

Fleet Account Program Agreement

This Fleet Account Program Agreement (Agreement) is entered into by and between the Texas Department of Transportation (TxDOT) and [insert name] (Vendor) for the purpose of establishing a Fleet Account to manage the payment of tolls.

1. FLEET ACCOUNT REQUIREMENTS

- 1.1. **General.** Vendor is not required to install a TxTag transponder (TxTag or Tag) in Vendor-managed vehicles. Although vehicles are not required to have a Tag, those without are subject to receiving violations from other tolling entities and Vendor is responsible for those additional fees. The license plate and Tag numbers on file for the Vendor's Account will be used to track toll usage. An initial deposit, based on historical or projected average monthly toll usage, is required. Toll transaction activity is reported through a daily electronic file exchange. The Account shall be prepaid and enrolled in TxDOT's Automatic Replenishment Program funded via two valid credit cards or debit cards not requiring a personal identification number. Each time a vehicle associated with the Account passes through a toll lane, the applicable toll will be deducted from the prepaid balance of the Account.
- 1.2. **Account Balance.** TxDOT will analyze the Vendor's fleet history on TxDOT toll roads to determine the Minimum Initial Prepaid Toll Amount and the Low Balance Threshold (see Attachment C - Account Parameters). If at any time the Account balance is insufficient to pay amounts owed to TxDOT, the Vendor shall remain liable for those amounts and is responsible for any related fees and costs incurred by TxDOT to collect the total amount due. Failure to pay a toll or other charges to the Account may result in the assessment of fees or other remedies as provided by law.
- 1.3. **Automatic Replenishment.** The Account will be automatically replenished by a credit or debit card on file when the Account balance reaches the Low Balance Threshold. Depending on use or other charges to the Account, there may be more than one replenishment transaction in any given month.
- 1.4. **File Exchange / Account Information.** The Vendor shall develop processes to update and maintain the Account via a secured file exchange. These processes must comply with the latest version of the Fleet Account Data Transmission Interface Control Document (see Attachment A), which outlines the various file types required. A secure communication tunnel will be established between the Vendor and TxDOT to facilitate the transfer of information between the two organizations. All file transfers will occur through a Secure File Transfer Protocol protected by a username and password. The Vendor shall send a vehicle license plate file on a frequency defined in the ICD. TxDOT will send a reconciliation file on a frequency defined in the ICD. TxDOT will notify the Vendor of system maintenance and outages that may impact the file exchange process.
 - 1.4.1. The Vendor shall agree to a testing schedule prior to activating the Account. The purpose of the test is to ensure that the processes established by the Vendor comply with all of the requirements of the ICD. The Vendor is responsible for any tolls and fees incurred before the Account is activated.
 - 1.4.2. A valid license plate number is required for each vehicle associated with the Account. The Vendor is responsible for ensuring all Account information (including contact, vehicle and credit card information) is up-to-date and accurate throughout the term of this Agreement. Account information may be verified or updated by calling or visiting the TxDOT Customer Service Center (CSC).
 - 1.4.3. TxTag Transponders. The Vendor may procure Tags directly through TxDOT or through a TxDOT- approved third party. Availability of Tags procured directly from TxDOT is subject to current inventory supply. Standard pricing for Tags purchased through TxDOT is set out in Attachment B - Schedule of Fees and Charges. Any transponders procured by the Vendor from a third party source are required to be compatible with the TxDOT toll facilities and shall undergo certification testing at the Vendor's expense prior to being enrolled to the

Fleet Account. TxDOT, in its sole discretion, will determine if such compatibility testing sufficiently demonstrates transponder compatibility with the TxDOT toll facilities.

1.5. Rates, Fees, and Charges.

- 1.5.1. Usage of the Fleet Account relies upon maintenance of a prepaid account balance. (See Attachment C – Account Parameters.)
- 1.5.2. The applicable fees and charges described in Attachment B - Schedule of Fees and Charges, may be billed directly to the Account and deducted from the Account balance. The Vendor is responsible for all tolls and fees incurred by vehicles and Tags associated with the Account, including Tags used in vehicles not otherwise associated with the Account.
- 1.5.3. Vehicles associated with the Account will be charged the Pay By Mail (PBM) rate for image-based toll transactions and the Electronic Toll Collection (ETC) rate for Tag-based toll transactions. The Vendor may contest the imposition of a toll or fee by submitting a dispute in writing within sixty (60) days of the transaction date to the designated TxDOT representative. If a toll or fee is rescinded, the Account will be credited the amount of the rescinded toll or fee.

