

**TOLLING SERVICES AGREEMENT**  
**SEGMENTS 3A AND 3B**  
**OF**  
**NORTH TARRANT EXPRESS PROJECT**  
**Between**  
**NORTH TEXAS TOLLWAY AUTHORITY**  
**and**  
**TEXAS DEPARTMENT OF TRANSPORTATION**

**Dated September 19, 2013**

## TABLE OF CONTENTS

	<u>Page</u>
1. Definitions and Interpretation.....	2
2. Engagement and General Statement of Responsibilities.....	3
3. Term; Transition of Services.....	7
4. Toll Collection and Enforcement Services.....	9
5. Financial Interoperability Functions and Terms.....	17
6. Compensation for Services.....	18
7. Toll Transaction Payments to TxDOT and Developer.....	28
8. Video Transactions.....	31
9. Transponder Transactions.....	33
10. No Duty to Enforce, Collect or Pay Certain Transactions.....	35
11. Overcharges; Credits to Account Holders.....	36
12. System Technology Interface; Interoperability.....	37
13. Intellectual Property and Licensing; Marketing Plan.....	42
14. Reports; TxDOT Protection of Patron Confidential Information.....	44
15. Records and Audit Rights.....	47
16. Video Transaction Toll Premiums and Incidental Charges.....	49
17. Change Orders and Change Directives.....	50
18. Representations and Warranties.....	54
19. Default and Remedies.....	56
20. Dispute Resolution.....	67
21. Termination; Transition of Services at Termination.....	69
22. Malfunction, Damage or Destruction of NTTA Facilities.....	71
23. Assignment.....	74
24. Special Provisions for Compliance with Agreement.....	74
25. Labor Practices.....	75

26.	Designation of Authorized Representatives .....	76
27.	Notices .....	76
28.	Third Party Beneficiaries.....	77
29.	Amendment of this Tolling Services Agreement or the Developer TSA.....	77
30.	Independent Engineer .....	78
31.	Non-Disparagement .....	79
32.	Governing Law .....	79
33.	Interpretation .....	79
34.	Counterparts.....	80

**Attachments**

Attachment 1	Definitions
Attachment 2	Performance Standards and Non-Compliance Points
Attachment 3	Interface Control Document
Attachment 4	List of Transponder Models Establishing Benchmark Transponder Performance
Attachment 5	[Reserved]
Attachment 6	[Reserved]
Attachment 7	Initial Designation of Authorized Representatives
Attachment 8	Example of Calculation of Delinquent Payment Deduction
Attachment 9	Example of Calculation of Non-Compliance Deduction
Attachment 10	[Reserved]
Attachment 11	Summary of Certain Terms of NTTA's Business Continuity Plan
Attachment 12	Summary of NTTA's Audit and Reconciliation Procedures
Attachment 13	Summary of NTTA's Marketing/Distribution Activities
Attachment 14	Form of Joinder Agreement to NTTA Master Custody Agreement
Attachment 15	Description of TxDOT's Toll Payment Obligations and Procedure for Payment Under the Developer TSA

## TOLLING SERVICES AGREEMENT

THIS TOLLING SERVICES AGREEMENT (the "Tolling Services Agreement") is entered into and effective as of September 19, 2013 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 the **Texas Department of Transportation**, a public agency of the State of Texas ("TxDOT"), with reference to the following facts.

### RECITALS

A. On June 23, 2009, TxDOT and NTE Mobility Partners Segments 2-4 LLC, an affiliate of Developer (defined below) ("Developer Affiliate") entered into a Comprehensive Development Agreement (the "CDA") to provide the framework for Developer Affiliate to collaborate with TxDOT for the conceptual, preliminary and final planning along with some or all of the development, design, construction, financing, operation and maintenance, of one or more facilities of the North Tarrant Express Project set forth in the CDA, including the Segments 3A and 3B Facility. The Segments 3A and 3B Facility, which is the only portion of the North Tarrant Express Project subject to this Tolling Services Agreement, is referred to herein as the "Facility".

B. On July 6, 2011, TxDOT and Developer Affiliate agreed upon a Facility Implementation Plan for the development of the Facility in accordance with the CDA.

C. On March 1, 2013, pursuant to the Facility Implementation Plan and in accordance with the CDA, TxDOT and NTE Mobility Partners Segments 3 LLC, a Delaware limited liability company ("Developer") entered into a Facility Agreement (the "Agreement") for the design, construction and/or reconstruction of general purpose lanes, managed lanes, railroad improvements, frontage roads, and crossing streets, utility adjustments, the establishment of tolling operations, and maintenance and operation of the Facility in Tarrant County, Texas.

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

E. 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 Facility.

F. Pursuant to the Agreement, Developer and TxDOT are contemporaneously entering into a Tolling Services Agreement (the "Developer TSA") pursuant to which Developer has agreed to retain TxDOT to provide certain customer services and certain toll collection, enforcement and interoperability functions and services for the Facility, on and subject to the terms of the Developer TSA.

G. TxDOT is entering into this Tolling Services Agreement pursuant to the Developer TSA to retain NTTA to provide and perform, as TxDOT's subcontractor, such customer services and toll collection, enforcement and interoperability functions and

services for the Facility, on and subject to the terms and conditions of this Tolling Services Agreement.

H. Pursuant to a resolution dated August 21, 2013, the Board of Directors of NTTA resolved to support TxDOT's development of the Facility and acknowledged that NTTA's sole role would be to provide the associated toll operations, as provided under applicable Law.

I. On August 29, 2013, the Commission passed Minute Order 113681, authorizing the executive director of TxDOT to enter into this Tolling Services Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth in this Tolling Services Agreement, NTTA and TxDOT 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 for the Facility (or for the Facility Segment that first achieves Service Commencement, if Developer develops the Facility in Facility Segments) or, if higher, at the time such evaluation is made, and with the Performance Standards under and other requirements of this Tolling Services Agreement, including as set forth in Section 4(i).
- (d) Any term of this Tolling Services Agreement obligating TxDOT to perform an act or function that TxDOT itself is unable to practicably perform because it does not own, control, or operate the ETCS or directly receive the data therefrom (such as but not limited to the obligations of TxDOT under Section 2(a), except Sections 2(a)(iii), (v), and Sections 8, 9, 12(a) and (f) and 22(a)) is deemed to mean that TxDOT shall contractually require Developer to perform such act or function, and TxDOT shall have no duty itself to perform such act or function. Wherever this Tolling Services Agreement refers to transmission or delivery of tolling-related data or information from TxDOT, (such as but not limited to Sections 9(e) and 14(i) and (j), and the definition of Candidate Vehicle), (i) it is deemed to mean the data or information that the Developer is obligated to provide to TxDOT or NTTA under the Developer TSA, and (ii) TxDOT shall have no duty itself to generate such data and information or deliver it to NTTA. TxDOT will use good faith efforts to enforce Developer obligations regarding its operations and other actions when NTTA shows it is suffering

detriment to its operations or costs from the Developer's lack of compliance.

2. Engagement and General Statement of Responsibilities.

TxDOT hereby engages NTTA to provide the services described herein from and after the Service Commencement Date for the Facility (or for the Facility Segment that first achieves Service Commencement, if Developer develops the Facility in Facility Segments) (except for any service that this Tolling Services Agreement specifically provides is to be performed by NTTA prior to such Service Commencement Date) and until the expiration or earlier termination of the Term (as defined herein), and NTTA hereby accepts such engagement. Except as otherwise provided in Section 19(d)(ii) in connection with TxDOT's exercise of step-in rights and in Section 22(e) during any period that NTTA is unable to normally render services hereunder due to the circumstances described in Section 22(b), during the Term NTTA will be the sole and exclusive provider of tolling services for the Facility. 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) TxDOT's general responsibilities include:
- (i) TxDOT 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 or its approved distributor 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 (also referred to herein as the "ICD").
  - (ii) TxDOT 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 (including any criteria that may be developed and agreed upon in writing by the Parties pursuant to Section 8(f) or 9(e)). Without limiting the foregoing, TxDOT shall be responsible for (A) determining the applicable toll, including Video Transaction Toll Premium (if any), 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. NTTA shall not have any

responsibility for any of the activities described in this paragraph (ii).

- (iii) TxDOT shall be responsible for interoperability fees to the extent set forth in Section 6(f).
- (iv) TxDOT shall cause Developer to provide reasonably detailed information to NTTA from time to time (upon NTTA's request) for purposes of training NTTA's customer service personnel adequately to respond to customer inquiries concerning Developer's dynamic or other toll pricing methodologies and policies. TxDOT shall provide or cause Developer to provide such additional assistance as reasonably required by NTTA to answer User questions relating to certain roadway operations, including but not limited to billing rates, accidents, operation of the managed lanes, and Developer's dynamic or other toll pricing methodologies and policies; provided that, prior to requesting the assistance of either TxDOT or the Developer, NTTA shall first endeavor to resolve such questions to the extent possible with information reasonably available to NTTA. Notwithstanding the foregoing, for the avoidance of doubt, TxDOT and Developer shall have no obligation or responsibility hereunder to handle or resolve customer communications, except as otherwise provided herein.
- (v) TxDOT shall not issue or permit the issuance of any transponders to Users in connection with the Facility other than as permitted or contemplated by this Tolling Services Agreement (including by Section 4(c)).
- (vi) TxDOT shall contractually prohibit Developer from imposing any tolls on Users in connection with the Facility other than as permitted by the Agreement and pursuant to tolling practices permitted by the Agreement, this Section 2(a) and Section 12(g) of this Tolling Services Agreement and the Developer TSA (subject to any change in such tolling practices made pursuant to Section 17 of this Tolling Services Agreement and the Developer TSA or otherwise pursuant to a written agreement between NTTA and TxDOT). TxDOT otherwise shall not take, and shall use good faith efforts to enforce any provisions in the Developer TSA to the extent such provisions prohibit Developer from taking, any actions in competition with the rights and responsibilities of NTTA hereunder (provided, however, that the foregoing shall not preclude TxDOT from marketing activities described in Section 4(d) or the Marketing Plan required in Section 13(d), from distributing NTTA-issued transponders on its own premises or allowing Developer to engage in such transponder distributions in its capacity as a distributor of NTTA, from exercising rights and remedies expressly provided to TxDOT hereunder in respect of this Tolling Services Agreement or in the Agreement in respect of the Agreement, and activities of TxDOT or any of its affiliates in connection with other toll roads).

(vii) So long as this Tolling Services Agreement is in effect NTTA agrees the Developer shall have the right at all times in order to undertake and implement any obligation of Developer under the Developer TSA to communicate and otherwise coordinate directly with NTTA, with a copy to TxDOT in case of any written communication and with, where and when practicable, advance notice to TxDOT of any oral communication regarding day-to-day operational and routine matters and NTTA may fully rely on and comply with any such communication unless NTTA reasonably believes the communication is inconsistent with this Tolling Services Agreement. For all other matters, the Developer TSA prohibits Developer from communicating directly with NTTA unless Developer shall have provided to TxDOT advance notice and an opportunity to participate in the communications. Further the Developer's interfaces, specifications and business rules with NTTA (in particular to the reconciliation of transactions and the definition of candidate vehicles) will be consistent to the greatest extent reasonably possible with those developed for the NTE Segment 1-2 and LBJ projects (taking into account such differences as relate to the differences between this Tolling Services Agreement and the tolling services agreements for the NTE Segment 1-2 and LBJ projects), and refinement of such will be done directly between NTTA and Developer so as to ensure consistency; provided that NTTA and Developer shall provide written notice and obtain TxDOT's consent to any agreed upon refinements that could prejudice TxDOT's rights or increase TxDOT's liability hereunder. Failure by TxDOT to respond within 15 days shall be deemed consent, provided that NTTA has sent a second notice and opportunity to respond prior to the expiration of the 15 day period.

(b) NTTA's general responsibilities include:

- (i) NTTA shall process Transponder Transactions in accordance with Section 9 and post Transponder Transactions to customer accounts in accordance with Section 4(a)(iv).
- (ii) NTTA shall provide Interoperability Functions in accordance with Section 5.
- (iii) NTTA shall process Video Transactions in accordance with Section 8.
- (iv) NTTA shall remit payments in respect of Video Transactions and Transponder Transactions in accordance with Section 7.
- (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).

- (vi) NTTA shall provide account management and other back office services in accordance with this Tolling Services Agreement, including Section 4(a).
  - (vii) NTTA shall provide toll collection enforcement services, which shall include transmittal of invoices and violation notices, collection efforts (which may include utilization of a third party collection agency) and other actions permitted by applicable Law (including court action) and in accordance with the standards set forth in Section 4(i), but which shall not include in-lane enforcement or patrols.
  - (viii) NTTA shall provide marketing services, as provided in Section 13(d).
- (c) TxDOT 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 Facility 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. TxDOT 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. TxDOT 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, TxDOT 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. If TxDOT and NTTA determine that any changes contemplated by this Section 2(c) should be made, then TxDOT shall use good faith efforts to obtain Developer's consent thereto to the extent any such change requires the consent of Developer under the Developer TSA. For the avoidance of doubt, TxDOT is not required to agree to any adjustments contemplated under this Section 2(c) if the Developer does not accept such adjustments. Any such changes shall be made in accordance with Section 17 of this Tolling Services Agreement and the Developer TSA, as applicable.
- (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 TxDOT 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.

3. Term; Transition of Services

- (a) The term of this Tolling Services Agreement commences on the date hereof and shall continue until the tenth anniversary of the Service Commencement Date for the Facility (or the Facility Segment that first achieves Service Commencement, if Developer develops the Facility in Facility Segments), subject to earlier termination of this Tolling Services Agreement in accordance with Section 21 or Section 24(d) (the "Initial Term"). This Tolling Services Agreement shall renew automatically from and after the final day of the Initial Term for successive five-year periods until the expiration of the Agreement (including, if and to the extent applicable, any extensions of the Term (as defined in the Agreement) of the Agreement in accordance with the terms thereof, including any extensions due to any Relief Events), subject to earlier termination of this Tolling Services Agreement in accordance with Section 21 or Section 24(d) (together with the Initial Term, the "Term").
- (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 for the Facility (or for the Facility Segment that first achieves Service Commencement, if Developer develops the Facility in Facility Segments).
- (c) TxDOT shall give, or cause Developer to give, NTTA at least 12 months' prior written notice of the anticipated date of Service Commencement for the Facility (or for the Facility Segment that first achieves Service Commencement, if Developer develops the Facility in Facility Segments, rather than as a whole, pursuant to the terms of the Agreement); provided, however, that if such Service Commencement is expected to occur less than 12 months following the date of this Tolling Services Agreement, then TxDOT shall give, or cause Developer to give, notice of the anticipated date of such Service Commencement to NTTA as soon as practicable following the date hereof. Following NTTA's receipt of such notice, TxDOT and NTTA shall, at their own cost, cooperate with each other and Developer in order to prepare, on or prior to the date that is six months prior to such anticipated date of such Service Commencement (or such later time mutually agreed to by the Parties in writing), 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 switchover involving the cessation of Developer's transmission of Transaction data to, and receipt of such Transaction data by, NTTA's CSC Host and the commencement of the

transmission of such Transaction data by Developer to TxDOT or another applicable replacement tolling services provider (including compliance with, if applicable under the circumstances, the protocols and procedures developed and implemented pursuant to Section 12(k)) and such other actions as are reasonably required to be taken in connection with the cessation of NTTA's provision of services under this Tolling Services Agreement (such as, for example, the removal of NTTA signage from the Facility); (ii) the transition of collection and enforcement services from NTTA to TxDOT 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 TxDOT of any step-in right pursuant to Section 19(d) hereof; and (iii) the delivery by NTTA to TxDOT and Developer, on or prior to the expiration or earlier termination of this Tolling Services Agreement or the exercise by TxDOT of any step-in right pursuant to Section 19(d) hereof, of reports of (A) Transactions occurring during the last five years of the Term prior to the expiration or termination date, or the date of TxDOT's exercise of such step-in right hereunder, for which NTTA has collected and remitted tolls as required by Section 7(c) hereof and received the related fees and other amounts payable to NTTA hereunder; and (B) Transactions occurring during the last five years of the Term prior to the expiration or termination date, or the date of TxDOT's exercise of such step-in right hereunder, for which NTTA has collected and remitted tolls to TxDOT but not received all of the related fees and other amounts payable to NTTA hereunder; (C) Transactions occurring during the last five years of the Term prior to the expiration or termination date, or the date of TxDOT's exercise of such step-in right hereunder, for which NTTA has collected and received the related fees and other amounts payable to NTTA hereunder but not remitted tolls to TxDOT. With respect to Transactions that have occurred and the data for which has been transmitted by TxDOT to NTTA but for which NTTA has not collected and remitted tolls to TxDOT or received any fees or other amounts payable to NTTA hereunder, NTTA shall transfer such Transactions to TxDOT, together with any information that NTTA has relating to such Transactions that may reasonably assist TxDOT in the collection of tolls for such Transactions. If, notwithstanding the fact NTTA has no obligation to prepay tolls under this Tolling Services Agreement, NTTA has made payment of tolls to TxDOT 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 TxDOT's exercise of such step-in right hereunder, then NTTA shall be entitled (and TxDOT 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 TxDOT'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 TxDOT or its designee or 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). TxDOT shall use good faith efforts to enforce any provisions in the Developer TSA that require Developer to cooperate with TxDOT in the development of the initial transition plan contemplated by this Section 3(c) and any and all updates of such transition plan. With respect to any termination of this Tolling Services Agreement other than due to a default by NTTA or the exercise by NTTA of a right to terminate this Tolling Services Agreement without cause, NTTA shall be entitled to payment from TxDOT of the costs and expenses incurred by NTTA in connection with the services and reports to be furnished by NTTA to TxDOT and Developer pursuant to provisions of this Section 3(c) and such transition plan.

- (d) NTTA shall be obligated to continue to enforce and collect all Transactions that NTTA has received at the NTTA CSC Host prior to but not collected by the expiration or termination date, or the date of TxDOT's exercise of such step-in right hereunder, in the same manner and for the same compensation, as had been in effect immediately before the expiration or termination date, or the date of TxDOT's exercise of such step-in right hereunder; provided that TxDOT may elect to assume the enforcement and collection of any or all such Transactions and NTTA shall not continue to enforce and collect any such Transactions. If TxDOT so elects, NTTA shall, within ten Business Days after TxDOT delivers written notice of such election, transfer the assumed Transactions to TxDOT, together with any information that NTTA has relating to the assumed Transactions that may reasonably assist TxDOT in the collection of tolls for the assumed Transactions.

#### 4. Toll Collection and Enforcement Services

- (a) NTTA shall provide, in accordance with Section 4(i), complete back office functions pertaining to toll collection and enforcement for the Facility (provided that NTTA shall not provide in-lane enforcement or patrols). 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) maintaining 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, TxDOT acknowledges that because Developer, not NTTA, is responsible for collecting in-lane data in respect of the Facility, 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, notifying account holders of low balances where automatic replenishment fails, accepting payments 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 and posted by NTTA in accordance with Section 4(i);

- (v) Transaction and payment processing for Video Transactions, including issuing billing statements to Video Transaction Users with itemization of toll charges, Incidental Charges, and Video Transaction Toll Premiums (if applicable), processing of payments received including reconciliation with billing statements, and accepting payment;
  - (vi) Violation processing and enforcement, including collection agency and court and other proceedings, in accordance with Chapter 366 of the Texas Transportation Code or other Laws applicable to NTTA;
  - (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. As used in this clause, Good Industry Practice includes PCI compliance and meeting federally mandated annual audits for PCI compliance, to the extent applicable to the services provided;
  - (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 Facility-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, mailings and materials necessary to perform such responsibilities in a timely manner.
- (b) NTTA shall issue notices and pursue collection and enforcement actions in a non-discriminatory manner in accordance with Sections 4(a)(vi) and 4(i).
- (c) Subject to Section 4(d), NTTA shall solely choose the transponders to offer to Users, consistent with Section 21 of the Technical Provisions and Section 12(h). 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.

