, whether due to the Developer's exercise of step-in rights under Section 19 or for any other reason, "**Interoperable Transponder Transactions**" means Transponder

Transactions involving transponders of Transponder Issuers other than an entity that is providing tolling services under this Tolling Services Agreement at the time of such a Transaction.

**Measurement Period** has the meaning set forth in Section 6(d)(iii).

**Non-Compliance Deduction** has the meaning set forth in Section 6(e).

**Non-Compliance Points** has the meaning set forth in Section 6(e) and Attachment 2 to this Tolling Services Agreement.

**NTTA** means the North Texas Tollway Authority.

**NTTA Compensation** has the meaning set forth in Section 6(a).

**NTTA Prospective Compensation Damages Limit** means the greater of the following:

- (a) the amount determined by subtracting (x) the Average Monthly NTTA Cost of Services from (y) the Average Monthly NTTA Compensation and multiplying the difference by (1) in the case of any termination (by NTTA due to a default by Developer) occurring during the first Service Period, the greater of (A) 60 or (B) the number of full calendar months in the period from and after the date of such termination through and including the stated expiration of such Service Period (i.e., the date the Service Period would have expired if such termination had not sooner occurred); and (2) in the case of any such termination occurring after the first Service Period, 60; or
- (b) the amount determined by multiplying (x) the Average Monthly NTTA Compensation by (y) ten percent (10%) and then multiplying the product so obtained by (1) in the case of any termination (by NTTA due to a default by Developer) occurring during the first Service Period, the greater of (A) 60 or (B) the number of full calendar months in the period from and after the date of such termination through and including the stated expiration of such Service Period (i.e., the date the Service Period would have expired if such termination had not sooner occurred); and (2) in the case of any such termination occurring after the first Service Period, 60.

**NTTA's CSC Host** means the central computer system of NTTA that supports customer service center account management functions for toll road facilities owned by NTTA.

**Open Book Basis** means allowing each Party to review all underlying assumptions and data of the other Party associated with pricing or compensation (whether of Developer or NTTA) or adjustments thereto, including assumptions and data as to marginal costs or other applicable costs, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, traffic volumes by User Classification, Toll Revenues, changes in toll rates, and other items reasonably required to satisfy the Party as to the reasonableness of the amount.

**Party** means Developer or NTTA, as the context may require, and “**Parties**” means Developer and NTTA, collectively.

**Patron Confidential Information** has the meaning set forth in Section 4(n)(i).

**Payment Period** means each calendar month during the Term of this Tolling Services Agreement, including any partial calendar month at the beginning or end of the Term.

**Performance Standards** means the requirements, measures and standards for NTTA’s performance set forth in Attachment 2 to this Tolling Services Agreement.

**Replacement Provider Compensation Damages Limit** means (a) in the case of any termination or step-in (by Developer due to a default by NTTA) occurring during the initial Service Period, the difference in the compensation payable to a replacement service provider (as described in Section 19(g)(ii)(G) or (H)) and the compensation that would have been payable to NTTA hereunder for the longer of (1) five years or (2) the remaining stated term of the initial Service Period (following such termination) and (b) in the case of any such termination occurring after the first Service Period, the difference in the compensation payable to such replacement service provider and the compensation that would have been payable to NTTA hereunder for five years, utilizing in each instance regular rates of compensation of such replacement service provider.

**Service Period** means (a) the ten-year period beginning on the Service Commencement Date and ending on the day before the tenth anniversary of the Service Commencement Date, and (b) beginning on the tenth anniversary of the Service Commencement Date, each successive five-year period thereafter.

**Service Year** shall mean each twelve (12) month period during the Term commencing on the Service Commencement Date or an anniversary thereof and ending on (but including) the day before the next succeeding anniversary of the Service Commencement Date.

**Statewide Confidentiality Protocols** has the meaning set forth in Section 4(n)(ii).

**Term** has the meaning set forth in Section 3(a).

**Tolling Services Agreement** means this Tolling Services Agreement between NTTA and Developer.

**Toll Operator** means any Person, including NTTA and Developer, who or which (a) manages and operates a tolled roadway in the State of Texas and (b) participates with NTTA in interoperability protocols, agreements and arrangements.

**Toll Operator Dispute Account** means the trust account by that name established or to be established under the Project Trust Agreement.

