

NEW YORK STATE THRUWAY AUTHORITY

Toll Management Service Provider Commercial Charge Account Program Agreement

Insert name of Toll Management Service Provider

This AGREEMENT (hereinafter "Agreement") is made this _____ day of _____, 20__, by and between the New York State Thruway Authority (hereinafter "Authority"), a public corporation organized and existing pursuant to Article 2, Title 9 of the New York State Public Authorities Law, as amended, whose principal office is located at 200 Southern Boulevard, Albany, New York 12209 (Mailing Address: P.O. Box 189, Albany, New York 12201-0189), and [insert name of Toll Management Service Provider] (hereinafter "Toll Management Service Provider"), a [insert Toll Management Service Provider's organizational form - e.g. municipality, state agency, not-for-profit, corporation, partnership, LLC, LLP, etc.] duly organized and existing under the laws of the State of [insert state], having its principal office at [insert address]. The Authority and the [Toll Management Service Provider] are collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, the Authority is statutorily responsible for financing, constructing, reconstructing, improving, developing, maintaining, and operating a 570-mile superhighway system known as the Thruway; and

WHEREAS, commercial trucking companies have historically enrolled in a Thruway Charge Account Program to receive monthly invoices for all trips made by their vehicles on the Thruway System and to receive a volume discount on Thruway toll charges that fall between certain ranges or exceed a certain amount; and

WHEREAS, there are Toll Management Service Providers that provide consolidated invoicing, dispute resolution, reporting and other toll services for their customers or Represented Companies that travel on all toll facilities that accept E-ZPass; and

WHEREAS, some commercial trucking companies prefer to have direct accounts with the various tolling authorities and some Represented Companies, who own and operate Commercial Vehicles prefer to have their Tolls paid and managed by Toll Management Service Providers;

WHEREAS, the Authority has established a Toll Management Service Provider Commercial Charge Account Program for Toll Management Services Providers that meet the Program requirements to pay for Tolls their Represented Companies incur.

NOW, THEREFORE, the parties hereto, for the consideration hereinafter named, do agree as follows:

ARTICLE I – TOLL MANAGEMENT SERVICE PROVIDER COMMERCIAL CHARGE ACCOUNT TERMS AND REQUIREMENTS

Section 1.1 - Definitions

Account – All Pre-paid and Post-paid tolling activity charged to the Toll Management Service Provider, which may include Master and/or Sub Account(s) activity.

Commercial Vehicle – A vehicle that falls into one of the Authority vehicle classes: 2H, 3H, 4H, 5H, 6H, 7H, 5S, 6S, 7S. Exceptions to these classifications may be made at the Authority's discretion.

Fee – Any charge with the exception of Tolls charged at the rates established by the toll agency.

Master Account – Account which receives billing for all Post-paid activity on associated Sub-Accounts.

Post-paid – Account activity related to travel at Authority facilities covering the prior month's transactions paid by the Toll Management Service Provider after receipt of a monthly invoice.

Pre-paid - Account activity related to travel at non-Authority facilities paid by withdrawing the amount due from the Toll Management Service Provider's pre-funded balance.

Represented Company – An individual or business that operates a Commercial Vehicle or vehicles on the Thruway System or on any toll facilities that accepts E-ZPass and is a client of the Toll Management Service Provider.

Sub-Account - Account from which financial Post-paid activity aggregates into Master Account.

Tag – E-ZPass transponder

Toll – A charge payable for use of 1) the Thruway System, 2) a highway, bridge or tunnel operated by a member of the E-ZPass Interagency Group, or 3) any other facility that accepts E-ZPass.

Volume Discount - A tiered percentage-based discount, which varies depending on monthly toll charges, also referred to as "Discount." See Section 1.5 – Thruway System Toll Charges for more details

Section 1.2- Accounts

The Toll Management Service Provider Commercial Charge Account Program differs from other Authority E-ZPass account programs because it is designed for businesses who may not be actively using the Thruway System or other tolling facilities that accept E-ZPass but are managing tolling for Represented Companies who utilize the Thruway System and other tolling facilities that accept E-ZPass.

Toll Management Service Provider is required to establish one Master Account. The Toll Management Service Provider may request, or the Authority may require, the establishment of Sub-Accounts to segregate Toll activity.

Toll Management Service Provider's Account shall be used for charges for Tolls and Fees of vehicles owned and/or operated by a Represented Company or Represented Companies. Toll Management Service Provider is solely responsible for all Toll and Fees charged on the Toll Management Service Provider's Account.

The Authority reserves the right to terminate the Toll Management Service Provider Account(s) if annual Toll charges do not exceed \$100,000.

A minimum of eighty-five percent of the Toll Management Service Provider monthly Tolls for travel on the Thruway System must be for Commercial vehicles.

Prior to adding a Represented Company to an Account, the Toll Management Service Provider must provide the Authority with the Represented Company's full legal commercial company name, address, plate listing, quantity of Tags required, and contact information; and assist the Authority in resolving any outstanding Toll and/or Fee balances that the Represented Company has with the Authority.

The Toll Management Service Provider must provide documentation, in the format as required by the Authority, from the Represented Company authorizing the Toll Management Service Provider to resolve transactions and disputes on the Represented Company's behalf.

The Authority reserves the right, in the Authority's sole discretion, to disallow a Represented Company from being on the Toll Management Service Provider's Account.

Toll Management Service Provider shall provide notice to the Authority at least one week prior to deactivating more than 250 Tags assigned to a single Represented Company. Such notice shall be provided by email to commercial_accounts@thruway.ny.gov and include the reason for deactivation.

Toll Management Service Provider may request access for data sharing related to the Account (i.e. via Application Programming Interface or similar technology). Approval for such access is at the sole discretion of the Authority.

Section 1.3 – Requirements for Agreement between Toll Management Service Provider/Represented Company

The Toll Management Service Provider's agreement with a Represented Company must disclose that the Toll Management Service Provider is required to invoice the Represented Company for the same Toll per transaction that the Toll Management Service Provider is invoiced by the tolling authority/agency, less 20% for Thruway System transactions, and that all fees imposed are solely at the discretion of the Toll Management Service Provider.

