

**PROFESSIONAL SERVICES AGREEMENT**

**BY AND BETWEEN**

**NEW JERSEY TURNPIKE AUTHORITY  
NEW JERSEY HIGHWAY AUTHORITY  
SOUTH JERSEY TRANSPORTATION AUTHORITY**

**AND**

**ACS STATE & LOCAL SOLUTIONS, INC.**

**TO PROVIDE**

**PROFESSIONAL SERVICES IN SUPPORT**

**OF**

**NEW JERSEY E-ZPASS SYSTEM REMEDIATION, BUILDOUT,  
OPERATIONS AND MAINTENANCE**

THIS PROFESSIONAL SERVICES CONTRACT (hereinafter "Contract") is entered into and made effective as of August 2, 2002, by and between the NEW JERSEY TURNPIKE AUTHORITY (hereinafter "Authority" and/or "NJTA") a body corporate and politic established pursuant to N.J.S.A. 27:23-1, having its principal office at the Turnpike Administration Building, New Brunswick, County of Middlesex and State of New Jersey, the SOUTH JERSEY TRANSPORTATION AUTHORITY (the "Transportation Authority" and/or "SJTA"), a body corporate and politic established pursuant to N.J.S.A. 27:25A-1, having its principal office at P.O. Box 351, Hammonton, County of Atlantic and State of New Jersey, and the NEW JERSEY HIGHWAY AUTHORITY (the "Highway Authority" and/or "NJHA") a body corporate and politic established pursuant to N.J.S.A. 27:12B-1, having its principal office at King George's Post Road, Woodbridge, County of Middlesex and State of New Jersey, and ACS STATE & LOCAL SOLUTIONS, INC., located at 1200 K Street, NW, Washington, DC 20005 (hereinafter "ACS" or "CONTRACTOR"), referred to individually as Party and collectively as Parties.

### RECITALS

WHEREAS, the Authority, SJTA, and NJHA (collectively, the "ETC Group" or "Group") each own and operate toll roads within the State of New Jersey; and

WHEREAS, the ETC Group has designated the NJTA to be the lead agency authorized to act upon behalf of the Group members with respect to this Contract; and

WHEREAS, a Consortium including members of the ETC Group, within its authority, exercised a termination of a certain contractor for the New Jersey electronic toll collection system; and

WHEREAS, the ETC Group has, within its authority, selected Contractor to be retained as the provider of Professional Services for the remediation, buildout, operation and maintenance of the New Jersey E-ZPass electronic toll collection system for the members of the ETC Group (hereinafter "ETC System"), the design, installation, implementation, operation and maintenance of a customer service center (hereinafter "CSC") and violation processing center (hereinafter "VPC"), and a limited agent for obtaining for the sole benefit of the NJTA the operations, maintenance and marketing of the installed fiber optic system (hereinafter "Fiber Optic System"), access to New Jersey Department of Motor Vehicles for purposes of obtaining motor vehicle information, and the services of banking institutions for Banking Charges; and

WHEREAS, the Authority, on behalf of the Consortium, issued to Contractor an Authority to Proceed letter, (hereinafter "ATP") effective August 2, 2002; and

WHEREAS, the ETC Group and Contractor have negotiated terms and conditions for a contract, by which the Contractor shall render its services and perform the work required, and represents that it is ready, willing and able to commence performance as of the effective date of this Contract to the full satisfaction of the ETC Group.

NOW, THEREFORE, in consideration of the mutual promises contained in this Contract, the Authority, on behalf of the ETC Group, and the Contractor agree as follows:

**1.0 APPLICABLE DOCUMENTS**

**1.1 Recitals; Included Documents; Order of Precedence [~~TO BE DETERMINED ONCE APPENDICES/EXHIBITS ARE COMPLETED~~]**

1.1.1 The recitals set forth above are incorporated by reference as if fully set forth herein.

1.1.2 Appendices A (Statement of Work), B (Compensation), C (Disaster Recovery Plan), D (Affirmative Action Requirements), E (Allowable Unamortized Cost Categories) and F (Fiber Optic Subcontract) together with their referenced and attached Exhibits, are attached hereto and incorporated by reference and form a part of this Contract.

1.1.3 In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, goods, service, or other work, or otherwise, between this Contract, incorporations by reference and the Appendices hereto, or between such documents, such conflict or inconsistency shall be resolved by giving precedence according to the following priority:

1.1.3.1 Duly approved Change Orders.

1.1.3.2 This Contract, its Appendices, and all documents incorporated by reference herein. —As between this Contract and its Appendices, however, the following order of precedence will govern:

- a) As to matters pertaining to the obligations of the Contractor with respect to the substantive performance of Services and as to Quantified Performance Standards, Appendix A shall take precedence in the event of a conflict or inconsistency between Appendix A and the Contract or other Appendices.
- b) As to matters pertaining to particular business or enforcement rules, the Exhibits shall take precedence in the event of a conflict or inconsistency between Appendix A and its Exhibits.
- c) As to matters pertaining to the compensation of the Contractor and as to invoicing, Appendix B shall take

precedence in the event of a conflict or inconsistency between Appendix B and the Contract or other Appendices.

- d) In the event of a conflict or inconsistency between the Fiber Optic Subcontract, Appendix F, and the Contract or other Appendices, the Fiber Optic Subcontract shall take precedence over any inconsistent or conflicting provisions in the Contract or other Appendices. Notwithstanding the foregoing, all provisions of this Contract relating to the limited-agency status of ACS with respect to the administration of and liability for Fiber Optic Maintenance shall take precedence over any inconsistent or conflicting provisions in the Fiber Optic Subcontract.

1.1.4 Any variation of the aforementioned order of precedence as may be agreed by the parties in a particular case, shall not constitute a variation or waiver of the order of precedence as to any other matter.

1.1.5 Notwithstanding the foregoing, before proceeding as to any matter in which the Contractor perceives any conflict, inconsistency or ambiguity to exist within or between the documents that form a part of this Contract, pursuant to Section 3.0 of this Contract it shall so notify the Chief Engineer and request a determination as to how the perceived conflict, inconsistency, or ambiguity is to be resolved.

## 2.0 DEFINITIONS

- 2.1 **AGENCIES** Shall mean, collectively, the New Jersey Turnpike Authority (the "Authority" and/or "NJTA"); the New Jersey Highway Authority ("NJHA"), and the South Jersey Transportation Authority ("SJTA"); individually each of the Agencies shall be referred to in the singular as an "Agency".
- 2.2 **AUTHORITY** Shall mean the New Jersey Turnpike Authority, individually and in its capacity as designated lead Agency for the ETC Group. The terms "NJTA" and "Authority," wherever used, shall be deemed to refer to the New Jersey Turnpike Authority and shall be deemed to be followed by the phrase "individually and in its capacity as lead agency of the ETC Group," except where the context indicates that the specific reference is meant to apply to NJTA individually.
- 2.3 **BANKING CHARGES** Shall mean costs and expenses imposed by third parties in connection with CSC operations including without limitation, credit card authorization and interchange fees, coin and currency fees, check processing fees and other similar costs and expenses.

- 2.4 **BANKING SERVICES** Shall mean those services to be provided by a bank, including those for which Banking Charges are imposed.
- 2.5 **BUILDOUT SERVICES** Shall mean all Services required to install and make operational the ETC System with respect to Lanes in addition to those for which Lane Remediation Services are provided.
- 2.6 **BUSINESS DAY** Shall mean a Calendar Day between the hours of 9:00 A.M. and 5:00 P.M. exclusive of Saturdays, Sundays and Holidays.
- 2.7 **BUSINESS OPPORTUNITY** Services in addition to those identified in this Contract that are authorized by law applicable to the Authority and/or the Agencies, and that create opportunities to generate proceeds and revenues by reason of the extension of the CSC Services and/or other aspects of the ETC System to business enterprises other than the collection of tolls.
- 2.8 **CALENDAR DAY OR DAY** Shall mean every Day shown on the calendar.
- 2.9 **CHANGE ORDER** Shall mean a written order to the Contractor, issued by the Chief Engineer, delineating changes in the Services and establishing by mutual agreement an adjustment to the Contract Price, the Contract Term, and/or any other applicable term or condition of this Contract.
- 2.10 **CHIEF ENGINEER OR ENGINEER** Shall mean the Chief Engineer of the New Jersey Turnpike Authority, or the duly-authorized representative of the Chief Engineer acting within the scope of the authority vested in that representative as set forth in the notice of responsibility issued by the Chief Engineer.
- 2.11 **CLAIM** Shall mean any assertion by the Contractor of entitlement to an extension of the Contract Time or increase in the Contract Price.
- 2.12 **CLEARING ACCOUNT** Shall mean a bank account(s) with a Depository(ies) pursuant to a Clearing Account Agreement.
- 2.13 **CLEARING ACCOUNT AGREEMENT** Shall mean the agreement, by and among the Authority, on behalf of the Agencies and the Depository, establishing and governing the Clearing Account.
- 2.14 **CONSORTIUM** Shall mean an association of public agencies, including the Agencies, in the New York, New Jersey, and Delaware region which contracted for ETC System services and Fiber Optic services, with Terminated Contractors, pursuant to the Initial Contract. The participating members of the Consortium are the New Jersey Turnpike Authority (the "Authority" and/or "NJTA"), the New Jersey Highway Authority ("NJHA"), The Port Authority of New York and New Jersey ("PANYNJ"), the South Jersey Transportation Authority ("SJTA") and the Delaware Department of Transportation ("DelDOT").

- 2.15 CONTRACT** Shall mean the written agreement between the Agencies and the Contractor for the performance of the Services, consisting of this Contract together with all Appendices and all documents specifically incorporated by reference and all Change Orders, all of which shall be treated as one instrument and interpreted in accordance with the order of precedence set forth in this Contract.
- 2.16 CONTRACT BOND** Shall mean the approved forms of performance security furnished by the Contractor's Surety and delivered by the Contractor to the Authority, including all performance and payment bonds.
- 2.17 CONTRACT PRICE** Shall mean the compensation payable to the Contractor pursuant to the Contract.
- 2.18 CONTRACT TERM** Shall mean a period of ten (10) years from the effective date of the Contract plus exercised options unless earlier terminated.
- 2.19 COMPLETION TIME** Shall mean the times provided in the Contract measured from the respective authority to proceed issued by the Authority to the Contractor, for the respective completion of:
- 2.19.1** readiness of the CSC and VPC for Cut-Over;
  - 2.19.2** all Lane Remediation Services; and
  - 2.19.3** all Buildout Services.
- 2.20 CONTRACTOR** Shall mean the party of the second part to this Contract acting directly or through subcontractors, agents, representatives or employees, and any successor to the Contractor's obligations under this Contract.
- 2.21 CONTRACT SCHEDULE** As set forth in Appendix A.
- 2.22 CUSTOMER SERVICE CENTER ("CSC")** Shall mean the place or places of business where the Contractor shall provide the CSC Services as set forth in Appendix A.
- 2.23 CSC SERVICES** Shall mean those Services pertaining to the establishment, operation, and maintenance of the CSC, including all VPC Services.
- 2.24 CUT-OVER** Shall mean the point at which the Contractor has established a fully operational and functional CSC (including VPC) for the Agencies, has satisfactorily completed the required testing under the Statement of Work, Appendix A, and has notified the Authority that it is ready to perform the CSC Services.

- 2.25 CUT-OVER DATE** Shall mean the date on which Cut-Over occurs. The parties have agreed that the Cut-Over Date shall be March 1, 2003.
- 2.26 DELIVERABLE** Shall mean all submittals, work products, materials, documents and reports, data, plans, schedules, procedures, manuals, drawings and statistics to be provided by the Contractor to the Authority pursuant to the Contract.
- 2.27 DEPOSITORY** Shall mean one or more banks, trust companies or savings and loan associations having its principal office in New York or New Jersey and approved by the Authority to provide Banking Services.
- 2.28 DISPUTE** Shall mean any determination, order or other action of the Chief Engineer or Authority pursuant to this Contract, or any assertion by the Contractor of any claim arising under, or in any way relating to, this Contract.
- 2.29 DISPUTE RESOLUTION PROCESS** Shall mean the procedure set forth in this Contract for the resolution of Disputes.
- 2.30 ELECTRONIC TOLL COLLECTION ("ETC") SYSTEM** Shall mean a system of integrated services, devices and components (including computer systems) that permit the automatic identification, classification, recording and processing of vehicle transactions and toll lane violations through electronic media in a toll revenue collection system.
- 2.31 EQUIPMENT** Any parts, components, apparatus, machinery and other tangible items (including Spare Parts) supplied by the Contractor in the performance of Services and physically incorporated into the ETC System. The term "Equipment" shall not include machinery, apparatus, and other tangible items, including without limitation construction equipment, used by the Contractor in the performance of Services but not incorporated into the ETC System.
- 2.32 EVENT OF DEFAULT** As defined in Section 44.
- 2.33 E-ZPASS<sup>sm</sup>** Electronic Toll Collection service mark utilized by the Interagency Group.
- 2.34 FIBER OPTIC MAINTENANCE** The performance of Services by the Fiber Optic Subcontractor in the nature of Fiber Optic System operations, maintenance and marketing services including without limitation continuous monitoring of the network, routine preventative maintenance and inspection, corrective maintenance, spare parts management, outside plant locate services, route surveillance and locate ticket management, emergency restoration, maintenance reporting, and marketing of dark fiber and the duct system to the extent and as all of the foregoing is defined in the Fiber Optic Subcontract between the Contractor

and Adesta, LLC., (as attached as Appendix F) Exhibit \_\_\_\_\_), or as may be defined in any successor contract with a Fiber Optic Subcontractor.

- 2.35 FIBER OPTIC SUBCONTRACTOR** An entity under contract with the Contractor to provide Fiber Optic Maintenance with respect to the Fiber Optic System.
- 2.36 FIBER OPTIC SYSTEM** The Telecommunications System, Dark Fiber and Duct System collectively, as said terms are defined in the Initial Contract.
- 2.37 FIRMWARE** Any executable machine language instructions (software) that is stored in a non-volatile memory device such as ROM, EPROM and EEPROM, ASIC, and PAL devices, etc., used in the Systems.
- 2.38 FORCE MAJEURE EVENT**
- 2.38.1** As related to the Contractor, any event or series of related events that materially impair the Contractor's ability to perform the Services or results in a material increase in the Contractor's cost of performing the Services, which are unforeseeable and not within the reasonable control of the Contractor or due to its fault including terrorism, acts of God, actions or unjustified failures to act or to act in a timely manner, on the part of any government or quasi-government entity other than NJTA, NJHA, or SJTA, unusual inclement weather, riots, acts of the public enemy, fires, explosion, war (declared or undeclared), strikes, or other labor organized business interruptions where the Contractor did not otherwise cause or contribute to the cause or not prevent when able to prevent such delay. The term shall also include as to the Contractor, changes in applicable law or orders of any court or regulatory agency of competent jurisdiction that materially impair the Contractor's ability to contract for or to continue all or any part of the Services.
- 2.38.2** As related to the Authority, any event or series of related events that materially impair the Authority's ability to perform its obligations under this Contract, which are not within the reasonable control of the Authority or due to its fault including terrorism, acts of God, unusual inclement weather, riots, acts of the public enemy, fires, explosion, war (declared or undeclared), or strikes where the Authority did not otherwise cause or contribute to the cause or not prevent when able to prevent such delay. The term shall also include as to the Authority, changes in applicable law or orders of any court or regulatory agency of competent jurisdiction that materially impair the Authority's ability to contract for or to continue all or any part of the Services.
- 2.39 HOLIDAYS** Shall mean Federal holidays and such additional holidays as may be granted by the Contractor to its employees generally, with NJTA's prior approval of any such additional holidays.

- 2.40 INCLUDE OR INCLUDING** The term "include" or "including," wherever used in this Contract and unless immediately followed by the word "only," shall be deemed to be followed by the words "without limitation by enumeration."
- 2.41 INDEMNIFIED PARTIES** Shall mean the Authority, the Agencies, and the respective Commissioners, directors, officers, employees and agents of each of the aforesaid.
- 2.42 INITIAL CONTRACT** Shall mean the "Contract between the New Jersey Turnpike Authority and MFS Network Technologies, Inc. Dated: March 10, 1998," and all amendments, modifications, and changes thereto pursuant to which the ETC System and Fiber Optic System existing as of the date of the Contract, were constructed.
- 2.43 INSPECTOR** An authorized representative of the Authority who inspects the Services and Materials.
- 2.44 INTERAGENCY GROUP (IAG)** A regional association of toll agencies cooperating in the use of E-ZPass<sup>sm</sup> Electronic Toll Collection.
- 2.45 LANE** An area of roadway utilized for either a permanent or temporary single line of vehicular traffic.
- 2.46 LANE MAINTENANCE SERVICES** Services provided by the Contractor in order to maintain the ETC System in those Lanes in which the ETC System was installed and made operational by Terminated Contractors, and in those additional Lanes in which the ETC System is made operational after Cut-Over, all in accordance with Appendix A, Statement of Work.
- 2.47 LANE REMEDIATION SERVICES** Services provided by the Contractor in order to improve the ETC System performance of those Lanes in which the ETC System was installed and made operational by Terminated Contractors, all in accordance with Appendix A, Statement of Work.
- 2.48 LANE REMEDIATION ACCEPTANCE** The acceptance by the Chief Engineer of the implementation of Lane Remediation Services, in accordance with Appendix A.
- 2.49 LIEN** Any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lien in the nature of a security instrument and the filing of an agreement to file a financing statement under the Uniform Commercial Code of any jurisdiction).

- 2.50 LOGO** An abbreviation for logotype, trademark or symbol.
- 2.51 LOSSES** Shall mean all direct damages suffered by the Indemnified Parties to the extent caused by Events of Default on the part of the Contractor, including among same any and all costs, expenses, penalties, fines, damages and losses of whatever nature occasioned by same, including all costs and counsel fees incurred in the recovery of same, and specifically including the following categories of loss and damage:
- 2.51.1** Lost ETC toll revenues to the extent directly and proximately caused by negligence or Events of Default on the part of the Contractor.
  - 2.51.2** Cost of repair or replacement of defective Spare Parts and Equipment installed by Contractor.
  - 2.51.3** Funds wrongfully converted by the Contractor or by any agents, employees, or subcontractors of the Contractor.
  - 2.51.4** Loss or damage covered by any required policy of insurance; provided, however, that the Authority shall not be entitled to double recovery of such loss or damage from the Contractor and its insurance carrier.
  - 2.51.5** In the event of termination for default, costs incurred in the selection of a replacement Contractor to perform all or any part of the Services in accordance with the Statement of Work, Appendix A as the same exists as of the date of this Contract and as the same may be modified by subsequent Change Orders, including without limitation all costs incurred in the procurement of any such replacement Contractor.
  - 2.51.6** The term "Losses" shall not include any special, consequential, indirect, incidental, and/or punitive damages; provided, however, that the exclusions contained in this Paragraph shall not impair or limit the Indemnified Parties' rights with respect to the specific types of Losses enumerated in this Section, however same may be characterized pursuant to law.
- 2.52 MAINTENANCE SERVICES** Shall mean the provision of all hardware, software, Equipment, Materials, Services, inventories, personnel, tools, equipment and apparatus, support, and preventive and predictive services, as set forth in Appendix A, so as to ensure that the ETC System functions in accordance with the Statement of Work, Appendix A, on a continuous basis.
- 2.53 MILESTONE** A date established in the Contract Schedule or elsewhere in the Contract, for the achievement of a particular level of progress in the Lane Remediation Services, the Buildout Services, the CSC Services, or the VPC Services.

- 2.54 MATERIALS** All raw or prepared materials, manufactured or fabricated products utilized in Lane Remediation and/or Buildout.
- 2.55 PLANS** Except where the context otherwise requires, Plans shall mean the reference drawings for the Project furnished by the Authority, and the drawings prepared by the Contractor as approved by the Authority, which define installation methods and Materials for the Project.
- 2.56 PREPAYMENTS** Payments made by E-ZPass<sup>sm</sup> customers to the Customer Service Center as initial funding or replenishment of an E-ZPass<sup>sm</sup> account.
- 2.57 PROJECT** The ETC and Fiber Optic Systems.
- 2.58 QUANTIFIED PERFORMANCE STANDARDS** Those Performance standards specifically identified in Appendix A as "CSC/VPC Performance Standards."
- 2.59 RECIPROCITY** Shall mean reciprocal relationships with non-ETC Group IAG member agencies, supported by the Contractor, so as to enable ETC Group E-ZPass<sup>sm</sup> Customers the convenience of using their Tags at non-ETC Group IAG member agencies' toll facilities without establishing a companion account with such non-ETC Group IAG member agencies, and to enable non-ETC Group E-ZPass<sup>sm</sup> Customers the convenience of using their Tags at Agencies' toll facilities without establishing a companion account with such Agencies.
- 2.60 RIGHTS-OF-WAY (ROW)** Shall mean those certain rights-of-way, easements, or other rights of use or possession, granted to, owned by, or used by the Agencies.
- 2.61 SERVICES** Shall mean all of the professional, administrative, engineering, maintenance, marketing, monitoring, procurement, operational, supervisory, management, training, labor, materials, testing, verifications, documentation and other duties and services required to be furnished and provided by the Contractor hereunder or which are otherwise necessary or appropriate for the operation, maintenance, and Buildout of the ETC System including all Services relating to Lane Remediation, Buildout, Maintenance, Fiber Optic Maintenance, CSC Operations and VPC Operations, but specifically excluding those tasks which the Contract specifies will be performed by the Authority, the Agencies, the Fiber Optic Subcontractor, banking institutions, investment plan management, departments of motor vehicles, or others.
- 2.62 SITES** Sites shall mean each of those areas utilized by the Contractor for performance of the Services and such additional areas as may, from time to time, be designated by the Authority.

- 2.63 **SPARE PARTS** Shall mean those parts, components, and Equipment purchased by the Contractor or provided to it by the Authority, and maintained by the Contractor in inventory for the purpose of effectuating repairs.
- 2.64 **SUBCONTRACT** An agreement between the Contractor and a Subcontractor pursuant to which the Subcontractor performs Services.
- 2.65 **SUBCONTRACTOR** Any person (other than an affiliated company of the Contractor) who has contracted with the Contractor to provide or perform any part of the Services, for or on behalf of the Contractor and who, in the case of a first tier Subcontractor, has been approved by the Authority in accordance with this Contract.
- 2.66 **SUBSTANTIAL COMPLETION (BUILDOUT):** When separately authorized by Change Order under this Contract, Buildout shall be substantially completed when the performance of all Services relating to Buildout, except final cleaning up and repair of construction not acceptable to the Chief Engineer, has been completed, provided that the Chief Engineer has determined, in his sole discretion, that the parts of the System affected by Buildout are safe and convenient for use by persons, and provided further that the value of Buildout Services remaining to be performed under this Contract including repairs and cleaning up is less than two percent (2%) of the total Capital Construction Cost of Buildout Services.
- 2.67 **SUPPLIER** Shall mean any corporation, partnership, firm, company, trust, unincorporated organization or individual not performing Services at the Sites which supplies machinery, Equipment or Materials to the Contractor or to any Subcontractor in connection with the Project.
- 2.68 **SURETY** A properly licensed surety company, insurance company or other person approved by the New Jersey State Insurance Commissioner to do business in New Jersey and approved by the Authority as an obligor on the Contract Bond(s).
- 2.69 **SYSTEM** Shall generally mean the ETC, CSC, VPC and Fiber Optic Systems collectively, as they apply to the Agencies.
- 2.70 **TAG OR TRANSPONDER** A portable electronic device, attached to a vehicle, for E-ZPass<sup>sm</sup> patron account identification when passing through a toll lane.
- 2.71 **TERMINATED CONTRACTOR** Shall mean a Contractor as defined in the Initial Contract, and/or any subcontractor thereto, whose Services as defined in the Initial Contract, have been terminated by the Authority or by any higher-tier Contractor. The term "Terminated Contractor" shall include, but not be limited to, WorldCom and J.P. Morgan Chase.

- 2.72 TOLL ROAD/TOLL FACILITY** The facilities known as: the New Jersey Turnpike; the Garden State Parkway; and the Atlantic City Expressway.
- 2.73 TRAFFIC PERMIT** An approved form, also referred to as a construction or activity permit, issued to the Contractor by the Operations Department of an Agency through its Chief Engineer.
- 2.74 TRANSITION PLAN** The plan to be provided by the Contractor and approved by the Chief Engineer, detailing the method of transition to another contractor in the event of the termination for convenience or default, or the expiration of the Applicable Contract Term.
- 2.75 TRANSITION PERIOD** The period beginning with the Authorization to Proceed issued by the Authority, and ending at the cessation of the performance of Work and/or Services, as defined in the Initial Contract, by all Terminated Contractors.
- 2.76 UNAMORTIZED COST** Shall mean the reasonable cost, to the extent not depreciated or amortized by the Contractor in accordance with generally accepted accounting principles (GAAP) before termination of this Contract or applicable severable part hereof pursuant to Section 42.0, of those items set forth in Appendix E, Allowable Unamortized Cost Categories.
- 2.77 UTILITIES** Utilities refers to the property, equipment and system owned, operated, used or maintained by a Utility.
- 2.78 UTILITY** A public, privately or cooperatively owned authority, agency or agencies operated by one or more persons or corporations for public service. For the purposes of this Contract, railroads shall be considered Utilities as well as Agency owned services. Utilities include, but are not limited to, electric, telephone, television, fiber optic, communications, traffic surveillance, sewer, water, gas and similar facilities and services.
- 2.79 VIOLATION** Failure to pay, an evasion, or attempt to evade the payment of a toll.
- 2.80 VIOLATION PROCESSING CENTER (VPC)** The portion of the CSC to be used for the processing of toll collection Violations.
- 2.81 VPC SERVICES** Shall mean those Services pertaining to the establishment, maintenance and operation of the VPC in accordance with Appendix A.
- 3.0 EXPLANATIONS; OMISSIONS AND MISDESCRIPTION**

Should it appear that the Services are not sufficiently detailed or explained in the Contract Documents, the Contractor shall apply to the Chief Engineer in writing for such further written explanations as may be necessary and shall conform to the explanation

provided. The Contractor shall promptly notify the Chief Engineer of all errors, omissions, inconsistencies or other defects (including inaccuracies and inconsistencies) which it may discover in the Contract, and shall obtain from the Chief Engineer specific instructions in writing regarding any such error, omission or defect before proceeding with, or continuing with, all work affected thereby. Omission of details of the Services from the Contract Documents or the misdescription of details of Services necessary to carry out the terms and intent of the Contract Documents, shall not relieve the Contractor from performing such omitted Services or misdescribed Services and all such Services shall be performed as if fully and correctly set forth and described in this Contract. If the Contractor contends that it is entitled to additional compensation and/or a time extension for Services that it contends is outside of the scope of this Contract, then the Contractor shall be entitled to file a request for a Change Order.

#### 4.0 **BINDING CONTRACT**

4.1 **Entire Agreement:** The terms of this Contract, the incorporations by reference and the Appendices hereto, shall constitute the complete and exclusive statement of understanding between the parties, which supersedes all previous agreements, written or oral, prior custom and practice between the Parties and all communications between the parties relating to the subject matter of this Agreement.

4.2 **Binding Effect.** This Contract is to be binding upon the Authority, the Agencies, their successor or successors, and upon the Contractor and its heirs, executors, administrators or successors, unless otherwise terminated as provided herein.

