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THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



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William Cass, P.E.
Commissioner

David Rodrigue, P.E.
Assistant Commissioner
Andre Briere, Colonel, USAF (RET)
Deputy Commissioner

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

Bureau of Turnpikes
January 6, 2023

REQUESTED ACTION

Authorize the Department of Transportation to enter into an Agreement with Kapsch TrafficCom IVHS, (Vendor No. 164793), a corporation with its principal offices in McLean, VA, under a best-value procurement undertaken by the E-ZPass Group (Interagency Group, or IAG) to provide E-ZPass related equipment for the Turnpike System. Effective upon the date of Governor and Council approval through December 12, 2028, with the option to renew for three additional one-year periods. 100% Turnpike Funds.

Funding of the purchase of E-ZPass transponders is available as follows:

04-96-96-961017-7515 Transponder Inventory Fund
020-500213 Stock in Trade

Funding for the future purchase of E-ZPass equipment will be secured under separate projects subject to Governor and Council approval, and contingent upon the availability and appropriation of funds at that time.

EXPLANATION

The Interagency Group (IAG) is an association of 34 members in 19 states in the Northeast, Midwest, Mid-Atlantic and Southern parts of the country that manage an interoperable electronic toll collection system. Agencies and authorities operate the E-ZPass regional electronic toll collection system by use of similar practices, procedures, and toll equipment. As authorized under RSA 237:16-b and RSA 237:16-c, the Commissioner may execute all documents and perform necessary acts to carry out provisions of the E-ZPass system with the IAG, as well as represent the state as a member of the IAG to aid in the determination of policies, practices, procedures, and in the selection of equipment and contractors needed to provide consistent toll collection throughout the region in accordance with the terms of the Interagency Operating Agreement.

On November 12, 2020, the E-ZPass Interagency Group Executive Management Committee Authorized NCTA to Conduct the Next Generation Technology Procurement on behalf of the IAG Resolution No. 2020-11-01. On June 7, 2021, the IAG, through the procurement administered by North Carolina Turnpike Authority, issued a joint Request for Proposal (RFP) to provide multiple qualified/certified Vendors to provide E-ZPass Certified Equipment and Services to continue operating a compatible electronic toll collection system.

The proposals were received on September 14, 2021, from four vendors: Kapsch TrafficCom, Neology, Star Systems America, and TransCore. A responsiveness review was completed by NCTA staff upon receipt of the Proposals. Price Proposals were provided to the Price Committee, and Technical Proposal was provided to the Technical Committee. An initial set of Request for Clarifications was sent out to all four proposers on September 23, 2021. The second set of Request for Clarifications was sent out on October 8, 2021. The selection process was

based on Vendors meeting the minimum requirements as outlined in Part III Scope of Work and providing a compliant proposal in accordance with Part IV of the RFP.

Notice of Award was issued to all four Vendors on December 13, 2021. Vendors began submitting their validation testing results on January 10, 2022, for approval by the IAG technical Committee. Equipment Certification testing is ongoing, and upon approval of the Equipment by the IAG Technical Committee, pricing will be added to the price list for E-ZPass Members. The committee will review Vendor Price Proposals with at least one approved Equipment Certification.

Price Proposals were received on February 7, 2022, from all four vendors. In accordance with its process, the Next Generation Procurement committee opened pricing from Vendors with approved Equipment on February 7, 2022, as the IAG technical committee had at least one approved Equipment for Kapsch TrafficCom and TransCore. Upon approval of one Equipment from Neology and Star Systems America, the Price Proposals will be opened, and a contract will be in place with these Vendors.

There are no negotiations of terms or conditions expected as part of this Contract, and contracts were signed on April 20th, 2022, with TransCore and Kapsch and made available to E-ZPass Members. The E-ZPass members determine which vendor(s) to proceed into a contract to supply their transponders and lane equipment. The Department has moved forward with Kapsch due to their lower prices, existing equipment in the lanes is Kapsch with expected end of life in 7 years, and our familiarity with their equipment since 2005.

Under the Next Generation ETC Equipment and Services Contract April 29, 2022, the pricing is as follows:

Tag Type	Item #	Description	Current Cost	Quotation Price
Interior Tag	Tra01	G5 / TRP-8200 - Interior, hard-case, portable TDM transponder	\$6.69	\$6.20
Exterior Mount	Tra02	FME - Exterior plate / Bumper or roof mount TDM transponder	\$13.08	\$12.99
6C Windshield & Headlight Sticker	Tra07 & 08	6CWS - ISO 6C Windshield Sticker Transponder	N/A	\$0.45

No action or changes are needed by our E-ZPass customers as the transponders and associated future equipment are fully compatible with the existing system.

The contract has been approved by the Attorney General as to form and executed copies of the fully executed contract are on file at the Secretary of State's Office and the Department of Administrative Services' Office; and subsequent to Governor and Council approval will be on file at the Department of Transportation.

It is respectfully requested that this resolution be approved.

Sincerely,

A handwritten signature in black ink that reads "William Cass". The signature is written in a cursive style with a large, looping initial "W".

William Cass, P.E.
Commissioner

Attachments



E-ZPass Group
ETC EQUIPMENT AND SERVICES

E-Z Pass Group
ETC Equipment And Services

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**Next Generation ETC
Equipment and Services
Contract
Kapsch TrafficCom USA, Inc
April 29, 2022**



**E-ZPass INTERAGENCY GROUP
EXECUTIVE MANAGEMENT COMMITTEE**

**Resolution No. 2020-11-01
Authorizing NCTA to Conduct the Next Generation
Technology Procurement on behalf of the IAG**

November 12, 2020

WHEREAS, the Full Member Agencies of the E-ZPass® Interagency Group ("IAG") entered into an Amended and Restated E-ZPass Operations Interagency Agreement dated as of August 13, 2015 ("Operating Agreement"), to jointly and cooperatively implement an electronic toll collection system known as E-ZPass; and

WHEREAS, the Full Member Agencies of the IAG approved Amendment 1 to the Amended and Restated E-ZPass® Operations Interagency Agreement dated March 8, 2018 ("Amendment 1"); and

WHEREAS, the Full Member Agencies of the IAG approved Amendment 2 to the Amended and Restated E-ZPass® Operations Interagency Agreement dated May 14, 2020 ("Amendment 2"); and

WHEREAS, the Operating Agreement establishes an Executive Management Committee ("EMC") to provide overall management of the IAG, including the development of an annual estimate of expenses to be incurred for the collective benefit of the Member Agencies and the establishment of a formula and procedure for sharing such expenses; and

WHEREAS, upon request of the EMC, the North Carolina Turnpike Authority ("NCTA") has volunteered to conduct the procurement process of the IAG's Next Generation Technology on behalf of the IAG; and

WHEREAS, in exchange for NCTA's time and efforts to be expended in connection with the procurement process, the EMC is willing to reimburse NCTA for any expenses directly related to the Next Generation Technology Procurement.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The IAG EMC hereby authorizes NCTA to conduct the Next Generation Technology Procurement on the IAG's behalf and hereby agrees the IAG will

reimburse to NCTA any expenses directly related to the procurement that are approved by the IAG Executive Director, within the EMC approved budget.

The IAG Executive Management Committee unanimously adopted this Resolution this 12th day of November 2020.

Craig R. Shuey

Craig R. Shuey (Nov 12, 2020 11:47 EST)

Craig Shuey
Chair, Executive Management Committee

PJ Wilkins

PJ Wilkins (Nov 12, 2020 12:56 EST)

PJ Wilkins
IAG Executive Director



Reso 2020-11-01 Authorizing NCTA to Conduct the NextGen Tech Procurement on IAG Behalf FINAL

Final Audit Report

2020-11-12

Created:	2020-11-12
By:	Linda Wiedenmann (lwiedenmann@e-zpassiag.com)
Status:	Signed
Transaction ID:	CBJCHDCAADBAAX4nY80M@3MFNKwOnYPjCB_Xv_Wp6

"Reso 2020-11-01 Authorizing NCTA to Conduct the NextGen Tech Procurement on IAG Behalf FINAL" History-

-  Document created by Linda Wiedenmann (lwiedenmann@e-zpassiag.com)
2020-11-12 - 3:35:08 PM GMT - IP address: 73.13.34.751
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-  Document emailed to Craig R. Shuey (cshuey@paturnpike.com) for signature
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-  Agreement completed.
2020-11-12 - 4:02:45 PM GMT

Part II: Defined Terms and Acronyms

1. Defined Terms

Term	Definition
6C Protocol	The ISO/IEC 18000-63 standard, commonly known as 6C. See Attachment 5.
"6C Transponder" Transponders	Transponders that use ISO-18000 6C technology and may come in different form factors as outlined in the Technical Requirements.
Acceptance	Formal Approval of a Phase or Deliverable as further set forth in Part V: Terms and Conditions.
Addenda	Written changes to the RFP documents issued by NCTA during the RFP process.
Agreement	The written Contract between an E-ZPass Group Member and the Vendor covering technical requirements and the other Contract Documents attached to the Agreement and made a part thereof. Also referred to as "Contract".
Agreement Date	The date on which this Agreement commences.
Agreement Term	The duration of the initial Agreement is seven years from the Effective Date and up to an additional three years for any authorized renewals and/or extensions. Also referred to as "Contract Term".
Amendment	Change in the Agreement executed in writing made by adding, altering, or omitting a certain part or term.
Antenna	Part of AVI equipment. This device is connected to AVI Reader to identify Transponders that cross the Capture Zone.
Approve	The term "Approve" and its variations (e.g., "Approval" or "Approved"), when capitalized in this Agreement refer to Acceptance of a process, vendor, document, condition, action or Deliverable in writing by the E-ZPass Group. Approval by the E-ZPass Group shall not be construed to mean endorsement or assumption of liability by the E-ZPass Group nor shall it relieve the Vendor of its responsibilities under the Agreement.

Term	Definition
Automatic Vehicle Classification (AVC)	A system of integrated devices and components that perform the automatic recording and reporting of vehicle characteristics such as number of axles, vehicle length / height / width, etc.
Automatic Vehicle Identification (AVI)	A system of integrated devices and components that perform the automatic recording and reporting of vehicle transactions through electronic media in a toll revenue collection system.
Automatic Vehicle Identification (AVI) Protocols	Communication standards for transmission of Transponder data. Also referred to as "Protocols".
Authorized Officer	The words "Authorized Officer" with respect to the Member, to mean the person or persons so designated in Appendix A - EZPass Group Members Terms & Conditions, or as otherwise designated in a Notice to the Vendor, as the individual(s) authorized to bind the Member on all matters in this Agreement, except as expressly provided otherwise in this Agreement; and with respect to the IAG, to mean the person or persons designated by resolution of the IAG Executive Committee certified by the Chair of such Committee as the person authorized to communicate formal approval by the parties to the IAG Agreements for one or more purposes of this Agreement.
AVI Reader	Part of AVI equipment. This device processes Transponder data as Transponders pass through the Capture Zone.
Business Day	A weekday, excluding E-ZPass Group Member observed holidays, beginning at 12:00:00 a.m. and ending at 11:59:59 p.m.
Business Hours	The words "Business Hours" to mean the normal hours of operation specific to an E-ZPass Group Member (excluding an E-ZPass Group Member's observed holidays) as set forth in Appendix A - E-ZPass Group Members Terms & Conditions., or as otherwise set forth in a Notice to the Vendor.
Calendar Day	Every day, including weekends and holidays, beginning at 12:00:00 a.m. and ending at 11:59:59 p.m.

<p>Capture Compatibility</p>	<p>Capture Compatible transponders are any transponders which can communicate with the Reader but which may not have all data fields required by the E-ZPass Group. Transponders issued by the E-ZPass Group Members are, by default, Capture-Compatible transponders.</p>
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Term	Definition
<p>Capture Zone</p>	<p>A volumetric space within which the system performs any vehicle identification, communications, and transactions.</p> <p>A volumetric space within which the system performs Transponder communications.</p>
<p>Certification</p>	<p>The Contractor's written verification and validation, with full supporting Documentation (including test results where applicable) that the Contractor has completed development of the Deliverable and certified its readiness for Approval, testing or review, as applicable.</p>
<p>Change Order</p>	<p>The words "Change Order" to mean changes resulting in additions or deletions to the Technical Requirements as directed by the Member in accordance with Part V, Terms and Conditions.</p>
<p>Compliance Table</p>	<p>Table of technical requirements noting Proposer compliance or non-compliance with each requirement.</p>
<p>Conformed Technical Requirements</p>	<p>The updated Technical Requirements as agreed to between the E-ZPass Group and the Vendor, including executed addenda generated during the RFP process.</p>
<p>Contract</p>	<p>See "Agreement".</p>
<p>Contract Documents</p>	<p>The documents forming the Contract including RFP, Conformed Technical Requirements, Addenda, exhibits and appendices thereto, Amendments, Contract modifications, Vendor Proposal and all provisions required by law to be inserted in the Contract, whether actually inserted or not.</p>
<p>Contract Term</p>	<p>See "Agreement Term".</p>
<p>Contract Date</p>	<p>The date as of which this Agreement is executed by the Procuring Member Agency.</p>

Vendor Certification	The Vendor's written verification and validation, with full supporting Documentation (including test results where applicable) that the Vendor has completed development of the Deliverable and certified its readiness for Approval, testing or review, as applicable.
Day(s)	Calendar Days, unless otherwise specified.
Dedicated Lane	A dedicated lane is a lane where only one form of payment is accepted such as a lane where only transponder-equipped

Term	Definition
	vehicles can pass without triggering a violation enforcement system. A dedicated lane may be gated to control violations.
Deliverable(s)	All Documentation and any items of any nature submitted by the Vendor to the E-ZPass Group for review and Approval pursuant to the terms of this Agreement. See "Submittal".
Discount Pricing	Proposer option to include for transponder pricing. Proposer to note discounting approach including price reductions, thresholds, triggers, etc.
Documentation	Materials, Submittals and Deliverables that provide official information or evidence that serves as a record in accordance with Scope, Requirements and the Agreement.
Effective Date	The initial date the E-ZPass Group executes an Agreement with any approved Vendor which shall be deemed the Effective Date for any subsequent Agreements entered by any E-ZPass Group Member and any approved Vendor.
Equipment	See "Hardware".
Express Lane	Express lanes are dedicated Transponder lanes which permit higher speeds than toll lanes and may have some lane delineation and equipment installed around the lane.
E-ZPass	The registered trademark owned by the Port Authority of New York and New Jersey that is used by member toll agencies to represent their interoperable electronic toll collection program.

E-ZPass Group	The collection of tolling entities that utilize a common AVI technology and operate Interoperable, reciprocal customer service centers in support of E-ZPass. Also known as the EZPass Interagency Group or IAG.
E-ZPass Group Approval	The words "E-ZPass Group Approval" to mean a resolution of the IAG Executive Committee certified by an Authorized Officer of the IAG, or such other approval mechanism as shall be identified in such a resolution. The words "as approved by the E-ZPass Group" or "approved by the E-ZPass Group" shall have this same meaning.

Term	Definition
E-ZPass Group Member	Toll operator that is a member of the E-ZPass Interagency Group; also referred to as Member.
E-ZPass Interagency Group	See E-ZPass Group
E-ZPass-on-the-Go	A convenient package that contains a prepaid tag ready for use that is sold at convenient locations such as participating local convenience stores, rest areas, DMV's, or simply ordering online.
E-ZPass Plus	A program enabling paying for parking at participating airports and garages using a Transponder.
Force Majeure	The circumstances as defined in this Agreement whereby either party is excused from meeting a Performance Requirement specified in this Agreement.
Gated Lane	Gated lanes are lanes in a toll plaza where a gate is used to prevent passage of vehicles until the lane/zone controller provides confirmation that a valid Transponder, cash or credit transaction has occurred.
Handheld Reader	Performs functions of AVI reader but with a handheld formfactor.

Hardware	“Hardware” is an all-inclusive term to mean the Equipment, Hardware, associated peripherals, software, associated firmware, electrical and other materials and supplies necessary or furnished by the Contractor pursuant to the Contract Documents.
High Occupancy Toll (HOT) Lane	HOT lanes are limited-access highway lanes that provide free or reduced cost access to qualifying High Occupancy Vehicles (HOVs), and provide access to other paying vehicles not meeting passenger occupancy requirements. HOT Lanes may or may not be barrier-separated from the non-HOT Lanes.
High Occupancy Vehicle (HOV) Switchable Transponder	Transponder equipped with a button or switch which allows the user to declare the HOV status of their vehicle.
High Speed Lane	High speed lanes are lanes where the vehicle may pass through the toll collection site at or near highway speeds. These may be present in open road tolling and toll plaza sites.
Interior Switchable Transponder	See HOV Switchable Transponder.
Interagency Group	See E-ZPass Group.

Term	Definition
Interoperable (Interoperability)	A relationship between tolling agencies or entities where their systems are capable of capturing and transmitting transactions generated on an agency’s roads by customers of the other agency or entity. Generally requires that reciprocity agreements between agencies and entities are in place to govern payments and reconciliation.
Interoperable Agency(s)	Agencies that have a relationship that is Interoperable with IAG Participating Members.
Lane Controller	All hardware and software necessary to interface with the Reader to receive the transponder-stored data.
Lane Straddling	Vehicles crossing through a Capture Zone with part of vehicle in more than one defined traveling lane or shoulder.
Low Speed Lane	Low speed lanes are lanes where the vehicle must slow down well below highway speeds while passing through the toll collection site. These are typically found in toll plazas to enhance safety.

Maintenance	Services performed by the Contractor pursuant to Part III Technical Requirements. May also be referred to as "Maintenance Services or Maintenance and Software Support Services."
Maintenance Support Services	The Maintenance and related Services required to be furnished by the Contractor, pursuant to the Contract Documents.
Mixed Mode Lane	A mixed mode lane is a lane where multiple forms of payment are accepted. For example, it could consist of any combination of manual toll collection, Automatic Coin machines as well as Transponder.
NCDOT	The North Carolina Department of Transportation.
NCTA	The North Carolina Turnpike Authority.
NCTA Designated Representatives	Person or persons authorized by the NCTA to represent NCTA in all dealings with the Contractor.
North Carolina Turnpike Authority (NCTA)	The business unit of the North Carolina NCTA of Transportation responsible for this procurement.
Notice	A formal communication addressing legal and contractual matters, not applicable to daily Implementation and operation and Maintenance communications.

Term	Definition
Notice of Award (NOA)	The written authorization by the E-ZPass Group specifying the Vendor's Equipment and/or Services which are certified by the E-ZPass Group and eligible for purchase by the Members.
Notice to Proceed (NTP)	The written authorization by the E-ZPass Group Member designating the date and time for the Vendor to commence Work.
OmniAir Certification Services	An association of independent testing agencies and laboratories which develops and executes certification programs for Intelligent Transportation (ITS) industry standards.

<p>Open Road Tolling (ORT) Lane</p>	<p>An open road tolling lane is a lane where a toll is collected but there are no toll booths or other toll collection equipment beyond that needed for electronic toll collection, allowing the vehicle to continue at highway speeds at any lateral position across the provided lanes or shoulder. An entry open road tolling lane in a closed system is a lane where the entry into the system is identified but there are no toll booths or other toll collection equipment beyond that needed for electronic toll collection, allowing the vehicle to continue at highway speeds at any lateral position across the provided lanes or shoulder.</p>
<p>Order of Precedence</p>	<p>The order in which Agreement documents control in the event of a conflict or ambiguity in such documents.</p>
<p>Original Equipment Manufacturer (OEM)</p>	<p>A company that manufactures a part or subsystem that is used in another company's end product.</p>
<p>Performance Requirements</p>	<p>The required level of performance standards for this Agreement as set forth in the Terms and Conditions and Technical Requirements.</p>
<p>Plan(s)</p>	<p>Vendor Deliverable that identifies approach to a particular aspect of the Work submitted for Approval.</p>
<p>Price Proposal</p>	<p>Proposer pricing provided in response to this RFP and in accordance with the instructions provided herein. Vendor's Approved Price Proposal is included as a Contract Document.</p>
<p>Priority</p>	<p>Ranking and assignment of importance used in the identification, monitoring, correction and reporting of System problems, bugs, and failures in accordance with Part III, Technical Requirements.</p>

Term	Definition
<p>Product Certification Test</p>	<p>Testing required to certify Equipment meets all E-ZPass Group standards.</p>
<p>Project Schedule</p>	<p>The detailed schedule developed and maintained by the Vendor that lists all tasks associated with Scope. The schedule is subject to Approval by the E-ZPass Group Upon Approval it becomes the Approved Baseline Project Schedule pursuant to the Agreement.</p>

Proposal	Proposer's entire Proposal in response to this RFP, including the Proposer's Technical Proposal and Proposer Price Proposal.
Proposer	A firm that has submitted a Proposal in response to this RFP.
Read / Write	Functionality that allows AVI Readers to transmit data to a Transponder and allows the Transponders to receive and store or act upon that data.
Reader	Synonymous with AVI Reader.
Retail Packaging	Retail Packaging consists of a sealed, RF shielded pouch/bag which prevents transponders from being read. Vendor must get approval for design and implementation of Retail Packaging from applicable E-ZPass Group Member prior to production of first order for each E-ZPass Group Member.
Requirements	Each of the required Work activities in numbered form as set forth in Part III: Technical Requirements.
Reversible Lane	A reversible lane is a lane where tolls may be collected from vehicles traveling in either direction during different periods of the day.
SeGo Protocol	The Super eGo protocol as specified by TransCore (See Attachment 5)
SeGo Transponder	Transponder that uses SeGo protocol and technology and may come in different form factors as outlined in the Technical Requirements
Services	All Vendor activities required by this Agreement which the Vendor is required to provide at no extra cost to the Member pursuant to this Agreement, and those optional services the Vendor is required to provide to the extent ordered at the sole discretion of the Member. Also referred to as "Work".

Term

Definition

Software	Software and computer programs used in connection with the Equipment and Services, including software and firmware embedded in Equipment; any commands or protocols that regulate and control the operation of the data processing system; all documentation and media required for use of computer programs; all procedures and rules; all compilers, library routines, and circuit diagrams, as well as any modifications, updates, revisions, releases, new versions, adaptations or improvements of or to any of the foregoing, as are required to be provided hereunder to meet the requirements set forth in the Technical Requirements.
Subcontractor	Any person, firm or corporation, other than the Vendor's employees, who contracts to furnish labor, or labor and materials, at the Site(s) or in connection with the Services, whether directly or indirectly, on the Vendor's behalf and whether or not in privity with the Vendor. Also referred to as "Subconsultant".
Submittal	See "Deliverable".
TDM Protocol	The E-ZPass Time Division Multiplexing protocol as specified by Kapsch (See Attachment 5).
TDM Transponder	Transponder that uses TDM protocol and technology and may come in different form factors as outlined in the Technical Requirements.
Technical Proposal	Proposer Technical document provided in response to this RFP and in accordance with the instructions provided herein. Vendor's Approved Technical Proposal is included as a Contract Document.
Technical Requirements	The words "Technical Requirements" to mean all elements and activities required by this Agreement, as set forth in Part III, Technical Requirements.
Time Division Multiplexing (TDM)	In context of this RFP, refers to the current Protocols by EZPass compatible Transponders and Readers as specified by Kapsch.
Toll Zone	A single Tolling Location covering one direction of traffic.

Traditional Toll Plaza Lane	A traditional toll lane is part of a toll plaza where tolls may be collected by toll collectors in booths, automatic coin
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Term	Definition
	machines, and/or electronically. Lanes dedicated to electronic toll collection in a toll plaza environment are considered toll lanes even if they do not require the vehicle to slow down. An entry lane in a closed system is part of a toll plaza where the entry into the system is identified.
Transponder	Vehicle-mounted radio frequency device read by the AVI Antenna(s) and reader Equipment in a toll lane.
Transponder Capture	The Reader's successful completion of a transaction with a transponder where a transaction is a successful "read" and "write" (where applicable). A successful 'read' is achieved when the Transponder Protocol is able to correctly determine the fixed identification data (e.g. read only fields) as well as the variable data associated with a vehicle that may have been set by a prior lane/zone controller and Reader (write fields). A successful 'read' and 'write' are achieved when the variable data fields are demonstrated to have been correctly updated so that they are available to Readers at other tolling points.
Transponder Capture Zone	See "Capture Zone"
Transponder Programmer	A device which is capable of programming the programmable data fields in a Transponder.
Transponder Reporting Zone	The geometric location in the Toll Zone where the Reader reports Transponder Capture to the Lane/Zone Controller.
Transponder Tester	A device used to test for proper functioning of a Transponder.
Updates	Generally, refers to a patch released for existing Software to fix any identified bugs, errors or security issues; may also include providing support for new Hardware, as well as performance tuning.
Upgrade	Generally, refers to transforming existing Software to a new version; provides new features and functionalities rather than fixing existing bugs, errors or security issues but does not include significant new functionality.

Vendor	The person, firm, corporation or entity undertaking the execution of the Work with whom the E-ZPass Group has entered into an Agreement.
Vendor Party	See "Vendor".
Term	Definition
Work	See "Services".
Write	The ability of the Reader to transmit and store new or modified data to/on a transponder for later access or further modification.
Zone Controller	See "Lane Controller".

