EXHIBIT 13

FORM OF TXDOT TOLLING SERVICES AGREEMENT

[Attached]

TOLLING SERVICES AGREEMENT

IH 635 MANAGED LANES PROJECT

Between

TEXAS DEPARTMENT OF TRANSPORTATION

and

LBJ INFRASTRUCTURE GROUP LLC,
a Delaware Limited Liability Company

Dated _____, 20__

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TOLLING SERVICES AGREEMENT

THIS TOLLING SERVICES AGREEMENT (the "Tolling Services Agreement") is entered into and effective as of _____, 20__ by and between the Texas Department of Transportation, a public agency of the State of Texas ("TxDOT"), and LBJ Infrastructure Group LLC, a Delaware limited liability company ("Developer"), with reference to the following facts.

RECITALS

A. On _____, 2009, the Texas Department of Transportation ("TxDOT") and Developer have entered into a Comprehensive Development Agreement (the "Agreement") to develop, design, construct, finance, operate and maintain the IH 635 Managed Lanes Project (the "Project"), consisting of the reconstruction of general purpose lanes, construction of managed lanes, and construction of new and reconstruction of existing frontage roads, crossing streets and utility adjustments, and the establishment of tolling operations and maintenance and operation of the IH 635 managed lane corridor in Dallas County, Texas.

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

C. Developer entered into a Tolling Services Agreement with North Texas Tollway Authority ("NTTA") pursuant to the Agreement, for NTTA to provide certain toll collection, enforcement and interoperability functions and services for the Project.

D. Pursuant to Section 8.7.5 of the Agreement, TxDOT agreed to provide such toll collection, enforcement, and interoperability functions and services to the Project if the conditions and/ or circumstances set forth therein were to occur.

E. On _____, 20__ Developer exercised its option pursuant to Section 8.7 of the Agreement with regard to such toll collection, enforcement and interoperability functions and services for the Project. TxDOT is willing to provide such services for Developer on and subject to the terms and conditions of this Tolling Services Agreement.

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

1. Definitions and Interpretation

   (a) Certain terms used herein have the respective definitions set forth in Attachment 1 to this Tolling Services Agreement.

   (b) Other capitalized terms used but not defined herein have the respective meanings set forth in the Agreement.

   (c) Notwithstanding anything to the contrary set forth herein, any reference made in this Tolling Services Agreement to the practices and procedures that TxDOT 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 TxDOT at the time of execution of this Tolling Services Agreement, and with the Performance Standards under or other requirements of this Tolling Services Agreement.

2. Engagement and General Statement of Responsibilities

Developer hereby engages TxDOT to provide the services described herein during the Term (as defined herein), and TxDOT hereby accepts such engagement. The Parties' general responsibilities under this Tolling Services Agreement include the following (with the following general description to be without limitation on the parties' respective other responsibilities and obligations provided for pursuant to the other terms and conditions of this Tolling Services Agreement):

(a) Developer's general responsibilities include:

(i) Developer shall install, replace and maintain in good condition throughout the Term equipment that complies with the requirements of the Agreement and that will identify vehicles equipped with a transponder issued by TxDOT (either directly by TxDOT or though a TxDOT-approved distributor) or another Toll Operator and video equipment and related lane controller equipment designed to capture video images of and/or data concerning vehicles passing through tolling stations as required by the Interface Control Document.

(ii) Developer shall be responsible for capturing data evidencing each Transponder Transaction and Video Transaction and transmitting a properly formed Transaction to TxDOT (which will include all of the information required by the ICD for each such Transaction) in accordance with this Tolling Services Agreement pursuant to the ICD or any other communications protocols in effect hereunder from time to time. Without limiting the foregoing, Developer shall be responsible for (A) determining the applicable toll for each Transaction and transmitting the applicable toll information to TxDOT 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. TxDOT shall not have any responsibility for any of the activities described above in this paragraph (ii). Responsibility for enforcement of high occupancy vehicle rules and requirements is exclusively governed by the Agreement.

(iii) Developer shall be responsible for all interoperable fees, the cost of which shall be paid in accordance with the applicable interoperability interlocal agreement.

(iv) Developer shall be responsible for providing reasonably detailed information to TxDOT from time to time for purposes of training TxDOT's customer service personnel adequately to respond to customer inquiries concerning Developer's dynamic or other toll pricing models.

(v) Developer shall not issue any transponders to or impose any tolls on Users in connection with the Project other than as permitted or contemplated by this Tolling Services Agreement, and Developer otherwise shall not take any actions in competition with the rights and responsibilities of TxDOT hereunder (provided, however, that the foregoing shall not preclude Developer from marketing activities, from distributing TxDOT-issued transponders on its own premises in its capacity as a distributor of TxDOT, from exercising rights and remedies expressly provided to Developer hereunder in respect of this Tolling Services Agreement or in the Agreement in respect of the Agreement, and activities of Developer or any of its affiliates in connection with other toll roads).

(b) TxDOT's general responsibilities include:

(i) TxDOT shall post Transponder Transactions to customer accounts in accordance with Section 4(a)(iv) hereof.

(ii) TxDOT shall provide Interoperability Functions in accordance with Section 5 hereof.

(iii) TxDOT shall process Video Transactions in accordance with Section 8 hereof.

(iv) TxDOT shall remit payments to Developer in respect of Video Transactions and Transponder Transactions in accordance with Section 7 hereof.

(v) TxDOT shall utilize and make available its Customer Service Center services for handling of customer inquiries and complaints, as provided in Section 4(a)(i) hereof.

(vi) TxDOT shall provide account management and other back office services in accordance with this Tolling Services Agreement, including Section 4(a) hereof.

(vii) TxDOT shall provide toll collection enforcement services, which shall include transmittal of violation notices, collection efforts (including, at TxDOT's option, utilization

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

(c) Developer and TxDOT acknowledge and agree that, particularly in view of the stated Term (as defined in the Agreement) of the Agreement and the Term of this Tolling Services Agreement, changes may occur during the Term in mobility and tolling equipment, technology and operations, interoperability standards and protocols and in business and commercial practices that may warrant the Parties' consideration and implementation of changes in the equipment, technology or practices utilized in connection with the Project and/or changes to this Tolling Services Agreement and the Parties' respective responsibilities and obligations hereunder in order to more effectively provide for the performance of the services contemplated and intended by this Tolling Services Agreement. Developer and TxDOT further acknowledge that Developer may need to change equipment, technology and practices to maintain interoperability as required by Section 12.1.3 of the Agreement. Developer and TxDOT 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 TxDOT with respect to its own facilities. In connection therewith, Developer and TxDOT also shall consider in good faith any adjustments (if any) in the compensation payable to TxDOT hereunder in light of such changed circumstances. Any such changes shall be made in accordance with Section 17.

(d) TxDOT shall put into effect the Custodial Arrangements as and when set forth in Section 8.7.7 of the Agreement. For the avoidance of doubt, TxDOT hereby disclaims any interest in funds owing or remitted to TxDOT by a User for a Transaction to the extent of amounts owed by TxDOT to Developer for such Transaction that have not yet been paid to Developer. TxDOT, via the Custodial Arrangements, shall be deemed to be a collecting agent acting on behalf of Developer with respect to such amounts owing or remitted by the applicable Users and owed to and not yet paid to the Developer until TxDOT pays Developer the applicable amounts owed to Developer with respect to the Transaction, at which time TxDOT may, through the Custodial Arrangements, receive and retain the corresponding amounts from applicable Users for its own account and as its own funds.

3. Term; Transition of Services

(a) The term (the "Term") of this Tolling Services Agreement commences on the date hereof and, subject to earlier termination in accordance with Section 19, shall expire either:

(i) If this Tolling Services Agreement is entered into pursuant to Section 8.7.5 of the Agreement, then the later of (A) five years after the Cutover Date or (B) on the date the NTTA fully cures its default under the NTTA Tolling Services Agreement and completes transfer of TxDOT's services, functions, rights and responsibilities back to the NTTA in accordance with a transition plan and schedule reasonably approved by TxDOT, Developer and the NTTA; or

(ii) If this Tolling Services Agreement is entered into pursuant to Section 8.7.6 of the Agreement, then two years after the Cutover Date.

(b) Developer and TxDOT shall cooperate and coordinate to transition customer service, back office services and electronic funds transfer functions from NTTA to TxDOT in accordance with the transition plan adopted by Developer and NTTA under the NTTA Tolling Services Agreement and consistent with TxDOT's systems and procedures, in order to avoid interruption of toll collection and enforcement for the Project. If Developer diligently assists and cooperates with TxDOT and if such transition plan is consistent with TxDOT's systems and procedures, TxDOT will be ready and able to commence provision of customer service, back office services and electronic funds transfer functions for Developer within six months of the execution of this Tolling Services Agreement. As part of such cooperation and coordination, Developer and TxDOT shall commence performing system interface work in accordance with the schedule developed under Section 12(c).

(c) At the end of the Term or upon earlier termination of this Tolling Services Agreement, TxDOT shall reasonably assist and cooperate with Developer and its replacement contractor for toll collection, enforcement, and related services to provide a smooth transition of services from TxDOT to Developer and its replacement contractor. Six months after the date of this Tolling Services Agreement, (or any other date mutually agreed in writing), the Parties shall, at their cost, cooperate with each other in order to prepare, on or prior to the date that is six months after the Cutover Date, a mutually acceptable transition plan (with each Party agreeing not to unreasonably withhold its approval or assent thereto). The transition plan shall set forth protocols, procedures and terms for (i) the transition of collection and enforcement services from TxDOT to Developer or its designee respecting Transponder Transactions and Video Transactions and related Transaction data transmitted to TxDOT but for which tolls have not been collected prior to the expiration or earlier termination of this Tolling Services Agreement; and (ii) the delivery by TxDOT to Developer, on or prior to the expiration or earlier termination of this Tolling Services Agreement, of reports of (A) Transactions occurring during the Term for which TxDOT has collected and remitted tolls to Developer and received the related fees and other amounts payable to TxDOT hereunder; (B) Transactions occurring during the Term for which TxDOT has collected and remitted tolls to Developer hereunder but has not received all of the related fees and other amounts payable to TxDOT hereunder;

and (C) with respect to Transactions that have occurred and the data for which has been transmitted by Developer to TxDOT but for which TxDOT has not collected and remitted tolls to Developer or received any fees or other amounts payable to TxDOT hereunder, TxDOT shall transfer such Transactions to Developer, together with any information that TxDOT has relating to such Transactions that may reasonably assist Developer in the collection of tolls for such Transactions. If TxDOT has made payment to Developer under the terms of this Tolling Services Agreement with respect to any Transactions that TxDOT has not collected or with respect to which TxDOT has not received Incidental Charges associated with such Transactions, at the expiration or termination date, TxDOT shall be entitled (and Developer shall have no obligation) to enforce and collect such Transactions in the same manner as had been in effect immediately before the expiration or termination date. The foregoing does not obligate TxDOT 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 TxDOT to disclose to Developer TxDOT's proprietary information or processes. The Parties will cooperate to update the transition plan once every two years, if applicable (or annually if reasonably requested by either Party due to any change in circumstances). With respect to any termination of this Tolling Services Agreement other than due to a default by TxDOT, TxDOT shall be entitled to payment from Developer of the costs and expenses incurred by TxDOT in connection with the services and reports to be furnished by TxDOT to Developer pursuant to provisions of this Section 3(c) and such transition plan.

4. Toll Collection and Enforcement Services

(a) TxDOT shall provide complete back office functions pertaining to toll collection and enforcement for the Project, consistent with the practices utilized by TxDOT with respect to its own facilities. Such functions shall include the following:

(i) Customer service operations providing all customer service representatives with access to all electronic account and toll violation information and ability to resolve most issues or questions with the customer (including HOV customers) through various contact channels, including (A) transponder distribution support, (B) walk-in customer service and support, (C) staffing and maintaining call center operations for customer and general inquiries with sufficient call handling capacity to answer calls in accordance with the Performance Standards, (D) operating and maintaining an industry-standard interactive voice response system in English and Spanish configured to allow customers, without charge, to obtain automated information, to transfer or be directed to a specific source of information, to access account maintenance functions and to speak in English or Spanish with a live customer service representative, (E) creating and managing an

industry standard interactive web site, with the customer service center portion of the web site in English and Spanish, which may be used for disseminating information on TxDOT's transponder program and allowing a customer to conduct secure account maintenance activities such as opening an account, changing information on an account, viewing account status and statements, replenishing an account balance and with a posted privacy notice, and such web site shall allow dissemination and receipt of information simultaneously with multiple users without unreasonable delay in responses, (F) maintaining an Internet e-mail address for all inquiries and comments regarding account maintenance matters from customers and the public, (G) receipt of and response to e-mails on a timely basis during normal business hours, and (H) the ability of customers to send facsimile communications to the customer service center 24 hours per day seven days per week, and responding to such communications during normal business hours; however, notwithstanding the foregoing, Developer acknowledges that because Developer, not TxDOT, is responsible for collecting in-lane data in respect of the Project, TxDOT 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, TxDOT 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 TxDOT 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 TxDOT accounts to pre-determined levels when accounts reach low balance thresholds, accepting payments (pursuant to payment methods consistent with those utilized by TxDOT with respect to its own facilities) to replenish accounts, and issuing monthly statements to TxDOT account holders (or other frequency as may be agreed between TxDOT and such account holders) providing an activity summary that itemizes usages, related toll charges and other Incidental Charges;

(iii) Transponder issuance and replacement;

(iv) Transaction and payment processing for Transponder Transactions, including posting Transponder Transactions

against User transponder accounts, and debiting accounts for toll charges and Incidental Charges on a "first in" basis according to the date and time received by TxDOT, all subject to the Custodial Arrangements;

(v) Transaction and payment processing for Video Transactions consistent with TxDOT's practices regarding customers of its own facilities, including issuing billing statements to Video Transaction Users with itemization of toll charges and Incidental Charges, processing of payments received including reconciliation with billing statements, and accepting payment (pursuant to payment methods consistent with those utilized by TxDOT with respect to its own facilities), all subject to the Custodial Arrangements;

(vi) Violation processing and enforcement in accordance with Chapter 228 of the Texas Transportation Code or other Laws applicable to TxDOT and consistent with TxDOT's practices regarding customers of its own facilities;

(vii) Implementation of appropriate reporting, reconciliation, accounting, audit and quality assurance processes in accordance with Good Industry Practice, including internal controls to minimize the possibility of inadvertent and illegal diversion of Toll Revenues, and including (A) controlled access to all TxDOT computer systems and subsystems, (B) control by user group scheme, (C) state of the art virus protection and firewall software and (D) maintaining a secure record of system access and breaches of security, consistent with Good Industry Practice;

(viii) Implementation of data backup and disaster recovery in accordance with Good Industry Practice and retention of Project-related data in accordance with Section 15(d);

(ix) Provision to the appropriate governmental agencies or entities of the State of Texas of the calculation and information required to be furnished by TxDOT pursuant to Section 228.0055(b) of the Texas Transportation Code (or any successor law thereto); and

(x) Provision of all staffing, supervision, support services, data services, CSC Host equipment, and materials necessary to perform such responsibilities in a timely manner.