#### 5.0 **MANNER OF PERFORMANCE**

5.1 **Authority's Entitlement to Services; Contractor's Duty to Cooperate.** The Contractor shall provide all Services in a competent and professional manner satisfactory to the Authority in accordance with the terms and conditions of this Contract. The Authority shall be entitled to the satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. The Contractor promises to furnish its best skill and judgment and to cooperate with the officials, employees and agents of the Authority in furthering the Authority's and the Agencies' interests. The Contractor agrees to furnish efficient business administration and supervision to render and complete the Services in furtherance of the Authority's and Agencies' best interests.

5.2 **Duty of Cooperation.** The Contractor, its Subcontractors and all persons performing the Services hereunder shall fully and promptly cooperate with the Authority in permitting the Authority, its personnel and that of the Agencies, and their respective designees, to inspect such performance upon reasonable notice and at reasonable times and places. The Contractor shall promptly make any and all adjustments in work, personnel or schedule that the Authority deems

necessary to cure material deficiencies in the performance of the Services; provided, however, that in all cases the Contractor shall be responsible for the means and methods of performance and shall be entitled to a Change Order for Extra Work directed by the Authority hereunder. Except as provided in Section 5.3 below, under no circumstances, including during the pendency of any Dispute, shall the Contractor refuse to perform Services including those directed to be performed by the Chief Engineer pursuant to any proposed or pending Change Order. Any claim by the Contractor for an adjustment to the Contract Price or Contract Time by reason of any such Change Order or directive, shall be resolved pursuant to the Dispute Resolution Procedure. The Parties' duty to cooperate with each other shall be absolute except in the event of a continuing and unjustified failure or refusal of the Authority and/or the Agencies to make payment of undisputed amounts due the Contractor despite the Contractor's having provided the Authority and the nonpaying Agency(ies) with notice of such nonpayment and reasonable opportunity to cure. The Contractor's continued performance of Services in such event, does not constitute waiver by the Contractor of its right to exercise any other remedy given to the Contractor by this Contract.

**5.3 No Right to Suspend or Withhold Services.** In entering into this Contract the Contractor acknowledges that its Services serve a critical function that is integral to the Authority's public function and that of the Agencies and to the police powers of the State of New Jersey, and that the Authority, its bondholders, the State of New Jersey, and the Agencies will be immediately and irreparably damaged by any withholding of Services by the Contractor for any reason whatsoever. Accordingly, the Contractor agrees that, except for failure of the Authority and/or the Agencies to pay the undisputed amount of any Contractor invoice within sixty (60) calendar days of receipt, under no circumstances, including default by the Authority and/or the Agencies, will it suspend, slow down, withhold, or otherwise refrain from complete and timely performance of the Services except for any Services whose performance is specifically excused by the Authority in a writing signed by its Executive Director and in that event only to the extent same are specifically excused. This provision in no way limits the Contractor's rights against the Authority either under this Contract, or at law or in equity.

**5.4 Standard of Care and Professional Skill.** The Contractor shall perform the Services with that degree of skill normally shown by a contractor performing services of a scope, purpose, and magnitude comparable with the nature of the professional Services to be provided under this Contract. The Contractor shall assure that all Services which require the exercise of professional skills or judgment shall be accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed as and if required by law. The Contractor shall remain responsible for the professional and technical accuracy of all Services furnished, whether by the Contractor or its Subcontractors or others on its behalf.

- 5.5 Fiduciary Relationship.** The Contractor acknowledges that it is entrusted with or has access to valuable and confidential information and records of the Authority and the Agencies. With respect to this information and to the Contractor's duties hereunder, the Contractor is in a fiduciary relationship with the Authority and the Agencies and agrees to be held to the standards of care and diligence of a fiduciary.
- 5.6 Correction of Services.** If the Services or any part thereof fail to conform to the requirements of this Contract, the Contractor shall perform again, at its own expense, any and all Services required to be re-performed as a direct or indirect result of such failure and regardless of whether or not other remedies are also available to the Authority. Any review, approval, acceptance or payment for any and all Services by the Authority shall not relieve the Contractor of its responsibility for the professional and technical accuracy of the Services. This provision in no way limits the Authority's rights against the Contractor either under this Contract, at law or in equity.
- 5.7 Customer Relations.** The Contractor recognizes the paramount importance of customer relations, both in the Authority's and Agencies' fulfillment of their statutory mission, and to the successful implementation of the Project. Inasmuch as customer services are provided for the convenience and benefit of the public, the Contractor acknowledges the paramount importance of the quality and timeliness of such Services .

**6.0 COMMENCEMENT OF CONTRACT TERM; GENERAL DESCRIPTION OF SERVICES**

- 6.1 Contract Term.** The Contract Term shall commence on August 2, 2002.
- 6.2 General Scope of Services.** The following is intended to be a general description of the Services, and shall be supplemented by the Appendices hereto. Any conflict or inconsistency between the description of the Services as set forth in this Section shall be resolved in favor of the description thereof contained in the applicable Appendix. Generally, the parties intend that the Services are to be accomplished in the following separate and distinct but related phases:
- 6.2.1 Phase One:** Lane Remediation Services.
- 6.2.2 Phase Two:** Establishment of the CSC and VPC, prior to Cut-Over.
- 6.2.3 Phase Three:** Lane Maintenance Services.
- 6.2.4 Phase Four:** Operation and maintenance of the CSC and VPC following Cut-Over, including obtaining Depositories as a limited agent for the sole purpose of facilitating payment.

**6.2.5 Phase Five: Build-Out Services.**

**6.2.6 Phase Six: Fiber Optic Maintenance Services.**

**6.3 Option to Extend:** The Authority may, at its sole option, exercise one or both of two options under which the Contractor shall continue the Services, or such parts thereof as shall be desired by the Authority. Each of said options shall extend for a period of two years following the expiration of the Contract Term or the first of said options, as applicable. The Authority shall advise the Contractor of its interest in exercising any such option not less than 180 Days prior to the expiration of the Contract Term or the first of the two options, as applicable, and shall identify any material changes to the Contract desired by the Authority during the applicable option period. Within 30 days of receipt of notice of the Authority's interest, the Contractor shall provide the Authority with a pricing proposal responsive to the notice. The Parties shall negotiate in good faith to reach mutual agreement on the terms, schedule and pricing for the option period to enable uninterrupted performance of the Services. Such agreement shall be memorialized by Change Order. If the Authority and the Contractor are unable to reach agreement 60 days prior to the expiration of the Contract by its terms or of the first option period, as applicable, the Authority may in its discretion withdraw its expression of interest and the Contract shall be deemed expired as of the date on which it would have expired but for the expression of interest.

**7.0 CONTRACT TIME**

This Contract is one indivisible agreement. Without limitation to the foregoing, there are five (5) distinct components of the Services of this Project: (a) CSC and VPC operations, (b) Lane Remediation; (c) Lane Maintenance Services; (d) Buildout Services, and (e) Fiber Optic Maintenance Services. Maintenance Services other than Lane Maintenance Services, shall extend for periods concurrent with the component of the Services to which they relate. The Contract Time for those components shall be as follows:

- 7.1 CSC Services Contract Time.** The CSC Services Contract Time shall commence on August 2, 2002 and shall expire on July 31, 2012 unless sooner terminated in accordance with the provisions of this Contract.
- 7.2 Lane Remediation Contract Time.** The Lane Remediation Contract Time shall commence on August 2, 2002 and shall conclude as set forth in Appendix A.
- 7.3 Lane Maintenance Services Contract Time** The Lane Maintenance Services Contract Time shall commence as set forth in Appendix A, and shall expire on July 31, 2012 unless sooner terminated in accordance with the provisions of this Contract.

- 7.4 **Buildout Contract Time.** The Buildout Contract Time shall commence on the effective date of a Change Order with respect to same, as the parties shall agree.
- 7.5 **Fiber Optic Maintenance Contract Time.** The Fiber Optic Maintenance Contract Time shall commence upon termination of such services under the Initial Contract and execution of the subcontract between Contractor and Adesta, LLC, and shall expire on July 31, 2012 unless sooner terminated in accordance with the provisions of this Contract.

## 8.0 EXCUSING EVENTS

- 8.1 **Neither Party in Default; Performance Obligations Excused.** Except as otherwise expressly provided in this Contract, neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that such performance is directly prevented or delayed by any Excusing Event as set forth in this Section.
- 8.2 **Excusing Events Defined.** As to the Contractor, an "Excusing Event" shall mean actions, inactions, omissions or directions of the Authority or the Agencies or its agents or employees; banking institutions, departments of motor vehicles, the Fiber Optic Subcontractor, government and quasi-government entities, Terminated Contractors, and/or contractors which materially impair or materially delay the Contractor's ability to perform the Services including Force Majeure events as to the Authority or the Agencies and/or unilateral action by the Authority or the Agencies materially changing the ETC System such that the performance of the Contractor's Services with respect to same is materially impaired or delayed. Withholding of payment by the Authority or the Agencies, except as set forth in section 5.3, shall not be deemed an Excusing Event. Notwithstanding the foregoing, the failure of a Terminated Contractor to provide data conversion or related Services to the Contractor shall not operate as an Excusing Event beyond March 31, 2003.
- 8.3 **Force Majeure.** As to either party, the occurrence of one or more Force Majeure events.
- 8.4 **Mitigation Required.** The Contractor shall take all reasonable steps to mitigate delays and costs related to any Excusing Event, whether related to it or affecting the Authority or the Agencies. The parties shall immediately assess the cause of such an Excusing Event and take such steps as reasonably necessary to cure or determine what alternate Services may be required to be performed. The Contractor shall provide all reasonable cooperation to assist the Authority and the Agencies, as applicable, in resolving and implementing a corrective action plan.
- 8.5 **Effects upon Subcontractors or Suppliers.** Failures of any of the Contractor's suppliers or Subcontractors or the like shall not excuse the Contractor's

performance, except to the extent that such failures are due to a Force Majeure event.

**8.6 Notice of Excusing Event.** If either Party is rendered unable by an Excusing Event to comply with its obligations under this Contract, such party shall use reasonable efforts to give notice to the other of such Excusing Event in writing within fourteen (14) calendar days after becoming aware of the occurrence of the Excusing Event; provided, however, that this time limitation shall not apply to Excusing Events claimed to have occurred before the date of signature of this Contract by the Contractor and the Authority. As to such events the party claiming the Excusing Event shall provide notice to the other within ten days of the date of signature of this Contract by the Contractor and the Authority. Upon giving such notice, the obligations of the affected party shall be suspended as long as and to the extent that the Excusing Event shall prevent it from performing its obligations. The affected party shall use reasonable efforts to give notice to the others of the end of the Excusing Event within five (5) calendar days after becoming aware of the end of such event.

**8.7 Continuation of Services.** Contractor shall use its best efforts to maintain those Services that are not materially affected by the Excusing Event, and shall continue to provide all Services whose performance is not prevented by same, provided that it shall not be required to place its personnel and subcontractors at risk as determined by the Contractor. Contractor shall not be liable for the replacement of any property of or held for the benefit of the Authority that is damaged, destroyed, lost, stolen or otherwise not suitable for its intended use as a result of an Excusing Event, provided that such damage or loss was not due to the negligence of the Contractor. In the event the Excusing Event lasts longer than five calendar days, the Parties shall assess the impact to the Services and the need to retain minimum personnel and resources.

**8.8 Change Order for Excusing Event.** Where the Contractor has, or is likely to have, cost, schedule and/or other impacts to the terms of this Contract due to any Excusing Event, the Contractor shall use reasonable efforts to provide, within 30 calendar days of knowing such impacts, such supporting information to the Authority. The parties will negotiate in good faith with respect to a Change Order compensating the Contractor and adjusting the Contract Schedule, Contract price, and Contract terms, as appropriate, for impacts resulting from the Excusing Event; provided, however, that the Contractor shall not be entitled to compensation of any kind by reason of the failure of a Terminated Contractor to provide data conversion or related Services to the Contractor.

## **9.0 COMPENSATION**

**9.1 Compensation for Services.** All compensation to Contractor under this Contract shall be paid by the Authority and the Agencies as set forth in Appendix B.

## 10.0 PASS THROUGH CHARGES

- 10.1 **Banking Charges.** The Authority shall make direct reimbursements to the banking institutions for "Banking Charges" incurred by the Contractor in connection with the performance of the Services hereunder. "Banking Charges" include credit card authorization and interchange fees,[- fees and costs related to management of funds investment, bank account fees, coin and currency fees, check processing fees and other similar costs and expenses imposed by third parties in connection with CSC operations. This definition excludes "lock-box" fees. Banking Charge invoices shall be submitted to the Contractor, but forwarded to the Authority for direct payment to the banking institutions. All Banking Charges shall be incurred with established market vendors approved by the Authority at competitive price levels given the scale and nature of the E-ZPass<sup>sm</sup> program.
- 10.2 **Fiber Optic Subcontract Payments.** Contractor shall submit separate invoices to the Authority and the Authority shall make payments to Contractor for all charges related to the Fiber Optic Subcontract. Contractor shall make payment to the Fiber Optic Subcontractor after payment by the Authority. Reimbursement for such Fiber Optic Maintenance shall be made on a direct, dollar-for-dollar pass-through basis, except that the Contractor may impose a fee of five (5) per cent of the amount of each invoice, excluding costs and compensation related to marketing activities of the Fiber Optic Subcontractor, for management services.
- 10.3 **DMV Lookup Fees.** Contractor shall act as an agent of the Authority in obtaining information from the DMVs where and to the extent required to establish the Contractor's authority to obtain such information. Subject to adjustment as further set forth in Appendix B, all fees charged by the respective motor vehicle licensing agencies of the various States for the provision of registration information to the Contractor on its request, shall be pass-through charges as and to the extent set forth in Appendix B. Such fees shall not be subject to markups of any kind but shall be reimbursed at direct cost.
- 10.4 **Contractor's Status as to Banking and Investment Entities and as to Fiber Optic Subcontractor.** Contractor shall coordinate with the Authority in the Authority's selection, content and implementation of the subcontracts for banking institutions, funds investment entities, and the Fiber Optic Subcontractor. For purposes of the Services identified above, Contractor shall be considered a limited agent of the Authority, authorized to enter into such efforts for the sole benefit of the Authority subject to the provisions of Appendix A. - Contractor shall not be liable or responsible in any way for the acts or omissions of the aforementioned service providers except to the extent set forth in Appendix A. The Authority shall fully indemnify Contractor for the obligations of the Authority and for any claims made by or on behalf of the service providers or made

pursuant to their subcontract, except to the extent such claims arise directly from negligent or wrongful acts or omissions of the Contractor.

## 11.0 OWNERSHIP AND PROVISIONING OF PROPERTY

- 11.1 Warranty of Title to Equipment.** The Contractor hereby warrants and represents that any and all Materials, Spare Parts and Equipment provided by Contractor shall be new and unused, and except as specified in Section 11.5 herein, that the Agencies shall acquire good and clear title thereto, free and clear of all liens and encumbrances.
- 11.2 Vesting of Title to Equipment.** Prior to termination of this Contract, title to all Equipment shall vest upon installation in the Agency that owns the Site upon which the equipment is installed; provided, however, that upon termination of this Contract by the Authority for any reason, title to all Spare Parts and as to any Materials and/or Equipment acquired by the Contractor before termination of the Contract for the purpose of installing same in the performance of the Services, shall immediately upon the Contractor's receipt of notice of termination vest in the Authority. As part of its Services required upon termination of the Contract, the Contractor shall continue to protect same against theft, loss and damage and shall abide by all instructions given by the Authority as to the disposition of same. The Contractor may submit a claim for compensation for all such Materials and Equipment for which it has not been paid before receipt of notice of termination.
- 11.3 Lane, Plaza, and Host Software and Related Items.** The parties acknowledge that the Authority has provided to the Contractor lane, plaza and host computer software source code, and related documentation to be used in their remediation, operation and maintenance. The Authority shall provide to Contractor source code, related documentation, test benches and other software, related equipment and environments to enable the Contractor to perform Lane Remediation Services to the extent same is in the Authority's possession and not provided prior to the signature date of this Contract. Title to such software, modifications, enhancements and equipment shall be in the name of the Authority.
- 11.4 Parts.** The Contractor shall procure all Spare Parts and Equipment Parts ~~as defined in Appendix B~~, for use in Lane Remediation Services, Buildout Services, and Maintenance Services. The Contractor shall be reimbursed for such procurements as and to the extent provided in Appendix B.
- 11.5 CSC and VPC.** The Contractor shall procure and establish the CSC and VPC and related support facilities. Title of ownership in such property and Contractor's proprietary software shall remain in the name of the Contractor, except for leases where title shall remain with the lessor.

## 12.0 PROPRIETARY CONSIDERATIONS, DATA SECURITY, DISCLOSURE

**12.1 Non-Disclosure.** Contractor agrees that:

**12.1.1** It shall not disclose any confidential material or details in connection with this Contract to any party, except as may be otherwise provided herein or required by law.

**12.1.2** All reports, studies, recommendations, and other Deliverables shall become the property of the Authority and the Agencies. The Contractor acknowledges that all data obtained in the course of performing the Services are the property of the Agencies and/or their customers. Except upon prior written approval of the Authority and/or the Agencies or except as required by law (including applicable regulations), the Contractor shall not furnish or disclose to any person or entity unaffiliated with the Authority, an Agency, the Contractor or one of its Subcontractors or Suppliers who are performing work or Services pursuant to this Contract any reports, studies, recommendations, data, enforcement information or policies, or similar information made, received, or developed by the Contractor or its Subcontractors in the course of the performance of the Services and that by the nature of its content would disclose information relating to identifiable means and methods of the Agencies' program administration, enforcement, or other material to which the Authority or the Agencies are entitled to confidentiality under applicable law. The parties agree that monetary damages may not be an adequate remedy for a breach of this Section and that the Authority shall be entitled to seek injunctive relief to restrain any such breach or threatened breach. Nothing contained herein shall prevent the Contractor from disclosing general, public information regarding the Contract and the manner of its performance under same, provided that such disclosure does not reveal enforcement or other information to which the Authority is or may be entitled to confidentiality under applicable law.

**12.1.3** It shall take all commercially reasonable measures to protect the security and confidentiality of all confidential data and information provided to it or obtained by it in the course of performing the Services. The Contractor shall require all employees and independent contractors with access to confidential information to sign appropriate nondisclosure agreements and shall enforce same where necessary to protect the confidentiality of all such information.

**12.1.4** Represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the Authority or the Agencies.

**12.2 Permitted Publicity.** Recognizing Contractor's need to identify its services and related clients to sustain itself, the Authority or the Agencies shall not prohibit

Contractor from publicizing its role under this Contract upon the following conditions:

- 12.2.1 Contractor shall develop all publicity material in a professional manner.
- 12.2.2 Subject to Section 12.1.2 above, ~~During~~ during the course of performance on this Contract Contractor, its employees, agents, and subcontractors shall not publish or disseminate commercial advertisements, press releases, opinions or feature articles regarding the Contract (other than recruitment advertising, solicitation of bids, and similar advertising and solicitation) without the prior written consent of the Authority, which may be withheld if for any reason the Authority believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

### 13.0 WARRANTIES AND MAINTENANCE

13.1 **Warranty Obligations.** The Contractor's sole and exclusive warranties with respect to Spare Parts, Equipment, and workmanship shall be as follows:

- 13.1.1 Without in any way limiting any rights the Authority may have and within the applicable manufacturer's warranty period, the Contractor shall promptly repair or replace at no additional cost to NJTA, any defective Equipment purchased and installed by the Contractor. – All replacement Equipment installed by the Contractor will become the Authority's property.
- 13.1.2 For a period of one hundred eighty (180) days after the completion of remediation as to any Lane, or the performance of any item of Maintenance Services, the Contractor shall promptly perform any repairs necessitated as a result of its defective workmanship in same at no additional cost to NJTA. This warranty shall begin anew with the performance of such corrective work.
- 13.1.3 All Subcontractors', manufacturers', fabricators', and Suppliers' warranties, express or implied, respecting any work or materials shall, at the direction of the Chief Engineer, be enforced by the Contractor for the benefit of the Authority.
- 13.1.4 The Contractor shall obtain any warranties which Subcontractors, manufacturers, fabricators and Suppliers would give in normal commercial practice. If directed, the Contractor shall require any such warranty to be executed in writing to the Authority. In addition to the foregoing warranties, the Contractor hereby assigns to the Authority, and the Authority shall have the benefit of, any and all Subcontractors' and Suppliers' warranties and representations with respect to the Third Party

Software and Equipment provided hereunder. In the Contractor's agreements with Subcontractors and Suppliers, the Contractor shall require to the extent possible that such parties (i) consent to the assignment of such warranties and representations to the Authority; and (ii) agree that such warranties and representations are enforceable by the Authority in its own name.

**13.1.5** The Chief Engineer may direct the Contractor to undertake litigation to enforce any warranty. Litigation directed to be brought within the warranty period provided by the applicable subcontractors, manufacturers, fabricators and Suppliers, whichever is longer, (whether actually instituted within this period or not) shall be at the Contractor's expense. Litigation directed to be instituted after the aforementioned period shall be at the Authority's expense.

**13.1.6** The Chief Engineer will notify the Contractor, in writing, of the discovery of any failure, defect or damage. Should the Contractor fail to remedy any failure, defect or damage described in the paragraph above, within forty-five (45) Days after receipt of notice thereof, the Chief Engineer will have the right to replace, repair, or otherwise remedy such failure, defect or damage at the Contractor's expense.

**13.1.7** Notwithstanding any other provision of this Section, unless such a defect is caused by the negligence of the Contractor or its Subcontractors, fabricators or Suppliers at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Authority or any of the Agencies or for the repair of any damage which results from any such defect in Authority or Agency furnished material or design.

**13.2 Mark IV Equipment and Maintenance** Except to the extent set forth in Appendix A, the Contractor shall not be responsible for the acquisition, shipment, performance, malfunction, maintenance, or warranty of the Mark IV equipment or other AVI equipment selected by the Authority or any losses resulting therefrom. The Contractor shall be responsible for the installation and integration of the Mark IV equipment, for any loss or damage caused by the negligent acts or negligent omissions of the Contractor in relation to its installation of the Mark IV Equipment, and for the connections made by the Contractor between Equipment it is supplying under this Contract and the Mark IV Equipment.

**13.3 Adesta, LLC Equipment and Maintenance** The Contractor shall not be responsible for the acquisition, shipment, performance, malfunction, operation, maintenance and/or warranty of the Fiber Optic System, or other fiber optic equipment selected by the Authority or any losses resulting therefrom.

## 14.0 SOFTWARE

**14.1 Software Definition/Rights.** For the purposes of this Contract, there are three categories of software being addressed:

**14.1.1 Application Software** - Application Software refers to the Vector-based computer programs to which the Contractor has proprietary rights and which perform the various functions of the CSC and VPC operations including such things as account management and violations processing. Application Software may be custom developed by the Contractor or any of its subcontractors. Application Software may have been developed prior to this Contract, be entirely custom developed in response to this Contract, or a combination thereof. The term encompasses all software specific to the CSC and VPC operations in this Project, including site-specific software tailoring and configurations written by the Contractor or subcontractor(s) to perform functions in this Contract. Application Software includes any modifications which may be made to the relevant computer programs during the course of this Contract. Application Software includes both source code and object code.

**14.1.2 ETC Software** – ETC Software refers to the computer programs which the Authority has provided to the Contractor consisting of lane, plaza and host computer software source and object code, and related documentation which perform the various functions in operating the Systems, including any modifications or additions which may be made to the relevant computer programs or underlying documentation during the course of this Contract by the Contractor, the Authority or any of their subcontractors.

**14.1.3 Third Party Software** - Third Party Software refers to standard, off-the-shelf operating systems (e.g., DOS, VMS), layered products (e.g., database management systems such as Sybase or Oracle), or application packages (e.g., Lotus 1-2-3) which are acquired by the Contractor as part of this Contract or otherwise are utilized by the Contractor in connection with the Application Software or the ETC Software. Third Party Software represents packages which are readily available and/or enhancements and/or custom code applications developed by third parties in the performance of this Contract to which the Contractor does not have proprietary rights. Third Party Software shall not include any pre-existing software utilized in the ETC System, including but not limited to software provided by the Terminated Contractor, its subcontractors, vendors and suppliers.

**14.2 Software Licenses**

**14.2.1** For Application Software, the parties acknowledge and agree that the Contractor shall utilize the Application Software to operate the CSC and VPC for the benefit of the Authority and the Agencies during the term of

this Contract at no additional cost beyond those stated in this Contract. If a Termination for Default by the Contractor occurs hereunder and the Application Software is released to the Authority from the escrow provided for in Section 15, the Authority shall have a non-transferable, royalty-free, paid-up, non-exclusive license to use the Application Software, without the right to sublicense, in order to operate the CSC and VPC (including the right to modify the Application Software for maintenance purposes and to accommodate changes in business and similar rules substantially comparable to those governing the CSC before termination) during a reasonable period from termination of the contract for default until the assumption of CSC Services by a successor contractor, not to exceed 24 months from the date of termination. During this 24-month period, the parties may negotiate an extension of the aforementioned license for compensation to be agreed upon. The license granted to the Authority hereunder shall cover the full definition of Application Software including components directly owned and/or developed by the Contractor as well as components owned and/or developed by any subcontractors. The Authority shall return all copies of the Application Software to the Contractor at the expiration of any license granted hereunder.

- 14.2.2** For Third Party Software related to the CSC and VPC, the Contractor shall provide to the Authority licenses to use the Third Party Software to operate the CSC and VPC, which licenses shall be coextensive with the Authority's license to use the Application Software. The Contractor shall secure such licenses from the providers of Third Party Software packages at Contractor's expense, and ensure that they are transferable to and assignable by the Authority at the time of any release of the escrow provided for in Section 15.
- 14.2.3** For Third Party Software related to the System (other than related to the CSC and VPC) which Contractor elects to utilize, the Contractor shall procure for the Authority transferable, royalty-free, unlimited, perpetual, irrevocable, non-exclusive licenses to use the Third Party Software in connection with the System. The Contractor shall secure such licenses from the providers of Third Party Software packages in the name of the Authority or its designee. The Contractor shall obtain the written approval of the Authority before incorporating any Third Party Software into the ETC Software.
- 14.2.4** If Contractor elects to incorporate its proprietary software into any modification to the ETC Software provided hereunder, upon such incorporation the Contractor grants to the Authority, its successors and assigns, an irrevocable, nonexclusive, worldwide, transferable, perpetual, unlimited, royalty-free right and license to (i) use, modify, execute, reproduce, display, perform, distribute internally and externally, sell

copies of, and prepare derivative works of such proprietary software, and (ii) authorize or sublicense others from time to time to do any or all of the foregoing.

**14.2.5 Bankruptcy.**—All rights and licenses granted under or pursuant to this Contract by the Contractor to the Authority (including the licenses referred to in this section 14.2) are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code (the "Code"), licenses for rights to "intellectual property" as defined under the Code. The parties hereto agree that the Authority, as licensee of such rights under this Contract (including the license), shall retain and may fully exercise all of its rights and elections under the Code. The parties hereto further agree that, in the event of the commencement of bankruptcy proceedings by or against the Contractor under the Code, the Authority shall be entitled to retain all of its rights under this Contract (including the license), subject to the Authority's compliance with the terms of this Contract.

