

**TOLLING SERVICES AGREEMENT**

**IH 635 MANAGED LANES PROJECT**

**Between**

**NORTH TEXAS TOLLWAY AUTHORITY**

**and**

**LBJ INFRASTRUCTURE GROUP LLC**

**Dated September 4, 2009**

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## TOLLING SERVICES AGREEMENT

THIS TOLLING SERVICES AGREEMENT (the "Tolling Services Agreement") is entered into and effective as of September 4, 2009 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 **LBJ Infrastructure Group LLC**, a Delaware limited liability company ("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. NTTA further agrees that, with respect to deferred revenue amounts that NTTA receives from its customers pursuant to the terms governing NTTA customer accounts, NTTA will establish, no later than the date that is six months prior to the Service Commencement Date for the Project (or the initial Project Segment, if Developer develops the Project in Project Segments, rather than as a whole, pursuant to the terms of the Agreement), a trust account created for the benefit of such customers and into which such deferred revenue amounts shall be deposited and held, free and clear of any claim, lien, charge, security interest or encumbrance in favor of any creditor of NTTA, pending application thereof to toll charges owing by such customers (whether in respect of the Project or in respect of any other facility, whether owned and operated by NTTA or a party other than NTTA). NTTA shall deliver evidence of the establishment of such trust account to Developer no later than the date that is six months prior to the initial Service Commencement Date. Notwithstanding the preceding provisions of this Section 2(e), however, the deadlines for NTTA's establishment of the trust account contemplated hereby and NTTA's delivery of evidence thereof to Developer shall be subject to extension in accordance with Section 35 of this Tolling Services Agreement.

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 October 15, 2012 (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 October 15, 2012 (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. Notwithstanding the preceding provisions of this Section 3(c) concerning the timing for the Parties' cooperation and preparation of a mutually acceptable transition plan and the updating of such plan, the deadlines and time frames related thereto shall be subject to adjustment and extension in accordance with Section 35 of this Tolling Services Agreement.

#### 4. Toll Collection and Enforcement Services

- (a) NTTA shall provide complete back office functions pertaining to toll collection and enforcement for the Project, consistent with the practices utilized by NTTA with respect to its own facilities. 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 11) 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 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 all costs of re-establishing necessary connections between the ETCS to the newly located NTTA CSC Host equipment in connection with such relocation. Upon the request of either Party, the Independent Engineer shall review such costs and advise the Parties concerning the accuracy of any statement thereof. 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 ETCS performance requirements 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 12).
- (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 with respect to any applicable portion of the Project during an Emergency Mode. 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). 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).
- (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 payable to NTTA) (and subject to any adjustments provided for in Section 6(a)(ii)) for Interoperable Transactions.

6. Compensation for Services

- (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.

- (i) Subject to Section 35, the Base Transaction Fee for each Transaction received by NTTA's CSC Host initially, as of the Service Commencement Date for the Project (or, subject to Section 35, the initial Project Segment, if Developer develops the Project in Project Segments), shall be four and one-half cents

(\$0.045) and shall increase (rounded to the nearest 1/10<sup>th</sup> cent) every two years on the anniversary of such 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. Notwithstanding the foregoing, if the Service Commencement Date for the Project (or, subject to Section 35, the initial Project Segment, if Developer develops the Project in Project Segments) occurs in or before 2014, the Base Transaction Fee shall be and remain four and one-half cents (\$0.045) until the anniversary of such Service Commencement Date occurring during 2016, which shall be the first escalation date hereunder.

- (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 in writing by the Parties pursuant to Section 8(f) 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.

- (i) Subject to Section 35, 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 three and three-quarters percent (3.75%) 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 in writing by the Parties pursuant to Section 8(f) 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):

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

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):

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

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(e)-1 below

NTTA Compensation  $n,m$  = Base Transaction Fees for Period  
 $n,m$  + Variable Transaction Fees for  
Period  $n,m$

Table 6(e)-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 Section 6(e)(iii), each month NTTA will assign Non-Compliance Points to its performance in accordance with the Performance Standards and the terms hereof 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).

