

APPENDIX F – SAMPLE CONTRACT

Contract Number XXXXX

For

**Transponder Technology Products and
Services**

between the

Washington State

Department of Transportation

and

XXXXXX

Effective Date: _____

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- Exhibit B: Transponder Based Toll Technology Technical Requirements
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CONTRACT NUMBER _____

for

Transponder Technology Products and Services

PARTIES

This Contract (“Contract”) is entered into by and between the state of Washington, acting by and through the Department of Transportation, an agency of Washington State government (WSDOT) located at 301 Maple Park Avenue, Olympia, WA 98504-7400, and _____, a _____ licensed to conduct business in the state of Washington (“Vendor”), located at _____ for the purpose of providing Transponder Technology Products and Services.

RECITALS

WHEREAS, the State of Washington, acting by and as WSDOT, is the owner and operator of state highway toll transportation facilities and the statewide tolling Customer Service Center, collectively referred to as the tolling program, and

WHEREAS, WSDOT has determined that one of its toll collection methods requires the use of Transponder Technology Products and Services;

WHEREAS, _____ is the manufacturer of specific Transponder Technology Antennae, Readers, Transponders, and related materials needed by WSDOT; and,

NOW THEREFORE, WSDOT awards to _____, this Contract, the terms and conditions of which shall govern Vendor’s furnishing to WSDOT the Transponder Technology Products and Services. In consideration of the mutual promises as hereinafter set forth, the parties agree as follows:

1. Definition of Terms

The following terms as used throughout this Contract shall have the meanings set forth below.

“**Acceptance**” shall mean that Products have been delivered and WSDOT has a reasonable opportunity to determine that the Products appear to be undamaged, and in good working order.

“**Acceptance Date**” for Vendor supplied Products shall mean the date upon which WSDOT accepts the Products.

“**Business Days and Hours**” shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

“**Calendar Days**” shall mean shall mean a day reckoned from midnight to midnight.

“**Confidential Information**” shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes. Confidential Information may include, but is not limited to, names, addresses, account numbers, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, agency source code or object code, or agency security data.

“**Contract**” shall mean this document, all schedules and exhibits, and all amendments hereto.

“Delivery Date” shall mean the date set forth in the Order Document by which the Products ordered hereunder must be delivered.

“Effective Date” shall mean the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

“Exhibit A: *Authorized Product and Price List*” shall mean the attachment to this Contract that identifies the authorized Products and Prices available under this Contract.

“Help Desk” shall mean a service provided by Vendor for the support of Vendor’s Products. WSDOT shall report warranty problems to Vendor’s Help Desk for initial troubleshooting and possible resolution of the problems or for the initiation of repair or replacement services.

“Order” or **“Order Document”** shall mean any official document from WSDOT and attachments thereto specifying the Products to be purchased from Vendor under this Contract.

“Price” shall mean charges, costs, rates, and/or fees charged for the Products and Services set forth in Exhibit A under this Contract and shall be paid in United States dollars.

“Product(s)” shall mean any Transponder Technology Products as set forth in Exhibit A and detailed in Exhibit B under this Contract.

“Proprietary Information” shall mean information owned by Vendor to which Vendor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

“RCW” shall mean the Revised Code of Washington.

“Service” shall mean those services as described in Exhibit B provided by Vendor under the Contract.

“Specifications” shall mean the technical and other specifications set forth in Exhibit B.

“State of Washington” Unless otherwise restricted by the RFP, includes all members of the State of Washington, State Purchasing Cooperative including where applicable: State agencies, political subdivisions of Washington qualified non-profit corporations, institutions of higher education (e.g., colleges, universities, community & technical colleges) who choose not to purchase independently under RCW 23.B.10.029.

“Subcontractor” shall mean one not in the employment of Vendor, who is performing all or part of the business activities under this Contract under a separate contract with Vendor. The term “Subcontractor” means Subcontractor(s) of any tier.

“Toll Collection System” shall mean any system that creates a toll transaction for processing by the WSDOT Customer Service Center (CSC).

“Toll Transportation Facility” shall mean a facility whose purpose is to collect and process WSDOT tolls and detect and process toll violations. A toll facility includes all traffic, bridge lanes requiring tolls, and any related tollbooths and operation buildings.

“Vendor” shall mean _____, its employees and agents. Vendor also includes any firm, provider, organization, individual, or other entity performing the business activities under this

Contract. It shall also include any Subcontractor retained by Vendor as permitted under the terms of this Contract.

“Vendor Account Manager” shall mean a representative of Vendor who is assigned as the primary contact person whom the WSDOT Project Manager shall work with for the duration of this Contract and as further defined in the section titled **Vendor Account Manager**.

“Vendor Contracting Officer” shall mean _____, or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of Vendor Contracting Officer acting within the limits of his/her authority.

“Warranty Period” shall mean the period of time as set forth in Section 15 and further described in Exhibit C of this Contract titled **Product Warranty** wherein Vendor warrants that the Products shall be in good operating condition and shall conform to the Specifications.