**Transaction** means either a Transponder Transaction or a Video Transaction; and **Transactions** means all Transponder Transactions and Video Transactions.

**Transponder Issuer** means any Person, including NTTA and Developer, who or which (a) issues transponders for mounting in vehicles and transacting Transponder

Transactions on any tolled roadway in the State of Texas and (b) participates with NTTA in interoperability protocols, agreements and arrangements.

**Transponder Transaction** means each electronic record of a toll, which may include video images and video data that together constitute one toll payable from a customer, that are properly transmitted to NTTA's CSC Host in accordance with the ICD and Section 9 (including where the transmission is not received due to problems, downtime or other malfunction of NTTA's CSC Host) respecting a vehicle that (a) passes through a toll lane on the Project, (b) is equipped with a transponder issued by a Transponder Issuer, and (c) has a sufficient account balance at the time of posting or re-posting to pay in full the applicable toll rate.

**TxDOT** means the Texas Department of Transportation.

**Unpostable Interoperable Transaction** means an interoperable Transponder Transaction that is not paid by the applicable home authority or cannot be pursued otherwise because of lack of a video image or other data which would permit pursuit of payment.

**Unpostable Transponder Transaction** means a Transponder Transaction that cannot be posted by NTTA as a result of insufficient customer funds and insufficient prepaid toll payments by the applicable customer.

**Variable Transaction Fee** has the meaning set forth in Section 6(c).

**Variable Transaction Fee Payment** has the meaning set forth in Section 6(c).

**Video Transaction** means each electronic record of a toll and set of contemporaneous video images of license plates and other video data (as required by the ICD) that are properly transmitted to NTTA's CSC Host in accordance with the ICD (including where the transmission is not received due to problems, downtime or other malfunction of NTTA's CSC Host) respecting (a) a Candidate Vehicle under subsection (b) of the definition of Candidate Vehicle that passes through a toll lane on the Project or (b) a vehicle that passes through a toll lane on the Project and is equipped with a transponder that is (i) issued by a Transponder Issuer and (ii) associated with an account not closed at the time of transmission but having an insufficient account balance at the times of debit and re-debits to pay in full the applicable Transponder Transaction toll rate.

## Attachment 2

### Performance Standards and Non-Compliance Points

| Performance Standard   | Std.                      | Points |
|--|---------------------------|--------|
| <b>1. Non-Compliance Deduction Related Non-Compliance Points</b>   |                           |        |
| 1. Less than 5% of walk in customers at the "store front" kept waiting for greater than ten minutes before being seen by NTTA staff, as demonstrated by statistically reliable random sampling each month.   | <5% greater than 10 mins. | 4      |
| 2. Call Efficiency – 80/20 service level with 80% of calls to be answered within 20 seconds.   | 80% in 20 seconds         | 3      |
| 3. Customer service requests via NTTA's Online CSC will be responded to within 2 business days.  | within 2 business days    | 3      |
| 4. 95% of customer service requests via email, facsimile, and postal mail will be responded to within 2 business days.   | within 2 business days    | 2      |
| 5. Customer Service Hours – operating sales office with walk in customer service manned in-person 7 AM to 7 PM, Monday through Friday local time and 9 AM to 1 PM Saturday local time, excluding NTTA-observed holidays  |                           | 1      |
| 6. Customer Service Hours – manned telephone coverage 7 AM to 7 PM, Monday through Friday local time and 9 AM to 1 PM Saturday local time, excluding NTTA-observed holidays, and 24 hour availability of IVR system. Faults to telephone line and/or IVR rectified as soon as possible but no later than within 24 hours, with the possible exception of faults outside of scheduled maintenance and failures due to non-NTTA equipment or failures outside NTTA's control.  | within 24 hours           | 1      |
| 7. 24X7 availability of secure customer access through NTTA Online CSC (in English and Spanish) for account maintenance purposes (including opening an account, changing information on an account, viewing account status and statements, and replenishing an account balance, etc.). Faults that result in NTTA Online CSC being unavailable (outside of scheduled maintenance and failures due to non-NTTA equipment or failures outside NTTA's control) rectified as soon as possible but no later than within 24 hours. | within 24 hours           | 3      |
| 8. 24X7 availability to receive email. Faults to email availability rectified as soon as possible but no later than within 24 hours. Exceptions include faults outside of scheduled maintenance and failures due to non-NTTA equipment or failures outside NTTA's control.   | within 24 hours           | 1      |
| 9. 24X7 availability to receive facsimile. Faults to facsimile availability rectified as soon as possible but no later than within 24 hours. Exceptions include faults outside of scheduled maintenance and failures due to non-NTTA equipment or failures outside NTTA's control.   | within 24 hours           | 1      |
| 10. Call abandon rate less than or equal to 4%.  | < or = 4%                 | 2      |
| 11. 96% of escalations received via the Service Recovery Process receive a response within one Business Day.   | 96%                       | 2      |
| 12. 96% of Customer Service Specialists will have at least two customer interactions monitored each month.   | 96%                       | 3      |
| 13. The NTTA Customer Service Center shall maintain a 90% or higher quality monitoring rating each month, based on evaluations using the quality monitoring form appended to this <u>Attachment 2</u> as <u>Appendix A</u> .   | >90%                      | 3      |
| 14. NTTA CSC Host Availability - NTTA CSC Host shall be available to receive information from Developer on a 24X7 basis (excluding scheduled maintenance and failures due to non-NTTA equipment or failures outside NTTA's control). Any fault that results in NTTA CSC Host being unavailable (outside of scheduled maintenance and failures due to non-NTTA equipment or failures outside NTTA's control) rectified as soon as possible but no later than within 24 hours.   | 24 hours                  | 4      |
| 15. Reconciled monthly financial reports under <u>Section 14(a)</u> shall be available by the 15th day of the month following the month being reported upon.   | 15 days                   | 4      |
| 16. Monthly Delinquent Payment Deduction report under <u>Section 14(d)</u> shall be available by the 15th day of the month following the month being reported upon.  | 15 days                   | 4      |