(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 ETCS performance requirements 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), then (A) such Party shall, within 14

days after delivering or receiving (as the case may be) 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) the Party from which the disputed amount is payable shall, 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) (other than monthly adjustments provided for in Section 6(h)(ii)), within two Business Days after the date the Transponder Transaction has been properly transmitted to NTTA's CSC Host in accordance with the ICD. Notwithstanding the foregoing (but subject to Sections 7(c) and 7(d), and except as provided in Section 22(d)), with respect to any Transponder Transaction for which Developer does not receive an acknowledgment of receipt by NTTA's CSC Host in accordance with the ICD, (x) if Developer has both notified NTTA of such attempted transmittal and also made arrangements with NTTA either for the transmittal or for the delivery to NTTA of the applicable Transponder Transaction data in digital form in accordance with the ICD within four hours after Developer's initial transmittal of such Transponder Transaction to NTTA's CSC Host in accordance with the ICD, then NTTA shall be obligated to deposit or cause to be deposited the applicable amount within such two Business Day period from the date and time of the initial transmittal, and (y) if Developer shall not have both so notified NTTA of such attempted transmittal and also made arrangements with

NTTA either for the transmittal or for the delivery to NTTA of the applicable Transponder Transaction data in digital form in accordance with the ICD within such four hour period, then the period within which NTTA is obligated to deposit or cause to be deposited the applicable amount shall be extended to the corresponding time, less four hours, on the date that is two Business Days from the date and time that Developer shall have both so notified NTTA of such transmittal and also so made arrangements with NTTA either for the transmittal or for the delivery to NTTA of the applicable Transponder Transaction data in digital form in accordance with the ICD. The applicable 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(a) does not include any Incidental Charges.

- (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) (other than monthly adjustments provided for in Section 6(h)(ii)), within two Business Days after the date the Video Transaction has been properly transmitted to NTTA's CSC Host in accordance with the ICD. Notwithstanding the foregoing (but subject to Sections 7(c) and 7(d), and except as provided in Section 22(d)), with respect to any Video Transaction for which Developer does not receive an acknowledgment of receipt by NTTA's CSC Host in accordance with the ICD, (x) if Developer has both notified NTTA of such attempted transmittal and also made arrangements with NTTA either for the transmittal or for the delivery to NTTA of the applicable Video Transaction data in digital form in accordance with the ICD within four hours after Developer's initial transmittal of such Video Transaction to NTTA's CSC Host in accordance with the ICD, then NTTA shall be obligated to deposit or cause to be deposited the applicable amount within such two Business Day period from the date and time of the initial transmittal, and (y) if Developer shall not have both so notified NTTA of such attempted transmittal and also made arrangements with NTTA either for the transmittal or for the delivery to NTTA of the applicable Video Transaction data in digital form in accordance with the ICD within such four hour period, then the period within which NTTA is obligated to deposit or cause to be deposited the applicable amount shall be extended to the corresponding time, less four hours, on the date that is two Business Days from the date and time that Developer shall have both so notified NTTA of such transmittal and also so made arrangements with NTTA either for the transmittal or for the delivery to NTTA of the applicable Video Transaction data in digital form in accordance with the ICD. The applicable 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 (or in the case of any Transaction that has been reclassified, more than 30 days after the date on which Developer has been notified of the reclassification), 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, 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
  - (v) 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) 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.
  - (c) NTTA shall issue a statement to each Video Transaction User (for whom NTTA has necessary registration and mailing address information) and shall provide each such Video Transaction User the opportunity to pay such invoice, in each case consistent with NTTA's practices regarding customers of its own facilities, prior to treating such Video Transaction as a violation or initiating violation processing and procedures against such Video Transaction User. If a Video Transaction User shall fail to pay any such statement within the applicable allotted time period, then NTTA may initiate violation processing and procedures against such Video Transaction User, consistent with NTTA's policies regarding customers of its own facilities.
  - (d) For the purpose of Section 8(c), "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.
  - (e) 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).

- (f) Following the execution of this Tolling Services Agreement and at least six months before the projected Service Commencement Date for the Project (or the initial Project Segment, if Developer develops the Project in Project Segments), 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.
- (g) 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 (for this purpose, determined to be a Transponder Transaction without reference to the sufficiency of funds in the applicable customer account) 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 and as contemplated herein) 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 (as required by the ICD and as contemplated herein) at any time following the date on which the reclassification of the applicable Transponder Transaction to an Unpostable Transponder Transaction is included in a report provided for in Section 14(a), as provided in Section 8(e)). If Developer elects not to send such video images and video data within seven days following NTTA's request, 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 Transaction on the Project by the Transponder Issuer's customer that was originally characterized as a Transponder Transaction (prior to such determination of insufficient funds), 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 and request a video image and video data, within seven days of NTTA's receipt of the applicable Transponder Transaction, with respect to any such Transaction that is not settled by the Transponder Issuer within that time frame. For the avoidance of doubt, a Transaction that was originally characterized as a Transponder Transaction is automatically reclassified as a Video Transaction if both (i) the video image is available, and (ii) the account persists to have insufficient funds to pay the full toll for the 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. If the video image is unavailable and the account so persists to have insufficient funds, however, then the Transaction will be adjusted as one not involving a Candidate Vehicle unless and until such time as Developer resubmits the Transaction with video images and video data.