“Work Product” shall mean all data and Products produced under this Contract including but not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.

“WSDOT” shall mean Washington State Department of Transportation, any division, section, office, unit or other entity within WSDOT, and any of the officers, consultants, agents, representatives or other officials lawfully representing WSDOT.

“WSDOT Contract Administrator” shall mean that WSDOT employee designated to receive legal notices, and to administer, amend, or terminate this Contract.

“WSDOT Project Manager” shall mean the WSDOT employee designated to manage and provide oversight of the day-to-day activities under this Contract. The WSDOT Project Manager shall be the primary contact with Vendor concerning Vendor’s performance under this Contract; Provided that, the WSDOT Project Manager does not have authority to accept legal notices on behalf of WSDOT or amend this Contract.

Contract Term

2. Term

- 2.1. This Contract’s initial term shall be for one (1) year, commencing upon the Effective Date.
- 2.2. This Contract’s term may be extended by nine (9) additional one (1) year terms, provided that the extensions shall be at WSDOT’s option and shall be effected by WSDOT giving written notice of its intent to extend this Contract to Vendor not less than thirty (30) calendar days prior to the then-current Contract term’s expiration and Vendor accepting such extension prior to the then-current Contract term’s expiration. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.

3. Purchases

WSDOT, at its discretion, will order Products and Services as it deems necessary. No Purchase shall be authorized until an Order Document is executed by WSDOT and accepted by Vendor. WSDOT may make purchases under this contract for items shown in Exhibit A in any quantity desired. This Contract is an optional-use contract that neither financially binds the State nor otherwise obligates the State to purchase any Products hereunder. Nor does the Contract prevent the State from purchasing the same or similar Products from other sources.

Pricing, Invoice and Payment

4. Pricing

- 4.1. Vendor agrees to provide the Products and Services as ordered by WSDOT at the Prices set forth in Exhibit A. No other Prices shall be payable to Vendor.
- 4.2. Prices may not be increased during the initial term of the Contract.
- 4.3. If Vendor reduces its Prices for any comparable purchases of the Products during the term of this Contract, WSDOT shall have the benefit of such lower Prices for new purchases. Vendor shall send notice to the WSDOT Contract Administrator with the reduced Prices within fifteen (15) Business Days of the reduction taking effect
- 4.4. Vendor agrees all the Prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by Vendor to any other entity purchasing similar quantities under similar terms. If during the term of this Contract Vendor shall enter into contracts with any other entity providing greater benefits or more favorable terms than those provided by this Contract, Vendor shall be obligated to provide the same to WSDOT for subsequent purchases.
- 4.5. If Vendor fails to provide WSDOT Prices, terms, warranties, and benefits comparable to or better than those presently offered or offered in the future to any other entity purchasing similar quantities under similar terms, WSDOT shall be entitled to a refund of the amount overpaid to Vendor, plus an amount equal to fifteen percent (15%) of the amount overpaid as compensation for WSDOT's efforts in enforcing the pricing terms of this Contract.

5. Advance Payment Prohibited

No advance payment shall be made for the Products and Services furnished by Vendor pursuant to this Contract.

6. Taxes

- 6.1 WSDOT will pay sales and use taxes, if any, imposed on the Products acquired hereunder. Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Vendor's income or gross receipts, or personal property taxes levied or assessed on Vendor's personal property. WSDOT, as an agency of Washington State government, is exempt from property tax.
- 6.2 Vendor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

7. Invoice and Payment

- 7.1. Vendor will submit properly itemized invoices to WSDOT OIT Vendor Payments at PO Box 47420, Olympia, WA 98504-7420. Invoices shall provide and itemize, as applicable:
- a) WSDOT Contract number _____ and Order Document number;
 - b) Vendor name, address, phone number, and Federal Tax Identification Number;
 - c) Description of Products and Services, including quantity ordered, model and serial numbers;
 - d) Date(s) of delivery;
 - e) Price for each item and applicable discounts;
 - f) Net invoice Price for each item;
 - g) Applicable taxes;
 - h) Shipping costs;
 - i) Other applicable charges;
 - j) Total invoice Price; and
 - k) Payment terms including any available prompt payment discounts.
- 7.2. Payments shall be due and payable within thirty (30) calendar days after receipt and Acceptance of Products and Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.
- 7.3. Incorrect or incomplete invoices will be returned by WSDOT to Vendor for correction and reissue.
- 7.4. The WSDOT Contract number _____ and Order Document number must appear on all bills of lading, packages, and correspondence relating to this Contract.
- 7.5. WSDOT shall not honor drafts, nor accept goods on a sight draft basis.
- 7.6. If WSDOT fails to make timely payment, Vendor may invoice WSDOT one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1). Payment will not be considered late if payment is deposited electronically in Vendor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of Acceptance of the Products or receipt of Vendor's properly prepared invoice, whichever is later.

8. Overpayments to Vendor

Vendor shall refund to WSDOT the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Vendor fails to make timely refund, WSDOT may charge Vendor one percent (1%) per month on the amount due, until paid in full.