2. Acronyms

Acronym	Meaning
ACK	Acknowledgement Message or Files
AET	All-Electronic Tolling
AVI	Automatic Vehicle Identification
BAFO	Best and Final Offer
BOM	Bill of Materials
CSC	Customer Service Center
DMV	Department of Motor Vehicles
EMI	Electromagnetic Interference
ETC	Electronic Toll Collection
FAT	Factory Acceptance Test
FCC	Federal Communications Commission
FOB	Free On Board (shipping to be FOB continental U.S.)
GPS	Global Positioning System
HOT	High Occupancy Toll
HOV	High Occupancy Vehicle
HTTPS	Hypertext Transfer Protocol Secure
IAG	E-ZPass Interagency Group
ISO	International Standards Organization
LCD	Liquid Crystal Display
LED	Light Emitting Diode
LLC	Limited Liability Company
NCDOT	North Carolina Department of Transportation
NCTA	North Carolina Turnpike Authority
NTP	Notice to Proceed

OCS	OmniAir Certification Services
ORT	Open Road Tolling
PDF	Portable Document Format

Acronym	Meaning
RF	Radio Frequency
RFID	Radio Frequency Identification
RFP	Request for Proposal
RMA	Return Merchandise Authorization
RTCS	Roadside Toll Collection System
RTM	Requirements Traceability Matrix
SOV	Single Occupancy Vehicle
T&C	Terms and Conditions
TDM	Time Division Multiplexing
TOC	Toll Operators Coalition
UPC	Universal Product Code
USB	Universal Serial Bus
USDOT	United States Department of Transportation
USPS	United States Postal Service

In Witness Whereof, this Agreement is executed by the Member by its Authorized Officer, and by the Vendor by its duly authorized officer, all as of the "Agreement Date" set forth herein.

MEMBER:

NEW HAMPSHIRE DEPARTMENT OF
TRANSPORTATION

By: _____

Name: William Cass, P.E.

Title: NHDOT Commissioner

Date: 1/6/2023

Address: 7 Hazen Dr

Concord, NH 03302

VENDOR:

KAPSCH TRAFFICOM USA, INC.

By: _____

Name: Dan Toohey

Title: SVP, Sales & Business Development

Date: 12/1/2022

Address: 2855 Premiere Parkway, Suite F

Duluth, GA 30097

Part III
Terms and Conditions

Part III: Terms and Conditions

ARTICLE 1 - GENERAL

ARTICLE 1.01 DEFINITIONS AND CONSTRUCTION

All definitions, terminology and acronyms are described in Part II – Glossary.

ARTICLE 1.02 ORDER OF PRECEDENCE

In the event that any provision of this Agreement is inconsistent or in conflict with another provision, the order of precedence shall be as follows:

- a) Appendix A - E-ZPass Group Members Terms & Conditions including Purchase Orders
- b) This Agreement other than a), c), and d) and e) and includes Appendix B- License Agreement
- c) The Technical Requirements as set forth in Appendix C-Technical Requirements
- d) Appendix D-Equipment, Components, Services Listing and Pricing Schedule
- e) Vendor's Technical Proposal including exhibits and appendices other than Exhibit A-8 Price Proposal.

ARTICLE 1.03 NATURE OF AGREEMENT

- a) The Vendor agrees to provide the Equipment and Services to the Member over the term of this Agreement as defined in Article 2.01, Agreement Term, to satisfy orders placed in accordance with Article 10.02, Orders.
- b) The Vendor acknowledges that there will be no restriction on the Member's testing, procurement or deployment of other vendors' ETC technologies, systems or Services from other vendors during the term of this Agreement.
- c) The Vendor acknowledges that the Member shall not be prohibited from reselling, transferring or otherwise disposing of the Equipment at any time. The Vendor further acknowledges that the Member may purchase Equipment from other E-ZPass Group Members without violating this Article.

d) ARTICLE 1.04 VENDOR OBLIGATIONS WITH RESPECT TO OTHER PARTIES

- a) The Vendor agrees not to sell, lease, license or provide to any other customers equipment or software that has the ability to decode/interpret ("read") the information contained in E-ZPass Group-format compatible Equipment or that is ~~has the ability to~~ programmed ("write to") E-ZPass Group

compatible Equipment, or any rights, licenses or privileges in respect thereof, that has been purchased by the Member and/or other E-ZPass Group Members, to unauthorized third parties who are not a E-ZPass Group member. ~~Unless the Vendor has received E-ZPass Group Approval for the sale, lease, license or provision of such equipment or software and in such case, only to those customers specifically designated in the E-ZPass Group Approval.~~

b) The Vendor agrees to sell and provide the Equipment and Services covered in this Agreement to all E-ZPass Group Members, subject to the terms and conditions herein and in compliance with the Technical Requirements.

c) The Vendor agrees to sell and provide the Equipment and Services covered in this Agreement and in compliance with the Technical Requirements to other third parties which have received E-ZPass Group Approval to install Equipment compatible with E-ZPass operations for E-ZPass Plus applications, including but not limited to traffic management, commercial vehicle operations, and parking. Except as specifically provided in the Technical Requirements the Vendor agrees to sell products and Services of equivalent quality, scope and function to those offered to the E-ZPass Group Members and to extend the same terms, conditions, and pricing as included in this Agreement to such third parties who have received E-ZPass Group Approval.

d) To the extent that the Member is a governmental entity the Vendor agrees to sell and provide the Equipment and Services covered in this Agreement, with the exception of Transponders, to the Member's affiliates operating within the jurisdiction of a governmental Participating Member as shall be specifically designated in a Notice from the Member and as shall have received E-ZPass Group Approval. The Vendor agrees to sell products of equivalent quality, scope and function to those offered to E-ZPass Group Members and to extend the same terms, conditions and pricing included in this Agreement to such designated affiliates. The Vendor recognizes that the designation of affiliates under this Article 1.04 (d) shall not mean that such affiliates become E-ZPass Group Members.

ARTICLE 1.05 INDEPENDENT CONTRACTOR

The Vendor is and shall be, in all respects, an independent contractor in performing the Technical Requirements pursuant to this Agreement. In accordance with its status as an independent contractor, the Vendor 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 E-ZPass Group Member, and that neither the Vendor 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 Member, including, but not limited to Worker's Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement System membership or credit.

ARTICLE 1.06 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the state or province as indicated in Appendix A - E-ZPass Group Members Terms & Conditions. (including Purchase Orders), except where the federal Supremacy Clause requires otherwise. The Vendor further consents to any jurisdictional requirements which may be set forth in Appendix A - E-ZPass Group Members Terms & Conditions.

ARTICLE 1.07 NON-ASSIGNMENT

The Vendor and Member agree that the Vendor has been selected by the Member based on unique and specific qualifications relating to the Equipment and Services. The Vendor shall not sell, assign, sublicense, sub-Agreement, sublet, franchise, mortgage or transfer any interest, right or obligation in this Agreement without the prior written consent of the Member, which shall be at the sole discretion of the Member, and any attempt to sell, assign, sublicense, sub-Agreement, sublet, franchise, mortgage or transfer any interest, right or obligation in this Agreement without the written consent of the Member shall be null and void. For purposes of this Article 1.07, the term "assign", "assignment" and correlative forms thereof, shall be deemed to include: (i) the transfer of this Agreement or the rights or obligations hereunder, whether voluntarily, involuntarily, by operation of law or otherwise; (ii) a sale or other transfer by the Vendor of all or substantially all of its assets; (iii) the merger, amalgamation, consolidation or reorganization of the Vendor into or with another corporation or other entity as a result of which the Vendor is not the surviving entity; (iv) any transaction (including any of the foregoing transactions, as well as any in which the Vendor is the surviving entity) which, whether by way of sale, gift or other transfer, whether involving the Vendor or the record or beneficial owners of equity interests in the Vendor, results in more than a forty percent (40%) change in the voting control of the Vendor; or (v) any of the foregoing transactions that occur with respect to the majority owner of the Vendor.

If at any time while this Agreement remains in effect, the Vendor wishes to assign or encumber this Agreement, the Vendor shall provide Notice to the Member, at the same time providing the Member with all information and documentation necessary to permit the Member to evaluate the contemplated transaction. The Member shall be entitled to condition its consent to any assignment or encumbrance of this Agreement on such terms and conditions as the Member deems appropriate.

Notwithstanding any such assignment, the Vendor shall remain responsible for all representations, warranties, covenants, guarantees and obligations of the Vendor set forth herein. Any transferee shall have the qualifications and financial responsibility necessary in the sole determination of the Member to assure compliance with the obligations of the Vendor herein and to assure compliance with all laws, regulations, executive orders and procedures relating to the selection of vendors by any Participating Member. Any transferee, by instrument in writing satisfactory to the Member, shall, for itself and its successors and permitted assigns, have assumed all of the obligations of the Vendor under this Agreement and agreed to be subject to all conditions and restrictions herein.

ARTICLE 1.08 NO THIRD PARTY BENEFICIARY

Nothing in this Agreement shall act to confer third party beneficiary rights with the exception of Article 1.04, Vendor Obligations with Respect to Other Parties, and Article 1.12, Price Match Guarantee and Article 5.02 Financial Assurance. Nothing in this Agreement shall create any obligation on the part of the Member to any third party.

ARTICLE 1.09 INDEPENDENT AGREEMENTS

The Vendor shall seek resolution of all disputes and payment for the Equipment and Services furnished to the Member pursuant to this Agreement from the Member only and not from any of the other E-ZPass Group Members. Each agreement executed between the Vendor and a Participating Member is independent and the Member shall have no obligation to resolve such disputes, nor any liability arising from disputes under any agreement executed with any other Participating Member, or to become a guarantor for any payments due to the Vendor from any other Participating Member.

ARTICLE 1.10 NO ARBITRATION

Unless provided otherwise in Appendix A - E-ZPass Group Members Terms & Conditions, disputes involving this Agreement, including the breach or alleged breach hereof, may not be submitted to binding arbitration (except where required by statute) but shall, instead, be heard in a court of competent jurisdiction of the state or province identified in Article 1.06, Governing Law and Jurisdiction.

ARTICLE 1.11 ANTITRUST ASSIGNMENT

The Vendor hereby assigns, sells and transfers to the Member all rights, title and interests in and to any claims and causes of action now existing or arising or accruing any time heretofore or hereafter under the antitrust laws of the state(s) or provinces in which the Member is located, or of the United States or Canada relating to the Equipment and Services purchased or procured by the Member hereunder.

ARTICLE 1.12 PRICE MATCH GUARANTEE

- a) The Vendor will match its price for any substantially similar, equivalently performing ETC Transponder under contract awarded through a competitive, public procurement between the Vendor and any public tolling agency in the United States. The Vendor shall provide notice to EZPass Group Members of all such price reductions made to a public tolling agency in the United States during the term of this Agreement and such price reduction shall be granted to any Member with a contract with the Vendor for such ETC Transponders retroactive to the time such price reduction was first granted to such new customer.
- b) ~~The Vendor warrants and represents that throughout the term of this Agreement, the Vendor shall not sell, lease, license or otherwise provide the ETC Equipment and Services to any Member or other E-ZPass Group Members at a price lower than the prices of the ETC Equipment and Services specified in~~

~~Appendix D-Equipment, Components, Services Listing and Pricing Schedules (such prices on Appendix D being subject to reduction in accordance with this Article 1.12).~~

c) The Vendor shall provide the Operator with Notice of all reductions made to its price lists included in any commercial catalogs, term sheets or other formats by which the Vendor offers its Equipment or Services for sale in the E-ZPass Group. This Notice shall be provided within thirty (30) Days following the date such price lists are issued. The Vendor need not report prices which are not below those set forth in Appendix D-Equipment, Components, Services Listing and Pricing Schedules.

d) If after the execution of this Agreement by the Member or the execution of an agreement between the Vendor and any of the E-ZPass Group Members, the Vendor reduces the prices it offers to new or existing customers as described in subparagraphs (c) or (d) of this Article 1.12, a reduction resulting in an equivalent price shall apply to this Agreement for the remainder of the Agreement Term as defined in Article 2.01, Agreement Term, or until further reduced or, in the case of temporary price reductions, for the duration of any temporary price reduction period.

e) This Article 1.12 shall not apply to any sale at a price below the price set forth in Appendix DEquipment, Components, Services Listing and Pricing Schedules, if caused by an error in billing, provided that the error is corrected and the customer is billed based on corrected pricing and provided that adequate documentation is furnished by the Vendor to the Member within thirty (30) Days following the discovery of the error.

f) Any price reduction granted by the Vendor to any customer with operations in the E-ZPass Group or offered by the Vendor on any of its price lists for E-ZPass Group Members in accordance with subparagraphs (c) or (d) of this Article 1.12, respectively, shall be effective for the Members and EZPass Group Members, retroactive to the time such price reduction was first granted to such customer, or included on such price list, as the case may be. The Vendor shall invoice at such reduced price and indicate thereon that the price reduction is pursuant to the provisions of this Article 1.12. Any such invoice shall be accompanied by a statement by the Vendor explaining the calculation for the price reduction, giving the Member an opportunity to contest same. If there is a credit balance, the Member has the option to require a refund from the Vendor at any time.

g) The Vendor shall furnish to the Member within ten (10) Days after the end of each twelve (12) month period from the First Agreement Date a statement certifying either (i) that there was no applicable reduction; or (ii) that any price reduction was reported to the Member and E-ZPass Group Members. For each reported price reduction, the Vendor shall state the date when it notified the Member and E-ZPass Group Members.

ARTICLE 1.13 SUCCESSION

Upon the expiration or any earlier termination of this Agreement in accordance with the terms hereof, regardless of the time, manner or reason of or for such termination, the Vendor shall cooperate with the

Member and any other entity or entities designated by the Member to facilitate a smooth succession to the Member's selected successor for the Equipment and Services as reasonably requested by the Member. Such cooperation shall include engineering and technical support and be provided as part of Time and Material Maintenance Support Services in accordance with the Technical Requirements and pricing in Appendix D- Equipment, Components, Services Listing and Pricing Schedules for such Services. Support shall include but not be limited to attendance at meetings; integration and design support to ensure non-interference with the Equipment, and implementation support.

Additionally, the Vendor agrees to cooperate with the Member in the Member's implementation of any new technology to comply with any national ETC standards introduced over the term of this Agreement, and that the Member shall be entitled to exercise all rights granted pursuant to the license set forth in Article 4.02, Licenses, in respect of the Equipment, and all elements thereof, in whole or in part, in configuration, combination or conjunction with, or as part of, any such new technologies.

This Article 1.13 shall survive the expiration, cancellation, or termination of this Agreement.

ARTICLE 1.14 SEVERABILITY

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

ARTICLE 1.15 ENTIRE AGREEMENT

This Agreement, including any appendices, attachments, schedules or exhibits, constitutes the entire understanding between the parties relating to the subject matter hereof and there are no other oral or extrinsic understandings of any kind between the parties. This Agreement supersedes all prior agreements, written or oral, between the parties on the subject matter hereof. This Agreement may not be changed, modified, or amended in any manner except by a subsequent writing, duly executed by the parties hereto.

ARTICLE 1.16 NOTICES

Unless permitted otherwise in Appendix A - E-ZPass Group Members Terms & Conditions, all notices, requests, demands and other communications required or permitted hereunder, other than with respect to daily operations, shall be in writing and shall be deemed to have been duly given (a) if delivered by hand or nationally recognized overnight delivery service, when delivered; (b) if by facsimile, on the first Business Day when received, or (c) if by mail, five (5) Business Days after being mailed, certified or registered mail, with postage prepaid as follows:

If to the Member, to the address and to the attention indicated on the execution page of this Agreement or as otherwise provided in Appendix A - E-ZPass Group Members Terms & Conditions;

If to the Vendor, to the address and to the attention set forth on the execution page of this Agreement; and

If to the E-ZPass Group Members, to the addresses and to the attention set forth in Appendix E Notice Addresses for E-ZPass Group Members, as may be amended from time to time by the Member or the applicable Participating Member.

Any party may change such addresses by providing a Notice in accordance with this Article 1.16.

ARTICLE 1.17 SERVICE OF PROCESS

The Vendor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon the Vendor's actual receipt of process or upon the Member's receipt of the return thereof by the United States Postal Service as refused or undeliverable, or as otherwise specifically provided in Appendix A - E-ZPass Group Members Terms & Conditions. The Vendor must promptly provide Notice to the Member of each and every change of address to which service of process can be made. Service by the Member to the last known address shall be sufficient.

Without limiting the foregoing, the Vendor further consents to any methods of service to the extent such methods are allowed by applicable laws of the state or province referred to in Article 1.06, Governing Law and Jurisdiction.

ARTICLE 1.18 BENEFIT

Subject to the provisions hereof with respect to assignment, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

ARTICLE 1.19 JOINT AND SEVERAL LIABILITY

This Agreement shall not operate as a joint venture, trust, agency or any other business relationship. If the Vendor is a partnership, each party to the joint venture or each partner (other than a limited partner in a limited partnership), as the case may be, is jointly and severally liable for all obligations under this Agreement and the term "Vendor" means each of them as well as all of them.

ARTICLE 2 - TIME AND MANNER OF PERFORMANCE

ARTICLE 2.01 AGREEMENT TERM

This Agreement shall commence on the Agreement Date and shall expire seven (7) years after the Effective Date, unless earlier terminated pursuant to Article 8.02, Notice of Default-Chance to Cure, Termination or Article 2.17, Termination for Convenience by the Member/Suspension of Work. The term of this Agreement may be extended for three (3) additional one (1) year periods at the sole discretion of the Member upon Notice to the Vendor not less than ninety (90) Days prior to the original expiration of this Agreement. References herein to "term of this Agreement", "term hereof", "agreement term", or

“Agreement Term” or words to the same effect shall mean such period, including the option period, if such option is exercised by the Member.

The Member shall issue a Notice to Proceed at the time the Member desires the Vendor to commence performance under this Agreement, which Notice to Proceed shall identify the Member’s initial Project Manager.

The E-ZPass Group intends to allow an open enrollment for potential Vendors on this Agreement in future years. The premise for the open enrollment is to provide a mechanism for Vendors with new and viable ETC Equipment and Services that are beneficial to the E-ZPass Group to become authorized Vendors under this Agreement, as described in Part I, Administrative. The open enrollment process for New Vendors or New Products is: 1) E-ZPass Group will conduct an administrative review to determine if the Vendor, its equipment and services are eligible for qualification; 2) prospective Qualified Vendors will be certified; and 3) E-ZPass will select Vendors to be added to the pool of approved Qualified Vendors. The open enrollment period for New Vendors or New Products is once a year from the date this Agreement is awarded, for a calendar month period. New Vendors interested in becoming an authorized Vendor will be evaluated under the same requirements and evaluation criteria as the original authorized Vendors under this Agreement, unless newly announced industry services, laws or regulations require additional evaluation criteria. Newly awarded Vendors will be provided a four month window starting six (6) months prior to the start of open enrollment to comply with requirements and standards associated with this Agreement and open enrollment, including, but not limited to, all provisioning and billing requirements as indicated in the Terms and Conditions. Vendors in good standing who bid but were excluded from the initial award of this Agreement (but not debarred) may participate in the open enrollment. Vendors should note that the E-ZPass Group reserves the rights to reject any proposed service offerings or Vendor’s request to become an authorized supplier of services to the E-ZPass Group. All new Vendors added during open enrollment may provide services until the end of the original Agreement Term.

ARTICLE 2.02 SURVIVAL OF TERMS

In addition to those Articles noted in this Agreement as surviving the termination, cancellation, or expiration of this Agreement, the terms of this Agreement, the Vendor’s obligations and the obligations of the Member under this Agreement, which by their nature would reasonably be understood to continue beyond the termination, cancellation, or expiration hereof, shall survive termination, cancellation, or expiration hereof.

ARTICLE 2.03 GENERAL

The Vendor recognizes the paramount importance of customer relations, both in the Member’s fulfillment of its statutory or corporate mission, and in the successful operation of E-ZPass and the successful implementation of the Equipment as described in the Technical Requirements in a timely, skillful and efficient manner. Inasmuch as E-ZPass is provided for the convenience and benefit of the public, the Vendor acknowledges that the quality of, and timeliness of, all Equipment and Services are the essence of

this Agreement. The Vendor's general responsibilities for the Equipment and Services include the following:

- a) The Vendor has and shall have the requisite technology, intellectual property rights, facilities, personnel, equipment, expertise, experience, knowledge and skill to timely, fully and effectively perform its obligations under this Agreement. The Vendor shall provide all resources, personnel, equipment and supplies necessary to perform the Technical Requirements. The Vendor shall provide the Equipment and Services described herein in a competent and professional manner to the satisfaction of the Member. The Vendor agrees that it shall at all times employ, maintain and assign to the performance of the Technical Requirements a sufficient number of competent and qualified professionals and other personnel to meet the Technical Requirements in a timely manner. The Vendor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses necessary to perform the Technical Requirements described herein, in a competent and professional manner.
- b) The Member shall be entitled to full and prompt cooperation of the Vendor in all aspects of the Technical Requirements. The Vendor shall use best efforts to minimize any disruption to the Member's normal business operations when Vendor Parties are performing Services.
- c) The Vendor represents that the Equipment and Services shall comply with the specific requirements of this Agreement and that the Equipment and Services if purchased by any of the EZPass Group Members, shall be fully interoperable and compatible with the Equipment and Services purchased by the Member as described in this Agreement. The design of the Equipment shall satisfy any statutory requirements which may be specified in Appendix A - E-ZPass Group Members Terms & Conditions.
- d) The Vendor shall provide Equipment as described in Section 2.6 of the Technical Requirements, as well as Services required to be performed at no additional cost pursuant to the Technical Requirements.
- e) The Vendor shall provide Services and engage in the activities set forth in the Technical Requirements for which pricing is specified in Appendix D-Equipment, Components, Services Listing and Pricing Schedules.
- f) The Vendor shall provide Services as described in the Technical Requirements in accordance with pricing in Appendix D-Equipment, Components, Services Listing and Pricing Schedules, in the event the Member has a requirement to procure such items for the purposes outlined in the Technical Requirements and decides, in its sole discretion, to use the Vendor for such purposes.
- g) During the term of this Agreement, the Member may purchase the Vendor's products in accordance with the provisions of Article 1.12, Most Favored Customer, and the provisions of Article 2.06, Coordination with E-ZPass Group.

- h) The Vendor agrees that all Vendor Parties shall comply with all provisions of all federal, state, and local laws, ordinances, rules, and regulations that are applicable to the performance of this Agreement, and to procure all necessary registrations, licenses and permits. The Vendor agrees to provide evidence of such compliance, registrations, licenses, and permits upon the request of the Member. The Vendor shall ensure that all Vendor Parties shall perform all acts and obligations necessary for Vendor to fully comply with its obligations under this Agreement.
- i) At the Member's request, the Vendor shall cooperate with the Member and any other party identified by the Member in connection with application, receipt and use of federal funding assistance related to the implementation of the Technical Requirements.

ARTICLE 2.04 COMPLIANCE WITH MEMBER-SPECIFIC REQUIREMENTS

The Vendor agrees that all Vendor Parties shall comply with all Member-specific requirements and policies as included in Appendix A - E-ZPass Group Members Terms & Conditions.

ARTICLE 2.05 EMERGENCY RIGHTS OF MEMBER

In the event of an emergency which, if not corrected, could endanger life, limb, property, public health or safety, or essential services at the Site(s), the Member may do anything necessary or advisable to alleviate such an emergency situation, including performing work at the Site(s), or directing another contractor to perform work at the Site(s), as determined by the Member in its sole judgment. For purposes of this Article 2.05, an emergency also includes emergencies as determined by the Federal Emergency Management Agency or the U.S. Department of Homeland Security or any other federal, state, provincial or local agency having the authority to declare emergencies.

ARTICLE 2.06 COORDINATION WITH E-ZPASS GROUP

- a) Recognizing the paramount importance of interoperability among E-ZPass Group Members, the Vendor shall obtain E-ZPass Group Approval for certain submissions or changes as further set forth in this Agreement, with respect to Article 1.04, Vendor Obligations with Respect to Other Parties, and this Article 2.06. Reference herein to submissions to the E-ZPass Group shall mean Notice to each of the E-ZPass Group Members. Reference herein to requests or notifications by the E-ZPass Group shall mean written Notice to the Vendor authorized in the same manner as E-ZPass Group Approval.
- b) The Vendor acknowledges that the E-ZPass Group is not an entity, partnership, or joint venture. The Vendor acknowledges that the E-ZPass Group Agreements may be amended without notice to or consent of the Vendor. No change in the IAG Agreements shall affect the obligations of the Vendor under this Agreement. Without limiting anything in Article 1.09, Independent Agreements, the Member shall have no responsibility for any consent or approval required by the E-ZPass Group or any other Participating Member, nor for any action or inaction of the E-ZPass Group or any other Participating Member.

c) The Vendor shall obtain E-ZPass Group Approval before making any Model changes to any Equipment covered under this Agreement, including future products offered as compatible with the previously installed Equipment, Components and Services. The Vendor shall seek E-ZPass Group Approval well in advance of any anticipated deployment by any Participating Member.

(i) During the term of this Agreement, the Vendor shall perform New Product Testing in accordance with Article 10.01 Tests, for design changes and redesigns, such as redesign due to component end-of-life, regardless of whether or not the same are requested by the Member or any other Participating Member.

(ii) The Vendor shall not establish or change prices to the Member for any new Model without advance approval by the Member, except as explicitly provided in Appendix D-Equipment, Components, Services Listing and Pricing Schedules.

d) The Vendor shall not discontinue production of products required to be provided to the Member pursuant to this Agreement without prior E-ZPass Group Approval. If the Vendor receives E-ZPass Group Approval to discontinue production of any Models, the Vendor must obtain advance E-ZPass Group Approval for any price increase for the new/replacement Models above the prices applicable to the Models discontinued.

ARTICLE 2.07 HARMONY

The Vendor shall not employ any persons or use any labor, or use or have any equipment, or permit any condition to exist which shall or may cause or be conducive to any labor complaints, troubles, disputes or controversies which interfere or are likely to interfere with the Member's operations or facilities, or with the operations of the Vendor under this Agreement.

The Vendor shall immediately give notice to the Member (to be followed by Notices and reports) of any and all impending or existing labor complaints, troubles, disputes or controversies and the progress thereof. The Vendor shall use its best efforts to resolve any such complaint, trouble, dispute or controversy. If any type of strike, boycott, picketing, work stoppage, slowdown or other labor activity is directed against the Vendor Parties or against any operations of the Vendor Parties under this Agreement, whether or not caused by the Vendor Parties, and if any of the foregoing, in the opinion of the Member, results or is likely to result in any curtailment or diminution of the Technical Requirements to be performed hereunder or to interfere with or affect the operations of the Member, or in the event of any other cessation or stoppage of operations by the Vendor hereunder for any reason whatsoever, the Member shall have the right at any time during the continuance thereof to suspend the operations of the Vendor under this Agreement. During such time of suspension, the Vendor shall not be entitled to any compensation. Notice of suspension shall be given in writing.