- (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 Fees and Variable Transaction Fees 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 for the Project (or the initial Project Segment, if Developer develops the Project in Project Segments), 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 in writing by the Parties pursuant to Section 8(f) 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 NTTA is or becomes aware that any account or Video Transaction User has been 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 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); provided, however, that NTTA shall always be obligated to promptly arrange for such refund if it has received payment of such overcharge from Developer or the trustee under the Project Trust Agreement, as the case may be, pursuant to the immediately following sentence. 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, and following receipt of such invoiced amount, NTTA shall promptly refund such amount to the relevant account or Video Transaction User. 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 Substantial Completion of the Project (or the initial Project Segment if Developer develops the Project in Project Segments), 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 date of Substantial Completion of the Project (or the initial Project Segment if Developer develops the Project in Project Segments), with a view to the Parties' identification and correction of any problems no later than 60 days before the date of such Substantial Completion. 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 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. For the avoidance of doubt, unless otherwise agreed in writing by NTTA and Developer, tolling on the Project shall be conducted on a transaction, rather than a trip, basis, and will involve a single point of payment-, barrier-type toll collection process.

- (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. For the avoidance of doubt, the interoperable fees referred to in this Section 12(j) shall be the interoperable fees that may be payable to NTTA pursuant to interoperability agreements to which NTTA is a party or bound or in which NTTA participates at any applicable time or times, separate and apart from this Tolling Services Agreement.

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 prior written 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 for the Project (or the initial Project Segment, if Developer develops the Project

in Project Segments), Developer and NTTA shall prepare a mutually acceptable plan for identifying, 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 13). 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) operational signage and displays required to indicate to Users that NTTA is providing tolling services in respect of the Project, and NTTA shall bear the cost of obtaining, erecting, maintaining, replacing and removing (unless removal is being effected as a consequence of a default hereunder by Developer) signage and displays advertising and promoting NTTA that are provided for in the approved plan (or otherwise approved in writing by NTTA and Developer). On or prior to expiration or earlier termination of this Tolling Services Agreement, all such signs and displays containing NTTA's name, logos, trademarks and brands shall be removed from the Project Right of Way, 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 reclassified as Unpostable Transponder Transactions or 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. (An example of a report showing Transponder Transactions and Interoperable Transactions reclassified as Video Transactions is attached hereto as Attachment 10.) 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 initially determine (as provided in Section 10(a)) or 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 for the Project (or the initial Project Segment, if Developer develops the Project in Project Segments), 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 for the Project (or the initial Project Segment, if Developer develops the Project in Project Segments) 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 such Service Commencement Date. Notwithstanding the foregoing, the deadline for NTTA's delivery of the initial letter of credit hereunder shall be subject to extension pursuant to Section 35(d).
- (b) The face amount of such letter of credit for each of the first, second and third Service Years shall be equal to fifty percent (50%) of the Toll Revenues that Developer's Base Case Financial Model projects will be earned during the third Service Year. The face amount of such letter of credit for each of the fourth 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. Notwithstanding the foregoing, however, in the event that Developer is to develop the Project in Project Segments rather than as a whole, then the face amount of the letter of credit delivered hereunder shall be modified as provided in Section 35(d) of this Tolling Services Agreement, and any references in this Tolling Services Agreement to the letter of credit or the face amount thereof (or of any cash collateral account) required hereunder shall be to such letter of credit and amount thereof as modified pursuant to such Section 35(d).

- (c) Not later than 30 days prior to each anniversary of the Service Commencement Date for the Project (or the initial Project Segment, if Developer develops the Project in Project Segments), 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 one year 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(e)(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 delivery of its 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 that is acceptable to Developer pursuant to escrow arrangements acceptable to Developer. 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 Business 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 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. 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. NTTA shall pay all

charges imposed in connection with the establishment and maintenance of any account established pursuant to Section 16(h) and all charges imposed in connection with Developer's withdrawal of funds therefrom.