1.6. Placement and Use of the Tag. Installation and use of Tags shall be in accordance with TxDOT's direction. Each Tag must be installed and used only in the vehicle specifically assigned to that Tag. Tags shall not be transferred between vehicles and each Tag shall be assigned to a single Account only. A license plate number must be provided for each vehicle on the Account. Each Tag on the Account must be linked to a single license plate. The Tag may be used as a method of payment in toll lanes that are open and designated for TxTag use. When a Tag is used as a method of payment in these toll lanes, a non-refundable toll will be charged to the Account. The Tag may also be used as a method of payment at any public or private facility designated for TxTag use. Visit TxTag.org for information on TxDOT's interoperable partners. The Vendor is responsible for verifying that the facility accepts TxTag for payment.

1.7. Damaged or Defective Tag. If a Tag is damaged or defective, the Vendor shall notify the designated TxDOT representative immediately.

1.8. Statements.

- 1.8.1. If a Tag is not read by lane equipment at the tolling point or by other equipment at the interoperable facility/location designated for TxTag use and the license plate information on the Account is not accurate, the Vendor may receive a statement for payment of the toll or a violation, depending on the facility traveled. If a statement is received that includes incorrect information, Vendor shall contact the TxDOT representative immediately to identify and correct the problem and to update the Account information.
- 1.8.2. Depending on the facility traveled, the Vendor may receive a statement or a violation if the Account balance is too low to cover the cost of tolls incurred on the particular facility. Tolls that are billed to the Account will be billed at the PBM rate to offset the costs related to processing license plate information. Following receipt of a statement, the Vendor shall contact the designated TxDOT representative immediately to identify and correct the problem with the Account. A new file may be required to update the vehicle license plate list associated with the Account.

1.9. Lost, Stolen, or Sold. If a Tag is lost, a vehicle that is registered to the Account is sold, or a Tag or vehicle is stolen, the Vendor shall notify the designated TxDOT representative immediately so the Tag and/or vehicle on the Account can be deactivated. To avoid possible issues, Vendor shall remove the Tag from vehicles scheduled for sale or disposal. Until TxDOT receives the required notice, the Vendor is responsible for any incurred tolls, fees, and charges assessed to any Tag or vehicle associated with the Account.

1.10. Technical support. Technical questions regarding the Account and file exchange process shall be referred to the designated TxDOT representative. TxDOT will create a trouble ticket and contact the Vendor to resolve the issue.

1.11. Itemized Statements. The Vendor will not receive an itemized Account statement (except as noted in Section 1.8 above.) The reconciliation file will serve as the Vendor's statement of Account activity.

- 1.12. Interoperability.** TxTag may be used at non-TxDOT facilities that accept TxTag as a method of payment. When used at the facilities of another entity, the Vendor will be subject to the rules and regulations of that entity and any other terms and conditions related to interoperability. In addition, the entity, at its sole discretion, may discontinue acceptance of TxTag as a method of payment without prior notice. To enable the use of TxTag at such facilities, information about the Account will be shared with other entities for purposes of billing and collecting the proper tolls and fees. Vendor is required to keep license plate information on the Account up-to-date and properly linked to Tags. If vehicle information is out of date, Vendor may receive an invoice or violation notice from the participating interoperable partner. Using the Tag on facilities without an Account balance sufficient to cover incurred tolls may result in the issuance of toll bills, violations, and/or fees. Toll identified through license plate based reads instead of through Tag reads may not be interoperable with all non-TxDOT facilities.
- 1.13. Compliance.** The Vendor shall comply with all requirements of the Fleet Account Agreement and the Fleet Account Data Transmission Interface Control Document (See Attachment A.) Failure to do so may result in the assessment of fees, termination of the Agreement and closure of the Fleet Account, or other remedies as provided by law.