No exercise by the Member of the rights granted to it in this Article 2.07 shall be deemed to be a waiver of any rights of termination or revocation contained in this Agreement or a waiver of any rights or remedies which may be available to the Member under this Agreement or otherwise.

During the term of this Agreement, it may be necessary for other Contractors and other persons (including personnel of the Member) to do work in or about the Site(s) at the same time as any Vendor Party is performing Services at the Site(s). The Member reserves the right to permit and put such other Contractors and such persons to work and to afford them access to the Site(s) at such time and under such conditions as do not unreasonably interfere with the Vendor. The Vendor shall progress its work continuously and diligently and shall so plan and conduct its operations as to work in harmony with others engaged at the Site and not to delay, endanger or interfere with the operation of others, all to the best interests of the Member and the public, as may be directed by the Member.

ARTICLE 2.08 AUTHORITY OF THE PROJECT MANAGER

- a) The Vendor hereby authorizes the Member's Project Manager to determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including, without limitation: questions as to the value, acceptability and fitness of the Equipment and Services; questions as to either party's fulfillment of its obligations under this Agreement; negligence, fraud or misrepresentation before or subsequent to execution of this Agreement; questions as to the interpretation of the Technical Requirements, and claims for damages, compensation and losses.
- b) The Project Manager may give orders to the Vendor to do work which he/she determines to be necessary for the Vendor to fulfill the Vendor's obligations under this Agreement. Such orders shall be in writing unless not practicable, in which event any oral order must be confirmed in writing by the Project Manager as soon thereafter as practicable.
- c) If requested by the Vendor, the Project Manager will promptly provide explanations and reasons for his/her determinations and orders hereunder, as deemed appropriate by the Project Manager.
- d) The Vendor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Vendor agrees with the Project Manager's determination or order.
- e) The Vendor agrees that in the event of dispute as to cooperation with other Contractors of the Member, the Member's Project Manager shall decide all matters in the event of such a dispute and decisions made by the Project Manager shall be binding. The Vendor agrees to make no claims against the Member for any inconvenience, delay or loss experienced because of the presence and operations of other Contractors, subject to the provisions of Article 2.07, Harmony.
- f) In the event the Vendor wishes to dispute the order or determination of the Project Manager, the Vendor shall appeal to the Member's Authorized Officer or as otherwise specifically provided in this Agreement, or Appendix A - E-ZPass Group Members Terms & Conditions, or in a Notice to the

Vendor. The Vendor shall be required to continue to comply with the order or determination of the Project Manager notwithstanding any appeal until such time as the Project Manager has withdrawn such order or it is overturned pursuant to the appeal process.

ARTICLE 2.09 INVESTIGATION OF DEFICIENT EQUIPMENT AND COMPONENT PERFORMANCE

In addition to but not in limitation of Article 7.06, Defects, the Vendor shall investigate and resolve all cases of deficient Equipment and Component performance, as identified and documented by the Member or any Participating Member. If the Member identifies a case of deficient Equipment and Component performance, the investigation and problem resolution shall be approved, guided, and directed by the Member, who may involve other entities as well. If another Participating Member identifies a case of deficient Equipment and Component performance which may affect interoperability among E-ZPass Group Members, the investigation and problem resolution shall also be subject to E-ZPass Group Approval. Regardless of which of the Vendor Parties was responsible for the deficient performance, the Vendor shall promptly correct the deficiency at its sole cost and expense.

ARTICLE 2.10 MAINTENANCE OF RECORDS; INSPECTION, REVIEW AND AUDIT

- a) The Vendor shall establish and maintain complete and accurate books, data, records, documents, accounts and other evidence pertaining to any matters relating to this Agreement (collectively, "Records") including, without limitation, records relating to other customers of the Vendor in connection with Article 1.12, Most Favored Customer, and the Vendor's quality assurance efforts in connection with the manufacture and delivery of Equipment and the performance of Services. Such Records shall be maintained in accordance with Generally Accepted Accounting Principles, as applicable.
- b) Unless otherwise provided in this Article 2.10, the Vendor shall maintain Records that conform to those requirements defined in Sub-Part IV.7 of the Federal Acquisition Regulations ("FAR"), and such Records shall only address those transactions related to this Agreement and the transactions conducted with any of the E-ZPass Group Members. The Vendor further agrees to maintain an accounting system that provides for the following:
 - (i) accounting records that are supported with adequate documentation; and
 - (ii) adequate procedures for determining the allowability and allocability of costs according to the FAR; and
 - (iii) effective control over, and accountability for, Agreement funds and tangible personal property acquired for use on an Agreement; and
 - (iv) records that accurately, currently, and completely identify costs for each significant cost objective; and

(v) records that distinguish between direct and indirect costs in a logical and consistent manner; and

(vi) timekeeping records kept in sufficient detail to allow employees' time to be associated with the various Agreements they work on.

c) The Vendor shall permit authorized representatives of the Member to inspect, review and audit the Records during the Vendor's normal business hours. All parties designated by the Member and any other person or entity authorized to conduct such an inspection, review or audit shall be granted full and prompt cooperation by the Vendor and all necessary access to the Records at an office of the Vendor within the state in which the Member's principal administrative office is located, or, if no such office is available, at a mutually agreeable and reasonable venue within that state, for purposes of inspection, reviewing, auditing and copying.

d) The Member shall have the right to inspect the performance of the Vendor Parties at any time and the Vendor shall fully and promptly cooperate with the Member in the execution of such inspections.

e) The Member's rights to inspect, review and audit include (i) surveillance of the Vendor operations including other sources where manufacture of Equipment may occur to ensure compliance Part III - Technical Requirements, (ii) measuring the quality of Equipment to be offered for acceptance, (iii) inspection of Equipment awaiting release for shipment to ensure compliance with the Technical Requirements, and (iv) interviewing key personnel of the Vendor.

f) The Vendor's obligation to maintain Records, and the Member's rights to inspect, review and audit under this Article 2.10, shall exist during the term of this Agreement and shall survive for a period of seven (7) years (or any other longer period required by law) following final payment under or the termination of this Agreement, whichever is later. As used in this subparagraph, "termination of this Agreement" shall mean the later of completion of the Technical Requirements or the end date of the Agreement term defined in Article 2.01, Agreement Term, or such earlier date as this Agreement has been terminated in accordance with Article 2.17, Termination for Convenience by the Member/Suspension of Work, or Article 8.02, Notice of Default-Chance to Cure, Termination.

g) In all of the Vendor's Agreements with its sub-contractors, the Vendor shall include provisions equivalent to this Article 2.10 to obligate the Subcontracts and suppliers to maintain Records, and to grant the Member the right to inspect, review and audit Records and performance of such subcontractors and suppliers.

ARTICLE 2.11 PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Vendor Parties:

a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the Member, or the Technical Requirements being performed pursuant to this Agreement, unless the

Vendor first obtains the written approval of the Member. The Vendor shall seek such written approval from the Project Manager or from such other Member officer or employee as the Project Manager shall identify. The Vendor understands and accepts that generally the Member will not grant permission for public announcements or news releases and will only allow the use of the Member's name (without logo) on a list of references, in materials provided by the Vendor to specific customers or prospective customers of the Vendor in response to particular inquiries from such parties as to existing customers of the Vendor; or

- b) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the E-ZPass Group, E-ZPass or E-ZPass Plus, with or without logos, unless the Vendor first obtains E-ZPass Group Approval; or
- c) Communicate in any way with any contractor, department, board, authority, commission or other organization or any person whether governmental or private in connection with the Technical Requirements to be performed hereunder except upon prior written approval and instruction of the Member; or except in response to a request from a governmental entity with subpoena powers; or
- d) Represent, directly or indirectly, that any product or service provided by the Vendor Parties has been approved or endorsed by the Member, any Participating Member, or the E-ZPass Group, either individually or collectively.

This Article 2.11 shall survive the expiration, cancellation, or termination of this Agreement.

ARTICLE 2.12 USE OF MARKS/LOGOS

The Vendor understands that the Member may direct it to utilize, and in such case the Vendor shall utilize, in strict accordance with rules established by the Member, the logos, trademarks, service marks, and other trade designations associated with the Member and E-ZPass. Such use shall be in compliance with all terms of quality and use required by the Member and limited to activities directly related to providing the Equipment and Services pursuant to this Agreement.

The Vendor understands and agrees that it shall have no proprietary interest in such logos, trademarks, service marks or other trade designations utilized in the provision of Services and Equipment pursuant to this Agreement, or any of the goodwill associated therewith, that other entities may have such rights, and that the Vendor must fully respect, recognize, and act in accordance with such rights.

ARTICLE 2.13 SUBCONTRACTOR RELATIONS

- a) The Vendor may, with the prior written approval of the Member, utilize subcontractors to perform some of the Technical Requirements that the Vendor is required to perform pursuant to this Agreement. Prior to awarding any sub-contract, the Vendor shall submit to the Member a written statement containing the proposed element(s) of the Technical Requirements the subcontractor is to perform, the qualifications of sub-contractor's personnel that will be performing such element(s) and such other information as the

Member may require. If the Member, in its sole discretion, approves the use of a sub-contractor for a specified scope, the Vendor shall incorporate all of the terms of this Agreement into its Agreement with the Subcontractor and shall pay the Subcontractor pursuant to such Agreement promptly. The Vendor shall be fully responsible to the Member for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, just as the Vendor is fully responsible to the Member for the acts and omissions of persons directly employed by it. Nothing contained in this Agreement shall create any contractual relationship between a Subcontractor and the Member. The agreement between the Vendor and Subcontractor shall designate the Member as a third party beneficiary thereunder.

b) The Vendor shall include in each of its Agreements with any Subcontractor an express restriction upon sale, assignment, sublicensing, subcontracting, subletting, franchising, mortgaging or transferring any interest, right or obligation in such Agreement without the prior written consent of the Vendor, which consent shall be subject to the Vendor obtaining the prior written approval of the Member in accordance with the process described in subparagraph (a) of this Article 2.13. The Vendor's Agreement with the Subcontractor shall state that any attempt to sell, assign, sublicense, subcontract sublet, franchise, mortgage or transfer any interest, right or obligation in any such Agreement without the prior written consent of the Vendor shall be null and void. The Vendor's Agreement with the Subcontractor shall expressly define the term "assign" as used in this context to include the scenarios outlined in subparagraphs (i) through (v) of Article 1.07, Non-Assignment, with "Subcontractor" substituted for "Vendor".

c) Within each subcontract for the performance of any element of the Technical Requirements hereunder, there shall be a clause for the benefit of the Member permitting the Member to require completion of performance by the Subcontractor of its obligations under the subcontract, in the event the Member finds the Vendor in breach of the Vendor's obligations under this Agreement.

d) At the request of the Member, the Vendor shall furnish to the Member copies of all Agreements between the Vendor and its subcontract used to perform any element of the Technical Requirements pursuant to this Agreement.

e) The Member shall have the right to withdraw its consent to a subcontract if it appears to the Member that the Subcontractor or terms of the Agreement will delay, prevent, or otherwise impair the Vendor's performance of any element of the Technical Requirements under this Agreement.

f) The Member shall also have the right to withdraw its consent to a subcontract if the Subcontractor with whom such subcontract exists or if any person who directly controls the activities of such Subcontractor has been determined to be non-responsible by the Member in accordance with the Member's responsibility guidelines. ARTICLE 2.14 EXTENSION OF TIME

a) If the performance of the Vendor's obligations contained in this Agreement is delayed at any time hereunder, then the affected Scheduled Delivery Date as defined in Article 10.02, Orders, or the required

performance of warranty Services and/or optional Services purchased from the Vendor may be extended by the Member in the reasonable exercise of its discretion for such reasonable time as the Member may determine, provided that:

(i) The cause of the delay is beyond the control of the Vendor Parties and arises without their fault or negligence, and arises after the execution hereof and neither was nor could have been anticipated by the Vendor Parties by reasonable investigation; and

(ii) The Vendor demonstrates that the completion of the performance will be actually and necessarily delayed by the causes set forth in (i) above; and

(iii) The effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures by the Vendor Parties, whether before or after the occurrence or the cause of delay; and

(iv) The Vendor has provided a Notice to the Member within ten (10) Days after the time it knows or reasonably should have known of any cause which might, under reasonably foreseeable circumstances, result in a delay for which it may request an extension of time. The Vendor shall specifically state in such Notice that an extension is or may be claimed and identify the cause of the delay, describing the nature and expected duration of the delay and its effect on the completion of the affected portions of the work identified in the Notice. All of the conditions of this subsection (a) must be met in order for the Member to consider a delay to be an excusable delay.

b) The period of any extension of time shall be only that which is necessary to make

up the time actually lost. The Member reserves the right to rescind or shorten any extension previously granted if the Member subsequently determines that any information provided by the Vendor Parties in support of a request for an extension of time was erroneous or that there has been a material change in the facts stated.

c) The Member may require the Vendor to furnish such additional information or documentation as the Member shall reasonably deem necessary or helpful in considering a requested extension. The Vendor shall furnish such required information or documentation promptly. The Vendor understands an extension of time will not be granted unless it affirmatively demonstrates to the Member's reasonable satisfaction that the circumstances shown justify such extension. In addition, the Vendor shall keep the Member advised as to the status of the circumstances giving rise to the request for the extension irrespective of the Member's request for additional information.

d) Within thirty (30) Days of its receipt of all information and documentation as may be required by the Member, the Member shall advise the Vendor of its decision on such requested extension. Notwithstanding the foregoing, where it is not reasonably practicable for the Member to render its decision within such thirty (30) Day period, the Member shall, prior to the expiration of such period,

advise the Vendor that it will require additional time and the approximate date upon which it expects to render such decision.

- e) If any of the Vendor Parties become aware that any person seeks a restraining order, preliminary injunction, injunction or other judicial or governmental act which may delay or otherwise affect the performance of the Technical Requirements, the Vendor shall promptly give the Member a copy of all legal papers received in connection with such action or proceeding. The Member shall be accorded the right to intervene or become a party to any suit or proceeding in which any such restraining order, preliminary injunction, injunction or other judicial or governmental act shall be sought or obtained and to oppose or to move to dissolve the same or otherwise, as the Member may deem proper at the Vendor's expense.
- f) Permitting the Vendor to proceed with the Technical Requirements subsequent to any missed schedule milestone, Scheduled Delivery Date, or delay in performance of warranty Services and/or optional technical support and Maintenance Support Services purchased from the Vendor (as such date may have been extended pursuant to the provisions of this Article 2.14) and/or the making of any payments to the Vendor shall not be deemed a waiver of or otherwise compromise any of the Member's rights or remedies under this Agreement or applicable law, including the contractual right to assess actual or liquidated damages or declare the Vendor in default.

ARTICLE 2.15 EXTENSION OF TIME NOT CUMULATIVE

In the event the Vendor is delayed concurrently by two or more causes identified in accordance with Article 2.14, Extension of Time, the Vendor shall not be entitled to a separate extension for each one of the causes but only one period of extension shall be granted for the delay. In addition, the Vendor shall not be entitled, by reason of a delay, to an extension of time for the completion of the overall Technical Requirements unless the Technical Requirements is necessarily affected by the delay. Accordingly, in the event of a delay, the Vendor shall proceed continuously and diligently with the performance of the unaffected portions of the Technical Requirements.

ARTICLE 2.16 CHANGE ORDER

- a) No change in or modification, termination or discharge of the Technical Requirements or any part thereof, in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by the Member's Authorized Officer.
- b) This Agreement and subsequent Purchase Order(s) is awarded subject to shipment of quantities, qualities, and prices indicated by the Purchase order or Agreement, and all conditions and instructions of the Agreement or proposal on which it is based. Any changes made to this Agreement or purchase order proposed by the Vendor are hereby rejected unless accepted in writing by the Agency or State Award Authority. The Member shall not be responsible for Services or services delivered without a purchase order from the Member as required in Appendix A - E-ZPass Group Members Terms & Conditions.

c) Any material changes to the terms of the Purchase Order shall require a written Amendment to the purchase order. No claim for additional compensation shall be recognized unless contained in a duly executed Amendment.

d) If the Member provides a dispute resolution process in Appendix A - E-ZPass Group Members Terms & Conditions, or otherwise in a Notice to the Vendor, the Vendor shall follow such process for resolving any Disputed Work and in order to recover compensation for the Disputed Work. During the pendency of any dispute hereunder, the Vendor must proceed with the Disputed Work in accordance with the Member's written directives pursuant to subparagraph (f) of this Article 2.16, unless otherwise advised by the Member's Project Manager in writing.

e) The Vendor shall furnish weekly status reports regarding a Change Order or Disputed Work, including such documentation as the Member may require in order to support all costs of the Change Order or Disputed Work. The Vendor agrees to maintain and furnish the Member with time and materials records in accordance with Article 2.10, Maintenance of Records; Inspection, Review and Audit, which substantiate the Vendor's costs for Disputed Work whether or not such time and materials rates are in accordance with Appendix D- Equipment, Components, Services Listing and Pricing Schedules.

ARTICLE 2.17 TERMINATION FOR CONVENIENCE BY THE MEMBER/SUSPENSION OF WORK

a) The Member shall have the right, in its sole discretion, to postpone or suspend work or orders for Equipment or Services under this Agreement or to abandon or terminate this Agreement with thirty (30) days' written notice to Vendor and for any reason throughout the term of this Agreement, and such action shall in no event be deemed a breach of Agreement.

b) In the event the Member exercises its right to postpone or suspend performance hereunder, or abandon or terminate this Agreement, the Member will provide the Vendor with Notice thereof. The Vendor shall, upon receipt of such Notice, unless otherwise directed in writing by the Member:

- (i) stop work on the date specified in the Notice ;
- (ii) take such action as may be necessary for the protection and preservation of the Member's materials and property, including data and other aspects of the Vendor's performance which are not completed;
- (iii) cancel orders made by the Vendor in contemplation of providing any Equipment or Services to the Member;
- (iv) assign to the Member and deliver to the Site or any other location designated by the Member any non-cancelable orders for material or Equipment that is not capable of use except in the performance of the Technical Requirements pursuant to this Agreement and has been specifically fabricated for the sole purpose of this Agreement;

- (v) take no action which will increase the amounts payable by the Member under this Agreement;
 - (vi) take all steps necessary to assure a smooth transition to a new vendor or the Member; and
- c) In the event that the Member exercises its right to postpone, or suspend performance hereunder, or abandon or terminate this Agreement, the Member will pay only the items enumerated in subparagraphs (i) and (ii) below at the Vendor's actual cost or the fair and reasonable value consistent with Appendix D- Equipment, Components, Services Listing and Pricing Schedules, whichever is less:
- (i) the Equipment and Services to the extent delivered or completed in accordance with this Agreement up to the date specified in the stop work Notice; and
 - (ii) non-cancelable material and Equipment that are not capable of use except in the performance of the Technical Requirements pursuant to this Agreement and has been specifically fabricated for the sole purpose of this Agreement but only to the extent that such materials and Equipment have actually been assigned and delivered to the Member in accordance with subparagraph (b)(iv) of this Article 2.17.
- d) Any amounts payable to the Vendor hereunder shall be offset by all payments already made to the Vendor.
- e) All payments made pursuant to this Article 2.17 shall be accepted by the Vendor in full satisfaction of all claims against the Member arising out of the postponement, or suspension of performance hereunder, or abandonment, or termination of this Agreement. In no event shall the Member be responsible for any indirect, consequential, incidental or special damages or any loss of business, goodwill, reputation, revenues or profits.
- f) All payments pursuant to this Article 2.17 are subject to audit.
- g) Upon such a postponement, suspension, abandonment or termination, the Vendor must within ten (10) Days deliver to the Member all records, documents and data in readable and useable formats and media, understandable to programmers of ordinary skill and industry knowledge, pertaining to the Technical Requirements performed under this Agreement.
- h) Throughout the term of this Agreement, the Vendor must report to the Member any material changes in the Vendor's or any Subcontractor's initial vendor responsibility disclosure(s). The Member shall have the right to terminate this Agreement at any time in the event the Member determines that the Vendor or any Subcontractor is non-responsible in accordance with the Member's responsibility guidelines or has failed to accurately disclose vendor responsibility information.

ARTICLE 2.18 SECURITY REQUIREMENTS

The Vendor agrees to ensure that all Vendor Parties comply with all security measures and internal security procedures identified as applicable by the Member whenever such individuals are on the Member's premises. Such measures may include, but are not limited to, obtaining special identification badges; background checks; traveling in clearly marked vehicles; parking in designated areas; reporting to the front desk or security desk of office buildings or toll facilities, and obeying any posted security and safety policies and regulations. The Vendor agrees that all Vendor Parties shall comply with the Member's network security policies identified as applicable by the Member. The Vendor agrees that all Vendor Parties shall comply with Member-specific security requirements included in Appendix A - E-ZPass Group Members Terms & Conditions, or as otherwise provided in a Notice to the Vendor.

ARTICLE 3 - COMPENSATION

ARTICLE 3.01 PRICING OF EQUIPMENT AND SERVICES

- a) The Member may purchase the Equipment and Services, and license the Software in accordance with the provisions of Article 4, at prices as set forth in Appendix D- Equipment, Components, Services Listing and Pricing Schedules. The prices set forth in Appendix D-Equipment, Components, Services Listing and Pricing Schedules include the provision of all design/development costs; components; materials; testing; packaging; delivery, and any service costs necessary or incidental to the manufacture and delivery of the Equipment and installation of the Software.
- b) The Vendor may adjust prices only to the extent provided in Appendix D- Equipment, Components, Services Listing and Pricing Schedules and in accordance with price indices specified therein for Services.
- c) The Member shall pay the Vendor in accordance with the pricing schedule set forth in Appendix D- Equipment, Components, Services Listing and Pricing Schedules, and Vendor agrees to accept such amount as full compensation for such Equipment and Services. Such prices are all inclusive and no additional amounts will be paid to the Vendor for expenses or costs incurred in the performance or delivery of any items of work set forth in the Technical Requirements. The Member's obligation to pay the Vendor is contingent upon the Member's finding that the Vendor has performed in a competent and professional manner satisfactory to the Member and upon acceptance as may be provided for in accordance with the terms of this Agreement.
- d) A Change Order shall result in an equitable adjustment (increase, decrease or no change) to the compensation set forth herein, if applicable, representing the reasonable costs or the reasonable financial savings related to the Change Order, as determined by the Member, in accordance with Appendix D-Equipment, Components, Services Listing and Pricing Schedules, and approved by the Member' Authorized Officer in advance. To the extent not provided in Appendix D-Equipment,

Components, Services Listing and Pricing Schedules, the Vendor's reasonable costs related to the Change Order shall be limited to the cost of materials, including sales tax if payable by the Member, cost of delivery, and the cost of labor.

- e) All prices in Appendix D-Equipment, Components, Services Listing and Pricing Schedules are net of sales and use taxes and any other taxes and duties and shall be FOB Destination, Freight Prepaid and Allowed for Continental U.S. delivery and in accordance with Article 10.05, Packing, Boxing, and Delivery Charges.
- f) To the extent provided by Appendix A - E-ZPass Group Members Terms & Conditions, the Vendor shall be limited to a maximum amount payable under this Agreement.

ARTICLE 3.02 METHOD AND TIMES OF PAYMENT

To receive payment, the Vendor must submit a certified, itemized invoice to the Member documenting the Equipment delivered and Services rendered. Such invoice shall be in a form and contain such detail as are acceptable to the Member, as specified by the Member's Project Manager.

The Vendor shall send invoices and associated back-up documentation in duplicate as indicated in Appendix A - E-ZPass Group Members Terms & Conditions, or as otherwise indicated in a Notice to the Vendor. Compliance with the Member's invoice and documentation requirements shall be required as a condition for payment by the Member. Invoices shall be submitted no more frequently than monthly for any Equipment and Services provided to the Member in the preceding month, except as otherwise provided in Appendix A - E-ZPass Group Members Terms & Conditions, or in a Notice to the Vendor.

ARTICLE 3.03 TAXES

The Vendor shall be responsible for franchise fees and taxes levied against the Vendor.

To the extent that the Member is exempt from sales and use taxes on all personal property and services it purchases or uses as may be further provided in Appendix A - E-ZPass Group Members Terms & Conditions or in a Notice to the Vendor, the Vendor shall not include any charges representing such taxes on any invoices hereunder.

ARTICLE 3.04 TIMELINESS OF PAYMENT

Timeliness of payment and any interest to be paid to the Vendor for late payment shall be governed by the Member-specific prompt payment provisions, if any, included in Appendix A - E-ZPass Group Members Terms & Conditions or in a Notice to the Vendor. Unless provided otherwise in Appendix A - E-ZPass Group Members Terms & Conditions or in a Notice to the Vendor, payment terms shall be net 30 Days from the invoice date. ARTICLE 3.05 MONIES WITHHELD

a) The Member may withhold payment hereunder when the Member shall have reasonable grounds for believing that:

(i) The Vendor will be unable to provide the Equipment or perform the Services fully and satisfactorily within the time fixed for performance;

(ii) A claim exists or may exist against the Vendor or the Member arising out of the negligence of any Vendor Party or the Vendor's breach of any provision of this Agreement; or

(iii) If there is a discrepancy between the Vendor's invoices and the associated documentation, provided that the Member has notified the Vendor of such discrepancy.

b) Any amount so withheld may be retained by the Member for such period as it may deem advisable to protect the Member against any loss and may, after Notice to the Vendor, be applied in satisfaction of any such claim. The Member shall not pay interest on any amounts withheld under this Article 3.05.

c) This Article is intended solely for the benefit of the Member and, except as otherwise provided by law, no person shall have any right or claim against the Member by reason of the Member's failure or refusal to withhold monies; the Member's withholding of monies; the Member's application of any withheld monies; or the Member's failure to apply withheld monies. This Article is not intended to limit or in any way prejudice any other right or remedy of the Member.