- (d) Notwithstanding any contrary provision of this Tolling Service Agreement, TxDOT shall have the right to engage in general marketing of TxDOT-issued transponders on a state-wide basis, so long as such marketing activities are not targeted at Users of the Facility or otherwise intended to cause Users of the Facility to obtain or use TxDOT-issued transponders rather than NTTA-issued transponders. In addition, notwithstanding any contrary provision of this Tolling Service Agreement, each of TxDOT and Developer shall have the right (but is not obligated) to engage in targeted marketing of, and to issue, its own transponders that are equivalent in utility, functionality and reliability to those issued by NTTA to any Person, including to those customers residing within NTTA's service area and to other Users of the Facility, during each of the following time periods: (i) from and after six months prior to the end of the Term; (ii) 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); and (iii) during any period in which TxDOT is exercising step-in rights under this Tolling Services Agreement. No term in this Tolling Services Agreement shall be construed to limit TxDOT's right to issue transponders to any person or entity that requests such transponders, including to those customers residing within NTTA's service area.
- (e) 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).
- (f) 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 (and such statement of NTTA's responsibility for such costs is not intended to limit any liability NTTA otherwise may have under this Tolling Services Agreement for any loss of Toll Revenues owing to TxDOT attributable to an NTTA breach or failure to perform). Upon the request of either Party, the Independent Engineer shall review such costs and advise

the Parties concerning the accuracy of any statement thereof. TxDOT 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.

- (g) NTTA may establish and enforce reasonable minimum amounts for opening, maintaining and replenishing electronic tolling accounts.
- (h) NTTA shall provide credit card processing services to its customers and Video Transaction Users for all major credit cards.
- (i) NTTA shall provide the services, steps and functions described in this Section 4 in accordance with the applicable 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, in accordance with NTTA's standard management practices, procedures, protocols and business rules with which it performs such services and functions for its own facilities, including any special rules designed to improve performance of managed lane facilities, and at the level provided customers on NTTA's own facilities. In the event of a modification to such management practices, procedures, protocols or business rules affecting services to be provided by NTTA under this Tolling Services Agreement or the Facility, NTTA shall provide TxDOT with notice of such change 60 days prior to the date NTTA adopts such modification; provided that NTTA shall not adopt any modification that is reasonably anticipated to (i) disproportionately affect the Facility or its operations, (ii) adversely affect the aggregate annual net Toll Revenues (including both base tolls and any Video Transaction Toll Premiums) generated by the Facility or (iii) adversely affect satisfaction of, or require any adverse change to, the Performance Standards. Before any modified business rules are implemented, however, TxDOT shall discuss the same with NTTA at a TxDOT-NTTA Regular Meeting.
- (j) Without limiting the effect of Section 24(d), NTTA shall be temporarily excused from complying with the requirements and standards set forth in Section 4(i) to the extent its inability to comply is directly attributable to any failure or inability of Developer (or, if applicable at any time, TxDOT) to comply with the ICD, or to meet the ETCS performance requirements set forth in Section 21 of the Technical Provisions. NTTA shall bear the burden of providing evidence reasonably satisfactory to TxDOT that NTTA exercised diligent efforts to comply.
- (k) NTTA will provide TxDOT and Developer access to standardized toll collection system reports described in Section 14 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 September 19, 2013 is attached hereto as Attachment 12).
- (l) TxDOT and NTTA shall conduct regular meetings (the "TxDOT-NTTA Regular Meetings") of an implementation team comprised of NTTA and

TxDOT employees as appropriate but no less than quarterly, or such other frequency as the Parties mutually approve. The purpose of the regular meetings shall be to review, discuss and resolve matters relating to coordination, services, quality control, performance, performance standards, customer service, customer inquiries and complaints, tolling (including any issues related to erroneous pricing set by Developer or billing by NTTA and "readability" of transferred video images), proposed changes to Developer's, TxDOT's or NTTA's tolling practices, payment, collection procedures and their effectiveness, strategies and incentives to optimize collections, vendor procurement, terms and conditions for sale of uncollected Video Transactions, proposed and actual changes to business rules, business rules contemplated to be implemented by TxDOT and/or Developer as provided in Section 12(g), elements and activities to be included in the Marketing Plan pursuant to Section 13(e), Change Orders or Change Directives contemplated under this Tolling Services Agreement, change orders or change directives contemplated under the Developer TSA that would necessitate changes to this Tolling Services Agreement or would affect NTTA's rights or obligations under this Tolling Services Agreement, changes or adjustments to this Tolling Services Agreement that would necessitate changes to the Developer's TSA or would affect TxDOT's rights or obligations under the Developer TSA or this Tolling Services Agreement, and other matters arising under this Tolling Services Agreement. The implementation team shall consider recurring issues, including in respect of NTTA's customer service obligations, and develop solutions or approaches to address such issues. TxDOT shall have the right, but not the obligation, to include Developer as a participant in such meetings, except as to matters under this Tolling Services Agreement that have no relevance to or impact on TxDOT's performance of the Developer TSA; provided that NTTA shall take direction regarding its services only from TxDOT. The Parties shall schedule all meetings at a mutually convenient date, time and place. In addition to regularly scheduled meetings, TxDOT 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 the Independent Engineer and, at TxDOT's election, with Developer.

- (m) 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 Facility, other than customer relations in the ordinary course of handling customer accounts, inquiries and communications, (iii) maintenance of a Facility 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 Facility, other than customer relations and other than as provided in the Marketing Plan developed pursuant to Section 13 and as otherwise required under this Tolling Services Agreement, and (v) any maintenance work on the ETCS. 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.

- (n) NTTA recognizes that Developer is not entitled to charge tolls to Users with respect to any applicable portion of the Facility during an Emergency Mode. If Developer transmits transaction data to NTTA during such periods, and if NTTA reviews (whether pursuant to its system or manually) any such Transaction data, NTTA may charge TxDOT the Base Transaction Fee otherwise applicable to non-emergency Transactions hereunder. 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 TxDOT the Base Transaction Fee otherwise applicable to non-Exempt vehicles or non-Duplicate Transactions (as the case may be) hereunder.
- (o) 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(o).
  - (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 Facility 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 Facility in strictest confidence and not to make use of Patron Confidential Information relating to the use of the Facility 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 Facility, 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.
- (vii) In connection with TxDOT's exercise of step-in rights or other remedies hereunder (including termination of this Tolling Services Agreement) due to an NTTA default, upon TxDOT's written request, NTTA shall make available to TxDOT such Patron Confidential Information (other than credit card, social security and other sensitive information), as is reasonably requested by TxDOT and, at all other times, data concerning aggregate and anonymous (i.e., that does not identify individual Users) User origination and destination travel patterns on the Facility that is maintained by NTTA, without NTTA having any obligation to track, or create any special report concerning, any such data. TxDOT shall treat, and shall cause Developer to treat, such information as confidential information.
- (p) In connection with any dispute regarding a Transaction, including in connection with collection agency, court or other proceedings brought to collect tolls owed with respect to the Transaction, at NTTA's request

TxDOT, at TxDOT's 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.

- (q) Pursuant to the Developer TSA, Developer generally intends to obtain prepayment of tolls or otherwise handle on its own payment of tolls for operators of Special Vehicles on the Facility; and therefore TxDOT does not intend 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 Facility 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, and in such event NTTA shall be entitled to the same Base Transaction Fee and, as applicable, Variable Transaction Fee as it would be entitled to in respect of other Video Transactions.
- (r) If a User remits a partial payment in respect of any invoice, subject to NTTA's business practices for accepting partial payments in respect of its own facilities, NTTA shall apply such partial amounts (i) first, to pay the toll amount (which, with respect to Video Transactions, includes both the base toll and the Video Transaction Toll Premium) for all transactions on the invoice (i.e. in respect of the Facility and other projects), in the order in which NTTA received and posted such transactions, and (ii) second, to administrative fees, in such order. Any proposed change to NTTA's business practices that impact the acceptance or allocation of partial payment on invoices for tolls on the Facility shall be subject to TxDOT's prior written approval to the extent that the proposed change would affect the Facility disproportionately or prejudice TxDOT's interests and adversely affect net Toll Revenues.

#### 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 associated 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 has agreed in the Developer TSA 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 agrees to keep TxDOT and Developer regularly informed of such practices and procedures. The payment of interoperability fees and the remittance of tolls in respect of Interoperable Transactions are governed by Section 6(f).

6. Compensation for Services

(a) Fees and Deductions.

(i) In consideration for NTTA's services hereunder, TxDOT shall pay NTTA the following fees:

(A) The applicable Base Transaction Fee provided for in Section 6(b); plus

(B) The Variable Transaction Fee provided for in Section 6(c).

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

(b) Base Transaction Fee.

(i) The Base Transaction Fee shall be calculated and applied to Transactions as follows:

(A) For each Transponder Transaction received by NTTA's CSC Host initially, as of the Service Commencement Date for the Facility (or for the Facility Segment that first achieves Service Commencement, if Developer develops the Facility in Facility Segments), and processed prior to the issuance of a billing statement (as contemplated under Section 8(c)) in connection with such transaction, \$0.04 as of 2015 escalated every two years at a rate of two percent (2%) per annum to the year of the Service Commencement Date and rounded to the nearest 1/100<sup>th</sup> of a cent ("Transponder Base Transaction Fee"). If a Transaction that was initially classified as a Transponder Transaction is reclassified as a Video Transaction, NTTA shall make an adjustment to the Base Transaction Fee to charge the Video Base Transaction fee instead.

(B) For each Video Transaction received by NTTA's CSC Host initially, as of the Service Commencement Date for the Facility (or for the Facility Segment that first achieves Service Commencement, if Developer develops the Facility in Facility Segments), and processed by NTTA, \$0.325 as of 2015 escalated every two years at a rate of two percent (2%) per annum to the year of the Service Commencement Date and rounded to the nearest 1/100<sup>th</sup> of a cent ("Video Base Transaction Fee"); provided, however, that if a Transaction that is initially classified as Video Transaction is collected by NTTA or reclassified as a Transponder Transaction by NTTA before NTTA's issuance of a billing statement therefor, then NTTA shall make an adjustment to charge instead the Transponder Base Transaction Fee (and for avoidance of doubt, if a Transaction that was originally classified as a Video Transaction is collected by NTTA or reclassified as a Transponder Transaction by NTTA after NTTA's the issuance of a billing statement therefor, NTTA still shall be entitled to charge the Video Base Transaction Fee notwithstanding such collection or reclassification).

(C) The rates set forth in Section 6(b)(i)(A) and (B) shall increase (rounded to the nearest 1/100<sup>th</sup> of a 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%) per annum. Transactions first transmitted to the NTTA on or after the date of each increase shall be subject to the increase.

Transactions first transmitted to the NTTA on any date before the date of an increase shall not be subject to the increase, except with regard to a subsequent reclassification of the Transaction. To the extent that a Transaction is reclassified and there are no delays to the reclassification that are caused by the acts or omissions of NTTA that are not in accordance with NTTA's business rules or malfunction of NTTA's equipment, the Base Transaction Fee (Transponder Base Transaction Fee or Video Base Transaction Fee) that was initially charged will be adjusted and the reclassified Base Transaction Fee applicable at the time of reclassification will be charged. NTTA will perform reclassification of Transactions that are consistent with NTTA's practices in respect to its own facilities and made on a non-discriminatory basis.

- (ii) If a Transponder Transaction (including an Interoperable Transaction) is reclassified as a Video Transaction, NTTA shall have the right to charge the Video Base Transaction Fee only for the Video Transaction, except that if NTTA receives an Unpostable Transponder Transaction due to TxDOT's failure to submit the appropriate transaction data as required by Section 2(a)(ii) and TxDOT does not cure such failure within two Business Days after NTTA's rejection and return to TxDOT of such Unpostable Transponder Transaction, then NTTA may charge a Transponder Base Transaction Fee for the Unpostable Transponder Transaction and a Video Base Transaction Fee for the Video Transaction.
- (iii) If a Video Transaction is reclassified as a Transponder Transaction (including an Interoperable Transaction), NTTA shall have the right to charge only the Transponder Base Transaction Fee for the Transponder Transaction; provided that if an invoice that includes the Video Transaction has already been issued, the Video Base Transaction Fee will apply to the Transaction instead of the Transponder Base Transaction Fee regardless of whether the collection of the toll from the User occurs as a Transponder Transaction.
- (iv) The applicable Base Transaction Fee 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)) shall be paid to NTTA by NTTA's withdrawal of the amount thereof from the toll receipts, including receipts of Video Transaction Toll Premiums, held in the Revenue Consolidation Account under the NTTA Master Custody Agreement. The applicable Base Transaction Fee shall be due and payable (A) for Transponder Transactions, on the date the Transaction is posted to an account,

and (B) for Video Transactions, on the date that NTTA completes manual or OCR processing of the applicable video image, or if NTTA performs manual processing review of the applicable video image following such OCR processing, on the date that NTTA completes such manual processing; provided however, that for transactions (whether initially treated as transponder transactions or video transactions) that NTTA determines to be unpursuable pursuant to NTTA's business rules, the applicable Base Transaction Fee, if any, shall be due and payable in accordance with Section 10(b). The applicable Base Transaction Fee set forth in Section 6(b)(i) shall be the same for all User Classifications and for all Transactions of the same type (i.e. for Transponder Transactions or Video Transactions, as applicable) in the same Service Year, regardless of the amount of the toll for such Transactions.

- (v) Except as set forth in Section 6(b)(ii), the NTTA shall not be entitled to charge both the Transponder Base Transaction Fee and the Video Base Transaction Fee for the same Transaction.

(c) Variable Transaction Fee.

- (i) NTTA shall charge a fee for each Transaction (other than Interoperable Transponder Transactions, Exempt Vehicles and Duplicate Transactions, which shall not be subject to this fee) received by NTTA's CSC Host that is actually collected by NTTA from the applicable User equal to two percent (2%) of the toll amount collected, including Video Transaction Toll Premium, if any, that is collected (the "Variable Transaction Fee"). For clarity, no Variable Transaction Fee shall be calculated on or payable for collection of Incidental Charges. Each Variable Transaction Fee shall be rounded to the nearest 1/100<sup>th</sup> of a cent.
- (ii) No more than one Variable Transaction Fee shall be due or owing on any collected toll, even though the collected toll may be in respect of a Transaction reclassified from a Transponder Transaction (other than an Interoperable Transaction) to a Video Transaction, or vice versa.
- (iii) Subject to paragraph (ii) above, the Variable Transaction Fee shall be due and payable on the amount of tolls, including Video Transaction Toll Premiums, collected for each Transaction, whether a Transponder Transaction (other than an Interoperable Transponder Transaction, Exempt Vehicle or Duplicate 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 withdrawal of the amount thereof from the Facility toll receipts, including receipts of Video Transaction Toll Premiums, held in the

Revenue Consolidation Account under the NTTA Master Custody Agreement.

(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 the Facility Custodial Account in accordance with Section 7. The Delinquent Payment Deduction shall be payable as a monthly adjustment in accordance with Section 6(i) and shall be reported to TxDOT in a monthly Delinquent Payment Deduction report to be delivered to TxDOT 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):

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

Where:

$$\begin{aligned} \text{Daily Delinquent Payment} &= \text{Total payments due to the Facility} \\ \text{Deduction } n,m & \text{ Custodial Account on each day} \\ & \text{during Month } m \text{ of Year } n \text{ that are} \\ & \text{not timely paid by NTTA when} \\ & \text{due under } \underline{\text{Section 7}} \end{aligned}$$

$$\begin{aligned} \text{Duration} &= \text{The number of calendar days} \\ & \text{from the date a payment under} \\ & \underline{\text{Section 7}} \text{ is due until the date} \\ & \text{such payment is made to the} \\ & \text{Facility Custodial Account.} \end{aligned}$$

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

(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 to TxDOT as a monthly adjustment in accordance with Section 6(i). The Non-Compliance Deduction will be calculated as follows (and an example of the calculation of the Non-Compliance Deduction is attached hereto as Attachment 9):

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

Where:

$$\text{Monthly Non-Compliance Deduction } n,m \quad = \quad \text{Monthly Non-Compliance Reduction Percent} \times \text{NTTA Compensation } n,m$$

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

$$\text{NTTA Compensation } n,m \quad = \quad \text{Base Transaction Fees for Period } n,m \text{ + Variable Transaction Fees for Period } n,m$$

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

Non-Compliance Points for Period <i>n,m</i>	Monthly Non-Compliance Reduction Percent for Period <i>n,m</i>
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 TxDOT and Developer in the monthly Non-Compliance Deduction report to be delivered to TxDOT pursuant to Section 14(e) no later than 15 days after the end of such month; provided

that the report will include a separate calculation of (A) the Non-Compliance Deductions pertaining to those Performance Standards that are also Performance Standards under the Developer TSA, and (B) the total Non-Compliance Deductions pertaining to all Performance Standards under this Tolling Services Agreement. Any related Non-Compliance Deduction shall be paid by NTTA to TxDOT in connection with the monthly adjustments provided for in Section 6(i). Upon the written request of TxDOT, in addition to such monthly Non-Compliance Deduction report, NTTA shall furnish to TxDOT and 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. TxDOT, 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 TxDOT, (B) planned by NTTA and consented to, in advance in writing, by TxDOT, (C) directly caused by the acts or omissions of Developer or TxDOT or (D) excused pursuant to Section 22(d).

(f) Interoperable Fees

- (i) TxDOT shall be responsible for all interoperable fees for Interoperable Transactions processed by NTTA under this Tolling Services Agreement, the cost of which shall be paid in accordance with the applicable interoperability agreement. NTTA shall pay TxDOT, pursuant to Section 7(a) the amount of the toll less the interoperable 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).
- (ii) Notwithstanding TxDOT's obligation to pay all interoperable fees, TxDOT shall reimburse NTTA in the event NTTA pays any such fees.

- (iii) No Party shall charge any interoperable fees for Transactions by NTTA customers occurring during the Term of this Tolling Services Agreement, except as set forth in clause (iv) below.
- (iv) In the event that TxDOT shall exercise its step-in rights hereunder (either directly or through its designee) or termination rights hereunder, NTTA agrees that any interoperable fees payable to NTTA in respect of each of the first 18 months from and after the date TxDOT or its designee commences the performance of services pursuant to its exercise of such step-in or termination rights shall be limited to the lesser of (A) four percent (4%) of the applicable base toll amount, or (B) the amount chargeable under the applicable agreement on interoperable fees to which NTTA is a party or is bound. After such 18-month period, any interoperable fees payable to NTTA shall be in the amount established pursuant to the applicable agreement on interoperable fees to which NTTA and TxDOT are parties or are bound. For the avoidance of doubt, the interoperable fees referred to in this Section 6(f)(iv) shall be the interoperable fees that may be payable to NTTA pursuant to interoperability agreements to which NTTA is a party or is bound or in which NTTA participates at any applicable time or times, separate and apart from this Tolling Services Agreement.

(g) Incidental Charges to Users.

In addition to the NTTA Compensation, NTTA shall have the right to impose on and collect from Users (separate from the toll charges referenced in Section 7(a) and 7(c)), and retain as additional compensation, Incidental Charges consistent with NTTA's practices concerning customers of its own facilities; provided that TxDOT shall have no liability for NTTA's inability to collect the same from Users. Waivers and reductions of Incidental Charges are governed by Section 16(d).

(h) Additional Fees and Charges Payable By TxDOT.

In addition to the NTTA Compensation, TxDOT 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 of the Technical Provisions. In addition, TxDOT 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(h) shall be payable by monthly adjustments pursuant to Section 6(i).

