

## **ELECTRONIC TOLL COLLECTION AGREEMENT**

This ELECTRONIC TOLL COLLECTION AGREEMENT (this "Agreement") is made and entered into this 1<sup>st</sup> day of July 2014, by and between the VIRGINIA DEPARTMENT OF TRANSPORTATION ("VDOT") and ELIZABETH RIVER CROSSINGS OPCO LLC, a Delaware limited liability company, (the "Participant").

### **RECITALS**

**WHEREAS**, VDOT is the owner and operator of the Virginia E-ZPass Toll Collection System;

**WHEREAS**, the Participant will operate the Elizabeth River Mid-Town and Downtown Tunnels and the MLK Extension (the "Facility");

**WHEREAS**, the Facility will operate and be compatible with the E-ZPass ETC System;

**WHEREAS**, pursuant to the E-ZPass Reciprocity Agreement attached hereto as Exhibit A, VDOT has joined the E-ZPass Interagency Group on behalf of itself and the Other Participants; and

**WHEREAS**, VDOT and the Participant desire to enter into this Agreement which will permit Participant to purchase the necessary equipment to operate the Facility to be compatible with the E-ZPass ETC System and to provide for, among other things, the provision by VDOT of ETC Services for the Participant for the Facility.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, VDOT and the Participant, intending to be legally bound, hereby agree as follows:

#### **ARTICLE 1 – DEFINITIONS**

**Section 1.1** The terms set forth below will have the meanings set forth adjacent to them.

**Agreement** means this Electronic Toll Collection Agreement.

**Agreement Date** means the date hereof.

**Authorized VDOT Representative** means the person duly authorized to act on behalf of VDOT.

**Authorized Participant Representative** means the person duly authorized to act on behalf of the Participant.

**Comprehensive Agreement** means a comprehensive agreement, if any, relating to the Facility between VDOT and Participant pursuant to the Virginia Public-Private Transportation Act.

**CSC** means a customer service center that will issue and provide services relating to the ETC System administration, prepaid account maintenance, and distribution of transponders.

**ETC** means electronic toll collection.

**ETC Prepaid Account** means an account for purposes of collecting prepaid tolls and account fees.

**ETC Servicer** means a third party with whom VDOT has contracted to provide the ETC Services to the Participant.

**ETC Servicer Agreement** means the agreement between VDOT and the ETC Servicer for the provision of the ETC Services to the Participant.

**ETC Services** means all of those services necessary for the administration and operation of an electronic toll collection system, including customer services, distribution of transponders and the collection of tolls from customer accounts and the operation of E-ZPass CSCs.

**ETC System** means a system of electronic toll collection.

**E-ZPass** means the trademark for the regional ETC system operated by an Interagency Group (IAG) of participants.

**E-ZPass ETC System** means the overall system of hardware, software and networks that are used for processing E-ZPass transactions and managing E-ZPass accounts.

**E-ZPass Reciprocity Agreement** means the agreement requiring reciprocity among Other Participants in the E-ZPass ETC System attached to the Agreement as Exhibit A.

**FY13-17 Time Period** is defined in Section 4.2(b)(i).

**Facility** means the Elizabeth River Mid-Town and Downtown Tunnels and the MLK Extension.

**Facility Transactions** means the aggregate of the tolled transactions for the Facility.

**Fiscal Year** means any 12 month period beginning July 1<sup>st</sup> one year and ending June 30<sup>th</sup> the following year.

**Other Participant** or **Other Participants** means those persons operating other ETC Systems in Virginia and who wish to participate in the E-ZPass network.

**Participant** means Elizabeth River Crossings OPCO.

**Read-Only Access** means permission only to view limited information in a database without ability to input or update data.

**Statewide Transactions** means the aggregate of electronic tolled transactions in the Commonwealth of Virginia.

**VDOT** means the Virginia Department of Transportation.

**VDOT E-ZPass Fees** means the fees paid by the Participant to VDOT in an amount as calculated in accordance with Article 4.

**VDOT Standard Operating Procedures** means the VDOT Standard Operating Procedures for ETC Services set forth in Exhibit E.

**Virginia E-ZPass Customer Database** is defined in Section 2.3(d).

**Virginia Toll Facilities Group** means a group comprised of the Other Participants.

## **ARTICLE 2 – ETC SERVICES**

**Section 2.1 Provision of ETC Services.** VDOT agrees to provide the ETC Services to the Participant for the Facility. All Participant policies and procedures that affect VDOT's E-ZPass CSC operations are subject to review and approval by VDOT (such approval not to be unreasonably withheld or delayed); provided, however that such approval shall not be subject to any deemed approval provisions of a Comprehensive Agreement. To the extent that any of Participant's policies and procedures materially and adversely affect VDOT's E-ZPass CSC operations, VDOT and Participant will engage in good faith discussions regarding the implementation of such policies and procedures, including the cure by Participant of any adverse financial effect on VDOT or the E-ZPass CSC operations.