9. Travel Expenses

WSDOT shall reimburse Vendor for travel and other expenses as identified in this Contract, or as authorized in writing, in advance by WSDOT in accordance with the then-current rules and regulations set forth in the Washington State Administrative and Accounting Manual (<http://www.ofm.wa.gov/policy/polto.htm>). Vendor shall provide a detailed itemization of expenses, including description, amounts and dates, and receipts for amounts of fifty dollars (\$50) or more when requesting reimbursement.

Performance Responsibilities

10. Optional Use Contract

This Contract is an optional-use contract that neither financially binds the State nor otherwise obligates the State to purchase any Products hereunder. Nor does the Contract prevent the State from purchasing the same or similar Products from other sources,

11. Shipping and Risk of Loss

Vendor shall ship all Products purchased pursuant to this Contract, freight prepaid, FOB WSDOT's destination as indicated on the order document. The method of shipment shall be consistent with the nature of the Products and hazards of transportation. Regardless of FOB point, Vendor agrees to bear all risks of loss, damage, or destruction of the Products ordered hereunder that occurs prior to delivery and acceptance, except loss or damage attributable to WSDOT's fault or negligence; and such loss, damage, or destruction shall not release Vendor from any obligation hereunder. After delivery and acceptance, the risk of loss or damage shall be borne by WSDOT, except loss or damage attributable to Vendor's fault or negligence or Product failure.

12. Product Compatibility/Specifications/Configurations

- 12.1. Vendor shall notify WSDOT of the existence of any compatibility issues between Vendor's Products and WSDOT's already existing or planned-for hardware, software, and cabling within three (3) Business Days of Vendor identification of compatibility issue.
- 12.2. Vendor expressly warrants that products delivered hereunder will conform to the detailed Specifications as defined in Exhibit B of this Contract in all respects including, but not limited to: physical characteristics, operating characteristics, space requirements, power requirements, maintenance or warranty characteristics, modularity, compatibility, and the like, as may be modified in writing and agreed to by the parties.
- 12.3. WSDOT shall have the right to connect the products purchased hereunder to any Products manufactured or supplied by others including other computers, peripheral equipment, terminal devices, communications equipment, software and the like that normally interface with the Products purchased hereunder.
- 12.4. If requested by WSDOT, Vendor agrees to identify, on all Product supplied under this Contract, all appropriate test points for connecting commercially available Product monitors designed to measure system capacity, performance, or activity.

13. Delivery and Acceptance

- 13.1. Vendor shall deliver the Products ordered pursuant to this Contract on or before the Delivery Date to the destination(s) specified in the executed Order Document. WSDOT and the Vendor shall agree to the Delivery Date for the Products ordered pursuant to this Contract for each Order Document. For any exception to this Delivery Date, Vendor must notify WSDOT and obtain prior approval in writing. Vendor may be subject to Liquidated Damages, termination of an Order or of this Contract and/or other damages available under law for failure to deliver on time.

- 13.2. All deliveries made pursuant to this Contract must be complete. Unless Vendor has obtained prior written approval from WSDOT, which shall not be withheld unreasonably, incomplete deliveries or backorders will not be accepted. All packages must be accompanied by a packing slip that identifies all items included with the shipment and the WSDOT's Order Document number. Vendor's delivery receipt must be signed by an authorized representative of WSDOT for all deliveries made hereunder.
- 13.3. Vendor shall allow WSDOT reasonable opportunity to inspect and determine that Products conform to all specifications including technical and packaging specifications prior to acceptance.
- 13.4. Acceptance occurs when Vendor has delivered Products in the amount and at the time and place specified in the Contract and when WSDOT, or its designated representative has inspected the Products and signifies that the Products appear to conform to the Contract.

14. Site Security

While on WSDOT's premises, if applicable, Vendor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations.

15. Product Repair, Replacement and Warranties

- 15.1. Vendor expressly warrants that the Products shall be in good operating condition and shall conform to the Specifications as described in Exhibits A and B from the date of delivery and for the following warranty periods:
 - a) Transponders for a period of five (5) years
 - b) Reader for a period of one (1) year
 - c) Antenna for a period of one (1) year
 - d) Other Products not listed above for a period of one (1) year
- 15.2. The Warranty Period shall commence upon the first day after the Acceptance Date.
- 15.3. During the Warranty Period and at WSDOT's discretion, Vendor shall adjust, repair, or replace all Products that are defective or not performing in conformance with the Warranty Specifications. All costs for such adjustments, repairs, or replacements, including all costs for replacing parts or units and any transportation and delivery fees, shall be at Vendor's expense. Any defective Products shall be repaired or replaced for WSDOT so that it conforms to the Specifications.
- 15.4. Vendor agrees that all warranty service provided hereunder shall be performed by manufacturer-trained, certified, and authorized technicians. Vendor further agrees to act as the sole point of contact for warranty service. Vendor warrants that it has or will obtain and pass through to WSDOT any and all warranties obtained or available from the Original Product Manufacturer (OPM), including any replacement, upgraded, or additional Product warranties.
- 15.5. Vendor shall provide Help Desk Services for reporting warranty issues and for troubleshooting problems. Vendor's Help Desk Services shall be accessible via e-mail or via one or more toll-free telephone lines.