- (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 or organization or combination of parties. Substitute performance security proposed pursuant to this Section 16(l) may include, without limitation, performance security provided by the State of Texas or any agency or political subdivision thereof, or any other public mobility organization located in, or with responsibility for, the area in which the Project is located (including, without limitation, the North Central Texas Council of Governments). Any such substitute performance security provided pursuant to this Section 16(l) shall be subject to Developer's prior written approval in its sole and absolute discretion. The cost of any such substitute performance security provided in lieu of the letter of credit shall be reimbursed to the provider thereof by Developer within 30 days following NTTA's or such other provider'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; provided, however, that the substitute performance security provider shall have the option (in its sole and absolute discretion and without any obligation to do so) to provide such substitute performance security at such provider's own cost and expense. Any provider of substitute performance security as contemplated by this Section 16(l) is an intended beneficiary of the provisions of this Section 16(l).

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, if any, that 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 limited liability company duly organized and validly existing under the laws of Delaware, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this 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, partnership or limited liability company action (as the case may be) 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 Tolling Services 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 and/or Collateral Agent that Developer desires should have the right (but not the obligation) to cure any default by Developer hereunder, and the address for notice to such Lender and/or Collateral Agent, NTTA shall deliver to such Lender and/or Collateral Agent written notice of any default by Developer hereunder at the same time as delivery of the default notice to Developer. Such Lender and/or Collateral Agent shall have the right (but not the obligation) to cure such default within the same period of time granted to Developer hereunder, plus, in the case of a default under Section 19(a)(i)(A) or (E), an additional 30 days (15 days in the case of a payment default) following the expiration of the cure period afforded 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/or Collateral Agent and Developer, or whether such Lender and/or Collateral Agent 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 any such failure to perform an obligation, other than a payment obligation, cannot be cured within 30 days but NTTA has begun diligently pursuing a cure of such failure within such 30 days and continues to diligently pursue such cure, for 90 days) (provided, however, that a failure to perform any payment obligation shall be deemed cured if Developer shall obtain payment of the related amounts from any performance security provided under Section 16 hereof); 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, 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.

With respect to Developer's exercise of its step-in rights under this Section 19(d)(ii), the determination as to whether it is Developer or Developer's designee that is to be the party who is to so step in shall be at Developer's sole option. With respect to the requirement that the Person stepping in shall perform at the same level of service required of NTTA hereunder, such Person shall have a "ramp up" period of 90 days from and after so stepping in

to achieve such level of service 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. NTTA in any event shall not have any liability to Developer hereunder due to the inability or failure of any Person stepping into NTTA's responsibilities under this Tolling Services Agreement to perform such responsibilities at a level at least equivalent to that required of NTTA hereunder.

- (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) (as contemplated by Section 19(d)(ii), including the provisions thereof concerning the permissibility of TxDOT stepping in as Developer's designee and the deemed compliance of TxDOT's performance with the level of service required hereunder) 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 if 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 except (1) to the extent, if any, that NTTA is then continuing to perform any services hereunder during the transition of services to Developer or Developer's designee, in which case NTTA shall be paid in accordance with the terms hereof, (2) with respect to Transactions it processes before transition of the applicable services, functions, rights and responsibilities to Developer, its contractors or designees and (3) 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 under applicable Law 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 as set forth in Section 6 hereof; provided, however, that to the extent pursuant to applicable Law NTTA is entitled to claim from Developer damages that result from an early termination (other than an early termination due to a default by NTTA hereunder) and constitute a measure of future compensation, the aggregate amount of such damages, if any, that may be payable to NTTA for such lost future compensation in respect of the remaining period of the stated Term of this Tolling Services Agreement (without regard to such 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 Tolling Services 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 an 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 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.
- (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 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.
- (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 for the Project (or the initial Project Segment, if Developer develops the Project in Project Segments), the end of the ten year period commencing on such Service Commencement Date and ending on the day before the tenth anniversary of such 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) such default has continued uncured after the expiration of any applicable cure period afforded hereunder to Developer or any Lender and/or Collateral Agent, (B) NTTA shall first deliver to Developer written notice of election to terminate, (C) 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, and (D) 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 for the Project (or the initial Project Segment, if Developer develops the Project in Project Segments), the end of the ten year period commencing on such Service Commencement Date and ending on the day before the tenth anniversary of such 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 of a right to terminate this Tolling Services Agreement without cause, in which case such expenses shall be paid by NTTA. Following the termination of this Tolling Services 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 and owing to it 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), as a consequence of the circumstances described in Section 22(b), beyond the date payment would otherwise be due under Section 7 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; New TSA