|   |                        |   |
|---|------------------------|---|
| 17. Monthly Non-Compliance Deduction report under <b>Section 14(e)</b> shall be available by the 15th day of the month following the month being reported upon.   | 15 days                | 4 |
| 18. Determine and document disposition of 98% of customer disputes within five Business Days after notice of dispute received by telephone, by email, by written correspondence or in person. Rejection or request for further information due to insufficient information from customer constitutes a determination and disposition. | Within 5 business days | 3 |
| 19. For customer disputes determined to require a refund of an overcharge, issue 99% of customer refunds (and mail if appropriate) within five Business Days after resolution of dispute.   | Within 5 business days | 3 |
| 20. For any customer correspondence requiring a written response, including requests for written receipts, 98% are provided a written response within three Business Days   | Within 3 business days | 2 |
| 21. Where relevant and to the extent not already included in NTTA reports to the Developer, provide Developer with reports as discussed under <u>Sections 14(f)</u> and <u>14(h)</u> .  | N/A                    | 5 |
| 22. NTTA will not charge a User more than once for a single transaction submitted to the NTTA by the Developer.   | 100%                   | 3 |
| 23. NTTA will not charge a toll different than that identified by the Developer.  | 100%                   | 3 |

## Quality Monitoring Forms

(Refer to Item 13 of Attachment 2)

| Call Quality  |                       |                       |                       |
|---|-----------------------|-----------------------|-----------------------|
| Opening   | Yes                   | No                    | N/A                   |
| Greets customers and thanks them for calling                  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Branded the call NTTA   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Provided their name and department name                       | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Obtains/Verifies necessary customer information for call type | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Category Comment:   | <div></div>           |                       |                       |
| Customer Account Information                                  | Yes                   | No                    | N/A                   |
| Verify/Update account address                                 | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Verify/Update account e-mail address                          | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Verify/Update account phone number                            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Verify/Update account vehicle information                     | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Category Comment:   | <div></div>           |                       |                       |
| Analytical Skills   | Yes                   | No                    | N/A                   |
| Asks probing/clarifying questions * (Forfeit)                 | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Actively listens * (Forfeit)                                  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