- 15.6. WSDOT will notify vendor of defective or non-conforming Products using Help Desk Services or by other written notification.
- 15.7. Upon completion of each warranty call, Vendor shall furnish an activity report to WSDOT, which shall include at a minimum, the following:
 - a) Date and time notified;
 - b) Date and time of arrival;
 - c) Type and serial number(s) of Product repaired(s);
 - d) Description of malfunction;
 - e) List of parts replaced; and
 - f) Additional charges, if applicable.
- 15.8. There shall be no additional charges for replacement parts or warranty service.
- 15.9. When requested, Products shall be repaired or replaced within 30 calendar days. Failure of Vendor to comply with this requirement shall be a Failure to Perform, per Section 45.
- 15.10. Spare Parts for Products and End-of-Life Support

Vendor shall make available new Original Product Manufacturer OPM replacement parts, or WSDOT-approved equivalent, for a minimum of five (5) years from the date of the affected Product's end-of-life date and/or the last day when the affected Product can be ordered. Vendor shall provide written notice to WSDOT no less than one-hundred eighty (180) days prior to the affected Product's end-of-life date and/or the last day when the affected Product can be ordered.

15.11. Vendor Commitments, Warranties and Representations

Any written commitment by Vendor within the scope of this Contract shall be binding upon Vendor. Failure of Vendor to fulfill such a commitment may constitute breach and shall render Vendor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Vendor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Vendor or contained in any Vendor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium used by Vendor to effect the sale to WSDOT.

16. Product Documentation

- 16.1. Vendor shall provide two (2) complete sets of the documentation as detailed in Exhibit B, including technical, electrical, maintenance, and installation information and will provide updated documentation for the term of this Contract. There shall be no additional charge for this documentation or the updates, in whatever form provided. Vendor's Product documentation shall be comprehensive, well-structured, and indexed for easy reference. If Vendor maintains technical, electrical, maintenance and installation documentation on a web site, Vendor may fulfill the obligations set forth in this section by providing WSDOT access to its web-based documentation information. Vendor may also provide such information on CD-ROM.
- 16.2. Vendor grants WSDOT the right to make derivative works, update, modify, copy or otherwise reproduce the documentation furnished pursuant to this section at no additional charge.

- 16.3. Vendor grants WSDOT the right to share this documentation with its vendors subcontracting agents under contract or agreement without prior approval or restriction by the Vendor.

17. Services

Vendor shall provide the services listed in Exhibit B including but not limited to those listed below to WSDOT or its designated representative for the duration of the Contract

17.1. Integration Support

- a) Vendor shall provide technical support and advice to WSDOT or its designated representative, during the integration of the Vendor supplied transponders, readers, and ancillary products into Toll Collection Systems at any WSDOT Toll Transportation Facility at no additional cost for the duration of the Contract.
- b) Vendor shall provide WSDOT or its designated representative necessary equipment and training to enable WSDOT to perform acceptability testing at the time of delivery at no additional cost
- c) Vendor shall be required to respond in timely manner to all requests for information and questions from WSDOT or its designated representative.
- d) At the written request of WSDOT, the Vendor shall travel to the State of Washington to provide on-site assistance.

17.2. Maintenance Support

- a) The Vendor shall provide on-going maintenance support and advice to WSDOT or its designated representative for products whether or not under warranty at no additional cost for the duration of the Contract,
- b) Vendor shall provide help desk services for addressing maintenance troubleshooting problems and questions from WSDOT or its designated representative. The Vendor's help desk services shall be accessible via e-mail or via one or more toll-free telephone lines on a 24 hour, 7 day basis should technical assistance be necessary. The Vendor shall respond to inquiries from WSDOT or its designated representatives within four (4) hours.
- c) At the written request of WSDOT, Vendor may be required to provide on-site maintenance assistance.

17.3. Firmware Updates

- a) Vendor shall make available to WSDOT or its designated representative, all changes, updates or modifications to the firmware and software of the reader at no additional cost for the duration of the Contract.
- b) Vendor shall provide assistance and instructions on the installation of such changes, updates and modifications to the reader software and firmware.
- c) It shall be at WSDOT's sole discretion whether to install such changes, updates and modifications to the reader software and firmware.

17.4. Training

- a) The Vendor shall develop a training program and training material for review and approval by WSDOT.