Toll Management Service Provider's agreement with a Represented Company must include that a Represented Company may use assigned Tag(s) on any vehicle(s) that is/are in the same classification for which the Tag(s) is designated, provided the vehicle is specifically registered to the Toll Management Service Provider's Account.

Toll Management Service Provider's agreement with a Represented Company must include that use of an assigned Tag on Thruway System and non-Thruway Authority facilities is subject to the terms, laws and regulations governing such use.

Toll Management Service Provider's agreement with a Represented Company must require Tag(s) be properly installed in or on a vehicle pursuant to the mounting instructions provided with the Tag. Failure to properly mount the Tag may cause the Tag to not be read and the license plate number will be captured. If the license plate is listed on Toll Management Service Provider's Account, the Toll will post at a higher Toll rate and Toll Management Service Provider will be responsible for paying the higher rate. If the license plate is not listed on the Toll Management Service Provider's Account, the registered owner of the vehicle will receive a Toll Bill in the mail for the higher rate that will be due to the tolling authority/agency.

Section 1.4 - Represented Company Invoicing Requirements

Toll Management Service Provider must charge a Represented Company the same Toll per transaction that the Toll Management Service Provider is billed by the toll agency, with the exception of Tolls for use of the Thruway System. For Toll charges on the Thruway System the amount invoiced to the Represented Company must be the Toll invoiced to the Toll Management Service Provider for the transaction less 20%.

The invoice provided to a Represented Company by the Toll Management Service Provider must separately itemize Toll transactions/charges and fees charged.

Section 1.5 - Thruway System Toll Charges

The Authority will invoice the Toll Management Service Provider monthly for travel on the Thruway System.

Toll Management Service Provider will receive a Volume Discount on Thruway System toll charges for amounts exceeding \$1,000 a month based on the following schedule.

<i>Monthly Thruway System Tiered Toll Charges</i>	<i>Volume Discount</i>
First \$1,000	None
Between \$1,000 - \$2,000	10%
Between \$2,000 - \$3,000	15%
Charges Over \$3,000	20%

To receive the Volume Discount, the Authority must receive full payment of each invoice within 30 days of the invoice date. **The Toll Management Service Provider will not receive any Discount if the Authority receives payment 30 days or more after the invoice date.** Payment must be remitted via Automated Clearinghouse (ACH) or wire transfer.

A request for reinstatement of a lost Discount must be submitted by email to creditrequest@thruway.ny.gov within 60 days of the invoice date that the Discount was lost, be for a specific invoice month, and include the following:

- Amount requested for credit and the reasons for such request
- Any documentation needed to support the reasons stated for Discount reinstatement

If the Authority approves all or a part of a request for a Discount reinstatement, the amount approved will appear on the Toll Management Service Provider Account invoice following such approval.

Section 1.6 - Non-Thruway System Toll Charges

Every month, the Toll Management Service Provider will receive an email statement showing the Represented Company or Represented Companies monthly charges.

Toll Management Service Provider must maintain, at all times, a Pre-paid Account balance sufficient to pay non-Thruway System Toll charges for a 15-day period. This Pre-paid Account balance requirement is calculated based on the Toll Management Service Providers Non-Thruway System Toll charges over the most recent three months, divided by the number of days in the most recent three months, then multiplied by 15 days. If the Toll Management Service Provider does not have three months of historical transactions, the minimum requirement will be equivalent to \$200 for each Tag requested.

Pre-paid balance payments must be remitted via an Automated Clearinghouse (ACH) or a credit card that is acceptable to the Authority.

The per transaction minimum for payments into the Toll Management Service Provider's Pre-paid account(s) are:

<i>Average Monthly Toll Charges</i>	<i>Per Transaction Minimum</i>
Greater than \$2 million	\$100,000
Greater than \$1 million to \$2 million	\$50,000
Greater than \$500,000 to \$1 million	\$25,000
Up to \$500,000	\$10,000

On a quarterly basis, no later than 15 business days after the end of the quarter, the Toll Management Service Provider will submit a certification of compliance with the Pre-paid requirements.

No interest will be paid on Pre-paid balances in the Toll Management Service Provider's Account.

The Authority, at its discretion, may receive updated information about Toll Management Service Provider's credit card, including new account numbers and expiration dates, from the issuing financial institution.

The Authority, at its discretion, may receive updated banking information including routing numbers, account numbers and account type from Toll Management Service Provider's financial institution.

Section 1.7 - Disputed Tolls

The Toll Management Service Provider shall establish written controls and procedures to ensure the validity of disputed Tolls submitted to the Authority. The controls and procedures will, at a minimum, include provisions requiring a Represented Company to provide supporting justification for disputes; a Represented Company must certify that any Toll transaction the Represented Company is disputing is, to the best of the Represented Company's knowledge and belief, incorrect, and provide written support/justification for disputed Tolls. Toll

Management Service Provider shall maintain supporting documentation and certifications for six years from the date of the dispute.

A. Thruway System Toll Disputes

Requests to dispute Thruway System Toll charges must be for a specific invoice month and be made within 120 days of the invoice date for that month.

Disputes must be emailed to creditrequest@thruway.ny.gov or submitted via Toll Management Service Provider's online Account using the Bulk Dispute Template available at www.thruway.ny.gov.

Toll Management Service Provider must review all disputes prior to submission to the Authority to ensure the accuracy of the requests. Toll Management Service Provider is required to analyze repeated Toll dispute requests for the same Tag/license plate and corrective action must be taken to eliminate the repeated requests. The Authority may reject repeated disputes for the same Tag/license plate.

The Authority reserves the right to review all disputes and ask for additional information or documentation before issuing credit. Additionally, the Authority may reject in whole or in part and return without further review requests for disputes that are incomplete, erroneous, repeated or are not made within 120 days from the invoice date.