|  |                          |                          |                          |
|--|--------------------------|--------------------------|--------------------------|
| Category Comment:  |                          |                          |                          |
| <div> <div> <div></div> <div></div> <div></div> </div> <div> <div></div> <div></div> <div></div> </div> </div>                             |                          |                          |                          |
| Resolution   | Yes                      | No                       | N/A                      |
| Provides best option(s) for resolution   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Utilized available tools   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Accurately noted account and made appropriate changes/updates  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Educates customer  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Category Comment:  |                          |                          |                          |
| <div> <div> <div></div> <div></div> <div></div> </div> <div> <div></div> <div></div> <div></div> </div> </div>                             |                          |                          |                          |
| Call Handle Procedures   | Yes                      | No                       | N/A                      |
| Follows hold proper steps (i.e. - asks for permission, thanks for holding)   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Follows proper transfer steps (i.e. - explains transfer process/follows hold procedure/debriefs person receiving transfer/Thanks Customer) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Category Comment:  |                          |                          |                          |
| <div> <div> <div></div> <div></div> <div></div> </div> <div> <div></div> <div></div> <div></div> </div> </div>                             |                          |                          |                          |
| Professionalism  | Yes                      | No                       | N/A                      |
| Courteous, professional tone   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Speaks clearly   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Uses customer name or Sir/Madam  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Provides clear, concise information  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Avoids use of technical/internal jargon  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Manages dead air time  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Avoids interrupting customer   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Conveys appropriate empathy  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |



Summary

Rating:

<Automatic>

Comments:

Microsoft Excel - ssqmform

File Edit View Insert Format Tools Data Window Help

Type a question for help

100%

Reply with Changes... End Review...

G5

|    | A  | B | C | D | E | F                               | G                              | H | I | J | K |
|----|--|---|---|---|---|---------------------------------|--------------------------------|---|---|---|---|
| 1  | <b>Support Services Quality Monitoring Form</b>    |   |   |   |   |                                 |                                |   |   |   |   |
| 2  |  |   |   |   |   |                                 |                                |   |   |   |   |
| 3  | CSS: <input type="text"/>                          |   |   |   |   | Team Lead: <input type="text"/> |                                |   |   |   |   |
| 4  |  |   |   |   |   |                                 |                                |   |   |   |   |
| 5  | Process: <input type="text" value="Image Review"/> |   |   |   |   | Date: <input type="text"/>      |                                |   |   |   |   |
| 6  |  |   |   |   |   |                                 |                                |   |   |   |   |
| 7  | <b>Accuracy / Timeliness</b>                       |   |   |   |   |                                 | <b>Score</b>                   |   |   |   |   |
| 8  | <input type="text"/>                               |   |   |   |   |                                 | <div>40</div> <div>of 40</div> |   |   |   |   |
| 9  |  |   |   |   |   |                                 |                                |   |   |   |   |
| 10 |  |   |   |   |   |                                 |                                |   |   |   |   |
| 11 |  |   |   |   |   |                                 |                                |   |   |   |   |
| 12 |  |   |   |   |   |                                 |                                |   |   |   |   |
| 13 | <b>Communication Skills / Customer Service</b>     |   |   |   |   |                                 | <b>Score</b>                   |   |   |   |   |
| 14 | <input type="text"/>                               |   |   |   |   |                                 | <div>40</div> <div>of 40</div> |   |   |   |   |
| 15 |  |   |   |   |   |                                 |                                |   |   |   |   |
| 16 |  |   |   |   |   |                                 |                                |   |   |   |   |
| 17 |  |   |   |   |   |                                 |                                |   |   |   |   |
| 18 |  |   |   |   |   |                                 |                                |   |   |   |   |
| 19 | <b>Analytical Skills / Decision Making</b>         |   |   |   |   |                                 | <b>Score</b>                   |   |   |   |   |
| 20 | <input type="text"/>                               |   |   |   |   |                                 | <div>20</div> <div>of 20</div> |   |   |   |   |
| 21 |  |   |   |   |   |                                 |                                |   |   |   |   |
| 22 |  |   |   |   |   |                                 |                                |   |   |   |   |
| 23 |  |   |   |   |   |                                 |                                |   |   |   |   |
| 24 |  |   |   |   |   |                                 |                                |   |   |   |   |
| 25 | <b>Total Score</b>                                 |   |   |   |   |                                 | <b>100%</b>                    |   |   |   |   |
| 26 |  |   |   |   |   |                                 |                                |   |   |   |   |
| 27 |  |   |   |   |   |                                 |                                |   |   |   |   |
| 28 |  |   |   |   |   |                                 |                                |   |   |   |   |
| 29 |  |   |   |   |   |                                 |                                |   |   |   |   |