- b) The training program shall describe in detail all recommended training functions, test equipment, certifications, licenses and other support functions that the Vendor considers necessary to ensure proper installation, tuning and maintenance of the readers and ancillary products provided by the Vendor under the Contract.
- c) The training material shall provide an overview of design, operations, and maintenance of the transponder readers and other ancillary products provided by the Vendor under the Contract. The training materials shall include instruction in proper maintenance, monitoring and diagnostics of the products and software either supplied or incorporated into transponder readers and other ancillary products provided by the Vendor under the Contract. Training shall be sufficiently detailed and intensive to enable WSDOT maintenance staff to undertake all routine maintenance beyond the end of the Warranty Period.
- d) Training shall include both classroom training and hands-on or in-the-field training and accommodate up to ten (10) persons.
- e) The Vendor shall conduct up to two (2) training sessions at WSDOT's discretion over the duration of the Contract in Washington State at a facility provided by WSDOT.
- f) The Vendor shall make updates to the training program and materials whenever necessary due to product or software changes that affect any maintenance or installation procedures.

18. Compliance with Specifications and Standards

- 18.1. Within three months of Contract execution, and prior to Product delivery, Vendor shall submit proof of Product DSRC protocol compliance and compliance with Exhibit B. Test results from previous installations at other toll facilities and/or independent third party certification entity shall be acceptable. The documentation provided by the Vendor shall be cross referenced to the requirements in Exhibit B.
- 18.2. Vendor shall submit draft documentation of compliance for comment by WSDOT. WSDOT will require a minimum of ten (10) Business Days to review the documentation. WSDOT will provide the Vendor with a consolidated set of comments on the documentation.
- 18.3. Vendor shall respond in writing to all WSDOT comments. A comment resolution meeting may be conducted to clarify and resolve any remaining questions and issues concerning the comments provided by WSDOT to the Vendor. Based on WSDOT comments and the results of the comment resolution meeting, the Vendor shall prepare a final version of the documentation of compliance for WSDOT approval.
- 18.4. Approval by WSDOT of Vendor documentation for compliance with Exhibit B will be required before payment for any Vendor supplied products or services will be made by WSDOT.

19. Confidential and Proprietary Information

- 19.1. Vendor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes ("Confidential Information"). Vendor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the

performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without WSDOT's express written consent or as provided by law. Vendor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by WSDOT. Vendor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

- 19.2. Immediately upon expiration or termination of this Contract, Vendor shall, at WSDOT's option: (i) certify to WSDOT that Vendor has destroyed all Confidential Information; or (ii) return all Confidential Information to WSDOT; or (iii) take whatever other steps WSDOT requires of Vendor to protect WSDOT's Confidential Information.
- 19.3. Violation of this section by Vendor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.
- 19.4. Vendor acknowledges that WSDOT is subject to chapter 42.56 RCW and that this Contract shall be a public record as defined in chapter 42.56 RCW. Any document or information supplied by Vendor pursuant to this Contract shall be treated as a public record unless specified as proprietary or confidential by Vendor. Any specific information that is claimed by Vendor to be Proprietary Information must be clearly identified as such by Vendor. To the extent consistent with chapter 42.56 RCW, WSDOT shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Vendor's Proprietary Information, WSDOT will notify Vendor of the request and of the date that such records will be released to the requester unless Vendor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Vendor fails to obtain the court order enjoining disclosure, WSDOT will release the requested information on the date specified.

20. Contract Administration Legal Notices

- 20.1. Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Products) shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid, or by email to the parties at the addresses provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

To Vendor at:	To WSDOT at:
	State of Washington Department of Transportation
Attn:	Attn:
	301 Maple Park Avenue SE
	PO Box 47408

	Olympia, WA 98504-7408
Phone: (858) 736-8236	Phone:
Fax:	Fax:
E-mail:	E-mail:

- 20.2. Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.
- 20.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Products provided pursuant to this Contract is served upon Vendor or WSDOT, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor and WSDOT further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

21. Vendor Account Manager

Vendor shall appoint an Account Manager for WSDOT's account under this Contract who will provide oversight of Vendor activities conducted hereunder. Vendor's Account Manager will be the principal point of contact for WSDOT concerning Vendor's performance under this Contract. Vendor shall notify WSDOT Contract Administrator and WSDOT Project Manager, in writing, when there is a new Vendor Account Manager assigned to this Contract. The Vendor Account Manager information is:

Person:
Street Address:
Phone:
E-Mail:

22. WSDOT Project Manager

WSDOT shall appoint a WSDOT Project Manager for this Contract and will provide oversight of the activities conducted hereunder. The WSDOT Project Manager will be the principal contact for Vendor concerning business activities under this Contract. WSDOT shall notify Vendor, in writing, when there is a new WSDOT Project Manager assigned to this Contract. The WSDOT Project Manager information is:

Person:
Street Address:
Phone:
E-Mail:

23. Section Headings, Incorporated Documents and Order of Precedence

- 23.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 23.2. Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.