Toll Management Service Provider may not deduct anticipated credits for disputed Toll charges from invoice balances due. If the Authority approves all or part of a dispute, the amount approved will appear on Toll Management Service Provider's Account invoice following such approval.

B. Non-Thruway System Toll Disputes

Requests to dispute non-Thruway System Toll charges must be submitted to the New York Customer Service Center (NYCSC) through the Toll Management Service Provider's online Account or by calling the NYCSC at 800-333-8655.

Section 1.8 – General

Failure to comply with this Agreement may result in Account termination and the imposition of penalties and/or administrative fees as provided herein or by law.

Failure to make payment in full as required pursuant to this Agreement will result in the Authority suspending the Toll Management Service Provider's Account, seeking payment from the Toll Management Service Provider's surety bond and any other remedies provided under this Agreement and at law and equity. Toll Management Service Provider may not assign the obligations or benefits of this Agreement.

Toll Management Service Provider must notify the Authority of any changes to Toll Management Service Provider's Account by updating the Account online or emailing commercial_accounts@thruway.ny.gov.

For Thruway vehicle classifications, visit www.thruway.ny.gov/travelers/tolls/classes.html.

For Thruway Toll rates, visit www.thruway.ny.gov/travelers/tolls/schedules/index.html.

Questions related to Thruway vehicle classes, Thruway Toll rates or the Toll Management Service Provider Account may be submitted via email to commercial_requests@thruway.ny.gov.

For non-Thruway System vehicle classifications, Toll rates and other information visit: www.E-ZPassny.com.

Section 1.9 - Reporting Requirements

Quarterly, or upon request, the Toll Management Service Provider must provide the Authority a report of each Represented Company included in Toll Management Service Provider's Account(s). The report shall be provided in an electronic format determined by the Authority and include but may not be limited to: full Represented Company legal commercial company name, company address, contact information, Tags assigned to the Represented Company, and a list of the Represented Company's license plates assigned to the Toll Management Service Providers Account(s).

Toll Management Service Provider must annually submit to the Authority internal control documentation that relates to the terms and conditions of this Agreement.

Section 1.10 - Right to Audit

The Authority and the Authority's external auditors retain the right to perform regular or periodic audits and sampling to ensure the Toll Management Service Provider is in compliance with the terms of this Agreement.

The Toll Management Service Provider shall support the Authority and its internal and external auditors by making all requested documentation related to this Agreement available for review.

The Toll Management Service Provider shall support the Authority and its internal and external auditors by making Toll Management Service Provider employees, consultants, and related parties available as needed for interviews by auditors.

Section 1.11 - Surety Bond

Toll Management Service Provider must maintain a bond, in an amount equal to three times highest monthly Account Tolls and Fees for use of the Thruway System, plus one time the Account highest monthly Tolls and Fees over the prior 12 months for use of non-Thruway System toll facilities. The bond will be in a form as required by the Authority and issued by a company acceptable to the Authority. If the Toll Management Service Provider does not have three months of historical Toll transactions the minimum bond requirement will be equivalent to \$1,600 for each Tag requested.

Section 1.12 - Violations

The Toll Management Service Provider is required to, prior to onboarding a new Represented Company and throughout the Toll Management Service Provider's

representation of such Represented Company, resolve all Authority violations incurred by the Represented Company.

Section 1.13 - Disclaimer

Toll Management Service Provider acknowledges that the Authority and all entities providing E-ZPass services have not made, and expressly disclaim any representation or warranty, express or implied, relating to the Tag(s) including, without limitation, any implied or express warranty of merchantability, fitness for a particular purpose or conformity to models or samples. Toll Management Service Provider agrees that the Authority and all entities providing E-ZPass services will have no obligation or liability whatsoever to Toll Management Service Provider or its Represented Companies with respect to the use or the performance of the Tag(s) issued to Toll Management Service Provider's Account(s). Further, Toll Management Service Provider agrees that the Authority and all entities providing E-ZPass services have no obligation or liability whatsoever to Toll Management Service Provider with respect to the method, materials or craftsmanship of the mounting unit used for exterior mounted Tags.

Section 1.14 - Collection of Expenses

Toll Management Service Provider agrees to pay all costs, including attorneys' fees, incurred by the Authority and all entities providing E-ZPass services to collect any monies due under the terms of this Agreement.

Section 1.15 – Changes

Toll Management Service Provider agrees to update any information provided to the Authority, such as, change in ownership, and payment method changes.

Section 1.16 - Inquiries and Correspondence

Please visit <https://www.thruway.ny.gov/commercial/ezpass/index.html> for the most up to date information on sending correspondence, payments, Tag returns and Toll disputes or Volume Discount reinstatements requests.

ARTICLE II – FEES

Section 2.1 - Schedule of Administrative Fees

Toll Management Service Provider will be responsible for applicable administrative Fees found in the E-ZPass Business Account Terms and Conditions, paragraph 15. (www.e-zpassny.com/help/terms-and-conditions/business-account). The Authority and any other IAG member agencies providing E-ZPass services reserve the right to assess additional Fees.

Section 2.2 Toll Management Service Provider Administrative Fee

Toll Management Service Provider will pay a Toll Management Service Provider Administrative Fee equal to 1% of all Tolls paid (inclusive of Volume Discount) by the Toll Management Service Provider. Toll Management Service Provider will be separately invoiced for this Toll Management Service Provider Administrative Fee on a monthly basis and payment must be received within 30 days of the invoice date. A late fee of 1.5% per month will be applied to any unpaid Toll Management Service Provider Administrative Fee balances after 30 days.

ARTICLE III – TIME AND MANNER OF PERFORMANCE

Section 3.1 – Term of Agreement

This Agreement shall commence upon approval of the Authority's Executive Director and shall terminate 5 (five) years after commencement. This Agreement may be renewed, at the consent of both Parties, for 3 (three) additional 5 (five) year terms.