### **14.3 Scope of Software Licenses**

**14.3.1** The license described in Section 14.2.1 shall entitle the Authority to use and reproduce the Application Software on any and all equipment configurations of whatever make, manufacture and/or model, owned or controlled by the Authority or which may assume the responsibilities of the Authority or any successors of the Authority in connection with the Services provided before termination. The Authority shall have the right to reproduce the Application Software, as it deems necessary. Nothing contained in this Section shall require the Contractor to modify any of the Application Software so as to assure compatibility with the Authority's equipment or assume any liability in connection with non-compatibility other than as warranted hereunder. Notwithstanding anything contained herein to the contrary, the Authority shall not have the right to authorize or license any contractor, subcontractor, or third party to operate, use, copy, modify, or maintain the Application Software except for purposes of audit.

**14.3.2** For Third Party Software with respect to the CSC and VPC, at the time of any release of the escrow provided for in Section 15, the Contractor shall obtain sufficient licenses as described in Section 14.2.2 for the Authority to use such Third Party Software for the number/size of processors required/specified to perform the functions of the CSC and VPC substantially consistent with the operations of the CSC and VPC prior to the release event.

**14.3.3** For Third Party Software related to the System (other than related to the CSC and VPC), the Contractor shall obtain sufficient licenses as described in Section 14.2.3 for the Authority to use such Third Party

Software for the number/size of processors required/specified to perform the functions of the System (other than the CSC and VPC).

#### **14.4 Software Ownership**

**14.4.1** For Application Software, the Contractor warrants that it possesses all rights to and interests in the Application Software, and all portions thereof, or otherwise has the right to use the Application Software on behalf of the Authority hereunder and the right grant to the Authority the licenses for Application Software. This warranty shall cover Application Software owned and/or developed by the Contractor as well as Application Software owned and/or developed by its subcontractors or others.

**14.4.2** For ETC Software, the Contractor acknowledges the Authority's rights thereto and therein, and that the Contractor shall obtain no rights in or to the ETC Software except as expressly provided herein. The Contractor hereby agrees that, subject to Section 14.2.4 above, all information, reports, studies, charts, plans, diagrams, presentations and any other tangible or intangible information, deliverables and all inventions, discoveries, specifications, designs, methods, business processes or models, devices, writings, compilations of information, and/or materials developed or produced by the Contractor hereunder in connection with work performed by the Contractor relating to the ETC Software as described in the Statement of Work or in any Change Order executed hereunder that are protectable as intellectual property whether under the laws of patent, copyright, trade secret, and/or mask works or other forms of intellectual property protected by law (collectively the "Work Product" which shall not include the subject matter of Section 14.4.3 below), shall be the sole and exclusive property of the Authority or an entity designated by the Authority and shall be deemed "works made for hire", of which the Authority or its designee shall be deemed the author. In furtherance thereof, the Contractor hereby irrevocably grants, assigns and transfers to the Authority or its designee all rights, title and interest of any kind, in and to the Work Product related to the ETC Software produced hereunder. The Contractor shall not disclose such Work Product to any third parties without the express written approval of the Authority. Further, the Contractor shall be entitled to make absolutely no use of such Work Product, except as may be expressly permitted in this Contract or otherwise expressly agreed to by the Authority in writing. Notwithstanding anything to the contrary in this Section, the Contractor shall be free to use at all times all pre-existing materials, knowledge, tools, and methods used or known to Contractor prior to performance of the Services hereunder or developed independently of the Services performed hereunder without reference to the Authority's proprietary information. Further, the Contractor shall be free to use Residuals (as such term is defined herein) in the development, manufacture, marketing and maintenance of its

products and services. The Contractor shall not intentionally memorize the proprietary information of the Authority so as to reduce it to an intangible form for the purpose of creating a Residual. This Section shall not be deemed to grant the Contractor a license under the Authority's intellectual property rights, if any. "Residuals" shall mean information regarding software modifications to the ETC Software created hereunder by the Contractor, in intangible form, which is retained in unaided memory by persons who have had access to, or work with, the ETC Software and/or the Authority's proprietary information, including ideas, concepts, know-how, methods, or techniques contained therein where the Contractor does not recall that such information was proprietary information. Notwithstanding the foregoing, Residuals shall not include the code underlying the ETC Software or derivatives therefrom, or any of the Authority's proprietary information and other information of the Authority that relates to the Authority's actual or planned present or future functionality or features of the ETC Software. In no event shall the Authority be granted any title or rights to the Application Software except for such license granted to the Authority in Section 14.2.1 above.

**14.4.3** In the event that Contractor elects to use Third Party Software in performing the modifications to the ETC Software requested of the Contractor by the Authority hereunder or under any Change Order prior to performing such modifications (or as reasonably possible after execution of this Contract with respect to modifications performed prior to such execution), the Contractor shall provide the following information to the Authority: (i) the nature of such Third Party Software; (ii) its owner; (iii) license terms and any restrictions or royalty terms applicable to the Contractor's use of such Third Party Software or the Authority's exploitation of the ETC Software incorporating such Third Party Software; and (iv) the source of the Contractor's authority to employ the Third Party Software in the modifications.

**14.4.4** For Third Party Software, the Contractor shall maintain copies of the License Agreements it obtains from providers. The Contractor shall also maintain the computer programs and disk and the documentation for all Third Party Software it obtains. Copies of all of the foregoing with respect to the CSC and VPC shall be delivered into the escrow provided for in Section 15. Copies of all the foregoing with respect to the modifications to the ETC Software shall be delivered to the Authority promptly after installation of the modifications unless otherwise agreed upon.

**14.5 Cost of Software.** For Application Software, any costs shall be clearly described in this Contract and the Appendices attached hereto. There shall be no additional cost associated with the Authority's use of the Application Software upon a release from escrow pursuant to Section 15. For ETC Software, the costs for the provision of services by the Contractor in connection with the ETC

Software shall be as outlined in this Contract and the Appendices attached hereto. For Third Party Software, any costs shall be clearly described in the Appendices hereto or the applicable Change Order for transferring the licenses for Third Party Software to the Authority as provided for herein.

#### **14.6 Software Documentation**

**14.6.1** For Application Software, the Contractor shall maintain documentation of all Application Software utilized for the CSC and VPC operations sufficient for technically competent personnel to maintain and use the Application Software as designed.

**14.6.2** A list of documentation regarding the Application Software shall be made available to the Authority as soon as reasonably available but not later than the Cut-Over Date. The Authority shall have the right to receive such documentation upon a release event under the escrow described in Section 15 and thereafter shall have the right to make as many copies of the documentation as it may deem necessary or useful for use with the System. It is agreed that the Authority will treat all documentation provided under this provision as proprietary to either the Contractor or the third party from which the documentation is obtained.

**14.6.3** Upon the creation of any modifications, additions or enhancements to the ETC Software by the Contractor in connection with the Services to be provided hereunder, the Contractor shall promptly generate documentation describing such modifications, additions or enhancements and their incorporation into the ETC Software. Such documentation shall include, as appropriate, release notes, logic flow diagrams, business flow diagrams, file headers, programmer notes, data flow diagrams, and other documentation that may exist relating to the modifications and their incorporation into the ETC Software. The Contractor shall provide such documentation to the Authority promptly upon the installation of any such modifications, additions or enhancements unless otherwise agreed upon.

**14.6.4** For Third Party Software, the Contractor shall obtain all available standard documentation from all vendors and maintain in safe storage. Documentation for Third Party Software related to modifications, additions or enhancements to the ETC Software shall be provided to the Authority at the time the modifications, additions or enhancements are installed unless otherwise agreed upon. A list of documentation for Third Party Software related to the Application Software or the operation of the CSC and VPC shall be made available to the Authority within a reasonable amount of time after its implementation into the CSC and VPC operations. The Authority shall have the right to receive such documentation upon a release event under the escrow described in Section 15. It is agreed that

the Authority will treat all documentation provided under this provision as proprietary to the third party from which the documentation is obtained.

#### **14.7 Software Revisions**

- 14.7.1** For Application Software, the Contractor shall make revisions as directed under this Contract or as may otherwise be requested by the Authority from time to time pursuant to a Change Order executed hereunder. The Contractor shall not make any revisions or modifications (at the request of the Authority or otherwise) to the Application Software which reduce or diminish the functionality of the Application Software or adversely effect the operations of the CSC or VPC without the express written approval of the Authority. Whenever revisions are conducted, the Contractor shall ensure that programs and documentation are updated accordingly, and that the updates are deposited into the escrow to the extent provided for in Section 15. Before implementation, the revisions shall be successfully tested in the CSC and VPC Systems as required by this Contract or any Change Order.
- 14.7.2** For ETC Software, the Contractor shall make revisions as directed under this Contract or as may otherwise be requested by the Authority from time to time pursuant to a Change Order executed hereunder. The Contractor shall not make any revisions or modifications (at the request of the Authority or otherwise) to the ETC Software which reduce or diminish the functionality of the ETC Software or adversely effect the operations of the ETC System without the express written approval of the Authority. Before implementation, the revisions shall be successfully tested in the ETC System as required by this Contract or any Change Order. As between the Authority and the Contractor, such revisions shall become the property of the Authority.
- 14.7.3** For Third Party Software, as determined by the Contractor in its reasonable discretion, the Contractor shall make arrangements such that regular revisions/updates/maintenance upgrades of Third Party Software are purchased, obtained, successfully tested, and installed as part of the CSC and VPC operations or the ETC Software, as the case may be. The Contractor shall assume responsibility for any changes to the Application Software and the ETC Software which are required in order to perform in conjunction with revisions to Third Party Software which has been incorporated by the Contractor with the Application Software or the ETC Software.
- 14.7.4** The Contractor shall not perform any revisions requested by Agencies other than the Authority without the Authority's written approval.

**14.8 Software Environment.** The Contractor warrants that all software, programs, and documentation utilized by the Contractor hereunder are capable of operating fully and correctly in the operating environment of the ETC System. In addition, the Contractor shall warrant that all software, programs, and documentation utilized by the Contractor hereunder are capable and are ready for interfacing with the Authority's network and the ETC System.

**14.9 Software Warranty.**

**14.9.1** In addition to any other warranties provided hereunder, the Contractor warrants that the Application Software, both initially furnished and as updated/modified/enhanced through the term of this Contract including all extensions of time, shall:

- (a) be free from defects in material and workmanship under normal use and remain in good working order;
- (b) be of a compiled high-level language that is commercially available and for which commercially available software tools are available, or if proprietary software tools are necessary in order to maintain the Application Software, all such proprietary tools are placed in the required escrow;
- (c) be capable of being copied by the Authority;
- (d) not contain "lockouts", disabling code or devices to which the Authority will not have been provided the key;
- (e) contain at a minimum sufficient documentation as to fully identify function within modules, clearly identify file headers, and definitions of all variables.

**1.1.214.9.2** In addition to any other warranties provided hereunder, the Contractor warrants that the modifications by the Contractor to the ETC Software, both initially furnished and as updated/modified/enhanced through the term of this Contract including all extensions of time, shall:

- (a) be substantially free from defects in material and workmanship under normal use and remain in good working order;
- (b) function properly and in substantial conformity with the specifications, descriptions, and/or documentation provided by the Authority in a Change Order;
- (c) be of a compiled high-level language that is commercially available and for which commercially available software tools are available;
- (d) be capable of operating fully and correctly on the combination of the Authority's existing equipment and Equipment purchased under this Contract;
- (e) be capable of being copied by the Authority;
- (f) not contain "lockouts", disabling code or devices; and,

- (g) contain, at a minimum, sufficient documentation as to fully identify function within modules, clearly identify file headers, and definitions of all variables.

**1.1.314.9.3** In no event shall the Contractor remove, alter, change, or interfere with the Application Software, the ETC Software or any third party software to prevent the Authority from using such software as a result of any dispute under this Contract, or restrict the Authority's use thereof without prior written agreement.

**14.9.4** In the event any Application Software, modifications to the ETC Software or Third Party Software does not comply with the warranties provided in this Section, in lieu of such non-compliance being an Event of Default, Contractor shall have an obligation, within the cost limits outlined in the appendices hereto, at Contractor's election, either to repair, replace, and/or upgrade the said software within a reasonable period of time, or to provide different software (or equipment or services) required to comply with such warranties.

**14.9.5** Failure by the Contractor to comply with the warranty provisions hereof may be deemed by the Authority as a material breach of the Contractor's obligation hereof.

**14.9.6** Notwithstanding any of the provisions regarding payment by the Authority for system maintenance and warranty throughout the term of this Contract, the Contractor agrees to provide to the Authority at no cost a fix for the Application Software should there be a failure as defined by any of the below described conditions or a combination thereof for which the Application Software is determined to be the proximate cause:

- (a) Frequent and arbitrary execution of wrong transactions,
- (b) Long term unrecoverable corruption of the database,
- (c) Total system failure,
- (d) Long term inability to interface with existing interfaces,
- (e) A failure that requires a system restart utilizing the Contractor's Near Real-time Recovery procedure which consumes more than 72 hours to recover.

**14.10 Third Party Warranties.** In addition to any other warranties required under this Contract, the Contractor hereby assigns to the Authority, and the Authority shall have the benefit of, any and all subcontractors and suppliers' warranties and representations with respect to any Software and Equipment provided hereunder. In its agreement with subcontractors and suppliers, the Contractor shall require that such parties (i) consent to the assignment of such warranties and representations to the Authority; (ii) agree that such warranties and representations are enforceable by the Authority in its own name; and (iii) furnish

to the Authority, the warranties and obligations as set forth in Sections 13.1, "Warranty Obligations" and 14.9, "Software Warranty".

#### **14.11 System Acceptance**

- 14.11.1 The Contractor acknowledges and agrees not to use any modifications to the ETC Software developed by the Contractor hereunder unless such modifications meet all functional and operational criteria as may be requested by the Authority which shall include formal testing plans and procedures including, without limitation, at a minimum, the following test milestones (as applicable): Data Conversion Plan, Prototype Testing, System Acceptance, User Acceptance, Conversion of Data, Cutover Testing and Implementation.
- 14.11.2 Throughout all testing, the Contractor shall ensure that the Authority's current operations are not interrupted and that such testing does not have an adverse impact on customers nor upon the processing of non-customer activity such as violations.
- 14.11.3 Acceptance tests/plans shall address initial developmental work as well as ongoing system changes, enhancements, upgrades, etc.
- 14.11.4 In the event that test requirements are not met, the Contractor shall be responsible to continue work and subsequent tests until the requirements are met. The Authority shall provide written notification of the final acceptance of the software and the System operations related thereto.

#### **14.12 Future Software Enhancements/Modifications**

- 14.12.1 The Contractor understands the Authority may require changes to the Application Software or modifications to the ETC Software which are outside the Statement of Work. Upon the Authority's request for such enhancements/ modifications (hereinafter, "enhancements"), the Contractor shall prepare a scope of work and shall submit a cost proposal including all costs and schedules including key milestones pertaining to furnishing the Authority with the enhancements. If the Authority directs the Contractor to perform such enhancements, it shall follow the provisions of this Contract for Changes and Extra Work.
- 14.12.2 The Authority may require that the Contractor agree to a not-to-exceed number of hours for the requested system enhancements in the Change Order. In no event shall the Contractor perform any Services on the task unless the Authority issues a written notice to the Contractor to proceed with the task. The Contractor shall not be reimbursed for the preparation of proposals.

- 14.12.3 When the source and object codes are completed, tested, and accepted by the Authority (as applicable), the Contractor shall deposit the revised source and object code for enhancements to the Application Software into the escrow provided for in Section 15 and shall deliver to the Authority the revised source and object code for enhancements to the ETC Software. The Contractor shall, upon the Authority's request, install the enhancements.
- 14.12.4 Following the Authority's acceptance of all enhancements, such enhancements shall be considered as part of the Application Software or the ETC Software, as the case may be, as such terms are defined in Section 14.1 for all purposes under this Contract. The Contractor shall provide the Authority, if so requested, with written confirmation of the date the enhancement was applied to the Application Software or the ETC Software, as the case may be, and any and all documentation, in accordance with Section 14.6, relating to the revised Application Software or ETC Software and/or respective enhancement thereof.
- 14.12.5 If any enhancement to the Application Software is not acceptable to the Authority as per the specifications in the applicable Change Order, the Authority may refuse to accept same and, in such event, the Contractor agrees to maintain the Application Software in the form in effect on the date the Contractor requested the Authority to accept such enhancements.
- 14.12.6 Title to all enhancements to the Application Software shall rest solely with the Contractor. However, the Contractor shall deem such enhancements once accepted and paid for (if applicable) to come within the license granted pursuant to Section 14.2 hereof.
- 14.12.7 Title to all enhancements to the ETC Software shall rest solely with the Authority and the Contractor agrees to take all actions requested by the Authority in furtherance of the foregoing, including assignment of all rights therein and thereto to the Authority or its designee subject to the provisions of Section 14.4.

## 15.0 ESCROW AGREEMENT

- 15.1 **Required Escrow.** The parties have agreed to accord certain software and escrow rights to the Authority per this Section, and in furtherance thereof, the Contractor agrees to maintain one System escrow account with respect to the Application Software per the requirements of this Section. The Authority agrees that any information Authority receives per this Section or per the Default provisions of Section 46 will not be provided to another contractor, and the Authority shall treat the information as the proprietary information of the Contractor or applicable third party.

- 15.2 **Agreement Required.** Within thirty (30) days from the execution of this Contract, the Authority, an escrow agent, and the Contractor shall enter into an escrow agreement in form and substance mutually agreeable to the Parties. Pursuant to the terms of such escrow agreement, the Contractor will deposit without charge to the Authority all information necessary to operate and maintain and use the Application Software. All such information shall be deposited with an escrow agent mutually acceptable to the Authority and the Contractor.
- 15.3 **Information to Be Deposited.** Information to be deposited into the escrow shall include but not be limited to source and object code, control files, compilers that are proprietary to the Contractor, and linkers compilers that are proprietary to the Contractor, related to all aspects of the Application Software, as well as a list of any commercially available compilers and linkers related to the Application Software, which list shall include applicable version numbers. In the event the Contractor revises or supplements any of the information deposited or creates additional information related to the Application Software, the Contractor will deposit a complete set of such revised, supplemented, or additional information with the above named escrow agent on a quarterly basis, or within sixty (60) days of the installation of any substantial revision or modification and shall indicate with each deposit which documents and which pages have been revised, supplemented or added since the last deposit. In the event the Contractor updates and/or modifies the system specifications, drawings, source code, object code or any other associated documentation for the Application Software, a complete set of such revised documentation will be deposited with the above named escrow agent and the Contractor shall indicate with each deposit which pages have been changed since the last deposit. The Contractor shall be responsible for payment of all costs arising in connection with the maintenance of the escrow referred to in this Section throughout the contract period, including extensions if applicable.
- 15.4 **Authority's Right to Review Escrow Contents.** The Authority shall have the right from time to time during the course of the escrow to review the contents of the information included in escrow and to cause an audit or verification of such escrow, at the Authority's cost and expense, by a neutral third party mutually acceptable to both Parties, to ensure the completeness and currency of the information. The Contractor shall immediately correct any errors or omissions identified by such audit or verification.
- 15.5 **Contractor's Representations Regarding Escrow.** The Contractor represents and warrants the following to the Authority with respect to the information deposited in escrow at any time during the term of this Contract:
- (a) The information included in escrow shall at all times represent the current version of the Application Software and related systems being used to operate the CSC and VPC subject to the deposit requirements set forth above.

- (b) The information maintained in escrow shall at all times be complete such that it consists of all information necessary or useful to operate and maintain the Application Software and related Third Party Software, and that it consists of information regarding all Application Software and Third Party Software necessary or as required hereunder in order to operate and maintain the CSC and VPC.
- (c) Title to all enhancements to the Application Software shall rest solely with the Contractor.
- (d) The information shall be in readable and useable formats, understandable to programmers of ordinary skill and industry knowledge.
- (e) The code included in the information shall not contain any lock-outs, time bombs, license keys or other disabling devices which will interfere with the use of such code by the Authority or its designees in the event such code is released from escrow to the Authority in accordance with the terms of the Escrow Agreement.

15.6 Authority's Right to Receive Escrowed Materials. The Authority shall be entitled to receive the materials in escrow upon a Termination for Default for Contractor's default hereunder.

## 16.0 INTELLECTUAL PROPERTY INDEMNIFICATIONS

1.16.1 Contractor's Warranty. The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: programs, documentation, equipment, software, analyses, firmware, tools, sections, appliances, structures, materials, devices, applications, methods, ways, processes and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.

16.2 Contractor's Indemnification. The Contractor shall be liable and responsible for any and all claims made against the Authority for infringement of patents, copyrights, service marks, trade secrets, or any other third party proprietary rights, by the use or supplying of any programs, documentation, equipment, software, analyses, firmware, tools, sections, appliances, structures, materials, devices, applications, methods, ways, processes and the like, in the course of performance or completion of, or connected with, the Services, or the Authority's continued use of the Equipment, the Application Software and the modifications to the ETC Software provided by the Contractor hereunder. Accordingly, the Contractor, at its expense, including the payment of reasonable attorneys' fees, shall indemnify, and hold harmless the Authority and defend any action brought against the Authority with respect to any such claim, demand, cause of action, debt, or liability. The foregoing indemnity shall not apply: (i) if the Authority specifies the particular Equipment to be provided by the Contractor; (ii) if the allegedly infringing materials were modified by the Authority other than as contemplated hereunder where said modification gives rise to the alleged

infringement; or (iii) if the allegedly infringing materials are used in a manner not contemplated hereunder and said use gives rise to the alleged infringement.

**16.3 Authority's Indemnification.** The Authority shall be liable and responsible for any and all claims made against the Contractor for infringement of patents, copyrights, service marks, trade secrets, or any other third party proprietary rights, relating to the ETC Software (other than modifications made by the Contractor). Accordingly, the Authority, at its expense, including the payment of reasonable attorneys' fees, shall indemnify, and hold harmless the Contractor and defend any action brought against the Contractor with respect to any such claim, demand, cause of action, debt, or liability. The foregoing indemnity shall not apply if the allegedly infringing materials are used in a manner not contemplated hereunder and said use gives rise to the alleged infringement.

**16.4 Contractor's Obligations in the Event of Infringement.** In the event that any Equipment, Software or anything provided to the Authority hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to either, at the Contractor's option:

i. modify, or require that the applicable subcontractor or supplier modify, the alleged infringing Deliverable(s) at its own expense, without impairing in any respect the functionality or performance thereof that is non-infringing, or

ii. procure for the Authority, at the Contractor's expense, the rights provided under this Contract to use the infringing Deliverable(s).

**~~1-5~~16.5 Obligation to Notify.** The Contractor shall be solely responsible for determining and informing the Authority whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, servicemark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing Equipment and/or Software hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at its own risk. The Authority may reject any Deliverable which it believes to be the subject of any such litigation or injunction, or if, in the Authority's judgment, use thereof would delay the Services or be unlawful.

**16.6 No Infringement.** The Contractor shall not infringe any copyright, trademark, servicemark, trade secrets, patent rights, or other intellectual property rights in the performance of the Services including, without limitations, any modifications to the ETC Software made by the Contractor.

## **17.0 AUTHORITY OF THE CHIEF ENGINEER**

**17.1 Chief Engineer's Inspections and Instructions.** The performance of the Services shall at all reasonable times be subject to inspection, and where

approval is contractually prescribed shall be subject to the approval of the Chief Engineer on behalf of all Agencies. The Chief Engineer shall give instructions necessary to attain conformity with the Contract, and to achieve the goals of this Contract. The Chief Engineer shall have the right to correct apparent errors or omissions in the Statement of Work and to make such interpretations and provide such directions as he may deem necessary for the proper fulfillment of the intent of the Statement of Work with timely notice to the Contractor. In respect to the performance of this Contract, the Contractor shall be entitled to rely on the directives of the Authority and the Chief Engineer and shall have no responsibility or obligation to take direction from any Agency except as specifically set forth in this Contract.

- 17.2 Contractor Retains Sole Responsibility for Performance.** The Chief Engineer's inspection, approval, acceptance, instruction, or oversight, however, shall not relieve the Contractor of its responsibility for the continued performance of the Services in accordance with the Statement of Work, Appendix A, and shall not commit the Authority to continued acceptance thereof if it is subsequently found that the materials, methods of construction, or workmanship were defective or otherwise did not conform with the requirements of the Statement of Work, Appendix A.
- 17.3 Chief Engineer's Power to Determine Questions and Disputes.** The Contractor hereby authorizes the Chief Engineer to decide, in writing, all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Contract including without limitation: questions as to the price and acceptability of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence; questions as to the interpretation of Statement of Work, Appendix A,; and claims for damages, compensation and losses. The Contractor must promptly comply with the decision of the Chief Engineer; however, without limitation to the foregoing, if the Contractor disagrees with the decision of the Chief Engineer, then it can file a claim or appeal and have it resolved pursuant to the Dispute Resolution Procedure while continuing to comply with the Chief Engineer's decision.
- 17.4 Chief Engineer's Power to Issue Directives.** The Chief Engineer may give written orders to do work which he determines to be contractually required for the Contractor to fulfill the Contractor's obligations under this Contract.
- 17.5 Explanation of Determinations and Orders.** The Chief Engineer will promptly provide appropriate explanations and reasons for his determinations and orders hereunder, if requested by the Contractor. At the Contractor's request, any order, explanation or direction of the Chief Engineer shall be stated in writing.
- 17.6 Contractor's Obligation to Follow Directives.** The Contractor shall be bound by all written determinations or written orders and shall promptly obey and follow

every order of the Chief Engineer, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Chief Engineer's determination or order.

**17.7 Designees of the Chief Engineer.** The Chief Engineer shall, by written notice to the Contractor, designate a person to act for the Chief Engineer with respect to the specific aspects of the Services; provided, however, that the Chief Engineer shall in such designation clearly indicate the areas of responsibility and authority of the designee.

**17.8 Discretion to be Exercised Reasonably.** All decisions of the Chief Engineer, or his designee as provided for in this Section, are to be based upon his sole discretion, exercised reasonably.

## **18.0 PLANS AND STANDARD SPECIFICATIONS**

**18.1 Availability of Plans and Standard Specifications.** Where applicable, reference drawings, Plans and Standard Specifications will be furnished upon request by the Chief Engineer at a charge in accordance with rates established by each Agency. Notwithstanding any information contained in any Plan, drawing or specification, it shall be the Contractor's sole and exclusive responsibility to field-verify all existing conditions before starting any work affected by same.

## **19.0 PERSONNEL**

**1-119.1 Qualified Personnel to Be Supplied.** In furtherance and not by way of limitation of its obligation to at all times provide sufficient qualified personnel to perform the Services, the Contractor shall at a minimum supply a sufficient number of personnel generally and a sufficient number of English-speaking supervisory personnel, all of whom shall have the proper skills, training, background, knowledge, experience, rights, authorizations, character and licenses necessary to perform the Services described herein in a competent and professional manner, so as to meet the requirements of the Statement of Work, Appendix A,.

**19.2 Contractor's Project Manager(s).** The Contractor shall designate a Project Manager(s) for each component of the Services who will have full responsibility for the prosecution of the Services and who will act as the point(s) of contact in all matters on behalf of the Contractor. The Authority shall identify its Program Manager for each category of Services so that communications and decisions are accomplished in a timely manner.