(i) Monthly Adjustments.

(i) For each calendar month during the Term, NTTA shall deliver to TxDOT and Developer, by the 15<sup>th</sup> day of the immediately succeeding calendar month, a report or reports 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 or reports shall cover each of the following, with the related adjustment to be made as follows:

(A) Such reports shall set forth all Transaction adjustments made during such calendar month in respect of (I) Unpostable Transponder Transactions that have not been reclassified as a Video Transaction as the result of being identified as not a Candidate Vehicle, (II) Duplicate Transactions previously paid by NTTA, (III) unpursuable Video Transactions (e.g., Transactions involving vehicles that are not Candidate Vehicles) (provided that NTTA shall be liable to TxDOT for the full amount of tolls, including Video Transaction Toll Premiums, payable to TxDOT for Video Transactions that are unpursuable due to the fault of NTTA), (IV) adjustments resulting from settled or otherwise resolved User disputes, (V) adjustments for waivers and reductions of Video Transaction Toll Premiums and Incidental Charges in accordance with Section 16(d), (VI) adjustments relating to refunds to accounts or Video Transaction Users due to inaccurate toll charges and inaccurate Transactions transmitted from TxDOT to NTTA, (VII) credits to TxDOT for prior overcharges to TxDOT, and (VIII) credits to TxDOT for duplicate Base Transaction Fees charged to TxDOT for the same Transaction except as specifically allowed under Section 6(b)(ii). 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 TxDOT pursuant to Section 7.

(B) Such reports 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 TxDOT pursuant to Section 6(h); (B) Delinquent Payment Deductions and Non-Compliance Deductions owing to TxDOT 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.

- (ii) NTTA Compensation and other amounts payable in accordance with this Section 6(i) 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 TxDOT hereunder) shall bear interest and late charges as provided in Section 19(f).

(j) 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(i), 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 whom the disputed amount is payable shall, within the time period for payment of the invoice, deposit into the Toll Operator Dispute Account an amount equal to one hundred five percent (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.
- (iii) If, in respect of any payment obligation, the amount required by this Section 6(j) has been paid into the Toll Operator Dispute Account in accordance with the terms of this Section 6(j), then the applicable payor Party shall not be in default of the related payment obligation hereunder if the dispute related thereto is not resolved until after the date such payment otherwise would be due under this Tolling Services Agreement, but such payor Party shall

be liable for late charges and interest thereon, as provided in Section 6(j)(ii) and determined pursuant to Section 19(f).

7. Toll Transaction Payments to TxDOT and Developer

- (a) NTTA is a collecting agent acting on behalf of TxDOT and (without creating an agency or similar relationship or obligation between NTTA and Developer) Developer with respect to amounts owing or remitted by the applicable Users and owed to and not yet paid to TxDOT or the trustee under the Facility Trust Agreement. Revenues collected by NTTA (less applicable Base Transaction Fees and Variable Transaction Fees) under this Tolling Services Agreement that constitute revenues to which TxDOT is entitled under this Tolling Services Agreement or Developer is entitled under the Developer TSA are the property of TxDOT or Developer, as the case may be, and not the property of NTTA. Concurrently with execution of this Tolling Services Agreement, NTTA, TxDOT and Wells Fargo Bank, N.A. are entering into a Joinder Agreement (in the form attached hereto as Attachment 14) to the certain Master Custodial Account Agreement (the "NTTA Master Custody Agreement") dated as of April 1, 2011 between NTTA and Wells Fargo Bank, N.A. (the "NTTA Custodian"). NTTA will at all times abide by the terms and provisions of the NTTA Master Custody Agreement and Joinder Agreement (as the same relate to or affect the Project), to assure the protection and proper disposition of all amounts owing or remitted by the applicable Users. Among other things, NTTA shall, pursuant to Section 2.06 of the NTTA Master Custody Agreement, direct and cause the NTTA Custodian to establish and maintain a separate custodial subaccount (the "Facility Custodial Account") to receive (i) daily deposits from the Revenue Consolidation Account under the NTTA Master Custody Agreement of all Toll Revenues, including all Video Transaction Toll Premiums, available after daily transfers to NTTA from the Revenue Consolidation Account of all fees then owing the NTTA under this Tolling Services Agreement, and (ii) all deposits from TxDOT pursuant to Section 7(c). Pursuant to the NTTA Master Custody Agreement and Joinder Agreement, all revenues and other amounts collected by NTTA under this Tolling Services Agreement (net of such fees payable to NTTA) will be transferred on a daily basis from the Revenue Consolidation Account under the NTTA Master Custody Agreement into the Facility Custodial Account free and clear of any claim, lien, charge, security interest or encumbrance in favor of any creditor of NTTA, pending distribution thereof to Developer (or to the trustee under the Facility Trust Agreement), or TxDOT. At TxDOT's written request, NTTA shall execute and deliver, and cause Wells Fargo Bank, N.A. (or its successor) to execute and deliver, a modification to the Joinder Agreement, or a separate Joinder Agreement, with Developer under which Developer shall be named an additional designated beneficiary under the NTTA Master Custody Agreement and the Facility Custodial Account to the extent of Developer's interest in the Toll Revenues, excluding Video Transaction Toll Premiums, held under the NTTA Master Custody Agreement.
- (b) Set forth on Attachment 15 is a description of TxDOT's obligations to pay tolls under the Developer TSA and the procedure for such payments

under the Developer TSA. Such description is provided for informational purposes only to facilitate understanding of the payment procedure under the Developer TSA by Persons properly administering or reviewing this Tolling Services Agreement. Such description is not intended, and shall not be construed, to impose obligations on NTTA in addition to those provided in the other provisions of this Tolling Services Agreement.

- (c) NTTA shall make available to TxDOT on a daily basis, in accordance with the ICD and Section 14 hereof, a report of each Transponder Transaction and Video Transaction that has been properly transmitted to and received by NTTA's CSC Host. In addition, NTTA shall transmit to Developer on a daily basis (or other frequency mutually agreed upon by Developer, NTTA and TxDOT) a disposition file covering transactions received on the previous day in accordance with NTTA's then-current business rules. NTTA shall deposit or cause to be deposited into the Facility Custodial Account an amount, for each Transponder Transaction and Video Transaction paid by the applicable User, equal to the toll paid for such Transaction (i.e. the toll charge indicated by Developer as contemplated under the Developer TSA, plus, for Video Transactions, the Video Transaction Toll Premium established by TxDOT), less the Variable Transaction Fee payable to NTTA for such Transaction and other undisputed outstanding amounts owing to NTTA under this Tolling Services Agreement (except as provided otherwise in Section 7(i)) and adjustments provided for under this Tolling Services Agreement, within two Business Days after the date NTTA collects such toll. As provided in Section 6(b)(iv), applicable Base Transaction Fees and Variable Transaction Fees will be deducted from the revenue generated by the tolls and the Video Transaction Toll Premiums prior to the NTTA making the deposit of or causing to be deposited the amounts contemplated in this Section 7(c). Except as set forth in Sections 19(c) and (g), TxDOT acknowledges and agrees that under this Tolling Services Agreement NTTA is not obligated to remit tolls to TxDOT in advance of collection.
- (d) For each Transponder Transaction and Video Transaction, NTTA acknowledges TxDOT is required to deposit or cause to be deposited with the trustee under the Facility Trust Agreement an amount equal to the toll for the Transponder Transaction or Video Transaction (i.e., the toll charge indicated by Developer as contemplated by Section 11(a) but excluding the Video Transaction Toll Premium), less fees payable to TxDOT as calculated under Section 6 of the Developer TSA and plus or minus adjustments made pursuant to Section 6(i) (other than monthly adjustments provided for in Section 6(i)(ii)) of this Tolling Services Agreement, within two Business Days after the date the Transponder Transaction or Video Transaction has been properly transmitted to NTTA's CSC Host in accordance with the ICD. For the avoidance of doubt, the amount of the toll to be remitted to Developer pursuant to the Developer TSA does not include the amount of any Video Transaction Toll Premiums or Incidental Charges (although Video Transaction Toll Premium receipts held in the Facility Custodial Account may be applied toward the amounts owing Developer under the Developer TSA). NTTA shall provide to TxDOT on a daily basis, a calculation of the amount of toll revenues owed

to the Developer in accordance with this Section 7(d), together with supporting reports in accordance with Section 14, for the preceding day. At least ten days prior to each of the following dates (i) the Service Commencement Date for the Facility (or for the Facility Segment that first achieves Service Commencement, if Developer develops the Facility in Facility Segments), and (ii) the start of each change to the amount of the fees payable to TxDOT as calculated under Section 6 of the Developer TSA, TxDOT shall deliver to NTTA written or electronic notice of the fee rates and terms. At least ten days prior to each of the following dates (i) the Service Commencement Date for the Facility (or for the Facility Segment that first achieves Service Commencement, if Developer develops the Facility in Facility Segments), and (ii) the start of each change to the amount of the fees payable to NTTA as calculated under Section 6 of this Tolling Services Agreement, NTTA shall deliver to TxDOT written or electronic notice of the fee rates and terms for verification by TxDOT of compliance with Section 6.

- (e) TxDOT shall from time to time deposit into the Facility Custodial Account good funds in such amount as TxDOT determines is reasonably necessary to assure that the funds in the Facility Custodial Account, including toll receipts (including Video Transaction Toll Premiums), at all times during the first calendar quarter or partial calendar quarter from and after such date, will be sufficient to make payment in full to the trustee under the Facility Trust Agreement of all toll amounts TxDOT will owe to Developer under the Developer TSA. NTTA shall not be entitled to any such amounts which shall be held in the Facility Custodial Account solely for the purpose of TxDOT making the payments to the trustee under the Facility Trust Agreement as required under the Developer TSA. TxDOT is responsible for the determination and deduction of its fees from amounts it is obligated to remit to Developer under the Developer TSA. For the avoidance of doubt, the amount of the toll to be remitted to Developer pursuant to the Developer TSA does not include the amount of any Video Transaction Toll Premiums or Incidental Charges (although Video Transaction Toll Premium receipts held in the Facility Custodial Account may be applied toward the amounts owing Developer under the Developer TSA). TxDOT shall provide instructions to the NTTA Custodian on a daily basis of amounts that are to be disbursed and the date such amounts are to be disbursed from the Facility Custodial Account to the trustee under the Facility Trust Agreement in respect of amounts owing by TxDOT to Developer under the Developer TSA. TxDOT also shall provide instructions to the NTTA Custodian from time to time of amounts that are to be disbursed from the Facility Custodial Account to TxDOT.
- (f) NTTA and TxDOT shall establish systems and procedures that provide to TxDOT on-demand electronic access to records of daily deposits to, amounts available in, and daily distributions from the Facility Custodial Account. Upon TxDOT's request, NTTA shall provide to TxDOT information available to NTTA relevant to TxDOT's preparation of estimates related to the anticipated deposits into the Facility Custodial Account described in Section 7(d) and otherwise reasonably cooperate with and assist TxDOT in its estimation efforts.

- (g) For clarity, NTTA shall have no liability for any insufficiency of amounts in the Facility Custodial Account to satisfy amounts due from TxDOT to the trustee under the Facility Trust Agreement or amounts due to TxDOT under the Developer TSA, except to the extent of NTTA's liability due to NTTA's breach of this Tolling Services Agreement.
- (h) TxDOT and NTTA shall develop a reconciliation process in accordance with applicable audit standards to reconcile deposits into and disbursements from the Facility Custodial Account.
- (i) NTTA will make its deductions for applicable Base Transaction Fees and Variable Transaction Fees net of any adjustments, as specified in this Tolling Services Agreement, from the tolls and Video Transaction Toll Premiums it collects from Users. If on any given date the deductions to be made to pay NTTA Compensation due on such date are greater than the toll and Video Transaction Toll Premium revenue collected by the NTTA, then NTTA shall accrue such NTTA Compensation and obtain payment therefor from toll and Video Transaction Toll Premium amounts subsequently collected prior to remitting such amounts to the Facility Custodial Account.
- (j) Upon expiration or earlier termination of this Tolling Services Agreement for any reason, TxDOT shall deliver to NTTA written instructions for the distribution of all funds remaining in the Facility Custodial Account after satisfaction of, or reservation of funds to satisfy, all sums due NTTA under this Tolling Services Agreement. NTTA shall distribute such remaining funds in accordance with such instructions within two Business Days after TxDOT delivers to NTTA such instructions.
- (k) NTTA acknowledges that the requirement to make payments to the Facility Custodial Account in accordance with the terms hereof is for the benefit and protection of TxDOT, Developer and Developer's Lenders, and is necessary for TxDOT to comply with the Agreement and the Facility Trust Agreement. Accordingly, NTTA shall not make any payments directly to Developer, or to any Person, without TxDOT's and Developer's prior written approval.
- (l) Each of NTTA and TxDOT, as applicable shall bear all risk, and be liable, for loss of Toll Revenues or other amounts payable to the other or to Developer or the trustee under the Facility Trust Agreement due to theft, embezzlement or fraud of any of its employees, agents or fiduciaries other than the Master Custodian or trustee.

8. Video Transactions

- (a) TxDOT'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", TxDOT 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 TxDOT does not match the User Classification associated with the transponder as indicated in the Consolidated Master List at the time of the Transaction, TxDOT 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, TxDOT 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, TxDOT 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 in accordance with the standards set forth in Section 4(i), 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, in accordance with the standards set forth in Section 4(i).
  - (d) For the purpose of Section 8(c), "issue" means the billing statement accurately sets forth the toll charges, including the Incidental Charges and Video Transaction Toll Premiums (if applicable), 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. TxDOT agrees to maintain video images and video data of Transponder Transactions and Video Transactions for at least 30 days following the occurrence thereof.
- (f) Following the execution of this Tolling Services Agreement and at least six months before the projected Service Commencement Date for the Facility (or for the Facility Segment that first achieves Service Commencement, if Developer develops the Facility in Facility Segments), TxDOT and NTTA shall cooperate with each other and Developer 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 TxDOT before acceptance and processing by NTTA. Neither party shall be obligated to accept such additional requirements. TxDOT shall exercise good faith efforts to enforce any provisions in the Developer TSA that require Developer to cooperate in such process.
- (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).
- (h) Subject to the confidentiality provisions of this Tolling Services Agreement and applicable Law, NTTA may sell uncollected Video Transactions on the Facility only to the extent such sales are (i) for purposes of attempting to improve Video Transaction revenue realization; (ii) consistent with NTTA's practices in respect of its own facilities, and (iii) made on a non-discriminatory basis. Not less than 30 days in advance of the issuance of any RFQ/RFP or other solicitation document for any proposed sale(s), NTTA shall discuss with TxDOT at a TxDOT-NTTA Regular Meeting any such sales and provide to TxDOT all information reasonably required to establish the sale's compliance with the preceding sentence. NTTA shall provide reports to TxDOT on final disposition of sold collectibles in accordance with NTTA's contract with its vendor.

9. Transponder Transactions

- (a) Before TxDOT transmits a Transaction to NTTA's CSC Host, TxDOT 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, TxDOT 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, use the image data fields previously indicated in the Transponder Transaction transmittal to secure video data (as required by the ICD and as contemplated herein). If TxDOT fails to provide such video images and video data following NTTA's attempt to secure the data, and the Transaction is not postable, the Transaction will be adjusted as one not involving a Candidate Vehicle until such time as TxDOT 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 Facility 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 in accordance with the standards set forth in Section 4(i) prior to mailing a Video Transaction billing statement to the customer on account of the rejected Transaction. NTTA shall use the image data fields previously indicated in the Transponder Transaction transmittal to secure video data 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) either (A) 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 the standards set forth in Section 4(i) or (B) even though the account has sufficient funds, the Transponder Issuer (other than NTTA) for any reason fails to transmit to NTTA the full toll for the Transaction by the deadline by which it is obligated to do so under its interoperability protocols and agreements with NTTA, and does not cure such failure prior to the Business Day on which NTTA would mail a Video Transaction billing statement in accordance with the standards set forth in Section 4(i). If the video image is unavailable and the account so persists to have insufficient funds or the Transponder Issuer so fails to transmit the full toll to NTTA, however, then the Transaction will be adjusted as one not involving a Candidate Vehicle unless and until such time as TxDOT 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 the standards set forth in Section 4(i), 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 Facility by their account holders (other than any interoperable fees

required to be paid by TxDOT hereunder) and TxDOT 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 Facility (or for the Facility Segment that first achieves Service Commencement, if Developer develops the Facility in Facility Segments), TxDOT and NTTA shall cooperate with each other and Developer 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 TxDOT before acceptance and processing by NTTA. Neither party shall be obligated to accept such additional requirements. TxDOT shall exercise good faith efforts to enforce any provisions in the Developer TSA that require Developer to cooperate in such process in accordance with Section 1(d).
10. No Duty to Enforce, Collect or Pay Certain Transactions
- (a) TxDOT shall be responsible for initially determining whether a vehicle is a Candidate Vehicle. NTTA shall have no duty to attempt to collect or enforce a toll respecting a vehicle traveling on the Facility where the vehicle is not a Candidate Vehicle; provided, however, that if NTTA does collect a toll respecting any such vehicle, it shall pay TxDOT 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 TxDOT access to NTTA's standard exception reports indicating Transactions that involve vehicles that are not Candidate Vehicles.
  - (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 ICD (or by any other communications protocols in effect hereunder from time to time, including any other criteria that may be developed and agreed upon in writing by the Parties pursuant to Section 8(f) or 9(e)). If TxDOT transmits any such non-complying transaction data to NTTA and rejects such transaction outright because the transaction does not contain a video image or other video data as required by the definition of Candidate Vehicle, then NTTA shall not be entitled to any NTTA Compensation in respect of such transaction. If, however, TxDOT transmits any such non-complying transaction data to NTTA and NTTA conducts a review of the same to determine whether the transaction data received is for a Candidate Vehicle, determines the transaction to be non-compliant and rejects such transaction in accordance with the ICD, then NTTA will be entitled to assess and collect a Transponder Base Transaction Fee (regardless of the type of transaction received and reviewed) in respect of such transaction in consideration of NTTA's review thereof. If, following such rejection and return of the transaction to TxDOT, TxDOT corrects the deficiency and resubmits the same transaction within two Business Days as a complying transaction (i.e., one that complies with the ICD and the requirements for a Candidate Vehicle),

and identifies such transaction as a re-submitted transaction, then NTTA will not charge the Transponder Base Transaction Fee a second time for such transaction. However, if NTTA is ultimately required to invoice the Transaction as a video transaction, the Base Transaction Fee applicable to Video Transactions will be charged and the Base Transaction Fee applicable to Transponder Transactions will be adjusted. In connection with a compliant re-submitted transaction that is collected by NTTA, NTTA also shall be entitled to receive the Variable Transaction Fee (or Interoperability Fee) in accordance with this Tolling Services Agreement. Moreover, if there is no indication that a transaction is a re-submitted transaction, then NTTA will treat it as a new transaction, and the applicable fees (including the applicable Base Transaction Fee) will be charged in accordance with this Tolling Services Agreement. If NTTA does not reject, but accepts non-complying transaction data for processing, and is able to debit the User's transponder account or invoice a Video Transaction, then the matter shall be treated as a Transaction for all purposes under this Tolling Services Agreement. 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 and any Video Transaction Toll Premium indicated by TxDOT. In accordance with the Agreement, TxDOT shall work with Developer to determine the applicable toll charge that corresponds to each Transaction based upon User Classification, Developer's applicable toll schedule or dynamic pricing methodology and policy, and any applicable high occupancy vehicle discount and correctly communicate such information to NTTA. For the avoidance of doubt, if TxDOT 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 TxDOT.
- (b) Under no circumstances shall NTTA charge any User a toll in addition to or higher than the toll charge transmitted from TxDOT to NTTA, except that NTTA may charge for the Incidental Charges and Video Transaction Toll Premiums (if applicable) authorized hereunder. NTTA shall refund to any User any excess toll, Incidental Charge, Video Toll Premiums or other amounts NTTA charges in violation of this provision and, to the extent any such amounts have been paid to Developer, the trustee under the Facility Trust Agreement or TxDOT, NTTA shall recoup the amount of such refund from revenues payable to Developer, the trustee under the Facility Trust Agreement or TxDOT, as applicable.
- (c) If NTTA is or becomes aware that any account or Video Transaction User has been overcharged or incorrectly charged for use of the Facility by reason of inaccurate toll charges transmitted from TxDOT 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(j); provided, however, that NTTA shall always be obligated to promptly arrange for such refund if it has received payment of such overcharge from TxDOT or the trustee under the Facility Trust Agreement, as the case may be, pursuant to the immediately following sentence. Alternately, NTTA shall have the right to invoice TxDOT, in writing or electronically, for the overcharge or incorrect charge, and TxDOT shall pay, cause Developer to pay, or cause the trustee under the Facility 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 TxDOT, or if TxDOT does not furnish such guidelines, in accordance with the standards set forth in Section 4(i).