(b) Provided TxDOT complies with Section 4(a)(vi), decisions on whether and when to issue notices and pursue collection and enforcement actions shall be within the discretion of TxDOT. TxDOT shall exercise such

discretion in the manner it makes such decisions with respect to its own tolled roadways and in accordance with Good Industry Practice.

(c) TxDOT shall solely choose the transponders to offer to Users, consistent with Section 21 of the Technical Provisions and Section 12(h); provided that Developer reserves the right (but is not obligated) to issue its own transponders that are equivalent in utility, functionality and reliability to those issued by TxDOT to any Person from and after the date either Party delivers written notice to the other Party exercising a right to terminate this Tolling Services Agreement (so long as any such notice is not rescinded). TxDOT shall issue and replace transponders expeditiously, consistent with the time periods applicable for replacement of transponders in respect of its own facilities. TxDOT 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 TxDOT. TxDOT shall include transponder mounting instructions with new transponders supplied to customers, and provide transponder mounting assistance at TxDOT's customer service center or outlets to support successful installation consistent with the level of service provided customers on TxDOT's own facilities.

(d) TxDOT 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 TxDOT 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 TxDOT account holders identified through Video Transactions or that incur violations, (iii) contacting TxDOT 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). TxDOT shall take such steps consistent with its practices regarding customers of its own facilities.

(e) TxDOT shall determine the location or locations of its call center operations and TxDOT's CSC Host. TxDOT may change any such location from time to time. If TxDOT 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 TxDOT CSC Host equipment in connection with such relocation. Upon the request of either Party, the Independent Engineer shall review such costs and advise the Parties concerning the accuracy of any statement thereof. Developer shall provide data to, and receive data from, TxDOT by means of the ETCS and its interface with TxDOT's CSC Host so as to enable TxDOT to enforce and collect all toll payments from Users in a timely, accurate and efficient manner.

(f) TxDOT may establish and enforce reasonable minimum amounts for opening, maintaining and replenishing electronic tolling accounts,

consistent with TxDOT's practices regarding customers of its own facilities.

(g) TxDOT shall provide credit card processing services to its customers and Video Transaction Users for all major credit cards consistent with its practices regarding customers of its own facilities.

(h) TxDOT shall provide the foregoing services in accordance with the Performance Standards, the applicable provisions and requirements of this Tolling Services Agreement, and to the extent equal to or better than the foregoing requirements and standards, TxDOT also shall provide the foregoing services in accordance with TxDOT's standard management practices, procedures and protocols with which it performs such services and functions for its own facilities.

(i) TxDOT shall be temporarily excused from complying with the requirements and standards set forth in Section 4(h) to the extent its inability to comply is directly attributable to any failure or inability of Developer to comply with the Interface Control Document, or to meet the ETCS performance requirements set forth in Section 21.5 of the Technical Provisions. TxDOT shall bear the burden of providing evidence reasonably satisfactory to Developer that TxDOT exercised diligent efforts to comply.

(j) TxDOT will provide Developer access to standardized toll collection system reports described in Section 14 hereof by means of a secure website/portal.

(k) Developer and TxDOT shall conduct regular meetings (the "Developer-TxDOT Regular Meetings") at least once per month, or such other frequency as the Parties mutually approve, to review, discuss and resolve matters relating to coordination, services, quality control, performance, customer service, tolling (including any issues related to erroneous pricing set by Developer or billing by TxDOT and "readability" of transferred video images), payment and other matters arising under this Tolling Services Agreement. The Parties shall schedule all meetings at a mutually convenient date, time and place. In addition to regularly scheduled meetings, Developer and TxDOT shall cause their respective representatives to be available at all reasonable times (generally, during regular business hours) for consultation with one another and with the Independent Engineer.

(l) Unless added by Change Order, TxDOT shall have no right or obligation to provide under this Tolling Services Agreement (i) storefront services except such services at TxDOT's customer service centers, (ii) any public relations work for the Project, other than customer relations in the ordinary course of handling customer accounts, inquiries and communications, (iii) maintenance of a Project web site (as distinguished from TxDOT's own web site and web-based customer service center required by Section 4(a)(i)(E) and (F)), (iv) any marketing or promotional work or services for the Project, other than customer relations, and (v)

any maintenance work on Developer's toll collection system. In no event, however, shall TxDOT be prohibited from providing any such services in connection with its own facilities or those of any third party.

(m) TxDOT recognizes that Developer is not entitled to charge tolls to Users with respect to any applicable portion of the Project during an Emergency Mode. Developer shall not transmit transaction data to TxDOT during such periods. If Developer does so, and if TxDOT reviews any such Transaction data, TxDOT may charge Developer the Transaction fees and charges otherwise applicable to non-emergency Transactions hereunder (including, but not limited to, Base Transaction Fees and Variable Transaction Fees. However, TxDOT shall have no obligation to review any data transmitted in connection with Emergency Mode transactions. In the event Developer transmits to TxDOT's CSC Host any Transaction that is for an Exempt Vehicle or that is a Duplicate Transaction, TxDOT also may charge Developer the Transaction fees and charges otherwise applicable to non-Exempt vehicles or non-Duplicate Transactions (as the case may be) hereunder (including, but not limited to, Base Transaction Fees and Variable Transaction Fees).

(n) TxDOT shall maintain the toll account and travel records of Users as confidential information and in compliance with applicable Laws on notice of privacy practices and handle such information in accordance with this Section 4(n).

(i) TxDOT acknowledges that the data generated by, or accumulated or collected in connection with, its services under this Tolling Services Agreement, including customer lists, customer identification numbers, customer contact information, customer account information and billing records and other customer specific information, including use and enforcement data, origin and destination information, system performance statistics, and real time traffic flow information may consist of or include information that identifies an individual who is a patron of the Project and that is exempt from disclosure to the public or other unauthorized persons under applicable Law ("Patron Confidential Information"). Patron Confidential Information includes names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or other information that relates to any of these types of information.

(ii) TxDOT shall comply with all applicable Laws, Technical Provisions and interoperability and compatibility standards, requirements and protocols developed by 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) TxDOT agrees to hold Patron Confidential Information relating to the use of the Project in strictest confidence and not to make use of Patron Confidential Information relating to the use of the Project for any purpose other than the performance of this Tolling Services Agreement, including toll violation processing and collection; provided, however, that to the extent Patron Confidential Information has been provided to TxDOT in connection with its operation of its own facilities or its provision of services to other Toll Operators, TxDOT 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) TxDOT shall not release, divulge, publish, transfer, sell or disclose Patron Confidential Information relating to the use of the Project, or otherwise make it known, to any other Person except as permitted or required by applicable Laws. TxDOT 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) TxDOT shall disclose in writing to each User to whom TxDOT issues a transponder and for whom it holds Patron Confidential Information TxDOT's policies regarding privacy of Patron Confidential Information, consistent with this Section 4(n). TxDOT shall deliver such written disclosure in an applicable end user agreement, and shall maintain such disclosure on its web site. TxDOT shall comply with the provisions of any applicable Law prescribing disclosure of TxDOT 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) TxDOT's obligations relating to Patron Confidential Information shall survive expiration or termination of this Tolling Services Agreement.

(o) In connection with any dispute regarding a Transaction, including in connection with enforcement and collection proceedings brought to collect tolls owed with respect to the Transaction, at TxDOT's request

Developer, at its expense, shall provide reasonable assistance and cooperation to evidence the proper operation of the ETCS and data transmission to the TxDOT's CSC Host at the time of the Transaction.

(p) Developer generally intends to obtain prepayment of tolls or otherwise handle on its own payment of tolls for operators of Special Vehicles on the Project and therefore not to involve TxDOT in transaction processing for Special Vehicles. However, the Parties recognize that Video Transactions regarding Special Vehicles may be transmitted to TxDOT's CSC Host because a Special Vehicle has operated on the Project without obtaining a permit and pre-paying a toll. In the event TxDOT receives a Video Transaction identified in the User Classification of a Special Vehicle, and if the Special Vehicle is not an Exempt Vehicle, then TxDOT shall process such Video Transaction as it customarily processes other Video Transactions.

(q) TxDOT shall have the right to use the brand name "TxTag" and/or "Texas Tollways," rather than or in addition to the official name of TxDOT, in its communications and dealings with Users and customers. Wherever in this Tolling Services Agreement a provision relating to TxDOT's communications and dealings with Users and customers refers to "TxDOT," it shall be construed consistently with this provision.

5. Financial Interoperability Functions and Terms

(a) TxDOT will establish and implement Interoperability Functions to coordinate the settlement and payment of electronic toll charges for Transponder Transactions by vehicles equipped with transponders issued by Transponder Issuers other than TxDOT. TxDOT will allow the Interoperability Functions to evolve to meet the needs of an increasing number of Transponder Issuers.

(b) Developer hereby agrees to adhere to TxDOT'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 TxDOT will keep Developer regularly informed of such practices and procedures). TxDOT shall pay Developer the amount of the toll less the interoperability fee (and less the Base Transaction Fee payable to TxDOT) (and subject to any adjustments provided for in Section 6(a)(ii)) for Interoperable Transactions.

6. Compensation for Services

(a) Fees and Deductions.

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

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

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

(ii) The Base Transaction Fee (as calculated pursuant to Section 6(b)) and the Variable Transaction Fee (as calculated pursuant to Section 6(c)) payable to TxDOT shall be subject to reduction (pursuant to Section 6(h)) by the following:

(A) The Delinquent Payment Deduction, calculated in accordance with Section 6(d); and

(B) The Non-Compliance Deduction, if any, calculated in accordance with Section 6(e).

The amount payable to TxDOT 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 "TxDOT Compensation."

(iii) The TxDOT 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, TxDOT expressly acknowledges that Developer shall have no obligation to compensate TxDOT over and above the TxDOT Compensation for any merchant bank charges or bank commissions or fees incurred by TxDOT 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 TxDOT 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 TxDOT's right to charge Incidental Charges to customers and Users to the extent set forth in Section 6(f), or TxDOT's right to additional compensation from Developer pursuant to Section 6(g).

(b) Base Transaction Fee.

(i) The Base Transaction Fee for each Transaction received by TxDOT's CSC Host shall be as follows.

(A) For Transactions occurring prior to the anniversary of the Service Commencement Date for the Project (or, subject to Section 36, the initial Project Segment, if Developer develops the Project in Project Segments) occurring in 2016, the Base Transaction Fee shall be four and one-half cents ($0.045) per Transaction; and

(B) The Base Transaction Fee per Transaction shall increase (rounded to the nearest 1/10th cent) on the anniversary of

the Service Commencement Date for the Project (or, subject to Section 36, the initial Project Segment, if Developer develops the Project in Project Segments) occurring in 2016 and every two years thereafter (i.e., on the second anniversary thereafter, fourth anniversary thereafter, sixth anniversary thereafter, etc.) based on an escalation rate equal to two percent (2.0%) per annum.

(ii) The applicable Base Transaction Fee shall be due and payable for each Transaction (whether a Transponder Transaction, Video Transaction or Interoperable Transaction) that is recognized by the ETCS and properly transmitted to TxDOT'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 TxDOT by TxDOT's deduction of the amount thereof from the amount of each toll transaction payment made by TxDOT to Developer pursuant to Section 7 hereof. Base Transaction Fees shall be the same for all User Classifications and for all Transactions in the same Service Year, regardless of the amount of the toll for such Transactions.

(c) Variable Transaction Fee.

(i) Subject to Section 36, the Variable Transaction Fee for each Transaction (other than Interoperable Transponder Transactions, which shall not be subject to the Variable Transaction Fee) received by TxDOT's CSC Host shall be equal to three and three-quarters percent (3.75%) of the applicable toll amount (exclusive of Incidental Charges).

(ii) The Variable Transaction Fee shall be due and payable for each Transaction, whether a Transponder Transaction (other than an Interoperable Transponder Transaction) or a Video Transaction, that is recognized by the ETCS and properly transmitted to TxDOT'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 TxDOT by TxDOT's deduction of the amount thereof from the amount of each toll transaction payment made by TxDOT to Developer pursuant to Section 7 hereof.

(d) Delinquent Payment Deduction.