- a) Exhibit A: Authorized Product and Price List
 - b) Exhibit B: Product Specifications
 - c) Exhibit C: Warranty
 - d) The terms and conditions contained on WSDOT's Order Documents, if used;
 - e) WSDOT RFQQ dated October 30, 2013
 - f) Vendor's Response to WSDOT RFQQ dated October 30, 2013; and
 - g) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to WSDOT and used to affect the sale of Products to WSDOT.
- 23.3. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:
- a) Applicable federal and state statutes, laws, and regulations;
 - b) Sections of this Contract;
 - c) Exhibit A: Authorized Product and Price List
 - d) Exhibit B: Product Specifications
 - e) Exhibit C: Warranty
 - f) The terms and conditions contained on WSDOT's Order Documents, if used;
 - g) WSDOT RFQQ dated October 30, 2013
 - h) Vendor's Response to WSDOT RFQQ dated October 30, 2013; and
 - i) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to WSDOT and used to affect the sale of Products to WSDOT.

24. Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Vendor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

25. Authority for Modifications and Amendments

No modification, amendment, alteration, addition, or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by WSDOT and Vendor Contracting Officers. Only WSDOT Contracting Officer shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract on behalf of WSDOT.

26. Independent Status of Vendor

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of

one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Vendor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW, or Title 51 RCW.

27. Governing Law

This Contract shall be governed in all respects by the law and statutes of the state of Washington, without reference to conflict of law principles. However, if the Uniform Computer Information Transactions Act (UCITA) or any substantially similar law is enacted as part of the law of the state of Washington, said statute will not govern any aspect of this Contract or any license granted hereunder, and instead the law as it existed prior to such enactment will govern. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

28. Subcontractors

Vendor may, with prior written permission from WSDOT Contracting Officer, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Vendor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Vendor to WSDOT for any breach in the performance of Vendor's duties. For purposes of this Contract, Vendor agrees that all Subcontractors shall be held to be agents of Vendor.

29. Publicity

- 29.1. The award of this Contract to Vendor is not in any way an endorsement of Vendor or Vendor's products by WSDOT and shall not be so construed by Vendor in any advertising or other publicity materials.
- 29.2. Vendor agrees to submit to WSDOT, all advertising, sales promotion, and other publicity materials relating to this Contract or any Product furnished by Vendor wherein WSDOT's name is mentioned, language is used, or Internet links are provided from which the connection of WSDOT's name therewith may, in WSDOT's judgment, be inferred or implied. Vendor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of WSDOT *prior* to such use.

30. Review of Vendor's Records

- 30.1. Vendor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to protection and use of WSDOT's Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Vendor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of

litigation, including all appeals, or six (6) years from the date of expiration or termination of this Contract, whichever is later.

- 30.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the WSDOT's Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Contract's term, Vendor shall provide access to these items within Thurston County. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor or any of its Subcontractors.
- 30.3. Vendor shall incorporate in its subcontracts this section's records retention and review requirements.

General Provisions

31. Patent and Copyright Indemnification

- 31.1. Vendor, at its expense, shall defend, indemnify, and save WSDOT harmless from and against any claims against WSDOT that any Product supplied hereunder, or WSDOT's use of the Product within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Vendor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by WSDOT provided that WSDOT:
 - a) Promptly notifies Vendor in writing of the claim, but WSDOT's failure to provide timely notice shall only relieve Vendor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Vendor; and
 - b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.
- 31.2. If such claim has occurred, or in Vendor's opinion is likely to occur, WSDOT agrees to permit Vendor, at its option and expense, either to procure for WSDOT the right to continue using the Product or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Product is enjoined by a court and Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will recall the Product and provide WSDOT refunds as well as other costs incurred by WSDOT associated with the Product recall.
- 31.3. Vendor has no liability for any claim of infringement arising solely from:
 - a) Vendor's compliance with any designs, specifications or instructions of WSDOT;
 - b) Modification of the Product by WSDOT or a third party without the prior knowledge and approval of Vendor;
 - c) Use of the Product in a way not specified by Vendor; or,
 - d) Use of the Product with equipment not supplied by Vendor;unless the claim arose against Vendor's Product independently of any of these specified actions.

32. Save Harmless

The WSDOT shall indemnify and hold harmless the Vendor from all claims, costs, damages, or expenses arising out of the negligence of WSDOT. Likewise, the Vendor shall indemnify and hold harmless WSDOT from all claims, costs, damages, or expenses arising out of the negligence of the Vendor. In the case of negligence of both the Vendor and WSDOT, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each party.