12. System Technology Interface; Interoperability

- (a) TxDOT at its expense shall design, construct, 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 ICD attached hereto as Attachment 3, as the same may be revised or updated by NTTA from time to time. NTTA shall reasonably cooperate with TxDOT and Developer in fulfilling TxDOT's obligations under this Section 12(a) and Developer's comparable obligations under the Developer TSA. TxDOT shall exercise good faith efforts to enforce any provisions in the Developer TSA that require Developer to cooperate with TxDOT in matters contemplated by this Section 12(a) in accordance with Section 1(d). In addition, although the provisions of this Tolling Services Agreement shall control over the ICD, NTTA and TxDOT shall cooperate to review and, as appropriate, make changes to the ICD from time to time to take into account changes in technology and business practices, so long as such changes are compatible with the tolling practices and procedures of NTTA, TxDOT and other Transponder Issuers, as applied in respect of their own facilities. Without limiting the preceding sentence, NTTA and TxDOT shall cooperate to review and, as appropriate, make changes to the ICD in accordance with the preceding sentence in connection with the activities contemplated by Section 12(c).
- (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 ICD attached hereto as Attachment 3, as the same may be revised or updated

by NTTA from time to time, including such revisions and updates as may be made pursuant to the cooperation among NTTA, Developer and TxDOT described above in Section 12(a).

- (c) NTTA shall diligently cooperate and coordinate with Developer and TxDOT 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 and schedules. Without limiting the foregoing, NTTA shall cooperate with Developer and TxDOT 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 for the Facility (or for the Facility Segment that Developer intends to first achieve Substantial Completion, if Developer develops the Facility in Facility 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 TxDOT, NTTA shall conduct with Developer 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 for the Facility (or for the Facility Segment that Developer intends to first achieve Substantial Completion, if Developer develops the Facility in Facility Segments), with a view to NTTA's and Developer's identification and correction of any problems no later than 60 days before the date of such Substantial Completion. The Independent Engineer shall observe and advise the Parties and Developer 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. In connection with the demonstration and performance testing of interconnection and interoperability of the ETCS with NTTA's CSC Host pursuant to this Section 12(c), NTTA also shall conduct with Developer demonstration and performance testing of such communications protocols and procedures that have been established pursuant to Section 12(k) for the possible transfer of tolling services performance in respect of the Facility from NTTA to TxDOT or another tolling services provider, and the Independent Engineer shall observe and advise the Parties in connection therewith. TxDOT shall exercise good faith efforts to enforce any provisions in the Developer TSA that require Developer to cooperate in connection with matters in which NTTA's cooperation is required in this Section 12(c) in accordance with Section 1(d).

- (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 make available the consolidated information to TxDOT and Developer daily in accordance with the ICD. Status designations shall be in accordance with the ICD (or any successor thereto). NTTA represents and warrants to TxDOT that NTTA shall accurately, in all material respects, consolidate the related Transponder Issuers' master lists and updates, as provided to NTTA by the respective Transponder Issuers, when making available the Consolidated Master List to Developer and TxDOT hereunder, provided, however, that TxDOT acknowledges that NTTA can make no (and hereby disclaims any) representation or warranty concerning the accuracy of the information contained in such master lists and updates, which TxDOT further acknowledges has been obtained and compiled by each applicable Transponder Issuer prior to the transmittal of the same to NTTA. NTTA's arrangement for the availability of such master lists to Developer shall be subject to the same disclaimer.
- (e) TxDOT shall be responsible for transmitting toll rates for each Transaction corresponding to Developer's dynamic pricing methodology and policy and for identifying all Transactions where the discount for a high occupancy vehicle has been applied.
- (f) So long as this Tolling Services Agreement is in effect, TxDOT shall deploy toll system technology for the Facility that does not adversely affect reliability of, or ability to meet applicable standards in the Technical Provisions or most recently issued ICD 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 Facility, then NTTA shall reimburse TxDOT for TxDOT's reasonable costs and for TxDOT's liabilities to Developer under the Developer TSA for any modifications Developer is required to make to comply with such modified requirements).
- (g) NTTA acknowledges and agrees that TxDOT and Developer may create and apply their 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, Facility Management Plan, the Developer TSA, this Tolling Services Agreement and Good Industry Practice. Such business rules may be implemented through logical routines incorporated into Developer's tolling system. Before any such business rules are implemented, however, TxDOT shall discuss the same with NTTA at a TxDOT-NTTA Regular Meeting. 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 TxDOT, tolling on the Facility shall be conducted on a transaction, rather than a trip, basis, and will involve a single point of payment-, open toll system-type toll collection process (as opposed to a ticket- or trip-based system, where the toll rate

is determined by matching or attempting to match transactions occurring at more than one toll location or toll plaza).

- (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 or national interoperability requirements. NTTA and TxDOT 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 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 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 and TxDOT 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 and TxDOT as soon as possible following such determination. Following such notice, NTTA shall consult with TxDOT and 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 TxDOT-NTTA 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 interoperability group of Developer's concerns (without any obligation to act as an advocate of any of Developer's positions); but, as provided in the Developer TSA, 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 TxDOT shall exercise its step-in rights hereunder (either directly or through its designee), NTTA agrees that any interoperability fees payable to NTTA shall be governed by Section 6(f)(iv).
- (k) NTTA shall consult and cooperate with Developer to establish, install or lease, and test, prior to the anticipated date of Substantial Completion of the Facility (or of the Facility Segment that Developer intends to first achieve Substantial Completion, if Developer develops the Facility in Facility Segments), commercially reasonable communications protocols and procedures (which may include procurement of a commercially leased communications line (if the replacement provider is to be TxDOT) or

development of a secure file transfer protocol (or "ftp") site and secure communications link, secure virtual private network or some combination thereof, or another commercially reasonable alternative based on then-existing technology) that are in accordance with industry standards and practices and standards comparable (taking into account then-existing technology) to those applicable to the interconnection and interoperability of the ETCS with NTTA's CSC Host and that will be ready to be utilized, upon termination of this Tolling Services Agreement or TxDOT's (or its designee's) exercise of step-in rights hereunder, to directly transmit, to and from TxDOT or another tolling services provider transaction data required under the Developer TSA or other tolling service provider's tolling services agreement in respect of the Facility (with a view to permitting such transfer within five or fewer Business Days). If Developer and NTTA are unable to agree in writing upon such communications protocols and procedures by the date that is six months prior to Developer's scheduled date for Substantial Completion of the Facility (or of the Facility Segment that Developer intends to first achieve Substantial Completion, if Developer develops the Facility in Facility Segments), then NTTA shall jointly consult with Developer and the Independent Engineer in good faith, and the Independent Engineer shall assist and advise them, to attempt to resolve any disagreements related thereto. If Developer and NTTA, acting reasonably and in good faith, are unable to resolve any such disagreements within 30 days, then NTTA agrees that Developer, taking into account the input from NTTA, shall determine such protocols and procedures (which must be commercially reasonable and in accordance with industry standards and practices and standards comparable (taking into account then-existing technology) to those applicable to the interconnection and interoperability of the ETCS with NTTA's CSC Host), set them forth in writing and deliver them to NTTA, and the same shall thereupon become binding on NTTA and, pursuant to the Developer TSA, Developer, unless and until they otherwise agree in writing. NTTA and, pursuant to the Developer TSA, Developer shall consult and cooperate with each other upon the reasonable request of the other from time to time during the Term following Substantial Completion of the Facility (or of the Facility Segment that first achieves Substantial Completion, if Developer develops the Facility in Facility Segments) to review such communications protocols and procedures then existing and to determine whether the same should be changed or updated based on then existing technology and industry standards and practices and, if reasonably determined by NTTA and Developer to be appropriate, to so change or update such communications protocols and procedures. Within 30 days of receiving any applicable invoice therefor, NTTA shall pay or reimburse Developer for, the costs and expenses of the establishment, installation or leasing, testing and maintenance of such communications protocols and procedures, and changes or updates thereto implemented pursuant to the preceding sentence. Notwithstanding Section 1(d), TxDOT shall have the right but not the obligation to enforce Developer's and NTTA's obligations in connection with the foregoing matters which are also addressed in the Developer TSA. TxDOT and NTTA acknowledge and agree that the Developer TSA includes the following provision for NTTA's benefit (and TxDOT agrees that such provision shall not be modified or amended

without NTTA's prior written consent): "WITH RESPECT TO PROTOCOLS AND PROCEDURES DEVELOPED AND IMPLEMENTED IN ACCORDANCE WITH THIS SECTION 12(K), DEVELOPER ASSUMES ALL RISKS ASSOCIATED WITH THE PERFORMANCE OR NON-PERFORMANCE THEREOF AND ANY THIRD PARTY CLAIMS WITH RESPECT THERETO, AND, TO THE FULLEST EXTENT PERMITTED BY LAW, RELEASES TXDOT AND NTTA FROM, AND AGREES TO INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS TXDOT AND NTTA FROM AND AGAINST, ANY AND ALL LOSSES, CLAIMS, LIABILITIES AND DAMAGES ARISING THEREFROM (INCLUDING LOSSES, CLAIMS, LIABILITIES AND DAMAGES ARISING FROM NTTA'S SIMPLE NEGLIGENCE), EXCEPT FOR LOSSES, CLAIMS, LIABILITIES AND DAMAGES ARISING THEREFROM AS A CONSEQUENCE OF NTTA'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD RELATING TO THE DEVELOPMENT AND IMPLEMENTATION OF SUCH PROTOCOLS AND PROCEDURES."

13. Intellectual Property and Licensing; Marketing 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 TxDOT requires NTTA to provide any services under this Tolling Services Agreement that utilize any such protected item, TxDOT shall obtain from Developer 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. TxDOT's right to use Developer's Intellectual Property Rights shall be transferrable to NTTA for the sole and only purpose of providing the services hereunder for the Facility. TxDOT and NTTA acknowledge and agree that under the Developer TSA Developer has agreed, for NTTA's benefit, to 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). TxDOT agrees that such provision shall not be modified or amended without NTTA's prior written consent. This subsection (a) shall not apply to any existing or future HOV recognition or registration system, application or software, and TxDOT shall have no obligation to provide to NTTA any license respecting the same.
- (b) If TxDOT by Change Order or Change Directive requires NTTA to modify, or NTTA for any other reason undertakes to modify, any portion of the RITE (Regional Integrated Toll Enhancements) System or any other software utilized by NTTA, neither TxDOT nor Developer shall have any right, title, or interest in or to any such modification.

- (c) NTTA hereby grants to TxDOT and 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 Facility and TxDOT's or Developer's operation thereof, including maintenance of NTTA's name, logos, trademarks and brands on the roadway, on the Facility web site and in TxDOT's or Developer's promotional and marketing materials for the Facility; 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 TxDOT and 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 Facility (or for the Facility Segment that first achieves Service Commencement, if Developer develops the Facility in Facility Segments), NTTA shall prepare and deliver to TxDOT a marketing plan (the "Marketing Plan") for review, comment and concurrence by TxDOT that such Marketing Plan complies with this Tolling Services Agreement. The Marketing Plan shall include (i) plans for identifying, promoting and advertising NTTA's association with the Facility and (ii) marketing responsibilities of NTTA during the Term, which shall be consistent with previous plans developed by NTTA for purposes of opening its own new toll projects, and with NTTA's regular marketing activities in respect of its own facilities (and a summary of NTTA's marketing and distribution activities in effect on September 19, 2013 is attached hereto as Attachment 13). In addition to media marketing, the Marketing Plan shall include a signage and display plan for placing and maintaining on the Facility 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 Facility and availability of NTTA transponders for use on the Facility, consistent with NTTA's practices in respect of its own facilities. TxDOT, Developer and NTTA shall cooperate to finalize the Marketing Plan, shall update the Marketing Plan as reasonably required from time to time, and shall diligently implement the Marketing Plan and updates thereto. Lack of agreement on the Marketing Plan or updates shall not affect continuance of the license granted under Section 13(c).
- (e) TxDOT shall have the right to include in the Marketing Plan or updates thereto elements and activities in addition to those included therein by NTTA pursuant to Section 13(d) above. If TxDOT is interested in any such additions, TxDOT and NTTA shall work collaboratively to develop the plan for such elements and activities; and TxDOT shall pay or reimburse NTTA for the incremental cost of carrying out such additional elements and activities. TxDOT also reserves the right to conduct additional marketing; and NTTA acknowledges that Developer likewise has the right

to conduct additional marketing, to the extent permitted in the Developer TSA and not in conflict with this Section 13.

- (f) Unless otherwise mutually agreed in writing, TxDOT 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 TxDOT's step-in rights hereunder) operational signage and displays required to indicate to Users that NTTA is providing tolling services in respect of the Facility, 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 TxDOT) signage and displays advertising and promoting NTTA that are provided for in the approved Marketing Plan (or otherwise approved in writing by NTTA, Developer and TxDOT). 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 Facility Right of Way, and TxDOT shall cease and require Developer to cease use of NTTA's name, logos, trademarks and brands, unless the parties otherwise agree in writing and except for traffic and toll guide signs for travelers from the Facility to NTTA facilities.
- (g) The Marketing Plan shall be subject to TxDOT's prior written approval for compliance with prohibitions under the Agreement on Developer's naming or branding of the Facility.
- (h) 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 Facility. 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.
- (i) Subject to Section 13(b), any systems that may be developed on TxDOT's or Developer's behalf that do not incorporate any technology owned or licensed by NTTA and that are paid for by TxDOT or Developer shall be TxDOT's or Developer's intellectual property, but TxDOT shall grant NTTA, or, as applicable, require Developer to grant to 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; TxDOT Protection of Patron Confidential Information

- (a) NTTA shall provide access to reports that Developer and TxDOT may utilize to prepare reconciliation reports, in summary or in detail, by reporting period selected by Developer or TxDOT. Such reports to which access is provided by NTTA shall reflect the Transactions as transmitted from TxDOT to NTTA for the applicable reporting period and shall be adequate for purposes of TxDOT's reconciliation of Transaction fees and other amounts paid by TxDOT to NTTA and NTTA to TxDOT. These reports will not permit Developer's reconciliation of Transaction fees and

other amounts paid by Developer to TxDOT under the Developer TSA unless and until such time as the systems and software utilized by NTTA permits such reconciliation (and NTTA shall not have any obligation hereunder to modify or upgrade its existing systems and software or acquire new systems and software for such purpose). Such reports shall be broken down to support the reconciliation of the fees paid to NTTA and the tolls deposited in the Facility Custodial Account and disbursed to the trustee under the Facility Trust Agreement, respectively, for the Facility. Such reports shall reflect the Transactions received by NTTA, the breakdown of Transponder Transactions, Interoperable Transactions, Video Transactions, Transponder Transactions posted to customer accounts, Transponder Transactions and Interoperable Transactions reclassified as Video Transactions, Unpostable Transactions, and unpursuable transactions. NTTA shall post Transactions from the Facility in accordance with the standards set forth in Section 4(i), and TxDOT 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 and Developer 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 TxDOT 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 TxDOT and 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 TxDOT and Developer through direct access to NTTA's reporting system, as in (a) above or through other electronic means.
- (d) NTTA shall provide TxDOT 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 to the Facility Custodial Account under Section 7(c) 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(c) until the date the payment was made to the Facility Custodial Account (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 TxDOT and Developer with a monthly Non-Compliance Deduction report for each calendar month not later than 15 days after the end of such month. The report to TxDOT 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. The report to Developer shall state the same information but only based on the Performance Standards that are also Performance Standards under the Developer TSA and on the Non-Compliance Deductions calculated as provided in the Developer TSA.

- (f) NTTA shall provide TxDOT with a monthly report (called, as of the date of this Tolling Services Agreement, an Excused Transactions Summary and Excused Transaction Detail Report) of the amount of all waivers and reductions of Video Transaction Toll Premiums and Incidental Charges, itemized by User, type, invoice, date and amount, together with aggregate amounts for the reporting period.
- (g) NTTA also shall prepare and provide to TxDOT and Developer any other specific report that is required to be delivered by TxDOT under the Developer TSA or by Developer under the Agreement in respect of the tolling services operation of the Facility. Further, NTTA shall prepare and provide to TxDOT reports of any additional information in respect of the tolling services operation of the Facility that TxDOT determines it needs for the purpose of reconciliation, audit, fiscal integrity or analysis. NTTA shall be required to prepare and provide the additional reports described in the preceding provisions of this Section 14(g) only if such reports relate to the general scope of the services provided by NTTA under this Tolling Services Agreement.
- (h) NTTA shall make available its reports to TxDOT and Developer in a format reasonably approved in writing by TxDOT and Developer. In no event shall NTTA be required to submit reports required in Section 14(g) that require the compilation of data that NTTA does not or is unable to collect at the time of the request for the report. Not later than nine months before the scheduled Service Commencement Date for the Facility (or for the Facility Segment that first achieves Service Commencement, if Developer develops the Facility in Facility Segments), NTTA shall deliver to TxDOT and Developer sample report formats including fictitious data sets. TxDOT shall deliver its and Developer's comments on such sample report formats to NTTA within not more than 60 days thereafter.
- (i) NTTA also shall deliver to TxDOT and Developer such other information as TxDOT may reasonably request to evaluate NTTA's compliance with this Tolling Services Agreement or to enable Developer to evaluate TxDOT's compliance with the Developer TSA. In no event shall NTTA be required to submit information required in this Section 14(i) that require the compilation of data that NTTA does not or is unable to collect at the time of the request for the report.
- (j) TxDOT also shall deliver to NTTA such information as NTTA may reasonably request to evaluate TxDOT'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 Facility with the requirements of the Agreement. NTTA shall maintain the confidentiality of such information.

- (k) TxDOT shall maintain, and shall require Developer to maintain, any and all information relating to NTTA account holders that may be reported under this Section 14 or otherwise as confidential information and in compliance with applicable Laws on notice of privacy practices.
- (i) TxDOT acknowledges that Patron Confidential Information may consist of or include information that identifies or concerns an individual who is an NTTA patron.
  - (ii) TxDOT shall comply, and shall require Developer to 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) TxDOT's obligations relating to Patron Confidential Information shall survive expiration or termination of this Tolling Services Agreement.
  - (iv) TxDOT shall secure for NTTA the right to monitor and review TxDOT's and Developer's systems, practices and procedures concerning Patron Confidential Information regarding NTTA account holders; provided that such right shall be exercised upon reasonable notice during normal business hours, without unreasonably interfering with Developer's operations, and at NTTA's or TxDOT's, as applicable, sole cost and expense.