QM Form

Ready

NUM

**Quality Evaluation Form – NTTA**  
(Customer Center)

CSS Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Observer: \_\_\_\_\_ Time: \_\_\_\_\_

|  |  |             |
|--|--|-------------|
| <b>1.0 INTRODUCTION</b>  | (Total Possible = 20)<br>Score _____   | Notes _____ |
| 1.1 Properly greeted customer  | <input type="checkbox"/> Yes = 10, <input type="checkbox"/> No = 0                                 |             |
| 1.2 Offered assistance   | <input type="checkbox"/> Yes = 10, <input type="checkbox"/> No = 0                                 |             |
| <b>2.0 REASON FOR VISIT</b>  | (Total Possible = 20)<br>Score _____   | Notes _____ |
| 2.1 Restated customer issue for clarification                                  | <input type="checkbox"/> Yes = 5, <input type="checkbox"/> No = 0, <input type="checkbox"/> NA = 5 |             |
| 2.2 Asked fact-finding questions to obtain necessary information               | <input type="checkbox"/> Yes = 5, <input type="checkbox"/> No = 0, <input type="checkbox"/> NA = 5 |             |
| 2.3 Validated customer information   | <input type="checkbox"/> Yes = 5, <input type="checkbox"/> No = 0, <input type="checkbox"/> NA = 5 |             |
| 2.4 Responses indicated understanding of issue                                 | <input type="checkbox"/> Yes = 5, <input type="checkbox"/> No = 0, <input type="checkbox"/> NA = 5 |             |
| <b>3.0 RESOLUTION</b>  | (Total Possible = 20)<br>Score _____   | Notes _____ |
| 3.1 Utilized available tools   | <input type="checkbox"/> Yes = 4, <input type="checkbox"/> No = 0, <input type="checkbox"/> NA = 4 |             |
| 3.2 Provided best options for resolution                                       | <input type="checkbox"/> Yes = 4, <input type="checkbox"/> No = 0, <input type="checkbox"/> NA = 4 |             |
| 3.3 Provided accurate and complete explanations                                | <input type="checkbox"/> Yes = 4, <input type="checkbox"/> No = 0, <input type="checkbox"/> NA = 4 |             |
| 3.4 Verified customer understanding of information and/or explanation provided | <input type="checkbox"/> Yes = 4, <input type="checkbox"/> No = 0, <input type="checkbox"/> NA = 4 |             |
| 3.5 Accurately noted account and made appropriate changes/updates              | <input type="checkbox"/> Yes = 4, <input type="checkbox"/> No = 0, <input type="checkbox"/> NA = 4 |             |
| <b>4.0 CLOSING</b>   | (Total Possible = 20)<br>Score _____   | Notes _____ |
| 4.1 Mentioned website option   | <input type="checkbox"/> Yes = 5, <input type="checkbox"/> No = 0                                  |             |
| 4.2 Asked, "Is there anything else I can help you with?"                       | <input type="checkbox"/> Yes = 10, <input type="checkbox"/> No = 0                                 |             |
| 4.3 Expressed appreciation "Thank You"   | <input type="checkbox"/> Yes = 5, <input type="checkbox"/> No = 0                                  |             |
| <b>5.0 CUSTOMER EXPERIENCE</b>   | (Total Possible = 20)<br>Score _____   | Notes _____ |
| 5.1 Managed customer effectively   | <input type="checkbox"/> Yes = 4, <input type="checkbox"/> No = 0                                  |             |
| 5.2 Consistently acknowledged customer   | <input type="checkbox"/> Yes = 2, <input type="checkbox"/> No = 0                                  |             |
| 5.3 Empathized by sincerely acknowledging customer emotion                     | <input type="checkbox"/> Yes = 2, <input type="checkbox"/> No = 0, <input type="checkbox"/> NA = 2 |             |
| 5.4 Used effective listening skills, did not interrupt                         | <input type="checkbox"/> Yes = 2, <input type="checkbox"/> No = 0                                  |             |
| 5.5 Apologized when appropriate  | <input type="checkbox"/> Yes = 2, <input type="checkbox"/> No = 0, <input type="checkbox"/> NA = 2 |             |
| 5.6 Clearly articulated words  | <input type="checkbox"/> Yes = 2, <input type="checkbox"/> No = 0                                  |             |
| 5.7 Built rapport using winning words  | <input type="checkbox"/> Yes = 2, <input type="checkbox"/> No = 0                                  |             |
| 5.8 Maintained professional tone and temper                                    | <input type="checkbox"/> Yes = 4, <input type="checkbox"/> No = 0                                  |             |
| <b>6.0 BONUS</b>   |  |             |
| <input type="checkbox"/> Managed / Handled objections                          | <input type="checkbox"/> Yes = 2, <input type="checkbox"/> No = 0                                  |             |
| <input type="checkbox"/> Recovered customer in difficult situations            | <input type="checkbox"/> Yes = 2, <input type="checkbox"/> No = 0                                  |             |
| <input type="checkbox"/> Prevented escalation                                  | <input type="checkbox"/> Yes = 2, <input type="checkbox"/> No = 0                                  |             |
| <b>TOTAL SCORE:</b> _____  | Comments: _____  |             |