2. GENERAL TERMS AND CONDITIONS

- 2.1. COMPLIANCE WITH LAWS:** The Vendor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of the Agreement, including if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations. The Vendor shall maintain all required licenses, certifications, etc. throughout the term of the Agreement. When required, the Vendor shall furnish TxDOT with satisfactory proof of its compliance.
- 2.2. NEPOTISM DISCLOSURE:**
- 2.2.1. In this section, the term "relative" means:
- 2.2.1.1. a person's great grandparent, grandparent, parent, aunt or uncle, sibling, niece or nephew, spouse, child, grandchild, or great grandchild, or
- 2.2.1.2. the grandparent, parent, sibling, child, or grandchild of the persons spouse.
- 2.2.2. A notification required by this section shall be submitted in writing to the person designated to receive official notices under this Agreement and by first-class mail addressed to Contract Services Division, Texas Department of Transportation, 125 East 11th Street, Austin Texas 78701. The notice shall specify the Vendor's firm name, the name of the person who submitted the notification, the Agreement number, the district, division, office or regional service center of TxDOT that is principally responsible for the Agreement, the name of the relevant Vendor employee, the expected role of the Vendor employee on the project, the name of the TxDOT employee who is a relative of the Vendor employee, the title of the TxDOT employee, and the work location of the TxDOT employee.
- 2.2.3. If the Vendor learns at any time that any of its employees or that any of the employees of a subcontractor who are performing work under this Agreement have a relative who is employed by TxDOT, the Vendor shall notify TxDOT under Section 2.2.2 of each instance within thirty days of obtaining that knowledge.
- 2.2.4. If the Vendor violates this section, TxDOT may terminate the Agreement immediately for cause, may impose any sanction permitted by law, and may pursue any other remedy permitted by law.
- 2.3. BOYCOTTING ISRAEL:** The Vendor does not boycott Israel and will not during the term of the Agreement.
- 2.4. ORDERS:** Only authorized TxDOT purchasers have the authority to place orders for goods and services. Purchase Orders must be issued by a TxDOT purchaser prior to a Vendor providing the goods or service. The only exceptions are payment card orders and bona fide emergencies. In the case of an emergency, the TxDOT Procurement Division will confirm such orders with a signed Purchase Order.

2.5. INTELLECTUAL PROPERTY:

- 2.5.1. All intellectual property developed and created in the course of the services rendered pursuant to the Agreement are works for hire and all intellectual property rights, including but not limited to publication rights, copyrights, trademarks, patents and trade secrets, to all products and materials developed and created pursuant to the Agreement shall be exclusively owned by TxDOT. Vendor shall provide TxDOT all assistance required to perfect such intellectual property rights without any charge or expense beyond those amounts payable for services rendered under the Agreement. To the extent that title to any work created under the Agreement is held by operation of law to not vest exclusively in TxDOT, such work shall be hereby irrevocably assigned to TxDOT.
- 2.5.2. Vendor shall ensure that TxDOT's intellectual property rights, including but not limited to publication rights, copyrights, trademarks, patents and trade secrets, are secured from all suppliers, vendors and subcontractors.
- 2.5.3. When applicable, each Vendor shall obtain necessary licenses, copyrights, trademarks or patents for TxDOT's use.
- 2.5.4. The Vendor shall not assert rights at common law or in equity or establish any claim to TxDOT's intellectual property, including, but not limited to, licenses, claiming common law ownership of intellectual property, obtaining registrations for copyrights, trademarks, trade secrets or patents for any intellectual property developed in performance of the services authorized.
- 2.5.5. THE VENDOR AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND TXDOT AND THE STATE FROM CLAIMS INVOLVING INFRINGEMENT OF THIRD PARTIES' LICENSES, TRADEMARKS, COPYRIGHTS, PATENTS, TRADE SECRETS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS AS SET FORTH IN SECTION 2.13 BELOW.

2.6. ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS: As required by 1 TAC Chapter 213:

- 2.6.1. Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. Vendor represents and warrants that technology to be provided to TxDOT and for TxDOT is in compliance with these requirements.
- 2.6.2. Vendor shall provide Texas Department of Information Resources with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product or service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide the Texas Department of Information Resources with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at: <http://www.section508.gov/>.

2.7. SITE VISITS: Prior to and after award of the Agreement, designated TxDOT representatives may conduct unannounced visits to inspect the Vendor's and its subcontractor's facilities during normal business hours to monitor compliance in accordance with TxDOT specifications or carry out performance audits of the service.**2.8. NON-WAIVER OF RIGHTS:** Nothing in this Agreement shall be construed as a waiver of the state's sovereign immunity. This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TxDOT does not waive any privileges, rights, defenses, or immunities available to TxDOT by entering into this Agreement or by its conduct prior to or subsequent to entering into this Agreement.