(i) A Delinquent Payment Deduction will be made for any Payment Period in which TxDOT fails to make a timely payment to Developer in accordance with Section 7. The Delinquent Payment Deduction shall be payable as a monthly adjustment in accordance with Section 6(h) and shall be reported to Developer in a monthly Delinquent Payment Deduction report to be delivered to Developer by TxDOT 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):

Delinquent Payment Deduction *n,m* (Year *n* = 1 to ___ and Month *m* = 1 to 12)	=	∑Daily Delinquent Payment Deduction *n,m* x Duration / 365 (or 366, in leap years) x Interest Rate *n,m*

Where:

Daily Delinquent Payment Deduction *n,m*	=	Total payments due Developer on each day during Month *m* of Year *n* that are not timely paid by TxDOT when due under Section 7
Duration	=	The number of calendar days from the date a payment under Section 7 is due until the date such payment is made to Developer.
Interest Rate *n,m*	=	Interest at a rate equal to the LIBOR in effect on the first day of Month *m* in Year *n* plus 400 basis points

(e) Non-Compliance Deduction.

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

Non-Compliance Deduction *n,m* (Year *n* = 1 to ___ and Month *m* = 1 to 12)	=	Monthly Non-Compliance Deduction *n,m*

Where:

Monthly Non-Compliance Deduction *n,m*	=	Monthly Non-Compliance Reduction Percent x TxDOT Compensation *n,m*

Monthly Non-Compliance Reduction Percent	=	The percent reduction to the TxDOT Compensation associated with the Non-Compliance Points for Month *m* as identified in Table 6(e)-1 below
TxDOT Compensation *n,m*	=	Base Transaction Fees for Period *n,m* + Variable Transaction Fees for Period *n,m*

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

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

(ii) Subject to Section 6(e)(iii), each month TxDOT will assign Non-Compliance Points to its performance in accordance with the Performance Standards and the terms hereof and will report the same to Developer in the monthly Non-Compliance Deduction report to be delivered to Developer pursuant to Section 14(e) no later than 15 days after the end of such month. Any related Non-Compliance Deduction shall be paid by TxDOT in connection with the monthly adjustments provided for in Section 6(h). Upon the written request of Developer, in addition to such monthly Non-Compliance Deduction report, TxDOT shall furnish to Developer reasonably detailed information and support for TxDOT'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 TxDOT hereunder and advise the Parties concerning the accuracy thereof. Developer and the Independent Engineer each shall have the right to inspect and audit TxDOT'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.

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

(f) Incidental Charges to Users.

In addition to the TxDOT Compensation, TxDOT shall have the right to impose on and collect from Users (separate from the toll charges referenced in Sections 7(a) and (b)), and retain as additional compensation, Incidental Charges consistent with TxDOT's practices concerning customers of its own facilities; provided that Developer shall have no liability for TxDOT's inability to collect the same from Users.

(g) Additional Fees and Charges Payable By Developer.

In addition to the TxDOT Compensation, Developer shall pay to TxDOT its demonstrated and actual additional administrative and processing costs and expenses, except those capable of being reasonably mitigated, incurred to perform services under this Tolling Services Agreement directly attributable to any failure or inability of Developer to meet the ETCS performance requirements set forth in Section 21.5 of the Technical Provisions. (Developer recognizes and acknowledges that such additional costs and expenses will not be compensated by any Non-Compliance Points liquidated damages that may be assessed and paid to TxDOT under the Agreement by reason of any such failure, because the same were estimated and agreed to only to cover damages to TxDOT in its capacity as a Party to the Agreement and not TxDOT's capacity as a provider of the services set forth in this Tolling Services Agreement.) In addition, Developer shall pay to TxDOT all sums due in accordance with the terms of any Change Orders or Change Directives. Amounts payable to TxDOT pursuant to this Section 6(g) (other than amounts payable under the previous sentence) shall be payable by monthly adjustments pursuant to Section 6(h).

(h) Monthly Adjustments.

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

(i) Such report shall set forth all Transaction adjustments made during such calendar month in respect of (A) Unpostable

Transponder Transactions that have not been reclassified as a Video Transaction, (B) Duplicate Transactions previously paid by TxDOT, (C) Video Transactions not pursuable (e.g., Transactions involving vehicles that are not Candidate Vehicles), (D) adjustments resulting from User disputes and (E) adjustments relating to refunds to accounts or Video Transaction Users due to inaccurate toll charges and inaccurate Transactions transmitted from Developer to TxDOT. Such adjustment shall be made each Business Day during the applicable calendar month as contemplated by Section 7(a) and (b). Such adjustments shall be applied on a daily basis to the toll Transaction payment owing to Developer pursuant to Section 7.

(ii) Such report also shall set forth all adjustments to be made in respect of the calendar month covered thereby for (A) any amounts owing to TxDOT from Developer pursuant to Section 6(g); (B) Delinquent Payment Deductions and Non-Compliance Deductions owing to Developer from TxDOT; 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)). 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.

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

(i) Disputed Amounts.

(i) In the event either Party disputes any amount that is to be payable by or to such Party pursuant to a monthly adjustment in accordance with Section 6(h), then (A) such Party shall, within 14 days after delivering or receiving (as the case may be) notice or an invoice or statement for such amount, deliver written notice to the other Party of the amount in dispute and the reasons for dispute and (B) the Party from which the disputed amount is payable shall, within the time period for payment of the invoice, deposit into the Toll Operator Dispute Account under the Project Trust Agreement an amount equal to 105% of the amount in dispute and notify the other Party in writing that such deposit has been made.

(ii) The amount so deposited under clause (i) above shall be maintained in the Toll Operator Dispute Account until the dispute is finally determined, at which time all amounts due the payee Party, if any, shall be immediately released from the Toll Operator Dispute Account to pay the amount due, including any late charge and interest. If the amount in the Toll Operator Dispute Account is insufficient to pay the amount finally determined to be due, including any late charge and interest, the payor Party shall immediately satisfy the balance of the amount due from other sources. If the amount in the Toll Operator Dispute Account exceeds the amount finally determined to be due, if any, the excess shall be immediately released to the payor Party, together with any interest earnings in the Toll Operator Dispute Account attributable to the excess funds so released to the payor Party.

(j) Any distribution, receipt, or handling of funds by TxDOT under this Section shall be subject to the Custodial Arrangements.

7. Toll Transaction Payments to Developer

(a) Subject to Sections 7(c) and 7(d), and except as provided otherwise in Section 22(d), for each Transponder Transaction, TxDOT shall, via the Custodial Arrangements, deposit or cause to be deposited with the trustee under the Project Trust Agreement an amount equal to the toll for the Transponder Transaction (i.e., the toll charge indicated by Developer as contemplated by Section 11(a)), less fees payable under Section 6 and adjustments made pursuant to Section 6(h) (other than monthly adjustments provided for in Section 6(h)(ii)), within two Business Days after the date the Transponder Transaction has been properly transmitted to TxDOT's CSC Host in accordance with the ICD. Notwithstanding the foregoing (but subject to Sections 7(c) and 7(d), and except as provided in Section 22(d)), with respect to any Transponder Transaction for which Developer does not receive an acknowledgment of receipt by TxDOT's CSC Host in accordance with the ICD, (i) if Developer has both notified TxDOT of such attempted transmittal and also made arrangements with TxDOT either for the transmittal or for the delivery to TxDOT of the applicable Transponder Transaction data in digital form in accordance with the ICD within four hours after Developer's initial transmittal of such Transponder Transaction to TxDOT's CSC Host in accordance with the ICD, then TxDOT shall be obligated to deposit or cause to be deposited the applicable amount within such two Business Day period from the date and time of the initial transmittal, and (ii) if Developer shall not have both so notified TxDOT of such attempted transmittal and also made arrangements with TxDOT either for the transmittal or for the delivery to TxDOT of the applicable Transponder Transaction data in digital form in accordance with the ICD within such four hour period, then the period within which TxDOT is obligated to deposit or cause to be deposited the applicable amount shall be extended to the corresponding time, less four hours, on the date that is two Business Days from the date and time that Developer shall have both so notified TxDOT of such transmittal and also so made arrangements with TxDOT either for the transmittal or for the

delivery to TxDOT of the applicable Transponder Transaction data in digital form in accordance with the ICD. The applicable amount shall be due and payable regardless of whether TxDOT actually collects the applicable toll amount from the applicable User. For the avoidance of doubt, the toll to be remitted to Developer pursuant to this Section 7(a) does not include any Incidental Charges.

(b) Subject to Sections 7(c) and (d), and except as provided otherwise in Section 22(d), for each Video Transaction, TxDOT shall, via the Custodial Arrangements, deposit or cause to be deposited with the trustee under the Project Trust Agreement an amount equal to the toll for the Video Transaction (i.e., the toll charge indicated by Developer as contemplated by Section 11(a)), less fees payable under Section 6 and adjustments made pursuant to Section 6(h) (other than monthly adjustments provided for in Section 6(h)(ii)), within two Business Days after the date the Video Transaction has been properly transmitted to TxDOT's CSC Host in accordance with the ICD. Notwithstanding the foregoing (but subject to Sections 7(c) and 7(d), and except as provided in Section 22(d)), with respect to any Video Transaction for which Developer does not receive an acknowledgment of receipt by TxDOT's CSC Host in accordance with the ICD, (i) if Developer has both notified TxDOT of such attempted transmittal and also made arrangements with TxDOT either for the transmittal or for the delivery to TxDOT of the applicable Video Transaction data in digital form in accordance with the ICD within four hours after Developer's initial transmittal of such Video Transaction to TxDOT's CSC Host in accordance with the ICD, then TxDOT shall be obligated to deposit or cause to be deposited the applicable amount within such two Business Day period from the date and time of the initial transmittal, and (ii) if Developer shall not have both so notified TxDOT of such attempted transmittal and also made arrangements with TxDOT either for the transmittal or for the delivery to TxDOT of the applicable Video Transaction data in digital form in accordance with the ICD within such four hour period, then the period within which TxDOT is obligated to deposit or cause to be deposited the applicable amount shall be extended to the corresponding time, less four hours, on the date that is two Business Days from the date and time that Developer shall have both so notified TxDOT of such transmittal and also so made arrangements with TxDOT either for the transmittal or for the delivery to TxDOT of the applicable Video Transaction data in digital form in accordance with the ICD. The applicable amount shall be due and payable regardless of whether TxDOT actually collects the applicable toll amount from the applicable User. For the avoidance of doubt, the toll to be remitted to Developer pursuant to this Section 7(b) does not include any Incidental Charges.

(c) If Developer transmits to TxDOT's CSC Host on any given day more than two full days of Transactions, TxDOT shall be entitled to reasonable extensions of the deadlines for payment set forth in Sections 7(a) and (b) to the extent that TxDOT bears the burden of providing evidence reasonably satisfactory to Developer that despite diligent efforts to process the Transactions TxDOT was unable to complete processing

within the deadlines provided due to the added volume of Transactions transmitted during the day.

(d) If (i) for any reason other than a delay attributable to TxDOT (including any delay resulting from TxDOT's failure to include in the applicable report referenced in Section 14(a) information concerning the reclassification of any Transponder Transaction) Developer first transmits to TxDOT's CSC Host sets of Transaction data more than 30 days after the date the Transactions occurred (or in the case of any Transaction that has been reclassified, more than 30 days after the date on which Developer has been notified of the reclassification), and (ii) TxDOT bears the burden of providing evidence reasonably satisfactory to Developer that TxDOT's rate of collection of the toll charges associated with such set of Transaction data (despite its commercially reasonable efforts to collect) is lower than the rate of collection it would have realized had transmission occurred without such delay, using the same billing, collection and enforcement practices and procedures, then TxDOT shall have the right to recover from Developer TxDOT's loss of toll charge collections so proven.

(e) The Parties acknowledge that the requirement to make payments to the trustee under the Project Trust Agreement in accordance with the terms hereof is for the benefit and protection of TxDOT, Developer and Developer's Lenders, and is necessary for Developer to comply with the Agreement and the Project Trust Agreement. Accordingly, TxDOT shall have no right or obligation to make any payments directly to Developer, or to any Person other than such trustee.

(f) TxDOT's payments shall be subject to the Custodial Arrangements. TxDOT and Developer acknowledge that the Custodial Arrangements are for the protection of Developer, and Developer is an intended third party beneficiary of the Custodial Arrangements, so long as this Tolling Services Agreement is in effect.

8. Video Transactions

(a) Developer's obligations regarding transmission of video imagery data to TxDOT's CSC Host are as follows:

(i) For Transponder Transactions where the status of the transponder indicated in the Consolidated Master List at the time of the Transaction is other than "Good", Developer shall transmit to TxDOT the Transponder Transaction, video images of license plates and video data as required by the ICD;

(ii) For all other Transponder Transactions where the status of the transponder indicated in the Consolidated Master List at the time of the Transaction is "Good" and the User Classification determined by Developer does not match the User Classification associated with the transponder as indicated in the Consolidated Master List at the time of the Transaction, Developer shall

transmit to TxDOT the Transponder Transaction, video images of license plates and video data as required by the ICD;

(iii) For all Video Transactions where a transponder is recorded but not listed in the Consolidated Master List, Developer shall transmit to TxDOT 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 the license plate's alpha-numeric or personalized information, and shall include video images of the license plates and video data as required by the ICD; and

(v) For all other Video Transactions, Developer shall transmit to TxDOT 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, TxDOT shall make an attempt to post the Transaction to the customer account and reclassify the Video Transaction to a Transponder Transaction.