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 the Facility, this Tolling Services Agreement or the Developer TSA (but in each applicable case relating only to the Developer TSA, to the extent of the data and information then reasonably available to NTTA concerning the Developer TSA), including (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 TxDOT, 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 Video Transaction Toll Premiums, itemized by Video Transaction, User, date and amount, (vi) all Incidental Charges directly relating to Facility usage, itemized by User, type, date and amount, (vii) all data, information and calculations relevant to waivers and reductions of Video Transaction Toll Premiums and Incidental Charges, itemized by each Transponder Transaction and Video Transaction (but TxDOT acknowledges that

waivers of Incidental Charges are made on an invoice basis and not a Transaction basis), User, type, date and amount, (viii) NTTA's performance of this Tolling Services Agreement and TxDOT's performance of essentially identical obligations under the Developer TSA, 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 essentially identical obligations of TxDOT under the Developer TSA, and (ix) all correspondence and other written or electronic communications with TxDOT or Developer relating to this Tolling Services Agreement or the Developer TSA. NTTA shall notify TxDOT and 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, to monitor, audit and review NTTA's software and processes, to monitor and review NTTA's systems, practices and procedures concerning Patron Confidential Information obtained and held in connection with this Tolling Services Agreement, and to monitor and audit any other processes, controls and information as may be required by the State Auditor's Office or TxDOT's auditors. NTTA's utilization or disclosure to third parties of the audits is permissible, provided it will be accomplished strictly without representation or warranty by TxDOT, express or implied, or any kind, and NTTA releases TxDOT from any liability therefor. Without limiting the foregoing, TxDOT, Developer, the Independent Engineer and the auditor 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 with respect to this Tolling Services Agreement.

- (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 TxDOT or TxDOT 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. Video Transaction Toll Premiums and Incidental Charges

- (a) TxDOT retains the sole right to Video Transaction Toll Premiums, for the uses set forth in this Tolling Services Agreement. NTTA retains the sole right to Incidental Charges. For the avoidance of doubt, the toll to be remitted to the Facility Custodial Account pursuant to Section 7(c) shall include Video Transaction Toll Premiums received, but does not include any Incidental Charges.
- (b) TxDOT shall have the sole right to set and modify the amount of Video Transaction Toll Premiums to be charged for each User Classification. NTTA shall have no right to fail to invoice, to fail to carry out its procedures to collect, to waive or to reduce Video Toll Transaction Premiums, except as provided otherwise in Section 16(d).
- (c) NTTA has the right to set and modify the amount of video transaction toll premiums under its tolling services agreement for the North Tarrant Express, Segments 1 & 2W facility, which abuts the Facility. Prior to TxDOT setting or modifying Video Transaction Toll Premiums, or NTTA setting or modifying video transaction toll premiums for the Segments 1 & 2W facility, TxDOT and NTTA shall confer, as part of the TxDOT-NTTA Regular Meetings, to assess both the benefit of maintaining consistency of the premiums on both the Facility and the Segments 1 & 2W facility and the need of each of TxDOT and NTTA to set and modify rates that will protect itself against collection risk. After such consultation, the final decisions on setting or modifying the Video Transaction Toll Premiums will rest with TxDOT in its sole discretion and on setting or modifying the video transaction toll premiums for the Segments 1 & 2W facility will rest with NTTA in its sole discretion.
- (d) Notwithstanding the foregoing, NTTA shall have the right, consistent with its practices in respect of its own facilities and on a non-discriminatory basis, to waive or reduce Incidental Charges and Video Transaction Toll Premiums for the sole purposes of (i) settling valid customer disputes and (ii) encouraging customers to obtain NTTA transponders and open related prepaid transponder-based customer accounts in exchange for the waiver or reduction. In the event of any such waiver or reduction, NTTA shall waive or reduce outstanding Incidental Charges on the applicable invoice(s) prior to or consistently (i.e. proportionately) with its waiver or

reduction of the outstanding Video Transaction Toll Premiums; provided that NTTA shall not be obligated to (but may) include in a waiver or reduction those Incidental Charges that are listed in clauses (a), (b) and (c) of the definition of Incidental Charges.

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

17. Change Orders and Change Directives

(a) General

- (i) TxDOT 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 Developer is required under the Developer TSA for any such Change Order, it shall be the responsibility of TxDOT 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 TxDOT 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 TxDOT 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 TxDOT 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 TxDOT to issue a Change Directive, TxDOT 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.
- (vi) At TxDOT's request, NTTA shall confer and coordinate with Developer and TxDOT regarding potential change orders or change directives under the Developer TSA that TxDOT desires to implement via a Change Order or Change Directive under this Tolling Services Agreement.

(b) Effectiveness of Change Orders.

Change Orders shall only be effective upon execution in writing by both Parties. The foregoing shall not preclude TxDOT or NTTA from granting written waivers, in general or in specific instances, of provisions of this Tolling Services Agreement or related Performance Standards.

(c) TxDOT-Initiated Change Orders.

- (i) TxDOT Change Order Notice. If TxDOT 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, TxDOT 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 TxDOT 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) TxDOT Determination. Within 30 days after receipt of NTTA's evaluation, TxDOT shall provide written notice of TxDOT's intent to proceed or not to proceed with the change. If TxDOT elects to proceed with the change and accepts NTTA's evaluation, TxDOT

shall prepare a Change Order for execution. If TxDOT elects to proceed with the Change Order but does not accept the evaluation in total, TxDOT 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 TxDOT 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, (1) payments shall be due monthly within 30 days after NTTA delivers to TxDOT written invoices and back-up documentation reasonably required by TxDOT, and (2) NTTA shall keep and present, in such form as TxDOT may reasonably require, an itemized accounting together with appropriate supporting data, which shall be subject to audit by TxDOT 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 TxDOT 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 TxDOT prefers not to incur the price adjustment, then NTTA shall cooperate with and assist TxDOT with analyzing trade-offs between price and Performance Standards to give TxDOT 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 TxDOT to remain in compliance with its obligations under the Agreement, then TxDOT 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 TxDOT 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 Facility. 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 TxDOT.

(g) Open Book Basis

All negotiations of Change Orders shall be conducted on an Open Book Basis, which shall include access by Developer on an Open Book Basis where the purpose of the Change Order is to implement a change order or change directive under the Developer TSA. Except as required to be disclosed by judicial order or applicable Law, both Parties shall maintain and, if applicable, TxDOT shall require Developer to maintain, the confidentiality of confidential records obtained or reviewed on an Open Book Basis in connection with such negotiations.

18. Representations and Warranties

(a) NTTA represents and warrants to TxDOT 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, any approvals or laws applicable to NTTA or any other material agreement to which NTTA is a party.
- (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 TxDOT 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 Facility or NTTA's ability to perform its obligations under this Tolling Services Agreement.
  - (viii) NTTA has all necessary expertise, qualifications, experience, competence, skills, know-how and rights and licenses to intellectual property to perform its obligations under this Tolling Services Agreement.
  - (ix) The provisions of Chapter 373 of the Texas Transportation Code either do not apply to the Facility or have been waived in respect of the Facility.
- (b) TxDOT represents and warrants to NTTA that, as of the Effective Date:
- (i) TxDOT 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 TxDOT provided for herein.
  - (ii) TxDOT 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 TxDOT; each person executing this Tolling Services Agreement on behalf of TxDOT has been duly authorized to execute and deliver it on behalf of TxDOT; and this Tolling Services Agreement has been duly executed and delivered by TxDOT.
  - (iv) Neither the execution and delivery by TxDOT 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 TxDOT, any approvals or laws applicable to TxDOT or any other material agreement to which TxDOT is a party.
  - (v) This Tolling Services Agreement constitutes the legal, valid and binding obligation of TxDOT, enforceable against TxDOT 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 TxDOT which challenges TxDOT's authority to execute, deliver or perform, or the validity or

enforceability of, this Tolling Services Agreement or which challenges the authority of the TxDOT official executing this Tolling Services Agreement; and TxDOT has disclosed to NTTA any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which TxDOT is aware.

- (vii) TxDOT is not in breach of any applicable law that would have a material adverse effect on the operations of the Facility or TxDOT's ability to perform its obligations under this Tolling Services Agreement.
- (c) The foregoing representations and warranties of NTTA and TxDOT shall survive for a period of two years following the expiration or earlier termination of this Tolling Services Agreement.

19. Default and Remedies

- (a) TxDOT Default and NTTA Remedies.
  - (i) TxDOT shall be in default under this Tolling Services Agreement in the event (A)(1) subject to Section 6(j), TxDOT fails to make any payment to NTTA when due hereunder and such failure continues for 45 days after NTTA delivers written notice thereof to TxDOT or (2) TxDOT fails to perform any other obligation of TxDOT hereunder (i.e., any obligation other than payment obligations covered by the preceding clause (1)), and such failure continues for 60 days (or, if such failure cannot be cured within 60 days but TxDOT has begun diligently pursuing a cure within such 60 days and continues to diligently pursue such cure, 120 days) after NTTA delivers written notice thereof to TxDOT, (B) to the extent permitted by applicable law, TxDOT files a voluntary petition in bankruptcy or insolvency or a petition for reorganization under any bankruptcy law, (C) to the extent permitted by applicable law, an order, judgment or decree is entered by any court of competent jurisdiction, on the application of a creditor, adjudicating TxDOT 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, (D) any representation or warranty of TxDOT hereunder was not true when made, such failure has a material adverse effect on TxDOT's ability to perform its obligations in accordance with the requirements of this Tolling Services Agreement and TxDOT fails to cure such inability within 30 days after receiving from NTTA written notice of such misrepresentation and its material adverse effect on NTTA, (E) TxDOT assigns its rights and obligations under this Tolling Services Agreement in violation of this Tolling Services Agreement, or (F) TxDOT ceases to be a body politic and corporate and an agency 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 TxDOT.

- (ii) In the event of a default by TxDOT 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 (each of which rights and remedies shall be cumulative and in addition to any such other rights and remedies); provided that NTTA's right to terminate shall only be as provided in Section 21. 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.

(b) NTTA Default.

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

- (i) NTTA fails to make any payment required to be made by NTTA under this Tolling Services Agreement to TxDOT, to the Facility Custodial Account or to the trustee under the Facility Trust Agreement when due hereunder and such failure continues for five Business Days after TxDOT delivers written notice thereof to NTTA (and a default under this clause (i) shall be a Step-In Trigger Default). Such default includes the payment obligations under Section 7, any adjustment payment obligation of NTTA under Section 6(i), the obligation to refund to TxDOT any excessive billing of fees and charges, and obligations to pay interest and other damages (including any damages owing by NTTA in connection with any exercise by TxDOT of its step-in rights pursuant to Section 19(d), including damages relating to (A) any Toll Revenues lost during the period of transition of services from NTTA to the replacement tolling services provider assuming the responsibility for the performance of such services pursuant to TxDOT's exercise of such step-in rights and (B) subject to Section 19(d)(iv), the costs and expenses of the transition of such services from NTTA to the replacement tolling services provider); 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 TxDOT delivers written notice thereof to NTTA (or if any such failure to perform any such other 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 120 days); or

- (iii) To the extent permitted by applicable law, NTTA files 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) To the extent permitted by applicable law, an order, judgment or decree is 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, 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, and NTTA fails to cure such inability within 30 days after receiving from TxDOT written notice of such misrepresentation and its material adverse effect on TxDOT (and a default under this clause (v) shall be a Step-In Trigger Default); or
- (vi) NTTA assigns its rights and obligations under this Tolling Services Agreement in violation of this Tolling Services Agreement; or
- (vii) NTTA ceases 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) TxDOT's Right to Damages.

In the event of a default by NTTA under this Tolling Services Agreement, subject to Section 19(d), TxDOT 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, (i) all Delinquent Payment Deductions and Non-Compliance Deductions from the NTTA Compensation made pursuant to Section 6 by reason of such default, and (ii) subject to Section 29, all damages under or due to the existence of the Agreement or the Developer TSA TxDOT may owe to Developer arising out of or relating to 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) TxDOT's Suspension and Step-in Rights.

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

- (A) There occurs or exists a Step-In Trigger Default as referenced in 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(b)(v), 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 TxDOT, including damages, TxDOT shall have the right, but not the obligation, to require NTTA to suspend the performance of NTTA's services hereunder, and if TxDOT exercises such right, then either TxDOT or TxDOT's designee 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 (h), 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, to assist TxDOT (or TxDOT'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 for services rendered, in such amounts and on such terms and conditions as TxDOT (or TxDOT's designee) determines to be acceptable;
- (F) Collecting and retaining all tolls, Incidental Charges and other amounts from Users, for TxDOT'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 TxDOT's exercise of its step-in rights under this Section 19(d)(ii), the determination as to whether it is TxDOT or TxDOT's designee that is to be the party who is to so step in shall be at TxDOT'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 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 TxDOT hereunder or to Developer 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) TxDOT shall exercise such suspension and step-in rights by delivering to NTTA written notice of election to do so, which notice shall specify the intended step-in date.
- (iv) If TxDOT 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 TxDOT (or TxDOT'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 TxDOT or its contractors or designees. NTTA shall use diligent efforts to accomplish such transfer as quickly as possible (with a view to accomplishing such transfer within five Business Days after receipt of such notice, unless TxDOT specifies a longer period to the intended step-in date) without materially compromising customer service. TxDOT 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 TxDOT all costs and expenses TxDOT incurs in connection with the transfer of the services, functions, rights and responsibilities to TxDOT, its contractors or designee, including any such costs of Developer that TxDOT is obligated to pay or reimburse pursuant to the Developer TSA as a result of NTTA's default; 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 (vs. a designee). NTTA shall not engage in any action or make any statements to customers that would or could reasonably be expected to harm TxDOT's relations with such customers or their patronage of the Facility.

- (v) TxDOT may continue to exercise its suspension and step-in rights until, in the absence of an agreement between TxDOT 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 TxDOT or its contractors or designees or (B) the date all the circumstances that were the basis for TxDOT's exercise of its step-in rights are fully cured and NTTA has paid in full any damages owing hereunder to TxDOT, 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 TxDOT's written request, NTTA shall furnish to TxDOT 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 TxDOT all reasonable costs and expenses TxDOT 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 TxDOT,

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 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) TxDOT shall have no obligation to promote or advertise NTTA's association with the Facility, and at its election may remove from the Facility Right of Way and the Facility web site, at NTTA's expense, any signs, displays and banners bearing NTTA's name, logos, trademarks or brands (and TxDOT 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 TxDOT or TxDOT's designee, in which case NTTA shall be paid in accordance with the terms hereof, (2) with respect to Transactions for which NTTA's fees were due and payable in accordance with Section 6 before transition of the applicable services, functions, rights and responsibilities to TxDOT, its contractors or designees, and (3) to the extent, if any, that TxDOT 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 TxDOT, its contractors or designees, provided TxDOT elects not to assume such Transactions as provided in Section 3(d).
- (vii) TxDOT's step-in rights do not entitle TxDOT 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 Facility.

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 TxDOT 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 (A) the number of Non-Compliance Points (determined pursuant to Performance Standards 1-24 on Attachment 2), cured or uncured, assessed against NTTA is greater than thirty percent (30%) of 65 Non-Compliance Points (the total assessable Non-Compliance Points for Performance Standards 1 - 24), or, (B) the number of Non-Compliance Points (determined pursuant to Performance Standards 1-29 on Attachment 2), cured or uncured, assessed against NTTA is greater than thirty percent (30%) of 84 Non-Compliance Points (the total assessable Non-Compliance Points for Performance Standards 1 - 29, for each month in any period of three consecutive calendar months during the Term, then, at the TxDOT-NTTA Regular Meeting following the third such calendar month, TxDOT may request NTTA to prepare a plan for the correction of the applicable non-compliance and, in such case, NTTA shall deliver to TxDOT such corrective plan no later than 15 days following TxDOT'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 65 Non-Compliance Points for the calendar month that is the second full calendar month following NTTA's delivery of such corrective plan to TxDOT, then NTTA shall prepare and submit to TxDOT for TxDOT'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 65 Non-Compliance Points for any month during the Term, then NTTA shall thereupon prepare and submit to TxDOT for TxDOT's approval a remedial plan complying with the requirements of Section 19(e)(ii). TxDOT 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 65 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 65 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 TxDOT a monthly written report, in reasonable detail, of NTTA's progress in carrying out the approved remedial plan. At TxDOT's request, NTTA shall allow TxDOT or TxDOT's designee 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 TxDOT hereunder, TxDOT 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 Facility 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 65 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, 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(i) 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 three percent (3%) of the undisputed amount or the amount finally determined to be payable, as applicable.

(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) TxDOT'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 TxDOT 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 TxDOT 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 by NTTA to TxDOT based on historical collection rates, attributable to an NTTA breach or failure to perform;
- (E) Subject to Section 29, damages that are owing by a Party under another agreement or contract pertaining to the Facility (including, without limitation, the Agreement and the Developer TSA) 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) TxDOT 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, including any such costs of Developer that TxDOT is obligated to pay or reimburse pursuant to the Developer TSA (without duplication of such costs and 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 TxDOT's proper exercise of a right to terminate this Tolling Services Agreement under Section 21(e)(i), costs TxDOT 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 that (1) NTTA agrees and acknowledges that TxDOT shall not be obligated to provide the services itself upon termination of this Tolling Services Agreement and instead may elect to procure and enter into a subcontract with a replacement service provider and (2) if TxDOT is the replacement service provider, NTTA shall not be liable for damages for any such excess compensation;

- (H) In the event of TxDOT's proper exercise of its step-in right under this Tolling Services Agreement, reasonable costs TxDOT 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 that NTTA agrees and acknowledges that TxDOT shall not be obligated to provide the services itself upon exercise of its step-in right under this Tolling Services Agreement and instead may elect to procure and enter into a subcontract with a replacement service provider (but if TxDOT or its designee is the replacement service provider, NTTA shall not be liable for costs TxDOT incurs to procure, hire, and compensate a replacement service provider);
- (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. 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

- (i) 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.

(j) As a condition to any Party pursuing a claim or dispute against the other Party, the claiming Party shall first initiate informal resolution procedures by serving a written notice on the other Party's Authorized Representative. If the claim or dispute arises out of, results in or includes an essentially identical claim or dispute between TxDOT and Developer under the Developer TSA (provided that for purposes of this Section 20, claims regarding TxDOT's obligations under the Developer TSA, to the extent that such obligations are passed through to NTTA through this Tolling Services Agreement, shall be considered essentially identical regardless of minor differences in the provisions), then the Parties shall include the Developer' authorized representative in the informal resolution procedures. 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 Executive Director of TxDOT and the Executive Director of NTTA or the Executive Director's designee of either Party whose rank is not lower than Assistant Executive Director (and, if applicable the Developer' authorized officer as described in the Developer TSA), 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 Party making a claim may advance it as follows:

- (i) If the claim or dispute arises out of, results in or includes an essentially identical claim or dispute between TxDOT and Developer under the Developer TSA, then the Parties shall use and each fully participate in the same procedures and proceedings that are provided for resolution of disputes under the Developer TSA (and TxDOT agrees that such provision shall not be modified or amended without NTTA's prior written consent), and the outcome of the dispute resolution process shall be binding upon the Parties with respect to any essentially identical claim or dispute, to the extent permitted thereby; and
- (ii) If the claim or dispute does not arise out of or result in an essentially identical claim or dispute between TxDOT and Developer under the Developer TSA, or if it does but the dispute resolution procedures under the Developer TSA do not permit participation by NTTA in the same proceedings, then the Party making the claim may advance it in accordance with the statutes and administrative rules applicable at the time such claim is made, provided that this paragraph (ii) does not effect, and resort to such statutes and administrative rules shall not effect, a waiver of

sovereign immunity by the defending Party (or Parties, in the event of a counterclaim). The Parties agree that any requirement under the applicable statutes and administrative rules to use an alternative dispute procedure will be satisfied by participating in non-binding mediation.