**19.3 Authority's Right to Review Qualifications of Key Personnel.** The Authority shall have the right to review the qualifications of each individual to be appointed

to a key position (including personnel employed by Subcontractors). Key personnel shall be all personnel assigned to the performance of the Services, with the title of Project Manager or above. The Contractor shall notify the Chief Engineer in writing of any proposed changes in any key personnel. The Contractor shall identify its designated Program Manager(s) as key personnel. Any change in such key personnel shall be with persons of comparable experience and capabilities. Except for unplanned departures, malfeasance, emergencies, health or other situations beyond Contractor's control, Contractor shall replace key personnel with a reasonable overlap of performance to minimize discontinuities of performance. Except for unplanned departures, malfeasance, emergencies, health or other situations beyond Contractor's control, the Contractor shall not change any key personnel on its own volition without the prior approval of the Chief Engineer as to the replacement personnel, which approval shall not be unreasonably withheld.. Unless as otherwise approved in writing by the Authority, all key personnel shall be 100% dedicated to the Project and shall work out of a local office of the Contractor.

**19.4 Removal of Personnel** If the Chief Engineer reasonably determines in his or her sole discretion that any individual employed by the Contractor or by any Subcontractor is not performing the Services in a proper and skillful manner, then at the written request of the Chief Engineer, the Contractor or such Subcontractor shall remove such individual(s) and such individual(s) shall not be re-employed for any Services without the prior written approval of the Chief Engineer. Nothing contained herein shall be construed so as to require the Contractor to violate any collective bargaining agreement or applicable law. If the Contractor or the Subcontractor fails to remove such individual or individuals or fails to furnish skilled and experienced personnel for the proper performance of the Services, then the Chief Engineer may suspend the affected portion of the Services by delivery of written notice of such suspension to Contractor. Such suspension shall in no way relieve the Contractor of any obligation contained in the Contract or entitle the Contractor to an extension of time, additional payment or Change Order. Once compliance is achieved, the Contractor shall be entitled to and shall promptly resume the Services.

**19.5 Notice as to Key Personnel Leaving Contractor's Employ.** If the Contractor becomes aware that any key personnel performing Services under this Contract intends to leave the Contractor's employ, the Contractor shall immediately advise the Chief Engineer of the name of such person, , and the final date of employment. Contractor shall facilitate contact with any departed key employee to the extent possible and if requested.

**19.6 Substitution of Key Personnel.** If the Contractor wishes to substitute personnel for any key personnel identified by the Contractor as available for assignment to perform the Services, the Contractor must notify the Chief Engineer in writing of the substitution except in the case of malfeasance, health, unplanned departures, emergencies, or other situations beyond Contractor's control.

any Subcontractor as if the same were performed directly by the Contractor; provided, however, that nothing contained herein shall operate to make the Contractor liable for the performance of the banking entities or the Fiber Optic Subcontractor except as provided in the Statement of Work, Appendix A.

**21.2 Incorporation of Contract into Subcontracts.** The Contractor shall specifically inform all Subcontractors as to all provisions and requirements of this Contract relating either directly or indirectly to the Services to be performed and, to the extent applicable to the Services to be performed by the Subcontractor, shall expressly incorporate this Contract by reference into all Subcontracts. Without limiting the foregoing, the Contractor shall require all Subcontractors to execute appropriate confidentiality agreements and intellectual property agreements and assignments in accordance with the terms of this Contract.

**21.3 Direct Payment to Subcontractors by Authority on Termination; Assignment; Third-Party Beneficiaries.** The Contractor shall, include language within each such subcontract granting the Authority the option to pay the Subcontractor directly for the performance of its Services if the Authority so elects following a termination of the Contract for either convenience or default. All subcontracts, including without limitation all contracts with Fiber Optic Subcontractors, shall also contain language for the benefit of the Authority permitting the Authority to directly require all Subcontractors to complete their obligations under their respective subcontracts in the event the Authority elects to terminate the Contract for any reason. Each such subcontract shall also extend third party beneficiary rights to the Authority in the Subcontractor's performance obligations under the Subcontract, but no such Subcontractor shall be entitled to be paid by the Authority for any services rendered prior to the date on which the Authority terminates this Contract or to withhold services under the Subcontract from the Authority due to nonpayment for services rendered to the Contractor prior to termination of this Contract. The Authority and the Contractor agree that there shall be no third-party beneficiaries of this Contract except to the extent set forth in this Subparagraph.

**21.4** Any controversy or claim between Contractor and Fiber Optic Subcontractor arising out of or related to the Fiber Optic Maintenance subcontract, or the breach thereof, involving the acts or omissions of the Authority shall be settled according to the dispute resolution procedures set forth in this Contract, and Fiber Optic Subcontractor has agreed to be bound by such procedures. Fiber Optic Subcontractor shall furnish all notices and information within the time required in this Contract to enable Contractor to timely assert a claim or defense of Fiber Optic Subcontractor. Fiber Optic Subcontractor shall have a right to participate in the assertion or defense of claims related to its work pursuant to the Fiber Optic Maintenance subcontract in the dispute resolution procedures contained herein. Notwithstanding any provisions herein to the contrary, if a decision on any question of fact or law arising under this Contract or the Fiber

Optic Maintenance subcontractor is made by the Authority on behalf of the Authority and/or Consortium and such question of fact or law is also related to the Fiber Optic Subcontractor's scope of work, terms and conditions under the Fiber Optic Maintenance subcontract, and if Contractor decides not to appeal such a decision, then Fiber Optic Subcontractor shall have the right, at Fiber Optic Subcontractor's expense and to the extent allowed under the prime contract between Contractor and the Authority, to appeal said decision pursuant to the disputes clause in this Contract in Contractor's name and on Fiber Optic Subcontractor's behalf and at Fiber Optic Subcontractor's expense. If Fiber Optic Subcontractor decides to appeal any such decision in Contractor's name, Contractor agrees to cooperate with such appeal, at Fiber Optic Subcontractor's expense.

## **22.0 PROSECUTION AND PROGRESS**

- 22.1 Commencement of Work; Notice to Proceed.** The Parties acknowledge that Contractor has already commenced work under the Order for Professional Services effective August 2, 2002 which shall be superseded by this Agreement.
- 22.2 Time of Completion.** The Contractor shall perform and complete all of the work and/or Services within the time or times set forth in the Contract Schedule. The Contractor's time for completion of Services and the submission of any Deliverable shall not be extended except by duly approved Change Order or by an Excusing Event, .
- 22.3 Extension Is Not Waiver.** Permitting the Contractor to continue and finish the Services or any part thereof after the time(s) established in the Contractor's Schedule for its completion, or after the date to which the time for completion may have been extended, shall not operate as a waiver by the Authority of any of its rights under this Contract and shall not relieve the Surety under the Bonds except to the extent of completed Services.

## **23.0 EXTENSION AND REDUCTION OF TIME**

- 23.1 Extensions Only Granted by Change Order.** Extensions or reductions to the scheduled dates and times for the completion of any portion of the Services set forth in this Contract can only be provided by Change Order. Such extensions or reductions shall only be allowed to the extent that the increase or decrease in the Services or delays of the types indicated below affect the completion of the Services affected by the request and shall have no effect on the Contract Time as to other Services.
- 23.2 Extensions Not Cumulative.** In the event the Contractor shall be delayed by more than one Excusing Event whose effects on the Contractor's performance

are concurrent, only one period of extension shall be granted for the cumulative effect of the delay.

## **24.0 CHANGES AND EXTRA WORK**

- 24.1 Entitlement.** The Contractor may be entitled to an adjustment in compensation and/or to an extension of time and/or change in terms and conditions for the performance of Services over and above those set forth in this Contract as modified by all prior Change Orders, which additional Services are the result of changes or increases in the Services directed by the Authority (hereafter referred to as "Extra Work") or for which the Contractor may be entitled to a Change Order pursuant to other provisions of this Contract, which either individually or by reason of the cumulative effect of such changes, result in a material increase in the Contractor's cost of performing the Services including the Extra Work, over its cost of performing Services in the absence of the Extra Work. The burden of proof shall at all times be upon the Contractor to substantiate all claimed increases in its cost of performing the Services, which substantiation shall also take into account the effect of all adjustments made to the Contractor's compensation during the Contract Term and the cumulative effect of prior Change Orders increasing the Contractor's compensation. The Contractor shall not under any circumstances, be entitled to a Change Order for any additional Services necessitated by any fault or failure of the Contractor to fulfill any requirement of the Contract.
- 24.2 Authority's Right to Order Changes.** The Authority reserves the right to order changes which may result in additions to, reductions to or deletions from the amount, type or price of the Services required by this Contract. Extra Work so ordered must be performed by the Contractor within a reasonable time from receipt of the Chief Engineer's order. All Services covered by a Change Order shall be subject to all requirements of the Contract as though it were originally included in same.
- 24.3 Extra Work Only to be Performed If Ordered.** No Extra Work shall be performed except as specified in writing by the Chief Engineer, which writing shall expressly state that the work described therein is to be considered Extra Work. In the absence of a written request, if the Chief Engineer shall direct, order or require any Services which the Contractor deems to be Extra Work, the Contractor shall nevertheless comply therewith and shall promptly and before beginning the performance thereof or incurring costs attributable thereto, give written notice to the Chief Engineer stating why the Contractor deems such work (hereinafter "Disputed Work") to be Extra Work. Said notice is for the purposes of (i) affording an opportunity to the Chief Engineer to cancel promptly such order, direction or requirement; (ii) affording an opportunity to the Chief Engineer to keep an accurate record of the Materials, labor and other items involved; and (iii) affording an opportunity to the Authority to take such action as it may deem advisable in light of such Disputed Work.

- 24.4 Contractor's Estimate of Cost of Extra Work Requested by Authority.** Before requiring Extra Work to be performed, the Chief Engineer may within his discretion in a particular case, provide the Contractor with a written request for an estimate by the Contractor of any increase in cost that the Contractor believes will result from the requested Extra Work. Within twenty (20) calendar days of the Contractor's receipt of any such request, the Contractor shall provide all information reasonably necessary and required in order to fully respond to same. If cost or quantity data is appropriate, the Contractor's response shall include the quantities and costs of all Services including Products, materials, labor, ancillary costs such as equipment rental, overhead and profit. The Contractor's response shall also detail, on a net basis, all anticipated effects on the Contract Price, contract terms and the Contract Schedule.
- 24.5 Contractor's Request for Change Order.** Any request from the Contractor for a Change Order shall contain sufficient information so as to enable evaluation thereof by the Authority, including a statement of the reasons therefor; its anticipated effect on the Services, terms, compensation, and the Contractor's Schedule, full substantiation of all cost data (both present and anticipated) and any other information reasonably requested by the Chief Engineer. Except in the case of a Change Order requested by the Contractor by reason of the Contractor's having responded to an emergency, any such requests shall be made sufficiently in advance of the time for performance of the affected Services so as to mitigate any adverse effects on the Contract Schedule or the performance by the Authority of any tasks related to the subject of the proposed Change Order.
- 24.6 Cost of the Work.** In the event that the Authority shall order Extra Work, it is understood and agreed by the Contractor that the Authority and the Contractor shall negotiate a mutually agreeable price to be paid by the Authority with respect to the changes agreed upon in the Change Order. ~~—~~If such agreement cannot be reached, the work shall be performed on a time and materials basis at the rates therefor set forth in Appendix B.

## **25.0 FEE REDUCTION**

- 25.1 Right to Fee Reduction for Contractor Delay.** The Contractor and the Authority agree that time is of paramount importance of this Contract, and recognize that delay in the performance of certain of the Services may result in damage to the Authority and the other Agencies including public convenience and the business reputation, economic status and loss of revenue of the Authority and the Agencies, and may also result in additional cost to the Authority for engineering, inspection and administration of this Contract. Because some of this damage is difficult or impossible to calculate or estimate, the parties agree that if the Contractor fails to perform, in accordance with this Contract or fails to timely perform as required in this Contract and in the absence of Excusing Events the Contractor shall, at the election of the Authority, and as the

Authority's sole and exclusive remedy for delay as to those matters for which fee reductions are provided in the Contract (also including such provisions with respect to fee reductions to which the parties may agree by future Change Order), pay the Authority those fee reductions set forth in the Contract in lieu of actual damage.

**25.2 Fee Reduction for Delay.** The Contractor agrees that the amounts set forth below are fair and reasonable as a fee reduction, as a result of the delay described below:

**25.3 Delay in Achieving Cut-Over Date.** In the event of a delay in achievement of the Cut-Over Date, to the extent not excused by reason of one or more Excusing Events, the Authority shall retain from money due the Contractor, as a fee reduction, the following sums: First through tenth calendar day of delay, \$12,500.00 per day. Eleventh calendar day and all days following, \$25,000.00 per day.

## **26.0 SUSPENSION OF WORK AND/OR SERVICES**

**26.1 Order to Suspend Services.** At any time after Cut-Over the Chief Engineer may order the Contractor, in writing, to suspend or delay all or any part of the Services for such period of time as the Chief Engineer determines is appropriate for the convenience of the Authority.

**26.2 Contractor's Right to Request Adjustment for Suspension.** If the performance of all or any portion of the Services is suspended or delayed by the Chief Engineer, in writing, and the Contractor believes that additional compensation and/or an extension of time is due as a result of the effect of such suspension or delay on any Services, the Contractor shall use reasonable efforts to submit to the Chief Engineer, in writing, a request for adjustment within thirty (30) Days of receipt of the notice to resume Services or at any time during the period of suspension. The request shall provide the reasons and support for such adjustment including without limitation, all anticipated effects of the suspension on past, present, and future items.

**26.3 Evaluation of Claim.** Upon receipt, the Chief Engineer will evaluate the Contractor's request and respond as promptly as practicable. If the Chief Engineer determines that the cost and/or time required for the performance of the Contract has increased, and/or the Contractor is entitled to fees for the time period the suspension was in place as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its Suppliers, or Subcontractors, the Chief Engineer will make an equitable adjustment (including profit) and notify the Contractor in writing. Claims

for extension of time and/or equitable adjustment for compensation will be submitted pursuant to the Dispute Resolution Procedure.

**26.4 Other Provisions Take Precedence.** No Contract adjustment will be allowed under this Section to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this Contract.

## **27.0 ACCESS TO RIGHTS OF WAY, FACILITIES AND SERVICES OF TERMINATED CONTRACTORS**

The Agencies shall provide the Contractor with access to the Rights-of-Way as may be reasonably necessary to complete the Services in a timely and efficient manner. In support of the Contractor's performance of the Services, NJTA shall use reasonable efforts to provide at no cost to the Contractor, timely access to and usage of all of the following to the extent same is in the possession or under the actual control of NJTA or members of the ~~Consortium~~ETC Group: facilities, roadways, plazas and lanes, software, including source code, documentation, inventories, personnel, the fiber optic system, the timely performance of transition services by Terminated Contractors to support these Services, and other resources of the ~~Consortium~~ETC Group to enable the Contractor to implement the Services to the Plan's schedule.

## **28.0 TRANSITION FROM TERMINATED CONTRACTORS**

During the Transition Period, the Authority shall use reasonable efforts to provide, either on its own behalf or by contract with the Terminated Contractors the performance and costs of the continuation of Lane Maintenance and CSC and VPC operations and Fiber Optic Maintenance, pursuant to the Initial Contract and to the extent not superseded by this Contract. During this period, the Authority shall endeavor to provide timely access to inventory, to other assets of the Authority and the Agencies as identified herein, and to personnel of the Authority and the Agencies, and to assets and information in the possession of Terminated Contractors, as shall be reasonably necessary in order for Contractor to meet its anticipated schedule, all as set forth in further detail in Appendix A.

## **29.0 COMPLIANCE WITH ALL APPLICABLE LAWS**

**29.1 Compliance with All Applicable Laws Required.** The enumeration of applicable laws in this Section or elsewhere in this Contract shall not limit or restrict Contractor's obligation to observe and comply with all Federal and State laws, regulations and local ordinances that affect those engaged or employed on the Project, the Materials or Equipment used, or any other aspect of the performance of the Services whether or not enumerated herein. The Contractor shall monitor the performance of this obligation both as to itself and as to all of its Subcontractors. Failure to do so shall be an Event of Default.

- 29.2 OSHA Compliance.** The Contractor shall comply with all of the applicable provisions of the Williams-Steiger Occupational Safety and Health Act (OSHA) of 1970, 29 U.S.C Section 651 et seq., including Safety and Health Regulations for Construction. The Contractor must maintain up-to-date records of the required information as specified in the Recordkeeping Requirements pamphlet issued by the U.S. Department of Labor, Bureau of Labor Statistics or Occupational Safety and Health Administration. The Contractor shall comply with the applicable provisions and regulations of the New Jersey Worker and Community Right-To-Know Act, N.J.S.A. 34:5A-1 et seq. The Contractor shall maintain the appropriate records and information as specified in the Right-To-Know Act and make available to the Authority a copy of these records and information.
- 29.3 High Voltage Compliance.** Prior to the commencement of any work adjacent to high voltage lines, the Contractor shall notify the Department of Labor and Industry, Bureau of Engineering and Safety to secure their approval, and shall prosecute such work in strict accordance with the provisions of the "High Voltage Proximity Act", N.J.S.A. 34:6-47.1 et seq.
- 29.4 Affirmative Action Compliance.** The parties to this Contract agree to incorporate into the Contract the mandatory language of N.J.A.C. 17:27-3.4(a) and N.J.A.C. 17:27-7.4(A) and (B) promulgated by the New Jersey State Treasurer pursuant to P.L. 1975, c.127, N.J.S.A. 10:5-31 et seq., and the Contractor or Subcontractor agrees to comply fully with these regulations and the provisions of N.J.A.C. 17:27-3.4(a).
- 29.5 Prevailing Wage Act.** The Contractor warrants and represents that it is aware of and will abide by the provisions of "The New Jersey Prevailing Wage Act," N.J.S.A. 34:11-56.25 et seq., as to prevailing rates of wages for workers employed in New Jersey in connection with the Services, and has reviewed the applicable Wage Determination (s) in relation to the Services. The Contractor further agrees that if the minimum wage rate prescribed for any craft by the United States Secretary of Labor for the market area in which the Services are being performed is higher than the minimum wage rate prescribed for that craft by the New Jersey Department of Labor, the higher of the two shall be paid. The Contractor shall be required to submit certified payrolls to the Chief Engineer for all individuals covered by the Act to the extent required by law.
- 29.6 Contractor's Obligation to Remedy.** If it is determined by any governmental authority that any employee of the Contractor, or of any of its Subcontractors has been paid wage rates below those required hereunder, the Contractor shall remedy or cause to be remedied the underpayment within thirty (30) days thereafter.

## **30.0 ENVIRONMENTAL COMPLIANCE**

**30.1 Environmental Compliance Required.** The Contractor hereby agrees, to comply with any existing or hereafter enacted environmental laws and/or regulations which affect any of the Services, at no additional cost to the Authority or the Agencies. The Contractor's responsibility in this regard shall include, without limitation, obtaining all appropriate and applicable permits and approvals prior to commencing any work under this Contract, making all necessary submissions to the appropriate regulatory agencies charged with enforcing any applicable environmental or other laws or regulations which are in effect and are applicable to the Contractor's work for which this Contract is made, and undertaking at no additional cost to the Authority or the Agencies, any monitoring or cleanup required pursuant to any applicable environmental cleanup responsibility law or regulation unless such is made necessary by the sole conduct of the Indemnified Parties. The Contractor, at no additional cost to the Authority or the Agencies shall promptly provide the Authority copies of all submissions made to any regulatory agency pursuant to this paragraph, to the extent they involve the Agencies' property. The Contractor, at no additional cost to the Authority shall promptly provide copies of all its field reports, laboratory and analytical data, and all QA/QC documents to the Authority. If any cleanup must be undertaken because of any spills or discharges of hazardous substances or waste which occur through any action or inaction of the Contractor, its Subcontractors, agents, servants, and employees during the Contract Term, then the Contractor shall, at its own expense, prepare and submit the required plans and financial assurances and carry out the approved plan, but shall not withhold its approval of any plan that is agreed to by either a State or Federal environmental regulatory agency, or both, having jurisdiction over the matter. The Authority shall have the right, but not the obligation, to approve any cleanup plan prepared pursuant to the provisions of this subsection.

**30.2 Access for Inspections.** At all times during the Contractor's work, the Contractor shall permit the Indemnified Parties, their agents, servants and employees, reasonable access to each Site for the purpose of environmental inspections and sampling; the Contractor shall not restrict access to any part of a Site, unless such is deemed necessary for environmental, health, or safety reasons. At no expense to the Authority, the Contractor shall promptly provide all information requested by the Authority for preparation of a non-applicability affidavit, de minimis quantity exemption application or other submission and shall promptly sign such affidavits and submission when requested by the Authority. The Contractor's failure to abide by the terms of this subsection shall be restrainable by an injunction. The Contractor shall not be responsible for the remediation or expense of any pre-existing environmental problem or previous non-compliance with environmental laws which is not exacerbated by the Contractor by a deviation from the approved plans. The Authority shall promptly notify the Contractor as to any environmental compliance condition not caused by the Contractor of which it has, or comes to have, actual knowledge.

**31.0 PERMITS AND LICENSES.**

The Contractor shall procure all permits, grants and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the Services. Where the Authority or the Agencies have has procured permits, grants or licenses for temporary or permanent construction, the Contractor will be relieved of the above obligation to the extent provided by the terms of such permit, grant or license; however, the Contractor shall advise the issuing agency or party of its proposed operations and obtain their cooperation and such supplemental permission as may be necessary. Charges for permits, grants, and licenses in connection with the Services, and not obtained by the Authority, shall be paid by the Contractor.

## 32.0 CONTRACTOR'S WARRANTIES AND REPRESENTATIONS

The Contractor has made and here makes certain representations and warranties to induce the Authority and the Agencies to enter into this Contract and the Contractor acknowledges that the Authority has relied and will continue to rely upon these warranties and representations. Specifically, the Contractor warrants and represents to the Authority and the Agencies, the following:

**1.132.1 Corporate Status.** The Contractor is a corporation duly organized, existing and in good standing under the laws of New York and is qualified and in good standing as a foreign corporation under the laws of any jurisdiction where the ownership of the Contractor's assets or the conduct of its business require the Contractor to be so qualified.

**32.2 Qualification to do Business in New Jersey.** The Contractor is qualified to do business in the State of New Jersey, and is in good standing as a foreign corporation under the laws of the State of New Jersey.

**32.3 Pending Litigation.** There is no action, suit or proceeding pending or threatened in writing against or affecting the Contractor before or by any court, administrative agency or other governmental authority which will in any way impair the Contractor's ability to perform all of its obligations hereunder, or which otherwise brings into question the enforceability or validity of the transactions contemplated by this Contract.

**32.4 Actions Duly Authorized.** The Contractor's execution, delivery, and performance of this Contract has been duly authorized by all appropriate corporate action on its part, and this Contract constitutes a valid and binding obligation of the Contractor, which is enforceable against the Contractor in accordance with the terms hereof.

**32.5 No Default.** Neither the execution of this Contract, nor the consummation by the Contractor of the transactions contemplated hereby, nor compliance by the Contractor with the provisions hereof, conflicts with or results in a breach of any of the provisions of the Contractor's Certificate of Incorporation, its Articles of Incorporation or its By-laws or any amendments thereto, or any applicable law,

judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other governmental authority, or of any agreement or other instrument to which the Contractor is a party or by which it is bound, or constitutes a default under any provision thereof.

- 32.6 No Franchising.** The Contractor will not franchise under this Contract.
- 32.7 Financial Capability.** The Contractor represents that it has the financial capability to fully perform each and every obligation imposed upon it by this Contract.
- 32.8 Accuracy of Financial and Other Information.** The Contractor represents and warrants that all financial, corporate, and other information pertaining to the Contractor that has been or will in the future be supplied to the Authority, is complete and accurate as of the date thereof and that all financial information has been prepared in accordance with generally accepted accounting principles. The Contractor further represents that there have been no material adverse changes to the Contractor's financial condition from the date of its most recent financial statements to the date hereof.
- 32.9 No Payment of Gifts or Gratuities.** No payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties or between the Contractor and the Authority or any of the Agencies.
- 32.10 No Promises of Payment.** In addition to the foregoing, the Contractor warrants that no gratuities, or payments or offers to pay any thing of value, money, or benefit of any nature have been offered or given, or will be offered or given, to any official or employee or any immediate family of any official or employee of the Authority or any of the Agencies with a view toward securing favorable treatment in awarding, amending or evaluating the Contractor's performance under this Contract.
- 32.11 No Conflict of Interest.** The Contractor represents and warrants that neither the Contractor nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the Services to be provided under this Contract. The Contractor further represents and warrants that in the performance hereof, no person having such interest or possible interest shall be employed, or subcontracted with, by the Contractor. No elected official or other officer or employee of the Authority or the Agencies, or any person whose salary is payable, in whole or in part, from a State or local governmental agency in the State of New Jersey, or from the Federal Treasury, shall participate in any decision relating to the Services performed pursuant hereto which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Contract or

in the proceeds thereof. The Contractor further agrees to comply with all applicable conflict of interest or code of ethics laws of the States of New Jersey, Delaware and New York.

- 32.12 No Collusion.** The prices and terms stated in this Agreement have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any competitor. The fact that the Contractor has done any of the following does not constitute, per se, a disclosure within the meaning of the above: a) published price lists, rates or tariffs covering items being procured; b) informed prospective customers of proposed or pending publication of new or revised price lists for such items; or c) sold the same items to other customers at the same prices proposed or agreed upon.
- 32.13 No Debarment.** The Contractor represents and warrants that it is not in arrears to the Authority or any of the Agencies upon a debt or agreement and is not a defaulter as a surety or otherwise upon any obligation to the Authority or any of the Agencies. In addition, the Contractor warrants that it has not been declared "not responsible" or "disqualified" by or debarred from doing business with any state or local governmental entity in the States of New Jersey, New York or Delaware, or a public authority of the States of New Jersey, New York or Delaware, the Federal Government or any other State in the United States of America, nor is there any proceeding pending pertaining to the Contractor's responsibility or qualification to receive public contracts. The warranty stated in this Section shall be a continuing warranty and the Contractor shall inform the Authority of any change during the Term of the Contract.
- 32.14 No Pending Investigations.** The Contractor hereby represents that to the best of its knowledge, neither it nor any of its personnel have been the subject of any investigation nor have any of them been convicted or indicted for the commission of any unethical behavior or crime involving misconduct, corruption, bribery, or fraud in connection with any public contract in the State of New Jersey or any other jurisdiction, except as has been specifically disclosed in writing to the Authority, and that, should any such conviction or indictment be obtained or any such investigation be commenced prior to the expiration of the Contract Term, regardless of the date of the occurrence giving rise to the subject matter of such conviction, indictment or investigation, it will be disclosed in writing to the Authority.
- 32.15 Duty to Act in Good Faith.** The Contractor warrants and represents that it will act in good faith.
- 32.16 Warranties and Representations Continuing.** The Contractor warrants that all warranties and representations made herein are continuing obligations of the Contractor and the Contractor shall promptly advise the Authority of any changes therein.

### **33.0 AUTHORITY'S WARRANTIES AND REPRESENTATIONS**

- 33.1 Authority's Power to Act.** As of the date of signature of this Contract, the Agencies represent that they have the legal authority to enter into this Contract.
- 33.2 Authority's and Agencies' Financial Responsibility.** The Authority and the Agencies represent and warrant that they have the financial capability to perform their obligations hereunder, subject to annual appropriations in accordance with law, and that they will timely make all required payments to the Contractor. The Authority and/or the Agencies, as applicable, shall provide timely notice to the Contractor in the event it shall reasonably appear to the Authority that it may be unable to make payments when and as required.
- 33.3 Duty to Act in Good Faith.** The Authority and the Agencies warrant and represent that they will act in good faith.