**Section 2.2 – E-ZPass Customer Service Center(s).** VDOT will establish, administer, and operate one or more CSCs either directly or through a contract with an ETC Servicer to establish, administer, and operate one or more CSCs. Unless otherwise provided herein, VDOT will provide the necessary data and communication lines, office supplies and equipment to support a CSC. VDOT will provide a minimum of seven (7) days advance notice to the Participant of any planned changes to any CSC, toll operations and service requirements that materially affect Participant and will, with good faith cooperation, seek the Participant's comments on any such changes and incorporate any mutually agreeable proposals.

### **Section 2.3 – ETC Prepaid Account.**

(a) Notwithstanding anything contained in this Agreement, VDOT and the Participant acknowledge and agree that:

- (i) VDOT has established an ETC Prepaid Account;

(ii) VDOT is the sole owner of the ETC Prepaid Account and has the exclusive right, power and authority, at the exclusion of the Participant and all other persons, to exercise sole dominion and control of the ETC Prepaid Account; and

(iii) the Participant will have no right, title or interest in and to the ETC Prepaid Account.

(b) VDOT agrees to initiate payment by wire transfer to the Participant on or before the close of business of the next VDOT business day, an amount equal to the aggregate tolls and any applicable membership fees posted to patron accounts the previous day, less payment of the VDOT E-ZPass Fees; provided, however that VDOT shall not be obligated to initiate payment pursuant to this Section 2.3(b) in cases of system failure that prevents Participant from sending E-ZPass transactions or VDOT from processing E-ZPass transactions for Participant. Payments which were not made in accordance with this Section 2.3(b) due to system failure will be made by VDOT to the Participant the next day following the correction of the system failure.

(c) In the event outstanding bond or financial covenants located in the Project Financing Agreements (as defined in the Comprehensive Agreement) prohibit netting of the VDOT E-ZPass Fees from the electronic toll receipts, the VDOT E-ZPass Fees must be paid upon receipt of an invoice for services pursuant to Section 2.4.

(d) VDOT agrees to provide the Participant with Read-Only Access to the Virginia E-ZPass Customer Database via the customer service client application, subject to the Participant's agreement to comply with the then-current terms and conditions of the Virginia E-ZPass Database User Policy. VDOT reserves the right to limit the number of individual users from the Participant that are granted Read-Only Access. The Participant's use of the Virginia E-ZPass customer database shall be limited to the provision of direct customer service to address a customer service issue relating solely to the Participant. The Participant shall not use the Virginia E-ZPass customer database to contact customers for marketing purposes. Unless otherwise required by law, the Participant shall not disclose customer data from the Virginia E-ZPass Customer Database to any third party without the express written consent of VDOT.

**Section 2.4 – Invoices for Services.** Any fees for any services including, but not limited to, ETC Services provided by VDOT to the Participant upon request or with the agreement of the other party that are not otherwise paid as provided herein, will be invoiced to the other party and paid in compliance with the laws of the Commonwealth of Virginia.

**Section 2.5 – Disputed Invoices.** If either VDOT or the Participant disputes any invoice or payment transaction reported by the ETC Servicer, they will give prompt notice to the ETC Servicer and each other and resolve the dispute pursuant to Article 10. Participant will only reimburse questioned amounts to VDOT upon final resolution for any amounts in dispute.

**Section 2.6 – Payments by the ETC Servicer.** In the event that pursuant to an ETC Servicer Agreement, the ETC Servicer is obligated to pay VDOT lost revenues or any other sum resulting from the default of the ETC Servicer or the non-performance of the ETC Servicer's duties and obligations under the ETC Servicer Agreement, VDOT will promptly remit to the Participant its *pro rata* portion of such sums. Such payment will be based on the product of (i)

the historical ratio of the Facility Transactions to Statewide Transactions over the applicable time period in question for the immediately preceding year (taking into account holiday and weekend travel days), multiplied by (ii) the average percentage traffic increase at the Facility during the immediately preceding twelve month period; *provided* that if by reason of an event during the time periods in either or both of the preceding items (i) and (ii), the foregoing calculation is not a fair approximation of the traffic flow for the Facility for the period in question, then VDOT will remit such other amount as Participant can establish to VDOT's reasonable satisfaction. Payment to the Participant by VDOT will be limited to revenues lost by Participant or other sums that Participant can show as a direct loss from any such non-performance.