21. Termination; Transition of Services at Termination.

- (a) TxDOT shall have the right to terminate this Tolling Services Agreement in any circumstance where TxDOT is exercising or entitled to exercise step-in rights under Section 19(d); provided that (i) TxDOT shall first deliver to NTTA written notice of election to terminate, (ii) termination shall be effective the first to occur of (A) a date specified in such notice, (B) the date TxDOT and/or its replacement contractor for toll collection and enforcement services is ready to commence performing such services, and (C) one year after the date TxDOT delivers its written notice of election to terminate, and (iii) pending the effective date of termination NTTA shall continue to diligently perform the services for which TxDOT 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 TxDOT, in accordance with this Tolling Services Agreement.
- (b) TxDOT shall have the right to terminate this Tolling Services Agreement without cause 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 TxDOT to utilize NTTA to provide customer service, toll collection or enforcement services for the Facility and no other Law then in effect obligates TxDOT to utilize NTTA to provide customer service, toll collection or enforcement services for the Facility;
  - (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 Facility; 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 Facility.

- (c) Termination by TxDOT under Section 21(b) shall be effective upon the later to occur of (i) the date specified in written notice to NTTA of TxDOT's election to terminate this Tolling Services Agreement without cause, which shall not be earlier than six months after the date the notice is delivered or (ii) the end of the then-current Service Period (or with respect to any termination right under Section 21(b) prior to the Service Commencement Date for the Facility (or for the Facility Segment that first achieves Service Commencement, if Developer develops the Facility in Facility Segments), the end of the Initial Term).
- (d) NTTA shall have the right to terminate this Tolling Services Agreement (i) for failure of TxDOT to pay any sum when due or (ii) due to a default described in Section 19(a)(i)(A)(2) but only if it is a material default; provided that (A) such failure or default as described in clause (i) or (ii) above, as applicable, has continued uncured after the expiration of any applicable cure period afforded hereunder to TxDOT, (B) NTTA shall first deliver to TxDOT written notice of election to terminate, (C) termination shall be effective the first to occur of six months after NTTA delivers such notice to TxDOT or the date TxDOT 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, including assisting with transition of services as set forth in Sections 21(g), and to receive amounts due to TxDOT, in accordance with this Tolling Services Agreement.
- (e) NTTA shall have the right to terminate this Tolling Services Agreement without cause 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 Facility, and no other Law then in effect obligates NTTA to provide customer service, toll collection or enforcement services for the Facility;
  - (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 Facility, 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 Facility; 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 NTTA to provide customer service, toll collection or enforcement services for the Facility, 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 Facility.

- (f) Termination by NTTA under Section 21(e) shall be effective the later to occur of (i) the date specified in written notice of NTTA's election to terminate this Tolling Services Agreement without cause, which shall not be earlier than 12 months after the date the notice is delivered or (ii) the end of the then-current Service Period (or with respect to any termination right under Section 21(e) prior to the Service Commencement Date for the Facility (or for the Facility Segment that first achieves Service Commencement, if Developer develops the Facility in Facility Segments), the end of the Initial Term).
- (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 TxDOT and its replacement contractor for toll collection, enforcement and related services to provide a smooth transition of services from NTTA to TxDOT 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 TxDOT, 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 Sections 3(c) and (d), 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 TxDOT 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, TxDOT shall attempt re-transmission every two hours for a period of 24 hours. If transmission remains unsuccessful, TxDOT shall thereafter attempt re-transmission expeditiously after NTTA notifies TxDOT 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, TxDOT shall deliver Transaction data to NTTA in digital form once per day, and NTTA shall reimburse TxDOT 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) is 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 resume normal receipt, processing, collection and payment of Transactions that it is rendered unable to normally receive, process, collect or pay due to such circumstances, provided that such extension of time shall apply only to (A) previously received Transactions that NTTA is unable to normally process for collection and payment, up to a maximum of 30 consecutive days after inception of such circumstances, and (B) Transactions that occur after inception of such circumstances and up to the 30<sup>th</sup> consecutive day that NTTA is unable to receive Transactions for normal processing and collection. For those Transactions for which NTTA is entitled to an extension of time, it shall resume normal receipt, processing, collection and payment on the first to occur of (1) the date NTTA restores service and receives the Transaction at NTTA's CSC Host or NTTA's back-up system, or (2) the date that is the later of (I) 30 days after the Transaction occurs and (II) five Business Days after the date TxDOT 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 respecting Transactions whose collection or payment is deferred pursuant to this Section 22(d) (determined using NTTA's historical collection rates and experience), as a consequence of the circumstances described in Section 22(b), shall bear interest at a floating rate equal to the LIBOR in effect from time to time, commencing on the date of inception of the circumstances described in Section 22(b) and continuing until such circumstances are remedied and NTTA resumes normal receipt, processing, collection and payment. 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 services by NTTA or payments owing by NTTA are interrupted or delayed due to a malfunction that is not attributable to the circumstances described in Section 22(b), then NTTA shall not be excused from performance or from any penalties or other consequences of such interrupted or delayed services or payment provided for in this Tolling Services Agreement, (including, as applicable, the Delinquent Payment Deductions and any rights and remedies available to TxDOT hereunder).
- (e) During any period that NTTA is unable to normally receive, process, collect or pay tolls on Transactions, or to render other services hereunder, due to the circumstances described in Section 22(b), TxDOT shall be free to seek and obtain temporary substitute services elsewhere. NTTA shall have no right to compensation respecting Transactions for which the fee is not due and payable in accordance with Section 6 and TxDOT chooses to process through any such substitute service provider. If TxDOT elects to transfer to a substitute service provider any Transaction for which NTTA has earned its fees in accordance with Section 6, NTTA shall be entitled to receive the applicable Base Transaction Fee in respect thereof; provided, however, that, if, at the time of the transfer of the Transaction to the substitute service provider, NTTA has provided processing services for such Transaction but has not received payment for, and has not issued a billing statement for such Transaction, then NTTA shall be entitled to receive only applicable Transponder Base Transaction Fee in respect thereof (and appropriate adjustments shall be made to effect such compensation if NTTA previously has been paid a higher amount). If NTTA remains unable to normally receive, process, collect or pay tolls on Transactions, or to render other services hereunder, due to the circumstances described in Section 22(b), for more than 90 consecutive days, then such non-performance shall constitute a Step-In Trigger Default hereunder.

23. Assignment

- (a) TxDOT shall have the right to assign this Tolling Services Agreement as follows, and only as follows:
  - (i) Without NTTA's consent, to any Person that assumes in writing TxDOT's obligations under the Agreement, the Developer TSA and this Tolling Services Agreement accruing after the date of assignment; and
  - (ii) To any other Person only with the prior written consent of NTTA in its sole discretion.
- (b) Any acceptance by an assignee of TxDOT's rights and interests under this Tolling Services Agreement pursuant to Section 23(a) shall not operate to make the assignee responsible or liable for any breach hereof by TxDOT 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 TxDOT'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 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 TxDOT in its sole discretion.
- (d) No assignment shall relieve the assigning Party from any liability under this Tolling Services Agreement arising prior to the effective date of assignment, or impair any of the other Party's rights or remedies due to the assigning Party's default occurring prior to the effective date of assignment.

24. Special Provisions for Compliance with Agreement

- (a) At TxDOT's request NTTA shall participate in meetings (in addition to TxDOT-NTTA Regular 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 NTTA shall take direction regarding its services only from TxDOT.
- (b) At TxDOT's request, NTTA shall give evidence in any dispute resolution proceeding pursuant to Section 17.8 of the Agreement.
- (c) Notwithstanding the provisions of Section 21, TxDOT 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).

- (d) To the extent that Developer does not timely perform any of its obligations under the Developer TSA that are a condition to TxDOT's or NTTA's performance under this Tolling Services Agreement, or that otherwise as a matter of the facts and circumstances must be performed by Developer in order for TxDOT or NTTA, as applicable, to perform under this Tolling Services Agreement, then TxDOT or NTTA, as applicable, shall be excused from such Party's related obligations hereunder (to the extent the same are affected by Developer's non-performance), and TxDOT's or NTTA's, as applicable, non-performance thereof shall not constitute a breach or default by such Party under this Tolling Services Agreement; provided, however, that TxDOT in any event shall be required to exercise good faith efforts to enforce Developer obligations to the extent provided in Section 1(d) and to enforce any applicable provisions of the Developer TSA if expressly required in other provisions of this Tolling Services Agreement.

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 TxDOT 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 13 to the Agreement, and shall require such subcontractors to comply with such provisions.

26. Designation of Authorized Representatives

NTTA and TxDOT 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 TxDOT:

Edward Pensock, Jr., P.E.  
Texas Department of Transportation  
Strategic Projects Division  
125 East 11th Street  
Austin, Texas 78701  
Telephone: (512) 936-0965  
Facsimile: (512) 936-0970  
E-mail: Ed.Pensock@txdot.gov

With copies to:

Texas Department of Transportation  
Office of General Counsel  
125 East 11th Street  
Austin, Texas 78701  
Telephone: (512) 463-8630  
Facsimile: (512) 475-3070  
E-mail: Jack.Ingram@txdot.gov

If to Developer:

NTE Mobility Partners LLC  
9001 Airport Freeway, Suite 600  
Suite 600 North Richland Hills, TX 76180  
Attention: John Hagan  
Telephone: (817) 710-0502  
Facsimile: (817) 710-0509

If to NTTA by U.S. mail:

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

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

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

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

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

28. Third Party Beneficiaries

- (a) Developer is an intended third party beneficiary of the provisions of Section 7 that obligate NTTA to establish and maintain the Facility Custodial Account and to make payments to the trustee under the Facility Trust Agreement, of Section 12(k) that obligate NTTA with respect to the communications protocols and procedures and other matters set forth therein, and of all covenants of NTTA in this Tolling Services Agreement to cooperate and coordinate with Developer set forth in Sections 2(c), 3(c), 8(f), 9(e), 12(a), 12(c), 13(d) and 17(a)(vi).
- (b) Except for the foregoing, it is not intended by any of the provisions of this Tolling Services Agreement to create any third party beneficiary rights hereunder in Developer or any other Person, or to authorize anyone not a Party hereto to maintain a suit based on or pursuant to the terms or provisions hereof.

29. Amendment of this Tolling Services Agreement or the Developer TSA

- (a) This Tolling Services Agreement may be amended only if in writing executed by TxDOT and NTTA.

- (b) Any amendment, modification or revision to the Developer TSA (provided that Change Directives shall not be considered amendments, modifications or revisions for purposes of this Section 29(b)) that materially increases NTTA's liability for damages due to NTTA's breach of this Tolling Services Agreement and to which NTTA has not provided prior written consent shall not be considered in the calculation of NTTA's damages therefor.
- (c) Any amendment, modification or revision to any of NTTA's agreements with its vendors or other entities providing or performing work, materials, equipment, systems or services relevant to any portion of NTTA's obligations under this Tolling Services Agreement, to NTTA's Business Rules or to the ICD that materially increases TxDOT's liability for damages due to TxDOT's breach of this Tolling Services Agreement and to which TxDOT has not provided prior written consent shall not be considered in the calculation of TxDOT's damages therefor. Within ten Business Days after the date of this Tolling Services Agreement, NTTA shall deliver to TxDOT true and complete copies of all such agreements, NTTA's Business Rules and the ICD as they exist as of the date of this Tolling Services Agreement.
- (d) TxDOT will not amend any covenants (i) of Developer to cooperate and coordinate with NTTA set forth in Sections 2(c), 3(c), 4(o), 8(f), 9(e), 12(a), 12(c), 12(d), and 17(a)(vi), (ii) of Developer to attend meetings in accordance with Section 4(k), (iii) naming NTTA an intended third party beneficiary set forth in Section 28(a), and (iv) in Section 13(b) of the Developer TSA (provided that Directive Changes shall not be considered amendments for purposes of this Section 29(d)) without the prior written consent of NTTA . TxDOT shall not amend any other sections of the Developer TSA without NTTA's consent, if NTTA's consent to such amendment is expressly required pursuant to the provisions of this Tolling Services Agreement.
- (e) Wherever a party's consent to amendments, modifications or revisions is required under Sections 29(b) and (c), such party shall not unreasonably withhold or delay its consent.

30. Independent Engineer

References in this Tolling Services Agreement to the Independent Engineer shall mean the Independent Engineer engaged by TxDOT and Developer pursuant to the terms of the Developer TSA. NTTA shall have the right to object and require removal for reasonable cause, to the extent allowed under the existing terms of the Independent Engineer Joint Work Authorization, any personnel proposed by the Independent Engineer to perform any of the Independent Engineer's obligations in respect of this Tolling Services Agreement and the services to be provided hereunder. The Independent Engineer is to perform the functions provided for under this Tolling Services Agreement, the Developer TSA and the three-party agreement among TxDOT, Developer and the Independent Engineer, and to assist and advise the Parties and Developer 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. 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. 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 other than Developer 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

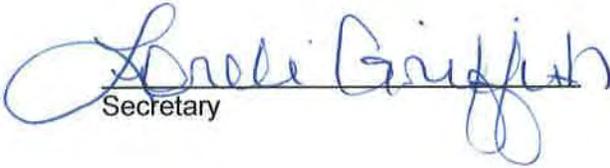
- (a) The title headings of the respective paragraphs of this Tolling Services Agreement are inserted for convenience only, and shall not be deemed to be part of this Tolling Services Agreement or considered in construing this Tolling Services Agreement.
- (b) Wherever the word "including," "includes" 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.

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

**NTTA**

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

By:   
Name: Gerald Carrigan  
Title: Executive Director

**TxDOT**

**TEXAS DEPARTMENT OF  
TRANSPORTATION**

By: \_\_\_\_\_  
Name: Phil Wilson  
Title: Executive Director



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**NTTA**

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By: \_\_\_\_\_  
Name: Gerald Carrigan  
Title: Executive Director

**TxDOT**

**TEXAS DEPARTMENT OF  
TRANSPORTATION**

By:  \_\_\_\_\_  
Name: Phil Wilson  
Title: Executive Director



# Attachment 1

## Definitions

### Definitions from Agreement

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

Affiliate  
Base Case Financial Model  
CDA Documents  
Contractor  
Customer Groups  
Day or day  
Developer's Interest  
Directive Letter  
Electronic Toll Collection System, or ETCS  
Exempt Vehicles  
Facility Debt  
Facility Segment  
Facility Trust Agreement  
Force Majeure Event  
Functional Availability  
Good Industry Practice  
Laws  
Lender  
LIBOR  
Person  
Service Commencement  
Service Commencement Date  
Special Vehicles  
Substantial Completion  
Technical Documents  
Technical Provisions  
Termination for Convenience  
Toll Revenue  
Toll Revenue Account  
User  
User Classification  
VES  
Video Transaction User  
Additional Definitions

**Agreement** means the certain Facility Agreement dated March 1, 2013 between Developer and TxDOT concerning the Facility.

**Authorized Representative** means the individuals authorized to make decisions and bind the Parties on matters relating to this Tolling Services Agreement pursuant to



Section 26. Where the term is used with reference to TxDOT, it has the meaning set forth in the Agreement.

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

**Average Monthly NTTA Cost of Services** means (i) after this Tolling Services Agreement has been in effect for a period of at least 12 full calendar months following the Service Commencement Date for the Facility (or for the Facility Segment that last achieves Service Commencement, if Developer develops the Facility in Facility Segments), one twelfth (1/12) of NTTA's total cost of providing services hereunder for the 12 full calendar months immediately preceding the termination of this Tolling Services Agreement requiring a determination of the Average Monthly NTTA Cost of Services or (ii) prior to such time as this Tolling Services Agreement has been in effect for 12 full calendar months following the Service Commencement Date for the Facility (or for the Facility Segment that last achieves Service Commencement, if Developer develops the Facility in Facility Segments), the monthly average of NTTA's total cost of providing services hereunder for the number of full calendar months during which this Tolling Services Agreement has been in effect following the Service Commencement Date for the Facility (or for the Facility Segment that has most recently achieved Service Commencement prior to the termination of this Tolling Services Agreement requiring a determination of the Average Monthly NTTA Cost of Services, if Developer develops the Facility in Facility Segments). NTTA's total cost of providing services used for purposes of determining the Average Monthly NTTA Cost of Services shall not include any costs that otherwise would be included in the total cost of providing services hereunder that have actually been recovered by NTTA through the collection of Incidental Charges; provided, however, that NTTA's costs to collect Video Transactions (such as, for example and not in limitation, administration, processing and enforcement costs) shall be excluded to the extent that such costs of collection are actually recovered from Incidental Charges imposed for this purpose at rates charged by NTTA consistent with NTTA's practices in respect of its own facilities (and to the extent such costs of collection are not so recovered, such costs shall be included in such cost of providing such services), and provided further, that due to the exclusion of such Video Transaction collection costs from NTTA's cost of providing services, then NTTA's cost of providing services shall not be reduced by Incidental Charges actually recovered by NTTA in respect of such collection costs).

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

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

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

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

- (a) A valid Transponder Transaction; or
- (b) A Video Transaction with an unobstructed readable video image of a license plate that bears serialized or personalized alpha-numeric plate characters and means to identify the plate type and issuing jurisdiction, which in the case of a vehicle with a trailer (including a truck with a trailer) must be the front license plate if a front plate is required by the issuing jurisdiction, and (ii) video data as required by the ICD.

For this purpose, a "readable video image" means an image produced by the VES and transmitted to NTTA's CSC Host in which plate characters, plate type and issuing jurisdiction can be reliably read electronically or by the human eye.

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

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

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

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

**Developer** means NTE Mobility Partners Segments 3 LLC, a Delaware limited liability company.

**Developer TSA** has the meaning set forth in Recital E of this Tolling Services Agreement.

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

**Effective Date** means the date set forth in the first paragraph on page 1 of this Tolling Services Agreement.

**Emergency Mode** means the period and circumstances when tolls are suspended on the Facility or a portion of the Facility in accordance with Section 3.4 of the Agreement.

**Facility Custodial Account** has the meaning set forth in Section 7(a).

**Incidental Charges** means:

- (a) Reasonable amounts for the purchase or rental of transponders or other electronic toll devices;
- (b) Reasonable, refundable security deposits for the distribution of transponders or other electronic toll devices;
- (c) Reasonable administrative fees for account establishment and maintenance and account statements;
- (d) Reasonable fees, penalties and interest for toll violations, including costs of collection; and
- (e) Other reasonable fees and charges for customary incidental services to Users for whom NTTA manages electronic tolling accounts (on the same basis as uniformly charged with respect to NTTA's own facilities).

For clarity, Video Transaction Toll Premiums are not an Incidental Charge.

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

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

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

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

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

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

**Interoperable Transponder Transactions** means Transponder Transactions involving transponders of Transponder Issuers other than NTTA; except that if NTTA's provision

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

**Marketing Plan** has the meaning set forth in Section 13(d).

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

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

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

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

**NTTA Custodian** has the meaning set forth in Section 7(a).

**NTTA Master Custody Agreement** has the meaning set forth in Section 7(a).

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

- (a) the amount determined by subtracting (x) the Average Monthly NTTA Cost of Services from (y) the Average Monthly NTTA Compensation and multiplying the difference by 60; or
- (b) the amount determined by multiplying (x) the Average Monthly NTTA Compensation by (y) five percent (5%) and then multiplying the product so obtained by 60.

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

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

**Party** means TxDOT or NTTA, as the context may require, and "**Parties**" means TxDOT and NTTA, collectively.

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

**Payment Period** means each calendar month during the Term of this Tolling Services Agreement from and after the Service Commencement Date for the Facility (or for the

Facility Segment that first achieves Service Commencement, if Developer develops the Facility in Facility Segments), which shall include (if such Service Commencement Date occurs on a date other than the first day of a calendar month), the partial calendar month from and after such Service Commencement Date and which also shall include any partial calendar month at the end of the Term.

