

**Texas Department of Transportation
Texas Turnpike Authority**

**Volume III
Agreement for
Toll Operations and Customer Service Center
Operator**

Draft Issue - January 21, 2011

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**AGREEMENT FOR THE PROVISION OF
STATEWIDE TOLL COLLECTION CUSTOMER SERVICE CENTER
SYSTEM AND OPERATIONS**

AND

CENTRAL TEXAS TURNPIKE SYSTEM TOLL OPERATIONS

This Agreement for the Provision of Statewide Toll Collection Customer Service Center System and Operations and Central Texas Turnpike System Toll Operations (“Agreement”) is entered into by and between the Texas Department of Transportation, a public agency of the State of Texas (“TxDOT”), and **NAME OF PROVIDER**, a **STATE** corporation (“Provider”), effective on the date the last party executes it, with reference to the following recitals.

A. Texas Transportation Code, §228.052 authorizes TxDOT to enter into an agreement with one or more persons to provide personnel, equipment, systems, facilities, and services necessary to operate a toll project or system, including the operation of toll plazas and lanes and customer service centers and the collection of tolls.

B. The Texas Transportation Commission has promulgated rules at Title 43, Texas Administrative Code, §27.83 governing the requirements for soliciting proposals to operate a TxDOT toll project or system.

C. Pursuant to Texas Transportation Code, §228.052 and Title 43, Texas Administrative Code, §27.83 TxDOT wishes to enter into an agreement with a vendor to (1) establish, operate, and maintain customer service center (“CSC”) operations supporting TxDOT’s toll collections throughout the state of Texas; (2) provide a system to manage toll accounts, transaction processing, interoperability and violations (hereafter, “the CSC System”); and (3) manage and maintain toll operation services for the Central Texas Turnpike System, a network of toll roads in the greater Austin area encompassing State Highway 45, Loop 1 and State Highway 130 (hereafter, “the CTTS”).

D. On **DATE** TxDOT issued a Request for Proposals (“RFP”) setting forth TxDOT’s selection criteria and requirements for the work described above. TxDOT determined that Provider is the proposer which best met the selection criteria contained in the RFP, and that its proposal is the one that provides the best value to the State.

E. The Executive Director of TxDOT has been authorized to enter into this Agreement by Texas Transportation Commission Minute Order **NUMBER** dated **DATE**.

NOW, THEREFORE, in consideration of the sums to be paid to Provider by TxDOT, the foregoing premises and the covenants and agreements set forth herein, the parties hereby agree as follows:

**SECTION 1.
PROVIDER'S OBLIGATIONS**

1.1 Scope of Work

- 1.1.1 Performance of the Work - Provider shall perform all tasks described in the Technical Provisions for Toll Operations and Customer Service Center Operator as set out in Exhibit A (hereafter, "Technical Provisions") and as further described by Provider in its Proposal as set out in Exhibit B. These tasks are collectively referred to herein as "the Work." Provider shall implement the CSC, commence CSC operations and commence toll operations in accordance with the schedules set forth in the Pricing and Delivery Tables P-1 and P-2 submitted by Provider with the Proposal as set out in Exhibit C. Provider shall not undertake or make any irreversible commitment to undertake any of the Work until TxDOT issues a notice to proceed. Any conflicts between the Proposal and the Technical Provisions shall be resolved according to the order of precedence set forth in Section 17.2. Time is of the essence in this Agreement. All labor, materials, equipment, services, expenses and efforts necessary for Provider to complete the Work and comply with the terms of this Agreement shall be Provider's sole responsibility, unless otherwise provided for in this Agreement.
- 1.1.2 Performance Standards – Provider shall perform the Work in accordance with all professional and industry standards generally accepted in the State, in a good and workmanlike manner, free from defects, and in accordance with the terms and conditions set forth in this Agreement.
- 1.1.3 Quality Control and Quality Assurance – Provider shall perform all quality control and quality assurance necessary for Provider to comply with its obligations under this Agreement.
- 1.1.4 Compliance with applicable laws, regulations and governmental approvals – In performing the Work, Provider shall comply with all applicable laws, rules, regulations and governmental approvals in any manner affecting the performance of the Work. At TxDOT's request, Provider shall furnish TxDOT with satisfactory proof of compliance.
- 1.1.5 Compliance with TxDOT directions - At all times during the term hereof, including during the course of, and notwithstanding the existence of, any dispute, Provider shall perform as and if directed by TxDOT in a diligent manner and without delay, shall abide by TxDOT's decision or order, and shall comply with all applicable provisions of this Agreement. If a dispute arises regarding such performance or direction, the dispute shall be resolved in accordance with Section 15, below.
- 1.1.6 Changes in Work - If TxDOT determines it is necessary to require corrections to completed Work due to errors made by Provider, Provider shall correct the Work at no additional cost to TxDOT. If TxDOT requires changes in previously

completed and approved Work, Provider shall make such changes as directed by TxDOT and, provided that the changes are not made necessary by a breach of warranty by Provider, Provider will be compensated by TxDOT for such at the hourly rates indicated on Pricing and Delivery Table P-9 submitted with the Proposal. Any such changes must be approved in advance in writing by TxDOT. The parties may mutually determine to amend this Agreement in accordance with Section 18.4 to require Provider to perform additional tasks beyond the scope of the Work contemplated by this Agreement, but in no event shall the dollar amount charged by Provider to TxDOT for additional tasks under such an amendment exceed the amount calculated using the actual hours worked and the hourly rates indicated on Pricing and Delivery Table P-9.

1.1.7 Communication - From time to time, at TxDOT's discretion, Provider shall confer with TxDOT regarding the progress of the Work. Provider shall prepare and present all information that is requested by TxDOT or is necessary for TxDOT to evaluate the Work. Provider shall promptly advise TxDOT in writing of any problems, delays or adverse conditions that will materially affect the Provider's ability to meet goals on schedule. Provider shall also promptly notify TxDOT in writing of any favorable developments that enable Provider to meet goals sooner than anticipated.

1.2 Personnel and Worker Conduct

1.2.1 Project Manager - Provider shall at all times provide a Project Manager approved by TxDOT who (a) will have full responsibility for the prosecution of the Work, (b) will act as agent and be a single point of contact in all matters on behalf of Provider, and (c) will be available to execute instructions and directions from TxDOT or its authorized representatives. Provider shall notify TxDOT of the name and contact information of the Project Manager within ten (10) calendar days of the effective date of this Agreement.

1.2.2 Employment of Trained and Licensed Personnel - Provider shall employ under this Agreement only personnel properly trained to perform the Work or, if applicable, properly licensed to perform the Work. Provider shall ensure that its employees are well-groomed and appropriately dressed when on TxDOT property. TxDOT may require Provider to dismiss an employee from the project if in the sole discretion of TxDOT the work of that employee does not comply with the terms of this Agreement or the conduct of that employee is detrimental to the Work.

1.2.3 Replacement or Changes of Key Personnel - Replacement or changes of key personnel and increases/decreases in operational staffing levels by Provider shall be requested in writing and are subject to the approval of TxDOT. If TxDOT determines that the key personnel are unable to perform satisfactorily or to communicate effectively, TxDOT may cause their immediate dismissal from the project. Replacement personnel shall have comparable qualifications and be provided at no additional cost to TxDOT. A resume for the proposed replacement

shall be submitted to TxDOT. TxDOT may reject the proposed replacement if references or past working performance are questionable or unfavorable. If key personnel are removed, and TxDOT did not initiate the request, Provider has five (5) calendar days to provide a replacement. In the event that the replacement is to be compensated by TxDOT on an hourly basis under this Agreement, there shall be no charge to TxDOT for the first five (5) working days of the replacement.

- 1.2.4 Alcohol, drug and firearm free workplace - TxDOT is committed to maintaining an alcohol, drug, and firearm free workplace. Provider shall ensure that its employees do not possess or use firearms; or possess, use or be under the influence of alcohol or controlled substances while in the performance of any of the Work under this Agreement.
- 1.2.5 No Smoking in TxDOT buildings - Provider shall ensure that its employees comply with TxDOT's policy prohibiting smoking in TxDOT buildings.
- 1.2.6 English Speaking Staff – Provider shall at all times have a minimum of one English speaking employee at any site at which Provider or its subcontractor is performing Work under this Agreement.
- 1.2.7 Subcontractors - Provider shall ensure that subcontractors providing services under this Agreement have the same obligations, meet the same requirements and provide the same level of service and level of experience required of Provider under this Agreement. If Provider uses a subcontractor for any or all of the Work, the following conditions apply under the listed circumstances:
 - (1) Any subcontract for services rendered by individuals or organizations not a part of Provider's firm shall not be executed without prior authorization and written approval from TxDOT.
 - (2) Provider shall coordinate, control performance and project budget and schedule for all subcontractors. Provider shall be solely responsible and accountable for the completion of all Work for which Provider has subcontracted.
 - (4) TxDOT reserves the right to require the removal of subcontractor employees who are deemed unsatisfactory by TxDOT.
 - (5) TxDOT retains the right to check any subcontractor's background and make a determination to approve or reject the use of submitted subcontractors. Any negative responses may result in disqualification of the subcontractor.
 - (6) Provider shall be the main point of contact between TxDOT and subcontractors.