(c) TxDOT shall issue a statement to each Video Transaction User (for whom TxDOT has necessary registration and mailing address information) and shall provide each such Video Transaction User the opportunity to pay such invoice, in each case consistent with TxDOT's practices regarding customers of its own facilities, prior to treating such Video Transaction as a violation or initiating violation processing and procedures against such Video Transaction User. If a Video Transaction User shall fail to pay any such statement within the applicable allotted time period, then TxDOT may initiate violation processing and procedures against such Video Transaction User, consistent with TxDOT's policies regarding customers of its own facilities.

(d) For the purpose of Section 8(c), "issue" means the billing statement accurately sets forth the toll charges, including the Incidental Charges, and is deposited in the U.S. mail, proper postage prepaid.

(e) The reports provided for in Section 14(a) will include information referencing each Transponder Transaction that has been reclassified to a Video Transaction within one Business Day following such reclassification (and with any such reclassification to be made within 31 days after TxDOT's receipt of the applicable Transponder Transaction or such other time period as applies from time to time under the applicable interoperability agreement).

(f) Following the execution of this Tolling Services Agreement and before the Cutover Date, Developer and TxDOT shall cooperate with each other to

discuss whether there should be implemented any objective criteria, in addition to the requirements of the ICD, for the rejection of Video Transactions that may require further review by Developer before acceptance and processing by TxDOT. Neither party shall be obligated to accept such additional requirements.

(g) Notwithstanding anything to the contrary set forth in this Tolling Services Agreement, any reference in this Tolling Services Agreement to the delivery of video data or images of license plates shall be deemed to be a reference to an image of either the front or the back license plate as provided in clause (b) of the definition of "Candidate Vehicle" (except that, as provided in such clause (b), the image must be of the front license plate in the case of a vehicle with a trailer).

9. Transponder Transactions

(a) Before Developer transmits a Transaction to TxDOT's CSC Host, Developer shall compare the transponder to the most recently updated version of the Consolidated Master List. If the transponder is listed as "Good" in the Consolidated Master List, Developer shall transmit the Transponder Transaction (for this purpose, determined to be a Transponder Transaction without reference to the sufficiency of funds in the applicable customer account) as required by the ICD, but if such Transponder Transaction is determined to be an Unpostable Transponder Transaction, then TxDOT shall, for TxDOT accounts, request from Developer video images and video data (as required by the ICD and as contemplated herein) within seven days of TxDOT's receipt of the applicable Transponder Transaction (but without prejudice to the right of Developer to submit such video images (as required by the ICD and as contemplated herein) at any time following the date on which the reclassification of the applicable Transponder Transaction to an Unpostable Transponder Transaction is included in a report provided for in Section 14(a), as provided in Section 8(e)). If Developer elects not to send such video images and video data within seven days following TxDOT's request, and the Transaction is not postable, the Transaction will be adjusted as one not involving a Candidate Vehicle until such time as Developer resubmits the Transaction with the video images and video data.

(b) If a Transponder Issuer (including TxDOT) rejects due to insufficient funds TxDOT's settlement of a Transaction on the Project by the Transponder Issuer's customer that was originally characterized as a Transponder Transaction (prior to such determination of insufficient funds), TxDOT will resubmit the Transaction for settlement consistent with TxDOT's practices regarding customers of its own facilities prior to mailing a Video Transaction billing statement to the customer on account of the rejected Transaction. TxDOT shall advise Developer and request a video image and video data, within seven days of TxDOT's receipt of the applicable Transponder Transaction, with respect to any such Transaction that is not settled by the Transponder Issuer within that time frame. For the avoidance of doubt, a Transaction that was originally

characterized as a Transponder Transaction is automatically reclassified as a Video Transaction if both (i) the video image is available, and (ii) the account persists to have insufficient funds to pay the full toll for the Transaction through the Business Day prior to the Business Day on which TxDOT would mail a Video Transaction billing statement in accordance with TxDOT's practices regarding customers of its own facilities. If the video image is unavailable and the account so persists to have insufficient funds, however, then the Transaction will be adjusted as one not involving a Candidate Vehicle unless and until such time as Developer resubmits the Transaction with video images and video data.

(c) If a vehicle is associated with a transponder issued by TxDOT 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, TxDOT shall use reasonable efforts, in accordance with TxDOT's practices regarding customers of its own facilities, to notify the account holder and rectify or cause to be rectified the problem with the transponder.

(d) The Base Transaction Fees and Variable Transaction Fees are inclusive of any transaction fees and charges by other Toll Operators and Transponder Issuers, including NTTA, in connection with account management and fund transfers for Transponder Transactions on the Project by their account holders (other than any interoperability fees required to be paid by Developer hereunder) and Developer shall not be responsible for any such additional charges or fees.

(e) Following the execution of this Tolling Services Agreement and before the Cutover Date, Developer and TxDOT shall cooperate with each other to discuss whether there should be implemented any objective criteria, in addition to the requirements of the ICD, for the rejection of Transponder Transactions that may require further review by Developer before acceptance and processing by TxDOT. Neither party shall be obligated to accept such additional requirements.

10. <u>No Duty to Enforce, Collect or Pay</u>

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

adjustment in respect thereof pursuant to Sections 6(g) and (h), and TxDOT shall have no obligation to pursue collection or enforcement of such Transaction.

(b) TxDOT shall have no duty to accept for processing transmissions of Transaction data not in the format and having the content required by the Interface Control Document (or by any other criteria that may be developed and agreed upon in writing by the Parties pursuant to Section 8(f) or 9(e)). If TxDOT accepts such data for processing, then the matter shall be treated as a Transaction for all purposes under this Tolling Services Agreement, except as provided otherwise in Section 10(a). If TxDOT does not accept such data, (i) TxDOT shall reject the data in accordance with the ICD, and (ii) TxDOT 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) TxDOT shall charge the toll charge indicated by Developer. Developer shall be responsible for determining the applicable toll charge that corresponds to each Transaction based upon User Classification, Developer's applicable toll schedule or dynamic pricing model, and any applicable high occupancy vehicle discount and correctly communicating such information to TxDOT. For the avoidance of doubt, if Developer states a toll charge for a Transponder Transaction or a Video Transaction different from the toll charge for the User Classification associated with the applicable customer account, TxDOT shall charge the toll charge as indicated by Developer. The foregoing does not waive any of Developer's obligations or any of TxDOT's rights and remedies under the Agreement regarding toll rates that may be charged to Users.

(b) Under no circumstances shall TxDOT charge any User a toll in addition to or higher than the toll charge transmitted from Developer to TxDOT, except that TxDOT may charge for the Incidental Charges authorized hereunder. TxDOT shall refund to any User any toll or Incidental Charge TxDOT charges in violation of this provision.

(c) If TxDOT is or becomes aware that any account or Video Transaction User has been overcharged or incorrectly charged for use of the Project by reason of inaccurate toll charges transmitted from Developer to TxDOT, 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, TxDOT shall have the right and the obligation to arrange for a refund to the subject account or Video Transaction User as part of the monthly adjustment provided for in Section 6(h); provided, however, that TxDOT shall always be obligated to promptly arrange for such refund if it has received payment of such overcharge from Developer or the trustee under the Project Trust Agreement, as the case may be, pursuant to the immediately following sentence. Alternately, TxDOT shall have the right to invoice Developer or the trustee under the Project Trust Agreement, in writing or electronically,

for the overcharge or incorrect charge, and Developer shall pay, or cause the trustee under the Project Trust Agreement to pay from the Toll Revenue Account, such invoiced amount within two Business Days after receipt of the invoice, and following receipt of such invoiced amount, TxDOT shall promptly refund such amount to the relevant account or Video Transaction User. Notwithstanding the foregoing, however, in connection with each refund or reimbursement, TxDOT 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 the Agreement and, to the extent consistent with the Agreement, written guidelines furnished by Developer, or if Developer does not furnish such guidelines, in accordance with TxDOT's practices and procedures utilized with respect to its own facilities. This Section 11(c) shall be subject to the Custodial Arrangements to the extent TxDOT receives, disburses, and/or handles any funds hereunder.

12. System Technology Interface; Interoperability

(a) Developer at its expense shall design, install, operate and maintain the ETCS and interconnections of the ETCS with TxDOT's CSC Host. Such design and installation shall be consistent with, and meet all requirements of, the Interface Control Document attached hereto as Attachment 3, as the same may be revised or updated by TxDOT from time to time. TxDOT shall reasonably cooperate with Developer in fulfilling its obligations under this Section 12(a).

(b) TxDOT at its expense shall supply, operate and maintain TxDOT's CSC Host and facilitate interconnection of the ETCS to TxDOT's CSC Host. TxDOT's CSC Host shall be consistent with, and meet all requirements of, the Interface Control Document attached hereto as Attachment 3, as the same may be revised or updated by TxDOT from time to time.

(c) TxDOT shall diligently cooperate and coordinate with Developer in its efforts to conduct and satisfy all demonstration and performance testing of interconnection and interoperability of the ETCS with the TxDOT's CSC Host, in accordance with Developer's testing and commissioning plans. Without limiting the foregoing, TxDOT shall cooperate with Developer in preparing and adhering to a reasonable schedule, consistent with Section 3(b), for interconnecting the ETCS with TxDOT's CSC Host and for conducting such testing. In addition, TxDOT shall conduct testing prior to the Cutover Date, pursuant to a plan and schedule consistent with Section 3(b), to demonstrate to Developer the capability of TxDOT'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 TxDOT and Developer, TxDOT and Developer shall conduct demonstration and performance testing of interconnection and interoperability of the ETCS with TxDOT's CSC Host at least 90 days before the Cutover Date, with a view to the Parties' identification and

correction of any problems no later than 60 days before the Cutover Date. The Independent Engineer shall participate with, and assist and advise, the Parties in connection with the development of the interconnection schedule and the demonstration and performance testing of interconnection and interoperability of the ETCS with TxDOT's CSC Host as contemplated by this Section 12(c), including advising the Parties concerning the resolution of disagreements or problems related to such interconnection and interoperability and certification of operational readiness of the toll system. The Independent Engineer shall provide the same services in connection with the resumption or recovery of tolling services following any major interruption thereof at any time during the Term.

(d) TxDOT will consolidate the Transponder Issuers' master lists and updates (such consolidation being the "Consolidated Master List") of all known transponders and their current known status and electronically distribute the consolidated information to Developer. Status designations shall be in accordance with the Interface Control Document. TxDOT will make such electronic distribution of the Consolidated Master List to Developer daily.

(e) Developer shall be responsible for transmitting toll rates for each Transaction corresponding to Developer's dynamic pricing model and for identifying all Transactions that qualify for a high occupancy vehicle discount.

(f) So long as this Tolling Services Agreement is in effect, Developer shall deploy toll system technology for the Project that does not adversely affect reliability of, or ability to meet applicable standards in the most recently issued Interface Control Document for, transmission of data to TxDOT's CSC Host. If TxDOT modifies the requirements of TxDOT's systems, Developer is not required to maintain interoperability with such modification pursuant to Sections 8.7.2 and 8.7.3 of the Agreement, and such modifications are not attributable to a change required by this Tolling Services Agreement or by a Change Order or Change Directive under this Tolling Services Agreement benefiting the Project, then TxDOT shall reimburse Developer for Developer's reasonable costs of any modifications Developer is required to make to comply with such modified requirements.

(g) TxDOT acknowledges and agrees that Developer may create and apply its own business rules for assisting in the proper determination of Transactions by Users and tolls due from Users, so long as the business rules are consistent with the Agreement, Technical Provisions, Project Management Plan, this Tolling Services Agreement and Good Industry Practice. Developer may implement such business rules through logical routines incorporated into its tolling system. Subject to Section 11(c), TxDOT shall accept and process data developed from application of such business rules and transmitted to TxDOT's CSC Host. For the avoidance of doubt, unless otherwise agreed in writing by TxDOT and Developer, tolling on the Project shall be conducted on a transaction, rather than a

trip, basis, and will involve a single Transaction point toll collection process.

(h) So long as this Tolling Services Agreement is in effect, TxDOT shall adopt and issue new types or models of transponders in accordance with applicable Texas statewide interoperability requirements. TxDOT and Developer acknowledge that the benchmark performance standards for transponders under interoperability requirements in effect as of the date of execution hereof limit the types and models of transponders to those that are equal to or better than the performance levels of the transponders listed in Attachment 4 to this Tolling Services Agreement.

13. Intellectual Property and Licensing; Promotional Plan

(a) If Developer utilizes any tolling system architecture, design, process, method or invention that is protected by Intellectual Property Rights of another Person, then before requiring TxDOT to provide any services under this Tolling Services Agreement that utilize any such protected item, Developer shall obtain and provide to TxDOT, without cost to TxDOT, any licenses that are required in order for TxDOT to accept data and transactions derived from the matter so protected and to otherwise perform services using such protected items. Developer shall indemnify, protect, defend and hold harmless TxDOT from any loss, cost, liability, obligation or expense arising out of any infringement by TxDOT 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 TxDOT without authorization by Developer).

(b) If Developer by Change Order or Change Directive requires TxDOT to modify any portion of TxDOT's VTX System or other applicable comparable system, Developer shall have no right, title, or interest in or to any such modification.

(c) TxDOT hereby grants to Developer a fully paid up, non-exclusive, license to use TxDOT's name, logos, trademarks and brands during the term of this Tolling Services Agreement in connection with the Project and Developer's operation thereof, including maintenance of TxDOT's name, logos, trademarks and brands on the roadway, on the Project web site and in Developer's promotional and marketing materials for the Project; provided that the location, context and appearance of all displays of TxDOT's name, logos, trademarks and brands shall be subject to TxDOT's prior review and prior written approval. TxDOT shall not unreasonably withhold its approval; and TxDOT shall be deemed to approve unless it delivers to Developer written objection or disapproval, including the reasons therefor and any changes needed to obtain approval, within 14 days after TxDOT 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 TxDOT otherwise agrees in writing.