- 2.9. LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS:** Vendor shall have no authority to act for or on behalf of TxDOT or the State of Texas except as expressly provided for in this Agreement. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or TxDOT.
- 2.10. VENUE AND JURISDICTION; APPLICABLE LAW:** Venue for any suit concerning the solicitation and any resulting Agreement shall be in a court of competent jurisdiction in Travis County, Texas. This Agreement is governed by, construed in accordance with, and interpreted under the laws of the State of Texas.
- 2.11. VENDOR ASSIGNMENTS:** Vendor hereby assigns TxDOT any and all claims for overcharges associated with this Agreement which arise under the antitrust laws of the United States (15 U.S.C.A. Chapter 1), and which arise under the antitrust laws of the State of Texas (Business & Commerce Code, Title 2, Chapter 15).
- 2.12. RIGHT TO AUDIT:**
- 2.12.1. The State Auditor's Office, pursuant to Section 2262.154, ("state auditor") may conduct an audit or investigation of the Vendor or any other entity or person receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Vendor or any other entity that is the subject of an audit or investigation by the state auditor agrees to provide the state auditor access to any information the state auditor considers relevant to the investigation or audit.
 - 2.12.2. TxDOT's internal auditors shall have the right to conduct an audit or investigation of the Vendor or any subcontract under this Agreement. TxDOT has the right to audit the Vendor's books and records pertaining to the service during normal work hours. Vendor or any other entity that is the subject of an audit or investigation by TxDOT agrees to provide TxDOT's internal auditor access to any information TxDOT considers relevant to the investigation or audit.
 - 2.12.3. Vendor will ensure that this section concerning the authority of the state auditor and TxDOT to audit and the requirement to cooperate is included in any subcontract it awards.
- 2.13. INDEMNIFICATION: Acts or Omissions**
- 2.13.1. VENDOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TXDOT, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, VENDORS, SUBCONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, COURT COSTS AND EXPENSES ARISING OUT OF, OR RESULTING FROM, ANY ACTS OR OMISSIONS OF THE VENDOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH TXDOT AND THE OFFICE OF THE ATTORNEY GENERAL WHEN THE STATE OF TEXAS OR TXDOT IS NAMED AS A DEFENDANT IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TXDOT AND THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.
 - 2.13.2. Infringement:
 - 2.13.2.1. VENDOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TXDOT, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, VENDORS, SUBCONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, TRADE SECRETS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS AGREEMENT. VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES AND COURT COSTS. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH TXDOT AND THE OFFICE OF THE ATTORNEY GENERAL WHEN THE STATE OF TEXAS OR TXDOT ARE NAMED AS A DEFENDANT IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TXDOT AND THE OFFICE OF THE ATTORNEY GENERAL.
- 2.13.2.2. VENDOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY:
- 2.13.2.2.1. ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TXDOT, OR
- 2.13.2.2.2. ANY USE OF THE PRODUCT OR SERVICE BY TXDOT THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT BETWEEN VENDOR AND TXDOT.
- 2.13.2.3. IF VENDOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TXDOT PROVIDES VENDOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, VENDOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TXDOT, SHALL), AT VENDOR'S SOLE OPTION AND EXPENSE;
- 2.13.2.3.1. PROCURE FOR TXDOT THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR
- 2.13.2.3.2. MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TXDOT'S USE IS NON-INFRINGEMENT.
- 2.13.3. Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity
- 2.13.3.1. VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS AGREEMENT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TXDOT AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY.
- 2.13.3.2. VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS TXDOT, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, VENDORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE, WORKERS' COMPENSATION, AND/OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY IN OR ARISING OUT OF ITS PERFORMANCE UNDER THIS AGREEMENT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES AND COURT COSTS. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH TXDOT AND THE OFFICE OF THE ATTORNEY GENERAL WHEN THE STATE OF TEXAS OR TXDOT IS NAMED AS A DEFENDANT IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TXDOT AND THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- 2.14. DAMAGE TO TXDOT PROPERTY:** The Vendor shall be liable for damage to TxDOT's equipment, workplace and its contents resulting from the Vendor's or the Vendor's subcontractor's work or negligence in performance of the work by the Vendor's or subcontractor's personnel or equipment.
- 2.15. CONFIDENTIALITY CLAUSE:** TxDOT is governed by laws and regulations that make certain information confidential as well as specifying how public information is released. Notwithstanding any provision to the contrary, the Vendor understands that TxDOT will comply with the Texas Public Information Act, Government Code Chapter 552, as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. The Vendor, its employees or subcontractors shall not divulge any information relative to TxDOT business, including electronic toll collection customer account information obtained from TxDOT, at any time to a third party without the prior written approval of TxDOT. The Vendor will notify TxDOT within 24 hours of receipt of any third party requests for information that was provided by TxDOT for use in performing the Agreement, including the Agreement itself. All information created by or accessible to a Vendor while providing a good or service for TxDOT is confidential. If applicable to a service, upon award of an Agreement, the Vendor may be required to complete and sign TxDOT Form 1828b, Information Resource Security Compliance and Confidentiality Agreement. Vendor is required to make any information created or exchanged with the state pursuant to the Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state. Vendor agrees to provide the information to the public in any format reasonably required by TxDOT.
- 2.16. BUY TEXAS:** Pursuant to Section 2155.4441 of the Government Code, the Vendor shall buy products and materials produced in the State of Texas for use in providing services authorized in this Agreement when such products and materials are available at a comparable price and in a comparable period of time when compared to products and materials produced outside the state.
- 2.17. COMPETENCE OF VENDOR:** The Vendor shall have available the necessary organization and facilities to fulfill all the requirements under the Agreement. Only personnel trained to perform the solicited services or, if applicable, licensed to perform such services shall be employed under and for the Agreement. Vendor shall obtain any other licenses or permits or both as required for the performance of the service.
- 2.18. CHANGES IN WORK:** If TxDOT determines it necessary to require corrections to completed work due to errors made by the Vendor, the Vendor shall correct the work at no cost to TxDOT. Any changes must be approved in advance in writing through a purchase order change notice issued by TxDOT's purchasing department.
- 2.19. IT SERVICE CONTRACTS SECURITY:** The Vendor will implement appropriate administrative, physical and technical safeguards which reasonably and appropriately protect the confidentiality, integrity, and availability of services provided to TxDOT. The Vendor will immediately report to TxDOT any security incident which it becomes aware. The Vendor will submit for approval by TxDOT and conform its policies and procedures relating to the implementation of security safeguards to comply with TxDOT's information resources security program pursuant to Title 1, Texas Administrative Code, Section 202.
- 2.20. NOTICES:** Any written notices required under the resulting Agreement will be by either hand delivery to Vendor's office address specified on Page 1 of the Purchase Order or by U.S. Mail, certified, return receipt requested, to TxDOT, 125 E. 11th Street, Austin, TX 78701-2483. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this Section by written notification to the other party.
- 2.21. ACCESS TO INFORMATION:** The Vendor is required to make any information created or exchanged with TxDOT pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to TxDOT. At a minimum the formats are to include portable document format (PDF) and HTML.
- 2.22. PUBLIC DISCLOSURE:** No public disclosures or news releases pertaining to this Agreement shall be made without prior written approval of TxDOT.