### **34.0 BONDS**

#### **34.1 Lane Remediation Performance and Payment Bond**

Within fifteen days after execution of this Contract, the Contractor shall furnish and deliver in quadruplicate to the Authority a contract performance and payment bond which shall guarantee performance by the Contractor of all Lane Remediation Services and associated interim maintenance services, said bond to be in an amount not less than Ten Million Dollars (\$10,000,000.00), in New Jersey statutory form referencing an annually renewable bond, and provided by Treasury-rated sureties meeting all New Jersey statutory requirements. This Bond shall remain in effect until, and shall be released by the Authority upon acceptance of the Baseline Lane Test Assessment and furnishing by the Contractor of the Maintenance Services Performance and Payment Bond.

#### **34.2 Maintenance Services Performance and Payment Bond**

Within ten days of the Authority's acceptance of the Baseline Lane Test Assessment the Contractor shall furnish and deliver in quadruplicate to the Authority a contract performance and payment bond which shall guarantee performance by the Contractor of all Maintenance Services, said bond to be in an amount not less than \$6.5 Million Dollars (Six Million Five Hundred Thousand Dollars), in New Jersey statutory form modified to reference an annually-renewable bond, and provided by Treasury-rated sureties meeting all New Jersey statutory requirements. This bond shall be in addition to all other bonds and shall remain continuously in effect, for the entire Contract Term relating to Maintenance Services. Contractor shall be permitted to supply an annually-renewable bond in conformance with this requirement, provided that the Authority shall be notified not less than 60 days prior to the renewal date as to any refusal to renew said bond on its expiration. In the event of non-renewal for any reason

the Contractor shall obtain a new bond or shall submit alternate security acceptable to the Authority. In the event of non-renewal for any reason or failure to submit alternate security acceptable to the Authority, and the Authority may at its sole election, either declare the Contractor in default or endeavor to secure a substitute surety and deduct all Losses relating to same from monies otherwise due the Contractor. If the Authority elects to pursue a substitute surety and is unsuccessful in obtaining same, the Authority may at that time declare the Contractor in default hereunder.

### **34.3 CSC and VPC Performance and Payment Bond**

**34.3.1** The Contractor shall furnish and deliver in quadruplicate to the Authority, within fifteen (15) days of the Cut-Over Date a contract performance and payment bond which shall guarantee performance by the Contractor of all CSC Services and VPC Services, both before and after Cut-Over, said bond to be in an amount not less than Forty Million Dollars (\$40,000,000.00), in New Jersey statutory form modified to reference an annually renewable bond, and provided by Treasury-rated sureties meeting all New Jersey statutory requirements. This bond shall be in addition to all other bonds and shall remain continuously in effect for the entire Contract Term relating to CSC Services unless a suitable bond is substituted pursuant to Section 34.3.2. Contractor shall be permitted to supply an annually-renewable bond in conformance with this requirement, provided that the Authority shall be notified not less than 60 days prior to the renewal date as to any refusal to renew said bond on its expiration.

**34.3.2** Not less than twelve months following the date of Cut-Over, Contractor may furnish and deliver in quadruplicate to the Authority a contract performance and payment bond which shall replace the aforementioned bond and guarantee performance by the Contractor of all CSC Services and VPC Services, said bond to be in an amount not less than Twenty-Five Million Dollars (\$25,000,000.00), in a modified New Jersey statutory form referencing an annually renewable bond, and provided by Treasury-rated sureties meeting all New Jersey statutory requirements. This bond shall be in addition to all other bonds and shall remain continuously in effect for the entire Contract Term relating to CSC Services unless a suitable bond or alternate security acceptable to the Authority is substituted pursuant to Section 34.3.3. Contractor shall be permitted to supply an annually-renewable bond in conformance with this requirement, provided that the Authority shall be notified not less than 60 days prior to the renewal date as to any refusal to renew said bond on its expiration. If at the time of tender of the aforementioned bond the Contractor is a) under a notice to cure any Event of Default or b) subject to withholding for failure to meet any Quantified Performance Standard, the Authority shall refuse to accept said bond and the bond posted in accordance with the previous paragraph shall remain in place until such time as the Event of

Default is cured or all withholding is released, or both. If the Contractor is not at that time subject to such notice or withholding, the Authority shall immediately release the earlier CSC/VPC bond upon receipt of the bond provided for in this paragraph. As a condition of acceptance of this bond, the Contractor shall also provide to the Authority a guarantee, issued by its parent company and in form acceptable to the Authority, of payment of the difference between the penal sum of the bond and Forty Million Dollars (\$40,000,000.00), which guarantee shall be operative upon the exhaustion of the bond amount.

**34.3.3** Not less than eighteen (18) months following the date of Cut-Over, Contractor may furnish and deliver in quadruplicate to the Authority a contract performance and payment bond which shall replace the aforementioned bond and guarantee performance by the Contractor of all CSC Services and VPC Services, said bond to be in an amount not less than Ten Million Dollars (\$10,000,000.00), in a modified New Jersey statutory form referencing an annually renewable bond, and provided by Treasury-rated sureties meeting all New Jersey statutory requirements. This bond shall be in addition to all other bonds and shall remain continuously in effect for the entire Contract Term relating to CSC Services. Contractor shall be permitted to supply an annually-renewable bond in conformance with this requirement, provided that the Authority shall be notified not less than 60 days prior to the renewal date as to any refusal to renew said bond on its expiration. As a condition of acceptance of this bond, the Contractor shall also provide to the Authority a guarantee, issued by its parent company and in form acceptable to the Authority, of payment of the difference between the penal sum of the bond and Forty Million Dollars (\$40,000,000.00), which guarantee shall be operative upon the exhaustion of the bond amount.

**34.3.4** In the event of non-renewal of any required bond for any reason the Contractor shall obtain a new bond or alternate security acceptable to the Authority. The Authority may at its sole reasonable election, either declare the Contractor in default or endeavor to secure a substitute surety and deduct all Losses relating to same from monies otherwise due the Contractor. If the Authority elects to pursue a substitute surety and is unsuccessful in obtaining same, the Authority may at that time declare the Contractor in default hereunder.

**34.4 Buildout Performance and Payment Bond** Prior to the issuance of Notice to Proceed with respect to Buildout Services, the Contractor shall furnish and deliver in quadruplicate to the Authority a contract performance and payment bond which shall guarantee performance by the Contractor of all Buildout Services, the amount and duration of said bond to be determined as a part of a Change Order relating to Buildout Services, in New Jersey statutory form, and

provided by Treasury-rated sureties meeting all New Jersey statutory requirements. This bond shall be in addition to all other bonds.

- 34.5 Performance by Surety Does Not Relieve Contractor.** Notwithstanding any other provision set forth in this Contract, performance by a Surety or a guarantor of any of the obligations of Contractor shall not relieve the Contractor of any of its obligations hereunder. The Contractor's liability to the Authority hereunder shall not be limited by the terms of any Bond.
- 34.6 Subcontractor Bonding.** Notwithstanding any other provision set forth in this Contract, in no case will a Subcontractor be obligated to provide double bonding for the same liability for the same portion of the Services as to which the Contractor is required to provide bonds to the Authority. Contractor shall have the option to require that subcontractors bond their portion of the work at subcontractors' expense. Nothing contained in this Contract, however, shall operate to limit or restrict the right of the Contractor to obtain such bonds from its Subcontractors as it shall deem appropriate, in which case both the Contractor shall be named as obligee. The Contractor's election to obtain bonds from Subcontractors, however, shall not operate to reduce or limit the Contractor's obligation to the Authority to obtain bonds in its own name. .
- 34.7 No Rights to Authority Proceeds.** The Contractor shall not furnish a bond or guarantee or enter into any agreement which gives or purports to give to any Surety or guarantor any rights or interest in any funds or assets of the Authority, or the Agencies, or the Consortium and its agencies, including toll revenues.

## **35.0 RISKS ASSUMED BY THE CONTRACTOR**

- 35.1 Risks Assumed by Contractor, Generally.** The Contractor assumes the following distinct and several risks, arising from negligent acts and negligent omissions and/or willful misconduct of the Contractor, also including its Subcontractors, but excluding the banking institutions and Fiber Optic Subcontractor except to the extent set forth in the Statement of Work, Appendix A, or in the Fiber Optic Subcontract, suppliers, materialmen, employees, agents and all others working for the Contractor on the Project. The Contractor's risks exclude all risks to the extent they arise from the negligent acts or negligent omissions or willful misconduct of the Authority or any Agency.
- 35.2 Protection of Authority's Property.** The Contractor shall, where its performance of Services affects same, be solely responsible for the support, maintenance, safety and protection of the Authority's property, and for the safety and protection of all persons, and shall be solely responsible and liable for any injury (including death) or damage related thereto, excluding injury and damage to the extent caused by the negligence of the Indemnified Parties.

- 35.3 Protection of Contractor's Property.** Until the completion of Lane Remediation, Maintenance Services, and Buildout Services, respectively, the Contractor shall have the charge and care of all Services, Materials and Equipment to be used therein, including Materials for which the Contractor has received payment, and shall take every reasonable precaution against injury or damage to any part thereof by the action of the elements or from any other cause, (except to the extent caused by negligent or intentional acts or omissions of the Authority or an Agency), whether arising from the execution or from the non-execution of the Services. Where necessary to protect the Services or Materials from damage the Contractor shall, in furtherance of the above paragraph, but not by way of limitation, within the Contract price provide suitable drainage for the Project and erect such temporary structures as is reasonably necessary to protect the Services or Materials from any and all damage. The risks for failure to take such actions are assumed by the Contractor. The risk of loss or damage to any property of the Contractor, and of claims made against the Contractor or the Authority or the Agencies for loss or damage to any property of Subcontractors, Suppliers, workers and lessors and others performing the Services, occurring at any time prior to removal of all such property from the Sites or the Authority's or Agencies' premises, or the vicinity thereof, shall be upon the Contractor. The risk of loss or damage to all equipment and property located at or installed in the CSC shall be borne by the Contractor to the extent not caused by the negligent acts or negligent omissions or willfull misconduct of the Authority and/or the Agencies, their employees and contractors.
- 35.4 Obligation to Restore Damaged Property.** The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the Services occasioned by any of the above causes before acceptance and shall bear the expense thereof. If performance of the Services is suspended for any cause whatever, the Contractor shall continue to be responsible for the Project as provided above and shall take such precautions as may be necessary to prevent damage to the Project, provide for drainage, and shall erect any necessary temporary structures, signs or other facilities. During such period of suspension of the Services, the Contractor shall properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedings, and soddings furnished under this Contract, and shall take adequate precautions to protect new tree growth and other important vegetative growth against injury.
- 35.5 Protection of Property during Suspension of Work.** If ordered by the Chief Engineer, the Contractor shall properly store, during such suspension of Services, Spare Parts, Equipment and Materials which have been partially paid for by the Authority or which have been furnished by the Authority, on behalf of the Authority. The Authority shall at all times be entitled to the possession of such Spare Parts, Equipment and Materials, and the Contractor shall promptly return the same to the Site when requested. The Contractor shall be entitled to payment for all such items, to the extent set forth in the Contract and to the

extent not previously paid therefor. The Contractor shall not dispose of any of the Materials so stored except on written authorization from the Chief Engineer. The Contractor shall be solely responsible for loss or damage to such Spare Parts, Equipment and Materials except to the extent caused by the negligent acts or negligent omissions or willful misconduct of the Authority and/or the Agencies, their employees and contractors..

**35.6 Risks of Claims on Account of Injury, Loss or Damage.** The Contractor agrees to assume all risk of claims, just or unjust, by third persons made against the Contractor, the Authority or the Agencies on account of injuries including wrongful death, loss or damage of any kind whatsoever arising or alleged to arise out of or in connection with the performance of the Services (whether or not actually caused by or resulting from the performance of the Services), or out of or in connection with the Contractor's operations or presence at or in the vicinity of the Sites, Authority's or Agencies' premises, whether such claims are made and whether such injuries, damages and loss are sustained before or after the respective completion of Services, except to the extent same arise from: negligent or willful acts or omissions of a) the Authority or the Agencies or persons or entities, other than the Contractor, its Subcontractors and Suppliers, employed or engaged by the Authority or the Agencies, or b) banking institutions and Fiber Optic subcontractor (except to the extent set forth in Appendix A)

**35.7 Indemnification against Enumerated Risks Borne by Contractor.** In addition to all other indemnities required of the Contractor under this Contract, The Contractor shall indemnify and save harmless the Authority and the Agencies against any and all claims described in the preceding subsections arising out of the negligent acts or negligent omissions or the willful misconduct of the Contractor, its Subcontractors, excluding banking institutions and Fiber Optic Subcontractor except to the extent set forth in Appendix A, or its Suppliers and their respective officers, agents and employees, and for all reasonable expenses incurred by the Authority or any of the Agencies in the defense, settlement or satisfaction thereof including reasonable attorneys' fees and costs. The Contractor's obligation to indemnify and hold harmless the Indemnified Parties shall apply, except to the extent of the negligence of the Authority or any Agency. If so directed, the Contractor shall at its own expense defend against such claims.

**35.7.1** The provisions of this section shall also be for the benefit of all the Authority's and the Agencies' Commissioners, officers, agents, and employees so that they shall have all the rights which they would have under this Section if they were named at each place above at which the Authority is named, including a direct right of action against the Contractor to enforce the foregoing indemnity.

**35.7.2** The Contractor's indemnification obligations shall survive through the expiration of the applicable statute of limitations as to the particular claim

or loss asserted. Neither the enumeration in this section nor the enumeration elsewhere in this Contract of particular risks assumed by the Contractor or of particular claims for which the Contractor is responsible shall be deemed: (a) to limit the effect of the provisions of this section or of any other provision of this Contract relating to such risks or claims; (b) to imply that the Contractor assumes or is responsible for risks or claims only of the type enumerated in this section or in any other provision of this Contract; or (c) to limit the risks which the Contractor would assume or the claims for which the Contractor would be responsible in the absence of such enumerations.

**35.7.3** The Contractor expressly understands and agrees that any insurance protection required by the Contract, or otherwise provided by the Contractor, shall in no way limit the Contractor's responsibility to defend, indemnify, and save harmless the Authority and the Agencies as herein provided. Such insurance requirements are designed to provide greater assurance to the Authority and the Agencies that the Contractor will be financially able to discharge its obligations under this section and as to the risks assumed elsewhere in the Contract and shall not in any way be construed as a limitation on the nature and extent of such obligations.

## **36.0 CONTRACTOR'S LIABILITY AND INDEMNIFICATION**

**36.1 Agreement to Indemnify, Generally.** The Contractor agrees to and shall assume the defense of, and protect, indemnify and hold the Indemnified Parties harmless from and against claims, suits, actions, loss and liability, damages and costs of every type and description, including reasonable attorneys' fees and court costs, brought or recovered against the Indemnified Party or the Agencies and occurring on account of, arising out of or in connection with the Services, Materials, Equipment, supplies or other goods provided under this Contract, in any manner whatsoever, by or from the negligent acts or omissions, Events of Default, or the willful misconduct of the Contractor, its Subcontractors and Suppliers and their respective officers, agents and employees. The indemnification obligations of this Section shall be subject to all limitations on the Contractor's liability contained elsewhere in this Contract. Such indemnity shall not be deemed limited by any insurance taken out pursuant to the provisions of this Contract. This indemnity shall not apply to the extent the Indemnified Party acted in a negligent manner.

**36.2 Scope of Indemnity.** The Contractor shall be solely responsible for, and shall defend, indemnify, and hold harmless the Indemnified Parties in accordance with this Contract for (i) all injuries (including death) to persons, including but not limited to employees of the Indemnified Parties and employees of the Contractor and of its Subcontractors and Suppliers, excluding the banking institutions and Fiber Optic Subcontractor except as set forth in Appendix A, and all unrelated

persons, (ii) damage to property; and losses, costs, fees, expenses, and damages occasioned by any Event of Default up to the amount of the monetary limitation on damages contained in this Contract. The Contractor's liability hereunder shall extend to such injuries or damages occurring on account of, or arising out of, or in connection with the Services, Materials, Equipment or other goods provided under this Contract, in any manner whatsoever, regardless of where the injury or damage occurs, which is attributable to the negligent acts or negligent omissions or willful misconduct of the Contractor or its Subcontractor or Suppliers, excluding the banking institutions and Fiber Optic Subcontractor except as set forth in Appendix A, but shall exclude injuries to persons and damage to property to the extent caused by the negligence of an Indemnified Party.

- 36.3 Worker's Compensation Included.** The term "loss and liability", as used herein, shall be deemed to include, but not be limited to, liability for the payment of workers' compensation under the applicable Workers' Compensation Laws, and judgments under the Federal Employees' Liability Act or similar statutes.
- 36.4 Contractor's Sole Liability.** Neither any approval by the Authority of any of the Services or the manner in which same are performed, nor any failure by the Authority to call attention to improper or inadequate methods or require a change in methods or direct the Contractor to take any particular precautions or to refrain from doing any particular thing, shall in any way excuse or discharge the Contractor from its responsibility to protect persons and property under this Contract.
- 36.5 Indemnified Parties' Right to Require Immediate Repairs.** If any damage shall occur to any part of any of the Indemnified Parties' property by reason of the performance of or failure to perform any required Services, except to the extent caused by negligent acts or omissions of an Indemnified Party, the Indemnified Parties shall have the right to cause such damage to be immediately repaired and to charge the expense of such repairs to the Contractor, in which event the Authority may deduct such sum from any monies due or to become due to the Contractor hereunder or under any other agreement between the Contractor and the Authority.
- 36.6 Subcontractors Bound.** The provisions of this Section shall apply to the Contractor's Subcontractors and Suppliers excluding the banking institutions and Fiber Optic Subcontractor except as set forth in Appendix A, and their officers, agents and employees in all respects as if they were employees of the Contractor. The Contractor shall not be discharged from any of its obligations and liabilities under this Section by reason of subcontracting, but shall be liable for all negligent acts and negligent omissions of its Subcontractors, excluding the banking institutions and Fiber Optic Subcontractor except as set forth in Appendix A, and their officers, agents and employees as if they were employees of the Contractor.

- 36.7 Defense and Settlement.** In those situations where this Contract imposes an indemnity obligation on the Contractor, the Contractor shall have the sole obligation, and authority to defend and settle claims at its own expense. However, the Authority or the Agencies may, at their expense, elect to participate in the defense if the Authority or the Agencies should so choose.
- 36.8 Remedies Not Exclusive.** Except for Fee Reduction under the circumstances provided for in the Contract, the Contractor agrees that the rights and remedies provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or this Contract. The Contractor's indemnification obligations hereunder shall not be diminished, waived or discharged by the Authority's recourse to any other remedy provided for hereunder, at law or in equity.
- 36.9 Survival.** The Contractor's indemnification obligations pursuant to this section shall survive the expiration, termination or cancellation of this Contract, through the expiration of the statute of limitations applicable to the particular claim or loss.

## **37.0 INSURANCE**

- 37.1 Required Insurance.** The Contractor shall procure and maintain at its own expense, throughout the Contract Term, insurance for liability for damages imposed by law and assumed under this Contract, of the kinds and in the amounts hereinafter provided, with insurance companies authorized to do business in New Jersey. Before commencing Services, the Contractor shall furnish to the Authority a standard certificate or certificates of insurance showing that the Contractor has complied with this Section. The standard certificate or certificates shall provide that the policies shall not be materially changed or canceled until thirty (30) Days notice has been given to the Authority.
- 37.2 Proof of Insurance.** All certificates and notices of cancellation or material change shall be mailed to: Chief Engineer, New Jersey Turnpike Authority, P.O. Box 1121, New Brunswick, NJ 08903. Upon request at any reasonable time during the Contract Term, the Contractor shall provide the Authority with the opportunity to review all policies of insurance, including all coverages, exclusions, endorsements, and deductible provisions, at an office of ACS' broker, within the State of New Jersey. ~~The provisions establishing premiums.~~
- 37.3 Terms and Deductibles.** The Contractor shall be responsible for the deductible limit of the policy and all exclusions consistent with the risks the Contractor assumes under this Contract and as imposed by law.
- 37.4 Qualifications of Carriers.** All coverages shall be underwritten in New Jersey by insurance companies admitted in, New Jersey and having a current Best's financial rating of A- VII or better or insurance companies permitted to write

insurance in New York, New Jersey, and Delaware and approved in writing by the Authority in its discretion.

**37.5 Coverages and Limits.** The Contractor shall provide and maintain, prior to the commencement of Services and throughout the Contract Term, the types and minimum limits of insurance as follows:

**37.5.1 Commercial General Liability Insurance.** The minimum limits of liability for this insurance shall be \$25,000,000 Per Occurrence and General Aggregate Combined Single Limit of Liability for Bodily Injury or Property Damage. The Authority and the Agencies, and their respective members, commissioners, officers, and employees shall be named as additional insureds. The coverage to be provided under this policy shall be at least as broad as the standard basic unamended and unendorsed commercial general liability policy. Such policy shall be endorsed so as to include insurance protection against property damage caused by events such as, but not limited to, explosion, collapse, and interference with existing underground and overhead facilities. The insurance policy shall be endorsed to include Broad Form Property Damage, Contractual Liability, Completed Operations for a minimum of two years, and Independent Contractors. The required policy limit for this insurance can be provided by a combination of primary and excess coverages, provided that primary coverage shall be not less than \$1,000,000 and that the excess coverage shall be at least as broad as the primary policy.

**37.5.2 Comprehensive Business Automobile Liability Insurance.** The Comprehensive Business Automobile Liability policy shall cover Contractor's owned, non-owned and hired vehicles with minimum limits of \$25,000,000 per accident combined single limit of liability for bodily injury or property damage. The required policy limit for this insurance can be provided by a combination of primary and excess coverages, provided that primary coverage shall be not less than \$1,000,000 and that the excess coverage shall be at least as broad as the primary policy.

**37.5.3 Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance shall be provided in accordance with the requirements of the laws of New Jersey and shall include an all states endorsement to extend coverage to any state which may be interpreted to have legal jurisdiction. Employers' Liability Insurance shall be provided with a limit of liability of not less than \$100,000 for each accident.

**37.5.4 Professional Liability Insurance.** The Contractor shall obtain and maintain Professional Liability Insurance with a coverage amount of not less than \$10,000,000 per claim. If such policy is a "claims made" policy, all renewals thereof during the life of this Contract shall include "prior acts coverage" covering at all times all claims made with respect to the

Contractor's performance under this Contract, including any subsequent supplements thereto or modifications thereof for the entire duration thereof. A discovery period of one (1) year shall follow the expiration of said policy.

**37.5.5 Valuable Papers Insurance.** The Contractor shall provide Valuable Papers Insurance in the amount of \$2,500,000 for insuring all plans, designs, drawings, specifications and documents produced or used under this Contract by the Contractor.

**37.5.6 All Risk Crime Insurance.** The Contractor shall provide an All Risk Crime Insurance policy covering the Contractor, its employees and special employees, and shall require all independent contractors engaged in the performance of CSC Services or with access to the CSC data, lockbox areas, and/or other secure CSC equipment, areas, and functions (other than independent contractors engaged solely in the supply of goods), for a minimum amount of \$10,000,000 per occurrence and \$20,000,000 aggregate and for coverage of the Authority's funds. The full policy limits shall include coverage for the loss of assets owned by or for which Contractor is legally liable and resulting from computer fraud or fraudulent transfer instructions. This policy coverage shall include theft of the Authority and Agencies' funds or dishonest acts by an employee of the Contractor.

**37.6 Insurance Does Not Limit Liability.** Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor for liability in excess of such coverage, nor shall it preclude the Authority or the Agencies from taking such other actions as are available to them under any other provisions of this Contract or otherwise in law.

**37.7 Timely Renewal Required.** In the event that the Contractor provides evidence of insurance in the form of certificates of insurance valid for a period of time less than the period during which the Contractor is required by the terms of this Contract to maintain insurance, said certificates shall be acceptable but the Contractor shall be obligated to renew its insurance policies as necessary and to provide new certificates of insurance from time to time so that the Authority is continuously in possession of evidence of the Contractor's insurance in accordance with the foregoing provisions.

**37.8 Failure to Maintain, Cancellation, and Non-Renewal.** Except as otherwise specified herein, all insurance shall remain in force at all times during the Contract Term including all extensions. If at any time during the Contract Term the required insurance is not in effect for any reason, the Authority shall have the option to: (i) direct the Contractor to suspend work with no additional cost or extension of time due on account thereof, (ii) obtain insurance providing coverage equal to that required above, the cost of such insurance to be payable

by the Contractor to the Authority immediately; or (iii) declare the Contractor in default. If the Contractor fails or refuses to renew its insurance policies or if a policy is canceled, terminated, or materially changed so that the insurance does not meet the requirements of this Section, the Authority may refuse to make payment of any further monies due under this Contract or refuse to make payment of monies due or coming due under other contracts between the Contractor and the Authority. The Authority in its absolute discretion may use monies retained under this paragraph to renew the Contractor's insurance for the periods and amounts referred to above. During any period when the required insurance is not in effect, the Chief Engineer may suspend performance of the Contract. If the Contract is so suspended, no additional compensation or extension of time shall be due on account thereof.

**37.9 Other Insurance As Required.** The Contractor shall also take out and maintain during the Contract Term such additional insurance policies necessary to obtain required permits or otherwise comply with applicable law, ordinances or regulations regarding the performance of the Services.

## **38.0 RECORDS AND AUDITS**

**38.1 Records Maintenance and Retention.** The Contractor shall maintain books, correspondence, memoranda, drawings, documents, papers and other records and documents, relevant to the Contract Statement of Work and all related transactions ("Records"), including but not limited to those pertaining to quality assurance efforts in connection with the performance of any Services hereunder and in connection with any portion of the operation of the CSC to allow account reconciliation required by the Authority or the Agencies but this shall not require keeping more than one set of Records nor any costs related to the Fiber Optic Subcontractor. These Records shall be kept separate and apart from all other records and documentation that may be maintained by the Contractor. To the extent possible, the Contractor shall also include in all subcontracts a provision to the effect that the Subcontractor and/or key Suppliers shall maintain Records in accordance with the same requirements and in the same manner as specified herein. The term "subcontract" as used in this Section excludes (a) purchase orders and subcontracts not exceeding one hundred thousand dollars (\$100,000) per calendar year and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public and (c) Suppliers.

**38.2 Right to Inspect and Audit.** The Contractor agrees that the Authority and the Agencies or their duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of the Contract Term and any extension thereof, be afforded access with reasonable notice to all reasonably necessary facilities during normal business hours on normal Business Days in order to allow for inspection of the Services and Records of the Contractor. During the period of Contract performance, this shall include, but not

be limited to, interviewing of the Contractor management, surveillance of the Contractor's operations, a review of all bank and customer account information, access to any premises where any Services may be carried on and performed and access to any Records of the Contractor directly related to the Services, with full facilities for inspecting and copying the same. The Contractor further agrees to include in all subcontracts, to the extent possible, hereunder a provision to the effect that the Subcontractor agrees that the Authority and the Agencies or their duly authorized representatives shall, until the expiration of three (3) years after the applicable Contract Term and any extensions hereof, have access to all Records.