### **ARTICLE 3 – ETC SYSTEMS**

#### **Section 3.1 – Independent Systems.**

(a) The Participant operates or will operate an ETC System which is independent of but compatible with the VDOT E-ZPass ETC System and reads the same or E-ZPass-approved compatible type of transponder, and the Participant agrees that its ETC System will provides ETC transaction data in the format required by VDOT. The Participant agrees to purchase readers, antennas and other tolling hardware necessary comply with the E-ZPass Reciprocity Agreement from vendors approved by VDOT.

(b) VDOT will provide data formats, documentation, interface requirements and any other necessary design information to the Participant in a timely manner and at no additional cost to the Participant. This information is subject to change with reasonable advance written notice from VDOT. Participant will be required to conform to the new interface requirements at no cost to VDOT. Transaction processing problems which arise from the Participant not meeting these requirements will be resolved at the direction of VDOT on a time plus materials basis payment by the Participant to VDOT.

(c) VDOT and the Participant will each continue to be responsible for the maintenance, repair, and operation of all necessary lane and computer equipment for their respective ETC Systems. Specifically, the Participant will be responsible for the maintenance, repair and operation of all necessary lane and computer equipment for its ETC System through and including its host computer. VDOT will be responsible for the maintenance, repair and operation of its ETC System commencing from the Participant's host router and extending through and including telephone lines, routers, black boxes and the CSC.

(d) In no event will VDOT have any liability to the Participant for any losses, including but not limited to lost toll revenue, suffered due to equipment failure or error in the Participant's ETC System; provided, however, that should VDOT's failure to properly maintain, repair and operate its ETC System and the CSC cause a loss of revenue to the Participant, VDOT will pay the Participant the lost revenue and the Participant's direct costs associated therewith within 14 days after the Participant provides VDOT written notice. Such written notice will include adequate and detailed documentation of such lost revenues and costs. Neither party will have any liability to the other party for consequential damages.

**Section 3.2 – Testing Procedures and Results.** Participant will provide VDOT the opportunity to participate in the installation of upgrades or other modifications to the Participant's ETC System, as requested by VDOT. The Participant may participate in the installation of upgrades or other modifications to VDOT's CSC system. In any such event, each party will provide proposed test schedules and scripts for such upgrades or other modifications to the other party and the CSC at least 7 days in advance of testing, and reasonable commercial efforts to deliver 60 days in advance of testing. In the case of upgrades or modifications to Participant's ETC System, upon mutual agreement, VDOT may require additional tests to be undertaken at the Participant's expense in order to confirm the accuracy and reliability in all aspects of processing relating to ETC transactions. Copies of test results will be made available to the other party and the relevant CSC promptly. VDOT will participate in acceptance testing and must approve testing prior to processing of live traffic through the CSC.

**Section 3.3 – Modifications to Systems.**

(a) As equipment changes, modifications or upgrades occur to the ETC Systems, the Participant will use reasonable efforts to cause its ETC equipment used on the Facility to be compatible with that used by VDOT on its other ETC facilities and VDOT's ETC operations. The Participant will be responsible for any and all system maintenance, changes, modifications or upgrades to its ETC equipment or operations. If any changes, modifications or upgrades to any of the Participant's ETC equipment or other system modifications will adversely impact VDOT's ETC operations in any material respect, the parties agree to make good faith efforts to resolve such impact to each party's satisfaction; provided, however, that any such changes, modifications or upgrades will be ultimately compatible with the VDOT ETC operations. Either party will notify the other in writing at least 90 days in advance of any changes or modification to such party's ETC System equipment that may affect the other's ETC System equipment or operations in any material respect.

(b) VDOT will exercise due care and diligence in planning and implementing modifications, upgrades and associated testing of its ETC System at levels which are reasonable given the schedule, scope and budget for the ETC System and will not exceed what is considered customary and reasonable for hardware and software processing systems. However, there is no guarantee against adverse impacts to the performance of the hardware or software in Participant's or others' systems. While precautions will be taken by VDOT to help mitigate the risk of occurrence of such adverse impacts, VDOT will not, unless it is in breach of its duty of due care and diligence, be financially responsible for the occurrence of adverse impact to the Participant or other third parties affected during such modifications, upgrades and associated testing.

**Section 3.4 – System Performance.**

(a) Both the Participant and VDOT will report as promptly as possible and no later than 72 hours from when the parties received notice therefore, of any system failure or degradation that may affect ETC operations. In the event that the Participant is unable to send E-ZPass transactions for the Facility for periods in excess of 24 hours, the Participant must notify the Authorized VDOT Representative prior to sending any backlogged E-ZPass transactions for the Facility. If VDOT is unable to process E-ZPass transactions for the Facility for the

Participant for any period in excess of 24 hours, VDOT will notify the Participant within as promptly as possible and no later than 72 hours of such fact.