(d) Nothing in this Section 13 grants to TxDOT any exclusive rights regarding use or display of names, logos, trademarks or brands of Transponder Issuers, or regarding marketing and promotion by Transponder Issuers, in connection with the Project. TxDOT reserves the right to challenge other Transponder Issuers that use logos, trademarks or brands that infringe upon TxDOT's rights in its own logos, trademarks or brands.

(e) Subject to Section 13(b), any systems that may be developed on Developer's behalf that do not incorporate any technology owned or licensed by TxDOT and that are paid for by Developer shall be Developer's intellectual property, but Developer shall grant TxDOT a paid-up, non-exclusive license to use the same during the Term to the extent such systems are required for TxDOT's performance of its responsibilities under this Tolling Services Agreement.

14. Reports; Developer Protection of Patron Confidential Information

(a) TxDOT shall provide access to reports Developer may utilize to prepare reconciliation reports, in summary or in detail, by reporting period selected by Developer. Such reports to which access is provided by TxDOT shall reflect the Transactions as transmitted from Developer to TxDOT for the applicable reporting period and shall be adequate for purposes of Developer's reconciliation of Transaction fees and other amounts paid by Developer to TxDOT and TxDOT to Developer. Such reports shall be broken down to support the reconciliation of the fees paid to TxDOT and the tolls paid to Developer. Such reports shall reflect the Transactions received by TxDOT, the breakdown of Transponder Transactions, Interoperable Transactions, Transponder Transactions posted to customer accounts, Transponder Transactions and Interoperable Transactions reclassified as Unpostable Transponder Transactions or Video Transactions, Transponder Transaction variances that are unpursuable, Video Transactions, Transactions that cannot be pursued as a result of not involving a Candidate Vehicle and Transaction adjustments. TxDOT shall post Transactions from the Project in accordance with TxDOT's standards and practices for its own facilities, and Developer shall have access to reports reflecting such Transactions upon such posting. Upon the request of either Party, the Independent Engineer may review reconciliation reports and underlying Transaction data and assist and advise the Parties in connection with any disagreement with respect thereto, including any disagreement with respect to verifying reconciliations.

(b) Without prejudice to or limitation on the right of Developer to initially determine (as provided in Section 10(a)) or dispute whether a vehicle is a "Candidate Vehicle" as defined in this Tolling Services Agreement, TxDOT shall provide Developer with a summary and detail to support the reported vehicles that have been deemed "Not a Candidate Vehicle".

(c) TxDOT shall reconcile Transactions for each calendar month not later than 15 days after the end of such month. TxDOT shall make reconciled

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

(d) TxDOT shall provide Developer with a monthly Delinquent Payment Deduction report for each calendar month not later than 15 days after the end of such month. Such report shall state (i) for each instance in the applicable calendar month in which a payment due under Section 7 was not timely made, the amount of the delinquent payment, the number of calendar days or partial calendar days from the date the payment was due under Section 7 until the date the payment was made to Developer (or until the end of the calendar month if not yet paid) and (ii) TxDOT's calculation of the Delinquent Payment Deduction, if any, for that calendar month.

(e) TxDOT shall provide Developer with a monthly Non-Compliance Deduction report for each calendar month not later than 15 days after the end of such month. Such report shall state (i) a comparison of actual performance during such calendar month to each of the Performance Standards, (ii) TxDOT's calculation of the Non-Compliance Points, if any, for such calendar month and (iii) TxDOT's calculation of the Non-Compliance Deduction, if any, for that calendar month.

(f) TxDOT also will prepare and provide to Developer any other specific report that is required to be delivered by Developer under the Agreement in respect of the tolling services operation of the Project (provided that such report relates to the general scope of the services provided by TxDOT hereunder).

(g) TxDOT shall make available its reports to Developer in a format reasonably approved in writing by Developer. In no event shall Developer have the right to require report formatting that TxDOT's system is not capable of generating. Not later than 90 days after the execution of this Tolling Services Agreement, TxDOT shall deliver to Developer sample report formats including fictitious data sets. Developer shall deliver its comments on such sample report formats to TxDOT within not more than 60 days after receipt.

(h) TxDOT also shall deliver to Developer such other information as Developer may reasonably request to evaluate TxDOT's compliance with this Tolling Services Agreement.

(i) Developer shall make available to TxDOT, no later than the 15th day of each calendar month, a record of Exempt Vehicle, non-billable transactions for the preceding calendar month.

(j) Developer also shall deliver to TxDOT such information as TxDOT may reasonably request to evaluate Developer's compliance with this Tolling Services Agreement, including but not limited to such information as TxDOT may reasonably request from time to time concerning the compliance of the in-lane ETCS equipment utilized for the Project with the

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

(k) Developer shall maintain any and all information relating to TxDOT account holders that may be reported under this Section 14 as confidential information and in compliance with Section 8.8 of the Agreement, which is hereby incorporated herein by reference, and with applicable Laws on notice of privacy practices.

15. Records and Audit Rights

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

(b) TxDOT shall make all its books and records described in Section 15(a) available for audit and inspection by Developer 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. TxDOT shall provide to Developer and the Independent Engineer and their designees copies thereof upon request and at no expense to TxDOT. Developer 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 TxDOT 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, TxDOT shall afford Developer and its Authorized Representative and the Independent Engineer, and their designees, access during normal business hours to TxDOT's customer service center and other TxDOT offices and operations buildings for the purpose of carrying out their oversight and audit functions.

(c) The rights of Developer and the Independent Engineer to audit and inspect under this Tolling Services Agreement shall include the right to monitor, audit and investigate TxDOT's books and records related to its services hereunder and to monitor and review TxDOT's systems, practices and procedures concerning Patron Confidential Information obtained and held in connection with this Tolling Services Agreement. Without limiting the foregoing, Developer and the Independent Engineer may exercise such audit and inspection rights to determine the accuracy of the reports provided by TxDOT pursuant to Section 14(d) and (e) and any Delinquent Payment Deduction, Non-Compliance Deduction or Non-Compliance Points stated therein or made or calculated pursuant thereto.

(d) TxDOT 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 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 of the Agreement.

16. [RESERVED]

17. Change Orders and Change Directives

(a) General

(i) Developer and TxDOT may (but shall not be obligated to) agree on Change Orders at any time and without limitation as to the subject matter thereof.

(ii) The following may be adjusted by Change Orders or Change Directives: provisions for additional or supplemental services from TxDOT 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 TxDOT's ability to maintain its performance in accordance with the Performance Standards, including additional or supplemental services to assist Developer in implementing its ideas, programs and packages for marketing, promotion and enhanced customer service. For the avoidance of doubt, the changes in scope of work set forth in Section 4(l) may be made only by mutually agreed Change Order.

(iii) The following may be adjusted by Change Order or Change Directive: terms and provisions of this Tolling Services Agreement (A) as necessary for Developer to implement Change Orders and Directive Letters under the Agreement that relate to or affect the pre-existing terms of this Tolling Services Agreement, including changes in User Classification, provided the adjustment is consistent with applicable Law; and (B) as necessary to comply with applicable Law.

(iv) Where the provisions above expressly permit Developer to issue a Change Directive, Developer may issue it whenever the Parties are unable to agree as to the adjustment to any portion of the compensation for TxDOT 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). TxDOT 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, TxDOT may assert a claim or cause of action to resolve such dispute under Section 20.

(v) Except as expressly provided above or otherwise mutually agreed in writing by the Parties, no provisions of this Tolling Services Agreement may be modified or amended by Change Order or Change Directive.

(b) Effectiveness of Change Orders.

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

(c) Developer-Initiated Change Orders.

(i) Developer Change Order Notice. If Developer wishes to make a change pursuant to Section 17(a) or to evaluate whether to make any such change, other than due to a Change Directive, Developer shall deliver to TxDOT 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, TxDOT shall deliver to Developer a written evaluation of the proposed change, together with TxDOT's analysis and supporting documentation supporting estimated adjustments to any applicable element of compensation or any applicable Performance Standard required as a result of such proposed change.

(iii) Developer Determination. Within 30 days after receipt of TxDOT's evaluation, Developer shall provide written notice of Developer's intent to proceed or not to proceed with the change. If Developer

elects to proceed with the change and accepts TxDOT's evaluation, Developer shall prepare a Change Order for execution. If Developer elects to proceed with the Change Order but does not accept the evaluation in total, Developer shall negotiate a mutually acceptable Change Order with TxDOT or issue a Change Directive where permitted under Section 17(a).

(d) Change Order Pricing.

(i) Modifications or adjustments of TxDOT'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, TxDOT's marginal costs directly attributable to the change and a reasonable rate of return commensurate with the risks undertaken by TxDOT 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 TxDOT 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 TxDOT'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 TxDOT's compensation shall be determined in the order of preference set forth below:

(A) Adjustments to rates using the pricing structure and methodology set forth in Section 6;

(B) If there is no agreement to rate adjustments or the Parties mutually agree that the adjustment is best done with unit prices, then an adjustment shall be negotiated using the unit prices agreed upon;

(C) If there is no agreement to unit pricing or the Parties mutually agree that the adjustment is best done with lump sum pricing, then an adjustment shall be negotiated using a lump sum; or

(D) If the Parties cannot reach agreement using the above methods and Developer has the right to, and does, issue a Change Directive to perform the changed services, TxDOT shall promptly proceed with the changed services, and the adjustment shall be determined on a time and materials basis applying marginal costs or cost savings, or the actual, reasonable direct costs or savings, as applicable, for the services attributed to the Change Directive, plus or

minus an amount reflecting a reasonable rate of return commensurate with the risks described in Section 17(d)(i). In such case, (I) payments shall be due monthly within 30 days after TxDOT delivers to Developer written invoices and back-up documentation reasonably required by Developer, and (II) TxDOT shall keep and present, in such form as Developer may reasonably require, an itemized accounting together with appropriate supporting data, which shall be subject to audit by Developer in accordance with the provisions of Section 15.

(e) Impact to Performance Standards and Measures.

(i) If as a result of a Change Order or Change Directive, it is determined that such change will or does materially impair TxDOT's ability to meet the Performance Standards, then Developer and TxDOT will negotiate as part of the Change Order (or, in the case of a Change Directive, TxDOT shall be entitled to) an appropriate adjustment to the affected Performance Standards. The adjustment shall be limited to the minimum extent reasonably necessary under the circumstances.

(ii) If it is possible to avoid an adjustment to Performance Standards through a Change Order adjusting price (or through a price adjustment in connection with a Change Directive) but Developer prefers not to incur the price adjustment, then TxDOT shall cooperate with and assist Developer with analyzing trade-offs between price and Performance Standards to give Developer a range of choices on how to proceed with the Change Order or Change Directive.

(iii) If it is not possible to adjust a Performance Standard in a manner that enables Developer to remain in compliance with its obligations under the Agreement, then Developer either may (A) incur the price adjustment to the extent needed to preserve the Performance Standard and remain in compliance with the Agreement or (B) modify or withdraw the Change Order or Change Directive.

(f) Involvement of Independent Engineer

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

either Party or any Change Directive contemplated or proposed by Developer.

(g) Open Book Basis

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

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

(a) TxDOT represents and warrants to Developer 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) Subject to Section 16.5.3 of the Agreement, 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 or governing statutes of TxDOT or any approvals or laws applicable to TxDOT.

(v) Subject to Section 16.5.3 of the Agreement, 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 Developer 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 TxDOT's ability to perform its obligations under this Tolling Services Agreement.

(viii) TxDOT has all necessary expertise, qualifications, experience, competence, skills and know-how to perform its obligations under this Tolling Services Agreement.

(b) Developer represents and warrants to TxDOT that, as of the Effective Date:

(i) Developer is a limited liability company duly organized and validly existing under the laws of the State of Delaware, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this Tolling Services Agreement and to perform each and all of the obligations of Developer provided for herein. Developer is duly qualified to do business, and is in good standing, in the State of Texas.

(ii) The execution, delivery and performance of this Tolling Services Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action (as the case may be) of Developer; each person executing this Tolling Services Agreement on behalf of Developer has been duly authorized to execute and deliver it on behalf of Developer; and this Tolling Services Agreement has been duly executed and delivered by Developer.

(iii) Neither the execution and delivery by Developer of this Tolling Services Agreement, nor the consummation of the transactions contemplated hereby, is in conflict with or has resulted or will result in a default under, or a violation of, the governing instruments of Developer or any approvals or laws applicable to Developer.

(iv) This Tolling Services Agreement constitutes the legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and general principles of equity.

(v) There is no action, suit, proceeding, investigation or litigation pending and served on Developer which challenges Developer's authority to execute, deliver or perform, or the validity or

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

(vi) Developer is not in breach of any applicable law that would have a material adverse effect on the operations of the Project or Developer's ability to perform its obligations under this Tolling Services Agreement.

(vii) Developer is the "Developer" named in the Agreement and is the legal and valid holder of the Developer's Interest under the Agreement.

(viii) Developer has delivered to the trustee under the Project Trust Agreement a written certificate (A) naming TxDOT as the exclusive "Toll Operator" entitled to the benefits and protections of the provisions of the Project Trust Agreement pertaining to Toll Operators and (B) revoking any prior naming of the NTTA as a "Toll Operator;" and Developer has not and will not, so long as this Tolling Services Agreement is in effect, revoke such certificate or name a different or additional Person as "Toll Operator."

(c) The foregoing representations and warranties of TxDOT and Developer shall survive for a period of two years following the expiration or earlier termination of this Tolling Services Agreement.