ARTICLE 4 - INTELLECTUAL PROPERTY PROVISIONS

ARTICLE 4.01 PROPRIETARY RIGHTS

a) The Vendor hereby acknowledges and agrees that the Member retains all right, title and interest in and to all ideas, knowledge, information, data, materials, inventions, discoveries, works, knowhow, trade secrets, processes, procedures, techniques, designs, and other tangible or intangible subject matter, including any and all specifications and documentation comprising or relating to any of the foregoing, and all copies and other embodiments thereof, that are in the broadest sense disclosed, provided, or made available, directly or indirectly, by the Member to any of the Vendor Parties in connection with this Agreement (including any activities pursuant or relating to this Agreement), whether in written, oral or other tangible or intangible form, irrespective of whether or not incorporated in any of the Member Owned Inventions (as defined in subparagraph (b) of this Article 4.01), and including all patent, copyright, trade secret and other intellectual property and proprietary rights therein, (collectively, "Member Materials"). Such Member Materials shall include any and all modifications, improvements, adaptations, revisions, updates, releases, new versions, derivative works, and documentation (including any specifications, copies, notes, summaries or analyses) comprising, based on, derived from, or related to any Member Materials, including any of the foregoing that is conceived, discovered, invented, created, developed or made by any of the Vendor Parties. None of the Vendor Parties shall have any proprietary interest in such

Member Materials. None of the Vendor Parties may use, reproduce, publish or distribute any Member Materials for any purpose other than the performance of the Technical Requirements pursuant to this Agreement without the prior written consent of the Member.

b) The Member shall have all right, title and interest in and to any and all ideas, knowledge, information, data, materials, inventions, discoveries, works, know-how, trade secrets, processes, procedures, techniques, designs, and other tangible or intangible subject matter, all specifications and documentation comprising or relating to any of the foregoing, and all copies and other embodiments thereof, originated, conceived, discovered, invented, created, developed or made, and any and all patent, copyright, trade secret or other intellectual property or proprietary rights thereby or otherwise acquired, by or on behalf of any of the Vendor Parties in connection with the performance of this Agreement, whether in written, oral or other tangible or intangible form (collectively, "Member Owned Inventions"). Such Member Owned Inventions shall include any modifications, improvements, adaptations, revisions, updates, releases, new versions, derivative works, and documentation (including any specifications, copies, notes, summaries or analyses) comprising, based on, derived from, or related to any Member Owned Inventions. Accordingly, none of the Vendor Parties shall have any proprietary interest in such Member Owned Inventions. Member Owned Inventions may not be utilized, reproduced, published or distributed by or on behalf of any of the Vendor Parties for any purpose other than the performance of the Technical Requirements pursuant to this Agreement without the prior written consent of the Member.

c) Submission or distribution by the Vendor Parties of Member Materials or Member Owned Inventions solely (i) to meet official regulatory requirements, or (ii) for purposes of the performance of the Technical Requirements, shall not be construed as publication in derogation of the Member's copyrights or other proprietary rights in such Member Materials or Member Owned Inventions.

d) In furtherance and not limitation of the Member's rights pursuant to subparagraphs (a) and (b) above, the Vendor shall, and hereby does, irrevocably assign, and shall, within ten (10) days of the Agreement Date, or thereafter contemporaneously with their employment or engagement by the Vendor, cause each of the other Vendor Parties to irrevocably assign, to the Member and its assigns, Vendor's and each of such other Vendor Parties' entire right, title and interest in and to the Member Materials (to the extent they may have any) and the Member Owned Inventions then in existence or thereafter generated, including all patent, copyright and other intellectual property rights in respect thereof, together with the exclusive rights to petition, sue and otherwise seek and recover damages, profits and any other remedy (monetary, injunctive, declaratory or other), for any past, present or future infringement, conversion or misappropriation of, or any other injury, offense, violation, breach of duty or wrong with respect to, the Member Materials (to the extent they may have any) or the Member Owned Inventions, or any right, title or interest with respect thereto.

e) The Member shall, in addition to its rights, titles and interests pursuant to subparagraphs (a), (b) and (d) of this Article 4.01 and its license rights pursuant to Article 4.02, Licenses, have good and valid title to and unrestricted ownership of, and shall enjoy all rights of title and ownership, whether inherent,

implied or other, that are appurtenant to, any articles or items of Equipment, documentation, materials or other tangible matter purchased by or provided to the Member pursuant to this Agreement, whether directly or indirectly from any of the Vendor Parties, without requirement of any payment by the Member other than as specifically provided herein. For clarity, and without limitation of any of the Member's rights, titles or interests at law or hereunder (including, without limitation, the Member's intellectual property rights), the rights of title and ownership described in this Article 4.01(e) refer to such rights as pertain to or arise from the transfer to the Member, or the Member's title in or ownership, of the tangible articles or items themselves as distinguished from the intellectual property rights therein.

f) The Vendor shall, and shall cause the other Vendor Parties to, promptly and fully provide Notice to the Member of any existing or potential claims or disputes of which it or any of them has knowledge that relate to any Member Materials or Member Owned Inventions, or other intellectual property, including with respect to any infringement, misappropriation or other violation of any rights in respect of intellectual property comprising or relating to any such Member Materials, Member Owned Inventions or other intellectual property, or that is generated, used, developed, provided, licensed or acquired (by assignment, license or otherwise) in connection with this Agreement.

g) In furtherance and not limitation of the assignments granted pursuant to subparagraph (d) of this Article 4.01, the Vendor shall, and shall cause each of the other Vendor Parties to, provide to the Member any and all assistance required to record, perfect, implement, protect or enforce the rights, titles and interests of the Member pursuant to this Agreement, including, but not limited to, the prompt execution and delivery, upon Member's request, of all assignments, instruments and other documents, and undertaking of all such acts, as may be required by the Member to evidence, record, perfect, implement, protect, or enforce the Member's intellectual property or proprietary rights in the Member Materials or the Member Owned Inventions. Such assignments, instruments and other documents shall be in such form as shall be reasonably requested by the Member, and such assistance may include filing applications for patents and copyright registration in the name of the Member and making all other necessary or appropriate filings with governmental entities so as to establish the Member's exclusive ownership of, and secure and maintain maximum protection for, Member's right, title and interest in and to the Member Materials and the Member Owned Inventions.

ARTICLE 4.02 LICENSES

Note to Prospective Proposers: Proposals are to be submitted -with a proposed License Agreement which must meet the stated minimum requirements of this Article 4.02 or provide more favorable terms to the E-ZPass Group members than the stated minimum requirements. The proposed License Agreement shall be submitted as part of the Proposer's response to Section 2.8 of Part IV to be evaluated as indicated in Sections 1.11 and 2.8 of this RFP.

a) The Vendor shall grant to the Member an unlimited, fully-paid-up, royalty-free, perpetual, universal, irrevocable, non-exclusive license to use, maintain, disclose, duplicate, modify, adapt, improve, and use all resulting versions, modifications, adaptations and improvements of, and/or permit any other person or entity providing services to the Member to do any of the foregoing with respect to, any and all

Equipment to operate the Equipment, including any associated systems, processes, methods, applications, technical data specifications and other documentation necessary or useful for such operations. The license shall include the right to make use ~~and have made copies, reproductions, modifications, adaptations, improvements and derivative works~~ of any and all Software and Hardware and documentation, ~~and to use any and all such copies, reproductions, modifications, adaptations, improvements or derivative works~~ to operate the Equipment.

b) The license shall encompass use by the Member of the Equipment and all other elements of the Equipment, in whole or in part, including use of any and all individual components thereof, that have directly or indirectly been purchased or obtained by the Member from the Vendor, in each case alone, or in configuration, combination or conjunction with, or as part of:

(i) the Equipment, in whole or in part, or any other systems, processes or methods, in whole or in part; or

(ii) any software, equipment, devices, processes, methods, technologies, applications, systems or system components, in whole or in part, of whatever make, manufacture or model, that are not directly or indirectly purchased or obtained by the Member from the Vendor, subject to Article 7.10, Interface with Non-Vendor Equipment.

c) The license provided hereunder shall cover the full definition of Software, including programs directly owned and/or developed by the Vendor, programs owned and/or developed by any subcontractors, and programs of any third parties which the Vendor integrates, bundles or provides as part of the Equipment. The Vendor shall secure all required licenses from any third-party providers of Software, and ensure that such licenses are transferable to and assignable by the Member, without additional compensation. The Vendor shall maintain copies of the license agreements it obtains from such third-party providers of Software. The Vendor shall also maintain the computer programs, disks and documentation for all Software it obtains from third parties.

d) The license to use Software shall be in both source and object code form with respect to application system software and in object code form only with respect to operating system software.

e) The Vendor shall grant to the Member an unlimited, fully-paid-up, royalty free, perpetual, universal, irrevocable license to use all commands and protocols originated, conceived, discovered, invented, created; developed or made by any of the Vendor Parties that are useful for any present or future Equipment used by the Member, including the right to provide the commands and protocols to third party Contractors as needed for those future Equipment to function. The foregoing license shall be exclusive to the E-ZPass Group Members with respect to all such commands and protocols as are originated, conceived, discovered, invented, created, developed or made by any of the Vendor Parties specifically for, or at the request or direction of, the Member or any of the other E-ZPass Group Members, and shall be otherwise nonexclusive.

f) The license provided hereunder shall encompass any and all documents and materials comprising or containing information relating to any of the Equipment or any component, aspect or feature thereof or of the Equipment, whether with respect to design, structure, content, expression, composition, performance, function, operation, use or otherwise, and including, to the extent the same may exist: specifications; technical data; Member's manuals; user's manuals; training materials; guides; commentaries; listings; design documents; flow charts; data flow diagrams; control files and scripts used to compile, link load or make applications or other system features or components; test scripts, test plans and test data; and other documents or materials that explain the performance, function, operation or use of individual Software or the interface or interaction of Software within the Equipment>

g) The Vendor shall execute and provide the Member with the foregoing licenses upon execution of this Agreement, pursuant to the terms of the license agreement annexed hereto as Appendix B-1 - License Agreement.

h) For clarity, the term "irrevocable", when referring to the rights and licenses granted pursuant this Article 4.02, Licenses shall include the continuation of the right to exercise all such rights and licenses irrespective of any expiration or termination of this Agreement, or any breach or default with respect to the terms or conditions hereof, and the term "perpetual", when referring to any such license, shall mean a license for a term comprised of the full duration of such period, if any, during which the subject matter of the license is claimed or otherwise covered by any colorable patent, trade secret, copyright or other right that conceivably could, but for the license, be infringed, misappropriated or otherwise violated by any of the activities authorized by the license or fairly implied thereby.

i) All rights and licenses granted by the Vendor to the Member under or pursuant to the license agreement are, and shall otherwise be deemed to be, licenses for rights to "intellectual property" for purposes of Section 365(n) of the United States Bankruptcy Code (the "Code"). The parties hereto agree that the Member, as a licensee of such rights under the license agreement, shall retain and may fully exercise all of its rights and elections under the Code. The parties hereto further agree that, in the event of the commencement of bankruptcy proceedings by or against the Vendor under the Code, the Member shall be entitled to retain all of its rights under the license agreement, subject to the Member's compliance with the terms of the license agreement. The license agreement shall contain an express provision confirming the foregoing.

ARTICLE 4.03 SCOPE OF LICENSES

a) All rights and licenses granted to the Member under this Agreement shall be exercisable by the Member and each of the persons and entities as the Member may permit to exercise its rights or licenses hereunder, and their respective successors and assigns, and, for the avoidance of doubt, shall include without requirement of any payment or provision of any consideration other than or in addition to that which is expressly specified by this Agreement, the right of the Member and each other person or entity referred to in this subparagraph:

- (i) to utilize the Equipment (including all Equipment or related documentation), in whole or in part, in connection with Services provided by or to the Member or such other persons or entities, including for purposes of technical support, maintenance or repair;
 - (ii) to make multiple copies of the Software and related documentation for purposes of the exercise of the Member's rights and licenses hereunder;
 - (iii) to use the Software and related documentation on or in connection with multiple processors, components obtained by or on behalf of the Member from the Vendor or from third parties, and systems (Equipment) utilized by the Member or any person or entity providing Services to or on behalf of the Member;
 - (iv) to maintain and modify the Software, and to use the resulting versions and modifications thereof;
 - (v) to sell or distribute Transponders or any other user technology, device or method permitting public access to and use of the user interface of the Equipment, to any person or entity; and
 - (vi) to exercise any and all such rights and licenses under this Agreement through the Services of its employees, agents, independent Contractors or subcontractors, or such other persons or entities as it may employ or engage in its own discretion, and to disclose the Software and related documentation, in whole or in part, to such persons or entities for such purposes.
- b) For the avoidance of doubt, nothing in this Agreement shall restrict or preclude the Member from providing to any other person or entity, or any such other person or entity from using, any of the Equipment or other materials provided to the Member hereunder by the Vendor, in connection with the provision of any products or Services to or on behalf of the Member, or to any person or entity providing Services to or on behalf of the Member, in connection with the Equipment.

ARTICLE 4.04 INTELLECTUAL PROPERTY REPRESENTATIONS

The Vendor hereby represents warrants and covenants that:

- a) Other than with respect to the Member Materials and Member Owned Inventions (all right, title and interest in which shall vest in Member), and subject to Member's rights and licenses pursuant to Article 4.01, Proprietary Rights, Article 4.02, Licenses, and Article 4.03, Scope of Licenses, the Vendor is and will be the sole owner of, or otherwise control, all intellectual property rights in and to the Equipment, and all inventions, technologies, works and other proprietary subject matter employed in providing Services, pursuant to this Agreement, including all patent, copyright, trade secret and other intellectual property rights with respect to, without limitation, all Software, other Equipment, related documentation, analyses, firmware, tools, articles, appliances, structures, materials, devices, applications, methods, ways, processes, systems and the like comprised thereby.

- b) Except for the sale or public disclosure or distribution of the Equipment which has been sold, disclosed or distributed prior to the date of this Agreement, no elements of the Equipment provided, or of any inventions, technologies, works or other proprietary subject matter employed to provide the Services, pursuant to this Agreement have been or will be disclosed, distributed or published under circumstances that would cause a loss of any intellectual property rights therein.
- c) The Vendor has and will have the full and sufficient right, power and authority:
- (i) to assign and grant all rights and licenses (including all rights to authorize the grant of permissions and authorizations under such licenses) herein assigned or granted by the Vendor to the Member in respect of the Equipment, including all Equipment necessary to operate the Equipment and any associated systems, processes, methods, applications, technical data, specifications and other documentation employed in connection with such operations, and all inventions, technologies, works and other proprietary subject matter employed to provide Services pursuant to this Agreement, including any of the foregoing that existed prior to the date of this Agreement; and
 - (ii) to provide to the Member all Equipment and associated systems, processes, methods, applications, technical data, specifications and other documentation needed to operate the Equipment in accordance with the Technical Requirements and warranties set forth in this Agreement, and any other materials provided by or on behalf of the Vendor hereunder, each of which is and shall be free and clear of all encumbrances, mortgages, deeds of trust, pledges, security interests, options, rights of first refusal, licenses, sublicenses, agreements, grants, assignments, transfers, set overs, conveyances, leases, adverse rights, title, interests or claims, imperfections or defects in title, liens, assessments, restrictive covenants, encroachments, burdens or charges, or any liability, debt, duty or obligation, or any third-party rights, claims or interests of any kind.
- d) None of the Vendor Parties has received any communication respecting any claim, investigation, suit, action or proceeding pending or threatened against any of it, or any of its affiliates, customers, licensees, contractors, subcontractors or suppliers, which (i) involves any allegation of infringement, misappropriation, dilution, unauthorized use or violation by any of them of any patent, copyright, trade secret or other intellectual property right in relation to the Equipment, in whole or in part, any Equipment used to operate the Equipment, or any associated systems or components of the Vendor, or the use of any of the foregoing, or (ii) challenges the ownership, use, protectability, registrability, validity or enforceability of any patent, copyright, trade secret or other intellectual property right of the Vendor or any of its affiliates, contractors, subcontractors or suppliers in relation to any Equipment used to operate the Equipment, or any associated systems or components of the Vendor. The Vendor further represents that there is no such claim, investigation, suit, action or proceeding pending, threatened or asserted, and that there is no valid basis for any such claim, investigation, suit, action or proceeding. In the event a Vendor Party is unable to make this representation, the Vendor Party shall disclose and provide an explanation of all claims, investigations, suit, etc., that meet the criteria above.

- e) The Member shall quietly and peacefully possess and enjoy the use of the Equipment in accordance with the provisions of this Agreement. In furtherance and not limitation of the foregoing, no possession of, or exercise of any other rights or licenses with respect to, any Equipment or other materials provided hereunder will be adversely affected, interrupted or otherwise disturbed by any of the Vendor Parties, or any person or entity asserting a claim under or through any of the Vendor Parties.
- f) No exercise, in accordance with the terms and conditions of this Agreement, of any of the rights or licenses hereunder with respect to the Equipment or other subject matter provided pursuant hereto will constitute or result in any infringement, misappropriation, dilution, unauthorized use or violation of any intellectual property or proprietary rights of any person or entity.
- g) No claims have been made against any third party by, under or through any of the Vendor Parties, alleging the infringement, misappropriation, dilution, unauthorized use, or violation of any intellectual property rights in respect of the Equipment, or any associated systems or components of the Vendor, in whole or in part; to the knowledge of the Vendor, no third party is infringing, misappropriating, diluting, misusing, or violating any of such intellectual property rights.
- h) All Software provided by or on behalf of the Vendor shall at all times be:
 - (i) written in a compiled higher level language that is commercially available and for which software tools are available;
 - (ii) capable of being copied, modified, maintained and repaired by the Vendor Parties, and by the Member or any person or entity providing Services to or on behalf of the Member to the extent permitted by this Agreement; and
 - (iii) free of any instructions, devices, codes, methods or techniques:
 - (A) that are designed to or can threaten, infect, erase, assault, vandalize, defraud, disrupt, damage, disable, alter, inhibit or shut down the Equipment, or any Software, other Equipment, system, operating environment, or other component, aspect or feature of the Equipment (including any other software, equipment, data or libraries), or otherwise prevent the Member or any person or entity providing Services to or on behalf of the Member from utilizing the same, in whole or in part, or cause the same to be inoperable or incapable of processing accurately, in accordance with the Technical Requirements and warranties set forth in this Agreement, (hereinafter "Virus");
 - (B) that are designed or intended to prevent or limit use by the Member, or any person or entity providing Services to or on behalf of the Member, of the Equipment, or any Software, other Equipment, system, operating environment, Equipment (including any other software, equipment, data or libraries), or to cause the same to cease functioning, (hereinafter "Disabling Device"); or

(C) that are designed or intended to allow access to any of the computing systems of the Member or any person or entity providing Services to or on behalf of the Member without their knowledge, or contrary to their system connectivity policies or procedures or any other documents describing any of their system security policies and procedures that are included in Appendix A - E-ZPass Group Members Terms & Conditions or otherwise may be provided to any of the Vendor Parties (hereinafter, "Trap Doors").

i) The Vendor shall at all times maintain the following elements of system security:

(i) All connectivity by the Vendor Parties to the computing systems or networks of the Member or any person or entity providing Services to or on behalf of the Member, and all attempts at establishing such connectivity, shall only occur through the security gateways and firewalls of the Member or such person or entity, and shall be in compliance with all system security policies and procedures that are included in Appendix A - E-ZPass Group Members Terms & Conditions or otherwise may be provided to any of the Vendor Parties;

(ii) The Vendor Parties shall not access and shall not permit unauthorized persons to access, the computing systems or networks of the Member or any person or entity providing Services to or on behalf of the Member without their express prior written authorization, and any such actual or attempted access shall be in compliance with the terms and conditions of such authorization;

(iii) The Vendor Parties shall use the latest available, most comprehensive Virus detection or scanning program as mutually agreed by the Vendor and the Member prior to any attempt to access any of the computing systems or networks of the Member or any person or entity providing Services to or on behalf of the Member and, upon detecting a Virus, shall immediately cease all attempts to access such systems or networks and shall not resume such attempts until such Virus has been eliminated;

(iv) The Vendor shall notify the Member immediately (to be followed by Notice) if the Vendor suspects, reasonably believes, or becomes aware of the existence of, any Virus, Disabling Device or Trap Door in the Equipment, any Software, or any component, aspect or feature of any of the foregoing;

(v) The Vendor shall also notify the Member promptly (to be followed by Notice) if it identifies any elements of the Equipment or any Software that would make the Equipment or any Software, or any component, aspect or feature of any of the foregoing, susceptible to known Viruses or to Viruses the Vendor Parties become aware of, and

(vi) The Vendor shall appoint one Vendor employee to respond to the Member's inquiries regarding computer security.

j) All documents and materials comprising or containing information relating to any of the Equipment or any components, aspect or feature thereof or of the Equipment provided hereunder shall in all cases: (i) fully describe in all material respects the Equipment, including all Equipment; (ii) be fully

applicable to the operation and use of the Software with the other Equipment; and (iii) identify and reflect any particular features of the Equipment that may affect the normal use or operation of the Equipment. The parties expressly understand and agree that nothing in this Article 4.04 is intended or shall be construed to void, limit, qualify or otherwise derogate from any of Vendor's other representations, warranties or other obligations hereunder.

k) Except as expressly set forth in Appendix C-Technical Requirements, none of the Software includes or will include any open source, shareware, freeware code or other freely available software. None of such Software or files listed in the Vendor's Appendix C Technical Requirements, as open source, shareware, freeware code or other freely available software has been or will be modified by or on behalf of the Vendor or its Subcontractors or Suppliers, or incorporated in whole or in part into the code of any of the Software. To the extent that any of such Software or files listed in Appendix C-Technical Requirements are currently or have been redistributed by the Vendor or any such other person or entity in connection with any Software, they are and have been redistributed only as independent files that are linked to, rather than incorporated in the code of, the Software.

ARTICLE 5 - INSURANCE AND FINANCIAL ASSURANCE REQUIREMENTS

ARTICLE 5.01 GENERAL INSURANCE REQUIREMENTS

During the term of the Agreement, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Agreement. As a minimum, the Vendor shall provide and maintain the coverage and limits, as set forth in the Insurance Requirements for the E-ZPass Group Members.

ARTICLE 5.02 FINANCIAL ASSURANCE

The Vendor shall comply with all Member specific financial requirements as set forth in Appendix A - E-ZPass Group Members Terms & Conditions. The Member shall be responsible for the cost of any such financial requirement, as set forth in Appendix D, Equipment, Components, Services Listing and Pricing Schedules.

ARTICLE 6 - CONFIDENTIALITY, ETHICS AND REPRESENTATIONS

ARTICLE 6.01 CONFIDENTIALITY

a) For purposes of this Article 6.01:

(i) Confidential Information includes any and all information and materials provided by the Member to the Vendor Parties or otherwise received by the Vendor Parties directly or indirectly from the Member in

connection with the Technical Requirements performed under this Agreement, or generated in connection with the Equipment and Services, Technical Requirements or this Agreement, with the following exceptions:

- A) information and materials which, at the time of the disclosure to the Vendor, or at the time of the creation of such information or materials, as the case may be, are already in the public domain or at any time thereafter become publicly known through no wrongful act or omission of any of the Vendor Parties;
- B) information and materials which, at the time of the disclosure to the Vendor, or at the time of the creation of such information or materials, as the case may be, are already known by the Vendor free of any confidentiality obligation;
- C) information and materials which are information or materials that the Member has approved in writing for disclosure;
- D) information and materials which, at the time of the disclosure to the Vendor, or at the time of the creation of such information or materials, as the case may be, are developed by or on behalf of the Vendor independent of any information or materials furnished directly or indirectly by the Member or otherwise received by the Vendor Party under or in connection with this Agreement; or
- E) information and materials which are received from a third party by the Vendor whose disclosure does not violate any confidentiality obligation.

(ii) Anything in this Article 6.01 to the contrary notwithstanding, all information and materials constituting or underlying Member Materials or Member Owned Inventions, as such terms are defined in Article 4.01, Proprietary Rights, shall be deemed to be Confidential Information.

b) The Vendor shall safeguard, and shall cause each of the other Vendor Parties to safeguard, the confidentiality of Confidential Information with at least the same level of care and security, using all reasonable security measures, devices and procedures, that it uses to protect its own trade secrets and confidential information, provided that the Vendor shall comply and shall cause each of the other Vendor Parties to comply, in all respects with the requirements of subparagraph (j) of this Article 6.01. In this regard, reasonable security measures, devices and procedures must include standard techniques for ensuring data security, such as secure passwords and encryption.

c) The Vendor may use Confidential Information solely for the purposes of performing the Technical Requirements for the Member pursuant to this Agreement. Subject to the limited exception set forth in subparagraph (d), below, the Vendor shall not make copies of any Confidential Information or sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the Member or if the Confidential Information is not owned by the Member, without the prior written consent of the owner thereof. (The Vendor acknowledges that a Participating Member is a potential owner thereof.)

d) The Vendor may share Confidential Information with third parties that agree in writing to the confidentiality provisions of this Agreement and are necessary to the Vendor's performance of the Technical Requirements for the Member pursuant to this Agreement; however, the Vendor shall share only that Confidential Information that is necessary to the third party's development of its contribution to the Vendor's Technical Requirements for the Member pursuant to this Agreement. In the event a third party with whom the Vendor is sharing Confidential Information is not a subcontractor, the Vendor shall require any such third party to sign a nondisclosure agreement designating the Member as a third party beneficiary thereunder. The Vendor agrees to enforce these nondisclosure agreements when necessary to protect the confidentiality of Confidential Information.

e) Disclosure of Confidential Information by the Member to the Vendor shall not convey to the Vendor any right or interest in such Confidential Information; the Member shall retain all right and title to such Confidential Information at all times.

f) In the event any of the Vendor Parties is requested or required by any court, or legislative or administrative body, (by oral questions, interrogatories, request for information or documents, subpoena, civil investigations, demand or similar process or in any litigation) to disclose any of the Confidential Information, the Vendor shall promptly notify (and thereafter provide Notice to) the Member of the attempt to compel the disclosure of such Confidential Information in order to afford the Member an opportunity to seek an appropriate protective order or other appropriate remedy at the Member's sole cost and expense and/or waive compliance with the provisions of this Agreement.