1.3 Knowledge Transfer

Provider shall furnish knowledge transfer to TxDOT to support existing, enhanced and modified functionality of CSC operations, the CSC System, and toll operation services for the CTTS. Knowledge transfer activities shall include, but are not limited to: (1) as needed job instruction (train the trainer) and familiarization of new and existing TxDOT employees and designees for all new functionality; and (2) development and maintenance of documentation, such as standard operating procedures, user guides for the CSC System and associated peripherals as mutually agreed upon by TxDOT and Provider.

1.4 Transfer of TxDOT Property

Provider shall, at TxDOT's request, be responsible for contacting any previous service provider(s) to request the transfer to Provider of any TxDOT property needed to perform the Work. Any such transfer of TxDOT's property shall occur within an agreed upon time frame to ensure Provider can begin providing services as required by TxDOT. At the end of the term of this Agreement or if the Agreement is terminated, Provider shall return all TxDOT property to TxDOT or transfer all TxDOT property to the person or person(s) designated by TxDOT immediately upon TxDOT's request.

1.5 Licenses, Permits, Certifications and Other Governmental Approvals

Provider shall obtain and comply with any licenses, permits, certifications or other governmental approvals required for the performance of the Work. At TxDOT's request, Provider shall furnish TxDOT with satisfactory proof of compliance.

1.6 Information Technology Security

Provider will implement appropriate administrative, physical, and technical safeguards to reasonably and appropriately protect the confidentiality, integrity, and availability of services provided to TxDOT. Provider will immediately report to TxDOT any security incident of which it becomes aware. Provider will submit for approval by TxDOT and conform its policies and procedures related to the implementation of security safeguards to comply with TxDOT's information resources security program.

1.7 Electronic and Information Resources Accessibility Standards

Provider shall furnish TxDOT with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas accessibility requirements, or indicate that the product or service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). If Provider cannot supply a URL to its VPAT or is not listed with the "Buy Accessible Wizard," Provider shall provide TxDOT and the Texas Department of Information Resources with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" and VPAT is located at: <http://www.section508.gov/>.

1.8 Buy Texas

Pursuant to Texas Government Code, §2155.4441, Provider shall buy Texas products and materials for use in providing services authorized in this contract when such products and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products and materials.

**SECTION 2.
TERM OF AGREEMENT**

The initial term of this Agreement shall be five (5) years with an option to extend, at TxDOT's discretion, for an additional five (5) years through the exercise of up to two (2) two-year terms and one (1) one-year term. This Agreement becomes effective when executed by both parties. Any reference to the term of this Agreement includes any extensions to the initial term.

**SECTION 3.
PAYMENT FOR SERVICES**

3.1 Payment for Work Performed

TxDOT will pay, as Provider's full compensation under this Agreement, the amounts set forth in the Pricing and Delivery Tables P-2 through P-7 and P-9 [, **OP-1 and OP-2**] submitted with the Proposal for complete and satisfactory performance of each (1) collection of tasks/events constituting a Payment Milestone under Pricing and Delivery Table P-2, (2) month of operation(s) under Pricing and Delivery Tables P-3 through P-7 [, **OP-1 and OP-2**], or (3) work performed pursuant to a change order under Pricing and Delivery Table P-9 (collectively, "Deliverables").

3.2 Invoicing Instructions

Provider shall submit comprehensive and detailed invoices with references to the bases and dates for each item charged, including references to the particular line item(s) on the Pricing and Delivery Tables for which payment is being requested. Original documentation that validates the charges shall be attached. The original invoice shall include the complete contract number and Provider's Employer Identification Number (EIN), and should be sent to the following address to ensure timely payment:

ADDRESS LINE 1

ADDRESS LINE 2

ADDRESS LINE 3

ATTN

FAX

E-MAIL

3.3 Invoices requiring correction

An invoice requiring correction shall be re-submitted with a new invoice date.

3.4 Deliverables and Payment

Provider shall submit an invoice for completion of each Deliverable for which payment is requested. Written rejection by TxDOT of a Deliverable or any portion of a Deliverable shall be accompanied by a statement of known defects in the Deliverable or portion of the Deliverable. If a Deliverable is rejected and capable of being corrected, Provider shall correct and resubmit it within ten (10) calendar days, or as otherwise agreed to by the parties. TxDOT shall not be obligated to pay for any rejected Deliverable or portion of a Deliverable until it is corrected to TxDOT's satisfaction, and TxDOT shall not be obligated to pay for any rejected Deliverable or portion of a Deliverable that is incapable of being promptly corrected, including any month of operation(s) or any portion of a month of operation(s) for which Provider did not perform the Work in accordance with this Agreement. Written acceptance or rejection of a Deliverable shall be effective when the notification is posted in the mail, faxed, or sent electronically via email within the timeframe agreed upon by TxDOT and Provider. Any payment under this Agreement will be made in accordance with Texas Government Code, Chapter 2251.

3.5 Payment of Subcontractors

As provided by Texas Government Code, §2251.022, Provider shall pay a subcontractor any appropriate share of a payment not later than the 10th calendar day after the date Provider receives the payment from TxDOT, unless a different time is specified by law. The appropriate share is overdue on the 11th calendar day after the date Provider receives the payment.

3.6 Disputes

Failure by TxDOT to pay any amount in dispute shall not alleviate, diminish or modify in any respect Provider's obligation to perform under this Agreement, and Provider shall not cease or slow down its performance under this Agreement on account of any such amount in dispute. Any dispute regarding such payment shall be resolved pursuant to Section 15. Provider shall proceed as directed by TxDOT pending resolution of the dispute. Upon resolution of any such dispute, each party shall promptly pay to the other any amount owing.

3.7 Form of Payment

Payment for goods or services purchased with State-appropriated funds is made by warrants or by direct deposit from the State Treasury. Direct deposit is the preferred method of payment. No penalty for late payment will be incurred by TxDOT if payment is made in thirty (30) calendar days or less from receipt of goods or a correct invoice, whichever is later. Additional information and a direct deposit authorization application may be found at: <https://fmx.cpa.state.tx.us/fm/payment/index.php>.

SECTION 4. GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS

Provider represents, warrants and covenants that:

- (1) The representations, descriptions and statements made in the Proposal, including the Proposer Affirmation Form, are true and correct.
- (2) Provider has, and throughout the term of this Agreement shall maintain, all required organization, facilities, authority, license status, professional ability, skills and capacity to perform the Work.
- (3) Provider has evaluated the feasibility of performing the Work, including implementation of the CSC, commencement of CSC operations and commencement of toll operations in accordance with the schedules set forth in Pricing and Delivery Tables P-1 and P-2 submitted by Provider with the Proposal, and has reasonable grounds for believing and does believe that such performance is feasible and practicable.
- (4) Provider acknowledges and agrees that it has familiarized itself with the requirements of any and all applicable laws and the conditions of any required governmental approvals prior to entering into this Agreement, and will be responsible for complying with the foregoing at its sole cost, regardless of whether such compliance would require additional labor, equipment and/or materials not expressly provided for in the Proposal.
- (5) Provider is a corporation duly organized and validly existing under the laws of the State of STATE, with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted. Provider is duly qualified to do business, and is in good standing, in the State, and will remain in good standing throughout the term of this Agreement and for as long thereafter as any obligations remain outstanding under this Agreement.
- (6) The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action of Provider, and this Agreement has been duly executed and delivered by Provider.
- (7) This Agreement constitutes a legal, valid and binding obligation of Provider, enforceable against Provider and, if applicable, each member of Provider, in accordance with its terms.
- (8) All required approvals have been obtained with respect to the execution, delivery and performance of this Agreement, and performance of this Agreement will not result in a breach of or a default under Provider's organizational documents or any indenture or loan or credit agreement or other material agreement, instrument, judgment or decree to which Provider is a party or by which its properties and assets may be bound or affected.
- (9) Provider and Provider's employees have not been convicted of a felony criminal offense, or, if such a conviction has occurred, Provider has fully advised TxDOT as to the facts and circumstances surrounding the conviction.

- (10) Provider and Provider's employees do not have, and will not acquire during the term of this Agreement, any interest that would conflict in any manner with the performance of Provider's obligations in regards to this Agreement.
- (11) Technology to be provided to TxDOT and for TxDOT under this Agreement is in compliance with the electronic and information resources accessibility standards set forth Title 1, Texas Administrative Code, Chapter 213.

SECTION 5. WARRANTY OF WORK

5.1 Provider's Warranty of Work

Provider warrants for the term of this Agreement (including any extensions to the initial term) that all of the Work shall (1) conform to all professional and industry standards generally accepted in the State; (2) be performed in a workmanlike manner and with professional diligence and skill; (3) be free of defects; and (4) meet all of the requirements of, and perform in accordance with, this Agreement. If, at any time during the term of this Agreement, TxDOT determines that any of the Work performed has not met the requirements set forth in the Technical Provisions and further described by Provider in its Proposal, or is otherwise defective, then Provider shall correct the work, even if the performance of such corrective work extends beyond the term of this Agreement. Provider shall bear all costs of warranty work, including additional testing and inspections.