(d) Developer covenants and agrees that it will maintain its existence and will remain in good standing in the State of Texas throughout the Term of this Tolling Services Agreement and will maintain its existence for as long thereafter as any obligations remain outstanding under this Tolling Services Agreement. The provisions of this Section 18(d) shall survive the expiration or earlier termination of this Tolling Services Agreement.

19. Default and Remedies

(a) Developer Default and TxDOT Remedies.

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

TxDOT delivers written notice thereof to Developer, (B) Developer shall file a voluntary petition in bankruptcy or insolvency or a petition for reorganization under any bankruptcy law, (C) Developer shall consent to an involuntary petition in bankruptcy against it or fail to vacate within 60 days from the date of entry thereof any order approving an involuntary petition in bankruptcy against it, (D) an order, judgment or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating Developer as bankrupt or insolvent or appointing a receiver, trustee or liquidator of all or a substantial part of such party's assets, and such order, judgment or decree shall continue unstayed and in effect for 60 days after its entry, (E) any representation or warranty of Developer hereunder was not true when made and such failure has a material adverse effect on Developer's ability to perform its obligations in accordance with the requirements of this Tolling Services Agreement, or (F) Developer assigns its rights and obligations under this Tolling Services Agreement in violation of this Tolling Services Agreement.

(ii) In the event of a default by Developer under this Tolling Services Agreement, TxDOT shall be entitled to all rights and remedies available under this Tolling Services Agreement, at Law or in equity, including the right to terminate this Tolling Services Agreement for failure of Developer to pay any sum when due (each of which rights and remedies shall be cumulative and in addition to any such other rights and remedies); provided that with respect to termination (A) TxDOT shall first deliver to Developer written notice of election to terminate, (B) termination shall be effective the first to occur of (1) 180 days after TxDOT delivers such notice to Developer, or (2) the date Developer and/or its replacement contractor for toll collection and enforcement services is ready to commence performing such services, and (C) pending the effective date of termination, TxDOT shall continue to diligently perform the services hereunder, including assisting with transition of services as set forth in Section 3(c). TxDOT's recoverable damages (following any termination of this Tolling Services Agreement) shall include the unamortized portion of all TxDOT's reasonable direct costs to prepare and mobilize for performance of this Tolling Services Agreement, 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 a period of five years starting on the Cutover Date.

(iii) No remedy referred to in this Section 19(a) 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. To the extent that any Developer default under this Tolling Services Agreement also constitutes a

default by Developer under the Agreement, TxDOT's rights and remedies shall in no way be limited to those specified in this Tolling Services Agreement.

(iv) Provided that Developer shall have given written notice to TXDOT of any Lender and/or Collateral Agent that Developer desires should have the right (but not the obligation) to cure any default by Developer hereunder, and the address for notice to such Lender and/or Collateral Agent, TXDOT shall deliver to such Lender and/or Collateral Agent written notice of any default by Developer hereunder at the same time as delivery of the default notice to Developer. Such Lender and/or Collateral Agent shall have the right (but not the obligation) to cure such default within the same period of time granted to Developer hereunder, plus, in the case of a default under Section 19(a)(i)(A) or (E), an additional 30 days (15 days in the case of a payment default) following the expiration of the cure period afforded to Developer hereunder. If such default has not been cured by the expiration of the cure period provided herein, regardless of whether an event of default has occurred and is continuing under any loan documents between such Lender and/or Collateral Agent and Developer, or whether such Lender and/or Collateral Agent has exercised any rights or remedies with respect thereto, TXDOT shall have and may exercise all the rights and remedies otherwise available to it under, or referenced in, this Tolling Services Agreement.

(b) TxDOT Default and Developer's Remedies.

(i) TxDOT shall be in default under this Tolling Services Agreement in the event (A) TxDOT fails to make any payment to Developer when due hereunder and the failure to pay continues for 30 days after Developer delivers written notice thereof to TxDOT; (B) any representation or warranty of TxDOT hereunder was not true when made and 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; (C) TxDOT assigns its rights and obligations under this Tolling Services Agreement in violation of this Tolling Services Agreement; or (D) TxDOT fails to perform any other obligation of TxDOT hereunder, and the failure to perform such other obligation continues for 30 days after Developer delivers written notice thereof to TxDOT, or if TxDOT has begun diligently pursuing a cure of such failure within such 30 days and continues to diligently pursue such cure, then 90 days after Developer delivers written notice thereof to TxDOT.

(ii) In the event of a default by TxDOT under this Tolling Services Agreement, subject to Section 19(e), Developer shall be entitled to recover all losses and damages incurred as a result of TxDOT's default, with the amount of such damages to include, and not involve double counting of, all Delinquent Payment

Deductions and Non-Compliance Deductions from the TxDOT Compensation made pursuant to Section 6 by reason of such default. For the avoidance of doubt, the application of Delinquent Payment Deductions and Non-Compliance Deductions under this Tolling Services Agreement shall constitute only a monetary offset and not a cure for the relevant event (and shall not be deemed to be an exclusive remedy).

(iii) In the event of a default by TxDOT under this Tolling Services Agreement, Developer shall be entitled to all other rights and remedies available under this Tolling Services Agreement, at Law or in equity, including the right to terminate this Tolling Services Agreement for failure of TxDOT to pay any sum when due (each of which rights and remedies shall be cumulative and in addition to any such other rights and remedies); provided that with respect to termination (A) Developer shall first deliver to TxDOT written notice of election to terminate, (B) termination shall be effective the first to occur of (1) 180 days after Developer delivers such notice to TxDOT; (2) the date Developer and/or its replacement contractor for toll collection and enforcement services is ready to commence performing such services, and (3) any other date specified by Developer, and (C) pending the effective date of termination, Developer shall continue to diligently work with TxDOT to perform the services hereunder, including assisting with transition of services as set forth in Section 3(c).

(iv) No remedy referred to in this Section 19(b) is intended to be exclusive, but, to the extent permissible hereunder and under applicable Laws, each remedy shall be cumulative and in addition to any other remedy referred to above or otherwise available to Developer under applicable Laws.

(c) Remedial Measures.

(i) In the event that the number of Non-Compliance Points (determined pursuant to Attachment 2), cured or uncured, assessed against TxDOT is greater than thirty percent (30%) of the total assessable Non-Compliance Points for each month in any period of three consecutive calendar months during the Term, then, at the Developer-TxDOT Regular Meeting following the third such calendar month, Developer may request TxDOT to prepare a plan for the correction of the applicable non-compliance and, in such case, TxDOT shall deliver to Developer such corrective plan no later than 15 days following Developer's request, and TxDOT 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 TxDOT is not reduced to or below thirty percent (30%) of the total assessable Non-Compliance Points for the calendar month that is the second full calendar month following TxDOT's

delivery of such corrective plan to Developer, then TxDOT shall prepare and submit to Developer for Developer's approval a remedial plan complying with the requirements of Section 19(c)(ii). Notwithstanding the foregoing, in the event that the number of Non-Compliance Points (determined pursuant to Attachment 2), cured or uncured, assessed against TxDOT is greater than fifty percent (50%) of the total assessable Non-Compliance Points for any month during the Term, then TxDOT shall thereupon prepare and submit to Developer for Developer's approval a remedial plan complying with the requirements of Section 19(c)(ii). Developer shall not unreasonably withhold or delay its approval of a remedial plan delivered pursuant to this Section 19(c)(i).

(ii) The remedial plan shall set forth a schedule and specific actions to be taken by TxDOT to (A) reduce the number of monthly Non-Compliance Points in any calendar month to no more than thirty percent (30%) of the total assessable Non-Compliance Points, (B) reasonably assure performance at levels required by this Tolling Services Agreement, and (C) reasonably assure prevention of recurrence of Non-Compliance Points in excess of thirty percent (30%) of the total assessable Non-Compliance Points in any calendar month. Such actions may include improvements to TxDOT'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) TxDOT 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 TxDOT 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 grounds for Developer to terminate this Tolling Services Agreement.

(iv) TxDOT shall deliver to Developer a monthly written report, in reasonable detail, of TxDOT's progress in carrying out the approved remedial plan. At Developer's request, TxDOT shall allow Developer to inspect TxDOT's books and records, and monitor TxDOT'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(c) with respect to TxDOT's preparation, submittal and implementation of the remedial plan provided for in the next to last sentence of Section 19(c)(i), if at the time TxDOT is required to submit such remedial plan to Developer hereunder, Developer is able to, and does, provide to TxDOT written evidence reasonably

demonstrating that TxDOT's non-performance under this Tolling Services Agreement has caused traffic on, and revenue from, the Project to decrease, then TxDOT 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 TxDOT has reduced the number of Non-Compliance Points for such 30-day period to no more than thirty percent (30%) of the total assessable Non-Compliance Points. If TxDOT shall fail to correct such non-performance by the end of such 30-day period, then such failure shall constitute grounds for Developer to terminate this Tolling Services Agreement.

(d) 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(h) that is undisputed or is disputed but finally determined to be payable, such Party shall owe and pay to the other Party a one-time late charge equal to 3% of the undisputed amount or the amount finally determined to be payable, as applicable; provided, however, that if in connection with the resolution of any dispute between the Parties concerning any amount payable hereunder, the applicable Party from whom payment is owed shall deposit an amount equal to the amount in controversy into the Toll Operator Dispute Account and such amount is held therein and disbursed in accordance with the resolution of the related dispute, then such late charge shall not apply.

(e) Limitations on Liability.

(i) Notwithstanding any other provision of this Tolling Services Agreement and except as set forth in Section 19(e)(ii), to the extent permitted by applicable Law, neither Party shall be liable for punitive damages or special, indirect or incidental 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 and incidental consequential damages or loss of profit or income shall not apply to or limit any right of recovery one Party may have against the other Party under applicable Law respecting the following:

(A) Losses, damages, debts, obligations and liabilities (including defense costs) to the extent covered by the proceeds of insurance actually carried by or insuring the liable Party;

(B) Losses, damages, debts, obligations and liabilities arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith or gross negligence;

(C) Developer's obligation to pay compensation to TxDOT under this Tolling Services Agreement as set forth in Section 6; provided, however, that to the extent pursuant to applicable Law TxDOT is entitled to claim from Developer damages that result from an early termination (other than an early termination due to a default by TxDOT hereunder) and constitute a measure of future compensation, the aggregate amount of such damages, if any, that may be payable to TxDOT 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 TxDOT Prospective Compensation Damages Limit (and for the avoidance of doubt, it is acknowledged that such limitation applies only in respect of TxDOT'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 TxDOT relating to (i) any compensation accrued and owing to TxDOT under this Tolling Services Agreement as of the date of any termination of this Agreement by TxDOT due to a default by Developer hereunder, (ii) amounts owing to TXDOT in connection with any such termination in respect of TxDOT's recoverable unamortized costs and expenses related to its services hereunder), or (iii) any Developer breach or failure to perform under the Agreement;

(D) Loss of Toll Revenues owing to Developer, attributable to a TxDOT breach or failure to perform;

(E) Damages that are owing by a Party under another agreement or contract pertaining to the Project (including, without limitation, the Agreement) or the services under this Tolling Services Agreement and that are incurred due to the other Party's breach of this Tolling Services Agreement;

(F) Transition costs incurred by Developer or TxDOT upon its proper exercise of a right to terminate this Tolling Services Agreement;

(G) In the event of Developer's proper exercise of a right to terminate this Tolling Services Agreement, costs Developer incurs to procure, hire, transition to and compensate a replacement service provider for comparable services for the remainder of the term after termination, to the extent the compensation exceeds that which would be owing to TxDOT for the remainder of the term, subject to the 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;

(H) 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;

(I) 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

(J) Any credits, deductions or offsets that this Tolling Service Agreement expressly provides to a Party against amounts owing to the other Party.

(f) Mitigation of Damages.

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

20. Dispute Resolution

Sections 17.7 and 17.8 of the Agreement, and the provisions referenced therein, shall govern all disputes under this Tolling Services Agreement and are hereby incorporated by reference as though set forth in full herein, except that:

(a) Wherever the term "the CDA Documents" is used it is replaced with the phrase "this Tolling Services Agreement;"

(b) Section 17.8.1.5(b) of the Agreement is changed to read, "Any claim or dispute that does not arise under this Tolling Services Agreement or the CDA Documents;"

(c) The following language is added to Section 17.8.4.1(a) of the Agreement: "Wherever in the Disputes Board Agreement there is a reference to the Agreement and/or specific sections of the Agreement, for purposes of

Disputes under this Tolling Services Agreement it shall be deemed to refer to this Tolling Services Agreement and the provisions of Section 17.8 of the Agreement incorporated herein;" and

(d) Wherever the term "Effective Date" is used it is replaced with the phrase "date this Tolling Services Agreement is executed."

21. [RESERVED]

22. Malfunction, Damage or Destruction of TxDOT Facilities

(a) Refer to Section 7(a) regarding procedures to be followed where Developer does not receive acknowledgment of receipt by TxDOT's CSC Host of Transactions properly transmitted to TxDOT's CSC Host in accordance with the ICD. In addition to such procedures, at TxDOT's request Developer shall attempt re-transmission of any such Transaction every two hours for a period of 24 hours after the first time Developer properly transmits the Transaction in accordance with the ICD.

(b) TxDOT shall be entitled to the relief set forth in Section 22(d) in the following circumstances:

(i) TxDOT'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 TxDOT is rendered unable to normally receive or process Transactions for payment;

(ii) The event causing the damage, destruction or state of public emergency (and the effects of such event) (A) are not caused by the negligence or willful misconduct or other culpability of TxDOT 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 TxDOT; and

(iii) The inability to render such services continues for a period in excess of two consecutive days.