In the event that such protective order or other remedy is not obtained by the time the disclosure is compelled, or the Member grants a waiver hereunder, the Vendor Party(ies) requested or required to provide such disclosure may furnish that portion of the Confidential Information which it is legally compelled to disclose without the Vendor being deemed to be in violation of this Article 6.01.

g) The Vendor Parties may divulge and use Confidential Information only as expressly permitted by this Article 6.01, and the Vendor shall advise, and ensure that each of the other Vendor Parties shall advise, each person to whom or which it may directly or indirectly expose to any Confidential Information of such person's obligation to keep such Confidential Information confidential, and shall promptly advise, and cause the other Vendor Parties to promptly advise, the Member in writing if any of the Vendor Parties shall learn of any unauthorized use or disclosure of Confidential Information. The Vendor shall provide, and cause other Vendor Parties to provide, its full cooperation and assistance to the Member as necessary to ensure the confidentiality of Confidential Information.

h) Unless the Member shall otherwise request in writing, upon the completion of the Technical Requirements to be performed hereunder, the Vendor shall immediately return, or cause to be returned, to the Member all Confidential Information existing in tangible form, and all copies, derivatives, adaptations and other embodiments of such Confidential Information, within the possession or control of any of the Vendor Parties, and no such copies or other tangible embodiments of such Confidential Information or any derivatives or adaptations thereof shall be retained by any of the Vendor Parties without the prior

written consent of the Member. The aboverequired return of Confidential Information shall be accompanied by a certificate evidencing compliance with this subparagraph signed by an officer of each of the Vendor Parties to which Confidential Information has been disclosed, provided or otherwise made available.

- i) It is understood and agreed that in the event of a breach of this Article 6.01, damages may not be an adequate remedy and the Member shall be entitled to injunctive relief to restrain any such breach or threatened breach in addition to any other remedies provided in this Agreement or available under applicable law.
- j) The Vendor shall comply and shall cause each of the other Vendor Parties to comply, with privacy and security requirements identified in the Technical Requirements; with applicable laws, statutes, and regulations of the jurisdiction in which the Member is located governing protection of data privacy, privacy, and personal information; and with any Member specific policies included in Appendix A - E-ZPass Group Members Terms & Conditions or otherwise provided by Notice to the Vendor.
- k) To the extent that the Member is a governmental entity, or operates facilities under an agreement with a governmental entity, the Member may be subject to open or public records laws, rules and regulations or may have adopted policies or guidelines incorporating open or public records principles. If so, the Vendor further acknowledges the following:
 - i) This Agreement is a public Agreement. As such, the Member may be required by open or public records laws, rules or regulations, or by Member policies or guidelines incorporating open or public records principles, to make such Agreement and all information and materials received from any of the Vendor Parties available for public inspection on demand, unless such Agreement, materials and information are specifically exempted from public disclosure by the applicable open or public records laws, rules and regulations or Member policies or guidelines.
 - ii) Accordingly, the Member shall have no liability whatsoever to any of the Vendor Parties by reason of disclosure, of any information or materials provided to it by any of the Vendor Parties, pursuant to the applicable open or public records laws, rules and regulations or Member policies or guidelines incorporating open or public record principles.
 - iii) If the Vendor desires to restrict public dissemination of any materials or information provided to the Member hereunder or otherwise in connection with this Agreement on the grounds that the Vendor reasonably considers them to contain proprietary information or trade secrets that are exempted from public disclosure, the Vendor shall designate each page of all such materials with a stamp, watermark, or other marking indicating that the Vendor considers the material contained on that page to be proprietary information or trade secrets and that the material should not be subject to public disclosure.

iv) The Member reserves the right to make its own, independent determination as to whether material or information so marked is proprietary information or trade secrets and to give proprietary treatment only to that material or information which it has determined to be proprietary.

v) If any person, entity, or public authority brings a claim or action against the Member seeking to compel the disclosure of any material or information, that the Vendor has requested be exempt from public disclosure because it is proprietary or contains trade secrets, upon Notice from the Member the Vendor shall indemnify the Member upon demand for any and all defense costs, fines, penalties, or other costs or expenses of any nature that the Member may incur in the defense of any such claim or action.

ARTICLE 6.02 PROHIBITION ON GIFTS

a) The Vendor represents and warrants that no payment, gift or thing of value, including but not limited to money, stocks, offers of employment for an individual or his or her immediate family member, or consulting or professional services, has been offered, made, given or promised by or on behalf of any of the Vendor Parties, to any official, director, officer, or employee of the Member or any immediate family member of any official, director, officer, or employee of the Member. The Vendor acknowledges that the Member has relied upon this representation.

b) In addition to the foregoing, the Vendor warrants that no gratuities, payments, offers to pay anything, money, or benefit of any nature will be offered, made, given or promised, to any official, director, officer, or employee or any immediate family member of any official, director, officer, or employee of the Member for any reason whatsoever, including but not limited to favorable treatment in connection with any Member procurement.

c) The Vendor represents it has complied with any additional Member requirements regarding prohibitions on gifts and the like, to the extent provided in Appendix A - E-ZPass Group Members Terms & Conditions and in any Notices to the Vendor.

d) For a breach or violation of such representations and warranties, upon a finding by the Member of default by the Vendor, the Member shall have the right to recover all monies paid hereunder and the Vendor shall not make claim for, or be entitled to recover, any sum or sums due hereunder. This remedy, if effected, shall not constitute the sole remedy afforded for falsity or breach, nor shall it constitute a waiver of the Member's right to claim damages or refuse payment or to take any other action provided for by law or pursuant to this Agreement.

ARTICLE 6.03 CONFLICT OF INTEREST

With respect to the Vendor Parties, the Vendor represents and warrants that neither the Vendor nor any Vendor Party nor any of their directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance of the Technical Requirements pursuant to this Agreement. The Vendor further

represents and warrants that no person having such interest shall be employed or engaged by the Vendor Parties to perform the Technical Requirements pursuant to this Agreement.

For a breach or violation of such representations and warranties, upon a finding by the Member of default by the Vendor, the Member shall have the right to recover all monies paid hereunder and the Vendor shall not make claim for, or be entitled to recover, any sum or sums due hereunder. This remedy, if effected, shall not constitute the sole remedy afforded for falsity or breach, nor shall it constitute a waiver of the Member's right to claim damages or reuse payment or to take any other action provided for by law or pursuant to this Agreement.

ARTICLE 6.04 ETHICS

During the term of this Agreement, none of the Vendor Parties shall engage any person who is or has been at any time in the employ of the Member or any other legal entity specifically designated by the Member in Appendix A - E-ZPass Group Members Terms & Conditions or otherwise provided by Notice to the Vendor without the written consent of the Member. The Member may request that the Vendor provide it with whatever information the Member deems appropriate about such person's engagement, work cooperatively with the Member to solicit advice from other legal entities, and, if deemed appropriate by the Member, instruct such person to seek the opinion of other entities. The Vendor agrees that any such employee assigned to perform work under this Agreement shall be assigned in accordance with provisions of any laws, rules, regulations, and guidelines identified by the Member as applicable.

The Vendor further expressly agrees to comply, and to cause the other Vendor Parties to comply, with the laws of the state(s) in which the Member's facilities are located and the policies of the Member regarding the ethical conduct of employees and the code of ethics, as may be included in Appendix A - E-ZPass Group Members Terms & Conditions, or in a Notice to the Vendor.

ARTICLE 6.05 VENDOR REPRESENTATIONS

The Vendor represents the following:

- a) The Vendor is a legal entity duly organized, existing and in good standing under the laws of those jurisdictions where the ownership of the Vendor's assets or the conduct of its business require the Vendor to be so qualified.
- b) The Vendor is qualified and registered to do business in the jurisdiction(s) in which the Member's facilities are located, and is in good standing as a foreign or domestic legal entity under the laws of the jurisdiction(s) in which the Member's facilities are located. The Vendor is subject to suit in the jurisdiction(s) in which the Member's facilities are located in North America and any such judgment and resulting ruling(s) will be honored by courts in the jurisdiction in which the legal entity of the Vendor is located.

c) There is no claim, investigation, suit, action, or proceeding pending, threatened, or asserted against or affecting the Vendor before or by any court, administrative agency or other governmental entity; and, there is no valid basis for any such claim, investigation, suit, action, or proceeding which will in any way impair the Vendor's ability to perform any of its obligations pursuant to this Agreement or which otherwise brings into question the enforceability or validity of the transactions contemplated by this Agreement.

d) The Vendor has and will have the full right, power and authority to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or required by this Agreement to be executed by the Vendor, and to fully perform its obligations hereunder and thereunder. The Vendor's execution, delivery, and performance pursuant to this Agreement has been duly authorized by all appropriate governing action on its part, and this Agreement and each other agreement, document, instrument, or certificate contemplated by this Agreement or required by this Agreement constitute the legal, valid, and binding obligations of the Vendor enforceable against it in accordance with the terms hereof and thereof.

e) Neither the Vendor's execution and delivery of this Agreement, nor the performance by the Vendor of the Technical Requirements hereunder, nor compliance by the Vendor with the provisions hereof, do:

(i) conflict with or violate any requirement of any applicable law, judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other governmental entity;

(ii) conflict with, violate or result in a breach of any of the provisions of the articles of incorporation, bylaws or any comparable charter or organizational documents of the Vendor; or

(iii) conflict with, violate, result in a breach or termination of, or constitute a default (or, with notice or the lapse of time, become a default), require any consent, or give rise to any "take back" right or right of termination or acceleration or right to increase or modify the obligations under, any agreement, instrument, contractual obligation, permit or court or administrative order to which the Vendor is a party or by which the Vendor or any of its properties or assets is bound.

f) The Vendor has not, in connection with the parties' entry into this Agreement, communicated or otherwise provided to the Member any statement of fact, or failed to communicate or otherwise provide to the Member any fact, the communication or omission of which is or was, as of the Agreement Date, known, or should, upon reasonable inquiry, have been known, by the Vendor to be false, misleading or deceptive in any material respect, including any information provided or communicated by the Vendor that is set forth in this Agreement (including any Appendix or Schedule hereto).

g) The Vendor covenants that the representations made throughout this Agreement, including without limitation the representations in subparagraphs (a) through (f) of this Article 6.05 are a continuing

obligation of the Vendor, and the Vendor shall provide Notice to the Member promptly of any changes in the status of such representations.

ARTICLE 6.06 FINANCIAL INFORMATION AND DISCLOSURE

The Vendor represents and covenants that the certified audited financial statements it has supplied to the Member fairly represent the financial condition of the Vendor's company and/or its parent company, if any, as of the date thereof, in accordance with Generally Accepted Accounting Principles (GAAP). The Vendor represents that there has been no material adverse change in its financial condition from the date of such financial statements to the Agreement Date. The Vendor further represents that it has a continuing obligation to provide Notice to the Member promptly of any material adverse change in its financial condition throughout the term of this Agreement, or if the Vendor's net worth declines more than ten percent (10%) from the value set forth in its most recent audited financial statements. The Vendor shall provide copies of all annual audited financial statements issued during the term of this Agreement.

ARTICLE 7 - RISK OF LOSS, LIABILITY, INDEMNIFICATION AND WARRANTIES

ARTICLE 7.01 RISK OF LOSS

- a) The Vendor shall bear risk of loss for all Equipment until delivered to and received at the Member's designated delivery location in accordance with Article 10.04, FOB Terms. Title and ownership of the Equipment (other than the Software), and the right to possess and use the Software pursuant to the rights and licenses granted to the Member under this Agreement, shall pass to the Member upon delivery, subject, in the case of such title and ownership, to the Equipment conforming to the requirements set forth in the Technical Requirements.
- b) In the case of Equipment to be returned to any Vendor Parties, the Vendor shall bear risk of loss for all Equipment from and after the time the Equipment is removed from the Member's designated location, whether removed by the Vendor or otherwise, and whether going back to the Vendor or elsewhere.
- c) The Vendor shall bear risk of loss of any Equipment that is not removed from the Member's designated location after the fifteenth day of the Member's issuance of a notice of rejection or warranty claim unless the Member denies the Vendor reasonable access thereto, in which case the Member shall retain the risk of loss as to such Equipment until reasonable access to the same is granted to the Vendor. The Vendor shall give the Member reasonable advance notice of the approximate time and date that it will remove any such Equipment from the Member's designated location; provided that, in no event shall the Vendor arrive to remove any Equipment at a time other than during the Member's Business Hours.
- d) The provisions of subparagraphs (b) and (c) of this Article 7.01 shall apply whether the removal is in accordance with the warranty provisions of this Agreement or otherwise.

ARTICLE 7.02 VENDOR'S LIABILITY AND INDEMNIFICATION

a) The Vendor shall be fully liable and responsible for any and all damage to persons or property due to negligent or otherwise tortious acts, errors, or omissions of any of the Vendor Parties in connection with the Technical Requirements or otherwise relating to this Agreement.

b) The Vendor shall indemnify, defend and hold harmless the Member Indemnitees (as such term is defined below), as their interests may appear from and against any and all claims, demands, suits, actions, damages, losses, liabilities, settlement amounts incurred, expenses and costs of every name, kind and description, including in each case reasonable fees of legal counsel and expert consultants and court costs (collectively, "Claims"), which occur directly or indirectly on account of or in connection with, or arise from: (i) the Vendor's breach of any of its obligations, representations, warranties, or covenants under this Agreement, or (ii) the negligent or otherwise deficient performance by any of the Vendor Parties of any obligation of the Vendor arising from this Agreement or, (iii) the quality or performance of Equipment or Services provided pursuant to this Agreement, or (iv) death, personal injury or property damage, whether real, personal or intangible property, directly or indirectly arising from the acts or omissions or willful misconduct of any of the Vendor Parties. The foregoing indemnification of Claims shall include the defense, settlement or satisfaction thereof and shall not be limited by the terms or limits of any insurance coverage required or obtained pursuant to this Agreement. However, the Vendor shall not be required to indemnify, hold harmless, or defend the Member Indemnitees for that portion of any claim, suit, action, damage or cost which arises due to the negligent act or omission of the Member Indemnitees.

For purposes of this Article 7.02 and Article 7.03, Patent and Copyright Indemnification, the term "Member Indemnitees" shall mean, individually and collectively, the Member; the state(s), province(s) or other applicable jurisdiction(s) in which the Member's facilities are located or on whose behalf the Member's facilities are operated as specified in Appendix A - E-ZPass Group Members Terms & Conditions; and all members, officials, directors, officers, employees, agents, Contractors, consultants and other persons employed or engaged by any of the foregoing or working at their direction or on their behalf, and any person or entity required by this Agreement to be named as an additional insured on any policy of insurance required to be supplied by the Vendor.

c) The Vendor shall provide Notice to the Member at such time as the Vendor becomes aware of any Claim which may give rise to an indemnification obligation under this Article, or at such time as the Vendor becomes aware of any facts that reasonably could be expected to result in such a Claim.

d) The Vendor's defense, indemnification and hold harmless obligations hereunder shall in no way be diminished, waived or discharged by the Member's recourse to any other remedy provided for hereunder, at law, in equity or otherwise.

e) In the event that any damage shall occur at or to any part of the Member's facilities on account of any Equipment or Services or other subject matter provided by any of the Vendor Parties (except for damage arising from interfaced combinations or configurations referred to in clauses (i) or (ii) of Article 7.10, Interface with Non-Vendor Equipment, if the damage would have been avoided but for such

interfaced combination or configuration) the Member shall have the right to cause such damage to be repaired and to charge the expense of such repairs to the Vendor. Such sums may be deducted, at the sole discretion of the Member, from any monies due or to become due to the Vendor hereunder or under any other agreement between the Vendor and the Member.

f) In carrying out the provisions of this Agreement, or in exercising any power or authority granted to the Member by the provisions of this Agreement, no member, official, director, officer, employee or agent of the Member shall be liable personally under or by reason of this Agreement.

g) The provisions of this Article shall survive the expiration, cancellation, or termination of this Agreement.

ARTICLE 7.03 PATENT AND COPYRIGHT INDEMNIFICATION

a) The Vendor shall be fully liable and responsible for any and all Claims (as defined in Article 7.02, Vendor's Liability and Indemnification) made or asserted against the Member Indemnitees (as defined in Article 7.02, Vendor's Liability and Indemnification) for any alleged or actual infringement, conversion or misappropriation of, or any other injury, offense, violation, breach of duty or wrong with respect to, any patent, copyright, trademark, service mark, trade secret or other third party intellectual property or proprietary rights (i) by the Equipment or any elements thereof, including any Equipment or related documentation, or by any other subject matter, whether tangible or intangible, patented, patentable or nonpatentable, or copyrighted, copyrightable or noncopyrightable, such as, without limitation, any analyses, firmware, tools, articles, appliances, structures, materials, devices, manufactures, apparatuses, compositions of matter, applications, methods, ways, processes (including processes of manufacture), types of construction, and the like, manufactured, sold, or supplied by any of the Vendor Parties, or (ii) in any way arising out of, relating to, by, in, or in connection with: (A) the course of performance or completion of the Services; (B) the use of the Equipment or any elements thereof, or any of the other subject matter referred to in clause (i) of this subparagraph, by the Member or any other persons or entities permitted to use the Equipment pursuant to this Agreement; or (C) the Member's or such other authorized persons' or entities' exercise of any of its direct or derivative rights, licenses or privileges under Article 4 Intellectual Property Provisions.

b) The Vendor shall indemnify, defend and hold harmless the Member Indemnitees, as their interests may appear, from any and all Claims regarding intellectual property and other proprietary rights as described in subparagraph (a) of this Article 7.03, including the defense, settlement or satisfaction thereof, and shall not be limited by the terms or limits of any insurance coverage required or obtained pursuant to this Agreement.

c) If any of the Member Indemnitees, including any person or entity providing Services to, or on behalf of, the Member, shall be enjoined from using any of the Equipment or other elements which form the subject matter of this Agreement, and as to which the Vendor is required to indemnify the Member Indemnitees against Claims regarding intellectual property or other proprietary rights under this Article

7.03, the Member may, at its option and without thereby limiting any other right it may have hereunder or at law or in equity, require the Vendor to supply, temporarily or permanently, alternative systems or system components not subject to such injunction and not infringing or otherwise violating any intellectual property or proprietary rights and, if the Vendor shall fail to do so, the Vendor shall, upon the request of Member, and at the Vendor's expense, remove all such infringing elements of the Equipment and refund, in full, the cost thereof to the Member and otherwise equitably adjust compensation and take such steps as may be necessary to ensure compliance by the Member Indemnitees with such injunction, to the satisfaction of the Member.

d) In the event that any, or the exercise of any rights, licenses or privileges pursuant to Article 4 Intellectual Property Provisions with respect to any Equipment or other elements comprised by or used to operate the Equipment, or any of the inventions, technologies, works, or other subject matter employed to provide Services pursuant to this Agreement, or any configuration, combination or portion thereof, shall, in the opinion of counsel to any of the E-ZPass Group Members, be believed to infringe or otherwise violate any intellectual property or proprietary rights, the Vendor shall have the obligation upon the Member's request and at the Member's option to:

(i) modify, or require that the applicable Vendor Party modify, the alleged infringing subject matter at its own expense, without impairing in any respect the functionality of the Equipment or performance of any of its Equipment or other components; or

(ii) procure for the Member, at the Vendor's expense, the rights, licenses and privileges provided under Article 4-Intellectual Property Provisions, with respect to the alleged infringing subject matter.

e) The Vendor shall be solely responsible for determining, and shall promptly provide Notice to the Member, whether any actual or prospective supplier, contractor or other Vendor Party is a party to any litigation involving patent or copyright infringement, service mark or trademark violation, or any other Claims regarding intellectual property or proprietary rights, or is or may be subject to any injunction which may prohibit it from providing, or the Member or any person or entity providing Services to or on behalf of the Member from exercising any of its rights or licenses pursuant to Article 4-Intellectual Property Provisions, with respect to, the Equipment. The Vendor shall enter into agreements with all Suppliers and subcontractors at its own risk. The Member may reject any aspect, feature or component of the Equipment and Services, or any configuration, combination or portion thereof, which it believes to be, or likely to be, the subject of any such litigation or injunction, or if, in the Member's judgment, use thereof would delay the Services, or be unlawful.

f) The Vendor's defense, indemnification and hold harmless obligations hereunder shall in no way be diminished, waived or discharged by the Member's recourse to any other remedy provided for hereunder, at law, in equity or otherwise.

g) The provisions of this Article shall survive the expiration, cancellation, or termination of this Agreement.

ARTICLE 7.04 EQUIPMENT WARRANTIES

- a) The Vendor shall be obligated to replace or provide depot repair at the Vendor's sole cost and expense for a period specified herein, for any unit of Equipment (with the exception of Transponders), or part or component thereof, which the Member deems defective or insufficient, or which the Member deems to have failed to comply with the Technical Requirements. For purposes of this provision, the Member's determination of the date of installation of any unit of Equipment shall be accepted by the Vendor.
- b) The Vendor is obligated to provide to the Member, at the Vendor's sole cost and expense, replacement of any defective interior or exterior Transponder returned to the Vendor at [the U.S. or North America address to be provided by Vendor in Appendix D, Equipment, Components, Services Listings and Pricing Schedules], All such replaced Transponders shall be returned to the Member at the Vendor's sole cost and expense. All such warranty work, including delivery to the Member's designated delivery location, shall be completed within seven (7) Business Days from the date the Vendor receives the defective Transponders, provided, however, that delivery shall not be made to the Member on a Business Day that is observed as a holiday by the Member, and if applicable, the seven (7) Business Day time period shall be extended until the next following Business Day which is not observed as a holiday by the Member. Replacement Transponders provided during the warranty period shall be delivered to the E-ZPass Group Member's designated delivery location in accordance with the requirements of Article 10.02, Orders. The Vendor shall provide replacement Transponders for any Interior Portable and Exterior Hard-Case Transponders not functioning for any reason for ten (10) years, Feedback Transponder and the Switchable Transponder not functioning for any reason for seven and a half (7.5) years; and Interior Sticker and Exterior Sticker Transponders not functioning for any reason for two and one-half (2.5) years. The time periods described above The years defined above for each transponder beginning: i) the date any such Transponder is installed on the exterior or in the interior of any vehicle, or ii) twelve (12) months from the date such Transponder is delivered to the Member's designated delivery location, whichever is earlier. The warranty period for the replacement Transponder shall be for the time remaining warranty periods defined above for the replaced defective Transponder. At a minimum, Transponders which have failed according to the Transponder Tester shall be deemed defective for purposes of this Article 7.04. For purposes of this Article 7.04 b), the Member's determination of the date of installation of any Transponder shall be accepted by the Vendor.
- c) All defective Equipment replaced by the Vendor will become the property of the Vendor.
- d) The Vendor shall bear all costs of return of Equipment under Warranty.
- e) The provisions of this Article shall survive the expiration, cancellation, or termination of this Agreement.

ARTICLE 7.05 SOFTWARE WARRANTIES

a) The Software needed to operate the Equipment shall include, but not be limited to, all licensed internal code and firmware. The Member's acceptance of the Software shall occur in accordance with the provisions for First Article Testing in Article 10.01, Tests. The Vendor warrants that, upon the Member's acceptance of and for the longer of the term of this Agreement or the applicable warranty period of related Equipment, the Software and each module or component and function thereof shall:

- (i) be free from defects in materials and workmanship under normal use;
- (ii) remain in good working order, be free from Viruses, disabling devices or any other technology or means which has the ability to interfere with the use of the Equipment by the Member or its designees, or permit access to the Member's computing systems without its knowledge or contrary to its system connectivity policies or procedures, and
- (iii) operate and function fully, properly and in conformity with the warranties in this Agreement.

b) The Vendor represents and warrants that upon the Member's acceptance of and for the longer of the term of this Agreement or the applicable warranty period of related Equipment, the Software will:

- (i) operate fully and correctly in the operating environment identified in the Technical Requirements, including by means of the full and correct performance of the Software, and all updates, enhancements, or new releases of the Software, on or in connection with the Equipment, any updates, enhancements, or new releases to such Equipment, and any other Software used by or in connection with any such Equipment;
- (ii) be fully compatible and interface completely and effectively with the Equipment, including each other Software program provided to Member hereunder, such that the Software and other Equipment combined will perform and continuously attain the standards identified in the Technical Requirements; and
- (iii) accurately direct the operation of the Equipment, all as required by the Technical Requirements, and the descriptions, specifications and documentation set forth therein and herein.

c) During the term of this Agreement and at no additional cost to the Member, the Vendor shall provide Services to maintain the Software provided hereunder in good working order, keeping it free from defects such that the Equipment shall perform in accordance with this Agreement, the technical requirements of the Technical Requirements, and the warranties set forth herein.

d) The Vendor shall provide technical support and shall remedy any failure, malfunction, defect or non-conformity in Software as follows: the Vendor shall respond to any request for Services due to failure, malfunction, defect or non-conformity by telephone response by a qualified and knowledgeable

representative within fifteen (15) minutes. In the event the problem is diagnosed as being software related, the Vendor shall assign knowledgeable personnel and render continuous efforts to remedy the failure, malfunction, defect or nonconformity as soon as practicable, but in any event not later than the deadline(s) in subparagraph (c) of Article 8.08, Liquidated Damages.

e) The Vendor shall provide the Member the most current release of all Software available on the date of delivery to maintain optimum performance pursuant to this Agreement.

f) The Vendor shall promptly provide Notice to the Member and all other E-ZPass Group Members in writing of any defects or malfunctions in the Software provided hereunder regardless of the source of information. The Vendor shall promptly correct all defects or malfunctions in the Software or documentation discovered during the term of this Agreement and shall promptly provide the Member with corrected copies of same, without additional charge. If Software can only be corrected in conjunction with additional or revised hardware, the Vendor shall provide such hardware to Member and the cost of such hardware shall be borne solely by the Vendor.

g) When updates or enhancements to the Software made by or for the Vendor become available, the Vendor shall, at no additional cost to the Member, provide all Services, training and support required to install and implement such updates or enhancements and to convert and reformat any of the Member's data, if necessary, throughout the term of this Agreement. Enhancements shall be deemed to include all modifications to the Software which increase the speed, efficiency or ease of operation of the Software provided by the Vendor.

h) No updates or enhancements shall adversely affect the performance of the Equipment, in whole or in part, or result in any failure to meet any requirements of the Technical Requirements.

i) The Vendor shall ensure continued satisfactory performance by the current operating system of the Software in accordance with all provisions of this Article 7.05.

j) With regard to Software, the Vendor shall provide the following Services throughout the Agreement Term:

- (i) Release notes to the Member and all E-ZPass Group Members prior to making any Software changes or upgrades;
- (ii) Configuration management of all Software versions that are to be utilized;
- (iii) Routine monitoring of the Software to verify functionality, subject to Member's oversight and security requirements; and
- (iv) Software adjustments in order to fine tune the solution to better meet the performance requirements in the Technical Requirements.

k) The Vendor shall assist the Member in coordinating maintenance agreements for third party Software. The Vendor shall secure such maintenance agreements for the same duration and upon the same terms and conditions as the maintenance provisions between the Vendor and the Member.

l) In the event that, during the software warranty period described herein, the Software does not satisfy the conditions of performance set forth in the Technical Requirements, the Vendor is obligated to promptly repair or replace such Software at the Vendor's sole cost and expense or, if expressly agreed to in writing by the Member, provide different equipment or software, and perform Services required to attain the performance requirements set forth in the Technical Requirements.

m) In the event of any defect in the media upon which any tangible portions of the Software is provided, the Vendor shall provide the Member with a new copy of the Software.

n) Without releasing the Vendor from its obligations for warranty, support or maintenance of the Software, the Member shall have the right to use and maintain versions of the Software provided by the Vendor which are one or more levels behind the most current version of such Software and to refuse to install any updates or enhancements if, in the Member's discretion, installation of such updates or enhancements would interfere with its operations.

o) The provisions of this Article 7.05 shall survive the expiration, cancellation, or termination of this Agreement.