5.2 Provider's Further Warranty of the CSC System

With specific regard to the CSC System, Provider further and specifically warrants for the term of this Agreement that the CSC System (1) will be fit for use for the intended function, (2) will function on the machines and with operating systems for which it is designed, and (3) will conform to the specifications and functions set forth in Section 3 of the Technical Provisions, "CSC System Scope of Work." During the term of this Agreement, Provider shall be responsible for correcting any defects causing any portion of the CSC System to be inoperable or any defects resulting in inaccurate results produced by the CSC System, when the CSC System is used in accordance with the product documentation provided by Provider and without extraordinary actions on the part of TxDOT or its users. Such defects shall be localized and reproducible upon demand and, if found to be contained in the CSC System delivered by Provider, shall be corrected to the satisfaction of TxDOT at no additional cost to TxDOT.

5.3 Remedy

Within seven (7) calendar days of receipt by Provider of notice from TxDOT specifying a failure of any of the Work to satisfy the warranties, or the failure of any subcontractor representation, warranty, guarantee or obligation which Provider is responsible to enforce, Provider and TxDOT shall mutually agree when and how Provider shall remedy

such failure; provided, however, that (i) in case of an emergency requiring immediate curative action or a situation which poses a significant safety risk, Provider shall implement such action as it deems necessary and shall notify TxDOT in writing of the urgency of a decision, and (ii) the foregoing seven-day period shall not limit or modify TxDOT's rights to pursue and obtain actual or liquidated damages, including but not limited to those set forth in Exhibit G, during such seven-day period. Provider and TxDOT shall promptly meet in order to agree on a remedy. If Provider does not use its best efforts to proceed to effectuate such remedy within the agreed time, or should Provider and TxDOT fail to reach such an agreement within such seven-day period (or immediately in the case of emergency conditions, a situation which poses a significant safety risk or significant potential revenue loss, as determined by TxDOT, in its sole discretion), TxDOT shall have the right, but not the obligation, to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by Provider. Alternatively, TxDOT may deduct the amount of such costs and expenses from any sums owed by TxDOT to Provider pursuant to this Agreement.

5.4 Defects Resulting from TxDOT Actions

Provider shall not be responsible for correcting defects resulting from CSC System components that have been improperly altered or affected by the actions of TxDOT. Should TxDOT request Provider to correct a defect that is a result of TxDOT's improper alteration of the CSC System components or affected by the actions of TxDOT, TxDOT agrees to compensate Provider on an hourly basis, using the rates set forth on Pricing and Delivery Table P-9 submitted with the Proposal, for problem diagnosis and defect correction, if any. During the problem diagnosis, Provider shall keep TxDOT informed of potential charges.

5.5 Application of Warranty to Work Re-Done, Repaired, Corrected or Replaced

The warranty shall apply to all work re-done, repaired, corrected or replaced. Following acceptance by TxDOT, the warranty for each re-done, repaired, corrected or replaced element of the CSC System shall extend beyond the term of this Agreement in order that each element of the CSC System (including redone, repaired, corrected or replaced Work) shall have at least a one-year warranty period.

5.6 Subcontractor Warranties

5.6.1 Warranty Requirements – Without in any way derogating Provider's own representations and warranties and other obligations with respect to all of the Work, Provider shall obtain from all subcontractors and cause to be extended to TxDOT, for periods at least coterminous with the term of this Agreement, appropriate representations, warranties, guarantees and obligations with respect to design, installation, integration, materials, workmanship, equipment, tools and supplies furnished by such subcontractors. All representations, warranties, guarantees and obligations of subcontractors (1) shall be written so as to survive all TxDOT inspections, tests and approvals, and (2) shall run directly to and be

enforceable by Provider and/or TxDOT and their respective successors and assigns. Provider hereby assigns to TxDOT all of Provider's rights and interest in all extended warranties for periods exceeding the term of this Agreement which are received by Provider from any of its subcontractors. To the extent that any subcontractor warranty or guaranty would be voided by reason of Provider's negligence in incorporating material or equipment into the Work, Provider shall be responsible for correcting such defect.

5.6.2 Enforcement – Upon receipt from TxDOT of notice of a failure of any of the Work to satisfy any subcontractor warranty, representation, guarantee or obligation, Provider shall enforce or perform any such representation, warranty, guaranty or obligation, in addition to Provider's other obligations hereunder. The foregoing provisions concerning subcontractor warranties are intended to provide TxDOT with an additional person and source in which to seek recourse if the Work fails to meet the requirements of this Agreement. In no event shall the foregoing provisions be interpreted to modify, limit, discharge, release, negate or waive Provider's own warranties or obligations with respect to the Work, and Provider shall not be entitled to use the existence of subcontractor warranties as a defense to Provider's obligations under this Agreement.

5.7 No Limitation of Liability

The foregoing warranties and subcontractor warranties are in addition to all rights and remedies available under this Agreement or applicable law or in equity, and shall not limit Provider's liability or responsibility imposed by the Agreement or applicable law or in equity with respect to the Work, including liability for design defects, latent construction defects, strict liability, breach, negligence, willful misconduct or fraud.

5.8 Damages for Breach of Warranty

In addition to TxDOT's other rights and remedies hereunder, at law or in equity, Provider shall be liable for actual damages resulting from any breach of an express or implied warranty or any defect in the Work, including but not limited to those listed in Exhibit G, lost revenue and the cost of performance of such obligations by others.

SECTION 6. PERFORMANCE AND PAYMENT BONDS

6.1 Requirement to provide performance and payment bonds

Provider shall provide performance and payment bonds to TxDOT securing Provider's obligations hereunder, each in an amount set forth herein, and shall maintain such bonds in full force and effect as described below.

6.1.1 Pre-CSC System Acceptance Performance Bond - Before beginning the Work, Provider shall provide, and continuously maintain in place for the benefit of

TxDOT, a performance bond for that portion of the Work that is scheduled to take place prior to acceptance of the CSC System by TxDOT, as defined by the Qualifying Events listed under the “Acceptance Issued” Payment Milestone on Pricing and Delivery Table P-2. Such bond shall be in the form of Exhibit D, and in an amount equal to the sum of (1) the Total Phase I (Implementation) Price indicated on the bottom of Pricing and Delivery Table P-2 and (2) the price of post-tolling commencement CSC and toll operations for a period of two (2) years, calculated using the dollar amounts indicated on Pricing and Delivery Tables P-3 through P-7 and the estimated CSC statistics provided by TxDOT. TxDOT will release such bond upon acceptance of the CSC System by TxDOT, as defined by the Qualifying Events listed under the “Acceptance Issued” Payment Milestone on Pricing and Delivery Table P-2.

6.1.2 Post-CSC System Acceptance Performance Bond - Before TxDOT acceptance of the CSC System, Provider shall provide, and continuously maintain in place for the benefit of TxDOT, a performance bond for that portion of the Work that is scheduled to take place after acceptance of the CSC System by TxDOT, as defined by the Qualifying Events listed under the “Acceptance Issued” Payment Milestone on Pricing and Delivery Table P-2. Such bond shall also be in the form of Exhibit D, and in an amount equal to the price of post-tolling commencement CSC and toll operations for a period of two (2) years, calculated using the dollar amounts indicated on Pricing and Delivery Tables P-3 through P-7 and the estimated CSC statistics provided by TxDOT. TxDOT will release such bond upon expiration of the term of this Agreement.

6.1.3 Payment Bond - Before beginning the Work, Provider shall provide, and continuously maintain in place for the benefit of TxDOT, a payment bond for the Work. Such bond shall be in the form of Exhibit E, and in equal to the sum of (1) the Total Phase I (Implementation) Price indicated on the bottom of Pricing and Delivery Table P-2 and (2) the price of post-tolling commencement CSC and toll operations for a period of two (2) years, calculated using the dollar amounts indicated on Pricing and Delivery Tables P-3 through P-7 and the estimated CSC statistics provided by TxDOT. TxDOT will release such bond (a) upon receipt of (i) evidence satisfactory to TxDOT that all persons eligible to file a claim against the bond have been fully paid and (ii) unconditional releases of liens and stop notices from all subcontractors who filed preliminary notices of claim against the bond, or (b) upon expiration of the statutory period for subcontractors to file a claim against the bond if no claims have been filed.

6.2 Acceptable forms of bonding

Acceptable forms of bonding are cashier’s check, certified check, or irrevocable letter of credit issued by a financial institution subject to the laws of Texas; a surety or blanket bond from a company chartered or authorized to do business in Texas and entered on the United States Department of Treasury’s listing of approved sureties or the Texas Department of Insurance listing; United States treasury bond; or certificate of deposit. The surety chosen by Provider is subject to TxDOT approval. A Power of Attorney and a

printed document stating the bonding company's name, address, and telephone number and the Texas Department of Insurance telephone number shall accompany each of the bonds.

6.3 No Relief of Liability

Notwithstanding any other provision of this Agreement, performance by a surety of the obligations of Provider shall not relieve Provider of any of its obligations hereunder.

SECTION 7. INSURANCE

7.1 Requirement to Hold Insurance

Throughout the term of this Agreement, Provider shall maintain all insurance coverage required by TxDOT Form 1950 (Exhibit F), as well as Professional Liability Insurance with limits of liability not less than \$1,000,000 per claim and aggregate. TxDOT shall be included as an Additional Insured by Endorsement in Provider's (1) worker's compensation policy or policies, (2) commercial general liability insurance policy or policies, and (3) Texas business or comprehensive automobile liability insurance policy or policies, and each of those policies shall have a waiver of subrogation endorsement in favor of TxDOT. TxDOT will allow deductible policies. Provider shall pay the deductible amounts. Provider's worker's compensation insurance coverage shall comply with the minimum amounts of coverage and notice provisions set out in the Texas Labor Code, Chapter 406 and Title 28 of the Texas Administrative Code, Chapter 110. Provider shall also carry both federal and state unemployment insurance coverage. All insurance required hereunder shall be procured from insurance companies with an A.M. Best and Company rating level of A- or better, Class VIII or better, or as otherwise approved by TxDOT and authorized or approved to do business in the State.