**38.3 Required Accounting.** The Contractor shall provide the following:

**38.3.1** accounting records for the time and material work elements that are supported with reasonable documentation;

**38.3.2** effective control over, and accountability for, Contract funds and tangible and intangible personal property acquired for use on this Contract;

**38.3.3** records that accurately, currently, and completely document changes and identify costs for each time and material work element;

**38.3.4** timekeeping records kept in sufficient detail to allow employees' time to be associated with the various time and material work elements where applicable;

**38.3.5** audit trails of all transactions relating to the CSC operation including, but not limited to: customer transactions, violation processing, billing and account information, electronic funds transfer information, and charges and revenues related to customer services and violation processing, investment of funds, collateralization of funds, tag distribution and sale; and

**38.3.6** A system of internal controls to safeguard the assets of the CSC and ensure that transactions are properly and consistently processed.

**38.4 Required Financial Statements.** Each year, during the CSC Contract Term, the Contractor shall provide, within one hundred (100) calendar days of the end of the Authority's fiscal year, financial statements of CSC/VPC operations for funds, assets, and liabilities of the Authority and the Agencies, prepared by the Contractor in accordance with Generally Accepted Accounting Principles (GAAP) and audited by an auditor selected by the Contractor with the approval of the Authority, which approval shall not be unreasonably withheld.

**38.5 Location of Records.** Where practical, all of the Records shall be maintained in a location situated in the State of New Jersey. If any of the Records are maintained outside that location, Contractor may send copies of same to a suitable location in New Jersey within a reasonable time period following a request by the Authority. If the Authority's auditor wishes to inspect original Records maintained outside the State of New Jersey, the Contractor at its option, may have same delivered to its offices within the State of New Jersey or may pay the reasonable cost of the auditor's travel to the location where the records are maintained.

**39.0 ASSUMPTIONS, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS**

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the Authority and the Agencies are provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events, the Authority and the Agencies represent and warrant that the estimates and assumptions attributable to the Authority and the Agencies were made in good faith and based on reasonable information; but the Authority and the Agencies shall not be responsible for conclusions to be drawn therefrom. The Contractor and the Authority agree that there are no assumptions or parameters expressed or implied in this Contract other than those expressly set forth herein.

**40.0 TRANSITION PLAN**

**40.1 Transition Plan.** Within one hundred eighty (180) days of the Cut Over Date or September 1, 2003 (or a date to be mutually agreed upon), whichever shall first occur, , the Contractor shall provide the Authority with a Transition Plan which shall set forth in detail reasonably acceptable to the Authority, all Services necessary for the Contractor to perform in order to facilitate a smooth and orderly transition of the Services to another contractor.

**40.2 Duty to Cooperate in Transition.** If this Contract is terminated for convenience or default, or if the Contract has expired by its own terms and another contractor has been chosen to perform the Services required, the Contractor shall cooperate with the Authority and the Agencies to facilitate a smooth transition pursuant to the Transition Plan during any phase of the Services to the Authority's selected successor for the Services. Additionally, and without regard to the contents of its Transition Plan, the Contractor agrees:

**40.2.1** to make all operational records, documents, data, systems, and facilities required to maintain the day-to-day operations of the Services being rendered under this Contract available on or before the date of such termination or suspension;

**40.2.2** As and to the extent provided elsewhere in this Contract, to make all other records, documents, data and program software, including source and object code, which is licensed to or owned by the Authority or the Agencies, and pertaining to the Services rendered for this Contract, available within thirty (30) Days of such termination; and

**40.2.3** to make all necessary provisions for transferring any leases held by the Contractor to the Authority and the Agencies.

**40.3 Continuation of Services.** Notwithstanding anything in this Contract to the contrary other than the Authority's or the Agencies' duty to pay the Contractor with respect to undisputed amounts in accordance with this Contract to the Contractor, if the Authority so requests, the Contractor shall continue to perform in accordance with the Transition Plan all Services required under this Contract (or such portion of same as may be specified by the Authority in its Notice of Termination) after the scheduled date of termination, and shall require all of its affected Subcontractors do so, until the Contractor is notified by the Authority that such Services are no longer required, in order to allow for an efficient, effective and smooth transition to another Contractor. In no event will this oblige the Contractor to continue to provide services for more than one year following the termination date.

**40.4** The Contractor shall be compensated for its Services during the transition period in accordance with the Contract to the extent it continues to render CSC Services and/or Maintenance Services, and for other Services as agreed by the parties.

#### **41.0 DISASTER RECOVERY PLAN**

**41.1 CSC Recovery Program** The Contractor shall provide on a continuous basis from and after Cut-Over, a Disaster Recovery Program equal to or better than that described in Appendix C, Disaster Recovery Program.

#### **42.0 TERMINATION FOR CONVENIENCE BY THE AUTHORITY**

In addition to termination as otherwise provided in this Contract, the Authority in its absolute judgment, with or without cause, a) may terminate one or more severable parts of this Contract at any time, which severable parts shall be limited to Lane Remediation Services, Maintenance Services, or Buildout Services as units, or b) may at any time after August 1, 2007, terminate any or all of the preceding severable parts of this Contract or this Contract as a whole. Any such termination shall occur by written notice from the Authority to the Contractor and in such event:

- 42.1 Compliance with Transition Plan.** The Contractor shall in accordance with the terms and conditions of the Transition Plan, upon receipt of such notice, unless otherwise directed by the Authority:
- 42.1.1** stop work on the date specified in the notice ("the Effective Date"), demobilize and implement the Transition Plan;
  - 42.1.2** take such action as may be necessary for the protection and preservation of the Authority's materials and property;
  - 42.1.3** except as provided in the following subparagraph, cancel orders;
  - 42.1.4** assign to the Authority and deliver to the applicable Sites or any other location designated by the Authority any non-cancelable orders for Materials and Equipment that is not capable of use except in the performance of this Contract or has been specifically fabricated for the sole purpose of this Contract and not incorporated in the Services;
  - 42.1.5** take no action which will unnecessarily increase the amounts owed by the Authority under this Contract; and
  - 42.1.6** take reasonable measures to mitigate the Authority's liability under this Section.
- 42.2 Right to Compensation; Claim Filing.** Contractor shall have the right to payment for Services rendered up to the date of termination for convenience, for all Services rendered pursuant to this Contract after termination for convenience as directed by the Authority, and for costs incurred to implement the approved Transition Plan. All such payments are subject to audit. If the Authority terminates this Contract for convenience, it shall also compensate the Contractor for the reasonable costs incident to termination of this Contract including, but not limited to Unamortized Costs, the reasonable costs of settlement and termination of any subcontract, lease or other commitment entered into by the Contractor prior to the date of its receipt of notice of termination, and reduction in force costs. Within 30 days of the Cut-Over Date, the Contractor agrees to place in escrow with an escrow agent or firm mutually acceptable to the Contractor and the Authority, a compilation of all of the items that are claimed to fall within the categories of Allowable Unamortized Costs listed in Appendix E, together with the acquisition cost of each such item and the useful lives and depreciation method(s) utilized by the Contractor with respect to each such item, (hereafter, the "Compilation of Cost Information.") The Contractor may, at its option, provide the Compilation of Cost Information to the escrow agent either as a single document or in clearly identified volumes that correspond to the severable parts of the Contract listed in Section 42.0. On the fifth anniversary of the Cut-Over Date, the Contractor shall fully update the Compilation of Cost Information. Upon the Authority's providing a Notice of Termination to the Contractor under this

Section 42, the escrow agent shall release the Compilation of Cost Information to the Authority and the information contained therein shall be considered evidentiary in establishing the Contractor's claim for Unamortized Costs. If the Authority terminates a severable part of the Contract and the Compilation of Cost Information is provided to the escrow agent in separate volumes, then only the volume(s) of the Compilation of Cost Information that correspond to the terminated parts of the Contract shall be released. The Contractor's claim, if any, for compensation due to termination for convenience shall be submitted to the Authority, with supporting documentation, within one year of the effective date of such termination. Under no circumstances shall the Contractor be entitled to recover lost profits, opportunity costs, indirect or consequential damages, or any other amounts beyond the actual and reasonable costs incurred by the Contractor by reason of the Authority's termination of this Contract. The amount due under this Section shall be offset by all payments made to the Contractor and all amounts to which the Authority may be entitled under any provision of this Contract.

**42.3 Required Mitigation.** So as to mitigate its damages in the event of a termination for convenience by the Authority, the Contractor shall include provisions in all real property leases and service subcontracts utilized in the performance of the Services, allowing (1) with the exception of the lease for the CSC, the Contractor to terminate the same for convenience by payment of no more than six month's pro rata cost of the subcontract and/or (2) assignment by Contractor of any such subcontract, lease, or other contractual commitment to the Authority. The Authority may in its discretion accept assignment of any subcontract, lease, or other contractual commitment in lieu of payment of termination costs to the Contractor with respect to same; provided that upon its acceptance of such assignment the Contractor shall have no liability to the other party for services rendered by such other party following the date of assignment. With the exception of the lease for the CSC, under no circumstances shall the Authority be liable for any costs respecting any lease or subcontract as to which the Authority does not take assignment, in excess of those that would be incurred if the lease or subcontract contained a provision providing for termination for convenience by payment of no more than six months' pro rata cost of the subcontract or lease.

**42.4 Disposition Instructions.** Under any termination, the Authority shall provide disposition instructions to Contractor for work product paid for or otherwise belonging to the Authority, which is in the custody of the Contractor. Contractor agrees to comply with such disposition instructions.

**42.5 Authority's Right of Set-Off .** The Authority may deduct or set off against any sums due and payable pursuant to this Section any claims it may have against the Contractor under this Contract.

**42.6 Payments Subject to Audit.** All payments made to the Contractor shall be subject to the Authority's right to audit as set forth elsewhere in this Contract.

#### **43.0 EVENT OF DEFAULT BY CONTRACTOR**

**43.1 Events of Default.** The Contractor's failure to keep, perform or observe any material promise, material covenant or other material provision of this Contract, including without limitation the occurrence of any or all of the following events, which failure materially and adversely affects the interests of the Authority or the Agencies whether or not specifically mentioned in this Contract shall constitute an "Event of Default" under this Contract:

**43.1.1 Failure to Observe Applicable Laws.** The Contractor has failed to abide by the applicable laws and regulations, of the United States or the State of New Jersey.

**43.1.2 Failure to Remit.** The Contractor has materially failed in its obligations to remit or credit any proceeds due the Authority or the Agencies pursuant to this Contract.

**43.1.3 Failure of Performance.** The Contractor has materially failed to provide one or more of the Services in the manner required by this Contract including any obligations related to transition after termination, provided, however, that such failures are not caused by Excusing Events.

**43.1.4 Failure to Make Payments as Required.** The Contractor has failed to make payments to its employees, or of amounts that it is contractually obligated to pay to Subcontractors or Suppliers for Materials or labor for which it has received payment.

**43.1.5 Insolvency.** There has been entered an order of relief against, or the filing of a petition by or against the Contractor under Title 11 of the United States Code, as the same may be amended from time to time, or any successor statute thereof, or if the Contractor shall be adjudicated a bankrupt, a debtor or an insolvent thereunder or under any applicable State law, or shall admit in writing its inability to pay its debts as they mature, or shall make an assignment for the benefit of its creditors or composition agreement with all or a material part of its creditors; or if the Contractor shall apply for or consent to the appointment of any receiver, trustee, executor, sequestrator, conservator, liquidator or other judicial representative, similar or dissimilar for itself or for all of any substantial part of its property; or any such judicial representative shall be appointed without the application or consent of the Contractor; or if the Contractor shall institute or have instituted against it (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization,

arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction.

**43.1.6 Failure to Obtain Required Approval.** The Contractor has acted without obtaining the approval of the Authority where required by this Contract, or has acted contrary to the direction of the Chief Engineer.

**43.1.7 Failure to Provide Required Assurances.** When, in the opinion of the Authority, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, regardless of whether or not same constitutes Anticipatory Breach as set forth in this Section, the Authority may request that the Contractor, within the time frame set forth in the Authority's request, provide reasonable assurances to the Authority, in writing, of the Contractor's ability to perform in accordance with terms of this Contract. In the event that the Contractor fails to provide the Authority with the requested assurances within the prescribed time frame, the Authority may deem such non-response an Event of Default.

**43.1.8 Inaccuracy of Financial Information.** Certified financial statements and/or federal tax returns submitted by the Contractor or the Contractor's parent company to the Authority, if and as required by this Contract, do not accurately represent the Contractor's or its parent's true financial position in all material ways as of the dates set forth in said statements.

**43.1.9 Breach of Warranties and Representations.** Any material misrepresentation contained in any warranty, certification or statement made by the Contractor in the Contract, or in any document delivered pursuant to this Contract.

**43.1.10 Failure to Maintain Required Bonds and Insurance.** The Contractor has failed to obtain and maintain in force, all required Bonds and insurance.

**43.1.11 Anticipatory Breach.** An Event of Default shall also include, but not be limited to the following, whether or not the time has yet arrived for performance of an obligation under this Contract:

**43.1.11.1** A written statement by the Contractor's authorized representative, to the Chief Engineer stating that the Contractor cannot or will not perform any one or more of its material obligations under this Contract;

**43.1.11.2** Any continued or repeated suspension of or failure to proceed with any part of the Services by the Contractor, due to a factor within the control of the Contractor, which makes it reasonably

improbable at that time that the Contractor will be able to perform any one or more of its material obligations under this Contract.

**43.2 Authority's Rights Not Limited.** The enumeration in this clause or elsewhere in this Contract of specific rights or remedies of the Authority shall not be deemed to limit any rights or remedies which the Authority would have in the absence of such enumeration. No exercise by the Authority of any right or remedy shall operate as a waiver of any other of the Authority's rights or remedies not inconsistent therewith or to estop the Authority from exercising such other rights or remedies. Except with respect to the Authority's or the Agencies' obligation to pay undisputed amounts as set forth in this Contract, and inasmuch as the Contractor can be adequately compensated by money damages for any other breach of this Contract which may be committed by the Authority, the Contractor expressly agrees that no default, act or omission of the Authority shall constitute a breach of this Contract entitling the Contractor to cancel or rescind it or to suspend or abandon performance.

#### **44.0 NOTICE OF DEFAULT - OPPORTUNITY TO CURE/TERMINATION**

**44.1 Notice of Default.** If an Event of Default occurs, the Authority shall notify the Contractor in writing ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured promptly or this Contract may be terminated.

**44.2 Ability to Cure.** The Authority shall in the Default Notice direct the Contractor to rectify the default to the Authority's reasonable satisfaction within a period of time reasonable under the circumstances of the default. The Authority may grant an additional period to cure the default of such duration as the Authority shall deem appropriate without waiver of any of the Authority's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity. The Default Notice or subsequent notices may specify the date the Contractor is to discontinue Services (the "Termination Date"), and thereupon the Contractor shall discontinue the Services upon the Termination Date.

#### **45.0 FAILURE TO MEET QUANTIFIED PERFORMANCE STANDARDS; REMEDIES.**

**45.1 Remedies** The above cure provisions shall not apply to failure to meet the Quantified Performance Standards. Without limitation, the Authority's remedies for the Contractor's failure to meet Quantified Performance Standards shall include the following:

- 45.1.1** On a monthly basis commencing with the month that includes the ninetieth day after Cut-Over, the Contractor shall supply the Authority with a consolidated report indicating its conformance with each of the Quantified Performance Standards for the calendar month that ends with the report date, within ten (10) days of the end of said period (Reporting Date). The report shall specifically identify each Quantified Performance Standard that the Contractor has failed to meet during the reporting period (each referred to hereafter as the "Missed Standard"). The Contractor shall supply, if and as requested, backup information with respect to the information contained in the consolidated report.
- 45.1.2** As to each Missed Standard, the Contractor shall deliver with the report identifying same, a narrative explanation as to why the standard was missed during the reporting period and a plan to achieve conformance with the relevant Quantified Performance Standard within 15 calendar days following the report date. If the Contractor alleges that the standard was missed due to an Excusing Event, same shall be specifically identified in the narrative and the Contractor shall indicate how the effects of the Excusing Event are to be mitigated. The Contractor shall immediately begin to implement the plan contained in the narrative unless and until specifically directed otherwise by the Authority. If the report following the report of the Missed Standard indicates that the Contractor cannot implement or has not implemented its corrective action plan, or if the next following report does not demonstrate that compliance with the relevant Quantified Performance Standard has been achieved for the relevant reporting period, and the failures are not due to an Excusing Event, then:
- 45.1.3** As to Category "A" Quantified Performance Standards as set forth in the Statement of Work, Appendix A, the Authority may withhold \$25,000 from the Contractor's next invoice for CSC Services until such time as each such Missed Standard is corrected. If such failure continues for 60 days, the Authority shall be entitled to withhold \$50,000 from the next invoice; if it continues for 90 days, the Authority shall be entitled to withhold \$75,000 from the next invoice and from each invoice thereafter until each such Missed Standard has been corrected. Failure to meet the APR Accuracy performance standard shall subject the Contractor to withholding at 120% of the foregoing amounts.
- 45.1.4** As to Category "B" Quantified Performance Standards as set forth in the Statement of Work, Appendix A, the Authority may withhold \$20,000 from each such Contractor's next invoice for CSC Services until such time as each Missed Standard is corrected. If such failure continues for 60 days, the Authority shall be entitled to withhold \$40,000 from the next invoice; if it continues for 90 days, the Authority shall be entitled to withhold \$60,000

from the next invoice and from each invoice thereafter until each such Missed Standard has been corrected.

**45.1.5** As to Category "C" Quantified Performance Standards as set forth in the Statement of Work, Appendix A, the Authority may withhold \$5,000 from the Contractor's next invoice for CSC Services until such time as each such Missed Standard is corrected. If such failure continues for 60 days, the Authority shall be entitled to withhold \$10,000 from the next invoice; if it continues for 90 days, the Authority shall be entitled to withhold \$15,000 from the next invoice and from each invoice thereafter until each such Missed Standard has been corrected.

**45.1.6** In the case of Quantified Performance Standards evaluated on a daily basis, the money withheld shall not be returned to the Contractor until compliance with each such Missed Standard is achieved. For purposes of each such Quantified Performance Standard, compliance shall be deemed to have been achieved when the relevant Quantified Performance Standard has been met for each day in a monthly reporting period (net of Excusing Events) subsequent to the reporting period on which it has been identified as a Missed Standard.

**45.1.7** In the case of Quantified Performance Standards evaluated on a monthly average basis, the money withheld shall not be returned to the Contractor until compliance with each such Missed Standard is achieved. For purposes of each such Quantified Performance Standards, compliance shall be deemed to have been achieved when the relevant Quantified Performance Standard has been met for two consecutive monthly reporting periods (net of Excusing Events) subsequent to the reporting period on which it has been identified as a Missed Standard.

**45.1.8** All monies withheld by reason of the Contractor's failure to correct a Missed Standard shall be returned to the Contractor along with payment of the next invoice following the date on which the compliance with the Qualified Performance Standard is achieved. As to performance standards for which compliance requires the standard to be met for consecutive reporting periods, the Authority shall be entitled to withhold money only for those reporting periods in which the performance standard is not met.

**45.1.9** If the Contract is terminated for default the Authority shall be entitled to retain all monies withheld under this Section as of the date of termination, also including those to which the Authority would be entitled during the invoicing period that includes the date of termination.

## **46.0 REMEDIES IN THE EVENT OF DEFAULT**

- 46.1 Authority's Remedies Enumerated.** Upon the occurrence of an Event of Default, the Authority may, after providing an opportunity to cure in accordance with the provisions of the Contract with respect to same, take any and all actions necessary to ensure the continuation of the operation and maintenance of the ETC, CSC, and VPC, including without limitation such remedies as may be agreed upon by the parties, or any of the following or any combination thereof:
- 46.1.1** Terminate the Contract or one or more severable parts thereof (which severable parts shall be limited to Lane Remediation Services, Maintenance Services, or Buildout Services as units).
  - 46.1.2** Complete and continue one or more severable parts of the Services as set forth above with its own forces and/or with other contractors; provided, however, that in such event the Authority may direct the Contractor to perform the remainder or severable parts of the Services; provided, however, that in such event the parties shall negotiate with respect to the effect of the severance of Services on any obligations of the Contractor that are affected thereby.
  - 46.1.3** In conjunction with termination of the Contract or one or more severable parts thereof, take possession of and use any or all of the Materials, plants, tools, Equipment, supplies and real and personal property of every kind, provided, purchased, maintained, leased, owned, or rented by the Contractor in connection with the Services, including all technical specifications, drawings, source code, hardware, software, and object code; exercise the rights granted to the Authority under any applicable software escrow agreement; make available such materials to third parties without liability to the Contractor, and/or procure other materials, plant, tools, equipment, supplies and property for the completion of the Services. The Contractor shall be entitled to reasonable compensation for the value of Materials, plants, tools, Equipment, supplies and real and personal property utilized by the Authority in the completion of the Services; provided, however, that the Authority shall be entitled to set off against any such amount any increase in its cost of completion of the Services that is occasioned by the Contractor's default.
  - 46.1.4** Bring any suit or proceeding for damages or for equitable relief, including for specific performance and/or injunctive relief.
  - 46.1.5** Refuse to approve any disbursements of funds to the Contractor and/or withhold any money that it would otherwise owe to the Contractor to the extent permitted under the Contract. The Authority's withholding of funds shall not operate to discharge the Contractor from liability for any additional amounts.

**46.1.6** Require the Surety(ies) to complete the Services pursuant to the Bonds. In such event, the Surety shall have the right to complete, or arrange for completion of, the Services or, with reasonable promptness under the circumstances, to determine the amount for which the Surety may be liable to the Authority and to tender payment therefor to the Authority.

**46.1.7** Recover its Losses.

**46.2 Contractor's Rights Not Limited.** The enumeration in this Contract of specific rights or remedies of the Contractor shall not be deemed to limit any other rights or remedies of the Contractor. No exercise by the Contractor of any right or remedy shall operate as a waiver of any other of the Contractor's rights or remedies or to estop the Contractor from exercising such other rights or remedies.

#### **47.0 DIRECT DAMAGES AND LIMITATION OF LIABILITY**

**47.1 Damages Enumerated.** Upon the occurrence of an Event of Default, the Authority shall be entitled to recover from the Contractor all Losses, subject to the monetary limitation of damages contained in this Contract.

**47.2 Monetary Limitation on Damages.** Notwithstanding any provision of this Contract to the contrary, the Contractor's total aggregate liability under this Contract in contract (including but not limited to indemnification liabilities), tort (including but not limited to negligence and strict liability), implied contract, or otherwise, shall not exceed \$50,000,000.00 (Fifty Million Dollars); provided, however, that the Authority shall be entitled to recover in addition to this amount, any proceeds payable under required professional liability and crime insurance, and the full amount of any monies actually received by the Contractor and wrongfully converted by the Contractor. Contractor shall not be liable for any consequential, incidental, indirect, special, and/or punitive damages; provided, however, that the foregoing shall not limit the Authority's right to collect the full extent of its Losses as said term is defined in Section 2.51, however the same might be characterized under applicable law.

#### **48.0 DAMAGES CUMULATIVE TO EACH OTHER, AND WITH LIQUIDATED DAMAGES**

**48.1 Damages Independent.** The Losses that the Authority shall be entitled to obtain shall be independent and separate such that an Event of Default by the Contractor with respect to more than one classification of Service shall entitle the Authority and the Agencies to obtain separate damages for each independent and separate classification of Service even if an Event of Default occurs, or is occurring, contemporaneously for more than one classification of Service.

**48.2 Damages Cumulative.** Except for those matters specifically subject to Fee Reductions assessed under the Contract, the Losses recoverable by and

payable to the Authority with respect to enumerated Events of Default shall be cumulative, .it being agreed that said Fee Reductions are solely to compensate the Authority and the Agencies for items of loss and damage that are not susceptible to calculation. Provided, however, that nothing contained herein shall be construed so as to either allow the Authority and the Agencies double recovery with respect to any Event of Default or limit the Authority's or the Agencies' recovery to less than their total Losses by reason of same except as expressly limited in this Contract.

#### 49.0 COORDINATION WITH OTHER CONTRACTORS

During the progress of the Services, it may be necessary for other contractors and other persons (including contractors engaged by the Authority or the Agencies) to do work in or about the Sites, excluding the CSC facility. The Authority reserves the right to permit and put such other contractors and such persons to work and to afford them access to such Sites at such time and under such conditions as does not unreasonably interfere with the Contractor. The Contractor shall prosecute its Work continuously and diligently and shall conduct its work so as to minimize interference with such other work. If, notwithstanding the Contractor's compliance with the foregoing, such other work interferes with the Contractor's performance, then the Contractor shall be entitled to Change Order to the extent such interference causes the Contractor to incur additional cost or impacts the Contract Schedule. The Authority shall provide the Contractor with a list of existing contracts which may potentially conflict with the Services required by the Contractor hereunder and coordinate with the Contractor as to future contracts which may affect the said Sites.

The Contractor shall allow the Authority's personnel, auditors, and independent contractors such access to the CSC as may be necessary in order for them to observe or audit the operations of the Contractor as permitted under this Contract, or to coordinate their functions relating to the Project with those of the Contractor. The Authority will endeavor to avoid interference with the Contractor's operations or disclosure of proprietary information by reason of such observations, audits, or coordination.

Except to the extent caused by the Contractor's negligence, the Authority shall indemnify and hold harmless the Contractor from any and all claims, losses, damages, or liability incurred by or caused by such contractors and persons.

**49.1 Indemnification by Authority of Claims by Terminated Contractors** Except to the extent caused by the Contractor's negligence or wrongful acts, the Authority agrees to and shall assume the defense of, and protect, indemnify and hold the Contractor, harmless from and against claims, suits, actions, loss and liability, damages and costs of every type and description, including reasonable attorneys' fees and court costs, brought or recovered against the Contractor, by the Terminated Contractors and occurring by reason of the Contractor's having assumed the performance of any Work and/or Services as said terms are defined in the Initial Contract.

## **50.0 EMERGENCY ACTION**

In the event of an emergency creating a danger to life or property, the Authority may do anything necessary to alleviate such an emergency situation, including performing work at the Sites, or directing another contractor to perform work at the Sites. The Contractor shall abide by all directives of the Chief Engineer or emergency personnel.

## **51.0 CLAIMS FOR ADDITIONAL COMPENSATION OR EXTENSION OF TIME**

**51.1 Notice Requirements.** When the Contractor deems that additional compensation and/or extension of time is due for Services to be performed or Materials to be furnished which were not required by the Contract and which have not been covered by a Change Order or for a delay which is not attributable to the Contractor, the Contractor must notify the Chief Engineer in writing of its intention to make claim for such additional compensation or extension of time or both before beginning the Work or furnishing the materials in question; such notice shall be given by the Contractor within sixty (60) days of the knowledge that facts exist which could give rise to a claim. If such notification is not given, then the Contractor shall agree and hereby does agree, to waive the claim for such additional compensation or extension of time or both.

**51.2 Claim Submissions.** Claims shall be filed with the Chief Engineer in quintuplicate, and will be ruled on by the Authority. Claims shall be submitted only by registered mail addressed to the Chief Engineer. No claim will be granted unless the Authority deems such claim to be just. Supporting Documentation for a claim shall be filed within thirty (30) days after submitting notification of an intention to file a claim. Denial of a claim shall be subject to appeal pursuant to the Dispute Resolution Procedure.