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

**Permitted Person** for purposes of Section 30 means (i) the partners, members, shareholders, directors, managers, officers, employees, advisors and consultants of the Parties who have a reasonable need to know the related information, (ii) accountants, attorneys, consultants and other professionals rendering services in connection with the Facility or this Tolling Services Agreement and (iii) lenders and potential lenders to the Facility or to the applicable Party.

**Replacement Provider Compensation Damages Limit** means in the case of any termination or step-in (by TxDOT due to a default by NTTA), the difference in the compensation payable to such replacement service provider and the compensation that would have been payable to NTTA hereunder for five years, utilizing in each instance regular rates of compensation of such replacement service provider.

**Service Period** means, as applicable, (a) the Initial Term, or (b) each successive five-year period thereafter.

**Service Year** shall mean each 12-month period during the Term commencing on the Service Commencement Date for the Facility (or for the Facility Segment that first achieves Service Commencement, if Developer develops the Facility in Facility Segments) or an anniversary thereof and ending on (but including) the day before the next succeeding anniversary of such Service Commencement Date.

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

**Step-in Trigger Default** has the meaning set forth in Section 19(d)(i).

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

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

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

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

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

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

**Transponder Issuer** means any Person, including NTTA, TxDOT and Developer, who or which (a) issues transponders for mounting in vehicles and transacting Transponder Transactions on any tolled roadway and (b) participates with NTTA in interoperability protocols, agreements and arrangements.

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

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

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

**Unpostable Transponder Transaction** means a Transponder Transaction that cannot be posted to a customer account of NTTA or other Transponder Issuer due to reasons other than malfunctions of NTTA's CSC Host or such other Transponder Issuer's CSC Host.

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

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

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

**Video Transaction Toll Premium** means the charges described in Section H of Exhibit 4 to the Agreement.

## Attachment 2

### Performance Standards and Non-Compliance Points

Performance Standard	Std.	Points
<b>Non-Compliance Deduction Related Non-Compliance Points</b>		
1. Less than 5% of walk in customers at the "store front" kept waiting for greater than ten minutes before being seen by NTTA staff, as demonstrated by statistically reliable random sampling each month.	<5% greater than 10 mins.	4
2. Call Efficiency – 80/20 service level with 80% of calls to be answered within 20 seconds.	80% in 20 seconds	3
3. Customer service requests via NTTA's Online CSC will be responded to within 2 Business Days.	within 2 Business Days	3
4. 95% of customer service requests via email, facsimile, and postal mail will be responded to within 2 Business Days.	within 2 Business Days	2
5. Customer Service Hours – operating sales office with walk in customer service manned in-person 7 AM to 7 PM, Monday through Friday local time and 9 AM to 1 PM Saturday local time, excluding NTTA-observed holidays		1
6. Customer Service Hours – manned telephone coverage 7 AM to 7 PM, Monday through Friday local time and 9 AM to 1 PM Saturday local time, excluding NTTA-observed holidays, and 24 hour availability of interactive voice response (IVR) system. Faults to telephone line and/or IVR rectified as soon as possible but no later than within 24 hours, with the possible exception of faults outside of scheduled maintenance and failures due to non-NTTA equipment or failures outside NTTA's control.	within 24 hours	1
7. 24X7 availability of secure customer access through NTTA Online CSC (in English and Spanish) for account maintenance purposes (including opening an account, changing information on an account, viewing account status and statements, and replenishing an account balance, etc.). Faults that result in NTTA Online CSC being unavailable (outside of scheduled maintenance and failures due to non-NTTA equipment or failures outside NTTA's control) rectified as soon as possible but no later than within 24 hours.	within 24 hours	3

8. 24X7 availability to receive email. Faults to email availability rectified as soon as possible but no later than within 24 hours. Exceptions include faults outside of scheduled maintenance and failures due to non-NTTA equipment or failures outside NTTA's control.	within 24 hours	1
9. 24X7 availability to receive facsimile. Faults to facsimile availability rectified as soon as possible but no later than within 24 hours. Exceptions include faults outside of scheduled maintenance and failures due to non-NTTA equipment or failures outside NTTA's control.	within 24 hours	1
10. Call abandon rate less than or equal to 4%.	< or = 4%	2
11. 96% of escalations received via the Service Recovery Process receive a response within one Business Day.	96%	2
12. 96% of Customer Service Specialists will have at least two customer interactions monitored each month.	96%	3
13. The NTTA Customer Service Center shall maintain a 90% or higher quality monitoring rating each month, based on evaluations using the quality monitoring form appended to this <u>Attachment 2</u> as <u>Appendix A</u> .	>90%	3
14. NTTA CSC Host Availability - NTTA CSC Host shall be available to receive information from TxDOT on a 24X7 basis (excluding scheduled maintenance and failures due to non-NTTA equipment or failures outside NTTA's control). Any fault that results in NTTA CSC Host being unavailable (outside of scheduled maintenance and failures due to non-NTTA equipment or failures outside NTTA's control) rectified as soon as possible but no later than within 24 hours.	24 hours	4
15. Reconciled monthly financial reports under <b>Section 14(a)</b> shall be available by the 15th day of the month following the month being reported upon.	15 days	4
16. Monthly Delinquent Payment Deduction report under <b>Section 14(d)</b> shall be available by the 15th day of the month following the month being reported upon.	15 days	4
17. Monthly Non-Compliance Deduction report under <b>Section 14(e)</b> shall be available by the 15th day of the month following the month being reported upon.	15 days	4
18. Determine and document disposition of 98% of customer disputes within five Business Days after notice of dispute received by telephone, by email, by written correspondence or in person. Rejection or request for	Within 5 Business Days	3

further information due to insufficient information from customer constitutes a determination and disposition.		
19. For customer disputes determined to require a refund of an overcharge, issue 99% of customer refunds (and mail if appropriate) within five Business Days after resolution of dispute.	Within 5 Business Days	3
20. For any customer correspondence requiring a written response, including requests for written receipts, 98% are provided a written response within three Business Days	Within 3 Business Days	2
21. Where relevant and to the extent not already included in NTTA reports to TxDOT, provide TxDOT and Developer with reports as discussed under Sections 14(g) and 14(i).	N/A	5
22. NTTA shall deliver to TxDOT such other information as TxDOT may reasonably request and that is reasonably available to NTTA within the time frame for delivery contemplated for this Performance Standard to operate the Facility and to evaluate NTTA's compliance with and performance of this Tolling Services Agreement.	Within 3 Business Days	1
23. NTTA will not charge a User more than once for a single transaction submitted to the NTTA by TxDOT.	100%	3
24. NTTA will not charge a toll different than that identified by the Developer.	100%	3
25. NTTA will reclassify an uncollected Transponder Transaction to a Video Transaction within 31 days after NTTA's receipt of the applicable Transponder Transaction or such other time period as applies from time to time under an applicable interoperability agreement to which NTTA is a party or is otherwise bound.	100%	3
26. NTTA will process Video Transaction images through OCR within three Business Days of receiving images from TxDOT. Images of reclassified Transponder Transactions and Interoperable Transactions shall be processed within three Business Days of being reclassified to a Video Transaction.	Within 3 Business Days	3
27. NTTA will process Video Transaction images within ten Business Days of completing OCR, through manual image review.	Within 10 Business Days	3

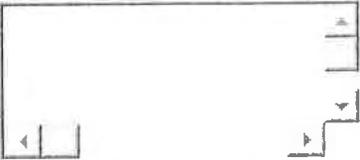
<p>28. NTTA will process and transition video transactions and invoices (up to the Third Notice of Nonpayment) according to NTTA's Business rules, within the required number of days.</p>	<p>85% of all Video Transactions required to be escalated under NTTA's business rules within the calendar month</p>	<p>9</p>
<p>29. NTTA shall transmit to Developer a disposition file for transactions received within two Business Days in accordance with NTTA's then current business rules.</p>	<p>Within 2 Business Days</p>	<p>1 per day of delay per disposition file</p>

## Appendix A to Attachment 2

### Quality Monitoring Forms

(Refer to Item 13 of Attachment 2)

#### Call Quality

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

Actively listens \* (Forfeit)

<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Category Comment:			

Resolution

Yes

No

N/A

Provides best option(s) for resolution

Utilized available tools

Accurately noted account and made appropriate changes/updates

Educates customer

Category Comment:			
-------------------	--	--	--

Call Handle Procedures

Yes

No

N/A

Follows hold proper steps (i.e. - asks for permission, thanks for holding)

Follows proper transfer steps (i.e. - explains transfer process/follows hold procedure/debriefs person receiving transfer/Thanks Customer)

Category Comment:			
-------------------	--	--	--

Professionalism

Yes

No

N/A

Courteous, professional tone

Speaks clearly

Uses customer name or Sir/Madam

Provides clear, concise information

Avoids use of technical/internal jargon

Manages dead air time

Avoids interrupting customer



Conveys appropriate empathy



Defuses customer anger



Empty text box with scrollbars

Category Comment:

Closing

Yes

No

N/A



Summarizes call and actions taken



Offers additional assistance and mentioned website option



Expressed appreciation - Thank You



Asked - Is there anything else I can help you with?



Branded the closing - NTTA



Empty text box with scrollbars

Category Comment:

Empty text box with scrollbars

Section Comment:



Summary



Rating:

<Automatic>

Comments:

Empty text box with scrollbars

Microsoft Excel - ssqmform

File Edit View Insert Format Tools Data Window Help

Type a question for help

100%

Reply with Changes... End Review...

G5

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

Ready

NUM

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

CSS Name: \_\_\_\_\_  
Observer: \_\_\_\_\_

Date: \_\_\_\_\_  
Time: \_\_\_\_\_

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

## Attachment 3

### Interface Control Document [ICD follows this page.]

## Attachment 4

### List of Transponder Models Establishing Benchmark Transponder Performance

TransCore Model Number	Power	Internal/ External	Mounting Surface	Agency
AT5544	Battery	either (sealed case)	non-metallic	HCTRA
AT5545	Battery	either (sealed case)	metallic	HCTRA
AT5547	Battery	internal	non-metallic	HCTRA
AT5140	Battery	external (bumper)	metallic or non-metallic	HCTRA
eGo Plus 0700	Beam	printable sticker tag	window	HCTRA
AT5100	Beam	internal	non-metallic	NTTA
AT5145	Beam	external (bumper)	metallic or non-metallic	NTTA
eGo Plus 0700	Beam	printable sticker tag	window	NTTA
eGo Plus 0700	Beam	printable sticker tag	window	TxDOT
AT5145	Beam	external (bumper)	metallic or non-metallic	TxDOT
AT5544	Battery	either (sealed case)	non-metallic	TxDOT

**Attachment 5**

**[RESERVED]**

**Attachment 6**

**[RESERVED]**

## Attachment 7

### Initial Designation of Authorized Representatives

**For NTTA:**

Name: Gerald Carrigan

Title: Executive Director

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

Office Tel: 214.461.2000

Mobile Tel: 214.325.5459

Fax: 972.930.2625

Email: gcarrigan@ntta.org

**For TxDOT:**

Name: Phil Wilson

Title: Executive Director

Address: 125 East 11th Street

Austin, TX 78701

Office Tel: (512) 305-9527

Fax: (512) 305-9567

Email: Phil.Wilson@txdot.gov

## Attachment 8

### Example of Calculation of Delinquent Payment Deduction

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

## Attachment 9

### Example of Calculation of Non-Compliance Deduction

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

**Attachment 10**

**[Reserved]**

**Attachment 11**

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

**[Summary follows this page.]**

# Executive Summary

## NTTA's Business Continuity Plan

### History

It is the policy of the NTTA to maintain a comprehensive Business Continuity Plan to protect its technology infrastructure, information assets, assure employee safety, and provide continued services. The Plan provides for reestablishment of critical and essential operations that may have been disrupted due to the impact of an unforeseen event.

The plan was developed to document the tasks, support and resources needed should a disaster impact the North Texas Tollway Authority. The Plan will be activated when an emergency beyond the scope of standard operating procedures occurs. It is designed to reduce confusion created during a disaster, and provides a framework for recovery and restoration of critical systems, voice/data communications, business processes and facilities.

### General Overview

The purpose of this Plan is to formalize and document the Business Continuity Policies and Procedures of the NTTA and to provide guidelines to:

- Gain control of problem situations;
- Minimize the impact of an operational outage on the NTTA,
- Gather critical information into a central repository,
- Reduce risks to essential information resources,
- Make decisions in advance of a crisis,
- Test periodically,
- Restore the facilities,
- Return to a permanent operating environment,
- Resume time-sensitive business operations.

The Business Continuity Plan addresses the logical flow of events in responding to major disruptions in IT services, business processes and technology infrastructure. Specifically, the events to:

- Continue/resume time-sensitive business operations for the critical and essential business processes.

- Activate the resumption and support of those services (chain of command, communication with key personnel, emergency procurement, etc.).
- Provide ability to initiate restoration procedures of critical computer processing and data communications capabilities quickly following a disaster.
- Define how the NTTA Departments will communicate and coordinate with the Business Continuity Teams.
- Identify the staff assigned to implement resumption support (Business Continuity Teams & Key Personnel) and their responsibilities.
- Restore critical operating systems, application systems, functions, and telecommunications.
- Achieve each of the above objectives in a timely, efficient, and cost effective manner.
- Return to a permanent operating environment.

The Business Continuity Plan is a restricted document and classified as confidential given the nature of the contents. Elements of the Plan are tested periodically and it is modified as needed based upon test results, as well as changes to hardware, software, applications, procedures, personnel, and the NTTA's organization structure. The Plan documents are stored electronically, backed up and saved offsite, and made available in electronic form to authorized individuals.

## **Attachment 12**

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

**[Summary follows this page.]**

**North Texas Tollway Authority  
Finance Department  
Revenue Recognition and Reconciliation Overview**

ACTIVITY	PROCESS	FREQUENCY
Revenue Recognition	System reports and queries are used to identify the following toll transactions. Each report is reviewed for accuracy, both individually and collaboratively. <i>Customer Deposits (Deferred Revenue)</i> <i>Earned Revenue</i> <i>Customer ZipCash Payments</i> <i>Accounts Receivables &amp; Payables</i> <i>Interoperability Transactions</i>	Daily
Reporting	Based on the information identified above, accounting transactions are recorded in the Financial System. Revenue is recognized on an accrual basis.	Daily/Monthly
Reconciliation	System reports and queries are used to conduct the following reconciliations: <i>Transactions from lane to Host System</i> <i>Interoperability transactions to Host System</i> <i>Cash per Report equals Cash deposited</i> <i>Internal Reporting Consistency</i> <i>General Ledger Cash to Bank</i> <i>Other General Ledger Accounts to System Reports</i>	Daily Daily Daily Daily/Monthly Monthly Monthly

## Attachment 13

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

[Summary follows this page.]

# Executive Summary

## NTTA's Marketing Distribution

### Overall Marketing Objective

The NTTA's objective is to increase TollTag market share throughout the North Texas region through a combination of tactics and strategies that touch the widest range of our customer base including: ongoing TollTag acquisition campaigns, grass roots marketing within the five counties (geographic and economic), community outreach and strategic partnerships. The overlay to this objective is a coordinated and cohesive message that identifies the NTTA as the toll provider of choice in North Texas and the TollTag as the most cost effective and easy way to travel on all toll roads in North Texas.

With a base of almost 2.7 million TollTag customers and 1.4 million accounts, the NTTA continues to expand its reach and distribution as new projects and opportunities to drive growth arise. For instance, the NTTA is gaining new customers in Tarrant County in anticipation of the 2014 opening of the Chisholm Trail Parkway. Historically, NTTA roads have been concentrated in a finite geographic region of Collin and Dallas counties.

### TollTag Distribution Strategies

NTTA marketing and distribution initiatives are designed to increase the availability of TollTags throughout the North Texas region and put more TollTags in cars. The overarching strategy is to provide solid messaging for having an NTTA TollTag, make it convenient to do business with the NTTA and establish strong marketing campaigns to consistently reinforce the message, sign-up locations and the role of the NTTA in North Texas.

1. Increasing customer and corporate accounts;
2. Strategic retail partnerships
3. Expansion of places to use the TollTag i.e. parking garages, stadiums, etc.

**Retail Partners:** By targeting retail partners with strong community exposure to a wide variety of audiences, the NTTA can maintain its standing as a community partner while providing residents added access to TollTags.

Acquisition campaigns and strategies to increase distribution points are the key focus of all NTTA TollTag campaigns. The NTTA currently has 62 Regional TollTag Partners, grocery stores, municipalities and other retail locations, throughout the metroplex where customers can obtain TollTags; 168 ACE locations where customers can pay their ZipCash invoices and two TollTag stores, Plano and Irving. There are plans in the near future to open a Fort Worth TollTag store and to increase the number of RTP locations with the addition of 24 Fiesta Stores.

**Mobile TollTag Distribution:** NTTA has ongoing outreach effort targeted at strategic locations with opportunities for TollTag distribution and education. To support the NTTA's grassroots outreach efforts to educate the customer about tolling and TollTags, NTTA has a mobile TollTag distribution program. The program is staffed by customer

service agents and works with the marketing team to support strategic partnerships such as the Texas Christian University promotion and the Fort Worth Stock Show. Many of these programs are focused on new growth areas in Tarrant and Johnson counties. In addition, NTTA has ongoing efforts in all.

**Distribution of TollTags through Expanded Channels:** The NTTA launched a Mobile App in 2013 which included the ability to manage TollTag accounts on a smart phone (Android and Apple devices). Additional phases are planned to include travel maps and a way to contact roadside assistance, ZipCash payments and opening a new TollTag account. The fastest growing distribution channel for TollTags is the NTTA website. NTTA continues to promote the website as an easy way to open a TollTag account that is open 24/7. A mobile site was launched in 2013 with additional content planned for 2014.

### **Marketing Strategy**

#### Goals:

- Inform and educate targeted segment of customer base about how the new TEXpress Lanes function so that they can make informed choices about their travel routes.
- Educate all motorists about the differences between TEXpress Lanes and other toll roads
- Educate all motorists about the new tolling methodology (variable pricing, HOV2+ discounts)
- Explain the relationship between the developer (NTE) and the toll collector (NTTA).
- Ensure timely payment for TEXpress Lane travel by encouraging use and an understanding of how TEXpress Lanes work.

#### Objectives:

- Drive consumer satisfaction levels and perception of TEXpress Lanes as a good value.
- Minimize customer questions and call-time to NTTA related to TEXpress Lanes and pricing.

#### Strategies:

- Focus marketing and communications on customer base with the highest probability of using the new road. Target drivers and businesses who are most likely to use and benefit from the new lanes.
- Construct messages to reduce customer confusion about how the lane operations, pricing and payment.
- Train NTTA customer service employees about the specifics of TEXpress lanes pricing and billing so they are equipped to respond to all customer inquiries.

### **Focus Groups**

Key to the success to any organization in sustaining market share is the ability to receive customer feedback, track trends and the flexibility to address those needs while not losing sight of the overall marketing objectives. The NTTA has established proven measures that collect both quantitative and qualitative data including:

**Biennial Customer Surveys** – NTTA benchmarks customer satisfaction every other year through the biennial customer surveys. Conducted by an outside consultant, the surveys are designed for TollTag, ZipCash, potential customers. In conjunction, NTTA also surveys media, vendors and elected officials questions on satisfaction, knowledge of products and services and communications.

**Email** – A variety of email addresses that customers can submit complaints, concerns, or feedback on any topic related to the NTTA. A system is in place that assures an accurate response is provided to the customer in a timely manner.