(b) Any E-ZPass transactions for the Facility not sent within 60 business days of occurrence are subject to deletion from the patron's account and related revenue may not be recorded or transferred unless the delay is due to failure by VDOT, in which case the related revenue will promptly be transferred to the Participant.

### **Section 3.5 – Disputed Transactions.**

(a) Each business day, the Participant will forward by telecopy or e-mail to VDOT through a CSC, a report listing E-ZPass transactions by lane number from the previous day or weekend, as applicable. Each business day VDOT will cause a CSC to send the Participant via telecopy or e-mail a disbursement report reflecting E-ZPass transaction revenue credited to Participant by transaction number.

(b) If at any time the Participant's E-ZPass revenue reflected in the disbursement report is out of balance with Participant's reported E-ZPass transactions by \$50 or more for any 3 consecutive days, the Participant will notify VDOT. VDOT will provide a detailed disbursement file within 5 business days of Participant's notification. The Participant will compare the detailed disbursement report to its detailed audit and provide details regarding the disputed transactions sufficient to update the patron accounts. If the Participant cannot provide detail sufficient to update the patron accounts within 20 business days of the occurrence of the transactions, those transactions will not be charged to patron accounts and will not result in revenue to the Facility. The Participant will send the detailed data to VDOT with comparisons of transactions to include the transaction sequence number(s) and the acknowledgement verification by the ETC System.

(c) E-ZPass transaction/revenue disputes will be resolved on a monthly basis. The CSC will resolve disputes that are recognized and/or identified as valid by adjusting or offsetting the funds that are owed to the Participant in a subsequent transfer. Any Participant's E-ZPass transactions rejected by their respective home agency will be identified in a report, which will be communicated to the Participant. Rejected transactions will be handled according to documented or generally accepted E-ZPass reconciliation procedures.

## **ARTICLE 4 - PAYMENT TERMS**

### **Section 4.1 – VDOT E-ZPass Fees.**

(a) Participant agrees to pay the VDOT E-ZPass Fees. The VDOT E-ZPass Fees will be due and payable as provided in Section 2.3. VDOT or the ETC Servicer will manage all responsibilities associated with collection and transmission of revenue back to the Participant.

(b) Subject to bond covenants and the affirmative agreement of Participant to right of offset, VDOT reserves the right to offset against amounts to be transferred from the ETC Prepaid Account to the Participant, any amount due to VDOT from the Participant. VDOT and the Participant agree that the agreement to transfer Participant's tolls from the ETC Prepaid Account and the remittance by VDOT to the Participant of amounts from the ETC Prepaid Account in

accordance with this Agreement is irrevocable unless amended, modified or waived by written agreement of both parties.

(c) The cost for any additional services provided by VDOT or the ETC Servicer for the Participant that have been agreed to by VDOT and the Participant in advance will be in addition to the VDOT E-ZPass Fees. Examples of additional services may include mailhouse services to customers and emails to customers. Pricing for the performance of such additional services shall be as agreed between the Participant and VDOT, with pricing for such services to be limited to a pass through of reasonably incurred costs to perform such services.

#### **Section 4.2 – Basis for VDOT E-ZPass Fees.**

(a) The VDOT E-ZPass Fees are intended to cover the Participant's share of VDOT's total annual ETC expenses and such fees shall be full compensation to VDOT to pay VDOT's normal and customary expenses incurred to process electronic toll collections through E-ZPass based on transactions transmitted electronically to the ETC Servicer. The VDOT E-ZPass Fees for each fiscal year will be determined by VDOT and will be deemed correct absent manifest error. The VDOT E-ZPass Fees consist of the following two amounts: the operating costs component and the processing fee component.

(b) Starting in April, 2015, the operating costs component of the VDOT E-ZPass Fees will be assessed by transaction and calculated as follows:

(i) VDOT will determine the estimated operating costs component of the VDOT E-ZPass Fees for each fiscal year to achieve full cost recovery over the five-year time period from Fiscal Year 2013 through Fiscal Year 2017 (the "FY13-17 Time Period") based upon:

(A) VDOT's actual costs for completed Fiscal Years during the FY13-17 Time Period plus estimated costs for the current Fiscal Year and future Fiscal Years for the FY13-17 Time Period for operating the statewide ETC system, including, but not limited to, the amortized capital costs allocated to the statewide ETC system, the annual E-ZPass membership dues paid by VDOT to the E-ZPass Group, and additional transponder acquisition and distribution costs of VDOT's ETC operations;

(B) VDOT's actual revenues for completed Fiscal Years during the FY13-17 Time Period plus estimated revenues for the current Fiscal Year and future Fiscal Years during the FY13-17 Time Period collected from customer maintenance fees assessed per transponder other miscellaneous customer charges (e.g., statement fees, lost/stolen fees), and other revenue generated by the CSC;

(C) VDOT's actual transactions for completed Fiscal Years during the FY13-17 Time Period plus estimated transactions for the current Fiscal Year and future Fiscal Years during the FY13-17 Time Period for all participants in the statewide ETC System.