Section 3.2 - Personnel, Equipment and Supplies

The Toll Management Service Provider shall provide all resources, personnel, equipment, and supplies necessary to perform services to its Represented Companies and pursuant to this Agreement. If the Toll Management Service Provider must make an external connection to the Authority's data communications infrastructure and/or access Authority information systems, Toll Management Service Provider shall in all respects comply with all Authority and/or New York State policies, procedures, and requirements regarding such connections and information systems access, including, but not limited to, Appendix D – Network Connection Requirements (TAP-372), Appendix E – Cybersecurity Requirements, attached hereto, and undertake whatever actions are necessary in the discretion of the Authority to ensure such compliance. New York State policies are available via the following link: <https://its.ny.gov/policies>. Toll Management Service Provider shall be responsible for all costs associated with ensuring that its own network security measures comply with all Authority policies, procedures, and requirements regarding external connections.

Section 3.4 – Independent Contractor

The Toll Management Service Provider is and shall be, in all respects, an independent contractor in performing services to its Represented Companies and pursuant to this Agreement. In accordance with its status as an independent contractor, Toll Management Service Provider covenants and agrees that neither it nor its agents and/or employees will hold itself or themselves out as or claim to be an officer or employee of the Authority, and that neither Toll Management Service Provider nor its agents and employees shall make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Authority, including, but not limited to Workers' Compensation coverage, Unemployment Insurance benefits, Social Security coverage, or Retirement System membership or credit.

Section 3.5 – Subcontracting

The Toll Management Service Provider agrees not to subcontract any of its services related to this Agreement.

ARTICLE IV – INSURANCE REQUIREMENTS

Section 4.1 – Insurance Conditions

The Toll Management Service Provider shall, procure prior to commencement of this Agreement, and maintain until this Agreement is terminated, insurance of the kinds and in the amounts

specified herein, covering all services and operations under this Agreement, whether performed by the Toll Management Service Provider, in accordance with the following conditions:

A. Toll Management Service Provider Cost and Expense

All insurance required by this Agreement shall be obtained at the sole cost and expense of Toll Management Service Provider.

B. Insurer Qualifications

All insurance required by this Agreement shall be maintained with insurance carriers licensed to do business in New York State, and acceptable to the Authority, with an A.M. Best rating of "A-" or better. The Authority may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documentation are accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit. Notwithstanding the foregoing, nothing herein shall be construed to require the Authority to accept insurance placed with a non-authorized carrier under any circumstances.

C. Primary Insurance

All insurance required by this Agreement shall be primary to any Authority insurance policy or Authority self-insurance program, which shall be excess and non-contributory.

D. Certificates and Endorsements

Toll Management Service Provider shall furnish the Authority with certificate(s) of insurance on ACORD Form 25, accompanied by the Authority Supplemental Insurance Certificate (Exhibit 1 – TA-W51343 (11/2017)), for each insurance carrier involved. Such certificate(s) shall be executed by a duly authorized representative of the insurance carrier, certifying such authorization and showing compliance with the Authority's insurance requirements set forth herein. Toll Management Service Provider shall furnish the Authority with a copy of each endorsement required herein. For work to be performed within New York State, proof of Workers' Compensation and Disability Benefits Insurance shall be indicated on the appropriate Workers' Compensation Board forms as listed in Section 4.2 [B. or C. or D. or E.] below. Toll Management Service Provider shall submit all certificates in .PDF file format via e-mail to: InsuranceCompliance@thruway.ny.gov.

E. Notice of Cancellation, Nonrenewal or Material Alteration

All policies, by specific Endorsement, shall provide for written notice to the Authority no less than thirty (30) days prior to the cancellation, nonrenewal, or material alteration of any insurance policies referred to therein. Any such notice shall be sent by e-mail to: Insurancecompliance@thruway.ny.gov, attention Insurance Compliance Supervisor. Only in the event that such written notice cannot be delivered via e-mail, notice shall be sent to: Insurance Compliance Section, Office of Investments and Asset Management, New York State Thruway Authority, P.O. Box 189, Albany, New York 12201-0189.

F. Deductibles and Self-Insured Retentions

If insurance policies contain deductibles or self-insured retentions (SIRs), they must be declared as such with applicable levels on the certificate(s) of Insurance and the Authority Supplemental Insurance Certificate. Insurance policies with deductibles in excess of \$100,000 will require review and approval by the Authority. Additional security or other requirements may be imposed at the sole discretion of the Authority. Any SIR will be subject to Section 4.1(G).

G. Authority Approval of Self-Insured Retentions

Insurance policies with Self-Insured Retentions (SIRs) must receive prior approval by the Authority. All applications for SIR approval must be submitted to the Authority's Office of Investments and Asset Management, indicate whether the program is administered by a third party, and contain a complete description of the program. SIR programs in excess of \$100,000 must be administered by a third-party administrator and must also meet additional security requirements. The Authority, at its sole discretion, reserves the right to require Toll Management Service Provider to provide additional collateral, or to reject the use of an SIR by the Toll Management Service Provider. Toll Management Service Provider will be solely responsible for all claims, expenses, and loss payments within the retention limit.

H. Copies of Insurance Documents

Toll Management Service Provider shall provide certified copies of all declarations, pages, or of the insurance policies themselves upon request by the Authority, and within twenty (20) days of such request.

I. No Waiver of the Toll Management Service Provider's Insurance Obligations

Failure of the Authority to demand such certificates, policies, endorsements, or other evidence of full compliance with the Authority's insurance requirements, or failure of the Authority to identify a deficiency from evidence that is provided, shall not constitute or be construed as a waiver of Toll Management Service Provider's obligation to maintain such insurance.

J. Failure to Maintain or Provide Proof of Coverage

Failure to maintain the required insurance, and failure to provide proof of such coverage to the Authority at its request, may, in the Authority's sole discretion, result in termination of this Agreement.