6.2 Provision of TxDOT Form 1950

Prior to beginning the Work, Provider shall furnish TxDOT with a completed TxDOT Form 1950 demonstrating the specified insurance coverage. Provider shall furnish a correct TxDOT insurance form each time its insurance is renewed or updated.

SECTION 8. INTELLECTUAL PROPERTY

8.1 Custom Software

In the event that custom software development is required, TxDOT will own all intellectual property rights (including publication rights, copyrights, copyright applications, copyright renewals, copyright extensions, trademarks, patents, and trade

secrets), title and interests in and to the custom software development documentation, software, and any other intellectual properties created for custom software and versions thereof, and all works based upon, derived from, or incorporating works thereof, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the custom software and copyrights arising there from, and in and all rights corresponding to the custom software and versions thereof throughout the world. Provider shall deliver to TxDOT all documentation concerning protocols for use of custom software, source codes, commented listings, descriptions of software structure, database utilization, and TxDOT shall retain ownership of all production and historical data produced by the CSC System.

8.2 Customized Software

In the event that Provider's proprietary software or licensed software from another source requires modifications, TxDOT shall own any modifications with all rights above stated in 8.1.1 and Provider shall deliver all items above listed in 8.1.1 to TxDOT. Provider shall also identify the tools required for the modifications.

8.3 Provider's Proprietary Software

Provider shall arrange for TxDOT to have escrow account access to, and use of the names, expertise, contact information of employees and consultants (if any), algorithms and source codes for any of Provider's software licensed to TxDOT so that TxDOT may continue operations in the event of the failure of Provider's company. Provider shall also place in the escrow account all documentation concerning protocols for use of the software, source codes, commented listings, descriptions of software structure, database utilization, and instructions necessary to convert the source codes to an operational system. The escrow account shall be established at the beginning of performance by Provider. When the CSC System begins revenue service the source codes and related materials shall be updated continually to maintain a current status. Provider's license of Provider's proprietary software shall not modify or be in conflict with any of the terms and conditions herein stated or applicable state laws.

8.4 Third Party Software

Provider shall purchase for and assign to TxDOT all third party licenses to software used in conjunction with proprietary, custom or customized software, including all original media, documentation, warranties, applications software and developmental software used in developing custom applications. Provider shall ensure that all third party warranties continue in effect upon assignment and comply with warranty provisions herein stated.

SECTION 9. HISTORICALLY UNDERUTILIZED BUSINESSES ("HUBs"); CIVIL RIGHTS

9.1 HUB Subcontracting Plan

Provider shall comply with the HUB Subcontracting Plan (“HSP”) included in its Proposal. Provider shall report all HUB and non-HUB subcontractor information using the appropriate TxDOT-approved form. The report shall be submitted to the TxDOT Contract Administrator monthly. The report shall be submitted monthly even during the months Provider is not invoicing TxDOT. All payments made to subcontractors shall be reported. TxDOT may verify the amounts being reported as paid by requesting copies of cancelled checks paid to subcontractors.

9.2 Civil Rights

- 9.2.1 Compliance with Regulations - Provider shall comply with the regulations concerning nondiscrimination in federally-assisted programs promulgated by the U.S. Department of Transportation and codified at Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as “the Regulations”), which are herein incorporated by reference and made a part of this Agreement.
- 9.2.2 Nondiscrimination - Provider, with regard to the Work performed by under this Agreement, shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Provider shall not participate either directly or indirectly on the discrimination prohibited by §21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 9.2.3 Solicitations for Subcontractors - In all solicitations undertaken by Provider, Provider shall notify each potential subcontractor or supplier of Provider’s obligations under this Agreement and the Regulations concerning nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.
- 9.2.4 Information and Reports - Provider shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by TxDOT or the Federal Highway Administration (“FHWA”) to be pertinent and to ascertain compliance with such Regulations, orders and instructions. Where any information required of Provider is in the exclusive possession of another who fails or refuses to furnish this information Provider shall certify to TxDOT or FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
- 9.2.5 Sanctions for Noncompliance - In the event of Provider’s noncompliance with the nondiscrimination provisions of this Agreement, TxDOT shall impose such sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: (a) withholding of payments to Provider under this Agreement until

Provider complies; or (b) termination or suspension of this Agreement, in whole or in part.

9.2.6 Incorporation of Provisions - Provider shall include the provisions of paragraphs 9.2.1 through 9.2.5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

9.2.7 Enforcement of Provisions by Provider - Provider shall take such action with respect to any subcontract or procurement as TxDOT or FHWA may direct as a means of enforcing the above provisions, including imposing sanctions for non-compliance; provided however, that, in the event Provider becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Provider may request TxDOT enter into such litigation to protect the interests of TxDOT, and, in addition, Provider may request the United States to enter into such litigation to protect the interests of the United States.

SECTION 10. SUSPENSION FOR CONVENIENCE

10.1 TxDOT's Right to Suspend

TxDOT may, at any time and for any reason, by written notice, order Provider to suspend all or any part of the Work for the period of time that TxDOT deems appropriate for the convenience of TxDOT. Provider shall promptly comply with any such written suspension order. Provider shall promptly recommence the Work upon receipt of written notice from TxDOT directing Provider to resume work. Suspension of the Work does not impact the term of the Agreement.

10.2 No Consequential Damages

Under no circumstances shall Provider be entitled to anticipatory or unearned profits or consequential, special, indirect or other damages as a result of a suspension or partial suspension under this Section 10.

SECTION 11. TERMINATION

11.1 Termination for Convenience

TxDOT may, at any time, terminate this Agreement in whole or in part, if TxDOT determines, in its sole discretion, that a termination is in TxDOT's best interest. TxDOT shall notify Provider of the termination in writing, specifying the extent of the termination and the effective date. TxDOT will pay Provider the contract price prorated

for acceptable service performed up to the date specified in the notice of termination. Termination under this paragraph shall not relieve Provider of any obligation or liability that occurred prior to termination.

11.2 Termination for Cause Other than Lack of Appropriation

If Provider defaults on any provision of this Agreement and fails to cure such default within thirty (30) calendar days after receiving written notice from TxDOT specifying such default in reasonable detail, TxDOT reserves the right to terminate this Agreement immediately upon notice and either re-solicit or award the contract to the next lowest responsive and responsible vendor. Provider will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work unless the specification or scope of work significantly changes. If Provider defaults on any provision of this Agreement and fails to cure the same as provided above, TxDOT may: (i) pursue any remedy permitted by law, and (ii) to the extent permitted by applicable law, impose sanctions, debar or suspend Provider for abandonment or default on the Agreement. This provision does not limit any other remedies TxDOT may have available at law.

11.3 Termination for Lack of Appropriation

This Agreement is subject to termination without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature.

11.4 No Consequential Damages

Under no circumstances shall Provider be entitled to anticipatory or unearned profits or consequential, special, indirect or other damages as a result of a termination or partial termination under this Section 11.

11.5 No Effect on Surety's Obligations

Termination (or partial termination) of this Agreement shall not relieve any surety of its obligation for any claims arising out of the Work performed.

11.6 No Waiver

A termination under this Section 11 shall not waive any right or claim to damages, including but not limited to those set forth in Exhibit G, for which TxDOT may have and TxDOT may pursue any cause of action which it may have at law, in equity, or under this Agreement.

11.7 Subcontracts

Provisions shall be included in each subcontract allowing terminations under this Section 11 to be passed through to the respective subcontractor, and providing that the subcontractor will not be entitled to any anticipatory or unearned profit on work

terminated or partly terminated, or to any payment which constitutes consequential damages on account of the termination or partial termination.

SECTION 12. FORCE MAJEURE

TxDOT may grant relief for time only from performance of this Agreement if Provider is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of Provider. The burden of proof for the need of such relief shall rest upon Provider. To obtain relief based on force majeure, Provider shall file a written request with TxDOT describing the events, dates, and effect of the events on Provider's ability to perform according to this Agreement.

SECTION 13. DAMAGES

13.1 Payment of Damages for Failure to Meet Performance Measures

The efficient and effective operation of the CSC, CSC System and CTTS toll operations is of paramount importance to TxDOT. In the event Provider fails to meet one or more performance measures indicated in Exhibit G, "Performance Measures and Damages," Provider shall pay to TxDOT the actual or liquidated damages indicated for that or those failures on the same. Damage amounts shall be withheld from payments, or if in excess of payments due to Provider, shall be payable by Provider within ten (10) calendar days after Provider's receipt of an invoice therefor from TxDOT. Nothing in this Section 13 or Exhibit G shall be construed as a limitation on TxDOT's right to recover from Provider appropriate actual damages for any breach of warranty or other default not specifically covered by Exhibit G.

13.2 No Waiver of Other Rights Under Agreement

The fact that TxDOT has agreed to accept liquidated damages as compensation for its damages associated with any failure to meet the specified performance measures shall not preclude TxDOT from exercising its other rights under this Agreement.