(D) VDOT's actual toll facility transaction fee income for completed Fiscal Years during the FY13-17 Time Period plus estimated income for current Fiscal Year. VDOT will calculate the estimated income for the current Fiscal Year by multiplying the toll



transactions for each completed Fiscal Year during the FY13-17 Time Period by the Operating Costs Component of the VDOT E-ZPass Fee previously published for the current Fiscal Year.

(ii) The estimated baseline operating costs component of the VDOT E-ZPass Fees is calculated using an amount equal to the difference in the estimated amounts set forth in clause (A) above and the sum of clauses (B) and (D) above, divided by the number of estimated transactions set forth in clause (C) above for the future Fiscal Years remaining in the FY13-17 Time Period (F).  $[(A - (B + D)) \div F]$ .

(c) The processing fee component of the VDOT E-ZPass Fees will consist of the sum of an amount equal to the average credit card processing fee (expressed in a percentage and calculated as set forth in the next sentence) multiplied by total revenue processed for the Participant each day. For the purposes of this calculation, the "average credit card processing fee" will equal the sum of the actual credit card processing fees and other related bank fees divided by credit card revenue multiplied by the percentage of total E-ZPass revenue processed by credit card. In the event that the processing fee component of the VDOT E-ZPass Fees collected for the twelve month period immediately preceding the date of calculation are either less than or in excess of the actual costs for such period, the deficiency or excess will then be applied to the calculation of the processing fee component of the VDOT E-ZPass Fees for the next twelve month period.

(d) Annually, but not later than April 1<sup>st</sup>, VDOT will endeavor to provide to Participant written notice of the VDOT E-ZPass Fees to be charged the next Fiscal Year.

(e) A calculation of the estimated baseline operating costs component of the VDOT E-ZPass Fees and the adjustment thereto is set forth in Exhibit B. A calculation of the processing fee component of the VDOT Processing Fee for the current Fiscal Year is also set forth in Exhibit B.

**Section 4.3. –Bank Account Information.** Unless otherwise directed by the Participant upon 10 business days prior written notice, the Department shall deposit or cause to be deposited all revenues derived from E-ZPass transactions into the account set forth in Exhibit C, in accordance with the terms of this Agreement.

## ARTICLE 5 – TERM

**Section 5.1 – Term.** The term of this Agreement will commence upon the Agreement Date and will terminate on that date which is the earlier to occur of the following:

- (a) June 30, 2015, subject to extension by VDOT pursuant to the Annual Extension of the Electronic Toll Collection Agreement, the form of which is attached hereto as Exhibit D, for successive one year extensions of the term;
- (b) the date on which this Agreement is terminated by either party, having given 90 days prior written notice; or

(c) the date this Agreement is terminated in accordance with Article 12.

**Section 5.2. – Continuity of ETC Services.** In order to insure continuity of ETC Services to the Participant, VDOT agrees that if the ETC Services Agreement will for any reason be terminated, or is materially changed or renegotiated, VDOT will (i) make a good faith attempt to give the Participant the opportunity to obtain ETC Services from the current ETC Servicer or a substitute Servicer engaged by VDOT, as appropriate, under terms substantially the same as those set forth in the ETC Services Agreement and this Agreement pursuant to an amendment to this Agreement or a separate agreement, and (ii) in the case where VDOT is performing the ETC Services, make ETC Services available to the Participant under terms substantially the same as those set forth in the ETC Services Agreement and this Agreement.

## **ARTICLE 6 – OPERATIONS**

**Section 6.1 – Standard Operational Procedures.** VDOT Standard Operating Procedures for ETC Services are attached hereto as Exhibit E (the “Standard Operating Procedures”). The Participant may establish and operate a customer service center to provide non-ETC related services independently of VDOT and in such a case the Participant agrees to operate such an independent service center in a manner consistent with the VDOT Standard Operating Procedures.

**Section 6.2 – Changes in Operational Procedures.** Any anticipated changes that materially affect operating procedures will be presented and discussed at liaison meetings. VDOT will, in good faith cooperation, try to accommodate changes proposed by the Participant. However, VDOT has sole approval authority to amend operational procedures.