K. Evidence of Renewal or Replacement

At least two weeks prior to the expiration of any policy required by this Agreement, evidence of renewal or replacement policies of insurance with terms at least as favorable to the Authority as the required minimum amounts set forth in Section 4.2. of this Agreement must be submitted to the Authority by email to: Insurancecompliance@thruway.ny.gov, attention Insurance Compliance Supervisor. Only in the event that such certificates cannot be delivered via e-mail, notice shall be sent to: Insurance Compliance Section, Office of Investments and Asset Management, New York State Thruway Authority, P.O. Box 189, Albany, New York 12201-0189.

L. Adequacy of Required Insurance

By requiring insurance, the Authority does not represent that certain coverages and limits will necessarily be adequate to protect the Toll Management Service Provider, and such coverages and limits shall not be deemed a limitation on the Toll Management Service Provider's liability under the indemnities granted to the Authority under any provision of this Agreement.

M. Waiver of Rights Against the State and Authority

The Toll Management Service Provider shall, waive all rights against the State of New York, the Authority, and their respective agents, officers, directors, and employees, for recovery of damages to the extent these damages are covered by the Commercial

General Liability (“CGL”) policy, the Business Auto Policy or the Commercial Umbrella Liability policy, as required.

N. Authority Insurance Requirements

The Toll Management Service Provider shall provide a copy of the Authority’s Insurance Requirements as set forth in Article IV (Insurance Requirements) of this Agreement to its insurance producer(s) and insurance carrier(s).

Section 4.2 - Required Insurance Coverages

The specific types and amounts of insurance that the Toll Management Service Provider must provide pursuant to this Agreement are set forth in this Section 4.2 as follows:

A. Commercial General Liability Insurance – The Toll Management Service Provider shall maintain through a combination of Commercial General Liability (CGL) and Commercial Umbrella Liability insurance (see Section 4.2(B)), with no less than the following limits and coverages:

- | | |
|--|------------------------------|
| ▪ Each Occurrence Limit | \$2,000,000 |
| ▪ General Aggregate: | \$2,000,000 |
| ▪ Products/Completed Operations Aggregate: | (Equal to General Aggregate) |
| ▪ Personal/Advertising Injury Liability: | \$1,000,000 |
| ▪ Fire Damage Legal Liability: | \$100,000 |
| ▪ Medical Expense: | \$ 5,000 |

CGL Insurance shall cover liability arising from premises, operations, independent contractors, products/completed operations, personal injury, advertising injury, and contractual liability. The Authority and the State of New York shall be listed as primary and non-contributory additional insureds on the CGL, and as applicable, on the Business Automobile, policies required under Section 4.2(A), Section 4.2(B), and Section 4.2(D) of this Agreement.

B. Commercial Umbrella Liability Insurance – When the limits of the CGL and business automobile liability policies procured are insufficient to meet the limits specified in Section 4.2(A) and Section 4.2(D), the Toll Management Service Provider shall procure and maintain commercial umbrella liability insurance and/or excess liability policies with limits in excess of the primary; provided, however that the total amount of insurance coverage is at least equal to the requirements set forth in Section 4.2(A) and Section 4.2(D). Such policies shall be issued on a “follow form” basis of the primary policies.

The Authority and the State of New York shall be included as additional insureds, using ISO Additional Insured Endorsement CG 20 10 04 13 and CG20 37 04 13 or an equivalent, under the CGL and Commercial Umbrella Liability policies, as required.

As noted above, all insurance required by the Agreement shall be primary to any Authority insurance policy or Authority self-insurance program, which shall be excess and non-contributory.

C. Privacy and Network Security (Cyber Liability) Insurance – The Toll Management Service Provider shall maintain Privacy and Network (Cyber Liability) insurance covering liability arising from (1) hostile action, or a threat of hostile action, with the intent to affect, alter, copy, corrupt, destroy, disrupt, damage, or provide unauthorized access/unauthorized use of a computer system including exposing or publicizing confidential electronic data or causing electronic data to be inaccessible (2) computer viruses, Trojan horses, disabling codes, trap doors, back doors, time bombs drop-dead devices, worms and any other type of malicious or damaging code (3) dishonest, fraudulent, malicious, or criminal use of a computer system by a person, whether identified or not, and whether acting alone or in collusion with other persons, to affect, alter, copy, corrupt, delete, disrupt, or destroy a computer system or obtain financial benefit for any party or to steal or take electronic data (4) denial of service for which the Insured is responsible that results in the degradation of or loss of access to internet or network activities or normal use of a computer system (5) loss of service for which the Insured is responsible that results in the inability of a third party, who is authorized to do so, to gain access to a computer system and conduct normal internet or network activities (6) access to a computer system or computer system resources by an unauthorized person or persons or an authorized person in an unauthorized manner with a limit not less than ten million dollars (\$10,000,000) per occurrence. This insurance shall provide coverage for personal injury (including emotional distress and mental anguish), and a separate limit of not less than \$1,000,000 for credit monitoring services.

D. Workers' Compensation & NYS Disability Benefits Insurance – This Agreement shall be void and of no force and effect unless the Toll Management Service Provider shall provide and maintain coverage during the term of this Agreement for the benefit of such employees as are required to be covered by the New York State Workers' Compensation/Disability Benefits Law. The Toll Management Service Provider must provide proof of exemption, certified by the Workers' Compensation Board, to obtain a waiver from the requirements of this provision.

Evidence of Workers' Compensation coverage must be provided on one of the following forms specified by the Commissioner of the Workers' Compensation Board:

1. C-105.2 – Certificate of Workers' Compensation Insurance;
2. U-26.3 – Certificate of Workers' Compensation Insurance from the State Insurance Fund;
3. GSI-105/SI-12 – Certificate of Workers' Compensation Self Insurance; or
4. CE-200 – Certificate of Attestation of Exemption.

Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Commissioner of the Workers' Compensation Board:

1. DB-120.1 – Certificate of Insurance Coverage under the NYS Disability Benefits Law;
2. DB-155 – Certificate of Disability Self Insurance; or

3. CE-200 – Certificate of Attestation of Exemption.

Disability benefits coverage must also include a rider providing Paid Family Leave insurance in form and substance satisfactory to the Authority. Evidence of coverage shall be provided to the Authority and may be in the form of a Notice of Compliance provided by your insurance carrier stating that you have Paid Family Leave insurance. The Notice will include information about your carrier. If you are self-insured, you can get this notice by contacting the NYS Workers' Compensation Board at certificates@wcb.ny.gov.

**ARTICLE V – LIABILITY, ETHICS, CONFIDENTIALITY AND
REQUIRED CERTIFICATIONS**

Section 5.1 – Liability, Indemnification and Defense

A. Liability

The Toll Management Service Provider shall be responsible for the acts and omissions of its agents, employees, and any other persons in connection with its participation in this Agreement.

B. Indemnification and Defense

1. The Toll Management Service Provider agrees to indemnify and hold harmless the Authority and all entities providing E-ZPass services from and against any and all damage, loss, cost, expense, and liability relating to, arising from, or as a result of, the use or performance of the Tag.

2. To the fullest extent permitted by law, the Toll Management Service Provider shall indemnify and save harmless, without limitation, the Authority and the State of New York (the "State"), and their respective officers, directors, board members, agents, employees, successors, and assigns ("Authority Indemnitees" and "State Indemnitees," respectively, and, collectively, "Collective Indemnitees") as their interests may appear, from any and all claims, suits, actions, damages, liabilities, fines, forfeitures, demands, losses, judgments, and costs of every kind and nature, and every name and description, arising from the this Agreement ("Claims"). Such defense and indemnity shall not be limited to the insurance coverage herein prescribed.

3. The Toll Management Service Provider shall, at its own expense, defend the Authority Indemnitees, the State Indemnitees, or the Collective Indemnitees in any action or proceeding involving any claims that may be brought against the Authority Indemnitees, the State Indemnitees, or the Collective Indemnitees. This obligation to defend shall include all attorneys' fees, disbursements, costs, and any other expenses incurred in connection with such claims. The Authority shall give the Toll Management Service Provider: (a) prompt written notice of any action, claim, or suit for which the Toll Management Service Provider is required to defend and indemnify the Authority; (b) the opportunity to take over, settle, or defend such action, claim, or suit at the Toll Management Service Provider's sole expense; and (c) assistance in the defense of any such action, claim, or suit at the expense of

the Toll Management Service Provider. Notwithstanding the foregoing, if the Toll Management Service Provider defends the Authority Indemnitees, the State Indemnitees or the Collective Indemnitees, the Authority and the State each reserve their respective right to join and/or participate in such action at their own expense.

4. The Toll Management Service Provider's indemnification and defense obligations under this Section 5.1 shall include any and all claims that may arise from this Agreement by the Toll Management Service Provider's agents and employees, and by any Represented Company under this Agreement.

C. *Survival*

The provisions of this Section 5.1 shall survive the expiration or termination of this Agreement.

Section 5.2 – Ethics

The Toll Management Service Provider may hire former State agency or Authority employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of the Authority may neither appear nor practice before the Authority, nor receive compensation for services rendered on a matter before the Authority, for a period of two years following their separation from Authority service. In addition, former Authority and former State employees are subject to a "lifetime bar" from appearing before the Authority or receiving compensation for services regarding any transaction in which they were directly concerned and in which they personally participated, or which was under their active consideration during their tenure with the Authority or any State agency.

During the term of this Agreement, the Toll Management Service Provider shall not, engage any person who is, or has been at any time, in the employ of the Authority or New York State to perform services for its Represented Companies and pursuant to this Agreement in violation of: the provisions of the Public Officers Law ("POL"); the rules, regulations, opinions, guidelines, or policies promulgated or issued by the Commission on Ethics and Lobbying in Government or its predecessors ("COELIG Regulations"); and any other laws applicable to the service of current or former Authority or New York State employees ("Other Laws," and, together with POL and COELIG Regulations, collectively, the "Ethics Provisions"). Toll Management Service Provider certifies that all of its employees who are former employees of the Authority or New York State and who are assigned to perform services for its Represented Companies or in fulfillment of this Agreement shall be assigned in accordance with all Ethics Provisions. Further, during the term of this Agreement, no person who is employed by the Toll Management Service Provider and who is disqualified from providing services to Represented Companies or in fulfillment of this Agreement pursuant to any Ethics Provisions may share in any net revenues derived from this Agreement by the Toll Management Service Provider.

The Toll Management Service Provider shall identify and provide the Authority with notice of those employees of Toll Management Service Provider who are former employees of the Authority or New York State and who will be assigned to perform services to its Represented Companies under this Agreement. The Authority may, request that the Toll Management Service Provider provide it with whatever information the Authority deems appropriate about each such person's engagement, work cooperatively with the Authority to solicit advice from the Commission on Ethics and Lobbying in Government, and, if deemed appropriate by the Authority, instruct any

such person to seek the opinion of the Commission on Ethics and Lobbying in Government. The Authority shall have the right to cancel or terminate this Agreement at any time if any work performed for the Toll Management Service Provider's Represented Companies or in fulfillment of this Agreement is in conflict with any Ethics Provisions.

Section 5.3 – Confidentiality and Non-Disclosure

A. "Confidential Information" means any information not generally known to the public, or that the Authority claims is confidential, whether oral, written, or electronic, that the Authority discloses, directly or indirectly, through any means of communication, to the Toll Management Service Provider. Confidential Information includes, but is not limited to, operational and infrastructure information relating to: specifications, reports, product information and data; business and security processes and procedures; personnel and organizational data; financial statements; information system IP addresses, passwords, security controls, architectures and designs; and such other data, information and images that the Authority deems confidential.

B. Confidential Information does not include information which, at the time of the Authority's disclosure to the Toll Management Service Provider: (1) is already in the public domain or becomes publicly known through no act of Toll Management Service Provider; or (2) is already known by Toll Management Service Provider free of any confidentiality obligations.