33. Insurance

- 33.1. Vendor shall, during the term of this Contract, and at its expense acquire and maintain in full force and effect, the insurance described in this Section. Vendor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. In the event of cancellation, non-renewal, revocation, or other termination of any insurance coverage required by this Contract, Vendor shall provide written notice of such to WSDOT within one (1) business day of Vendor's receipt of such notice. Failure to buy and maintain the required insurance may, at WSDOT's sole option, result in this Contract's termination
- 33.2. The minimum acceptable limits shall be as indicated below, with no deductible unless otherwise specified or approved by WSDOT in advance, for each of the following categories:
- 33.3. Commercial General Liability (CG 00 01 12 04, ISO or substitute liability form providing equivalent coverage) covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- 33.4. Business Automobile Liability (CA 00 01 10 01, ISO or substitute liability form providing equivalent coverage) covering owned, hired, or non-owned vehicles, the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
- 33.5. Employers Liability (Stop Gap) insurance covering the risks of Vendor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
- 33.6. Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, and coverage of not less than \$1 million per occurrence/\$2 million general aggregate; and
- 33.7. Umbrella policy providing excess limits over the above referenced general liability and automobile liability primary policies in an amount not less than \$3 million per policy.
- 33.8. Such insurance policies or related Certificates of Insurance (Certificates) shall name WSDOT as an Additional Insured on all general liability, automobile liability, employers' liability, and umbrella policies. Such policies or related Certificates shall also reference this Contract number _____ and shall have a condition that they not be revoked by the insurer until 45 calendar days after written notice of intended revocation thereof shall have been given to WSDOT by the Vendor's Insurance Broker. Under no circumstances will WSDOT be liable for any policy premiums or deductibles.

- 33.9. All insurance provided by Vendor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State on behalf of WSDOT and shall include a severability of interests (cross-liability) provision.
- 33.10. Vendor shall include all Subcontractors as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Failure of Subcontractor(s) to comply with insurance requirements does not limit Vendor's liability or responsibility.
- 33.11. Vendor shall furnish to WSDOT copies of certificates of all required insurance within fourteen (14) calendar days of this Contract's effective date and copies of renewal certificates of all required insurance within 14 days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this Section.
- 33.12. By requiring insurance herein, WSDOT does not represent that coverage and limits will be adequate to protect Vendor, nor limit WSDOT's right to seek additional recovery from the Vendor. Such coverage and limits shall not limit Vendor's liability under the indemnities and reimbursements granted to WSDOT in this Contract.
- 33.13. **Waiver of Statutory Immunity.** Vendor intentionally accepts the terms of this Section and waives any and all statutory immunity provided by the Washington State Industrial Insurance Act, RCW Title 51, with regard to all rights of the indemnities stated herein. THE TERMS OF THIS SECTION, SPECIFICALLY INCLUDING THE PRECEDING WAIVER OF IMMUNITY, SHALL BE DEEMED MUTUALLY NEGOTIATED, HAS BEEN EXPRESSLY AND SPECIFICALLY NEGOTIATED AND AGREED UPON BY THE PARTIES TO THE FULLEST EXTENT ALLOWED BY THE LAWS OF WASHINGTON APPLICABLE TO WSDOT.

34. Licensing Standards

Vendor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements and standards necessary in the performance of this Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

35. OSHA/WISHA

Vendor represents and warrants that its Products, when shipped, are designed and manufactured to meet then current federal and state safety and health regulations. Vendor agrees to indemnify and hold WSDOT harmless from all damages assessed against WSDOT as a result of the failure of the Products furnished under this Contract to so comply.

36. Uniform Commercial Code (UCC) Applicability

- 36.1. Except to the extent the sections of this Contract are clearly inconsistent, this Contract shall be governed by any applicable sections of the Uniform Commercial Code (UCC) as set forth in Title 62A RCW and specifically chapter 62A.2 RCW.
- 36.2. To the extent this Contract entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the UCC, except when to do so would result in an absurdity.

36.3. In the event of any clear inconsistency or contradiction between this Contract and the UCC, the terms and conditions of this Contract take precedence and shall prevail unless otherwise provided by law.

37. Antitrust Violations

Vendor and WSDOT recognize that in actual economic practice overcharges resulting from antitrust violations are usually borne by WSDOT. Therefore, Vendor hereby assigns to WSDOT any and all claims for such overcharges as to goods purchased in connection with this Contract, except as to overcharges not passed on to WSDOT resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Contract.

38. Compliance with Civil Rights Laws

During the performance of this Contract, Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Vendor’s noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the **Termination for Default** sections, and Vendor may be declared ineligible for further contracts with WSDOT.

39. Severability

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

40. Waiver

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties. This section shall

Remedies

41. Attorneys’ Fees and Costs

41.1. If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorneys’ fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.

41.2. In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator

or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

42. Liquidated Damages.

- 42.1. The Parties agree that any delay or failure by the Vendor to deliver conforming Products by the Delivery Date will constitute a default. Such default will interfere with the proper and timely operation of the WSDOT tolling program, to the loss and damage of WSDOT, the statewide tolling Program, the individual Toll Facility funds, motor vehicle fund and the citizens of the State.
- 42.2. As it would be impracticable to fix the actual damage sustained in the event of any such failure(s) to perform, WSDOT and Vendor agree that in the event of any such failure(s) to perform, the amount of damage which will be sustained will be the following amounts:
 - a) Ten thousand dollars (\$10,000) per Calendar Day per reader ordered for each Calendar Day the delivery of a reader is delayed past the Delivery Date.
 - b) One percent (1%) of the order value per Calendar Day per order of transponder(s) for each Calendar Day the delivery of the transponder(s) is delayed past the Delivery Date.
- 42.3. The parties also acknowledge that Liquidated Damages may be withheld from Contract payments by WSDOT or charged to the Vendor at the discretion of WSDOT.
- 42.4. The assessment of liquidated damages shall not constitute a waiver or release of any other remedy WSDOT may have under this Contract for Vendor's default or breach of this Contract including without limitation the right to terminate as described below.