## **ARTICLE 7 – RESPONSIBILITIES OF VDOT**

**Section 7.1 – Generally.** VDOT will use commercially reasonable efforts to cause the ETC Servicer to perform its duties and obligations in accordance with the ETC Servicer Agreement and the VDOT Standard Operating Procedures. If the Participant gives VDOT a written notice stating that the ETC Servicer is not performing its duties and obligations in accordance with the ETC Servicer Agreement or the VDOT Standard Operating Procedures, and specifying the reasons therefore, VDOT will promptly remedy the deficiency (including taking any remedial action available pursuant to the ETC Servicer Agreement) or give the ETC Servicer notice to such effect and request appropriate action. VDOT will include the Participant in all decisions relating to any such situation. The parties acknowledge that it is not necessary for Participant to be a party to the ETC Servicer Agreement, provided that VDOT will be obligated to provide all ETC Services pursuant to this Agreement.

**Section 7.2 – Notices.** VDOT will promptly notify the Participant of all changes in ETC Services that are anticipated to materially affect Participant’s operations, including with respect to E-ZPass and the E-ZPass Reciprocity Agreement.

## **ARTICLE 8 – RESPONSIBILITIES OF PARTICIPANT**

**Section 8.1 – Generally.** The Participant will use commercially reasonable efforts to maintain its ETC System to perform in accordance with the VDOT Standard Operating Procedures. If VDOT gives the Participant a written notice stating that its ETC System is not operating in accordance with approved operating procedures, and specifying the reasons, the Participant will promptly initiate appropriate corrective action. The Participant will include VDOT in all decisions relating to any such situation. The Participant will take no actions that violate or affect any of the terms of the E-ZPass Reciprocity Agreement that is attached and incorporated as part of this Agreement.

**Section 8.2 – Toll Rate Changes.** The Participant is exclusively authorized to make and be responsible for any toll rate changes at the Facility in accordance with applicable law and a Comprehensive Agreement, if any. The Participant will communicate any toll rate changes to VDOT and the ETC Servicer in accordance with a Comprehensive Agreement, if any, or if the Participant has not entered into a Comprehensive Agreement, at least fifteen (15) business days prior to implementation to allow for modifications to the ETC systems and related charges and modifications.

**Section 8.3 – Notices.** The Participant will notify VDOT of all changes in its ETC Systems that are anticipated to materially affect VDOT and/or ETC operations.

## **ARTICLE 9 – MARKETING**

**Section 9.1 – Marketing.** VDOT and the Participant will coordinate marketing for the ETC System of toll collections. VDOT and the Participant will mutually determine a marketing plan. VDOT will, in good faith cooperation, include the Participant in its marketing efforts. However, either party may implement, at its own cost, supplemental marketing efforts for the Facility which are in addition to those provided by the mutually agreed upon marketing plan. The Participant will be provided usage of, and is hereby granted, subject to the provisions of a Comprehensive Agreement, a license to use, the term “E-ZPass” and the “E-ZPass” logos at no charge for operational and marketing purposes and VDOT represents and covenants that it has lawful authority to grant such license; provided that VDOT will retain the right of prior approval of any such use, such approval not to be unreasonably withheld, conditioned or delayed.

## **ARTICLE 10 - DISPUTE RESOLUTION**

**Section 10.1 –Dispute Resolution Generally.** VDOT and the Participant will each exercise their best efforts to mutually resolve any dispute that may arise between them through good faith negotiations between the Authorized VDOT Representative and Authorized Participant Representative.

**Section 10.2 – Dispute Resolution Pursuant to a Comprehensive Agreement.** If VDOT and the Participant have entered into a Comprehensive Agreement pursuant to the Virginia Public-Private Transportation Act which requires their respective entry into this

Agreement, then the provisions of Section 11.1 shall not apply and the parties agree to resolve any disputes which arise between them under this Agreement pursuant to the dispute resolution provisions of such Comprehensive Agreement.

**ARTICLE 11 - DEFAULT**

**Section 11.1 – Events of Default; Cure; Termination.**

(a) A failure by either VDOT or Participant to fulfill their respective material responsibilities and obligations set forth herein will give rise to an event of default, respectively. Following the provision of notice of default by the non-defaulting party to the defaulting party, and the failure to cure the event of default within the period agreed upon pursuant to Section 12.1(b), the Agreement may be terminated in accordance with Section 12.1(c).

(b) If an event of default occurs pursuant to Section 12.1(a), the defaulting party shall have 60 days to cure such default; provided, however, that the 60-day cure period may be extended by mutual agreement.

(c) Following expiration of the cure period, unless such cure period is extended by mutual agreement, the non-defaulting party will have the right to terminate this Agreement by notice thereof to the defaulting party.

**ARTICLE 12 - MISCELLANEOUS**

**Section 12.1 – Waivers, Modifications and Amendments.** No waiver, modification, or amendment of any term, condition or provision of this Agreement will be valid or of any force or effect unless made in writing and signed by both VDOT and the Participant. The effect of any such change will be limited to the extent specified and agreed to by VDOT and the Participant, as evidenced by signatures of duly appointed officers of each of the parties.