## **Attachment 3**

### **Interface Control Document**

**[to be attached – submitted separately for review]**

## **Attachment 4**

### **List of Transponder Models Establishing Benchmark Transponder Performance**

**[to be attached]**

## **Attachment 5**

**[Reserved.]**

## Attachment 6

### Form of Letter of Credit

(ISSUING BANK)

IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Ladies and Gentlemen:

At the request and for the account of the North Texas Tollway Authority ("NTTA"), 5900 W. Plano Parkway, Suite 100, Plano, TX 75093, we hereby issue this irrevocable stand-by letter of credit ("Letter of Credit") pursuant to the Tolling Services Agreement between NTTA and \_\_\_\_\_ ("Beneficiary") dated \_\_\_\_\_, 2008, as the same may be amended, modified or supplemented from time to time (the "TSA") in the initial amount of \$\_\_\_\_\_ **[insert the applicable amount determined pursuant to Section 16 of the Tolling Services Agreement]** (the "Stated Amount"). An amount not to exceed the Stated Amount, plus any increases by the amount of NTTA's reimbursements as provided below, may be drawn by the Beneficiary or any designee thereof under this Letter of Credit at any time with respect to the occurrence of a Drawing Event (as defined below).

Funds under this Letter of Credit will be made available to you against receipt by us of a Demand for Payment (as defined below), duly completed and purportedly signed by a representative of the Beneficiary. Any such Demand for Payment shall be presented at our office located at the address set forth below or at any other office in the same city which may be designated by written notice delivered by us to you prior to the presentation of the Demand for Payment. Each Demand for Payment hereunder may be made up to the close of business on the Stated Expiration Date. Multiple partial drawings are permitted hereunder with respect to the occurrence of a Drawing Event.

If a Demand for Payment is made by you hereunder at or prior to 10:00 a.m., central time, on any weekday (i.e., Monday through Friday, excluding Texas state holidays and U.S. federal holidays) (a "Business Day"), and provided that such Demand for Payment conforms to the terms and conditions hereof, payment shall be made by us to you in immediately available funds free and clear of and without deduction for any taxes, duties, fees, liens, set-offs or other deductions of any kind and regardless of any objection by any third party, to the account designated below or such other account at a national bank in the United States of America that you may designate in the Demand for Payment on the next Business Day after demand is made. If a Demand for Payment is made by you hereunder after 10:00 a.m., central time, on a Business Day, and provided that such Demand for Payment conforms to the terms and conditions hereof, such payment shall be made no later than the close of business, local time of the location of

the account designated below or such other account at a national bank in the United States of America that you may designate in the Demand for Payment, on the second Business Day after demand is made. Payment under this Letter of Credit shall be made in same day funds, by wire transfer to your account described below or such other account as you may designate in writing.

Financial Institution: \_\_\_\_\_  
Routing Number: \_\_\_\_\_  
Account Name: \_\_\_\_\_  
Account Number to Credit: \_\_\_\_\_  
Reference: \_\_\_\_\_  
Attention: \_\_\_\_\_

If any Demand for Payment delivered by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you notice thereof, stating the reasons therefor and that we will upon your instructions hold any document at your disposal or return the same to you. Upon receipt of any such notice, you may attempt to correct any such non-conformance; provided, however, that any Demand for Payment presented to correct such non-conforming demand must be presented on or prior to the Stated Expiration Date.