13.3 Reasonableness of Liquidated Damages

Provider acknowledges that the liquidated damages specified on Exhibit G are not penalties, and have been set based on evaluation by TxDOT of damages to TxDOT and the public caused by failures to meet the specified performance measures. Provider and TxDOT agree that the amount of such damages are impossible to ascertain as of the date of execution hereof and the parties have agreed to such liquidated damages in order to fix Provider's costs and to avoid later disputes over which items are properly chargeable to

Provider. It is understood and agreed by Provider that any liquidated damages payable in accordance with this Section 13 are in the nature of liquidated damages and not a penalty, and that such sums are reasonable in light of the anticipated or actual harm caused by the failure to meet the specified performance measures, the difficulties of the proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

SECTION 14. INDEMNIFICATION

14.1 Provider's General Obligation to Indemnify

PROVIDER SHALL RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ALL OF ITS OFFICERS, AGENTS, AND EMPLOYEES, INCLUDING TXDOT AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, SUITS, JUDGMENTS, INVESTIGATIONS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, COSTS, PENALTIES, FINES, DAMAGES, LOSSES, LIABILITIES AND RESPONSE COSTS, INCLUDING ANY INJURY TO OR DEATH OF PERSONS OR DAMAGE TO OR LOSS OF PROPERTY, AND INCLUDING PENALTIES, FINES, ATTORNEYS', ACCOUNTANTS' AND EXPERT WITNESS FEES AND COSTS INCURRED IN CONNECTION WITH THE ENFORCEMENT OF THIS INDEMNITY, ARISING OUT OF, RELATING TO OR RESULTING FROM ANY ACTS OR OMISSIONS OF TXDOT AND ITS OFFICERS, AGENTS AND EMPLOYEES; OR PROVIDER AND ITS AGENTS, EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS OF THESE ENTITIES, IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT, WITHOUT REGARD TO WHETHER SUCH CLAIM, CAUSE OF ACTION, LOSS OR OTHER EVENT WAS CAUSED BY, OR WAS IN ANY WAY THE RESULT OF, TXDOT'S OR ITS OFFICERS', AGENTS' OR EMPLOYEES' OWN NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL CONDUCT. THIS PROVISION SHALL APPLY DURING THE ENTIRE TERM OF THE AGREEMENT AND THEREAFTER.

14.2 Provider's Specific Obligation to Indemnify With Respect To Third Party Claims of Copyright, Trade Secret or Patent Infringement

PROVIDER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, ALL OF ITS OFFICERS, AGENTS, AND EMPLOYEES, INCLUDING TXDOT AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ANY THIRD PARTY CLAIM OF UNITED STATES COPYRIGHT, TRADE SECRET OR PATENT INFRINGEMENT RELATING TO LICENSED SOFTWARE, WITHOUT REGARD TO WHETHER SUCH INFRINGEMENT WAS CAUSED BY, OR WAS IN ANY WAY THE RESULT OF, TXDOT'S OR ITS OFFICERS', AGENTS' OR EMPLOYEES' OWN NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL CONDUCT, PROVIDED TXDOT PROMPTLY NOTIFIES PROVIDER IN WRITING OF ANY SUCH CLAIM AGAINST TXDOT. IN THE EVENT AN INJUNCTION IS SOUGHT AGAINST PROVIDER AND/OR

TXDOT'S USE OF SUCH SOFTWARE AS A RESULT OF AN INFRINGEMENT CLAIM, PROVIDER MAY PROCURE, AT ITS OWN EXPENSE A LICENSE TO CONTINUE USE OF THE SOFTWARE, OR REPLACE THE SOFTWARE WITH CUSTOM OR OTHER THIRD PARTY LICENSED SOFTWARE AT NO EXPENSE TO TXDOT. PROVIDER SHALL ALSO SAVE HARMLESS THE STATE OF TEXAS, ALL OF ITS OFFICERS, AGENTS, AND EMPLOYEES, INCLUDING TXDOT AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES, FROM ANY AND ALL EXPENSE, INCLUDING, BUT NOT LIMITED TO ATTORNEY FEES OR ANY LIABILITIES WHICH MAY BE IMPOSED UPON PROVIDER OR TXDOT AS A RESULT OF INFRINGING ACTIVITIES BY PROVIDER, ITS SUBCONTRACTORS, CONSULTANTS OR EMPLOYEES. PROVIDER SHALL ALSO PAY TXDOT DAMAGES FOR INTERRUPTION OF OPERATIONS, IF ANY. THIS PROVISION SHALL APPLY DURING THE ENTIRE TERM OF THE AGREEMENT AND THEREAFTER.

14.3 Indemnification Obligation Not Limited by Worker's Compensation or Other Laws

In claims by an employee of Provider, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 14 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Provider or a subcontractor under worker's compensation, disability benefit or other employee benefits laws.

14.4 No Effect on Other Rights

The foregoing obligations shall not be construed to negate, abridge, or reduce other rights or obligations which would otherwise exist in favor of a party indemnified hereunder.

SECTION 15. DISPUTE RESOLUTION

15.1 Dispute Resolution

The parties shall attempt to resolve any disputes arising under this Agreement according to the dispute resolution process established under Title 43, Texas Administrative Code, §9.1.

15.2 Exclusive Jurisdiction and Venue

The exclusive jurisdiction and venue for any legal action or proceeding, at law or in equity, arising out of or relating to this Agreement shall be the Travis County District Court. Provider waives all objections it might have to the jurisdiction or venue of such court and hereby consents to such court's jurisdiction, regardless of Provider's residence or domicile, for any such action or proceeding.

15.3 Choice of law

This Agreement shall be governed, construed, and interpreted under the laws of the State of Texas.

15.4 Continuation of Work

At all times during the dispute resolution process or any subsequent administrative, arbitration or court proceeding, Provider and all of its subcontractors shall proceed with the Work diligently, without delay, in accordance with this Agreement, and as directed by TxDOT. Provider acknowledges that it shall be solely responsible for any delay that results from its actions or inactions during the dispute resolution process, even if Provider's position in connection the dispute ultimately prevails. In addition, the parties shall continue to comply with all provisions of this Agreement, any governmental approvals, and applicable law.

SECTION 16. DOCUMENTS AND RECORDS

16.1 Retention of Records

Provider shall maintain all financial and other records and documents relating to the Work, including copies of all original documents delivered to TxDOT until five years after the termination of this Agreement. Provider shall notify TxDOT where such records and documents are kept. Notwithstanding the foregoing, all records relating to claims against TxDOT or disputes with TxDOT arising under this Agreement shall be retained and made available until such claims or disputes have been finally resolved. Records to be retained include all books, electronic information and files and other evidence bearing on Provider's costs to perform the Work and toll revenue collected on TxDOT's behalf. Provider shall make these records and documents available for audit and inspection to TxDOT at all reasonable times, without charge, and shall allow TxDOT representatives to make copies of such records and documents at no expense to Provider.

16.2 Subcontractors' Records

Provider shall require all subcontractors to retain all financial and other records and documents relating to the Work, and to make such records and documents accessible to TxDOT, on terms substantially similar to those set forth in Section 16.1 above.

16.3 Public Information Act

16.3.1 Provider Acknowledgment and Obligations - Provider acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials in TxDOT's possession, including materials submitted by Provider, are subject to the provisions of the Texas Public Information Act, codified at Texas Government Code, Chapter 552. If Provider believes information or materials submitted to

TxDOT constitute trade secret, proprietary information or other information excepted from disclosure, Provider shall be solely responsible for specifically and conspicuously designating that information by placing “CONFIDENTIAL” in the center header of each such page affected, as it determines to be appropriate. Any specific proprietary information, trade secrets or confidential commercial and financial information shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim. Nothing in this Agreement shall modify or amend requirements and obligations imposed on TxDOT by the Public Information Act or other applicable law, and the provisions of the Act or other laws shall control in the event of a conflict between the procedures described above and the applicable law.

16.3.2 TxDOT Obligations – If TxDOT receives a request for public disclosure of materials marked “CONFIDENTIAL,” TxDOT will use reasonable efforts to notify Provider of the request and give Provider an opportunity to assert, in writing and at its sole expense, a claimed exception under the Public Information Act or other applicable law within the time period specified in the notice issued by TxDOT and allowed under the Public Information Act. Under no circumstances, however, will TxDOT be responsible or liable to Provider or any other person for the disclosure of any such labeled materials, whether the disclosure is required by law, or court order, or occurs through inadvertence, mistake or negligence on the part of TxDOT or its officers, employees, contractors or consultants.

16.3.3 TxDOT’s Role in Proceeding or Litigation – In the event of any proceeding or litigation concerning the disclosure of any material submitted by Provider to TxDOT, TxDOT’s sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and Provider shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that TxDOT reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. All costs and fees, including attorneys’ fees and costs, incurred by TxDOT in connection with any litigation, proceeding or request for disclosure shall be reimbursed and paid by Provider. Nothing in this Agreement is intended to prejudice the rights of Provider to protect from disclosure information of Provider that, under applicable law, is entitled to protection from disclosure.

16.4 Right to Audit

The State Auditor’s Office and TxDOT’s internal auditors (individually or collectively “state auditor”) may conduct an audit or investigation of any entity receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor to conduct an audit or investigation in connection with those funds. Provider agrees to

provide access to any information the state auditor considers relevant to any such investigation or audit. TxDOT has the right to audit Provider's books and records pertaining to the Work during normal work hours.