**Focus Groups** – Performed throughout the year with the set topics and used to develop messaging points or test advertising material or key communication points.

**Mystery Driver** – A program that utilized customers as “secret drivers” to provide data on customer touch points throughout the NTTA system.

### **Future Growth**

The NTTA continues to maintain and strengthen TollTag usage in North Texas and has plans to achieve higher TollTag penetration rates over the next three years. The NTTA has identified key initiatives/product launches that will assist in establishing an even strong share of the market while solidifying our relationship with our existing customer base.

**Attachment 14**

**Form of Joinder Agreement to NTTA Master Custody Agreement**

**[Follows this page]**



**JOINDER AGREEMENT**  
NTE Segments 3A and 3B Facility

This JOINDER AGREEMENT (this "Joinder Agreement") is made and entered into effective as of September 19, 2013 by the North Texas Tollway Authority, a regional tollway authority and political subdivision of the State of Texas ("NTTA"), the Texas Department of Transportation, a public agency of the State of Texas (the "Beneficiary"), and Wells Fargo Bank, N.A., a national banking association organized and existing under the laws of the United States of America, as Custodian (the "Custodian").

WHEREAS, NTTA and the Beneficiary have entered into that certain Tolling Services Agreement dated September 19, 2013 (the "TSA") pertaining to the Segments 3A and 3B Facility of the North Tarrant Express Project described therein (the "NTE 3A/3B Project");

WHEREAS, the Beneficiary and NTE Mobility Partners Segments 3 LLC, a Delaware limited liability company (the "Developer"), have entered into that certain Tolling Services Agreement dated September 19, 2013 (the "Developer TSA") pertaining to the NTE 3A/3B Project;

WHEREAS, NTTA and the Custodian have entered into that certain Master Custodial Account Agreement dated as of April 1, 2011 (the "Master Custodial Account Agreement");

WHEREAS, Section 206 of the Master Custodial Account Agreement provides that the Custodian shall, at the written direction of NTTA, establish such additional Master Lockboxes, Holding Accounts, Master Custodial Accounts or subaccounts within any of the Master Custodial Accounts established under the Master Custodial Account Agreement as shall be specified in such written direction of NTTA, for the purpose of identifying more precisely the sources of payments into and disbursements from such accounts and subaccounts, and this Joinder Agreement shall constitute the written direction of NTTA to establish an additional Master Custodial Account as provided in Section 2 hereof and to follow the instructions regarding the deposit and withdrawal of funds from such additional Master Custodial Account; and

WHEREAS, pursuant to Section 7.01 of the Master Custodial Account Agreement, NTTA desires to designate Beneficiary as a "Beneficiary" and the Beneficiary wishes to be so designated and to acquire and undertake the rights and obligations of a Beneficiary thereunder and as set forth herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Defined Terms. Capitalized terms not otherwise defined in this Joinder Agreement shall have the same meaning assigned to such terms in the Master Custodial Account Agreement. The following terms have the meanings set forth below:

"Facility Trust Agreement" means the Facility Trust Agreement dated as of March 1, 2013, by and between the Developer and the Facility Trustee, as it may be amended or modified

from time to time and any replacement thereof that constitutes a Facility Trust Agreement under the Developer TSA.

“Facility Trustee” means BOKF, NA dba BANK OF TEXAS, as trustee under the Facility Trust Agreement or any successor thereto in such capacity.

“NTE 3A/3B Facility Custodial Account” means the NTE 3A/3B Facility Custodial Account created by Section 2 of this Joinder Agreement.

“NTE 3A/3B Facility Toll Revenues” means TollTag Holder Revenues, Video Toll Revenues, Third-Party Transponder Issuer Revenues and Video Transaction Toll Premiums relating to Transactions on the NTE 3A/3B Project.

“Video Transaction Toll Premiums” means amounts, with respect to Video Transactions, reasonably necessary for Beneficiary to recover (a) its costs and expenses relating to the processing and collection of Video Transactions and (b) an amount to reflect the collection risk assumed by Beneficiary in the Developer TSA.

2. Establishment of NTE 3A/3B Facility Custodial Account; Disbursements.

(a) Pursuant to Section 206 of the Master Custodial Account Agreement, NTTA directs the Custodian to establish a Master Custodial Account designated the “NTE 3A/3B Facility Custodial Account.” On each Business Day, NTTA shall deliver to the Custodian a Certificate of NTTA setting forth (i) the amount of NTE 3A/3B Facility Toll Revenues on deposit in the Revenue Consolidation Account and (ii) the amount of NTE 3A/3B Facility Toll Revenues to be disbursed from the Revenue Consolidation Account to each of NTTA and the NTE 3A/3B Facility Custodial Account. On each Business Day, the Beneficiary shall deliver to the Custodian a Certificate of Beneficiary setting forth the amounts to be disbursed from the NTE 3A/3B Facility Custodial Account to the accounts identified by the Facility Trustee and to the accounts identified by the Beneficiary.

(b) Notwithstanding and in lieu of the requirements under Section 2.03(b) of the Master Custodial Account Agreement, on each Daily Disbursement Date the Custodian shall withdraw funds on deposit in the Revenue Consolidation Account that are designated or otherwise identified by NTTA in a Certificate of NTTA as NTE 3A/3B Facility Toll Revenues and make the following payments in the following order of priority:

(i) for transfer to NTTA the amount due to NTTA under the TSA, as set forth in the applicable Certificate of NTTA; and

(ii) for transfer to the NTE 3A/3B Facility Custodial Account the remaining amount of NTE 3A/3B Facility Toll Revenues on deposit in the Revenue Consolidation Account after the transfer in clause (i) above, as set forth in the applicable Certificate of NTTA.

(c) On each Daily Disbursement Date the Custodian shall withdraw funds on deposit in the NTE 3A/3B Facility Custodial Account in the amount set forth in the applicable Certificate of Beneficiary and make the following payments in the following order of priority:

(i) for transfer to the Facility Trustee the amount due to the Developer from the Beneficiary under the Developer TSA, as set forth in the applicable Certificate of Beneficiary; and

(ii) for transfer to the Beneficiary the amount, if any, as set forth in the applicable Certificate of Beneficiary.

(d) The Beneficiary may from time to time transfer funds to the Custodian for deposit into the NTE 3A/3B Facility Custodial Account.

(e) The Custodian is authorized and directed to invest funds in the NTE 3A/3B Facility Custodial Account in Eligible Investments pursuant to Section 8.05 of the Master Custodial Account Agreement at the written direction of the Beneficiary, and, absent such written instructions, to invest such funds in Eligible Investments as provided in Section 8.05 Master Custodial Account Agreement.

3. Designation of Beneficiary as "Beneficiary". NTTA hereby designates the Beneficiary as a "Beneficiary" under the Master Custodial Account Agreement with respect to the NTE 3A/3B Project and NTE 3A/3B Facility Toll Revenues that are at any time held by the Custodian under the Master Custodial Account Agreement and that under the terms of the TSA NTTA is obligated to direct to be transferred to the NTE 3A/3B Facility Custodial Account, and the Custodian hereby acknowledges said designations, with the full rights, powers and benefits granted to a "Beneficiary" thereunder. If (i) Beneficiary suspends or terminates NTTA's clearinghouse and toll or other fee collection and enforcement services or (ii) NTTA ceases to provide clearinghouse and toll collection and enforcement services for the Beneficiary, all as provided in the TSA, Beneficiary will deliver written notice to the Custodian specifying the date Beneficiary suspended or terminated NTTA's services or the date NTTA ceased to provide such services for the Beneficiary under the TSA, in which event NTTA shall no longer be entitled to receive payment of its charges and fees relating to the provision of such services as provided in the TSA for the period of suspension or the period after termination or cessation. In case of suspension, the Beneficiary will deliver written notice to the Custodian of the date such suspension ends and NTTA resumes its clearinghouse and toll or other fee collection and enforcement services. Beneficiary's rights as a "Beneficiary" under the Master Custodial Account Agreement shall continue so long as the TSA remains in effect.

4. Agreements of NTTA. NTTA hereby covenants and agrees as follows:

(a) NTTA will comply with the terms of the Master Custodial Account Agreement and perform the obligations of NTTA specified in the Master Custodial Account Agreement.

(b) NTTA will enforce the Master Custodial Account Agreement in accordance with its terms and provisions and will not amend, modify or waive any of the

terms and provisions thereof that establish or protect the rights of the Beneficiary as a “Beneficiary” thereunder.

(c) NTTA will not terminate or allow to expire in accordance with its terms the Master Custodial Account Agreement unless (i) NTTA has executed a new Master Custodial Account Agreement with a replacement custodian on substantially the same terms and conditions as the Master Custodial Account Agreement, or (ii) the TSA has been terminated and Beneficiary has been paid all amounts due to Beneficiary under the TSA and all outstanding, unsatisfied claims for sums owing from NTTA to Beneficiary have been finally resolved and satisfied.

(d) NTTA shall deliver to the Beneficiary a copy of all notices, certificates, and instructions delivered by or on behalf of NTTA to the Custodian with respect to matters relating to the Beneficiary or the NTE 3A/3B Project as and when delivered to the Custodian.

(e) NTTA will include instructions in all billing and account statements and implement other protocols by which all Users are notified and directed to send all payments related to the use of Facilities, including, without limitation, all NTTA Prepaid Funds, TollTag Holder Revenues, Video Toll Revenues, Third-Party Transponder Issuer Revenues and Video Transaction Toll Premiums, directly to a Master Lockbox or Holding Account.

5. Agreements of Beneficiary. The Beneficiary hereby covenants and agrees as follows:

(a) The Beneficiary (i) hereby becomes a “Beneficiary” under the Master Custodial Account Agreement with the same force and effect as if originally named therein as a Beneficiary and (ii) agrees to all the terms and provisions of the Master Custodial Account Agreement relating to or affecting the Beneficiary.

(b) The Beneficiary shall deliver to NTTA a copy of all notices, certificates, and instructions delivered by or on behalf of Beneficiary to the Custodian with respect to matters relating to NTTA or the NTE 3A/3B Project as and when delivered to the Custodian, except with respect to transfers of funds from Beneficiary to the Custodian for deposit into the NTE 3A/3B Facility Custodial Account.

(c) The Beneficiary shall have no greater right or interest in and to the funds and accounts created pursuant to the Master Custodial Account Agreement than is provided in the TSA or in this Joinder Agreement.

6. Agreements of Custodian. The Custodian hereby covenants and agrees as follows:

(a) The Custodian acknowledges that the Beneficiary is a “Beneficiary” as that term is used in the Master Custodial Account Agreement entitled to the rights of a Beneficiary as provided thereunder, including Article VII thereof, and this Joinder

Agreement constitutes a Joinder Agreement under the Master Custodial Account Agreement.

(b) The Custodian will transfer amounts required to be transferred to the Facility Trustee under Section 2(c)(i) of this Joinder Agreement as from time to time instructed by the Beneficiary and shall designate such amounts at the time of each transfer as "NTE 3A/3B Facility Toll Revenues."

(c) The Custodian will transfer amounts required to be transferred to the Beneficiary under Section 2(c)(ii) of this Joinder Agreement as from time to time instructed by the Beneficiary.

7. Agreements as to Revenues. Each of NTTA, the Custodian and the Beneficiary hereby acknowledge and agree as follows:

(a) The Master Custodial Account Agreement and arrangements thereunder are intended to ensure that toll or other revenues from operation of the NTE 3A/3B Project do not come into the possession of, or under the control of, NTTA, or become the assets or property of NTTA pending their distribution to the Beneficiary or the Facility Trustee unless and until the portion of such toll or other revenues that NTTA is entitled to receive pursuant to the terms of the TSA is actually distributed to NTTA from funds deposited into the Master Custodial Accounts.

(b) All revenue that accrues from the use of the NTE 3A/3B Project prior to the date the TSA is terminated that would constitute toll or other revenue if received by Beneficiary, either directly or indirectly, shall become the property of the Beneficiary or Developer when it accrues, but the foregoing shall not reduce NTTA's right to receive Basic Transaction Fees in accordance with the terms of the TSA or NTTA's rights under Section 2.03(e) of the Master Custodial Account Agreement.

(c) To the extent provided in the Master Custodial Account Agreement, the Custodian will have dominion and control of all toll or other revenues from operation of the NTE 3A/3B Project for purposes of crediting and transferring such toll or other revenues from use of the NTE 3A/3B Project to the Facility Trustee for deposit as contemplated by the Facility Trust Agreement and to the Beneficiary as provided herein.

(d) If for any reason NTTA receives any payment for any use of the NTE 3A/3B Project prior to the occurrence of the date the TSA is terminated, all toll or other revenues that are part of such payment shall be deemed received by NTTA merely as a bailee or agent for the Beneficiary and shall not constitute funds of NTTA, and NTTA agrees to promptly remit such payments to the Custodian for handling in accordance with the terms of the Master Custodial Account Agreement.

(e) None of the Holding Accounts or Master Custodial Accounts (including the NTE 3A/3B Facility Custodial Account) are accounts or subaccounts established pursuant to Section 228.012 of the Texas Transportation Code.

8. Indemnification. TO THE EXTENT ALLOWED BY LAW, THE BENEFICIARY SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS THE CUSTODIAN FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, COSTS, CLAIMS, EXPENSES AND LIABILITIES INCURRED BY OR ASSERTED AGAINST THE CUSTODIAN IN THE PERFORMANCE OF ITS DUTIES UNDER THIS JOINDER AGREEMENT RELATING TO ANY ACTION TAKEN OR FAILURE TO ACT PURSUANT TO A CERTIFICATE OF BENEFICIARY DELIVERED BY THE BENEFICIARY, INCLUDING ANY SUCH REASONABLE COSTS, CLAIMS, EXPENSES AND LIABILITIES INCURRED IN THE COURSE OF DEFENDING ITSELF AGAINST ANY CLAIMS OR ACTIONS OR ENFORCING ANY REMEDIES UNDER THE MASTER CUSTODIAL ACCOUNT AGREEMENT. ANY SUCH INDEMNITY SHALL NOT EXTEND TO ANY LOSSES, DAMAGES, COSTS, CLAIMS, EXPENSES OR LIABILITIES FINALLY ADJUDICATED TO HAVE BEEN DIRECTLY CAUSED BY THE CUSTODIAN'S BREACH OF THE MASTER CUSTODIAL ACCOUNT AGREEMENT OR THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CUSTODIAN OR VIOLATION OF LAW BY THE CUSTODIAN. THE INDEMNIFICATION OF THE CUSTODIAN UNDER THIS JOINDER AGREEMENT SHALL EXTEND TO ITS DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS. THE OBLIGATIONS OF THE BENEFICIARY UNDER THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS JOINDER AGREEMENT OR THE MASTER CUSTODIAL ACCOUNT AGREEMENT AND THE REMOVAL OR RESIGNATION OF THE CUSTODIAN.

9. Compensation. The Beneficiary shall not be liable to the Custodian or NTTA for any compensation due the Custodian under the Master Custodial Account Agreement or, except as provided in Section 8 of this Joinder Agreement, any costs, expenses or fees incurred by Custodian in connection with the Master Custodial Account Agreement.

10. Counterparts. This Joinder Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Joinder Agreement shall become effective when each of the Beneficiary, NTTA and the Custodian shall have received a counterpart of this Joinder Agreement that bears the signature of the Beneficiary, NTTA and the Custodian. Delivery of an executed signature page to this Joinder Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually signed counterpart of this Joinder Agreement.

11. Severability. In case any one or more of the provisions contained in this Joinder Agreement should be held invalid, illegal or unenforceable in any respect, none of the parties hereto shall be required to comply with such provision for so long as such provision is held to be invalid, illegal or unenforceable, but the validity, legality and enforceability of the remaining provisions contained herein and in the Master Custodial Account Agreement shall not in any way be affected or impaired. The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

12. Notices. All communications and notices hereunder shall be in writing and given as provided in Section 8.04 of the Master Custodial Account Agreement. The address for notice to the Beneficiary is set forth following its signature.

13. Governing Law. This Joinder Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

14. Successor Master Custodial Account Agreement. If NTTA and a successor custodian enter into a new master custodial account agreement in accordance with Section 5.01(e) of the Master Custodial Account Agreement, then, ipso facto, this Joinder Agreement shall apply to the new master custodial account agreement, and all references in this Joinder Agreement to Custodian and Master Custodial Account Agreement shall refer to the successor custodian and new master custodial account agreement, respectively.

15. Conflicts. As between NTTA and Beneficiary, if there is a conflict between the terms of this Joinder Agreement and the terms of the TSA, the terms of the TSA shall prevail. Nothing in this Joinder Agreement or the Master Custodial Account Agreement shall be construed as an amendment to the TSA.

16. Disputes. As between NTTA and Beneficiary, the dispute resolution procedures set forth in Section 20 of the TSA shall apply, *mutatis mutandis*, to any dispute arising out of this Joinder Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Joinder Agreement by their officers thereunto duly authorized as of the day and year first written above.

**NORTH TEXAS TOLLWAY AUTHORITY**

By: \_\_\_\_\_  
Name: Gerald Carrigan  
Title: CEO/Executive Director

**TEXAS DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Name: Phil Wilson  
Title: Executive Director

**NOTICE ADDRESS:**

Texas Department of Transportation  
Strategic Projects Division  
125 East 11th Street  
Austin, Texas 78701  
Attention: Edward Pensock, Jr., P.E.  
Telephone: (512) 936-0965  
Email: Ed.Pensock@txdot.gov  
Telecopy: (512) 936-0970

**WELLS FARGO BANK, N.A., as Custodian**

By: \_\_\_\_\_  
Name: Kushina White  
Title: Assistant Vice President

## Attachment 15

### Description of TxDOT's Toll Payment Obligations and Procedure for Payment Under the Developer TSA

Under the Developer TSA TxDOT is obligated to deposit or cause to be deposited with the trustee under the Facility Trust Agreement an amount, for each Transponder Transaction and Video Transaction, equal to the toll for such Transaction (i.e. the toll charge indicated by Developer as contemplated under the Developer TSA, but excluding Video Transaction Toll Premiums), less fees payable to TxDOT and adjustments provided for under the Developer TSA, within two Business Days after the date the Transaction has been properly transmitted to NTTA's CSC Host in accordance with the ICD. Under this Tolling Services Agreement between TxDOT and NTTA, NTTA is not obligated to remit tolls (including Video Toll Premiums) in advance of collection, and NTTA also is entitled to deduct from toll revenues it collects the amount of fees and other adjustments properly payable to NTTA under this Tolling Services Agreement. TxDOT is responsible for the determination and deduction of its fees and the adjustments to be deducted from amounts it is obligated to remit to Developer under the Developer TSA. For the avoidance of doubt, the amount of the toll to be remitted to Developer pursuant to the Developer TSA does not include the amount of any Video Transaction Toll Premiums or Incidental Charges (although Video Transaction Toll Premium receipts held in the Facility Custodial Account may be applied toward the amounts owing Developer under the Developer TSA). The difference between the timing for remittance of tolls between that in the Developer TSA and that in this Tolling Services Agreement, the difference in the risk regarding toll collection placed upon TxDOT in the Developer TSA and the risk regarding toll collection placed upon NTTA in this Tolling Service Agreement, and the fact that TxDOT has the sole right to collected Video Transaction Toll Premiums, may result in differences between the amount of toll receipts available in the Facility Custodial Account and the amount TxDOT owes to Developer at a given time under the Developer TSA. In order to enable timely payments by TxDOT to Developer under the Developer TSA and timely payments from NTTA to TxDOT of collected tolls in excess of payments that TxDOT owes to Developer under the Developer TSA (if any), NTTA and TxDOT have agreed to implement the procedures set forth in subsections (c) through (i) of Section 7 of this Tolling Services Agreement.