2.23. INSURANCE

- 2.23.1. **DURING TERM OF AGREEMENT:** The Vendor shall maintain all required insurance coverage throughout the term of the Agreement. The Vendor shall provide a correct TxDOT insurance form each time its insurance is renewed or updated. Failure to provide this form promptly may be cause for discontinuance of the work and termination of the Agreement.
- 2.23.2. **WAIVER OF SUBROGATION ENDORSEMENT:** The Vendor's Worker's Compensation insurance policy shall have a waiver of subrogation endorsement in favor of TxDOT. TxDOT will allow deductible policies. The Vendor shall pay the deductible amount.
- 2.23.3. **WORKERS' COMPENSATION INSURANCE:** Amounts of coverage are minimums and notice provisions are statutory (Texas Labor Code Chapter 406 and Title 28 Texas Administrative Code Chapter 110). The Vendor is responsible for both Federal and State Unemployment Insurance coverage and Standard Workers' Compensation Insurance coverage:
- 2.23.4. **COMMERCIAL GENERAL LIABILITY INSURANCE:** Bodily Injury/Property Damage. Required coverage shall at a minimum, be inclusive of the limits listed on the insurance form noted on the solicitation.

2.24. VENDOR PERSONNEL MANAGEMENT

- 2.24.1. **INDEPENDENT CONTRACTOR:** It is expressly understood and agreed to by both parties that TxDOT is contracting with the Vendor as an independent contractor. As such, Vendor understands and agrees that individuals performing services in connection with the Agreement are not state employees, and that the Vendor shall be responsible and liable for the safety, injury, and health of its and its subcontractor's working personnel while its employees or subcontractor's employees are performing work for TxDOT. Should the Vendor subcontract any of the services required in the Agreement, the Vendor expressly acknowledges and agrees that TxDOT is in no manner liable to any subcontractor of the Vendor. In no event shall this provision relieve Vendor of the responsibility for ensuring that all services rendered under all subcontracts are rendered in compliance with the Agreement.
- 2.24.2. **ALCOHOL AND DRUG FREE WORKPLACE:** TxDOT is committed to maintaining an alcohol and drug free workplace. Possession, use of or being under the influence of alcohol or controlled substances by Vendor's employees while in the performance of any service is prohibited. Violation of this requirement shall constitute grounds for termination of the Agreement. Vendor's employees shall comply with TxDOT's policy prohibiting smoking in TxDOT buildings.
- 2.24.3. **REPLACEMENT OF PERSONNEL:** If TxDOT determines a Vendor's employee or Vendor subcontractor performing under this Agreement is unable to perform in accordance with the service requirements or to communicate effectively, or is in the opinion of TxDOT, otherwise objectionable, the Vendor shall immediately remove that employee or subcontractor.
- 2.24.4. **LABOR/MATERIAL/EQUIPMENT:** The Vendor shall provide all labor, material, and equipment necessary to furnish the goods or perform the service(s) throughout the term of the Agreement. All employees of the Vendor shall be a minimum of seventeen (17) years of age and experienced in the type of work to be performed. No visitors, wives, husbands, children or other relatives of the Vendor's employees will be allowed on state property during working hours, unless they are bona fide employees of the Vendor.
- 2.24.5. **ENGLISH SPEAKING STAFF:** The Vendor shall at all times have a minimum of one English speaking employee on the job. All employees shall be well-groomed and appropriately dressed when on TxDOT property.
- 2.24.6. **FELONY CRIMINAL CONVICTIONS:** Vendor represents and warrants that neither Vendor nor any of Vendor's employees have been convicted of a felony criminal offense, or that, if such a conviction has occurred, Vendor has fully advised TxDOT as to the facts and circumstances surrounding the conviction and Vendor agrees to defend, hold harmless, and indemnify TxDOT from any loss or claim due to any such employees.
- 2.24.7. **SUBCONTRACTING REQUIREMENTS:** In accordance with Government Code Sections 2161.181-182 and 34 TAC §20.11 and pursuant to the CPA Historically Underutilized Business (HUB) Rules, 34 TAC, §20.14, and Transportation DBE/HUB/SBE Rules, 43 TAC