SECTION 17. CONTRACT ADMINISTRATION AND INTERPRETATION

17.1 Contract Administration

Contract administration is a joint responsibility of the TxDOT Contract Administrator and TxDOT Project Manager. TxDOT shall notify Provider of the name and contact information of the Contract Administrator and Project Manager within ten (10) calendar days of the effective date of this Agreement. TxDOT will give Provider prompt notice of any change to these designations during the term of this Agreement. The Contract Administrator will be responsible for administering the contractual relationship with Provider. The Project Manager will serve as the main point of contact between TxDOT and Provider. The Project Manager's responsibilities include, but are not limited to: (1) monitoring Provider's progress and performance and ensuring services conform to established specification requirements; (2) managing the financial aspects of the agreement including approval of payments; (3) meeting with Provider as needed to review progress, discuss problems, and consider necessary action; (4) identifying a breach of contract by assessing the difference between contract performance and non-performance; and (5) other areas as identified by the Comptroller of Public Accounts Contract Management Guide, latest edition. Neither the Contract Administrator nor the Project Manager have any express or implied authority to vary the terms of the contract, amend the contract in any way or waive strict performance of the terms or conditions of the contract.

17.2 Order of Precedence

The term "Contract Documents" shall mean the documents listed in this Section 17.2. Each of the Contract Documents is an essential part of this Agreement between the Parties, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete agreement. In the event of any conflict among the Contract Documents, the order of precedence shall be as set forth below:

1. Change Orders and Agreement amendments
2. Agreement (including all exhibits other than Exhibits A, B and C)
3. Proposal (Exhibit B)
4. Pricing and Delivery Tables P-1 through P-9 (Exhibit C)

5. Technical Provisions (Exhibit A)

Additional details and more stringent requirements contained in a lower priority document will control unless the requirements of the lower priority document present an actual conflict with the requirements of the higher level document (i.e. it is not possible to comply with both requirements). In determining whether a conflict exists between the Proposal and other Contract Documents, to the extent that the Proposal can reasonably be interpreted as an offer to provide higher quality items than otherwise required by the Contract Documents or to perform services in addition to those otherwise required, or otherwise contains terms which TxDOT considers to be more advantageous than the requirements of the other Contract Documents, the Proposal shall not be considered in conflict with the other Contract Documents, and Provider's obligations hereunder shall include compliance with all such statements, offers and terms.

17.3 Interpretation of Contract Documents

17.3.1 Rules of interpretation - In the Contract Documents, where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation;" unless otherwise indicated references to "sections" are to sections of this Agreement; the captions of the sections of this Agreement are for convenience only and shall not be deemed part of this Agreement or considered in construing this Agreement; and unless otherwise specified, lists contained in the Contract Documents defining the Work shall not be deemed all-inclusive.

17.3.2 Provider acknowledgments – Provider acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal, to review the terms and conditions of the Contract Documents and to bring to the attention of TxDOT any conflicts or ambiguities contained therein. Provider further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of the Contract Documents. Accordingly, if an ambiguity in or dispute regarding the interpretation of the Contract Documents, they shall not be interpreted or construed against the Person which prepared them, and, instead, other rules of interpretation and construction shall be used.

17.3.3 Answers to questions posed during the Proposal process – TxDOT's interim or final answers to the questions posed during the Proposal process for this Agreement shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except to the extent they may clarify provisions otherwise considered ambiguous.

**SECTION 18.
MISCELLANEOUS PROVISIONS**

18.1 Assignment

18.1.1. Assignment by TxDOT – TxDOT may assign all or part of its right, title and interest in and to this Agreement, including rights with respect to the payment and performance bonds, to any other person.

18.1.2. Assignment by Provider – Provider may not, without the prior written consent of TxDOT in its sole discretion, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber its rights or interests under this Agreement. No partner, joint venturer, member or shareholder of Provider may assign, convey, transfer, pledge, mortgage or otherwise encumber its ownership interest in Provider without the prior written consent of TxDOT, in TxDOT’s sole discretion.

18.2 Severability

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

18.3 Binding Effect and Survival of Obligations

By executing this Agreement, Provider binds itself, its successors and assignees, to the faithful performance of the terms and conditions and provisions of this Agreement. Expiration or termination of this Agreement for any reason shall not release Provider from any liabilities or obligations set forth in the terms and conditions of this Agreement which by their nature are intended to operate following expiration or termination of this Agreement.

18.4 Amendments

TxDOT and Provider reserve the right to amend this Agreement, in writing, at any time during its term, as may be necessary to achieve the highest quality Work by the most efficient and cost-effective means, or to include a different element or special feature that was not contemplated or fully developed at the time of solicitation. If the parties make and implement any interpretation of this Agreement without documenting such interpretation by an instrument in writing signed by both parties, such interpretation and implementation thereof will not be binding in the event of any future disputes.

18.5 Limitation on Authority; No Other Obligations

Provider shall have no authority to act for or on behalf of TxDOT or the State of Texas except as expressly provided for in this Agreement. Provider may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or TxDOT.

18.6 Non-Waiver of Rights

Nothing in this Agreement shall be construed as a waiver of the state's sovereign immunity. This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, or immunities available to TxDOT by entering into this Agreement or by its conduct prior or subsequent to entering into this contract.

18.7 Confidentiality of Information

TxDOT is governed by laws and regulations that make certain information confidential as well as specifying how public information is released (see Government Code Chapter 552). Provider and its employees shall not divulge any information furnished to them by TxDOT or relative to TxDOT business to any third party without prior written approval of TxDOT. All information created by or accessible to Provider while providing a good or service for TxDOT is confidential. Before beginning the Work, Provider shall complete and sign TxDOT Form 1828b, Information Resource Security Compliance and Confidentiality Agreement (Exhibit H).

18.8 Independent Contractor

It is expressly understood and agreed to by both parties that Provider is an independent contractor, and nothing contained in this Agreement shall be construed as constituting any relationship with TxDOT other than of independent contractor. In no event shall the relationship between TxDOT and Provider be construed as creating any relationship whatsoever between TxDOT and Provider's employees. Neither Provider nor any of its employees is or shall be deemed to be an employee of TxDOT. Except as otherwise specified in this Agreement, Provider has sole authority and responsibility to employ, discharge and otherwise control its employees and has sole responsibility for their safety, injury and health while performing the Work, and has complete and sole responsibility as a principal for its agents, for all subcontractors and for all other persons that Provider or any subcontractor hires to perform or assist in performing the Work.

18.9 Damage to TxDOT Property

Provider shall be liable for damage to TxDOT's equipment, workplace, and its contents resulting from Provider's or Provider's subcontractors' work or negligence in performance of the Work.

18.10 Access to Facilities

Designated TxDOT representatives may conduct unannounced visits to inspect Provider's and its subcontractors' facilities during normal business hours to monitor compliance in accordance with TxDOT specifications or carry out performance audits of the Work.

18.11 Assignment of Overcharges

Provider assigns TxDOT any and all claims for overcharges associated with this Agreement which arise under the antitrust laws of the United States (15 U.S.C.A. Chapter 1), and which arise under the antitrust laws of the State of Texas (Business and Commerce Code, Title 2, Chapter 15).

18.12 Use of Information Provided by TxDOT

Provider understands and agrees that TxDOT shall not be responsible or liable in any respect for any losses whatsoever suffered by any Provider-related entity by reason of any use of any information provided by TxDOT, or any action or forbearance in reliance thereon. Provider further acknowledges and agrees that (a) if and to the extent Provider or anyone on Provider's behalf uses any information provided by TxDOT in any way, such use is made on the basis that Provider, not TxDOT, has approved and is responsible for said information, and (b) Provider is capable of conducting and obligated hereunder to conduct any and all studies, analyses and investigations as it deems advisable to verify or supplement said information, and that use of said information is entirely at Provider's own risk and at its own direction.

18.13 No Estoppel

Provider shall not be relieved of obligations to perform the Work in accordance with this Agreement, or any of its warranty, maintenance or indemnity obligations, as the result of oversight, spot checks, audits, reviews, tests or inspections performed by any persons, approvals or acceptances made by any persons, or any failure of any person to take such action. TxDOT shall not be precluded or estopped by any expression of acceptance or approval of any aspect of the Work or by payment for any aspect of the Work, from showing that the Work does not conform in fact to the requirements of this Agreement. Notwithstanding any such expression of approval or acceptance or payment, TxDOT shall not be precluded or estopped from recovering from Provider and its surety(ies) such damages as TxDOT may sustain by reason of Provider's failure to comply or to have complied with the terms of this Agreement.

18.14 Waiver

Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding.

18.15 Limitation on Third Party Beneficiaries

It is not intended by any of the provisions in this Agreement to create any other third party beneficiary hereunder or to authorize anyone not a party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the indemnity provisions) identify third

parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 18.15, the duties, obligations, and responsibilities of the parties with respect to third parties shall remain as imposed by law. This Agreement shall not be construed to create a contractual relationship of any kind between TxDOT and a subcontractor or any person other than Provider.