ARTICLE 7.06 DEFECTS

a) The Vendor agrees to remedy any Pervasive Defect as provided in this Article 7.06 during the term of this Agreement.

(i) The Vendor agrees that a "Pervasive Defect" shall be deemed to be present in affected types of Equipment upon the occurrence of any of the following: (1) the circumstances described in the Technical Requirements; or (2) a need for corrective action identified as part of the Vendor's ongoing quality assurance plan as described in Section 2.7.6; or (3) a need for corrective action identified in accordance with Article 2.09, Investigation of Deficient Equipment and Component Performance or Article 2.10, Maintenance of Records; Inspection, Review and Audit, in all cases without regard to whether any warranty is then also applicable to said Equipment.

(ii) The Member shall provide Notice to the Vendor of the potential existence of a Pervasive Defect and the nature thereof as soon as practical after testing or other information indicates to the Member that a Pervasive Defect may exist; provided, however, that any failure on the part of the Member to provide timely Notice shall not relieve the Vendor of any of its obligations under this Article 7.06.

(iii) Upon its receipt of such Notice from the Member or any other Participating Member, the Vendor shall immediately investigate the circumstances described in the Notice and shall obtain all other relevant

facts and circumstances, including without limitation, information received by the Vendor from other E-ZPass Group Members and from its own engineering, quality control and quality assurance operations as to the performance of the relevant Equipment.

(iv) The Vendor shall provide Notice to the Member and the E-ZPass Group Members with a preliminary report as to its findings with regard to the claimed Pervasive Defect (the Preliminary Defect Report, or PDR) within thirty (30) days of its receipt of Notice thereof. The PDR shall fully describe the nature of the investigation conducted by the Vendor through the date of the PDR, including a description of all sources consulted and the information obtained from each, and whether, on the basis of its investigation, the Vendor has confirmed that a Pervasive Defect exists. If the Vendor's investigation determines that a Pervasive Defect exists, the PDR shall also describe the nature and cause(s) thereof, so far as is known as of the date of the PDR, and the extent to which the Pervasive Defect is believed to affect all Equipment then manufactured and/or deployed. If the PDR determines that no Pervasive Defect exists, it shall fully describe all findings made with respect to the anomaly (anomalies) reported by the Member or other Participating Member and describe all measures the Vendor believes to be necessary in order to correct the same. If after the Vendor provides the PDR, the Vendor becomes aware of information which would cause the PDR to be inaccurate or incomplete, the Vendor shall promptly supplement the PDR by Notice to the Member and E-ZPass Group Members.

(v) The Member, subject to E-ZPass Group Approval, on the basis of the PDR and such other information as may be available to it, may: (A) Determine that a Pervasive Defect exists and require the Vendor to develop and submit a Remedial Plan in accordance with subparagraph (a)(vi), (B) Determine that no Pervasive Defect exists and take such other action as the Member shall deem necessary under this Agreement; or (C) Determine that more information is required and direct the Vendor to conduct such further investigation of the matter and submit a revised version of the PDR for consideration on such schedule as may be specified pursuant to such E-ZPass Group Approval. In making any of the foregoing determinations, the Member shall not be bound by the Vendor's findings respecting the presence or lack thereof, of a Pervasive Defect. If a dispute between the Member and the Vendor exists as to the determination by the Member of a Pervasive Defect, the procedure set forth in subparagraph (a)(xiii) shall be followed.

(vi) If a Pervasive Defect has been determined to exist in accordance with subparagraph (v), the Vendor shall provide a Remedial Plan addressing such Pervasive Defect to the Member with a copy to all E-ZPass Group Members as provided in Article 1.16, Notices. In its development of the Remedial Plan the Vendor shall meet with all E-ZPass Group Members affected by the Pervasive Defect so as to obtain and utilize their input in the development of the Remedial Plan. The Remedial Plan shall be subject to E-ZPass Group Approval. The Vendor shall present the Remedial Plan for E-ZPass Group Approval within 30 days of the Notice of a determination made pursuant to subparagraph (v) of this Article 7.06; provided, however, that if more information was required under subparagraph (a) (v) (C) of this Article 7.06 because the Vendor's submittal of the PDR was incomplete or inadequate, the period for

submission of the Remedial Plan shall be reduced to the extent specified in the E-ZPass Group Approval so as to compensate for any time lost as a result.

(vii) If the Member determines that any Pervasive Defect has created an exigent circumstance for such Member, notwithstanding the foregoing it may direct the Vendor to take such immediate steps as may be necessary in order to mitigate the effects of the Pervasive Defect, pending implementation of a Remedial Plan (including without limitation stopping shipment, or immediate recall and replacement of the Member's Equipment). Any such steps shall be taken by the Vendor at no cost to the Member or any of the E-ZPass Group Members.

(viii) The Remedial Plan shall at a minimum include all of the following: (A) Identification of all Equipment affected by the Pervasive Defect; (B) A plan for recall, repair, or replacement of all such affected Equipment; (C) The timetable on which the recall, repair or replacement of all affected Equipment shall be commenced and completed, with appropriate prioritization and milestones; (D) A description of all steps to be implemented by the Vendor and by E-ZPass Group Members pending recall, repair or replacement of all affected Equipment so as to mitigate the consequences of the Pervasive Defect in the interim. Any such remedy shall be at no cost to the Member or any of the E-ZPass Group Members.

(ix) In the absence of extraordinary circumstances, which shall be stated in detail in the Remedial Plan if same are claimed to exist, the timetable contained in the Remedial Plan for recall, repair or replacement of all affected Equipment shall not extend for more than ninety (90) days after E-ZPass Group Approval of the Remedial Plan. Extensions of time shall be in accordance with Article 2.14, Extension of Time.

(x) The Vendor shall provide Notice to all E-ZPass Group Members of any Notice received from a Participating Member identifying the potential existence of a Pervasive Defect, or any determination by the Vendor that a Pervasive Defect exists, or of any recall pursuant to this Article 7.06. The Vendor shall further provide periodic status reports to the Member and all E-ZPass Group Members not later than thirty (30) Days after issuance of the Notice of Pervasive Defect, and at no longer than thirty (30) Day intervals thereafter, regarding the Vendor's progress with respect to remedying such Pervasive Defect. The status reports shall describe the Vendor's progress with respect to all matters contained in the Remedial Plan, identify all constraints in achievement of all required objectives, and state whether the schedule and objectives of the Remedial Plan are likely to be met as required. If any constraint is likely to delay the performance of the Remedial Plan, the Vendor shall state all steps that it intends to take in order to mitigate the effects of the constraint.

(xi) Upon completion of the implementation of the Remedial Plan, the Vendor shall provide a Final Remedial Plan Report to the Member and all E-ZPass Group Members, as provided in Article 1.16, Notices, that follows the format of the periodic status reports. The Remedial Plan shall be subject to E-ZPass Group Approval of the Final Remedial Plan Report. The Vendor shall promptly implement any further steps required as a condition to such approval and upon completion shall submit a revised Final Remedial Plan Report for E-ZPass Group Approval.

(xii) The Vendor shall warrant all Equipment repaired or replaced by reason of the implementation of the Remedial Plan that extends to the later of twelve (12) months from the end of the original warranty period required by Article 7.04, Equipment Warranties, or twelve (12) months from the date of installation of the repaired or replacement Equipment, or such longer warranty period as provided in accordance with the Technical Requirements.

(xiii) In the event that the Vendor disputes a determination of Pervasive Defect made in accordance with subparagraph (a) (v) of this Article 7.06, the Vendor shall notify the Member of such dispute, including a description of the dispute and shall provide all documentation to the Member in support of the dispute. The Vendor shall then Agreement with a third-party, licensed engineer that has been mutually agreed to by the Member and the Vendor for the purposes of providing an analysis and opinion regarding whether a Pervasive Defect has occurred. The Vendor shall pay the full cost of the third-party engineer.

b) The Vendor shall have an independent, ongoing obligation (i) to compile information with respect to warranty Services and returns as to all Equipment with reference to the circumstances described in the Technical Requirements, and (ii) to provide Notice to the Member and all E-ZPass Group Members, as soon as practicable upon a determination by the Vendor that a Pervasive Defect as defined in this Article exists or may exist either by reason of Section 2.5.3 or a need for corrective action arising under Section 2.7.6 or in accordance with Article 2.09, Investigation of Deficient Equipment and Component Performance, or Article 2.10, Maintenance of Records; Inspection, Review and Audit. In all of these cases, the provisions of subparagraphs (a) (iv) through (xiii) of this Article 7.06 shall govern except that the Vendor shall submit the PDR within thirty (30) days of the Vendor's first Notice to the E-ZPass Group Members.

c) The obligations set forth in this Article 7.06 shall be in addition to any warranty obligations set forth in this Agreement and subject to the provisions of Article 8.04, Actual Damages.

d) The provisions of this Article shall survive the expiration, cancellation, or termination of this Agreement.

ARTICLE 7.07 THIRD PARTY WARRANTIES

In addition to the foregoing warranties, the Vendor shall assign to the Member, and the Member shall have the benefit of, any and all Subcontractors and Suppliers' warranties and representations with respect to the Equipment and Services provided hereunder. The Vendor's agreements with subcontractors, Suppliers and any other third parties shall require that such parties (a) consent to the assignment of such warranties and representations to the Member, (b) agree to the enforcement of such warranties and representations by the Member in its own name, and (c) furnish to the Member, the warranties set forth herein. At the Member's request, the Vendor shall provide supporting documentation which confirms that these warranties are enforceable in the Member's name.

ARTICLE 7.08 REGULATORY MATTERS

- a) The Equipment shall comply with all applicable federal, state and local regulatory requirements for the underlying Equipment and its operation. If during the term of this Agreement the regulatory requirements change or a regulatory standard is changed by any branch of government, the Vendor shall be responsible for any modifications to the Equipment or other required compliance to meet the new regulations or the new standard.
- b) For Vendor-supplied Transponders if the proposed Transponder mounting location is other than the preferred interior and exterior locations as specified in the Technical Requirements, the Vendor accepts all responsibility for complying with all applicable state laws and regulations of all the Department/Division of Motor Vehicles in all states in which the E-ZPass Group Members' facilities are located for such alternate mounting locations.
- c) The Vendor accepts the following obligations with respect to the applicable federal, state, and local regulations and applicable licensing and permit requirements for its Equipment:
- (i) Recognizing that the operation of the Vendor's Reader will require the Member to obtain necessary licenses and permits from the applicable regulatory agencies under the relevant statutes and regulations (including those agencies, statutes and regulations specified in accordance with Section 2.6.2.6 of the Technical Requirements), the Vendor shall perform a comprehensive review, at the Vendor's cost and expense, of all licenses and permits other parties hold for equipment that operates in close proximity to the locations set forth in Exhibit 3-1 and that has the potential of affecting the operation of Vendor's Reader. Such review shall be completed and a written report of the Vendor's findings submitted no later than sixty (60) Days after the Member's Notice to initiate such action. In the event engineering analyses are required for any of the locations ("Designated License Locations") set forth in Exhibit 3-1, the Vendor shall perform and complete such engineering analyses, at its own cost and expense, no later than one hundred and twenty (120) Days from the Member's Notice to Proceed.
- (ii) During the term of this Agreement, the Vendor shall prepare, file and prosecute on the Member's behalf, all documentation necessary to secure, maintain or renew all necessary licenses and permits from the applicable regulatory agencies to operate the Equipment for each Designated License Location where the Vendor's Equipment will be installed. At least six (6) months in advance of the date any Equipment is to be installed at its Designated License Location, the Vendor shall fulfill its obligation to secure all necessary licenses and permits to operate the Equipment. The Member shall be responsible for providing the funds for the Vendor to pay the applicable license, permit or filing fees. The Vendor shall be responsible for paying all other costs of securing, maintaining or renewing such licenses and permits. The Member shall have the option to specifically indicate when it will secure, maintain or renew a required license or permit on its own behalf and, in that event, the obligations of this subparagraph shall not apply to the Vendor for securing, maintaining or renewing such specific license or permit.

(iii) If a regulatory agency requests compliance or accedence by the Member with a regulation or a requirement for a license or permit relating to the Equipment, then the Vendor shall prepare, file and prosecute, on the Member's behalf, all documentation necessary for compliance or accedence with such request. The Vendor shall be responsible for paying all costs of compliance or accedence with such request, provided that if any fines have been levied in connection with such request and the basis for the imposition of such fines is due to the fault of the Vendor, the Equipment or the operation of the Equipment, then the Vendor shall be responsible for paying such fines; otherwise, the Member shall be responsible for paying such fines. For any such request, the Member shall have the option to comply or accede to such request on its own behalf and, in that event, the obligations of this subparagraph, other than the conditional responsibility to pay any fines, shall not apply to the Vendor.

(iv) For the five (5) year period beginning on the Transition Date, the Vendor shall replace or modify the Equipment, at the Vendor's cost and expense, in the event it suffers interference from sources legally permitted to operate and such interference results in the Reader not functioning in accordance with the requirements of the Technical Requirements. The Member shall cooperate with the Vendor in its performance of the obligations under this subparagraph.

ARTICLE 7.09 WARRANTY OF TITLE

The Vendor warrants and represents the Member shall acquire good, clear and exclusive title to all delivered (i) Equipment, (ii) tangible media comprising or containing non-embedded Software, and (iii) documentation relating to any Equipment, including documentation described in the Technical Requirements, all of which shall be free and clear of any liens, claims or encumbrances.

ARTICLE 7.10 INTERFACE WITH NON-VENDOR EQUIPMENT

The Member shall have the right at any time to connect, attach or interface to any equipment, software, technology, system or devices, which did not originate with or was not provided by the Vendor's Software or other Equipment or to interface with the Vendor's Equipment, any such third party technologies, including any equipment, software, systems or devices. Without limiting or otherwise derogating from the foregoing right, the Vendor's warranties provided in this Agreement shall continue to apply to the use of the Equipment in such interfaced combinations or configurations unless such connections, attachments or interfaces (i) do not substantially conform with the requirements, or (ii) significantly conflict with the restrictions, as the case may be, that the Vendor has disclosed in response to the Technical Requirements.

ARTICLE 7.11 SERVICES WARRANTY

The Vendor warrants that all Services shall be performed in a high-quality, professional manner by qualified and skilled personnel in compliance with the Member's requirements as set forth in the Technical Requirements. In the event the Member determines that any Services do not conform to the foregoing warranty, the Member shall be entitled to elect one of the following remedies: (i) reperformance of the Services by the Vendor until the Member deems them to be in conformity with the warranty in this Article

7.11, at no charge to the Member; (ii) refund from the Vendor for all fees paid in connection with the Services which the Member deems were not as warranted, or (iii) reimbursement by the Vendor for the Member's costs and expenses incurred in having the Services re-performed by the Member or someone other than the Vendor.

ARTICLE 7.12 ADDITIONAL WARRANTIES

The Vendor represents and warrants that:

- a) All guarantees and warranties made herein are fully enforceable by the Member acting in its own name.
- b) The Vendor's Equipment installed and placed into operation will not result in any damage to existing facilities, walls or other parts of adjacent, abutting or overhead buildings, railroads, bridges, structures, surfaces, or any physical/mental injury to any patron utilizing any unit(s) of Equipment.
- c) All Equipment provided hereunder shall be new and unused. Equipment, including Transponders, shall meet or exceed the requirements in the Appendix C-Technical Requirements, all material and workmanship supplied hereunder shall be highest quality and consistent with established and generally accepted standards, and shall comply with the requirements of the Technical Requirements and the Vendor's performance claims in Appendix C-Technical Requirements. In the event the Equipment performance does not meet the requirements stated herein at an installation location, the Vendor shall be solely responsible at its own expense for performing the necessary Equipment replacements and modifications, with Member approval, so as to then achieve the Equipment performance requirements specified.

f) ARTICLE 7.13 GENERAL GUARANTY

Neither the Vendor Certification of the Equipment and Services or payment therefor nor any provision in this Agreement nor partial or entire use of the Equipment and Services by the Member shall constitute an acceptance of Equipment and Services not performed in accordance with this Agreement or relieve the Vendor of liability for any express or implied warranties or responsibility for faulty materials or workmanship.

ARTICLE 8 - DEFAULT, DAMAGES AND REMEDIES

ARTICLE 8.01 EVENT OF DEFAULT

- a) The following shall constitute an Event of Default on the part of the Vendor:

- (i) The Vendor has not delivered Equipment or performed Services on a timely basis except to the extent of an excusable delay in accordance with Article 2.14, Extension of Time;
- (ii) The Vendor has delivered to the Member and/or E-ZPass Group Members, reports required by the Technical Requirements which indicate that the Equipment will fall below the required functional and/or performance criteria set forth in the Technical Requirements;
- (iii) The Equipment or Services fail to meet the functional and/or performance criteria set forth in the Technical Requirements;
- (iv) The Vendor has persistently or repeatedly refused or failed, to supply enough properly skilled workers or proper materials to provide Services, except to the extent of an excusable delay in accordance with Article 2.14, Extension of Time;
- (v) The Vendor fails to comply with any applicable provisions of Article 7.08, Regulatory Matters;
- (vi) The Vendor fails to remedy Pervasive Defects in accordance with Article 7.06, Defects;
- (vii) The Vendor fails to maintain insurance policies and coverages or fails to provide proof of insurance or copies of insurance policies, as required by Article 5.01, General Insurance Requirements and Article 5.02, Minimum Limits;
- (viii) The Vendor fails to meet and maintain requirements for financial assurance as required by Article 5.02, Financial Assurance;
- (ix) Any warranty, representation, certification, financial statement or other information made or furnished to induce the Member to enter into this Agreement, including but not limited to the representations required by Article 4 and Article 6 of this Agreement, or made or furnished, at any time, in or pursuant to the terms of this Agreement or otherwise by the Vendor, or by any person who guarantees or who is liable for any obligation of the Vendor under this Agreement, shall prove to have been false or misleading in any material respect when made;
- (x) The Vendor breaches or violates any representation or warranty set forth in Articles 6.02, Prohibition on Gifts, 6.03, Conflict of Interest, or 6.04 Ethics.
- (xi) The Vendor has become insolvent (other than pursuant to a case, proceeding, or other action pursuant to subparagraph (a)(xii)), or has assigned the proceeds of any Equipment Orders or Service Orders received for the benefit of the Vendor's creditors (except any assignment of proceeds as collateral for any loan), or the Vendor has taken advantage of any insolvency statute or debtor/creditor law or the Vendor's property or affairs have voluntarily been put in the hands of a receiver;

- (xii) Any case, proceeding or other action against the Vendor is commenced in bankruptcy, or seeking reorganization, liquidation or any relief under any bankruptcy, insolvency, reorganization, liquidation, dissolution or other similar act or law of any jurisdiction, which case, proceeding or other action remains undismissed, undischarged or unbonded for a period of thirty (30) Days;
- (xiii) The Vendor has failed to provide "adequate assurances" as required under subparagraph (b) of this Article 8.01;
- (xiv) The Vendor has failed to make prompt payment to subcontractors or Suppliers for materials or labor;
- (xv) The suspension or revocation of any license, permit, or registration necessary for the performance of the Vendor's obligations under this Agreement;
- (xvi) Any act or omission of the Vendor, or any suspension of or failure to proceed with any part of the Technical Requirements by the Vendor, or any other occurrence which makes it improbable at the time that the Vendor will be able to perform any one or more of its obligations under this Agreement;
- (xvii) Any event which would constitute an Event of Default by the Vendor, or an event which with the passage of time or the giving of notice, or both, would constitute an Event of Default by the Vendor under any agreement with a Participating Member (other than the Member) to provide the Equipment and Services; or
- (xviii) The default in the performance or observance of any of the Vendor's other obligations under this Agreement and the continuance thereof for a period of thirty (30) Days after Notice given to the Vendor by the Member.

b) When, in the opinion of the Member, reasonable grounds for uncertainty exist with respect to the Vendor's ability to perform any of its obligations under this Agreement, the Member may give Notice of a request that the Vendor provide "adequate assurances" of the Vendor's ability to perform in accordance with the terms of this Agreement to the Member, in writing, within fifteen (15) Days of the Member's request. Until the Member receives such assurances, the Member may suspend all payments to the Vendor. In the event that the Vendor fails to provide by Notice to the Member the requested assurances to the Member's satisfaction within fifteen (15) Days, the Member may:

- (i) treat such failure as a repudiation of this Agreement;
- (ii) suspend the Vendor's performance hereunder;
- (iii) resort to any remedy provided herein or at law or equity, including but not limited to any right or remedy referred to in Article 8.03, Remedies in the Event of Default;

The enumeration in this Article 8.01 or elsewhere in this Agreement of specific rights or remedies of the Member shall not be deemed to limit any rights or remedies which the Member would have in the absence of such enumeration.

ARTICLE 8.02 NOTICE OF DEFAULT - CHANCE TO CURE, TERMINATION

a) Without limiting the Member's rights under subparagraph (b) of this Article, the Member may terminate this Agreement if, within a period of thirty (30) Days after the Vendor has received Notice from the Member that an Event of Default has occurred under subparagraph (a) of Article 8.01, Event of Default, the Vendor has not remedied such Event of Default or, if such event is one not reasonably curable within 30 Days, the Vendor has not commenced and continued to pursue with due diligence a remedy for any such Event of Default and has not cured such Event of Default within ninety (90) Days of the Notice of Event of Default.

b) The Member may terminate this Agreement immediately without notice, notwithstanding the provision in subparagraph (b) of Article 2.17, Termination for Convenience of the Member/Suspension of Work, upon an Event of Default of the character described in vii through xii, inclusive, of subparagraph (a) of Article 8.01, Event of Default.

ARTICLE 8.03 REMEDIES IN THE EVENT OF DEFAULT

Upon the occurrence of an Event of Default, and at any time thereafter during the continuation of such Event of Default, the Member may exercise any right or remedy available to it in law or equity to enforce all rights under this Agreement, including any one or more of the following remedial steps:

a) Take any action at law or in equity to enforce performance and observance of any obligation, agreement or covenant of the Vendor under this Agreement.

b) Perform or cause to be performed for the account of the Vendor any covenant in the performance of which the Vendor is in default or make any payment for which the Vendor is in default. The Vendor shall pay to the Member upon demand any amount paid or incurred by the Member in the performance of such covenant. Any amounts which have been paid or incurred by reason of failure of the Vendor to comply with any covenant or provision of this Agreement, including reasonable counsel fees incurred in connection with prosecution or defense of any proceedings instituted by reason of default of the Vendor, such amounts shall bear interest at the Default Rate, which shall be defined as the Prime Rate plus five (5) percent, but in no case higher than the highest rate permitted by law, from the date of payment by the Member until paid by the Vendor and shall be secured by the financial assurance instrument described in Article 5.032, Financial Assurance. The Prime Rate shall be determined to be the Prime Rate of Interest published by the Wall Street Journal, or if the published rate is a range, shall be the highest of such range.

c) The Member, or its designated representatives, shall have the right to immediately take possession of all applicable Equipment and data, and the applicable facilities that house such items. The Member, as

part of its right to complete or cause to be completed the Technical Requirements, may: take possession of and use any or all of the materials, plants, tools, technical specifications, drawings, Equipment, supplies and property of every kind, provided, purchased, maintained, leased, owned, or rented by the Vendor, ~~including but not limited to all Deposit Materials, as defined in Article 4.05, Escrow Agreement, placed into escrow in accordance with the Agreement;~~ make available any or all of the foregoing items; and/or procure other materials, plant, tools, equipment, and supplies and may charge the Vendor and the Vendor shall be liable to the Member for the expense of said labor, materials, plant, tools, equipment, supplies and property. Such procurement shall in no event be deemed a breach by the Member of what might otherwise be its obligations under this Agreement, including the provisions relating to the exclusivity period as described in Article 1.03, Nature of Agreement.