## **52.0 DISPUTE RESOLUTION PROCEDURE**

**52.1 Exclusive Process.** Except as otherwise provided in this Contract, the provisions of this Section shall constitute the exclusive process for the Parties to dispute any determination, order or other action of the Chief Engineer or Authority pursuant to this Contract, any claims for breach of contract or otherwise to assert against either Party any claim arising under, or in any way relating to,

this Contract (any such challenge or assertion shall be herein referred to as a "Dispute"). The absence of express references in any provision of this Contract to the availability of the dispute resolution process shall not be construed to limit or deny such availability. Specific references to the application of the Dispute Resolution Procedure to certain sections of this Contract shall not mean or be construed to mean that the Dispute Resolution Procedure does not apply to other sections of this Contract.

- 52.2 Agreement to Process.** The Contractor and the Authority hereby agree to the resolution of all Disputes in accordance with the Dispute Resolution Procedure; provided, however, that by participating in same the Authority does not agree or acknowledge the Contractor's entitlement to receive an extension of time or additional payment in any particular case.
- 52.3 Scope of Process; Referral to Chief Engineer.** With respect to any Dispute under this Contract, including, without limitation, determinations as to the acceptance of any Services, the question of whether disputed Services falls within this Contract, the acceptability of any proposed Subcontractors or suppliers or the determination of excusable delay, the parties hereby authorize the Chief Engineer, or his designee, to render a decision (referred to herein as "a Decision"). When referring a Dispute to the Chief Engineer for a Decision, the Contractor shall identify clearly the nature of the Dispute and shall include all evidence and other pertinent information reasonably available.
- 52.4 Time for Initial Decision.** All Decisions shall be given in writing no later than thirty (30) calendar days after the Dispute being referred to the Chief Engineer for his consideration and shall be clearly identified as such. Decisions shall include the factors taken into consideration and the reasons for the Decision.
- 52.5 Appeal from Initial Decision.** If the Contractor disagrees with a Decision or any part hereof, the Contractor may file an appeal with the Executive Director of the Authority with respect to the disputed part of the Decision. All such appeals shall be in writing and shall be filed within ninety (90) calendar days of receipt of the Decision. Appeals shall state the reason for the appeal and shall include evidence and other pertinent information in support of the appeal.
- 52.6 Final Decision.** The Executive Director's decision (herein referred to as "the Final Decision") shall be given in writing no later than forty-five (45) calendar days of the Contractor's claim being filed and shall be clearly identified as such. Final Decisions shall include the factors taken into consideration and the reasons for the Final Decision.
- 52.7 Appointment of Arbiter.** If the Contractor disagrees with the Final Decision or any Part thereof, the Contractor may so notify the Chief Engineer and request the appointment of an Arbiter (as hereinafter defined). Any such notice shall be given to the Chief Engineer within sixty (60) calendar days of receipt of the Final

Decision. If the parties fail to agree on the appointment of an Arbiter within thirty (30) calendar days of the Contractor's notice, either party may refer the matter to the American Arbitration Association (the "AAA"), requesting that they appoint the Arbiter. The Arbiter appointed by the AAA need not come from the AAA's National Panel of Arbitrators. Within sixty (60) calendar days of the Arbiter being appointed, the Contractor shall file its appeal with the Arbiter. Appeals shall state the reason for the appeal and shall include evidence and other pertinent information in support of the appeal. A copy of the appeal and all material submitted to the Arbiter shall be sent to the Authority at the same time the appeal is filed. The Authority shall submit to the Arbiter all evidence and other pertinent information within ten (10) business days of receipt of notice of the appeal.

- 52.8 Qualifications of the Arbiter.** The Arbiter shall be a retired Judge of the Superior or Supreme Court of New Jersey, who shall be mutually satisfactory to the Contractor and the Authority, or, in relation to Disputes which relate to specialized areas, such independent third party as shall be agreed upon between the Contractor and the Authority. The parties shall act in good faith in identifying Disputes which require specialized knowledge and in selecting an independent third party.
- 52.9 Final Resolution by Arbiter.** The Arbiter shall render a decision on the appeal ("the Final Resolution") within a reasonable time but in no event later than sixty (60) calendar days after the last submission made to the Arbiter. A Final Resolution shall be in writing and shall provide detailed reasoning for the Arbiter's decision. Both the Contractor and the Authority shall be bound by a Final Resolution and there shall be no appeal whatsoever against a Final Resolution. Either party may apply to a court of competent jurisdiction to enforce a Final Resolution.
- 52.10 Arbiter's Right to Receive Additional Information.** Before rendering a Final Resolution, the Arbiter may seek such technical or other expert advice as he shall deem necessary or appropriate. The Arbiter may seek such additional oral and/or written argument or materials from the Contractor and/or the Authority as he/she sees fit.
- 52.11 Arbiter's Right to Extend Deadlines.** The Arbiter shall have the power, at his/her sole discretion, to extend the time for submissions required hereunder.
- 52.12 Sharing of Arbiter's Costs.** The Parties shall share on a 50-50 basis, the Arbiter's costs including technical and other expert advice requested by the Arbiter and AAA filing fees.
- 52.13 Arbiter's Ability to Participate in Negotiations.** The Arbiter's ability to render a Final Resolution or the validity thereof shall not be impaired or waived by any negotiations or settlement offers in connection with the Dispute, whether or not

the Arbiter participated therein, or by any prior decision of others, or by termination or cancellation of this Contract.

**53.0 THE AUTHORITY AND THE CONTRACTOR MAY AVAIL THEMSELVES OF ALL REMEDIES**

As to any and all matters that are the subject of this Contract the Parties may avail themselves of each and every remedy herein specifically given to them now existing at law or in equity, and each and every such remedy shall be in addition to every other remedy so specifically given or otherwise so existing and may be exercised from time to time and as often and in such order as may be deemed expedient by the Parties, and the exercise, or the beginning of the exercise, of one remedy shall not be deemed to be a waiver of the right to exercise, at the same time or thereafter, any other remedy. The Parties' rights and remedies as set forth in this Contract are not exclusive and are in addition to any other rights and remedies available to it in law or in equity.

**54.0 SEVERABILITY**

If this Contract contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Contract without affecting the binding force of this Contract or any other provision therein, and the Contract and the remaining provisions shall remain in effect after omitting the unlawful provision.

**55.0 NON-SOLICITATION**

Unless otherwise mutually agreed to by the parties in writing, the Parties agree not to knowingly solicit the employment of any personnel of the other Parties, directly or indirectly associated with the Services hereunder during the Contract Term and for a period of one (1) year thereafter, provided, however, that this shall not prohibit either of the Parties' ability to hire personnel employed by the other if said hiring was not the result of solicitation. The Contractor also agrees to abide by all applicable provisions of law with regard to post-employment restrictions imposed on employees of the Authority or the Agencies.

**56.0 NO THIRD PARTY LIABILITY**

Notwithstanding the above, nothing provided herein shall create any rights in any third parties (other than the Indemnified Parties) or any obligation on the part of the Authority to any other third party. Nothing in this Contract shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership, control or statutory control) to a party.

**57.0 MITIGATION OF DAMAGES**

The Contractor, the Authority and the Agencies shall take all action necessary or appropriate to mitigate damages in all circumstances.

## 58.0 SALES AND USE TAX.

Sales or services supplied to or purchased by the New Jersey Turnpike Authority are exempt under N.J.S.A. 54:32B-8 et seq., from the State of New Jersey Sales and Use Tax (Tax Exempt No. 22-6002951). Also, sales made to the Contractor, Subcontractors or repairers of materials, supplies or services which are to be incorporated into the Services are exempt from the New Jersey State Sales and Use Tax. The exemption provided under N.J.S.A. 54:32B-8 is conditioned on the person seeking such exemption qualifying therefor pursuant to the rules and regulations and upon the forms prescribed by the New Jersey Division of Taxation. The required form, "Contractor's Exemption Purchase Certificate": (Form No. ST-13), can be obtained by writing or calling the New Jersey Division of Taxation, Tax Information Services (TIS), West State and Willow Streets, Trenton, New Jersey 08625.

58.1 All Contractors, Subcontractors, or repairers are required to abide by any amendment and/or revision to the New Jersey State Sales and Use Tax without any right of recourse against the Authority.

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

## 59.0 COOPERATION IN INVESTIGATIONS

59.1 **Contractor's Obligation to Cooperate.** Without waiving any rights, the Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry concerning this Contract by any governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General or other official of a governmental agency that is a party in interest to this Contract or any other governmental body of a relevant jurisdiction authorized to investigate or make inquiry about this Contract.

59.2 **No Solicitation.** In addition to and notwithstanding any other provision of this Contract, the Authority may, in its sole discretion, terminate this Contract in the event the Contractor fails to promptly report to the Authority, in writing, any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of an employee of the Authority or the Agencies or any other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Contract by the Contractor, or affecting the performance of the Services hereunder.

## **60.0 AMERICANS WITH DISABILITIES ACT**

**60.1 ADA Compliance.** With respect to the CSC facility, the Contractor and Subcontractors shall observe and comply with all provisions of the Americans with Disabilities Act, 42 U.S.C. paragraph 12101 et seq. ("ADA"), and all regulations promulgated pursuant thereto. If a determination is made that the Contractor or Subcontractor has violated the ADA and the Contractor or Subcontractor fails to correct the violation within thirty (30) Days of receiving notice of the determination, the Contractor shall have committed an Event of Default and shall be subject to the remedies specified in this Contract. In addition, any and all costs and expenses incurred by the Authority as a result of such violation shall be the sole responsibility of the Contractor and the Authority may retain and hold any money due to the Contractor under this Contract in such amount as reasonably determined necessary by the Authority to cover its potential liability until full settlement of the Contractor's liability hereunder is satisfied. The obligations of this Section shall survive the termination, expiration or rescission of this Contract.

**60.2 ADA Indemnification.** With respect to the CSC facility, in addition to all other indemnifications provided under this Contract, the Contractor shall defend, indemnify and save harmless the Authority and the Agencies, their officers, Commissioners, agents, and employees and each and every one of them against and from all liabilities, judgments, threatened, pending or completed actions, suits, demands for damages or costs of every kind and description actually and reasonably incurred, (including but not limited to attorneys fees and costs and court costs) (collectively "Liabilities") which the Authority or any of the Agencies may suffer or sustain on account of injuries or damages to person or property, arising under the ADA or any regulation promulgated pursuant thereto, out of the performance of this Contract by the Contractor, its officers, agents, employees or Subcontractors. Any money due to the Contractor under and by virtue of this Contract as shall be considered by the Authority may be retained by the Authority in such amount as reasonably determined necessary by the Authority to cover its potential liability and held until any and all Liabilities shall have been settled and suitable evidence to that effect is furnished to the Authority. The obligations of this Section shall survive the termination, expiration or rescission of this Contract.

## **61.0 NO PERSONAL LIABILITY**

In carrying out the provisions of this Contract or in exercising any power or authority granted them by their position, neither the Commissioners of the Authority nor the Commissioners of the Agencies including any director, officer, member, agent, or employee of the Authority or Agencies shall be charged personally by the Contractor with any liability.

## 62.0 INDEPENDENT CONTRACTOR

**62.1 Contractor is Independent Contractor; No Joint Venture.** The Contractor is and shall be an independent contractor of the Authority under this Contract and nothing herein shall be construed to create a partnership, joint venture or joint business enterprise relationship between the Contractor and the Authority for any purpose, and the Contractor will not hold itself out or otherwise represent to third parties that it is a partner, joint venturer or engaged in a joint business enterprise with the Authority. The Contractor is engaged as an independent business and agrees to perform the Services in the manner of and as an independent contractor. In accordance with the status of an independent contractor the Contractor covenants and agrees that the Contractor will conduct itself consistent with such status, that the Contractor will neither hold the Authority nor the Agencies out as an employer, nor claim to be an officer or employee of the Authority or the Agencies for any right or privilege applicable to an officer or employee of the Authority or the Agencies, including but not limited to workers compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

**62.2 Contractor's Employees Not Employed by Authority.** The Contractor's agents or employees shall not be employees of the Authority or the Agencies, and the Contractor alone shall be responsible for their work, the supervision thereof, and their compensation and benefits of any kind. Nothing in this Contract shall impose any liability or duty on the Authority or the Agencies on account of the acts, omissions, liabilities or obligations of any person, firm, company, agency, association, corporation or organization engaged by the Contractor as a Subcontractor, expert, consultant, independent contractor, specialist, trainee, employee, servant or agent or for taxes of any nature, including, but not limited to unemployment insurance, workers' compensation and anti-discrimination or work place legislation of any kind and the Contractor hereby agrees to indemnify and hold harmless the Authority and the Agencies against any such liabilities pursuant to the terms of this Contract.

## 63.0 BUSINESS OPPORTUNITIES

**63.1 Pursuit of Business Opportunities.** During the Contract Term, the Contractor, the Agencies, and the Authority agree to use reasonable efforts to identify and pursue Business Opportunities; provided, however, that nothing herein shall be construed so as to obligate the Contractor, the Authority, or the Agencies to participate in any Business Opportunity, nor shall any Business Opportunity relieve the Contractor of any of its obligations under the Contract.

**63.2 Types of Business Opportunities.** A Business Opportunity Management Team led by the Authority shall, to the extent authorized by law, pursue Business Opportunities including the following:

- 63.2.1 Extended application of E-ZPass technology into other market segments;
  - 63.2.2 Extended transaction processing methods and procedures into other market segments;
  - 63.2.3 Utilization of ETC Group E-ZPass customer segment data;
  - 63.2.4 Enhancement of the value of transportation-related products and services; and
  - 63.2.5 Extension of the value of intellectual property developed in connection with this Contract.
- 63.3 **Targeted Opportunities** Subject to the provisions of this Section, the Contractor shall develop and present plans for the following targeted Business Opportunities:
- 63.3.1 **Expansion of the Customer Service Center/Violations Processing Center:** The Authority and the Contractor shall seek out opportunities to leverage the systems, personnel and capabilities of the CSC for Business Opportunities that require similar processing services, including customer services for non-ETC Group entities for which the Contractor shall pay the Authority a mutually agreed upon transaction fee. These Business Opportunities may include transportation, communication and financial transaction-related services, which may require similar account services and processing applications as the Contractor shall provide for CSC operations.
  - 63.3.2 **Commercial Vehicle Operations: Commercial Vehicle Operations (CVO) Business Opportunities** shall focus on creating values and efficiencies for commercial vehicle usage. Specific submarkets may include:
    - 63.3.2.1 Efficient Route Planning/Toll Payment.
    - 63.3.2.2 Port of Entry/Weigh Station By-Pass.
    - 63.3.2.3 Automatic Vehicle Location/Asset Report.
    - 63.3.2.4 Fleet Management/Automated Fueling.
    - 63.3.2.5 Ports/Terminals/Intermodal Transportation.
    - 63.3.2.6 Other CVO-related services.
  - 63.3.3 **Advanced Traffic Management Systems:** The Advanced Traffic Management Systems market focus shall be on the marketing and provision of information services to third parties to increase traveler convenience, safety, and efficiency and may include services such as pre-trip planning, traffic density and speed analysis, pre-planning of known traffic anomalies, management and notification to authorities,

media and the traveling public of routing opportunities, emergency situations, construction events, weather events, hazardous materials situations, closed lanes and other traffic events.

**63.3.4 Parking:** Use of E-ZPass technology at specially configured parking facilities with parking fee processing to be accommodated as part of the CSC operations.

**63.3.5 Smart Card:** Smart Card compatible transponders and/or companion devices to transponders and/or E-ZPass accounts may create the opportunity to reduce replenishment and reporting costs associated with the E-ZPass Program and for other financial transactions.

**63.3.6 Marketing:** With the prior written consent of the Authority in its absolute discretion and subject to each of the Agencies' right of privacy policies, the Contractor may propose Business Opportunities that are derived from utilization of the E-ZPass Program customer database which does not involve the direct sale of individual customer data.

**63.4 Restriction on Use of Assets** The Contractor shall not use the CSC, VPC, or any assets of the Authority or the Agencies assets to pursue any direct or derivative business opportunity without the prior written approval of the Authority in its sole discretion.

**63.5 Dissolution or Continuance** The Authority and the Contractor shall agree to procedures to dissolve or continue Business Opportunities hereunder at the conclusion of this Contract.

**63.6 Treatment of New Agencies:** The Authority and the Contractor shall develop procedures to define the participation of new Agencies, if any, in any Business Opportunities developed hereunder.

#### **64.0 ASSISTANCE**

The Contractor shall provide such assistance as is reasonably requested by the Chief Engineer in dealing with any governmental entity and/or in prosecuting and defending third-party lawsuits in any and all matters relating to the Project. Such assistance may include providing information and reports regarding the Project as well as executing declarations and attending meetings and hearings. In no event shall the Contractor be required to provide legal services as part of its assistance obligation under this Section.

#### **65.0 NO ESTOPPEL OR WAIVER**

No acceptance, order, measurement, payment, or certificate of or by the Authority or its employees or agents shall either estop the Authority or the Agencies from asserting any

right or operate as a waiver of any provision hereof or of any power or right herein reserved to the Authority or the Agencies or of any rights to damages herein provided.

**66.0 TOLL CHARGES**

The Agencies will not extend non-revenue privileges to the Contractor or any sub-contractor or agent. All toll charges incurred by the Contractor or any of its Subcontractors or agents will be paid at the time of travel.

**67.0 U-TURNS BY CONTRACTOR**

The Contractor will not be permitted to make U-turns, unless authorized in writing, on any Agency Toll Roads or Facilities.

**68.0 REPORTS; LIAISON**

The Contractor shall establish and maintain continuing liaison with such employees of the Authority as designated by the Chief Engineer, and the Contractor shall keep the Authority fully informed as to the progress of the Services at all times. The Contractor shall do so by providing the Authority with copies of all reports required by the Contract and such other reports and information as may be reasonably requested by the Authority, and by maintaining close liaison between its personnel and that of the Authority. The Contractor shall submit to the Authority minutes of any scheduled meetings between any Agency and the Contractor relating to the Services within ten (10) Business Days following each such meeting.

**69.0 GOVERNING LAW**

This Contract shall be construed under and shall be governed in accordance with the regulations of the Authority and Constitution and laws of the State of New Jersey.

**70.0 NOTICES**

All notices required or permitted under this Contract shall be in writing and shall be deemed sufficiently served if sent by Registered or Certified Mail, Return Receipt Requested, or delivered personally, or fax delivery with hard copy to follow. For all notices, the following addresses shall be used:

To the Authority to the following address if by U.S. mail:

New Jersey Turnpike Authority  
Administration Building  
P.O. Box 1121  
New Brunswick, New Jersey 08903  
Attention: Chief Engineer

and

To the Authority to the following address if by courier service:

New Jersey Turnpike Authority  
Administration Building  
N.J. Route 18 @ Interchange 9  
East Brunswick, New Jersey 08816  
Tel: 732-247-0900  
Attention: Chief Engineer

With a copy to:

New Jersey Turnpike Authority  
Administration Building  
P.O. Box 1121  
New Brunswick, New Jersey 08903  
Attn: Director of Law

To the Contractor:

ACS State & Local Solutions, Inc.  
1200 K Street, NW  
Washington, DC 20005  
Attention: \_\_\_ Mr. Michael Huerta, Senior Vice President and Managing Director  
(202) 414- 3533 Phone Number  
(202) 289-4880 Fax Number

with a copy at the same address to:  
Attention: General Counsel

Either party may at any time designate a different address by giving written notice as provided above to the other party. Such notices shall be deemed given upon actual receipt by the addressee.

## 71.0 CONTRACT ADMINISTRATION

The Authority shall be the agent and representative of the ETC Group and shall administer the Contract on its own behalf and on behalf of the ETC Group. The Contractor agrees to provide advice and recommendations with respect to policy issues when requested. NJHA and SJTA, by their signatures, acknowledge and agree that NJTA is authorized to act on their behalf with respect to all matters pertaining to this Contract (including the determination as to whether any particular reference within this Contract relates to NJTA in its individual capacity or as agent for the ETC Group) without

further authorization from NJHA or SJTA, and agree to be bound by the actions of NJTA in administering the Contract.

#### **72.0 INSERTION OF REQUIRED PROVISIONS**

It is the intent and understanding of the parties hereto that each and every provision of New Jersey State Law required to be inserted herein shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and, if, through mistake or otherwise, any such provision is not inserted or is not inserted in correct form, then this Contract shall forthwith, upon written application of either party to the other party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party.

#### **73.0 CONTRACT DOCUMENTS CONTAIN ALL TERMS**

This Contract and all documents incorporated by reference or deliverable hereunder contain all the terms and conditions agreed upon by the parties hereto, and no other document or agreement, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

#### **74.0 NEGOTIATED AGREEMENT**

This Contract reflects the negotiation and agreement of the parties. Nothing contained herein shall be interpreted, by implication or otherwise, as inuring to the benefit or the disadvantage of one party in the absence of such mutual negotiation and agreement.

#### **75.0 SURVIVAL**

The parties acknowledge that certain of the obligations in this Contract will by their nature survive the Applicable Contract Term or termination, cancellation or expiration hereof so as to be consistent with the statute of limitations applicable to the matter in question. Accordingly, the respective obligations of the Contractor and the Authority under this Contract which by their nature would continue beyond the termination, cancellation or expiration hereof, shall survive termination, cancellation or expiration hereof.

#### **76.0 MODIFICATIONS**

No change in or modification, amendment, termination or discharge of this Contract in any form whatsoever shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith or a duly authorized representative thereof, provided, however, that any change in or modification, termination or discharge of this Contract expressly provided for in this Contract shall be effective as so provided. The Authority may only be bound hereunder by a properly authorized officer of the Authority.

## **77.0 PROHIBITION AGAINST ASSIGNMENT AND DELEGATION**

The Contractor shall at all times and in all respects be the party primarily responsible to the Authority for the performance of the Contract and shall not delegate same. Except as to Contractor's subsidiaries or affiliates, the Contractor shall not assign, transfer, convey or otherwise dispose of this Contract, its rights, title or interest in or to the same or any part thereof, either directly or by virtue of any conveyance of a controlling interest in the Contractor, without the prior written consent of the Authority. In such cases where approval is required, it shall not be unreasonably withheld. If the Contractor shall, without such prior written consent, assign, transfer, convey or otherwise dispose of this Contract, or of its rights, title or interests therein, to any other person, company or corporation, this Contract may at the option of the Authority be revoked and annulled, effective as of such assignment or transfer, and the Authority shall thereupon and thereafter be relieved and discharged from any and all liability and obligations growing out of the same to the Contractor and to its assignee or transferee and no right under this Contract or to any monies due or to become due hereunder shall be asserted against the Authority at law or in equity by reason of any so-called assignment of this Contract or any part thereof unless authorized as aforesaid by the written consent of the Authority. Notwithstanding the above, nothing herein contained shall be construed to hinder, prevent or affect any assignment by the Contractor for the benefit of its creditors, made pursuant to the statutes of the State of New Jersey.

## **78.0 SNOW REMOVAL**

During the Authority's or the Agencies' operations of snow removal from their roadways, it may sometimes be impractical to avoid piling the accumulated snow alongside the Contractor's working areas. In such event the Contractor shall clear such areas of the accumulated snow as necessary to proceed with its Services. The Contractor agrees that it will make no claim for compensation for any such work which might be required.

## **79.0 FORFEITURE**

If the Contractor or any of its agents, employees, or representatives shall give, offer to give, or promise to give or pay, either directly or indirectly, any money, property, entertainment, or other valuable thing to secure the award of this Contract, or to influence the implementation of this Contract, to any employee of the Authority or of the Agencies, or to any agents of the Federal or State Government for any reason, purpose, cause, or as an inducement, bribe, or reward for doing or omitting to do any act, or for showing any favor or disfavor in relation to this Contract, the making of such gifts, offer to give, inducement, or promise shall constitute an Event of Default. Upon proof to the Authority of such violation, the Authority shall take the prosecution of the Services out of the hands of the Contractor and take appropriate action to complete the Project in which

event the Authority shall have recourse against the Contractor for all damages and remedies pursuant to this Contract.

**80.0 CAPTIONS AND PARAGRAPH HEADINGS**

Captions and paragraph headings used in this Contract are for convenience only and are not part of this Agreement and shall not be used in construing this Agreement.

**81.0 WAIVER**

No waiver of any breach of any provision of this Contract shall constitute a waiver of any other breach of such provision. Failure of any party to enforce at any time, or from time to time, any provision of this Contract shall not be construed as a waiver thereof. The specific rights and remedies set forth in this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

**82.0 AUTHORITY'S AND AGENCIES' RIGHTS IN SYSTEM REVENUES**

**82.1 System Revenues Defined.** "System Revenues" shall consist of all revenues received by the Contractor that are required by the Statement of Work, Appendix A, to be transmitted to accounts maintained by the Authority or the Agencies.

**82.2 System Revenues Sole Property of Authority and Agencies.** The parties acknowledge and agree that all System Revenues, including toll revenues shall be the sole and exclusive property of the Authority and the Agencies. Contractor shall have no rights thereto, constructively or otherwise, and the Contractor shall take no actions inconsistent therewith.

**82.3 Contractor's Status as Agent and Fiduciary for Collection Purposes.** To the extent that Contractor, in the performance of the Services, collects System Revenues including toll revenues, it does so as agent for the Authority. Such System Revenues and toll revenues shall in all cases be deposited into and held in Authority accounts required by the Statement of Work, Appendix A, and otherwise in trust for the benefit of the Authority and the Agencies.

**82.4 System Revenues Not Income to Contractor.** The parties further agree that if any taxing authority asserts that the collection of System Revenues, including toll revenues, are taxable to the Contractor as income and the Contractor cannot otherwise resolve the issue in a commercially practicable manner, the parties agree to work in good faith to restructure the agreement, without changing the relative economic positions of the parties, so as to make clear the parties intention that System Revenues and toll revenues are not income to the Contractor.

IN WITNESS WHEREOF, Contractor and the Agencies have caused this Contract to be signed by their duly authorized officers on the day and year first set forth hereinabove.