The Letter of Credit may be transferred by you in connection with a transfer and assignment of your rights under the TSA upon receipt by us of a transfer request in the form attached hereto as Annex B accompanied by this original Letter of Credit.

In the event of any drawing by you hereunder, we shall immediately notify NTTA of such drawing, and request that NTTA reimburse us in the amount of such drawing, plus any interest earned thereon. If, and to the extent that, NTTA reimburses us prior to the termination date hereof for any amounts drawn by you hereunder, the available amount under this Letter of Credit shall be increased by the amount of NTTA's reimbursement. During our business hours you may request and we will thereupon provide to you documented verification of increases and of the then available amount of this Letter of Credit.

Except as expressly stated herein, this Letter of Credit is not subject to any condition or qualification. We engage with you that all Demands for Payment made in compliance with the terms of this Letter of Credit will be duly honored upon delivery of documents as specified if presented at this office in the manner described above on or before \_\_\_\_\_, 20\_\_ (the "Stated Expiration Date").

This Letter of Credit shall become effective immediately, and shall automatically terminate on the earliest to occur of (i) our honoring of a drawing hereunder in an amount equal to the Stated Amount plus any increases by the amount of NTTA's reimbursements, or (ii) the close of business on the Stated Expiration Date.

All notices (including without limitation presentation of any Demand for Payment) to be made to us under this Letter of Credit shall be in writing, shall refer to this Letter of Credit by number, and shall be delivered by hand or sent by registered or certified mail, postage prepaid, return receipt requested, if to us at **[address]**, **[attention]**, or at such address as we shall notify you in writing.



As used herein:

- (i) "Demand for Payment" shall mean the delivery to us of a certificate in the form attached as Annex A hereto.
- (ii) "Drawing Event" shall mean the occurrence of any event under paragraph (2) of the Demand for Payment.

The Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, (including the TSA), instrument or agreement referred to or to which the Letter of Credit relates (except only the certificates referred to herein); and any such reference shall not be deemed to incorporate herein by reference any document (including the TSA), instrument or agreement (except for such certificates). The obligations of the Issuing Bank under this Letter of Credit are the individual obligations of the Issuing Bank and are in no way contingent upon reimbursement with respect thereto from NTTA or any other party.

Except so far as otherwise expressly stated, this Letter of Credit is subject to the International Standby Practices ("ISP98"), International Chamber of Commerce Publication No. 590 (the "Uniform Customs"), which shall in all respects be deemed a part hereof as fully as if incorporated herein except as modified hereby.

This Letter of Credit shall be deemed to be a contract made under the laws of the State of Texas and applicable U.S. federal law, and shall, as to matters not governed by Uniform Customs, be governed by and construed in accordance with the laws of the State of Texas, without regard to principles of conflicts of law.

Any failure by you to draw upon this Letter of Credit as permitted hereunder shall not cause this Letter of Credit to be unavailable for any future drawing, provided that this Letter of Credit has not expired prior to such future drawing and that all requirements of this Letter of Credit are independently satisfied with respect to any such future drawing.

Communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at \_\_\_\_\_, Attention: \_\_\_\_\_, specifically referring to the number of this Letter of Credit.

Very truly yours,

**[ISSUING BANK]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ANNEX A

TO LETTER OF CREDIT  
DEMAND FOR PAYMENT CERTIFICATE

Date: \_\_\_\_\_, 20\_\_

[ISSUING BANK]

RE: Irrevocable Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit")

The undersigned, a representative of \_\_\_\_\_ (the "Beneficiary"), hereby certifies to [Issuing Bank] as follows:

1. The Beneficiary is making a Demand for Payment under the above-referenced Letter of Credit in the amount of US \$\_\_\_\_\_ (the "Requested Drawing Amount") for credit to Account No. \_\_\_\_\_ of the Beneficiary at [institution and location of institution].
2. Under the terms of the Tolling Services Agreement (TSA) dated \_\_\_\_\_ between the undersigned and the North Texas Tollway Authority (NTTA), the Beneficiary is entitled to draw on the Letter of Credit for the Requested Drawing Amount.
3. The Requested Drawing Amount was computed in compliance with the terms and conditions of the Letter of Credit, does not exceed the Stated Amount of the Letter of Credit and does not exceed the amount available to be drawn under the Letter of Credit.
4. This Demand for Payment is made before the Stated Expiration Date of the Letter of Credit.