**Section 12.2 – Captions.** Captions, headings, cover pages and tables of contents contained in this Agreement are inserted for convenience of reference only and in no way define, limit or prescribe the scope, intent or meaning of any provisions of this Agreement. All appendices, exhibits, or schedules attached hereto are hereby incorporated herein and made a part of this Agreement.

**Section 12.3 – Notices.** All notices will be in writing and will be delivered personally, by teletype, or by registered or certified mail, return receipt requested, addressed as follows:

**Participant Mailing Address**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**VDOT Mailing Address**

Virginia Department of Transportation  
1401 East Broad Street  
Richmond, Virginia 23219  
Attention: Commissioner of Highways  
Telecopier: 804-780-6250

**Section 12.4 - Entire Agreement.** This Agreement constitutes the entire agreement between VDOT and the Participant concerning the subject matter hereof and supersedes all prior negotiations, representations, and agreements about them, either oral or written; *provided, however* that the provisions of a Comprehensive Agreement, if any, shall prevail in the event such provisions conflict with the terms of this Agreement.

**Section 12.5 - Force Majeure/Emergency.** In case by reason of force majeure, either party will be rendered unable wholly or in part to carry out its obligations under this Agreement, then, provided such party will give notice and full particulars of such force majeure in writing to the other within a reasonable time after occurrence of the event or cause relied on, the obligations of such party so far as they are affected by such force majeure, will be suspended during the continuance of the inability then claimed, which will include a reasonable time for the removal of the effect thereof, and such party will endeavor to remove or overcome such inability with all reasonable dispatch. Any time period specified herein for the performance by such party of an obligation will be appropriately adjusted and extended without the necessity for any amendment to this Agreement if a force majeure event occurs.

**Section 12.6 – Assignment.** Participant may not assign its rights and obligations under this Agreement except with the prior written consent of VDOT.

**Section 12.7 – Governing Law and Venue.** This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Virginia. All litigation between the parties arising out of or pertaining to this Agreement or its breach will be filed, heard and decided in the Circuit Court for the City of Richmond, Virginia, Division I, which will have exclusive jurisdiction and venue.


**Section 12.8 - Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.


*[Signature Page Follows]*

IN WITNESS THEREOF, this Agreement has been entered into as of the first date set forth above, by the duly authorized officers of the parties hereto.

**PARTICIPANT**

**VIRGINIA DEPARTMENT OF  
TRANSPORTATION**

By:   
Name: GREG WOODSMALL  
Title: CEO

By:   
Name: David T. Caudill, P.E.  
Title: Division Administrator  
Tolling Operations Division

**Exhibit A**

**E-ZPass Reciprocity Agreement**

**Exhibit B**

**VDOT E-ZPass Fees**

For Fiscal Year 2015, the processing fee component of the VDOT E-ZPass Fees will be 1.611% of the revenue processed for each individual facility.

For Fiscal Year 2014, the operating costs component of the VDOT E-ZPass Fees will be \$0.0613 per transaction.

The method of calculation for the future estimated baseline operating costs component of the VDOT E-ZPass Fees and the adjustment thereto is illustrated in the following example attached hereto as follows:



**Example of baseline operating cost component calculation – Sample only for April 2014 calculation**

**Exhibit B - VDOT E-Zpass Fees and adjustments**

**Notes**

April 2014 Calculation for FY 2015 Toll Facility Transaction Fee  
 Completed Fiscal Years: 2013  
 Estimated Years: 2014(partial)through 2017  
 Transaction Fee for 2014 set in April 2013 at 0.0335