18.16 Personal and Tort Liability

18.16.1 Personal Liability - TxDOT's authorized representatives are acting solely as agents and representatives of TxDOT when carrying out the provisions of or exercising the power or authority granted to them under this Agreement. They shall not be liable either personally or as employees of TxDOT for actions in their ordinary course of employment. No agent, consultant, officer or authorized employee of TxDOT nor any member of the Texas Transportation Commission, shall be personally responsible for any liability arising under this Agreement.

18.16.2 Provision of Notice of Third Party Claims - The parties agree to provide to each other's authorized representative written notice of any claim which such party may receive from any third party relating in any way to the matters addressed in this Agreement, and shall otherwise provide notice in such form and within such period as is required by law.

18.16.3 Tort Liability - In no event shall TxDOT be liable for injury, damage, or death sustained by reason of a defect or want of repair on or within any property over which Provider has operation and control, nor shall TxDOT be liable for any injury, damage or death caused by the actions, omissions, negligence, willful misconduct, or breach of applicable law or contract by any Provider-related entity. Provider expressly acknowledges and agrees that TxDOT's rights in this Agreement to take any action with respect to the Work, including the right to review, comment on, disapprove and/or accept designs, plans, specifications and the like, are discretionary in nature and exist solely for the benefit and protection of TxDOT and do not create or impose upon TxDOT any standard or duty of care toward Provider or any other person, all of which are hereby expressly disclaimed.

18.18 Further Assurances

Provider shall promptly execute and deliver to TxDOT all such instruments and other documents and assurances as are reasonably requested by TxDOT to further evidence the obligations of Provider hereunder.

18.19 Entire Agreement

The Contract Documents contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties with respect to its subject matter.

18.20 Counterparts

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18.21 Notices and Communications

Notices under this Agreement shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by telefacsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such person):

All correspondence with Provider shall be sent to Provider’s Project Manager or as otherwise directed by Provider’s Project Manager. The address for such communications shall be:

ADDRESS LINE 1
ADDRESS LINE 2
ADDRESS LINE 3
ATTN
PHONE
FAX
E-MAIL

All communications to TxDOT shall be marked as regarding the “Statewide Toll Collection Customer Service Center System and Operations” and/or “Central Texas Turnpike System Operations,” and shall be delivered as directed by TxDOT’s Program Manager. The address for such communications shall initially be:

ADDRESS LINE 1
ADDRESS LINE 2
ADDRESS LINE 3
ATTN
PHONE
FAX
E-MAIL

In addition, all copies of all notices regarding disputes, termination and default notices shall be delivered to the following office:

Texas Department of Transportation
Office of General Counsel
125 East 11th Street
Austin, Texas 78701

Telephone: (512)463-8630
Facsimile: (512) 475-3070

Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other person making the delivery. Notwithstanding the foregoing, notices sent by telefacsimile after 4:00 p.m. Central Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.). Any technical or other communications pertaining to the Work shall be conducted by Provider's Project Manager and technical representatives designated by TxDOT. Provider's representatives shall be available at all reasonable times for consultation.

Provider shall copy TxDOT on all written correspondence pertaining to the Work between Provider and any person other than Provider's subcontractors, consultants and attorneys.

Written notification of changes to company name, address, telephone number, etc. shall be provided to TxDOT as soon as possible but not later than thirty (30) calendar days from the date of change.

18.22 Incorporation of Provisions - Exhibits A through H are incorporated into this Agreement as if set forth in full within the body of the Agreement.

IN WITNESS WHEREOF, TxDOT and NAME OF PROVIDER have executed this Agreement in duplicate.

TEXAS DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____

NAME
TITLE

NAME OF PROVIDER

By: _____ Date: _____

NAME
TITLE

EXHIBIT A
Technical Provisions

EXHIBIT B
Provider's Proposal

EXHIBIT C
Pricing and Delivery Tables P-1 through P-7

EXHIBIT D
Performance Bond Form

EXHIBIT D

PERFORMANCE BOND FORM

Agreement for the Provision of Statewide Toll Collection Customer Service Center System and Operations and Central Texas Turnpike System Toll Operations

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), an Agreement for the Provision of Statewide Toll Collection Customer Service Center System and Operations and Central Texas Turnpike System Toll Operations, duly executed and delivered as of _____, 2011 (the "Contract"), on the terms and conditions set forth therein; and

WHEREAS, under the terms of the Contract, Principal is required to furnish a bond guaranteeing the faithful performance of its obligations under the Contract.

NOW, THEREFORE, Principal and _____, a _____ ("Surety"), are held and firmly bound unto Obligee in the amount of \$ _____ (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Contract, including any and all amendments and supplements thereto, then this obligation shall be null and void; otherwise it shall remain in full force and effect. Obligee shall release this bond upon the occurrence of all of the conditions to release set forth in Section 5.1.1 [OR 5.1.2] of the Contract.

The following terms and conditions shall apply with respect to this bond:

1. The terms and conditions of the Contract are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.
2. This bond specifically guarantees the performance of each and every obligation of Principal under the Contract, as it may be amended and supplemented, including but not limited to, its liability for liquidated damages and warranties as specified in the Contract, but not to exceed the Bonded Sum.
3. The guarantees contained herein shall survive termination of the Contract with respect to those obligations of Principal which survive such termination.

4. Whenever Principal shall be, and is declared by Obligees to be, in default under the Contract, provided that Obligees is not then in material default thereunder, Surety shall promptly:
 - a. arrange for the Principal to perform and complete the Work; or
 - b. perform and complete the Work in accordance with the terms and conditions of the Contract as it then exists, through its agents or through independent contractors; or
 - c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligees for a contract for performance and completion of the Work, through a procurement process approved by the Obligees, arrange for a contract to be prepared for execution by the Obligees and the contractor selected with the Obligees's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to the Obligees damages incurred by the Obligees resulting from the Principal's default; or
 - d. waive their right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, and (i) after investigation, determine the amount for which they may be liable to the Obligees and, as soon as practicable after the amount is determined, tender payment therefore to the Obligees, or (ii) deny liability in whole or in part and notify the Obligees citing reasons therefore.
5. If Surety does not proceed as provided in Paragraph 4 with reasonable promptness, Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Obligees to Surety demanding that Surety perform its obligations under this bond, and the Obligees shall be entitled to enforce any remedy available to the Obligees. If Surety proceeds as provided in Subparagraph 4.d, and the Obligees refuses the payment or Surety has denied liability, in whole or in part, without further notice, the Obligees shall be entitled to enforce any remedy available to the Obligees.
6. After the Obligees has terminated the Principal's right to complete the Contract, and if Surety elects to act under Subparagraph 4.a, 4.b, or 4.c above, then the responsibilities of Surety to the Obligees shall not be greater than those of the Principal under the Contract, and the responsibilities of the Obligees to Surety shall not be greater than those of the Obligees under the Contract. To the limit of the Bonded Sum, Surety is obligated without duplication for:

- a. the responsibilities of the Principal for correction of defective work and completion of the Work
 - b. actual damages, including additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 4; and
 - c. liquidated damages and warranties under the Contract.
7. No alteration, modification or supplement to the Contract of the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this bond. Surety waives notice of any alteration, modification, supplement or extension of time.
8. Correspondence or claims relating to this bond should be sent to the Surety at the following address:
- _____
- _____
- _____
9. No right of action shall accrue on this bond to or for the use of any entity other than Obligee or its successors or assigns.

IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of _____, 2010.

Principal:

By: _____
Its: _____
(Seal)

Surety:

By: _____
Its: _____
(Seal)

EXHIBIT E
Payment Bond Form

EXHIBIT E

PAYMENT BOND FORM

Agreement for the Provision of Statewide Toll Collection Customer Service Center System and Operations and Central Texas Turnpike System Toll Operations

Bond No. _____

WHEREAS, the Texas Department of Transportation (“Obligee”), has awarded to _____, a _____ (“Principal”), an Agreement for the Provision of Statewide Toll Collection Customer Service Center System and Operations and Central Texas Turnpike System Toll Operations, duly executed and delivered as of _____, 2011 (the “Contract”), on the terms and conditions set forth therein; and

WHEREAS, under the terms of the Contract, Principal is required to furnish a bond guaranteeing the payment of claims, subcontractors and suppliers.

NOW, THEREFORE, Principal and _____, a _____ (“Surety”), are held and firmly bound unto Obligee in the amount of \$ _____ (the “Bonded Sum”), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if Principal shall fail to pay any claims, subcontractors or suppliers with respect to the Work (as defined in the Contract), then Surety shall pay for the same in an amount not to exceed the Bonded Sum; otherwise this obligation shall be null and void upon all of the conditions to release set forth in Section 5.1.3 of the Contract.

The following terms and conditions shall apply with respect to this bond:

1. The terms and conditions of the Contract are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.
2. No alteration, modification or supplement to the Contract of the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this bond. Surety waives notice of any alteration, modification, supplement or extension of time.
3. Correspondence or claims relating to this bond should be sent to the Surety at the following address:

4. No right of action shall accrue on this bond to or for the use of any entity other than Obligee or its successors or assigns.

IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of _____, 2010.