In addition to the foregoing, if an Event of Default occurs, or the Vendor threatens to commit an Event of Default, the Member shall have the right and remedy, without posting bond or other security, to have the provisions of this Agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such Event of Default will cause irreparable injury to the Member and that money damages will not always provide an adequate remedy therefor.

This Article 8.03 shall survive termination, cancellation, or expiration of this Agreement.

ARTICLE 8.04 ACTUAL DAMAGES

The Vendor acknowledges that its performance is critical to the operation of the Member inasmuch as the Technical Requirements to be provided pursuant to this Agreement directly involves the Member's revenue and customer service. The Vendor agrees that the actual damages set forth below are fair and reasonable in the event of unsatisfactory performance and the Vendor shall pay the Member such damages or the Member may choose in its sole discretion to exercise its right to set-off pursuant to Article 8.07, Set-Off Rights.

- a) The Vendor shall reimburse the Member for any revenue which the Member identifies as having been lost due to the Vendor's failure to comply with its obligations under this Agreement. Lost revenue includes, but is not limited to, such events as the Reader losing or not transmitting Transponder reads.
- b) The Vendor shall reimburse the Member for the difference between the costs associated with procuring alternative equipment and Services, including the amount actually expended by the Member and costs of administration, and the compensation the Member would otherwise have paid the Vendor for such equipment and Services pursuant to this Agreement.
- c) The Vendor shall be responsible for any other costs incurred which are the result of its failure to meet specifications, including such things as failure to comply with constraints or assumptions related to a Reporting Zone in Appendix C-Technical Requirements as required by Section 2.6.3.1.9 of the Technical Requirements. In the event the Vendor fails to comply with such constraints or assumptions, the Vendor

shall be responsible for all associated costs, including infrastructure costs, lane controller modification costs, or additional costs in processing transactions.

d) The Vendor shall also remain liable for any other liabilities and claims related to the Vendor's default.

ARTICLE 8.05 THE MEMBER MAY AVAIL ITSELF OF ALL REMEDIES; NO WAIVER

No right or remedy herein conferred or reserved is intended to be exclusive of any other available rights and remedy or remedies, but each and every such right and remedy shall be cumulative and shall be in addition to every other right and remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy, privilege or power accruing upon any default shall impair any such right, remedy, privilege or power or shall be construed to be a waiver thereof, but any such right, remedy, privilege or power may be exercised from time to time and as often as may be deemed expedient. No waiver by the Member of any right or remedy under this Agreement shall be effective unless made in a writing duly executed by an Authorized Officer of the Member, and such waiver shall be limited to the specific instance so written and shall not constitute a waiver of such right or remedy in the future or of any other right or remedy under this Agreement. No notice, other than such Notice as may be required in this Agreement, shall be required precedent to the exercise of any right or remedy hereunder or at law or in equity. This Article 8.05 shall survive termination, cancellation, or expiration of this Agreement.

ARTICLE 8.06 NO DAMAGES FOR DELAY

The Vendor agrees to make no claim for damages for delay in the performance by the Vendor of its obligations hereunder occasioned by any cause whatsoever, including any act or omission to act of the Member or of any of the Member's representatives or other Contractors.

ARTICLE 8.07 SET-OFF RIGHTS

The Member shall have rights of set-off. These rights shall include, but not be limited to, the Member's option to withhold for the purposes of set-off, any monies due to the Vendor under this Agreement, up to any amounts due and owing by the Vendor to the Member with regard to this Agreement, or any other Agreement with the Member, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the Member for any other reason including, without limitation, monetary penalties, adjustments, fees, or claims for actual or liquidated damages by the Member and third parties in connection therewith.

ARTICLE 8.08 LIQUIDATED DAMAGES

The Vendor acknowledges that time is of the essence in the performance of Services and delivery of Equipment under this Agreement. Liquidated damages may be assessed for the Vendor's failure to meet required delivery time as further described in Part 3: Technical Requirements and Exhibits A6,

Requirements Conformance Matrix. The Vendor acknowledges that damages for delay will be difficult to determine and, therefore, agrees that the amounts set forth in Part 3: Technical Requirements and Exhibits A-6, Requirements Conformance Matrix are fair and reasonable estimates of liquidated damages payable by the Vendor and that such amounts are in addition to the provisions of Article 8.04, Actual Damages.

a) Amounts due to Members as liquidated damages, if not paid by the Vendor within fifteen (15) Days of notification of assessment, may be deducted by Members from any money payable to the Vendor pursuant to this Agreement. Members will notify the Vendor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date Members deduct such sums from money payable to the Vendor. No delay by Members in assessing or collecting liquidated damages shall be construed a waiver of such rights.

b) If a Member elects not to impose liquidated damages in a particular instance, said decision shall not be construed as a waiver of the Member's right to pursue future assessments for failure to meet project milestones or Performance Requirements and associated liquidated damages; nor construed to limit any additional remedies available to the Member.

c) Payment adjustments will be assessed not as a penalty, but as liquidated damages for not meeting the Maintenance Requirements set forth in Part III: Technical Requirements, as applicable. If in the performance of the Services the Vendor does not meet or exceed the Requirements identified therein, IAG Participating Members will reduce the amount they would otherwise pay to the Vendor for such Services subject to the reduction amounts and limits set forth therein.

d) Members may recover any and all liquidated damages by deducting the amount thereof from any monies due or that may become due from the Vendor, notwithstanding any liens, Notices of liens or actions of Subcontractors, and if said monies are insufficient to cover said damages, then the Vendor or the surety shall promptly pay any remaining amounts due on demand.

e) Damages shall accrue up through 45 days past the deliverable date. Nothing herein contained shall be construed as limiting Members' rights to recover from the Vendor any and all other amounts due or that may become due to Members, or any and all costs and expenses sustained by Members for improper performance hereunder, or for breach or breaches in any other respect including, but not limited to, defective workmanship or materials.

ARTICLE 9 - OTHER STATUTORY REQUIREMENTS

ARTICLE 9.01 WAGE AND HOURS PROVISIONS

The Vendor agrees to comply with the labor laws of the state(s) and provinces in which the Member's facilities are located, to the extent applicable to the Technical Requirements, including without limitation, those included in Appendix A - E-ZPass Group Members Terms & Conditions.

ARTICLE 9.02 INTERNATIONAL BOYCOTT PROHIBITION

The Vendor agrees, as a material condition of this Agreement, that neither the Vendor nor any substantially owned or affiliated person, firm, partnership, or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. §§2401 et seq.) or regulations thereunder. If the Vendor, or any of the aforesaid affiliates of the Vendor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to this Agreement's execution, this Agreement, Amendment or modification thereto shall be rendered forfeit and void. The Vendor shall provide Notice to the Member within five (5) Business Days of such conviction or final determination.

ARTICLE 9.03 NON-COLLUSIVE PROPOSAL CERTIFICATION

The Vendor warrants, under penalty of perjury, that the Vendor's Proposal submitted in connection with the procurement of this Agreement was arrived at independently and without collusion aimed at restricting competition. The Vendor further warrants that, at the time the Vendor submitted its proposal, an authorized and responsible person executed and delivered a non-collusive proposal certification on the Vendor's behalf in the form required by the Member.

ARTICLE 9.04 NON-DISCRIMINATION REQUIREMENTS

The Vendor shall comply with the non-discrimination provisions of the Member as set forth in Appendix A - E-ZPass Group Members Terms & Conditions, or as otherwise set forth in a Notice to the Vendor.

ARTICLE 9.05 EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN

- a) The Vendor shall not discriminate against employees or applicants for employment because of race, creed, color, sex, national origin, or sexual orientation, age, disability, genetic predisposition or carrier status, marital status, or ancestry, and shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. As used in this clause, "affirmative action" shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, lay-off or termination, and rates of pay or other forms of compensation.
- b) At the request of the Member, the Vendor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or authorized representative will not discriminate on the basis of race, creed, color, sex, national origin, affectional or sexual orientation, age, disability, genetic predisposition or carrier status, marital status, or ancestry, and that such employment agency, labor union or authorized representative will affirmatively cooperate in the implementation of the Vendor's obligations herein.

- c) The Vendor shall state, in all solicitations or advertisements for employees, that in the performance of this Agreement all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, sex, national origin, affectional or sexual orientation, age, disability, genetic predisposition or carrier status, marital status, or ancestry.
- d) The Vendor shall comply with any additional provisions included in Appendix A- E-ZPass Group Members Terms & Conditions, or in a Notice to the Vendor.

ARTICLE 9.06 MINORITY/ WOMEN/SMALL OWNED BUSINESS ENTERPRISE (M/W/S/BE) REQUIREMENTS

It is the policy of the Member that minority owned business enterprises ("MBE"), women owned business enterprises ("WBE"), and small business enterprises ("SBE") should have the opportunity to participate in the performance of the Member's procurement of goods and/or Services. The Member desires participation of MBEs, WBEs and SBEs for the performance of this Agreement. Vendor shall comply with any procedures of the Member designated on Appendix A - E-ZPass Group Members Terms & Conditions or otherwise required by applicable law in order to demonstrate that a good faith effort has been made to accomplish the above-stated initiative.

ARTICLE 10 - TESTS, ORDERS, DELIVERY, AND INVENTORY

ARTICLE 10.01 TESTS

The Vendor agrees to perform a sequence of tests to assure ETC Equipment performance in accordance with the Test Requirements in Part III, Technical Requirements for ETC Equipment including Technical Requirements – Readers Part I and Technical Requirements – Transponders Part II ("Technical Requirements") including the Attachment 4- E-ZPass Group Test Plan and in this Article 10.01. The Vendor shall coordinate Product Certification Tests with the E-ZPass Group in advance during the Product Certification period. The Vendor also agrees that all such Members or their designated representative(s) shall have the right to observe all testing performed in accordance with this Article 10.01. The Vendor shall provide the Members thirty (30) calendar days advance Notice of the date and location of such tests.

The Vendor shall bear the cost of all tests specified in this Article 10.01 and such costs shall be deemed included in the prices of ETC Equipment specified in Appendix D-Equipment, Components, Services Listing and Pricing Schedule. Such costs shall include all retesting required in order to obtain Product Certification with E-ZPass Group Approval.

Product Certification Tests shall be performed by the Vendor in accordance with the Technical Requirements for all Members and subject to E-ZPass Group Approval. The Vendor shall provide evidence thereof to all Members in the form of written inspection and test reports. The Product Certification Tests shall be conducted at a facility within North America approved by the E-ZPass Group.

The Vendor shall complete Product Certification Tests for each Model of Equipment for each manufacturer of such Model. The Product Certification Tests shall include testing of actual product samples of such Models from each manufacturer utilized by the Vendor.

Product Certification Tests shall also be conducted by the Vendor for any existing Vendor or New Vendor that manufactures a new Model of any ETC Equipment prior to shipping any such Equipment to any Member. Upon request by the Vendor with notice to the Members, the E-ZPass Group in its discretion, may approve equivalent evidence that any such new manufacturer has produced Equipment that performs in accordance with the applicable requirements of the Technical Requirements.

For purposes of this Article a "New Vendor" is defined as (i) the manufacturer or supplier of a Model of Equipment where such Model has not received E-ZPass Group Approval, or (ii) the manufacturer or supplier of a certain Model of Equipment where such Model received E-ZPass Group Approval based upon specific Equipment that was neither manufactured nor supplied by such manufacturer or supplier.

It shall be the Vendor's responsibility, at no additional cost to any Member, to devise and build the test simulators necessary to perform the unit and ETC Equipment tests. Such simulators shall provide simulation(s) of all toll lane configurations included in the Technical Requirements and shall further be capable of demonstrating compliance with the Technical Requirements and representations made in the Technical Requirements.

The Vendor shall not ship any Equipment to any Member until the E-ZPass Group has given written approval that the specified Model of Equipment for the specified manufacturer or manufacturers identified in the Product Certification Test has satisfied all criteria of the Product Certification Tests. Once approval has been granted by the E-ZPass Group, the Vendor shall deliver any such Equipment ordered by the Member to the Member as specified in its Proposal. The Vendor shall not ship any Equipment from any new manufacturer until the E-ZPass Group has given additional Product Certification Test approval for such new Vendor as provided above. If the Member has submitted an Equipment Order and the E-ZPass Group has not granted E-ZPass Group Approval stating that the specified Model of Equipment for the specified manufacturer or manufacturers has satisfied all criteria of the Product Certification Tests, such Equipment Order may be canceled by the Member by Notice given within seven (7) Business Days after the earlier of the Scheduled Delivery Date or E-ZPass Group Approval, if it is granted.

ARTICLE 10.02 ORDERS

- a) If the Member elects to acquire any of the ETC Equipment and Services items listed in Appendix D-Equipment, Components, Services Listing and Pricing Schedules, the Member shall submit an order in writing.
- b) The Member may designate an agent or other third party to order, purchase, and/or accept deliveries of Equipment; order Services; and license the Software for use by the Member or any person or

entity providing services to or on behalf of the Member. Such designations shall not affect the Vendor's obligations to comply with the conditions set forth herein. The Member shall notify the Vendor in writing of any parties other than the Member's Project Manager authorized or designated to order, purchase, and/or accept deliveries of Equipment; order Services; and license the Software for use by the Member or any person or entity providing services to or on behalf of the Member.

c) The Vendor shall submit an Equipment or Services Orders in accordance with Member's purchasing requirements to generate data including invoices, manifest and other Equipment information required to complete the purpose order. The service order may also designate any specific third parties with whom the Vendor shall coordinate in any installation, calibration, testing, or adjusting the Equipment, and other Services.

d) The Vendor shall furnish an estimate for completion of the required Installation technical support, initial calibration services, or time and material Maintenance Support Services within five (5) Business Days of receipt of the Service Order, based on the time and material costs included in Appendix D- Equipment, Components, Services Listing and Pricing Schedules.

e) The Member is not bound to order installation technical support, initial calibration services, or time and material Maintenance Support Services from the Vendor by virtue of the Vendor's furnishing an estimate for such Services. The Vendor shall not perform such Services unless the Member has accepted the Vendor's quotation, finished the Vendor with a purchase order number and issued a written notice to perform the specifically designated Services.

f) If the Member accepts the Vendor's quotation, the Vendor shall not perform additional work above and beyond the initial time and material estimate unless the Member has authorized in writing such additional work.

g) If the Member orders initial calibration services or installation support Services and the Equipment is subsequently repaired or replaced in accordance with the warranty provisions of this Agreement, the Vendor shall perform calibration or installation support of any such repaired or replaced Equipment at no additional cost to the Member.

ARTICLE 10.03 INVENTORY LEVELS AND DELIVERY OBLIGATIONS

a) The Vendor shall manufacture Transponders and Readers to be held in inventory for such period of time and in such quantities as determined by the Technical Requirements.

b) The Vendor shall maintain an inventory sufficient to deliver the Member's and other Members' ongoing Equipment Orders within the order dates specified in the Vendors proposals and to deliver replacements of Equipment in accordance with the warranty provisions of this Agreement.

- c) The Member shall be responsible only for the costs of its own Equipment Orders and shall have no responsibility for any cost the Vendor may incur in maintaining inventory levels, including those required under this Article 10.03. The Member shall be under no obligation to revise or update any estimates submitted.
- d) The Member agrees to provide good faith, non-binding estimates of forecast orders on an annual basis in order for Vendors as a courtesy for planning. These good faith estimates shall not form the basis of any claims. Such good faith estimates shall be provided on or about the anniversary of initial E-ZPass Group Approval of Product Certification Test, or such other annual date as may be approved by the E-ZPass Group.
- i) Except as otherwise provided in Article 2.14, Extension of Time, Article 2.15, Extension of Time Not Cumulative, and Article 10.01, Tests, the Vendor shall deliver Equipment to the Member's designated delivery location within two (2) Business Days of the Scheduled Delivery Date set forth in the Equipment Order, provided, however, that delivery shall not be made to the Member on a Business Day that is observed as a holiday by the Member, if applicable, and the two Business Day time period shall be extended until the next following Business Day which is not observed as a holiday by the Member.
- j) All deliveries under this Agreement shall be made during Business Hours unless the Member designates in writing other hours.
- k) If the Member desires expedited delivery of Equipment, the Member shall make a written request to the Vendor. The Vendor shall commence shipment of Equipment for which the Member has requested expedited delivery to the designated delivery location specified in the written request within twenty-four (24) hours from the time the Vendor receives written request, which request may be via facsimile. Any charges for special or expedited delivery of the Equipment as requested by the Member shall be borne by the Member to the extent such charges exceed the Vendor's cost of delivery for a similar quantity of Equipment pursuant to a regular Equipment Order.
- l) Any delay in the Vendor's performance obligations in accordance with Article 10.02, Orders and this Article 10.03, shall be subject to the provisions of Article 2.14, Extension of Time, Article 2.15, Extension of Time Not Cumulative, and Article 8.08, Liquidated Damages.

ARTICLE 10.04 FOB TERMS

The Vendor shall be responsible for all transportation charges to the FOB destination point, freight prepaid and allowed, with such point being the Member's designated delivery location(s) specified in Appendix A - E-ZPass Group Members Terms & Conditions, or as otherwise provided in a specific Equipment Order, in accordance with Article 10.02, Orders. This point shall also be the point at which the Member takes title to the delivered Equipment in accordance with Article 7.09, Warranty of Title.

ARTICLE 10.05 PACKING, BOXING, AND DELIVERY CHARGES

The Vendor shall not charge the Member and the Member shall not be responsible for costs incurred by the Vendor Parties for packing, boxing, containers or any other matters relating to the preparation for shipment or delivery, unless explicitly provided for in subparagraph (h) of Article 10.03, Inventory Levels and Delivery Obligations.

ARTICLE 10.06 ACCEPTANCE OR REJECTION OF DELIVERIES

Each delivery shall be accompanied by a Packing Slip listing the units included in the delivery. The Member will determine whether to accept or reject deliveries, after the Member has fully inspected the Equipment. Except as otherwise provided herein or on Appendix A - E-ZPass Group Members Terms & Conditions, acceptance or rejection of deliveries shall occur within ten (10) Days of the Member's receipt of deliveries.

If the Vendor fails to make delivery within the time period provided in Article 10.03; or, if the Member finds that the Equipment delivered fails to conform to the requirements of this Agreement in quality, number, or otherwise at any time finds the Equipment to be deficient in material or workmanship, the Member may reject the Equipment in full or part and supply notice of such rejection to the Vendor.

The exercise by the Member of its rights to inspection hereunder or the Member's acceptance of deliveries shall in no way be deemed a waiver by the Member of (i) Member's right to later reject, revoke acceptance, or recover damages for deliveries accepted which are not free from defects, or (ii) the Vendor's obligation to deliver conforming Equipment. If the quantity of conforming units shown on the Packing Slip is not equal to the quantity actually delivered by the Vendor, the Member will ignore the Packing Slip and will apply the terms and conditions of this Agreement to the quantity actually delivered.

ARTICLE 10.07 REMOVAL OF REJECTED EQUIPMENT

The Vendor shall remove from the Member's designated location at its own expense and within a reasonable time (not to exceed fifteen (15) Days after notice of rejection), any Equipment rejected by the Member as nonconforming, as an over shipment, or due to early or late delivery. If the Member rejects the same Equipment from the Vendor for a second time, the Vendor shall be liable to the Member for all charges incurred by the Member in connection with inspection of the Equipment in accordance with the provisions of Article 8.04, Actual Damages. In addition to actual out-of-pocket costs incurred by the Member, the Vendor will be charged the Member's reasonable costs for each laboratory analysis performed, including analysis performed directly by the Member. The Vendor shall promptly pay such amounts to the Member.

APPENDIX A - E-ZPass Group Members Terms & Conditions

The E-ZPass Group Members listed in Exhibit A-7-Forms have Member specific Terms & Conditions that will be attached the Terms and Conditions of the Contract as Appendix A. All Responsive Vendors shall adhere to these Terms and Conditions to execute a Purchase Order with the Member. Please refer to Exhibit A-7 for all E-ZPass Group Member Terms and Conditions and submit required forms as part of the Proposal.

AGREEMENT EXECUTION PAGE

In Witness Whereof, this Agreement is executed by the EZPass Group Member by its Authorized Officer, and by the Vendor by its duly authorized officer, all as of the "Agreement Date" set forth herein.

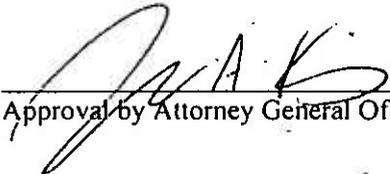
Except as provided herein, all provisions of the Agreement shall remain in full force and effect. This modification shall take effect upon the approval date from the Governor and the Executive Council.

EZPass Group Member: New Hampshire Department of Transportation, Bureau of Turnpikes



William Cass, P.E.
Commissioner
State of New Hampshire
Department of Transportation

Date: 1/6/23



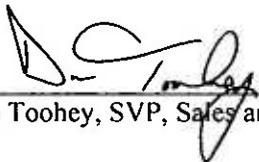
Approval by Attorney General Office

Date: 2/3/23

Approval by the Governor and Council

Date: _____

VENDOR: Kapsch TrafficCom USA, Inc.



Dan Toohey, SVP, Sales and Business Development

Date: 12/1/2022

Vendor's Notice Address for purposes of Article 1.16, Notices:

Kapsch TrafficCom USA, Inc.
2855 Premiere Parkway, Suite F
Duluth, GA 30097

EXHIBIT A: FORM NUMBER P-37 (version 12/11/2019)

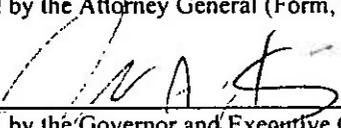
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name The State of New Hampshire		1.2 State Agency Address	
1.3 Contractor Name Kapsch TrafficCom USA, Inc.		1.4 Contractor Address Kapsch TrafficCom USA, Inc. 2855 Premiere Parkway, Suite F Duluth, GA 30097	
1.5 Contractor Phone Number 602-317-7175	1.6 Account Number 04-96-96-961017-7515 020-500213	1.7 Completion Date December 12, 2028	1.8 Price Limitation
1.9 Contracting Officer for State Agency William Cass, P.E.		1.10 State Agency Telephone Number 603-271-1484	
1.11 Contractor Signature  Date: 12/1/2022		1.12 Name and Title of Contractor Signatory Dan Toohey Senior Vice President, Sales and Business Development	
1.13 State Agency Signature  Date: 1/6/23		1.14 Name and Title of State Agency Signatory William Cass Commissioner	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: 2/3/23			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			

2. SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.17, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete

compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3. The Contractor agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and

submit to the State a Transition Plan for services under the Agreement.

10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

10.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

10.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

10.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. INDEMNIFICATION. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. **NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

17. **AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

18. **CHOICE OF LAW AND FORUM.** This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. **CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

20. **THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. **HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. **SPECIAL PROVISIONS.** Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

23. **SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. **ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

APPENDIX B – LICENSE AGREEMENT

See Article 4.02, Licenses. The proposed License Agreement shall be submitted as part of the Proposer's response to Section 2.8 to be evaluated as indicated in Sections 1.11 and 2.8 of this RFP and negotiated as indicated in Section 1.11.5. The Vendor shall provide the Member with the licenses upon execution of this Agreement with the form of license agreement to be annexed hereto as Appendix B-1-License Agreement.

APPENDIX B – END USER LICENSE AGREEMENT (EULA)

Kapsch TrafficCom END USER LICENSE AGREEMENT

This End User License Agreement ("License Agreement" or the "Agreement"), by and between Kapsch TrafficCom USA, Inc. ("KAPSCH") and NHDOT ("End User"), is effective as of the date last signed below ("Effective Date"), and governs and sets forth End User's rights to use the Software defined herein and delivered under the provisions of the E-ZPass Contract Agreement 12/1/2022 ("Contract") between the End User and KAPSCH for the benefit of the End User. In accordance with the amounts paid, and other consideration provided by End User to KAPSCH under the Contract, the receipt and sufficiency of which is hereby acknowledged, KAPSCH hereby issues a license to End User for the use of the System under the terms and conditions set forth below.

1. Definitions

- "Kapsch Software" shall mean the software applications developed and owned by KAPSCH and used for meeting Contract requirements and deliverables, including any underlying utility programs, source code, firmware and supporting documentation, and such Third Party Software as maybe incorporated into, and that is integral to the operation of the E-ZPass System in accordance with its obligations under the Contract.
- "Third Party Software" shall mean software, including operating systems and other materials, owned or licensed by a third party that is supplied to the End User by KAPSCH as part of the Kapsch Software. Nothing in this License Agreement is intended to modify, supersede or limit rights defined by applicable third party software license agreements.
- "The System" shall mean hardware, software, Third Party Software, extensions, utility programs, executable software, source code, firmware and such documentation in any format that KAPSCH provides to the End User under the Contract.

2. Applicability

The license granted herein applies to the Kapsch Software that KAPSCH will furnish to the End User pursuant to the terms of the Contract. This is a license agreement and not an agreement for sale. All rights granted to either party by law and not specifically granted in this License Agreement are exclusive to and reserved to such party.

3. Term and Termination

This License Agreement shall commence upon the Effective Date, and shall be perpetual until either terminated by mutual agreement or as a result of End User's material breach of this Agreement or the Contract. Upon termination of this License, the End User shall (a) immediately cease using the Kapsch Software, and (b) certify to KAPSCH within one (1) month after expiration or termination that the System and any copies permitted under this License Agreement have been destroyed or returned to KAPSCH. This requirement applies to copies in all forms, partial and complete, in all types of media and computer memory, and whether or not modified or merged into other materials.

At any time during the Term or following termination or expiry of the Contract, KAPSCH may terminate the grant under this License Agreement with 30 days' notice in writing (or such other

period as agreed by the parties) if the End User commits any material default of this License Agreement where, if the breach is capable of remedy, such breach is not remedied within 20 working days after KAPSCH provides End User written notice specifying the breach and requiring its remedy. Where KAPSCH is terminating this License Agreement for a material default, it may rely on a single material default or on collective or repeated defaults that taken together constitute a material default of this License Agreement.