If the Toll Management Service Provider wants to disclose Confidential Information, it shall notify the Authority and specify the Confidential Information it wants to disclose. Toll Management Service Provider may only disclose such Confidential Information if the Authority approves such disclosure in writing, subject to such other terms and conditions as the Authority may require. Such approval, if given, shall only apply to the particular request and the specific Confidential Information for which it is given. Toll Management Service Provider is required to adhere to the New York State Thruway Authority E-ZPass Account Information Policy attached hereto as Attachment 1.

If Toll Management Service Provider is required to disclose or make available, directly or indirectly, Confidential Information pursuant to statute, court or administrative order, subpoena, contractual obligation, or otherwise by law, Toll Management Service Provider shall: (1) notify the Authority that it has received such legal demand as soon as practicable, but in all events prior to any disclosure; (2) permit the Authority to take the steps it deems necessary and appropriate to protect the Confidential Information from disclosure; (3) cooperate to the fullest extent possible under the law with the Authority's efforts to protect the Confidential Information from disclosure; and (4) disclose only such Confidential Information, and only such portions thereof, as is required to satisfy the legal demand, and limit any such disclosure of confidential information to the fullest extent permissible under the law.

C. The Toll Management Service Provider may use Confidential Information solely for the purposes of providing services to the Represented Companies and pursuant to this Agreement. The Toll Management Service Provider may make copies of Confidential Information but only to the extent necessary for the disclosures and uses permitted by this Agreement. The Toll Management Service Provider will make commercially reasonable efforts to ensure that any copy of

Confidential Information that is made is marked to show that it is or contains Confidential Information. The Toll Management Service Provider may share Confidential Information with third parties: (i) that are required for the Toll Management Service Provider's provision of services to the Represented Companies and pursuant to this Agreement ; and (ii) that agree in writing to be bound by the confidentiality provisions of this Agreement; however, the Toll Management Service Provider may share only that Confidential Information that is necessary to the third party's contribution to the Toll Management Service Provider's provision of services to the Represented Companies and pursuant to this Agreement and the Toll Management Service Provider must first obtain the Authority's prior written consent.

The Authority's disclosure of Confidential Information to the Toll Management Service Provider shall not convey to the Toll Management Service Provider any right, title, or interest in or to such Confidential Information, and this Agreement does not transfer ownership of Confidential Information or grant a license thereto. The Authority shall retain all right, title, and interest in and to all such Confidential Information at all times.

D. The Toll Management Service Provider shall hold Confidential Information confidential to the maximum extent permitted by law. The Toll Management Service Provider shall safeguard Confidential Information with at least the same level of care and security that the Toll Management Service Provider uses to maintain and protect from disclosure its own confidential information, using all reasonable and necessary security measures, devices, and procedures that the Toll Management Service Provider uses to maintain its own confidential information, but in all events with not less than reasonable care.

The Toll Management Service Provider shall take reasonable steps to prevent unauthorized access to, use of, or disclosure of Confidential Information, including without limitation, by protecting its passwords and other log-in information. The Toll Management Service Provider shall notify the Authority immediately of any known or suspected misuse or misappropriation of Confidential Information and shall use its best efforts to stop said misuse or misappropriation.

E. Upon written request of the Authority, or upon expiration or termination of this Agreement, the Toll Management Service Provider shall return all Confidential Information to the Authority or certify in writing that it has been destroyed, and no copies exist.

F. The Toll Management Service Provider agrees that breach of this Section 5.3 would cause the Authority irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, the Authority will be entitled to injunctive relief against such breach or threatened breach, without proving actual damages or posting a bond or other security.

G. Without limiting the foregoing, the obligations and assurances involving Confidential Information pursuant to this Agreement shall survive termination or expiration of this Agreement.

H. The Toll Management Service Provider Account information will not be disclosed to third parties without the Toll Management Service Provider consent except as permissible by law and the policies of the Authority and the entities providing E-ZPass services.

Section 5.4 – New York State Human Rights Law, Article 15 of the Executive Law

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with New York State Executive Order No. 177, by execution of this Agreement, Toll Management Service Provider hereby certifies, that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and the aforementioned certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Section 5.5 – Conflicts of Interest

A. Toll Management Service Provider has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that Toll Management Service Provider's engagement in this Agreement does not and will not create a conflict of interest with, nor position Toll Management Service Provider to breach any other contract currently in force with the Authority or the State of New York, that Toll Management Service Provider will not act in any manner that is detrimental to any Authority or to the State of New York.

- B. Toll Management Service Provider hereby covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent Toll Management Service Provider's satisfactory or ethical engagement pursuant to the terms of this Agreement. Toll Management Service Provider hereby agrees it shall have a continuing affirmative duty and obligation to notify the Authority immediately of any actual or potential conflicts of interest.
- C. Intentionally left blank because subcontracting is not permitted.
- D. The Authority and Toll Management Service Provider recognize that conflicts may occur in the future because Toll Management Service Provider may have existing, or establish new, relationships. Toll Management Service Provider shall have an ongoing obligation to monitor potential conflicts of interest and to notify the Authority promptly of any relationships in the future that it may create a real or potential conflict of interest. The Authority will review the nature of any relationships and reserves the right to terminate this Agreement for any reason, or for cause, if, in the judgment of the Authority, a real or potential conflict of interest cannot be cured.

ARTICLE VI – MISCELLANEOUS

Section 6.1 – Public Announcements

Toll Management Service Provider shall not make public announcements or public disclosures on social media, or issue news releases, or make any other public disclosures pertaining to this Agreement without the Authority's prior written consent. Toll Management Service Provider understands and accepts that generally the Authority will not grant permission for public announcements, social media posts, news releases or other public disclosures; and will limit the use of the Authority's name to references only.

Section 6.2 – Provision of Information and Data

All available information and documentation relating to this Agreement existing in the offices of the Toll Management Service Provider shall be made available to the Authority without expense to the Authority.