Principal:

By: _____
Its: _____
(Seal)

Surety:

By: _____
Its: _____
(Seal)

EXHIBIT F
TxDOT Form 1950
(Certificate of Insurance for Services)



CERTIFICATE OF INSURANCE FOR SERVICES

P.O. No. _____
 Form 1950
 (Rev. 04/09)
 Previous versions of this form may not be used.
 Page 1 of 2

Prior to the beginning of work, the vendor shall obtain the minimum insurance and endorsements specified. Agents must complete the form providing all requested information and submit by fax, U.S. mail or e-mail as requested by TxDOT. Copies of endorsements listed below are not required as attachments to this certificate. Only certificates of Insurance published by TxDOT are acceptable as proof of insurance. Commercial carriers' certificates are unacceptable.

Insured: _____

Street/Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____ Vendor EIN Number (11 digits): _____

Worker's Compensation or Accident Insurance Coverage:

Endorsed with a Waiver of Subrogation in favor of TxDOT.

Carrier Name:			Carrier Phone Number:	
Address:			City:	State: Zip:
Type of Insurance	Policy Number	Effective Date	Expiration Date	Limits of Liability
Worker's Compensation or Accident Insurance				Not Less Than: Statutory - Texas \$300,000 for medical expenses and coverage for at least 104 weeks. \$100,000 for accidental death and dismemberment, 70% of employee's pre-injury income for not less than 104 weeks when compensating for loss of income. \$500 for the maximum weekly benefit.

Commercial General Liability Insurance:

Endorsed with TxDOT as Additional Insured and with a Waiver of Subrogation in favor of TxDOT.

Carrier Name:			Carrier Phone Number:	
Address:			City:	State: Zip:
Type of Insurance	Policy Number	Effective Date	Expiration Date	Limits of Liability
Commercial General Liability Insurance including: Bodily Injury Property Damage *Option Available				Not Less Than: \$300,000 each occurrence with \$600,000 aggregate. * \$1,000,000 per occurrence with \$2,000,000 aggregate OR with \$3,000,000 aggregate.

Texas Business or Comprehensive Automobile Liability Insurance:

Endorsed with TxDOT as Additional Insured and with a Waiver of Subrogation in favor of TxDOT.

Carrier Name:			Carrier Phone Number:	
Address:			City:	State: Zip:
Type of Insurance	Policy Number	Effective Date	Expiration Date	Limits of Liability
Texas Business Automobile Policy OR Comprehensive Automobile Liability Insurance Bodily Injury Property Damage				Not Less Than: \$250,000 each person \$500,000 each occurrence \$100,000 each occurrence

Other Insurance Coverage:

Carrier Name:		Carrier Phone Number:		
Address:		City:	State:	Zip:
Type of Insurance	Policy Number	Effective Date	Expiration Date	Limits of Liability

AGENT CERTIFICATION

This Certificate of Insurance neither affirmatively nor negatively amends, extends, or alters the coverage afforded by the above insurance policies issued by the insurance company named below.

Cancellation of the insurance policies shall not be made until THIRTY DAYS AFTER the undersigned agent or company has sent written notices by certified mail to the vendor and TxDOT.

THIS IS TO CERTIFY to TxDOT, acting on behalf of the State of Texas, that the insurance policies above meet all the requirements stipulated on Page 1 and such policies are in full force and effect.

Name of Insurance Company: _____	Name of Authorized Agent: _____
Company Address: _____	Agent's Address: _____
City: _____ State: _____ Zip: _____	City: _____ State: _____ Zip: _____
Authorized Agent's Phone Number Area Code (____) _____	Original Signature of Authorized Agent _____
	Date _____

**Texas Department of Transportation
Certificate of Insurance Requirements:**

The named insured on the certificate and the name of the vendor, as it appears on the contract with TxDOT, must be the same. (Note: In a case where the contract is in the name of a party such as "John Jones dba Jones Construction Company," the named insured on the Certificate of Insurance may be "Jones Construction Company" and vice versa. Also the abbreviations of "Co." for "Company" and "Inc." for "Incorporated" are acceptable.)

Over-stamping and/or typed entries made on the certificate of insurance by the agency/insuring company are unacceptable if such entries change the provisions of the certificate in any manner.

The following requirements apply to WORKER'S COMPENSATION and/or accident insurance paid coverage:

- ◆ If a vendor has *any* employees in addition to himself/herself (including relatives), then the vendor shall have workers' compensation or accident insurance.
- ◆ The word STATUTORY, under limits of liability for Workers' Compensation, means that the benefits allowed under the Texas Workers' Compensation Law will be paid by the insurer.

COMMERCIAL GENERAL LIABILITY insurance includes: Bodily Injury and Property Damage with limits as stated.

MANUFACTURERS' AND CONTRACTORS' LIABILITY insurance is *not* an acceptable substitute for COMMERCIAL GENERAL LIABILITY insurance.

The coverage amount for a COMPREHENSIVE AUTOMOBILE LIABILITY or TEXAS BUSINESS AUTOMOBILE POLICY may be shown as a minimum of \$600,000 Combined Single Limit by a typed or printed entry and deletion of the specific amounts listed for Bodily Injury and Property Damage.

BASIC AUTOMOBILE LIABILITY insurance is *not* an acceptable substitute for a TEXAS BUSINESS AUTOMOBILE POLICY or COMPREHENSIVE AUTOMOBILE LIABILITY insurance.

The signature of the agent shall be original in ink. Stamped/typed/printed signatures are unacceptable.

This form may be reproduced.

The certificate of insurance, once on file with TxDOT, is good for subsequent purchase orders *provided* adequate coverage is still in effect.

EXHIBIT G
Performance Measures and Damages

EXHIBIT H
TxDOT Form 1828b
(Information Resource Security Compliance and
Confidentiality Agreement)

Information Resources Security Compliance and Confidentiality Agreement (External User)

Printed Name

Payroll Unit No.

I understand that the Texas Department of Transportation ("TxDOT") collects and maintains confidential and privileged information.

I understand that TxDOT permits access to data containing confidential and privileged information by contractual agreement with external users not employed by TxDOT.

I understand and agree that any and all information that may come to my knowledge while using the TxDOT's information resources¹ may not be used or disclosed except as expressly authorized by TxDOT's management.

I understand and agree that I will observe the standards of confidentiality that must be maintained as I exchange business and technical information and that a breach of those standards may result in termination of my contract.

I understand and agree that any and all information system password(s) or access procedure(s) I receive or devise for use with TxDOT's information systems are confidential and reserved for official state agency business only. I will not disclose to any unauthorized person any password(s) or access procedure(s) I am given or devise, and I will not post these procedure (s) or written password(s) where persons who are not authorized to use TxDOT's system may view them.

I understand and agree that unauthorized release of confidential information, or actions deemed negligent resulting in damages/loss of information resources, will result in termination of my contract and may also result in legal action.

I understand and agree that I am responsible for all information system transactions performed as a result of access authorized by the use of my password(s) or procedure(s).

I understand and agree that my use of any access procedure(s) or password(s) not specifically issued to me or to a group of which I am a member is expressly prohibited and that attempts to access and utilize TxDOT's information systems for other than their intended purposes may result in prosecution under the Computer Fraud and Abuse Act of 1986 as well as any other applicable statutes and regulations.

I agree **not** to attempt to circumvent information system security devices or procedures by using or attempting to use any transaction, software, files, or other resources that I am not authorized to use.

I understand that intentionally failing to observe these requirements or intentionally bypassing them may constitute a breach of information systems security as defined in the Texas Penal Code §33.02 and may result in immediate loss of information system access.

I understand and agree that I may have access in the performance of job duties to any other intellectual property (trademarks, patents, trade secrets and materials and documents included there under) belonging to TxDOT and acknowledge that the source codes, programs, and related documentation constitute valuable intellectual property of TxDOT.

I understand and agree that these materials, including but not limited to commercial computer software and any accompanying documentation, that may be made available to me for my use by TxDOT are confidential and protected by intellectual property and copyright laws and are not to be disclosed, copied or shared with any unauthorized person(s)² without the written permission of TxDOT.

I understand and agree that the violation of intellectual property and copyright laws, including those applicable to computer software, may result in fines and/or other legal action.

I understand and agree that I may be required to develop, create or modify materials protected by intellectual property laws and that this is work for hire that is solely the intellectual property of TxDOT and as such may not be disclosed, copied or shared with unauthorized person(s) without the written permission of TxDOT.

I understand that using TxDOT's intellectual property for other than their intended purposes is prohibited and may result in termination of employment and prosecution pursuant to Texas Penal Code §31.05, as well as TxDOT's pursuit of any other legal remedies.

I understand and agree that any TxDOT-owned, developed, or licensed software will be returned to TxDOT upon termination of my contract.

I agree to abide by all TxDOT information security policies, procedures, and practices as outlined in the *External TxDOT User Policies*, which are located at ftp://ftp.dot.state.tx.us/pub/txdot-info/isd/external_txdot_user_policies.doc

I acknowledge receipt of this agreement, understand its contents, and agree to abide by the terms set forth herein. Additionally, I have been informed that questions regarding this agreement and/or issues related to the release or disclosure of confidential information should be directed to the director of TxDOT's Technology Services Division.

Signature

Date

Original to project manager for inclusion in the user's file.

Copy to be retained by security administrator for inclusion in user's security file.

¹ Information resources include computer systems, telephone systems, voicemail systems, fax systems, and regular mail systems as well as the procedures, equipment, and software that are designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and associated personnel including consultants and contractors.

² Unauthorized person(s) include anyone who is not bound by a written confidentiality agreement expressly covering TxDOT's intellectual property and related documentation.

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.