43. Non-Exclusive Remedies

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

44. Withholding Payment

If Vendor fails to perform any substantial obligation under this Contract WSDOT may withhold any monies due and payable to Vendor, without penalty to WSDOT, until such Failure to Perform is cured or otherwise resolved. Vendor may withhold costs associated with cure or cover as described herein and may withhold liquidated damages at the discretion of WSDOT.

45. Force Majuer

Neither Vendor nor WSDOT shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Vendor or WSDOT. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than WSDOT acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Vendor, WSDOT, or their respective Subcontractors.

Contract Default and Termination

46. Default

- 46.1. Vendor is in default if Products, Services, or Delivery fail in any respect to conform to the terms specified in this contract
- 46.2. Upon such default by Vendor, WSDOT may reject the whole delivery, or accept any commercial units and reject the rest.
- 46.3. If after delivery WSDOT discovers that Products are non-conforming or fail to meet the terms of the warranties listed herein, WSDOT may revoke acceptance of any Product or Products and notify Vendor of the default.
- 46.4. Upon violation of any material term of the Contract default by Vendor, WSDOT may elect to allow the Vendor a period to cure which may include repairing or replacing non-conforming Product(s), may elect to cover as described in Section 46.5 below, and/or may elect to terminate this Contract, in whole or in part, without penalty or liability to WSDOT.
- 46.5. In the event of default and/or termination of this Contract by WSDOT, WSDOT shall have the right to cover by procuring substitutes for the Products that are the subject of this Contract on the open market and Vendor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Contract price for the Products and the replacement costs of such substitute Products acquired from another Vendor; (ii) if applicable, all administrative costs directly related to the replacement of this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other costs to WSDOT resulting from Vendor's breach. WSDOT shall have the right to deduct from any monies due to Vendor, or that thereafter become due, an amount for damages that Vendor will owe WSDOT for Vendor's default.

47. Termination for Convenience

When, at the sole discretion of WSDOT, it is in the best interest of the State, WSDOT Contracting Officer may terminate this Contract, in whole or in part, by fourteen (14) calendar days written notice to Vendor. If this Contract is so terminated, WSDOT is liable only for payments required by the terms of this Contract for Products received and Accepted by WSDOT prior to the effective date of termination.

48. Termination for Withdrawal of Authority

In the event that WSDOT's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, WSDOT may terminate this Contract by seven (7) calendar days written notice to Vendor. No penalty shall accrue to WSDOT in the event this section shall be exercised. This section shall not be construed to permit WSDOT to terminate this Contract in order to acquire similar products from a third party.

49. Termination for Non-Allocation of Funds

If funds are not allocated to WSDOT to continue this Contract in any future period, WSDOT may terminate this Contract by seven (7) calendar days written notice to Vendor or work with Vendor to arrive at a mutually acceptable resolution of the situation. WSDOT will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then current period. WSDOT agrees to notify Vendor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to WSDOT in the event this section shall be exercised.

50. Termination for Conflict of Interest

WSDOT may terminate this Contract by written notice to Vendor if WSDOT determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, WSDOT shall be entitled to pursue the same remedies against Vendor as it could pursue in the event Vendor breaches this Contract.

51. Termination Procedure

- 51.1. In addition to the procedures set forth below, if WSDOT terminates this Contract, Vendor shall follow any procedures WSDOT specifies in WSDOT’s notice of termination.
- 51.2. Upon termination of this Contract, WSDOT, in addition to any other rights provided in this Contract, may require Vendor to deliver to WSDOT any property, Products, or Work Products specifically produced or acquired for the performance of such part of this Contract as has been terminated.
- 51.3. Unless otherwise provided herein, WSDOT shall pay to Vendor the agreed-upon price, if separately stated, for the Products received and accepted by WSDOT, provided that in no event shall WSDOT pay to Vendor an amount greater than Vendor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the **Disputes** section of this Contract. WSDOT may withhold from any amounts due Vendor such sum as WSDOT determines to be necessary to protect WSDOT from potential loss or liability.
- 51.4. Vendor shall pay amounts due WSDOT as the result of termination within thirty (30) calendar days of notice of amounts due. If Vendor fails to make timely payment, WSDOT may charge interest on the amounts due at one percent (1%) per month until paid in full.

52. Covenant Against Contingent Fees

- 52.1. Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Vendor.
- 52.2. In the event Vendor breaches this section, WSDOT shall have the right to either annul this Contract without liability to WSDOT, or, in WSDOT’s discretion, deduct from payments due to Vendor, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage, or contingent fee.

Exhibit A: Authorized Product and Price List

Exhibit B: Transponder Based Toll Technology Technical Requirements

Exhibit C: Product Warranty