- (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 pursuant to Section 23(a) 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.
- (e) In the event that (i) the CDA Documents and this Tolling Services Agreement are terminated under circumstances in which, under the terms of Section 20.4.8 of the Agreement, a Lender or Substituted Entity would have the option to enter into New Agreements with TxDOT, and (ii) such Lender or Substituted Entity elects under Section 20.4.8 of the Agreement to enter into New Agreements, then, unless this Tolling Services Agreement was terminated by NTTA pursuant to a right of NTTA to terminate this Tolling Services Agreement without cause, such Lender or Substituted Entity and NTTA also shall enter into a new Tolling Services Agreement (the "New TSA"), subject to the following: (A) the New TSA shall be effective as of the date of termination of this Tolling Services Agreement and shall be for the remainder of the term of this Tolling Services Agreement, and otherwise shall be on the terms, covenants and conditions contained in this Tolling Services Agreement; (B) as a condition to the effectiveness of the New TSA and upon the execution of the New TSA by such Lender or Substituted Entity and NTTA, such Lender or Substituted Entity shall pay to NTTA any and all sums that would be due under this Tolling Services Agreement but for such termination and shall otherwise fully remedy any existing defaults by Developer under this Tolling Services Agreement (provided, however, that with respect to any such defaults by Developer that cannot be cured until such Lender or Substituted Entity obtains possession of the Project, such Lender or Substituted Entity shall have such time, after it obtains possession, as is necessary with the exercise of good faith, diligence and continuity, to cure such defaults, in any event not to exceed 180 days after the date it obtains possession); and (C) as a condition to the effectiveness of the New TSA and upon the execution of the New TSA by such Lender or Substituted Entity and NTTA, without duplication of any amounts previously paid by Developer, such Lender or Substituted Entity shall pay to NTTA all reasonable costs and expenses incurred by NTTA in connection with (1) Developer's default and the termination of this Tolling Services Agreement, (2) the assertion of rights, interests and defenses in any bankruptcy proceeding, (3) all costs incurred by NTTA and not paid by Developer or TxDOT during any period of possession of the Project by TxDOT and (4) the preparation, execution and delivery of the New TSA. Upon request of the applicable Lender or Substituted Entity, NTTA will provide a written, documented statement of the costs and expenses described in clause (C) of the preceding sentence. In the event this Tolling Services Agreement is terminated as a result of any bankruptcy or insolvency proceeding of Developer in which the Agreement is not terminated and New Agreements are not to be entered

into by a Lender or Substituted Entity under Section 20.4.8 of the Agreement, then, without limiting any obligation of Developer, any Lender or any Substituted Entity under applicable law to enter into a new Tolling Services Agreement with NTTA, upon a Lender's or Substituted Entity's written request delivered to NTTA within 60 days of such termination, such Lender or Substituted Entity and NTTA shall enter into a New TSA subject to the terms and conditions set forth in clauses (A) through (C) of the second preceding sentence (and NTTA will reasonably cooperate with Lender or such Substituted Entity in Lender's or such Substituted Entity's procurement of any court, trustee or regulatory approvals required for such New TSA, subject to Lender's or such Substituted Entity's payment of the reasonable costs and expenses of NTTA incurred in connection therewith). The provisions of this Section 23(e) shall survive the termination of this Tolling Services Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 23(e) were a separate and independent contract made by NTTA and the Lender or Substituted Entity.

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:

LBJ Infrastructure Group LLC  
7700 Chevy Chase Drive, Building One, Suite 500C  
Austin, TX 78752-1562  
Attention: Jose Maria Lopez de Fuentes  
Telephone: (512) 637-8545  
Facsimile: (512) 637-1498  
E-mail: jmlopez@cintra.us.com

With copies to:

LBJ Infrastructure Group LLC  
7700 Chevy Chase Dr., Building One, Suite 500C  
Austin, TX 78752  
Attention: Alfonso Orol  
Telephone: (512) 637-8545  
Facsimile: (512) 637-1498  
E-mail: aorol@cintra.us.com

If to NTTA by U.S. mail, facsimile or electronic mail:

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

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

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

This Tolling Services Agreement may be amended only if in writing executed by Developer and NTTA. Any changes to the performance security requirements under this Tolling Services Agreement, including any substitute performance security in lieu of the letter of credit and/or cash account provided for in Section 16 hereof, is subject to TxDOT's prior written approval.