Change a FLAT Transaction Fee						
Operating cost component	Actual	Current Year Projection	Future Projections			Total
	Fiscal Year 2013	Fiscal Year 2014	Fiscal Year 2015	Fiscal Year 2016	Fiscal Year 2017	
	Year 1	Year 2	Year 3	Year 4	Year 5	
Toll Facility Transaction Fee	0.0335	0.0335				
Total Costs for Operating the statewide ETC System (A)	\$ 8,876,178	\$ 10,454,141	\$ 11,298,749	\$ 11,442,551	\$ 12,171,869	\$ 54,243,488
Total Estimated Revenue collected from customer maintenance fees and other miscellaneous fees	\$ 1,356,112	\$ 2,238,368	\$ 768,953	\$ 779,535	\$ 787,348	\$ 5,930,315
Toll facility transaction fee income	\$ 4,800,032	\$ 5,643,164				\$ 10,443,196
Total revenue/income (E)	\$ 6,156,144	\$ 7,881,532	\$ 768,953	\$ 779,535	\$ 787,348	\$ 16,373,512
Costs remaining (A-E)	\$ 2,720,034	\$ 2,572,609	\$ 10,529,796	\$ 10,663,015	\$ 11,384,521	\$ 37,869,976
ETC Transactions for all participants (C)	143,624,301	161,319,578	192,743,497	207,067,802	217,664,736	922,419,914
Projected transactions available for cost recovery (F)			192,743,497	207,067,802	217,664,736	617,476,036
Amount to be recovered via future transaction fee						37,869,976
Future transaction fee required to cover cost remaining (E/D)						0.0613
Future projected transaction fee revenue			11,821,012	\$ 12,699,526	\$ 13,349,438	\$ 26,048,964
Operating Profit / (Loss)	\$ (2,720,034)	\$ (2,572,609)	\$ 1,291,216	\$ 2,036,510	\$ 1,964,918	(0.00)
<b>Operating Cost Component of E-ZPass Fee (Z)</b>						\$ 0.0613
Revenue Summary						
Revenue anticipated from other revenues/fees	\$ 1,356,112	\$ 2,238,368	\$ 768,953	\$ 779,535	\$ 787,348	\$ 5,930,315
Transaction Fee	4,800,032	5,643,164	11,821,012	12,699,526	13,349,438	48,313,172
<b>TOTAL</b>	<b>\$ 6,156,144</b>	<b>\$ 7,881,532</b>	<b>\$ 12,589,965</b>	<b>\$ 13,479,061</b>	<b>\$ 14,136,786</b>	<b>\$ 54,243,488</b>
Anticipated Revenue less Total Estimated Costs for Operating ETC System (Profit/Loss)	\$ (2,720,034)	\$ (2,572,609)	\$ 1,291,216	\$ 2,036,510	\$ 1,964,918	\$ (0)

**Exhibit C**

**Bank Account Information**

Bank: Bank of America  
Account Name: Elizabeth River Crossings OpCo LLC - EZ Pass Revenue Sub Account  
Account No. 4427895959  
Routing No. 111000012

---

\* If the Facility is not in operation, the Participant agrees to provide to the Department the account information in this Exhibit C within 30 days prior to the planned commencement of tolling on the Facility.

**Exhibit D**

**Form of Annual Extension of the Electronic Toll Collection Agreement**

This ANNUAL EXTENSION OF THE ELECTRONIC TOLL COLLECTION AGREEMENT (this "FY 20[•] Extension Agreement") is made and entered into this [•] day of [•] 20[•], by and between the VIRGINIA DEPARTMENT OF TRANSPORTATION ("VDOT") and \_\_\_\_\_ (the "Participant"). Terms used in this FY 20[•] Extension Agreement and not defined herein shall have the meaning given them in the ETC Agreement.

**Recitals**

WHEREAS, VDOT and Participant entered into an Electronic Toll Collection Agreement (the "ETC Agreement") on July 1, 2014;

WHEREAS, the [•] Extension of the ETC Agreement was entered into on [•] and ends on [•]; and

WHEREAS, Article 5 of the ETC Agreement provides that it may be renewed for successive one year extensions.

**Agreement**

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, VDOT and the Participant hereby agree as follows:

**Section 1.01 Extension Period.** The term of the ETC Agreement shall be extended for an additional one-year period commencing July 1, 20[•] (the "Effective Date") and ending June 30, 20[•] (the "Extension Period"), subject to extension or earlier termination as provided in the ETC Agreement.

**Section 2.01 VDOT E-ZPass Fees.**

(a) The VDOT E-ZPass Fees for the Extension Period are calculated and set forth in Exhibit A hereto and shall replace the VDOT E-ZPass Fees prior to the Effective Date.

**Section 3.01 Ratification of ETC Agreement.** Except as expressly modified by a prior extension and this FY 20[•] Extension Agreement, all of the terms and provisions of the ETC Agreement and subsequent extension agreements are hereby ratified and confirmed and shall remain in full force and effect.

**Section 4.01 Counterparts.** This FY 20[•] Extension Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

*[Signature Page Follows]*

IN WITNESS THEREOF, this FY 20[ • ] Extension Agreement has been entered into as of the first date set forth above, by the duly authorized officers of the parties hereto.

**PARTICIPANT**

**VIRGINIA DEPARTMENT OF  
TRANSPORTATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit A to FY20[ • ] Extension Agreement**

**VDOT E-ZPass Fees**

For Fiscal Year 20(\*), the processing fee component of the VDOT E-ZPass Fees will be \_\_\_\_\_% of the revenue processed for each individual facility.

For Fiscal Year 20(\*), the operating costs component of the VDOT E-ZPass Fees will be \$\_\_\_\_\_ per transaction.

**Exhibit E**

**VDOT Standard Operating Procedures for ETC Services**