(c) TxDOT shall take all steps reasonably necessary to mitigate the consequences of the foregoing circumstances, including implementing its emergency backup and recovery systems and procedures. TxDOT 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 TxDOT establishes that the circumstances described in Section 22(b) exist, then:

(i) TxDOT shall be entitled to an extension of time to make payments to Developer regarding Transactions that it is rendered unable to normally receive or process for payment due to such circumstances, provided that such extension of time shall apply only to Transactions that occur up to the 30th consecutive day that TxDOT is unable to normally receive or process Transactions for payment. For those Transactions for which TxDOT is entitled to an extension of time, it shall make payment to Developer for the toll charges associated with such Transactions on the first to occur of (A) five Business Days after TxDOT restores service and receives the Transaction at TxDOT's CSC Host or TxDOT's back-up system, or (B) the date that is the later of (1) 30 days after the Transaction occurs and (2) five Business Days after the date Developer delivers to TxDOT in digital form the data for the Transaction that would have been received at TxDOT's CSC Host absent the foregoing circumstances.

(ii) All toll charges whose payment is deferred pursuant to this Section 22(d), as a consequence of the circumstances described in Section 22(b), beyond the date payment would otherwise be due under Section 6 shall bear interest at a floating rate equal to the LIBOR in effect from time to time, commencing on the date it would be due absent the deferral and continuing until paid. TxDOT shall pay such interest concurrently with its payment of the deferred toll charges.

(iii) Non-Compliance Points shall not be assessed against TxDOT as a result of inability to perform its obligations due solely and directly to the circumstances described in Section 22(b).

(iv) For the avoidance of doubt, if any payments owing by TxDOT are delayed due to a malfunction that is not attributable to the circumstances described in Section 22(b), then TxDOT shall not be excused from any penalties or other consequences of such delayed payment provided for in this Tolling Services Agreement, (including, as applicable, the Delinquent Payment Deductions and any rights and remedies Developer may have hereunder).

(e) During any period that TxDOT is unable to normally receive or process Transactions for payment, or to render other services hereunder, due to the circumstances described in Section 22(b), Developer shall be free to seek and obtain temporary substitute services elsewhere. TxDOT shall have no right to compensation, and no liability for payment to Developer, respecting Transactions that Developer chooses to process through any such substitute service provider. If TxDOT remains unable to normally receive or process Transactions for payment, or to render other services hereunder, due to the circumstances described in Section 22(b) for more than 90 consecutive days, then notwithstanding that such situation shall not constitute a default by TxDOT, (i) Developer shall have the right to terminate this Tolling Services Agreement and (ii) TxDOT shall reimburse Developer all costs and expenses Developer incurs in connection with the

transfer of the services, functions, rights and responsibilities to Developer, its contractors or designee; provided, however, that TxDOT shall not be liable for any such transfer costs and expenses in excess of the amount that is equal to 200% of the amount that could reasonably be expected to be incurred in connection with any such transfer from NTTA to TxDOT.

23. Assignment; New TSA

(a) Developer shall have the right to assign this Tolling Services Agreement only to the extent that it is permitted to assign the Developer's Interest pursuant to Section 21 of the Agreement.

(b) Any acceptance by a Lender or any of their respective successors, assigns or designees of assignment of this Tolling Services Agreement pursuant to Section 23(a) shall not operate to make the assignee responsible or liable for any breach hereof by Developer or for any amounts due and owing hereunder for work or services rendered prior to assumption (but without restriction on TxDOT's rights to suspend work or demobilize due to Developer's uncured default).

(c) TxDOT acknowledges that this Tolling Services Agreement is for the personal services of TxDOT. Accordingly, TxDOT shall have the right to assign this Tolling Services Agreement only as follows:

(i) Without Developer's consent, to any other Person that succeeds to (A) all the governmental powers and authority of TxDOT or (B) all the tolling service functions and operations of TxDOT in the State; and

(ii) To any other Person only with the prior written consent of Developer in its sole discretion.

(d) No assignment shall relieve the assigning Party from any liability under this Tolling Services Agreement arising prior to the effective date of assignment, or impair any of the other Party's rights or remedies due to the assigning Party's default occurring prior to the effective date of assignment.

(e) In the event that (i) the CDA Documents and this Tolling Services Agreement are terminated under circumstances in which, under the terms of Section 20.4.8 of the Agreement, a Lender or Substituted Entity would have the option to enter into New Agreements with TxDOT, and (ii) such Lender or Substituted Entity elects under Section 20.4.8 of the Agreement to enter into New Agreements, then such Lender or Substituted Entity and TxDOT also shall enter into a new Tolling Services Agreement (the "New TSA"), subject to the following: (A) the New TSA shall be effective as of the date of termination of this Tolling Services Agreement and shall be for the remainder of the term of this Tolling Services Agreement, and otherwise shall be on the terms, covenants and conditions contained in this Tolling Services Agreement; (B) as a condition to the effectiveness of the New TSA and upon the execution of the New TSA by such Lender or

Substituted Entity and TxDOT, such Lender or Substituted Entity shall pay to TxDOT any and all sums that would be due under this Tolling Services Agreement but for such termination and shall otherwise fully remedy any existing defaults by Developer under this Tolling Services Agreement (provided, however, that with respect to any such defaults by Developer that cannot be cured until such Lender or Substituted Entity obtains possession of the Project, such Lender or Substituted Entity shall have such time, after it obtains possession, as is necessary with the exercise of good faith, diligence and continuity, to cure such defaults, in any event not to exceed 180 days after the date it obtains possession); and (C) as a condition to the effectiveness of the New TSA and upon the execution of the New TSA by such Lender or Substituted Entity and TxDOT, without duplication of any amounts previously paid by Developer, such Lender or Substituted Entity shall pay to TxDOT all reasonable costs and expenses incurred by TxDOT in connection with (1) Developer's default and the termination of this Tolling Services Agreement, (2) the assertion of rights, interests and defenses in any bankruptcy proceeding, (3) all TxDOT Compensation earned by TxDOT during any period of possession of the Project by TxDOT, except to the extent recovered by TxDOT from Toll Revenues earned during such period of possession, and (4) the preparation, execution and delivery of the New TSA. Upon request of the applicable Lender or Substituted Entity, TxDOT will provide a written, documented statement of the costs and expenses described in clause (C) of the preceding sentence. In the event this Tolling Services Agreement is terminated as a result of any bankruptcy or insolvency proceeding of Developer in which the Agreement is not terminated and New Agreements are not to be entered into by a Lender or Substituted Entity under Section 20.4.8 of the Agreement, then, without limiting any obligation of Developer, any Lender or any Substituted Entity under applicable law to enter into a new Tolling Services Agreement with TxDOT, upon a Lender's or Substituted Entity's written request delivered to TxDOT within 60 days of such termination, such Lender or Substituted Entity and TxDOT shall enter into a New TSA subject to the terms and conditions set forth in clauses (A) through (C) of the second preceding sentence (and TxDOT will reasonably cooperate with Lender or such Substituted Entity in Lender's or such Substituted Entity's procurement of any court, trustee or regulatory approvals required for such New TSA, subject to Lender's or such Substituted Entity's payment of the reasonable costs and expenses of TxDOT incurred in connection therewith). The provisions of this Section 23(e) shall survive the termination of this Tolling Services Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 23(e) were a separate and independent contract made by TxDOT and the Lender or Substituted Entity.

24. Special Provisions for Compliance with Agreement

(a) TxDOT agrees to recognize and attorn to any Lender upon receipt of written notice from the Lender that it has exercised step-in rights under the Agreement. If TxDOT receives any such notice, it shall have no obligation to obtain Developer's consent or approval, and no obligation to

determine whether the Lender validly exercised its step-in rights. Developer hereby waives and releases any claim or cause of action against TxDOT arising out of or relating to its recognition and attornment in reliance on any such written notice.

(b) This Tolling Services Agreement shall automatically terminate, without further notice, upon any termination of the Agreement, without liability of TxDOT for any Developer lost profits, lost business opportunity or any other loss, damage, cost or expense (without prejudice to Termination Compensation under the Agreement); and without liability of Developer for any TxDOT loss, damage cost or expense, except for TxDOT's unamortized costs described in Section 18(a)(ii), (without prejudice to TxDOT's right to damages under the Agreement).

25. Labor Practices

(a) TxDOT 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) TxDOT 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. TxDOT shall carry out, and shall cause its subcontractors to carry out, applicable requirements of 49 CFR Part 26. Failure by TxDOT to carry out these requirements is a material breach of this Tolling Services Agreement, which may result in termination hereof or such other remedy permitted hereunder as Developer deems appropriate. TxDOT shall include this provision in every subcontract (including purchase orders) pertaining to the services under this Tolling Services Agreement.

(c) TxDOT confirms for itself and all subcontractors providing services under this Tolling Services Agreement that TxDOT 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 TxDOT and each such subcontractor maintains no employee facilities segregated on the basis of race, color, national origin, sex, age, religion or handicap. TxDOT shall comply with all applicable Equal Employment Opportunity and nondiscrimination provisions set forth in Exhibit 8 to the Agreement, and shall require such subcontractors to comply with such provisions.

26. Designation of Authorized Representatives

TxDOT and Developer shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to this Tolling Services Agreement ("Authorized Representative"). Attachment 7 to this Tolling Services Agreement provides the initial Authorized Representative designations. A Party may change such designations by a subsequent writing

delivered to the other Party in accordance with Section 27. The Parties shall cause their respective Authorized Representatives to cooperate and coordinate with one another in the administration of this Tolling Services Agreement.

27. Notices

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

If to the Developer:

_____
_____
_____
Attention: _____
Telephone: ( ) _____
Facsimile: ( ) _____

With copies to:

_____
_____
_____
Attention: _____
Telephone: ( ) _____
Facsimile: ( ) _____

If to TxDOT:

_____
_____
_____
Attention: _____
Telephone: ( ) _____
Facsimile: ( ) _____

With copies to:

_____
_____
_____
Attention: _____
Telephone: ( ) _____
Facsimile: ( ) _____

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. [RESERVED]

29. Amendment

This Tolling Services Agreement may be amended only if in writing executed by Developer and TxDOT.

30. Independent Engineer

As soon as practicable following the Parties' execution and delivery of this Tolling Services Agreement, and in any event no later than 6 months thereafter, the Parties shall engage an independent third party engineering firm (the "Independent Engineer") to provide the services that this Tolling Services Agreement states are to be provided by the Independent Engineer. The Independent Engineer shall have at least ten years' experience in the provision of services that are the same as those contemplated to be provided by the Independent Engineer hereunder. The Parties shall engage the Independent Engineer pursuant to a three-party agreement among, and containing terms and conditions reasonably acceptable to, Developer, TxDOT and the Independent Engineer (the "Independent Engineer Agreement"), which Independent Engineer Agreement shall provide for, among other things, the right by each Party to unilaterally remove the then acting Independent Engineer (i) for cause or (ii) once every five years without cause; provided, however, that in connection with the removal and replacement of the Independent Engineer without cause, the Party effecting the removal shall bear the costs and expenses of both Parties that are related to the engagement of a successor Independent Engineer. The Independent Engineer Agreement shall include provision for the equal allocation, between Developer and TxDOT, of the costs and expenses of the Independent Engineer in the performance of its services under the Independent Engineer Agreement. The Independent Engineer engaged by the Parties pursuant to the terms hereof may be, but shall not be required to be, the same Person engaged as the Independent Engineer (as defined in the Agreement) under the Agreement. The Independent Engineer is to perform the functions provided for under this Tolling Services Agreement and the Independent Engineer Agreement and to assist and advise the Parties concerning its findings and recommendations. The Independent Engineer's determinations are not final and binding. If there is a continuing disagreement between the Parties concerning any matter subject to review by the Independent Engineer following the Independent Engineer's review and recommendation in respect thereof, such disagreement shall be resolved pursuant to Section 20 hereof. The Parties agree not to disclose the findings, reports or other work product of the

Independent Engineer to any person other than a Permitted Person; provided, however, that such non-disclosure restriction shall not apply to any information as and to the extent required to be disclosed by applicable law or to information that becomes public other than by virtue of a breach of this restriction, and such non-disclosure restriction also shall not preclude disclosure of information to any applicable arbitrator or court in a dispute resolution proceeding pursuant to Section 20 hereof. Permitted Persons shall be informed of the confidential nature of the information disclosed to them and shall be required to agree to act in accordance with the provisions of the foregoing non-disclosure provisions with respect to such information.

31. Non-Disparagement

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

32. Governing Law

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

33. Interpretation

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

(b) Wherever the word "including," "includes" or "include" is used in this Tolling Services Agreement, it shall be deemed to be followed by the words "without limitation".

(c) All references to "Section" or "subsection" means the Section or subsection of this Tolling Services Agreement unless specifically provided otherwise.

(d) This Tolling Services Agreement includes all the Attachments hereto.

34. Counterparts

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

35. Modification of Base Transaction Fee and Variable Transaction Fee Related to Tolling Commencement for Project Segments Rather than the Project as a Whole

In the event that Developer is to develop the Project in Project Segments rather than as a whole and this Tolling Services Agreement takes effect before the Service Commencement Date for the last Project Segment, then:

(a) The Base Transaction Fee set forth in Section 6(b) and the Variable Transaction Fee set forth in Section 6(c) may be adjusted by TXDOT as follows: TXDOT shall utilize Developer's Base Case Financial Model projections with respect to (i) traffic and Toll Revenues for the Project Segments for which Service Commencement has occurred, (ii) the respective percentages of Transponder Transactions and Video Transactions for the Project Segments for which Service Commencement has occurred, and (iii) other pertinent data relating to the Project Segments for which Service Commencement has occurred and shall apply the methodology utilized to develop the Base Transaction Fee and Variable Transaction Fee for the entire Project and set forth in Section 6 to determine the Base Transaction Fee and the Variable Transaction Fee for the Project Segments for which Service Commencement has occurred; and

(b) Upon completion of the Project as a whole, the Base Transaction Fee and the Variable Transaction Fee shall be as set forth in Section 6(b) and 6(c), respectively, of this Tolling Services Agreement.