30. Independent Engineer

As soon as practicable following the Parties' execution and delivery of this Tolling Services Agreement, and in any event no later than the date that is 12 months before the projected Service Commencement Date (subject to extension of such deadline pursuant to Section 35(e) of this Tolling Services Agreement), 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"), which Independent Engineer Agreement shall provide for, among other things, the right by each Party to unilaterally remove the then acting Independent Engineer (i) for cause or (ii) once every five years without cause; provided, however, that in connection with the removal and replacement of the Independent Engineer without cause, the Party effecting the removal shall bear the costs and expenses of both Parties that are related to the engagement of a successor Independent Engineer. 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. The Parties agree not to disclose the findings, reports or other work product of the Independent Engineer to any person other than a Permitted Person; provided, however, that such non-disclosure restriction shall not apply to any information as and to the extent required to be disclosed by applicable law or to information that becomes public other than by virtue of a breach of this restriction, and such non-disclosure restriction also shall not preclude disclosure of information to any applicable arbitrator or court in a dispute resolution proceeding pursuant to Section 20 of this Tolling Services Agreement. Permitted Persons shall be informed of the confidential nature of the information disclosed to them and shall be required to agree to act in accordance with the provisions of the foregoing non-disclosure provisions with respect to such information.

31. Non-Disparagement

Each Party agrees not to make any statement, written or oral, to any third party which disparages or criticizes the other Party or the other Party's respective officers, directors, agents, or management and business practices, in each case in connection with the performance or administration of this Tolling Services Agreement or in connection with any matter related hereto. The provisions of this Section 31 shall not apply to any truthful statement required to be made by either Party, or such Party's officers, directors or agents, as the case may be, in any legal proceeding or governmental or regulatory investigation or to any internal discussions or communications between the Parties.

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.

35. Modification of Certain Deadlines and Other Items Related to Tolling Commencement for Project Segments Rather than the Project as a Whole. In the event that Developer is to develop the Project in Project Segments rather than as a whole and, as a consequence thereof, the Service Commencement Date for one or more Project Segments shall occur prior to January 1, 2011, then Developer and NTTA acknowledge and agree that certain of the deadlines set forth in this Tolling Services Agreement for performance of certain obligations by NTTA may need to be extended, certain elements of the fees payable to NTTA pursuant to Section 6 hereof will be adjusted, and the face amount of the letter of credit to be provided pursuant to Section 16(b) hereof shall be modified. Set forth below are terms relating to such matters. Without limiting or impairing any of the extensions provided for below, in the event Developer is to develop the Project in Project Segments, Developer agrees to give NTTA at least 12 months prior written notice of the Service Commencement Date for the first Project Segment. The following extensions and modifications shall apply in respect of the applicable provisions of this Tolling Services Agreement referenced below:

(a) Modification of Section 2(e). The deadline for NTTA's establishment of the trust account contemplated by Section 2(e) of this Tolling Services Agreement in any event shall not occur prior to July 31, 2009, notwithstanding whether the Service Commencement Date for the initial Project Segment shall occur before February 1, 2010.

(b) Modification of Section 3(c). If the Service Commencement Date for the initial Project Segment is to occur before the date that is 30 months following the date upon which Developer has delivered to NTTA prior written notice of the Service Commencement Date for the first Project Segment, then NTTA and Developer shall exercise commercially reasonable efforts to begin, as soon after NTTA's receipt of such notice from Developer as is reasonably possible, to cooperate with each other to prepare the transition plan contemplated by Section 3(c) of this Tolling Services Agreement and to complete such transition plan within 24 months thereafter (or such earlier date as may be reasonably achievable and agreed to in writing by Developer and NTTA). Such time frames shall control over the time frames set forth in Section 3(c) of this Tolling Services Agreement.

(c) Modification of Sections 6(b) and 6(c).