9.50-.57 (relating to Disadvantaged Business Enterprises, HUB and Small Business Enterprises, DBE/HUB/SBE) all state agencies entering into a contract with an expected value of \$100,000 or more over the life of the contract (including renewals) shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine if it is probable for subcontracting opportunities under the contract. If subcontracting opportunities are probable the state agency will state such probability in its bids, proposals, offers, or other applicable expression of interest and require the submission of a HUB Subcontracting Plan (HSP). The HSP, if acceptable to the agency, will be a provision of the contract. The HSP, if required, may be found at:

<http://www.dot.state.tx.us/gsd/purchasing/purchasing.htm>.

- 2.24.8. **VENDOR TITLE VI AFFIRMATIONS:** The Vendor affirms the following, with regard to the work performed by it under the Agreement:
- 2.24.8.1. Vendor and its subcontractors shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Vendor shall not participate either directly or indirectly in any discriminatory employment practices. Failure by the Vendor to carry out these requirements is a material breach of any contract awarded and may result in the termination of the contract or such other remedy as TxDOT deems appropriate.
 - 2.24.8.2. In any solicitations for subcontractors, including procurements of materials or leases of equipment and in all solicitations either by competitive bidding or negotiation made by the Vendor for work to be performed under a subcontract, each potential subcontractor or supplier shall be notified by the Vendor of the Vendor's and subcontractor's obligations under its Agreement relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.
 - 2.24.8.3. During the performance of this Agreement, the Vendor, for itself, its assignees and successors in interest (hereinafter referred to collectively in this subsection (c) as the "Vendor") agrees as follows:
 - 2.24.8.3.1. Compliance with Regulations: The Vendor will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
 - 2.24.8.3.2. Nondiscrimination: The Vendor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Vendor will not participate either directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
 - 2.24.8.3.3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Vendor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Vendor of the Vendor's obligations under this Agreement and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
 - 2.24.8.3.4. Information and Reports: The Vendor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by TxDOT or the Federal Highway Administration (FHWA) to be pertinent and to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Vendor is in the exclusive possession of another who fails or refuses to furnish this information, the Vendor will so certify to TxDOT or the FHWA, as