Capitalized terms used herein (without definition) shall have the respective meanings set forth in the Letter of Credit.

IN WITNESS WHEREOF, the undersigned, the [office held] of the Beneficiary has executed and delivered this Certificate as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[Name]

ANNEX B  
TO  
LETTER OF CREDIT  
TRANSFER REQUEST

**To:** [Issuing Bank]

**RE:** Irrevocable Letter of Credit No. \_\_\_\_\_

We have assigned our interest under the Tolling Services Agreement to the party named below as secondary beneficiary, and we hereby request you to transfer all our rights as beneficiary under the Letter of Credit referenced above to the second beneficiary named below.

\_\_\_\_\_  
Name of second beneficiary

\_\_\_\_\_  
Address

We do hereby transfer all our rights as the original beneficiary, including all rights to make drawings under the Letter of Credit, to the second beneficiary. The second beneficiary shall have sole rights as beneficiary, whether existing now or in the future, including rights to agree to any amendments, including increases or extensions or other changes. All amendments will be sent directly by the second beneficiary without the necessity of consent by or notice to us.

We enclose the original letter of credit and any amendments. Please indicate your acceptance of our request for the transfer by processing the letter of credit and sending it to the second beneficiary with your customary notice of transfer.

Your transfer fee: \$\_\_\_\_\_

Enclosed is our check for \$\_\_\_\_\_.

You may debit our Account No. \_\_\_\_\_

We also agree to pay you on demand any expenses which may be incurred by you in connection with this transfer.

\_\_\_\_\_  
Name of beneficiary

\_\_\_\_\_  
Address

Annex B

## **Attachment 7**

### **Initial Designation of Authorized Representatives**

#### **For NTTA:**

Name: Clayton K. Howe

Title Assistant Executive Director of Operations

Address: 5900 W. Plano Parkway, Plano, Texas 75093

Office Tel: 214.461.2000

Mobile Tel: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: [chowe@NTTA.org](mailto:chowe@NTTA.org)

#### **For Developer:**

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

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

Address: \_\_\_\_\_

Office Tel: \_\_\_\_\_

Mobile Tel: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

## Attachment 8

### Example of Calculation of Delinquent Payment Deduction

| <i>Typical Monthly Delinquent Payment Deduction</i> |                 |                         |                       |               |                                     |
|---|-----------------|-------------------------|-----------------------|---------------|-------------------------------------|
| Month:  | December, 2007  |                         |                       |               |                                     |
| LIBOR on 12/1/07                                    | 8%              |                         |                       |               |                                     |
| LIBOR + 400 basis points                            | 12%             | (100 Basis points = 1%) |                       |               |                                     |
| <u>Business Date</u>                                | <u>Due Date</u> | <u>Payment Date</u>     | <u>Number of Days</u> | <u>Amount</u> | <u>Delinquent Payment Deduction</u> |
| 12/3/2007   | 12/5/2007       | 12/6/2007               | 1                     | \$100,000.00  | \$32.88                             |
| 12/4/2007   | 12/6/2007       | 12/8/2007               | 2                     | \$125,000.00  | \$82.19                             |
|   |                 |                         |                       | Total         | \$115.07                            |

## Attachment 9

### Example of Calculation of Non-Compliance Deduction

| Typical Non-Compliance Deduction Calculation |            |  |
|--|------------|--|
| Adjusted Payment Period Compensation         | #####      |  |
| Monthly Non-Compliance Reduction %           | 2%         | For this Sample Month, the NTTA was non-compliant in performance which resulted in 18 Non-Compliance points. The Reduction % is then 2%. |
| Monthly Non-Compliance Deduction             | \$2,000.00 |  |

## **Attachment 10**

### **Summary of Certain Terms of NTTA's Business Continuity Plan**

**[Summary follows this page.]**

Attachment 10

## **Attachment 11**

### **Summary of NTTA's Audit and Reconciliation Procedures**

**[Summary follows this page.]**

Attachment 11



## **Attachment 12**

### **Summary of NTTA's Marketing/Distribution Activities**

**[Summary follows this page.]**

Attachment 13