- (i) In the event that Developer is to develop the Project in Project Segments rather than as a whole, the Base Transaction Fee set forth in Section 6(b) and the Variable Transaction Fee set forth in Section 6(c) may be adjusted by NTTA as follows: NTTA shall utilize Developer's Base Case Financial Model projections with respect to (i) traffic and Toll Revenues for the applicable Project Segment, (ii) the respective percentages of Transponder Transactions and Video Transactions for the applicable Project Segment, and (iii) other pertinent data relating to the applicable Project Segment and shall apply the methodology utilized to develop the Base Transaction Fee and Variable Transaction Fee for the entire Project and set forth in Section 6 to determine the Base Transaction Fee and the Variable Transaction Fee for the applicable Project Segment.
- (ii) In the event that Developer develops two or more Project Segments, NTTA may adjust the Base Transaction Fee and the Variable Transaction Fee by using Developer's Base Case Financial Model projections for such segments to determine the Base Transaction Fee and Variable Transaction Fee for such segments as a whole.
- (iii) Upon completion of the Project as a whole, the Base Transaction Fee and the Variable Transaction Fee shall be as set forth in Section 6(b) and 6(c), respectively, of this Tolling Services Agreement.
- (d) Modification of Section 16(a) and (b). In the event that Developer is to develop the Project in Project Segments rather than as a whole, then the face amount of the letter of credit delivered pursuant to Section 16 hereof shall be reduced to an amount that is equal to fifty percent (50%) of the Toll Revenues that Developer's Base Case Financial Model projects will be earned during the applicable Service Year until the Service Year in which Substantial Completion of the entire Project is projected to occur, at which time the face amount of such letter of credit shall be equal to fifty percent (50%) of the Toll Revenues that Developer's Base Case Financial Model projects will be earned during the third Service Year. The face amount of such letter of credit for each of the fourth 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. If Substantial Completion of the entire Project does not occur until after the third Service Year, however, then the face amount of such letter of credit for the Service Year in which Substantial Completion of the entire Project occurs and for each subsequent Service Year 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. Provided that Developer gives NTTA the 12 months' prior written notice of the Service Commencement Date for the first Project Segment as required by this Section 35, then NTTA shall still be required to deliver the applicable letter of credit no later than six

months before the applicable Service Commencement Date. If Developer shall fail to give NTTA the required 12 months' prior written notice of the Service Commencement Date for the first Project Segment, then NTTA shall not be required to deliver the applicable letter of credit until six months after such notice is given.

- (e) Modification of Section 30. If the Service Commencement Date for the initial Project Segment is to occur before the date that is 15 months following the date upon which Developer has delivered to NTTA prior written notice of the Service Commencement Date for the first Project Segment, then the deadline by which the Parties are to engage the Independent Engineer pursuant to Section 30 of this Tolling Services Agreement shall be extended to the date that is four months following the date upon which Developer has delivered to NTTA such prior written notice (or such later date as may be agreed to by NTTA and Developer in writing).
- (f) Possible Modification of Other Provisions. If Developer shall fail to give NTTA at least 12 months' prior written notice of the Service Commencement Date for the first Project Segment, then, without limiting or impairing any of the rights and remedies of NTTA under this Tolling Services Agreement with respect to such failure, NTTA and Developer acknowledge and agree that the following deadlines set forth in the following Sections of this Tolling Services Agreement shall be extended, as may be reasonably required to permit NTTA to perform its obligations thereunder in a commercially reasonable manner: (i) the deadline of six months before the Service Commencement Date set forth in Sections 8(f) and 9(e) of this Tolling Services Agreement; (ii) the deadline of 90 days before the projected Service Commencement Date set forth in Section 12(c) of this Tolling Services Agreement for testing of the interconnection and interoperability of the ETCS and the CSC Host; (iii) the deadline of 120 days before the Service Commencement Date set forth in Section 13(d) of this Tolling Services Agreement for the Parties' preparation of a mutually acceptable plan for identifying, promoting and advertising NTTA's association with the Project; and (iv) the deadline of nine months before the scheduled Service Commencement Date set forth in Section 14(g) of this Tolling Services Agreement for NTTA's delivery to Developer of sample report formats.

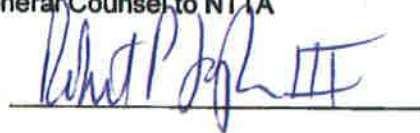
IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Tolling Services Agreement as of the date first written above.

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: Janice D. Davis  
Title: Interim Executive Director

**Developer**

**LBJ INFRASTRUCTURE GROUP LLC, a**  
Delaware limited liability company

By:   
Name: Carlos Ugarte  
Title: Authorized Representative

By:   
Name: Joseph Aiello  
Title: Authorized Representative

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