- appropriate, and shall set forth what efforts it has made to obtain the information.
- 2.24.8.3.5. Sanctions for Noncompliance: In the event of a Vendor's noncompliance with the nondiscrimination provisions of this Agreement, TxDOT will impose such Agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
- 2.24.8.3.5.1. withholding payments to the Vendor under the Agreement until the Vendor complies; and/or
- 2.24.8.3.5.2. cancelling, terminating, or suspending a Agreement, in whole or in part.
- 2.24.8.3.6. Incorporation of Provisions: The Vendor will include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Vendor will take action with respect to any subcontract or procurement as TxDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, that if the Vendor becomes involved in litigation with, or is threatened with litigation by, a subcontractor or supplier because of such direction, the Vendor may request TxDOT to enter into any litigation to protect the interests of TxDOT. In addition, the Vendor may request the United States to enter into the litigation to protect the interests of the United States.
- 2.24.8.4. The Vendor agrees to comply with the provisions of Appendix A attached hereto, which is incorporated by reference and made a part hereof.
- 2.24.9. **E-VERIFY:** Pursuant to Executive Order RP-80, Vendor certifies and ensures that for all contracts for services, Vendor shall, to the extent permitted by law, utilize the United States Department of Homeland Security's E-Verify system during the term of this Agreement to determine the eligibility of:
- 2.24.9.1. All persons employed by Vendor during the term of this Agreement to perform duties within the State of Texas; and
- 2.24.9.2. All persons, including subcontractors, assigned by Vendor to perform work pursuant to this Agreement.
- 2.24.9.3. Violation of this provision constitutes a material breach of this Agreement.
- 2.25. DISPUTE RESOLUTION.** In accordance with Government Code, Chapter 2260, TxDOT has established a dispute resolution process in 43 Texas Administrative Code §§9.1 and 9.2 to resolve disputes that may arise between TxDOT and the Vendor under the Agreement (referred to herein as the "dispute resolution process"). The dispute resolution process shall be used by TxDOT and the Vendor to resolve disputes arising under the Agreement, including without limitation any claim for breach of contract. The contested case process provided in Chapter 2260 is the Vendor's sole and exclusive process for seeking a remedy for an alleged breach of contract by TxDOT if the parties are unable to resolve their disputes as described above. Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the Agreement by TxDOT nor any other conduct of any representative of TxDOT relating to the Agreement shall be considered a waiver of sovereign immunity to suit. Notwithstanding any provision of the Agreement to the contrary, unless otherwise agreed in writing by TxDOT, the Vendor shall continue performance and shall not be excused from performance during the period of Agreement claim or dispute is pending; however, the Vendor may suspend performance during the pendency of such claim or dispute if the Vendor has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.
- 2.26. TERM OF AGREEMENT:** The term of the Agreement shall be as stated on the Purchase Order.
- 2.27. ORDER OF PRECEDENCE:** In the event of conflicts or inconsistencies between this Agreement and its attachments and other solicitation documents, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order: (1)

Amendments to the Agreement, (2) the Agreement and its Attachments, (3) the Purchase Order and (4) the Vendor's Application.

2.28. TERMINATION OF THE AGREEMENT:

- 2.28.1. **FOR CAUSE:** If Vendor fails to provide a good or service according to the provisions of the Agreement or fails to comply with any term or condition of the Agreement, or if any representation or certification made in the Agreement or any related document is false, incomplete or inaccurate, TxDOT may immediately terminate the Agreement upon written notice to the Vendor. The defaulting Vendor will not be considered in future solicitations for the same type of work unless the specification or scope of work is significantly changed. TxDOT may impose sanctions, debar or suspend the Vendor for abandonment or default(s) on the Agreement. Termination is not an exclusive remedy, but will be in addition to any other remedies TxDOT may have by law, in equity, or under the Agreement. TxDOT may exercise any other right, remedy or privilege which may be available to it under applicable law or may proceed by appropriate court action to enforce the provisions of the Agreement. The exercise of any of the foregoing remedies will not constitute a termination of the Agreement unless TxDOT notifies the Vendor in writing prior to the exercise of such remedy. The Vendor shall be responsible for all costs and expenses, including court costs, incurred by TxDOT with respect to the enforcement of any of the remedies listed herein.
- 2.28.2. **FOR CONVENIENCE:** The Agreement may be terminated in whole or in part, without penalty, by either party by providing thirty (30) days written notice to the other party. In the event of such termination, the Vendor shall, unless otherwise agreed in writing, cease all work immediately upon the effective date of termination. Termination under this paragraph shall not relieve the Vendor of any obligation or liability that has occurred prior to termination.
- 2.28.3. In the event of termination, the Account will be closed and any remaining Account funds (after all applicable fees and charges have been applied) will be refunded to Vendor.

2.29. SALE OR ASSIGNMENT: The Agreement is void if sold or assigned to another company without written approval from TxDOT. Written notification of changes to company name, address, telephone number, etc. shall be provided to TxDOT as soon as possible but not later than thirty (30) days from the date of change.

2.30. RENEWAL OF AGREEMENT FOR SERVICES: The Agreement may be renewed for up to three additional like periods of time at the same terms and conditions, or as otherwise stated in the solicitation, provided both parties agree in writing to do so prior to the expiration of the Agreement.

2.31. EXTENSION OF AGREEMENT:

- 2.31.1. TxDOT reserves the right to extend the Agreement for time only past the stated term to allow the Vendor to complete the requirements or to accommodate unanticipated events or requirements prior to the expiration of the Agreement.
- 2.31.2. An Agreement in its final renewal period may be further extended for a period up to ninety (90) days at the option of TxDOT.
- 2.31.3. The Vendor may request a time only extension of an Agreement by submitting written justification to TxDOT. TxDOT will approve or decline the request for extension in writing. An extension will only be effective if it is issued by the TxDOT purchasing department in the form of a purchase order change notice.