Upon termination of this License Agreement for any reason, the End User shall:

- immediately cease all use of the Kapsch Software; and
- at the discretion of KAPSCH, return copies of the Kapsch Software and other materials comprising the System; and
- where requested by KAPSCH, provide KAPSCH with a written notice, signed and otherwise completed by an authorized signatory, to certify compliance with the provisions of this paragraph.

4. Systems Use – License

KAPSCH hereby grants End User a perpetual, royalty-free, non-transferable, non-exclusive license to use and to sublicense its agents to use the Kapsch Software solely in connection with the management and use of the System at the End User's existing and future sites as mutually agreed by the parties, and solely for the purposes specified in the Contract. End User may make copies of the System for backup and archival purposes arising directly from the End User's internal business purpose and requirements.

KAPSCH shall retain exclusive ownership and all other rights to the Kapsch Software, and all other software materials or related documentation developed by KAPSCH together or in connection with the System under the Contract, including updates, modifications, improvements and any derivative products or materials. Other than that expressly presented in this License Agreement, no other license to any such products or materials is granted hereby.

Unauthorized use, sublicensing, modification, transfer, marketing, sale, merging in whole or part, compiling, reverse compiling or engineering, disassembling, merging into other programs, or sale of the System by the End User without the express written consent of KAPSCH is strictly prohibited and represents a material breach of this License Agreement.

5. Audit rights

KAPSCH and/or any third party licensor shall be entitled at any time on reasonable notice to conduct an audit to review and verify the End User's compliance (and/or the compliance of any third parties using the System on behalf of the End User) with the terms of this Agreement. The End User shall upon KAPSCH request and at no additional charge provide KAPSCH with all cooperation and assistance as are reasonably requested to enable KAPSCH to complete any audit conducted in accordance with this clause, including (without limitation) access to:

- any sites at which the End User accesses or operates the System or uses any Kapsch Software, including the ability to inspect and have demonstrated to KAPSCH any equipment used (whether exclusively or non-exclusively) in accessing the System;

- the End User's computer systems; and/or
- the End User's personnel who are engaged in accessing the System.

If an audit is carried out as a result of a Default by the End User of this License Agreement or identifies a Default by the End User of this License Agreement, the End User shall, to the extent to which the audit relates to the Default reimburse KAPSCH for all of KAPSCH's additional, reasonable costs arising directly out of the audit, in addition to any other losses, damages or liabilities incurred by KAPSCH as a result of such Default.

For the avoidance of doubt, where any third party is provided with access to the System by or on behalf of the End User, the audit rights in this clause 5 shall apply equally to such third party, and End User shall assist in facilitating such reasonably requested access to relevant materials at End User's expense. The End User shall be directly liable to KAPSCH for the use (or misuse) by any third party of the System and shall ensure that:

- any agreement between the End User and any third party that is provided with access to the System contains audit provisions which are no less onerous than those contained in this License Agreement; and
- any third party which is provided with access to the System complies with the terms of this License Agreement.

6. Source Code Programs and Confidential Materials

The System contains and Kapsch Software is proprietary and confidential information of KAPSCH. End User shall use all reasonable business measures to maintain the System, and any source code programs and/or other confidential materials and documentation provided with the System under strict confidence so as to ensure and guarantee that neither the System nor any related materials or documentation are not disclosed to any third parties. Nothing contained in this License Agreement shall be construed to grant the End User the right to modify or make derivative works of the System or obtain or use any of the source code programs or other confidential information beyond that required for normal maintenance.

7. Indemnification

End User agrees to enforce the terms of this License Agreement and to notify KAPSCH of any suspected or known breach of its terms and conditions. To the extent allowable under applicable laws, End User agrees to indemnify and hold harmless KAPSCH against, and reimburse KAPSCH for, any and all claims, demands, losses, actions and/or damages to KAPSCH arising from the following:

- Any violation of law by End User, including any alleged or claimed violations.
- Any use by End User of any materials not provided by KAPSCH but used in combination with the System if such claim would have been avoided by the exclusive use of the System and written permission was not granted by KAPSCH to combine the System with such materials.

- Any claims arising from the addition, at the End User's request, of new functionality to the System by way of an upgrade.
- Any claims that arise out of the End User's or its agents' acts, errors or omissions in its use of the System.
- All reasonable expenses incurred by KAPSCH to enforce the terms and conditions of this License, including, but not limited to, court costs and attorneys' fees.

8. Warranties

KAPSCH warrants to End User that for one year from delivery, or such other time period as expressly specified in the Contract, the media on which the System is delivered will be free of material defects in materials and workmanship, and that the System will operate substantially in accordance with the Contract specifications and KAPSCH-provided documentation. End User acknowledges and accepts that software, including the System licensed hereunder, is inherently susceptible to error and KAPSCH's sole obligation shall be to use reasonable efforts to remedy material malfunctions of the System by correcting errors or developing a suitable work around. End User must give KAPSCH immediate written notice upon discovery of any defect and maintain the capability for remote support by KAPSCH's product support staff. This warranty excludes damage due to abuse, accident, alteration, incident, repair by anyone other than KAPSCH's authorized representatives, improper storage, misuse, improper maintenance, or failure to observe any and all instructions, improper or unauthorized access or use, hacker or cracker intrusion or disruption, distributed denial of service attacks, computer viruses or worms, loss, theft, misuse, alteration or corruption of data, programs or information, failure of network security, or other acts, omissions, torts or crimes. KAPSCH reserves the right to investigate claims by End User as to defects. End User shall pay all costs to investigate invalid claims, and for any repair or replacement shown by investigation not to be covered by this express warranty. Third-Party Software and other products supplied but not manufactured or developed by KAPSCH shall be subject exclusively to the warranty extended by the original manufacturer.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, KAPSCH AND ITS VENDORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OR TRADE.

9. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL KAPSCH OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER ARISING IN ANY WAY UNDER OR CONNECTED WITH THIS LICENSE AGREEMENT. KAPSCH, its contractors and suppliers of any tier, shall not be liable in contract, tort or otherwise for damage to or loss of other property or equipment or systems, cost of capital, cost of replacement power or equipment, increased operating expenses, loss of profits, loss of business information, operations interruption, delay damages, or claims of End User's customers no matter how caused, including if caused by: abuse; accident; alteration or repair by anyone other than KAPSCH's authorized representatives; improper storage; misuse; improper maintenance; failure to observe

instructions; improper or unauthorized access or use; hacker or cracker intrusion or disruption; distributed denial of service attacks; computer viruses or worms; loss, theft, misuse, alteration or corruption of data, programs or information; failure of network security; or other acts, omissions, torts or crimes.

End User's remedies stated herein are exclusive and KAPSCH's liability under this Agreement, whether in contract, tort, or otherwise shall not exceed TWENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS (\$25,000.00). This provision shall survive termination of this License Agreement and the Contract.

This Agreement applies to the Kapsch Software as deployed within and for the System as of Effective Date and during the Contract Term, subject to any updates to the System to bring the software that forms part of the System up to date with then-current hardware and software per the terms of the Contract.

10. Replacement Hardware

KAPSCH does not provide, and hereby disclaims, any assurances or warranties that the System will operate with replacement hardware not expressly implemented under the terms of the Contract.

11. Proprietary Markings

The End User agrees not to remove or destroy any KAPSCH or third-party proprietary markings or proprietary legends, including copyright notices, appearing on or contained within any programs, source code, documentation or confidential materials delivered hereunder.

The End User may copy the System from Source Code provided by KAPSCH in order to create an archival copy and a backup copy of it. When copying software, the End User shall include the original machine readable copyright notice, and a label affixed to the media identifying the software and stating: "This medium contains an authorized copy of copyrighted software that is the property of Kapsch TrafficCom USA, Inc".

12. Assignment

Without the prior express written consent of KAPSCH, the End User's rights granted herein shall not be assigned, licensed, or otherwise transferred, voluntarily or otherwise, by the End User, provided that such consent by KAPSCH shall not be unreasonably withheld.

Any such assignee must agree in writing to be bound by all of the terms and conditions of this License Agreement without modification before any such assignment is affected.

13. Equitable Relief

End User expressly acknowledges that any breach of its obligations with respect to proprietary rights of KAPSCH will cause KAPSCH irreparable injury for which there may be inadequate remedies at law and that KAPSCH shall be entitled to equitable relief in addition to all other remedies available in law or equity available to KAPSCH.

14. General

This License Agreement constitutes the entire understanding between End User and KAPSCH relating to the use of the System and supersedes any prior written or oral agreement relating thereto. It shall not be modified except by subsequent written agreement signed by both parties. This License Agreement is governed by the laws of the State of Delaware, excluding the application of its conflict of laws provisions. If any part of this Agreement is found void or unenforceable, it will not affect the validity of the balance of the Agreement, which shall remain valid and enforceable according to its terms.

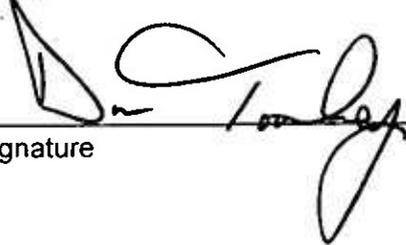
END USER

KAPSCH TRAFFICCOM USA, INC.

William Cass
Name

Dan Toohey
Name


Signature


Signature

Date: 1/6/23

Date: 12/1/2022

APPENDIX C – EQUIPMENT, COMPONENTS, SERVICES LISTINGS AND PRICING SCHEDULES

E-ZPass Equipment and Services RFP

Price Proposal 2 - New Multi-Protocol Readers and Related Items

Kasch TrafficCen USA, Inc.									
Item #	Vendor Identification	Vendor Description	Reader Attributes <i>(Use blank columns for other attributes. Add additional columns as necessary.)</i>				Minimum Order Quantity	Unit	Maximum Price
			Type	Environment	Redundancy				
Enter Model # or Identifier		Enter a description	Regular Toll or Value	Within Cabinet or External (Suggested)	Full, Partial, None		Each	Enter Unit Price	
Multi-Protocol Reader Units <i>(Use a separate row for each unique combination of attributes.)</i>									
MPR401*	480 802780-208	Janus MPR2.4	Regular Toll	Within Cabinet	Full		Each	\$11,200.00	
MPR402*	480 802780-702	Janus MPR2.4	Regular Toll	Within Cabinet	None		Each	\$8,000.00	
MPR403*	802890-001	Janus MPR4.1 Value Reader	Value	External	None		Each	\$6,100.00	
Multi-Protocol Reader Antennas <i>(Use a separate row for each unique combination of attributes.)</i>									
MPRAnt01*	802344-403	MPR2.4+ Lane ER					Each	\$4,300.00	
MPRAnt02*	800260-013	IAG-3 Antenna					Each	\$850.00	
MPRAnt03*	800260-008	IAG-2 Antenna					Each	\$450.00	
MPRAnt04*	480 802838-008	MPR2.4+ Lane Upgrade Kit					Each	\$3,350.00	
Multi-Protocol Reader Cables & Accessories <i>(Use a separate row for each unique combination of attributes.)</i>									
MPCBA01	802745-001	Antenna Amplifier - Single					Each	\$1,620.00	
MPCBA02	802745-002	Antenna Amplifier - Dual					Each	\$3,520.00	
MPCBA03	802354-004	Installation Kit - LMR800					Each	\$421.00	
MPCBA04*	802870-001	MPRM-S RF Module					Each	\$3,040.00	
MPCBA04*	802795-004	MPRM-S RF Module					Each	\$3,040.00	
MPCBA05	800127-001	Reader Cabinet					Each	\$1,480.00	
MPCBA06	802894-002	MPR4.1 Pole Bracket					Each	\$250.00	
MPCBA07*	802311-TAB	PSM - Power Supply Module					Each	\$1,850.00	
MPCBA08*	801695-TAB	SPM - Sync Port Module					Each	\$710.00	
MPCBA09*	802284-TAB	CTM - Controller Module					Each	\$2,830.00	
MPCBA10*	801701-TAB	LPM - Lane Port Module					Each	\$250.00	
Multi-Protocol Reader Support Services <i>(Use a separate row for each unique combination of attributes.)</i>									
MPRS01		Software Engineer					3 Hours	Hour	\$215.00
MPRS02		RF Engineer					4 Hours	Hour	\$215.00
MPRS03		Field Tech					1 Hours	Hour	\$140.00
MPRS04		System Admin					3 Hours	Hour	\$170.00
MPRS05		Program Manager					1 Hours	Hour	\$270.00
Multi-Protocol Reader Annual Maintenance <i>(Use a separate row for each unique combination of attributes.)</i>									
MPRAM01	Reader Preventative Maintenance	For the 1st reader per site					1 Year	Annual	\$4,750.00
MPRAM02	Reader Preventative Maintenance	For each additional reader connected via the same sync cable network					1 Year	Annual	\$1,750.00

Year 1 Pricing - Valid Feb 7, 2021 - Feb 6, 2023			
Quotation Price	Delivery	Order and Delivery Restrictions **	Other Information
Enter Unit Price	Enter # of weeks for delivery	Describe if applicable	Provide additional details if desired
\$9,800.00	11	Extraordinary SCM Issues excluded	
\$6,800.00	12	Extraordinary SCM Issues excluded	
\$5,300.00	12	Extraordinary SCM Issues excluded	
\$3,850.00	11	Extraordinary SCM Issues excluded	Includes either IAG-3 or IAG-2 Antenna
\$750.00	6	Extraordinary SCM Issues excluded	
\$750.00	6	Extraordinary SCM Issues excluded	
\$2,900.00	12	Extraordinary SCM Issues excluded	Excludes antenna
\$1,590.00	12	Extraordinary SCM Issues excluded	
\$2,880.00	12	Extraordinary SCM Issues excluded	
\$580.00	8	Extraordinary SCM Issues excluded	
\$2,775.00	11	Extraordinary SCM Issues excluded	Specify firmware version with Order
\$2,775.00	11	Extraordinary SCM Issues excluded	Specify firmware version with Order
\$1,350.00	10	Extraordinary SCM Issues excluded	
\$275.00	8	Extraordinary SCM Issues excluded	
\$1,650.00	12	Extraordinary SCM Issues excluded	
\$700.00	11	Extraordinary SCM Issues excluded	
\$2,825.00	12	Extraordinary SCM Issues excluded	
\$225.00	11	Extraordinary SCM Issues excluded	
\$190.00		Timing per mutually agreed schedule	
\$190.00		Timing per mutually agreed schedule	
\$190.00		Timing per mutually agreed schedule	Daytime Rates. Night work and weekend work at a \$90/hour premium. Overtime at \$40/hour premium, all travel at regular rate
\$190.00		Timing per mutually agreed schedule	
\$248.00		Timing per mutually agreed schedule	
\$7,000.00			
\$1,750.00			

E-ZPass Equipment and Services RFP
 Price Proposal 2 - New Multi-Protocol Readers and Related Items

Kopach TrafficCen USA, Inc.											
Item #	Vendor Identification	Vendor Description	Reader Attributes (Use blank columns for other attributes. Add additional columns as necessary.)						Minimum Order Quantity	Unit	Maximum Price
			Type	Environment	Redundancy						
Enter Model # or Identifier	Enter a description	Regular Toll or Value	Within Cabinet or External (Suggested)	Full, Partial, None				Each	Enter Unit Price		
MPRAM203	Service Call	Ad Hoc on Demand Service Call. T&M at hourly rates plus mileage, tolls, and incidentals.						4 Hours	Hour	See Multi Protocol Reader Support Services Rates	
MPRAM204	Diagnose/Repair	T&M at hourly rates plus replacement parts						4 Hours	Hour	See Multi Protocol Reader Support Services Rates	
Multi-Protocol Reader Training			<i>List training topic name, identifier, and a brief description. Add lines if necessary.</i>								
MPRTR01		T&M at hourly rates tailored to each Agency specific requirements						8 Hours	Hour	See Multi Protocol Reader Support Services Rates	
MPRTR02											
MPRTR03											
MPRTR04		<i>Add rows as necessary</i>									

Year 1 Pricing - Valid Feb 7, 2022 - Feb 6, 2023			
Quotation Price	Delivery	Order and Delivery Restrictions **	Other Information
Enter Unit Price	Enter # of weeks for delivery	Describe if applicable	Provide additional details if desired
See Multi Protocol Reader Support Services Rates			
See Multi Protocol Reader Support Services Rates			
See Multi Protocol Reader Support Services Rates			
See Multi Protocol Reader Support Services Rates			

Note: Proposers shall complete the Maximum Unit Price as noted in Column P. Regarding Columns R through AA, please refer to Section 3.3.1.1 of Part 1- Administrative
 NTE Pricing Notes:

* This pricing note has been eliminated as of January 1, 2022
 ** Extraordinary SCM (Supply Chain Management) issues excluded - Lead times might be extended due to SCM issues beyond the control of Kopach

E-ZPass Equipment and Services RFP
 Price Proposal 3 - Legacy Reader Support Services

Kaspach Traffic-Cam USA, Inc.								
Item #	Vendor Identification	Vendor Description	Reader Attributes			Minimum Qty or Quantity	Unit	Maximum Price
			Type	Environment	Enter other attributes offered. Add columns as necessary.			
	Enter Model # or Identifier	Enter a brief description	Regular Toll or Value	Within Cabinet or External (Plugged-In)			Each	Enter Unit Price
Legacy Reader Support Services <i>(Use a separate row for each unique combination of attributes.)</i>								
LRSS01	Reader Preventative Maintenance	For the 1st reader per site				1 Year	Annual	\$4,750.00
LRSS02	Reader Preventative Maintenance	For each additional reader connected via the same sync cable network				1 Year	Annual	\$1,750.00
LRSS03	Service Call	Ad Hoc on Demand Service Call. T&M at hourly rates plus mileage, tolls, and incidentals.				4 Hours	Hour	See Multi Protocol Reader Support Services Rates
LRSS04	Diagnoses	T&M at hourly rates plus replacement parts				4 Hours	Hour	See Multi Protocol Reader Support Services Rates
LRSS05	Badge Readers	Same pricing as Legacy Readers but no a la carte effects built into end of life				4 Hours	Hour	Equivalent to Legacy Reader for request of service

Year 1 Pricing - Valid Feb 7, 2022 - Feb 6, 2023		
Quantity Price	Order Restrictions	Other Information
Enter Unit Price	Describe if applicable	Provide additional details if desired
\$7,000.00		
\$1,750.00		
See Multi Protocol Reader Support Services Rates		
See Multi Protocol Reader Support Services Rates		
See Multi Protocol Reader Support Services Rates		

Note: Proposers shall complete the Maximum Unit Price as noted in Column I. Regarding Columns C through M, please refer to Section B.3.1.1 of Part 1: Administrative

**E-ZPass Equipment and Services RFP
Price Proposal 4 - Documentation List (No Pricing)**

Kapsch TrafficCom USA, Inc.

	Document Identification	Document Description	Other Information
	List document name, date, and version. Add lines if necessary.	Provide brief document description	Provide additional details if desired
Transponder Related			
1	Interior Hard Case Transponder Installation Instructions	Install document for windshield transponders	https://www.ktcsales.net/components
2	Exterior Hard Case Transponder Installation Instructions	Install document for bumper and roof mount transponders	https://www.ktcsales.net/components
3	6C Transponder Installation Instructions	Install document for 6C transponders	https://www.ktcsales.net/components
4	TS00 Tag Programming Station Operator and Maintenance Manual	Operations and Maintenance Manual	https://www.ktcsales.net/components
5	T600 Tag Tester Operator and Maintenance Manual	Operations and Maintenance Manual	https://www.ktcsales.net/components
6			
7			
8			
9			
10			

Reader Related			
1	MPR2.4 Operations and Maintenance Manual	Details on reader operation and maintenance	https://www.ktcsales.net/components
2	MPR2.4 Interface Control Document	Details on how to interface to the reader	https://www.ktcsales.net/components
3	MPR4.1 Operations and Maintenance Manual	Details on reader operation and maintenance	https://www.ktcsales.net/components
4	MPR4.1 Interface Control Document	Details on how to interface to the reader	https://www.ktcsales.net/components
5			
6			
7			
8			
9			
10			

**E-ZPass Equipment and Services RFP
Price Proposal 5 - Future Reader Support Services**

Kapsch TrafficCen USA, Inc.								
Item #	Vendor Identification	Vendor Description	Reader Attributes			Minimum Order Quantity	Unit	Maximum Price
			Type	Environment	Enter other attributes offered. Add columns as necessary			
	Enter Model # or Identifier	Enter a brief description	Regular Toll or Value	Within Cabinet or External (Recommended)		Each	Enter Unit Price	
Future Reader Support Services			<i>(Use a separate row for each unique combination of attributes.)</i>					
FRS501*		Software Engineer				4 Hours	Hour	\$215.00
FRS502*		RF Engineer				4 Hours	Hour	\$215.00
FRS503*		Field Tech				4 Hours	Hour	\$145.00
FRS504*		Supervisor				4 Hours	Hour	\$170.00
FRS505*		Program Manager				4 Hours	Hour	\$275.00

Year 1 Pricing - Valid Feb 7, 2022 - Feb 6, 2023		
Quotation Price	Order Restrictions	Other Information
Enter Unit Price	Describe, applicable	Provide additional details if desired
\$190.00		
\$190.00		
\$130.00		Daytime Rates. Night work and weekend work at a \$30/hour premium, Overtime at \$40/hour premium, all Travel at regular rate
\$150.00		
\$244.00		

Note: Proposers shall complete the Maximum Unit Price as noted in Column 8. Regarding Columns 1 through 6, please refer to Section 3.3.1.1 of Part 1 - Administrative

**UNANIMOUS WRITTEN CONSENT TO ACTION
OF THE BOARD OF DIRECTORS OF
KAPSCH TRAFFICCOM USA, INC.
TAKEN WITHOUT A MEETING**

The undersigned, being all of the members of the Board of Directors of Kapsch TrafficCom USA, Inc., a Delaware corporation (the "Corporation"), pursuant to Article III, Section 8 of the Amended and Restated Bylaws of the Corporation, permitting such action as to be taken without a meeting, hereby consent in writing to the adoption of the following resolutions:

Resignation of Officer

RESOLVED, that effective as of December 1, 2022, that the following persons be, and hereby are Officers of the Corporation, and elected to the offices of the Corporation as set forth opposite their names below, to serve in such capacities until the next annual meeting of the Board of Directors or until their successors are duly elected and qualified:

- | | |
|-----------------|---|
| • JB Kendrick | President |
| • Brian Tom | CFO |
| • Frank Meehan | Senior Vice President, PMO, Delivery & Operations |
| • Tony Pable | Senior Vice President, Engineering |
| • Janet Eichers | Senior Vice President, General Counsel, Secretary |
| • Dan Toohey | Senior Vice President, Sales/Business Development |
| • Jeffrey Adler | Vice President, Engineer of Record |

Omnibus Resolutions

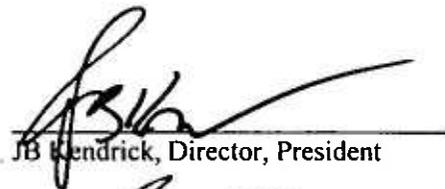
RESOLVED FURTHER, that appointed Officers individually may take all actions on behalf of the Company as specified in the Amended and Restated Bylaws and all relevant Corporation policies and procedures, including but not limited to, executing and approving all contractual agreements, and related certifications, instruments, materials and transactions. The Vice President, Professional Services Engineer shall have the preceding authorities solely with respect to matters specifically requiring such authorities of a Professional Engineer.

RESOLVED FURTHER, that all prior acts or actions taken by the officers of the Corporation in connection with the foregoing resolution are within the authority conferred thereby and are hereby ratified, confirmed, and approved as the acts and deeds of the Corporation.

This Unanimous Written Consent may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

This Unanimous Written Consent shall be filed in the Minute Book of the Corporation and become part of the records of the Corporation.

This Unanimous Written Consent shall be effective for all purposes as of December 1, 2022.



JB Kendrick, Director, President



Brian Tom, Director, CFO

State of New Hampshire

Department of State

CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that KAPSCH TRAFFICOM USA, INC. is a Delaware Profit Corporation registered to transact business in New Hampshire on March 07, 2002. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 400075

Certificate Number: 0005900023



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 22nd day of November A.D. 2022.

A handwritten signature in black ink, appearing to read "D. Scanlan", is written over a faint circular stamp.

David M. Scanlan
Secretary of State



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/21/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh & McLennan Agency LLC 309 Webster Street Dayton OH 45402	CONTACT NAME: Matt Rush PHONE (A/C, No, Ext): 513-256-2198 E-MAIL ADDRESS: Matt.Rush@marshmma.com	FAX (A/C, No):
	INSURER(S) AFFORDING COVERAGE	
INSURED Kapsch Trafficcom Holding II US Corp 2855 Premiere Parkway, Suite F Duluth GA 30097	INSURER A: XL Insurance America, Inc.	NAIC # 24554
	INSURER B: Hartford Casualty Insurance Company	NAIC # 29424
	INSURER C:	
	INSURER D:	
	INSURER E:	

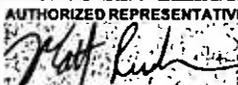
COVERAGES	CERTIFICATE NUMBER: 1379911868	REVISION NUMBER:
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THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	US00109972LI22A	7/1/2022	7/1/2023	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV IN JURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMPROP AGG \$2,000,000 Deductible \$100,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRE AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY	Y	Y	33UENFH2934	7/1/2022	7/1/2023	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$	Y	Y	US00109973LI22A	7/1/2022	7/1/2023	EACH OCCURRENCE \$9,000,000 AGGREGATE \$9,000,000 \$
B	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	33WEAL5RL8	7/1/2022	7/1/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Policies evidenced herein include the following Named Insureds:

Kapsch TrafficCom Holding Corp.
 Kapsch TraffCom, Inc.
 Kapsch TrafficCom USA, Inc.
 KTC Services USA
 Streetline, Inc.

CERTIFICATE HOLDER New Hampshire Department of Transportation Bureau of Turnpikes P.O. Box 2950 Concord NH 03302	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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