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

TxDOT

Attest:

TEXAS DEPARTMENT OF TRANSPORTATION,

_____
Secretary

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____

Developer

LBJ INFRASTRUCTURE GROUP LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Attachment 1

Definitions

Definitions from Agreement

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

Affiliate
CDA Documents
Change in Law
Chief Executive Officer of Developer
Contractor
Customer Groups
Day or day
Developer's Interest
Directive Letter
Disputes Board
Disputes Board Agreement
Disputes Board Decision
Disputes Board Member Conflict of Interest
Disputes Board Member Misconduct
Dispute Resolution Procedures
Proposal Due Date
Electronic Toll Collection System, or ETCS
Executive Director
Exempt Vehicles
Fast-Track Dispute
Force Majeure Event
Good Industry Practice
Grounds for Appeal
Incidental Charges
Informal Resolution Procedures
Laws
Lender
New Agreements
NTTA
NTTA Tolling Services Agreement
Person
Project
Project Segment
Project Trust Agreement
Service Commencement Date
Special Vehicles
Substituted Entity
Technical Documents
Technical Provisions
Termination for Convenience
Toll Revenue
Toll Revenue Account

User
User Classification
Video Transaction
User

Additional Definitions are as follows:

Agreement means the certain Comprehensive Development Agreement dated _____, 2009 between Developer and TxDOT concerning the Project.

Authorized Representative means the individuals authorized to make decisions and bind the Parties on matters relating to this Tolling Services Agreement pursuant to Section 26.

Average Monthly TxDOT 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 final Project Segment to be developed as part of the Project pursuant to the Agreement, one twelfth (1/12) of the total TxDOT Compensation for the 12 full calendar months immediately preceding the termination of this Tolling Services Agreement requiring a determination of the Average Monthly TxDOT 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 final Project Segment to be developed as part of the Project pursuant to the Agreement, the monthly average of the TxDOT 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 Project Segment most recently developed prior to the termination of this Tolling Services Agreement requiring a determination of the Average Monthly TxDOT Compensation.

Average Monthly TxDOT 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 final Project Segment to be developed as part of the Project pursuant to the Agreement, one twelfth (1/12) of TxDOT'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 TxDOT 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 final Project Segment to be developed as part of the Project pursuant to the Agreement, the monthly average of TxDOT'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 Project Segment most recently developed prior to the termination of this Tolling Services Agreement requiring a determination of the Average Monthly TxDOT Cost of Services. TxDOT's total cost of providing services used for purposes of determining the Average Monthly TxDOT 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 TxDOT through the collection of Incidental Charges.

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

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

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

(a) A valid Transponder Transaction; or

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

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

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

Change Order means a written order issued by Developer to TxDOT 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 TxDOT's compensation in accordance with Section 17.

Claim means (a) a demand by Developer, which is or potentially could be disputed by TxDOT, for payment of money or damages from TxDOT to Developer, or (b) a demand by TxDOT, which is or potentially could be disputed by Developer, for payment of money or damages from Developer to TxDOT.

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

Custodial Arrangements means the arrangements TxDOT is to put into effect, as and when set forth in Section 8.7.7 of the Agreement, with its custodian of accounts for TxDOT's transponder account customers for the handling and remittance of debits for Transponder Transactions and of payments from Users for Video Transactions and from Special Vehicle operators, the purpose of which is to cause amounts so debited or received to be held in trust by the custodian until it deposits such amounts to the Toll Revenue Account or Toll Operator Dispute Account under the Project Trust Agreement, without at any point becoming property or assets of TxDOT or the State.

Cutover Date means the date all applicable services, functions, rights and responsibilities of the NTTA have been properly transferred to TxDOT and TxDOT commences providing services under this Tolling Services Agreement for the Project (or the Project Segment(s) for which Service Commencement has occurred prior to the date this Tolling Services Agreement takes effect, if Developer develops the Project in Project Segments and this Tolling Services Agreement takes effect before the Service Commencement Date for the final Project Segment).

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

Developer means LBJ Infrastructure Group LLC, a Delaware limited liability company.

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

Dispute means any Claim, dispute, disagreement or controversy between TxDOT and Developer concerning their respective rights and obligations under this Tolling Services Agreement, including concerning any alleged breach or failure to perform and remedies.

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

Emergency Mode means the period and circumstances when tolls are suspended on the Project or a portion of the Project in accordance with Section 3.6 of the Agreement.

Incidental Charges means:

(a) Reasonable amounts for the purchase or rental of transponders or other electronic toll devices;

(b) Reasonable, refundable security deposits for the distribution of transponders or other electronic toll devices;

(c) Reasonable administrative fees for account maintenance and account statements;

(d) Reasonable fees, penalties and interest for toll violations, including costs of collection;

(e) Amounts, with respect to Video Transactions, reasonably necessary for TxDOT to recover (i) its reasonable out-of-pocket costs and expenses and (ii) a reasonable amount to reflect its collection risk.

(f) Other reasonable fees and charges for customary incidental services to Users for whom TxDOT manages electronic tolling accounts (on the same basis as uniformly charged with respect to TxDOT's own facilities).

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

Independent Engineer has the meaning set forth in Section 30.

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

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

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

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

Interoperable Transactions means Transactions involving Toll Operators other than TxDOT; except that if TxDOT's provision of services under this Tolling Services Agreement has been suspended or terminated, **"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 TxDOT; except that if TxDOT's provision of services under this Tolling Services Agreement has been suspended or terminated, **"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.

New TSA has the meaning set forth in Section 23(e).

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.

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

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

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

Payment Period means each calendar month during the Term of this Tolling Services Agreement from and after the Service Commencement Date, which shall include (if the Service Commencement Date occurs on a date other than the first day of a calendar

month), the partial calendar month from and after the 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 TxDOT's performance set forth in Attachment 2 to this Tolling Services Agreement.

Permitted Person for purposes of Section 30 of this Tolling Services Agreement means (i) the partners, members, shareholders, directors, managers, officers and employees 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 Project or this Tolling Services Agreement and (iii) lenders and potential lenders to the Project or to the applicable Party.

Replacement Provider Compensation Damages Limit means the excess, if any, of the compensation payable to a replacement service provider (as described in Section 19(e)(ii)(G)) and the compensation that would have been payable to TxDOT hereunder for the period of time equal to the greater of zero or (a) 60 months minus (b) the number of months elapsed in the Term between the Cutover Date and the effective date of termination of this Tolling Services Agreement, utilizing regular rates of compensation of such replacement service provider.

Service Year shall mean each twelve (12) month period commencing on the Service Commencement Date for the Project (or the initial Project Segment, if Developer develops the Project in Project 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(n)(ii).

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

Tolling Services Agreement means this Tolling Services Agreement between TxDOT and Developer.

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

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

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

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

Transponder Transaction means each electronic record, which may include video images and video data that together constitute one toll payable from a customer, that are properly transmitted to TxDOT's CSC Host in accordance with the ICD (including where

the transmission is not received due to problems, downtime or other malfunction of TxDOT's CSC Host) respecting a vehicle that (a) passes through a toll lane on the Project, (b) is equipped with a transponder issued by a Transponder Issuer, and (c) has a sufficient account balance at the time of posting or re-posting to pay in full the applicable toll rate.

TxDOT means the Texas Department of Transportation.

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

TxDOT Prospective Compensation Damages Limit means the greater of the following:

(a) The amount determined by subtracting (i) the Average Monthly TxDOT Cost of Services from (ii) the Average Monthly TxDOT Compensation and multiplying the difference by 60 ; or

(b) The amount determined by multiplying (i) the Average Monthly TxDOT Compensation by (ii) ten percent (10%) and then multiplying the product so obtained by 60.

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

Unpostable Transponder Transaction means a Transponder Transaction that cannot be posted to an TxDOT customer account due to reasons other than malfunctions of TxDOT's CSC Host.

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

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

Attachment 2

Performance Standards and Non-Compliance Points

Performance Standard	Std.	Points
1. Non-Compliance Deduction Related Non-Compliance Points		
1. Less than 5% of walk in customers at the "store front" kept waiting for greater than ten minutes before being seen by TxDOT 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 TxDOT'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 TxDOT-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 TxDOT-observed holidays, and 24 hour availability of IVR system. Faults to telephone line and/or IVR rectified as soon as possible but no later than within 24 hours, with the possible exception of faults outside of scheduled maintenance and failures due to non-TxDOT equipment or failures outside TxDOT's control.	within 24 hours	1
7. 24X7 availability of secure customer access through TxDOT 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 TxDOT Online CSC being unavailable (outside of scheduled maintenance and failures due to non-TxDOT equipment or failures outside TxDOT'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-TxDOT equipment or failures outside TxDOT'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-TxDOT equipment or failures outside TxDOT'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 TxDOT 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 Attachment 2 as Appendix A or other quality monitoring form with similar content.	>90%	3
14. TxDOT CSC Host Availability - TxDOT CSC Host shall be available to receive information from Developer on a 24X7 basis (excluding scheduled maintenance and failures due to non-TxDOT equipment or failures outside TxDOT's control). Any fault that results in TxDOT CSC Host being unavailable (outside of scheduled maintenance and failures due to non-TxDOT equipment or failures outside TxDOT's control) rectified as soon as possible but no later than within 24 hours.	24 hours	4
15. Reconciled monthly financial reports under **Section 14(a)** 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 **Section 14(d)** 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 **Section 14(e)** shall be available by the 15th day of the month following the month being reported upon.	15 days	4
18. Determine and document disposition of 98% of customer disputes within five Business Days after notice of dispute received by telephone, by email, by written correspondence or in person. Rejection or request for further information due to insufficient information from customer constitutes a determination and disposition.	Within 5 business days	3
19. For customer disputes determined to require a refund of an overcharge, issue 99% of customer refunds (and mail if appropriate) within five Business Days after resolution of dispute.	Within 5 business days	3
20. For any customer correspondence requiring a written response, including requests for written receipts, 98% are provided a written response within three Business Days	Within 3 business days	2
21. Where relevant and to the extent not already included in TxDOT reports to the Developer, provide Developer with reports as discussed under Sections 14(f) and 14(h).	N/A	5
22 TxDOT shall deliver to Developer such other information as Developer or any Lender may reasonably request (and that is reasonably available to TxDOT within the time frame for delivery contemplated for this Performance Standard) to operate the Project and to evaluate TxDOT's compliance with and performance of this Tolling Services Agreement.	Within 3 business days	1
23. TxDOT will not charge a User more than once for a single transaction submitted to the TxDOT by the Developer.	100%	3
24. TxDOT will not charge a toll different than that identified by the Developer.	100%	3

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			
Branded the call TxDOT			
Provided their name and department name			
Obtains/Verifies necessary customer information for call type			

Category Comment:

Customer Account Information	Yes	No	N/A
Verify/Update account address			
Verify/Update account e-mail address			
Verify/Update account phone number			
Verify/Update account vehicle information			

Category Comment:

Analytical Skills	Yes	No	N/A

Asks probing/clarifying questions * (Forfeit)

Actively listens * (Forfeit)

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

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 - TxDOT			

Category Comment:

Section Comment:

Summary

Rating: <Automatic>

Comments:

Microsoft Excel - ssqmform

Support Services Quality Monitoring Form

CSS:

Team Lead:

Process: Image Review

Date:

Accuracy / Timeliness	Score	
	40	of 40

Communication Skills / Customer Service	Score	
	40	of 40

Analytical Skills / Decision Making	Score	
	20	of 20

Total Score	100%

Quality Evaluation Form – NTTA
(Customer Center)

CSS Name: _____ Date: _____
Observer: _____ Time: _____

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

Quality Evaluation Form
Customer Center

Revised 6/2004

Attachment 3

Interface Control Document

[to be attached upon execution using the ICD then in use by TxDOT]

Attachment 4

List of Transponder Models Establishing Benchmark Transponder Performance

[to be attached upon execution listing transponder models then generally accepted by TxDOT as benchmarks for performance]

Attachment 5

[Reserved.]

Attachment 6

[Reserved.]

Attachment 7

Initial Designation of Authorized Representatives

For TxDOT:

Name: _____

Title _____

Address: _____

Office Tel: _____

Mobile Tel: _____

Fax: _____

Email: _____

For Developer:

Name: _____

Title: _____

Address: _____

Office Tel: _____

Mobile Tel: _____

Fax: _____

Email: _____

Attachment 8

Example of Calculation of Delinquent Payment Deduction

***Typical* Monthly Delinquent Payment Deduction**

Month:	December, 2007	
LIBOR on 12/1/07	8%	
LIBOR + 400 basis points	12%	(100 Basis points = 1%)

Business Date	Due Date	Payment Date	Number of Days	Amount	Delinquent Payment Deduction
12/3/2007	12/5/2007	12/6/2007	1	$100,000.00	$32.88
12/4/2007	12/6/2007	12/8/2007	2	$125,000.00	$82.19
				Total	$115.07

Attachment 9

Example of Calculation of Non-Compliance Deduction

Typical Non-Compliance Deduction Calculation		
TxDOT Compensation	$100,000.00	
Monthly Non-Compliance Reduction %	2%	For this Sample Month, the TxDOT was non-compliant in performance which resulted in 18 Non-Compliance points. The Reduction % is then 2%.
Monthly Non-Compliance Deduction	$2,000.00	