2.32. SEVERABILITY CLAUSE: In the event that any provision(s) of this Agreement may later be determined to be invalid, void, or unenforceable, then the remaining provisions of this Agreement shall remain in full force and effect.

2.33. BINDING EFFECT AND SURVIVAL OF OBLIGATIONS

- 2.33.1. By executing this Agreement, the Vendor binds itself, its respective successors and assignees, to the faithful performance of the terms and conditions and provisions of the Agreement.
- 2.33.2. Expiration or termination of the Agreement for any reason shall not release Vendor from any liabilities or obligations set forth in the terms and conditions and Agreement or any work order that are expressly stated to survive any such expiration or termination or which by their nature are intended to be applicable following such expiration or termination, including any and all provisions regarding confidentiality, indemnification, transition,

records, audit, property rights, dispute resolution, statement and fees verification. Upon expiration or termination of the Agreement for any reason, TxDOT shall retain ownership of all associated work products and documentation obtained from or created by the Vendor under the Agreement. Vendor shall deliver all documents or other work product to TxDOT upon request, including original versions if so specified in the request.

2.33.3. The term of service stated on the Purchase Order is binding on the Vendor regardless of the term on the originating agency contract or its Agreement.

2.34. AMENDMENTS TO THE AGREEMENT. TxDOT may revise the terms of this Agreement at any time with prior written notice to the Vendor. Notice will be deemed received ten (10) days after being mailed to the Vendor at the address on file. If the Vendor does not accept the revised terms, the Vendor must immediately notify the appointed TxDOT representative. Following notification, the Agreement will be terminated and the Account will be closed as described above. Continued use of the Account will constitute acceptance of the revised terms.

2.35. NO EXCLUSIVITY. TxDOT reserves the right to enter into similar agreements with multiple vendors. This Agreement does not guarantee a certain number of transactions or provide for exclusive rights to specific vehicles or license plates. Simultaneous registration of a single vehicle or license plate to more than one account may occur. In that case, TxDOT will resolve the conflict in accordance with its standard operating procedures. Image based toll transactions between two or more Fleet Accounts are prioritized to the first fleet account the plate was registered to and that is still active.

3. CONTACT INFORMATION. Questions regarding this Agreement shall be referred to the designated TxDOT representative:

Name: Cheryl Hill, CTCM
Title: Contract Specialist
Address: TxDOT Toll Operations Div.
Attn.: Contracting
12719 Burnet Road
Austin TX 78727
Phone: (512) 874-9144
Email: Cheryl.Hill@txdot.gov

4. SIGNATORY WARRANTY. The undersigned signatory for the Vendor represents and warrants that the signatory has full and complete authority to enter into this Agreement on the Vendor's behalf.

Signature of Vendor's representative below constitutes Vendor making an offer that may be accepted by TxDOT with issuance of a corresponding purchase order.

[INSERT COMPANY NAME]

By: _____

Printed Name: _____

Title: _____

Date: _____ Phone: _____

PO # _____

Fleet Account Agreement

Attachment A

Fleet Account Data Transmission Interface Control Document

Version 1.23

Fleet Account Agreement

Attachment B - Schedule of Fees and Charges

Description	Amount
Tag (sticker)*	\$7.99 per Tag
Bumper and Motorcycle Tags (includes \$35.00 refundable deposit)	\$45.00 per Tag
Replacement Tag – Defective	no charge
Replacement (sticker) tag – Lost/Stolen/Non-Defective*	\$7.99 per Tag
Replacement Bumper or Motorcycle tag – Lost/Stolen/Non-Defective (includes \$35.00 refundable deposit)	\$45.00 per Tag
Mailed Monthly Statement	\$1.15 per month
Mailed or Faxed On-Demand Statement	\$1.15 per statement month
E-mailed Monthly Statement	no charge
E-mailed On-Demand Statement	no charge
Returned Check (Insufficient Funds)	\$30.00
Administrative Fee	\$4.00 per month
Administrative Fee –Sworn Complaint Issued	\$100.00
* The \$7.99 sticker Tag fee only applies to Accounts that are not enrolled in AutoPay.	

Attachment C – Account Parameters

Fleet Accounts		
Minimum Initial Prepaid Toll Amount	Initial Automatic Replenishment Amount	Low Balance Threshold
Based on analysis of prior and anticipated toll usage	Based on analysis of prior and anticipated toll usage	25% of Initial Prepaid Toll Amount