Section 6.3 Modifications

The Authority may change the terms of this Agreement at any time by advance written notice or by posting notice of the change in terms to the website. Such modified terms shall take effect on the date specified therein. The invalidity of any term or terms of this Agreement shall not affect any other term of this Agreement, which shall remain in full force and effect.

Section 6.4 – No Damages for Delay

Toll Management Service Provider expressly agrees that it shall not make any charges or claims for damages against the Authority for any delays or hindrances from any cause whatsoever during the progress of any portion of this Agreement and that the Authority shall not be liable for any damages resulting from delays or hindrances from any cause whatsoever.

Section 6.5 – Cancellation, Suspension, Abandonment and Termination

The Toll Management Service Provider may cancel an individual Tag privilege under the Toll Management Service Provider's Account by returning the Tag to the Authority. To cancel all Tag privileges and close the Toll Management Service Provider's Account, the Authority shall be notified at least 30 days in advance by the Toll Management Service Provider emailing a letter, on company letterhead, signed by an authorized the Toll Management Service Provider representative, to commercial_accounts@thruway.ny.gov. All Tags must be returned to the address provided at <https://www.thruway.ny.gov/commercial/ezpass/index.html>. The Authority will close the Toll Management Service Provider's Account when all Tags have been received, all outstanding charges have been paid and there have been no new charges for at least one month. Any remaining balance in the Toll Management Service Provider's Pre-paid Account, after all outstanding invoices and/or Toll charges have been paid in full, will be refunded.

The Authority shall have the right, in its sole discretion, to postpone, suspend, abandon, or terminate this Agreement at any time and for any reason, and such action shall in no event be deemed a breach of this Agreement. This also includes the Authority's right to terminate this Agreement at any time in the event the Authority finds that the Toll Management Service Provider is non-responsible or has failed to accurately disclose vendor responsibility information. If the Authority exercises its right to terminate on account of a breach of this Agreement, the Authority may complete the contractual requirements in any manner it deems advisable and pursue available legal or equitable remedies for breach.

In the event the Authority exercises its right to postpone, suspend, abandon, or terminate this Agreement, the Toll Management Service Provider must within ten (10) days of such postponement, suspension, abandonment, or termination deliver to the Authority all records, documents, and data pertaining to this Agreement. Any E-ZPass Tags associated with the Toll Management Service Provider account must be returned within 30 days to the address provided at <https://www.thruway.ny.gov/commercial/ezpass/index.html>.

Section 6.6 – General Responsibility Obligations

The Toll Management Service Provider shall at all times during the term of the Agreement remain responsible. The Toll Management Service Provider agrees if requested by the Executive Director of the Authority, or their designee, to present evidence of the Toll Management Service Provider's continuing legal authority to do business in New York State and integrity, experience, ability, prior performance, and organizational and financial capacity.

Section 6.7 – Force Majeure

The Toll Management Service Provider and the Authority shall each be excused from the performance of their respective obligations hereunder to the extent each party's failure to perform such obligations is the result of acts of God, riots, insurrections, war, fire, casualty, earthquake, or other events that are beyond the reasonable control of the party seeking to be excused and that are not the fault of such party, including, but not limited to, the failure to exercise reasonable diligence. Further: (i) the party seeking to excuse performance must make good faith and reasonable efforts to meet its obligations hereunder; and (ii) only those obligations affected by the Force Majeure event shall be excused and only during such time that the Force Majeure event prevents those obligations from being performed. The occurrence of a pandemic shall not relieve Toll Management Service Provider from its obligations under the Agreement.

Section 6.8 Superseding Clause

This Agreement, including all exhibits attached hereto, constitutes the entire agreement and understanding between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written, between the parties.

Section 6.9 – Severability Clause

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, but shall remain binding and effective as against all parties hereto.

Section 6.10 – Notices

All notices permitted or required to be given hereunder, except for service of process as specified in Appendix A, shall be in writing and shall be transmitted using one of the following methods:

- Nationally Recognized overnight courier service (costs pre-paid)
- Certified United States mail, return receipt requested;
- Electronic mail (e-mail) transmission; or
- Personal delivery.

Authority:

[Insert Title or Name/Title of Authority personnel receiving Notice]
New York State Thruway Authority
200 Southern Boulevard
Albany, New York 12209

Toll Management Service Provider:

[Name
Title
Address]

Notices shall be deemed to be given to a party: (a) when delivered to the appropriate address, if sent by nationally recognized overnight courier service or if delivered by hand; (b) when received or rejected if sent by certified mail, return receipt requested; or (c) when transmitted, if sent by electronic mail with confirmation of transmission by the intended recipient.

Section 6.11 - Standard Contract Clauses, Appendices and Exhibits Incorporated by Reference

The Toll Management Service Provider agrees to comply with all of the terms and conditions set forth in Appendix A and in the other Appendices and Exhibits listed directly below, which are attached hereto and expressly made a part of this Agreement as fully as if set forth at length herein and the terms of the Agreement prevail in the event of an inconsistency or conflict.

Appendix D	Network Connection Requirements (TAP – 372)
Appendix E	Cybersecurity Requirements
Exhibit 1	Authority Insurance Certificate (TA-W51343)
Supplement 1	Vendor Assurance of No Conflict of Interest or Detrimental Effect Form
Supplement 2	Certification Under Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia
Supplement 3	Vendor Responsibility Questionnaire
Attachment 1	New York State Thruway Authority E-ZPass Account Information Policy

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written:

**NEW YORK STATE THRUWAY
AUTHORITY**

**[TOLL
MANAGEMENT
SERVICE PROVIDER
NAME]**

Frank G. Hoare, Esq.
Executive Director

[Authorized Representative
Name and Title]

Date

Approved as to Form:

[Federal ID#]

Sandra Rivera, Esq.
General Counsel

Recommended Jointly By:

Diana Nebiolo
Chief Revenue Management Officer

Dave Malone
Chief Financial Officer