**THE NEW JERSEY TURNPIKE  
AUTHORITY**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

**ACS STATE & LOCAL  
SOLUTIONS, INC.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

**NEW JERSEY HIGHWAY AUTHORITY**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

**SOUTH JERSEY TRANSPORTATION AUTHORITY**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

**APPENDIX A**  
**STATEMENT OF WORK**

**APPENDIX B**  
**PRICING AND METHOD OF COMPENSATION**

**APPENDIX C**  
**DISASTER RECOVERY PLAN**

## APPENDIX D

### AFFIRMATIVE ACTION REQUIREMENTS

During the performance of this Contract, the Contractor agrees as follows:

- i) The Contractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Except with respect to affectional or sexual orientation, the Contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- ii) The Contractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex.
- iii) The Contractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.
- iv) The Contractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
- v) The Contractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job December 23,

200212/13/02related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

- vi) The Contractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.
- vii) The Contractor shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

APPENDIX E

ALLOWABLE UNAMORTIZED COST CATEGORIES

ACS TARRYTOWN DATA CENTER

Computer hardware and software  
Disk Storage

CSC

Mail Opening/Sealing/Metering Equipment  
Payment Processors/Software  
Computer hardware and software  
Security system and installation  
Timekeeping system  
Desktop Workstations  
Printers  
Copiers  
Office Furnishings  
Facility Buildout and Wiring/Cabling

COMMUNICATIONS

Hubs/Routers/Switches/Firewalls  
T-1 Probes/Connections/Installations  
Fax Server, equipment and communications lines/installations  
Call Center:  
Automated Call Distributor  
Integrated Voice Response System  
Phone System and installation

OPERATING SOFTWARE

Vector modifications not directly paid by NJTA  
Application Software

ANCILLARY SERVICES

Printing, stuffing, sorting, sealing, metering, mailing equipment  
Data communication lines, modems, equipment  
Computer hardware and software  
Office equipment

LANE MAINTENANCE

Vehicles  
Facility buildouts  
Furnishings  
Special tools

APPENDIX F  
FIBER OPTIC SUBCONTRACT

TABLE OF CONTENTS

	<u>PAGE</u>
1.0 APPLICABLE DOCUMENTS.....	33
1.1 Recitals; Included Documents; Order of Precedence.....	33
2.0 DEFINITIONS.....	44
2.1 AGENCIES.....	44
2.2 AUTHORITY.....	44
2.3 BANKING CHARGES.....	554
2.4 BANKING SERVICES.....	554
2.5 BUILDOUT SERVICES.....	55
2.6 BUSINESS DAY.....	55
2.7 BUSINESS OPPORTUNITY.....	55
2.8 CALENDAR DAY OR DAY.....	55
2.9 CHANGE ORDER.....	55
2.10 CHIEF ENGINEER OR ENGINEER.....	55
2.11 CLAIM.....	55
2.12 CLEARING ACCOUNT.....	665
2.13 CLEARING ACCOUNT AGREEMENT.....	665
2.14 CONSORTIUM.....	665
2.15 CONTRACT.....	66
2.16 CONTRACT BOND.....	66
2.17 CONTRACT PRICE.....	66
2.18 CONTRACT TERM.....	66
2.19 COMPLETION TIME.....	66
2.20 CONTRACTOR.....	776
2.21 CONTRACTOR'S SCHEDULE.....	776
2.22 CUSTOMER SERVICE CENTER ("CSC").....	776
2.23 CSC SERVICES.....	77
2.24 CUT-OVER.....	77
2.25 CUT-OVER DATE.....	77
2.26 DELIVERABLE.....	77
2.27 DEPOSITORY.....	77
2.28 DISPUTE.....	77
2.29 DISPUTE RESOLUTION PROCESS.....	77
2.30 ELECTRONIC TOLL COLLECTION ("ETC") SYSTEM.....	887
2.31 EQUIPMENT.....	887
2.32 EVENT OF DEFAULT.....	88
2.33 E-ZPASS <sup>sm</sup> .....	88
2.34 FIBER OPTIC MAINTENANCE.....	88
2.35 FIBER OPTIC SUBCONTRACTOR.....	88
2.36 FIBER OPTIC SYSTEM.....	88
2.37 FIRMWARE.....	88

2.38	FORCE MAJEURE EVENT .....	<u>998</u>
2.39	HOLIDAYS.....	<u>99</u>
2.40	INCLUDE OR INCLUDING .....	<u>99</u>
2.41	INDEMNIFIED PARTIES .....	<u>99</u>
2.42	INITIAL CONTRACT .....	<u>10409</u>
2.43	INSPECTOR.....	<u>10409</u>
2.44	INTERAGENCY GROUP (IAG).....	<u>10409</u>
2.45	LANE.....	<u>10409</u>
2.46	LANE MAINTENANCE SERVICES .....	<u>10409</u>
2.47	LANE REMEDIATION SERVICES.....	<u>1040</u>
2.48	LANE REMEDIATION ACCEPTANCE.....	<u>1040</u>
2.49	LIEN.....	<u>1040</u>
2.50	LOGO.....	<u>1040</u>
2.51	LOSSES .....	<u>1040</u>
2.52	MAINTENANCE SERVICES.....	<u>1144</u>
2.53	MILESTONE .....	<u>1144</u>
2.54	MATERIALS.....	<u>1144</u>
2.55	PLANS .....	<u>124244</u>
2.56	PREPAYMENTS .....	<u>124244</u>
2.57	PROJECT.....	<u>124244</u>
2.58	QUANTIFIED PERFORMANCE STANDARDS.....	<u>124244</u>
2.59	RECIPROCITY.....	<u>124244</u>
2.60	RIGHTS-OF-WAY (ROW).....	<u>1242</u>
2.61	SERVICES.....	<u>1242</u>
2.62	SITES.....	<u>1242</u>
2.63	SPARE PARTS .....	<u>134342</u>
2.64	SUBCONTRACT .....	<u>134342</u>
2.65	SUBCONTRACTOR .....	<u>134342</u>
2.66	SUBSTANTIAL COMPLETION (BUILDOUT).....	<u>134342</u>
2.67	SUPPLIER.....	<u>1343</u>
2.68	SURETY.....	<u>1343</u>
2.69	SYSTEM.....	<u>1343</u>
2.70	TAG OR TRANSPONDER.....	<u>1343</u>
2.71	TERMINATED CONTRACTOR.....	<u>1343</u>
2.72	TOLL ROAD/TOLL FACILITY .....	<u>144443</u>
2.73	TRAFFIC PERMIT .....	<u>144443</u>
2.74	TRANSITION PLAN.....	<u>144443</u>
2.75	TRANSITION PERIOD.....	<u>144443</u>
2.76	UNAMORTIZED COST .....	<u>144443</u>
2.77	UTILITIES.....	<u>1444</u>
2.78	UTILITY.....	<u>1444</u>
2.79	VIOLATION.....	<u>1444</u>
2.80	VIOLATION PROCESSING CENTER (VPC).....	<u>1444</u>
2.81	VPC SERVICES .....	<u>154514</u>

3.0	EXPLANATIONS; OMISSIONS AND MISDESCRIPTION .....	<u>151514</u>
4.0	BINDING CONTRACT .....	<u>151514</u>
4.1	Entire Agreement.....	<u>1515</u>
4.2	Binding Effect.....	<u>1515</u>
5.0	MANNER OF PERFORMANCE.....	<u>1515</u>
5.1	Authority's Entitlement to Services; Contractor's Duty to Cooperate.....	<u>1515</u>
5.2	Duty of Cooperation.....	<u>161615</u>
5.3	No Right to Suspend or Withhold Services.....	<u>1616</u>
5.4	Standard of Care and Professional Skill .....	<u>171716</u>
5.5	Fiduciary Relationship .....	<u>171716</u>
5.6	Correction of Services.....	<u>171716</u>
5.7	Customer Relations.....	<u>1717</u>
6.0	COMMENCEMENT OF CONTRACT TERM; GENERAL DESCRIPTION OF SERVICES. .....	<u>1717</u>
6.1	Contract Term .....	<u>181817</u>
6.2	General Scope of Services .....	<u>181817</u>
6.3	Option to Extend.....	<u>181817</u>
7.0	CONTRACT TIME.....	<u>1818</u>
7.1	CSC Services Contract Time.....	<u>191918</u>
7.2	Lane Remediation Contract Time .....	<u>191918</u>
7.3	Lane Maintenance Services Contract Time .....	<u>191918</u>
7.4	Buildout Contract Time .....	<u>191918</u>
7.5	Fiber Optic Maintenance Contract Time .....	<u>191918</u>
8.0	EXCUSING EVENTS.....	<u>191918</u>
8.1	Neither Party in Default; Performance Obligations Excused.....	<u>1919</u>
8.2	Excusing Events Defined.....	<u>1919</u>
8.3	Force Majeure.....	<u>202019</u>
8.4	Mitigation Required .....	<u>202019</u>
8.5	Effects upon Subcontractors or Suppliers.....	<u>202019</u>
8.6	Notice of Excusing Event.....	<u>202019</u>
8.7	Continuation of Services.....	<u>212120</u>
8.8	Change Order for Excusing Event .....	<u>212120</u>
9.0	COMPENSATION .....	<u>212120</u>
9.1	Compensation for Services .....	<u>212120</u>
10.0	PASS THROUGH CHARGES .....	<u>212120</u>
10.1	Banking Charges .....	<u>212120</u>
10.2	Fiber Optic Subcontract Payments .....	<u>222221</u>
10.3	DMV Lookup Fees.....	<u>222221</u>
11.0	OWNERSHIP AND PROVISIONING OF PROPERTY .....	<u>222221</u>
11.1	Warranty of Title to Equipment.....	<u>222221</u>
11.2	Vesting of Title to Equipment .....	<u>2222</u>
11.3	Lane, Plaza, and Host Software and Related Items.....	<u>232322</u>
11.4	Parts.....	<u>232322</u>
11.5	CSC and VPC .....	<u>232322</u>

12.0	PROPRIETARY CONSIDERATIONS, DATA SECURITY, DISCLOSURE.....	<u>232322</u>
12.1	Non-Disclosure.....	<u>232322</u>
12.2	Permitted Publicity.....	<u>242423</u>
13.0	WARRANTIES AND MAINTENANCE.....	<u>252524</u>
13.1	Warranty Obligations.....	<u>252524</u>
13.2	Mark IV Equipment.....	<u>262625</u>
13.3	Adesta, LLC Equipment and Maintenance.....	<u>262625</u>
14.0	SOFTWARE.....	<u>262625</u>
14.1	Software Definition/Rights.....	<u>272725</u>
14.2	Software Licenses.....	<u>272726</u>
14.3	Scope of Software Licenses.....	<u>292928</u>
14.4	Software Ownership.....	<u>303028</u>
14.5	Cost of Software.....	<u>313129</u>
14.6	Software Documentation.....	<u>323229</u>
14.7	Software Revisions.....	<u>333329</u>
14.8	Software Environment.....	<u>343429</u>
14.9	Software Warranty.....	<u>343429</u>
14.10	Third Party Warranties.....	<u>353529</u>
14.11	System Acceptance.....	<u>363629</u>
14.12	Future Software Enhancements/Modifications.....	<u>363629</u>
15.0	ESCROW AGREEMENT.....	<u>373729</u>
16.0	INTELLECTUAL PROPERTY INDEMNIFICATIONS.....	<u>393929</u>
17.0	AUTHORITY OF THE CHIEF ENGINEER.....	<u>414129</u>
17.1	Chief Engineer's Inspections And Instructions.....	<u>414129</u>
17.2	Contractor Retains Sole Responsibility for Performance.....	<u>414129</u>
17.3	Chief Engineer's Power to Determine Questions and Disputes.....	<u>414129</u>
17.4	Chief Engineer's Power to Issue Directives.....	<u>424229</u>
17.5	Explanation of Determinations and Orders.....	<u>424229</u>
17.6	Contractor's Obligation to Follow Directives.....	<u>424229</u>
17.7	Designee For CSC and VPC.....	<u>424229</u>
17.8	Discretion to be Exercised Reasonably.....	<u>424229</u>
18.0	PLANS AND STANDARD SPECIFICATIONS.....	<u>424229</u>
18.1	Availability of Plans and Standard Specifications.....	<u>424229</u>
19.0	Personnel.....	<u>424229</u>
19.1	Qualified Personnel to Be Supplied.....	<u>434329</u>
19.2	Contractor's Project Manager(s).....	<u>434329</u>
19.3	Authority's Right to Review Qualifications of Key Personnel.....	<u>434329</u>
19.4	Removal of Personnel.....	<u>434329</u>
19.5	Notice as to Key Personnel Leaving Contractor's Employ.....	<u>444429</u>
19.6	Substitution of Key Personnel.....	<u>444429</u>
20.0	Deliverables.....	<u>444429</u>
20.1	Submission.....	<u>444429</u>
20.2	Review by Authority.....	<u>444429</u>
20.3	No Waiver.....	<u>454529</u>

20.4	Conditional Approval .....	454529
21.0	Subcontracting .....	454529
21.1	Contractor Remains Solely Liable for Performance .....	454529
21.2	Incorporation of Contract into Subcontracts .....	454529
21.3	Direct Payment to Subcontractors by Authority on Termination, Assignment; Third-Party Beneficiaries.....	464629
22.0	PROSECUTION AND PROGRESS .....	474729
22.1	Commencement of Work; Notice to Proceed .....	474729
22.2	Time of Completion.....	474729
22.3	Extension Is Not Waiver. ....	474729
23.0	EXTENSION AND REDUCTION OF TIME .....	474729
23.1	Extensions Only Granted by Change Order.....	474729
23.2	Extensions Not Cumulative .....	474729
24.0	CHANGES AND EXTRA WORK.....	474729
24.1	Entitlement.....	474729
24.2	Authority's Right to Order Changes .....	484829
24.3	Extra Work Only to be Performed If Ordered. ....	484829
24.4	Contractor's Estimate of Cost of Extra Work Requested by Authority. ....	484829
24.5	Contractor's Request for Change Order. ....	494929
24.6	Cost of the Work.....	494929
25.0	LIQUIDATED DAMAGES.....	494929
25.1	Right to Liquidated Damages for Delay .....	494929
25.2	Fee Reduction for Delay.....	505029
26.0	SUSPENSION OF WORK AND/OR SERVICES.....	505029
26.1	Order to Suspend Services.....	505029
26.2	Contractor's Right to Request Adjustment for Suspension. ....	505029
26.3	Evaluation of Claim.....	505029
26.4	Other Provisions Take Precedence. ....	515129
27.0	ACCESS TO RIGHTS OF WAY, FACILITIES AND SERVICES OF TERMINATED CONTRACTORS .....	515129
28.0	TRANSITION FROM TERMINATED CONTRACTORS .....	515129
29.0	COMPLIANCE WITH ALL APPLICABLE LAWS.....	515129
29.1	Compliance with All Applicable Laws Required.....	515129
29.2	OSHA Compliance.....	525229
29.3	High Voltage Compliance .....	525229
29.4	Affirmative Action Compliance .....	525229
29.5	Prevailing Wage Act.....	525229
29.7	Contractor's Obligation to Remedy .....	525229
30.0	ENVIRONMENTAL COMPLIANCE .....	535329
30.1	Environmental Compliance Required .....	535329
30.2	Access for Inspections .....	535329
31.0	PERMITS AND LICENSES .....	545429
32.0	CONTRACTOR'S WARRANTIES AND REPRESENTATIONS .....	545429
32.1	Corporate Status .....	545429

32.2	Qualification to do Business in New Jersey .....	<u>545429</u>
32.3	Pending Litigation .....	<u>545429</u>
32.4	Actions Duly Authorized .....	<u>555529</u>
32.5	No Default.....	<u>555529</u>
32.6	No Franchising .....	<u>555529</u>
32.7	Financial Capability.....	<u>555529</u>
32.8	Accuracy of Financial Information.....	<u>555529</u>
32.9	No Payment of Gifts or Gratuities .....	<u>555529</u>
3210	No Promises of Payment .....	<u>555529</u>
32.11	No Conflict of Interest .....	<u>565629</u>
32.12	No Collusion .....	<u>565629</u>
32.13	No Debarment .....	<u>565629</u>
32.14	No Pending Investigations.....	<u>565629</u>
32.15	Duty to Act in Good Faith .....	<u>575729</u>
32.16	Warranties and Representations Continuing .....	<u>575729</u>
33.0	AUTHORITY'S WARRANTIES AND REPRESENTATIONS .....	<u>575729</u>
33.1	Authority's Power to Act .....	<u>575729</u>
33.2	Authority's Financial Responsibility.....	<u>575729</u>
33.3	Duty to Act in Good Faith.....	<u>575729</u>
34.0	BONDS .....	<u>575729</u>
34.1	Lane Remediation Performance and Payment Bond .....	<u>575729</u>
34.2	Maintenance Services Performance and Payment Bond .....	<u>585829</u>
34.3	CSC and VPC Performance and Payment Bond.....	<u>585829</u>
34.4	Buildout Performance and Payment Bond.....	<u>606029</u>
34.5	Performance by Surety Does Not Relieve Contractor .....	<u>606029</u>
34.6	Subcontractor Bonding.....	<u>606029</u>
34.7	No Rights to System Proceeds.....	<u>616129</u>
35.0	RISKS ASSUMED BY THE CONTRACTOR .....	<u>616129</u>
35.1	Risks Assumed by Contractor, Generally .....	<u>616129</u>
35.2	Protection of Authority's Property .....	<u>616129</u>
35.3	Protection of Contractor's Property .....	<u>616129</u>
35.4	Obligation to Restore Damaged Property .....	<u>626229</u>
35.5	Protection of Property during Suspension of Work .....	<u>626229</u>
35.6	Risks of Claims on Account of Injury, Loss or Damage .....	<u>626229</u>
35.7	Indemnification against Risks Borne by Contractor.....	<u>636329</u>
36.0	CONTRACTOR'S LIABILITY AND INDEMNIFICATION .....	<u>646429</u>
36.1	Agreement to Indemnify .....	<u>646429</u>
36.2	Scope of Indemnity .....	<u>646429</u>
36.3	Worker's Compensation Included.....	<u>656529</u>
36.4	Contractor's Sole Liability .....	<u>656529</u>
36.5	Indemnified Parties' Right to Require Immediate Repairs .....	<u>656529</u>
36.6	Subcontractors Bound.....	<u>656529</u>
36.7	Defense and Settlement.....	<u>656529</u>
36.8	Remedies Not Exclusive.....	<u>666629</u>

36.9	Survival.....	666629
37.0	INSURANCE .....	666629
37.1	Required Insurance.....	666629
37.2	Proof of Insurance. ....	666629
37.3	Terms and Deductibles .....	666629
37.4	Qualifications of Carriers. ....	666629
37.5	Coverages and Limits.....	676729
37.6	Insurance Does Not Limit Liability.....	686829
37.7	Timely Renewal Required.....	686829
37.8	Failure to Maintain, Cancellation, and Non-Renewal. ....	686829
37.9	Other Insurance As Required.....	696929
38.0	RECORDS AND AUDITS.....	696929
38.1	Records Maintenance and Retention .....	696929
38.2	Right to Inspect and Audit.....	707029
38.3	Required Accounting.....	707029
38.4	Required Financial Statements .....	717129
38.5	Location of Records .....	717129
39.0	ASSUMPTIONS, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS .....	717129
40.0	TRANSITION PLAN .....	717129
40.1	Transition Plan .....	717129
40.2	Duty to Cooperate in Transition.....	717129
40.3	Continuation of Services.....	727229
41.0	DISASTER RECOVERY PLAN.....	727229
41.1	CSC and VPC Recovery Plan Required.....	727229
42.0	TERMINATION FOR CONVENIENCE BY THE AUTHORITY .....	737329
42.1	Compliance with Transition Plan .....	737329
42.2	Compensation; Claim Filing .....	737329
42.3	Required Mitigation .....	747429
42.4	Disposition Instructions .....	757529
42.5	Authority's Right of Set-Off .....	757529
42.6	Payments Subject to Audit.....	757529
43.0	EVENT OF DEFAULT BY CONTRACTOR .....	757529
43.1	Events of Default .....	757529
43.2	Authority's Rights Not Limited .....	777729
44.0	NOTICE OF DEFAULT - OPPORTUNITY TO CURE/TERMINATION .....	777729
44.1	Notice of Default.....	777729
44.2	Ability to Cure.....	787829
45.0	FAILURE TO MEET QUANTIFIED PERFORMANCE STANDARDS; REMEDIES.....	787829
45.1	Default as to Quantified Performance Standards.....	787829
46.0	REMEDIES IN THE EVENT OF DEFAULT .....	808029
46.1	Authority's Remedies Enumerated .....	808029
46.2	Authority's Rights Not Limited .....	818129
47.0	DIRECT DAMAGES IN THE EVENT OF DEFAULT.....	818129

47.1	Damages Enumerated .....	818129
47.2	Monetary Limitation on Damages .....	828229
48.0	DAMAGES CUMULATIVE TO EACH OTHER, AND WITH LIQUIDATED DAMAGES <u>828229</u>	
48.1	Damages Independent .....	828229
48.2	Damages Cumulative .....	828229
49.0	COORDINATION WITH OTHER CONTRACTORS .....	838329
49.1	Indemnification by Authority of Claims by Terminated Contractors.....	838329
50.0	EMERGENCY ACTION .....	838329
51.0	CLAIMS FOR ADDITIONAL COMPENSATION OR EXTENSION OF TIME .....	848429
51.1	Notice Requirements.....	848429
51.2	Claim Submissions .....	848429
52.0	DISPUTE RESOLUTION PROCEDURE.....	848429
52.1	Exclusive Process.....	848429
52.2	Agreement to Process.....	848429
52.3	Scope of Process; Referral to Chief Engineer.....	858529
52.4	Time for Initial Decision .....	858529
52.5	Appeal from Initial Decision .....	858529
52.6	Final Decision.....	858529
52.7	Appointment of Arbitrator.....	858529
52.8	Qualifications of the Arbitrator.....	868629
52.9	Final Resolution by Arbitrator.....	868629
52.10	Arbitrator's Right to Receive Additional Information .....	868629
52.11	Arbitrator's Right to Extend Deadlines.....	868629
52.12	Sharing of Arbitrator's Costs .....	868629
52.13	Arbitrator's Ability to Participate in Negotiations .....	868629
53.0	THE AUTHORITY MAY AVAIL ITSELF OF ALL REMEDIES .....	878729
54.0	SEVERABILITY.....	878729
55.0	NON-SOLICITATION.....	878729
56.0	NO THIRD PARTY LIABILITY .....	878729
57.0	MITIGATION OF DAMAGES.....	878729
58.0	SALES AND USE TAX .....	888829
59.0	COOPERATION IN INVESTIGATIONS .....	888829
59.1	Contractor's Obligation to Cooperate .....	888829
59.2	No Solicitation .....	888829
60.0	AMERICANS WITH DISABILITIES ACT .....	898929
60.1	ADA Compliance .....	898929
60.2	ADA Indemnification .....	898929
61.0	NO PERSONAL LIABILITY .....	898929
62.0	INDEPENDENT CONTRACTOR .....	909029
62.1	Contractor is Independent Contractor; No Joint Venture .....	909029
62.2	Contractor's Employees Not Employed by Authority.....	909029
63.0	BUSINESS OPPORTUNITIES.....	909029
63.1	Pursuit of Business Opportunities .....	909029

63.2	Types of Business Opportunities.....	919429
63.3	Targeted Opportunities .....	919429
64.0	ASSISTANCE .....	929229
65.0	NO ESTOPPEL OR WAIVER .....	939329
66.0	TOLL CHARGES .....	939329
67.0	U-TURNS BY CONTRACTOR.....	939329
68.0	REPORTS; LIAISON .....	939329
69.0	GOVERNING LAW.....	939329
70.0	NOTICES .....	939329
71.0	CONTRACT ADMINISTRATION.....	959529
72.0	INSERTION OF REQUIRED PROVISIONS .....	959529
73.0	CONTRACT DOCUMENTS CONTAIN ALL TERMS.....	959529
74.0	NEGOTIATED AGREEMENT .....	959529
75.0	SURVIVAL.....	959529
76.0	MODIFICATIONS.....	969629
77.0	PROHIBITION AGAINST ASSIGNMENT AND DELEGATION.....	969629
78.0	SNOW REMOVAL.....	969629
79.0	FORFEITURE.....	979729
80.0	CAPTIONS AND PARAGRAPH HEADINGS.....	979729
81.0	WAIVER.....	979729
82.0	AUTHORITY'S AND AGENCIES' RIGHTS IN SYSTEM REVENUES.....	979729
82.1	System Revenues Defined .....	979729
82.3	System Revenues Sole Property of Authority and Agencies.....	979729
82.3	Contractor's Status as Agent and Fiduciary for Collection Purposes .....	989829
82.4	System Revenues Not Income to Contractor .....	989829

# APPENDIX A

## Statement of Work

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1.	OVERVIEW .....	1
2.	PROJECT MANAGEMENT .....	2
3.	CONTRACT TRANSITION PERIOD.....	3
4.	OVERVIEW OF THE WORK PLAN.....	4
5.	WORK PROGRAM – CSC/VPC .....	5
5.1	CSC/VPC OPERATIONS.....	5
5.2	CSC FUNCTIONALITY .....	5
5.2.1	Tag Inventory and Distribution.....	5
5.2.1.1	Tag Ordering and Receiving into Inventory.....	6
5.2.1.2	Tag Distribution .....	6
5.2.1.3	Tag Returns .....	6
5.2.2	Account Establishment.....	7
5.2.2.1	Discount Plans .....	10
5.2.3	Customer Service and Account Maintenance.....	12
5.2.3.1	Remote Access .....	12
5.2.3.2	Account and Tag Updates .....	12
5.2.3.3	Statements.....	13
5.2.3.4	Web Site .....	14
5.2.3.5	Voice Response System (VRS).....	14
5.2.3.6	Customer Outreach Program .....	15
5.2.3.7	Credit Card Decline Process .....	15
5.2.3.8	Credit Card Expiration Process .....	15
5.2.3.9	Replenishment Amount Notification.....	15
5.2.4	Financial Reconciliation, Settlement, and Investment.....	16
5.2.4.1	Identification of Bank Accounts/Deposit of Funds.....	16
5.2.4.2	Books & Records.....	16
5.2.4.3	Toll Revenue Transfer to Agencies .....	16
5.2.4.4	Miscellaneous Revenue Transfer .....	17
5.2.4.5	Fees Retained by ACS.....	17
5.2.4.6	Funds Investment.....	17
5.2.4.7	Returned Checks, Refunds, and Credit Card Charge-backs.....	17
5.2.4.8	Reconciliation and Settlement of Reciprocity Transactions.....	18

	5.2.4.8.1	Tolls Settlement.....	18
	5.2.4.8.2	Credit Card Fee Settlement.....	18
5.3		VIOLATION PROCESSING FUNCTIONALITY .....	19
	5.3.1	Reconciliation of Image File and Violation Data Files .....	19
	5.3.1.1	Host/VPC Reconciliation .....	19
	5.3.1.2	Image Review Process.....	20
	5.3.1.3	Customer Account Debit.....	20
	5.3.1.4	Name and Address Acquisition.....	20
	5.3.1.5	Noticing .....	20
	5.3.1.6	Payments and Disputes.....	21
	5.3.1.7	Returned Checks and Refunds.....	21
	5.3.1.8	Three-Strike Rule .....	21
	5.3.1.9	In-Lane Speed Violations .....	22
	5.3.1.10	Gross Class Mismatch Processing .....	22
5.4		CSC/VPC FACILITY IMPLEMENTATION .....	22
	5.4.1	The CSC/VPC Facility .....	22
	5.4.2	The CSC/VPC System .....	22
5.5		OPERATIONS TRANSITION AND SYSTEM CONVERSION .....	23
	5.5.1	CSC/VPC Operations Transition .....	23
	5.5.2	Conversion and Software Modifications .....	25
	5.5.2.1	Conversion .....	25
	5.5.2.2	Software Modifications .....	25
	5.5.3	Testing .....	25
	5.5.3.1	Configuration Testing .....	26
	5.5.3.2	Regression Testing .....	26
	5.5.3.3	Conversion Testing .....	27
	5.5.3.4	End-To-End Testing .....	27
	5.5.3.5	Operational Readiness Testing .....	27
6.		WORK PROGRAMS – LANE REMEDIATION SERVICES AND MAINTENANCE SERVICES.....	28
	6.1	TRANSITION PHASE.....	29
	6.1.1	Baseline .....	29
	6.1.2	Parts and Equipment Procurement .....	29
	6.1.3	System Design Review .....	29
	6.1.4	Requirements.....	29
	6.1.5	Software Licenses.....	30
	6.1.6	Logistics.....	30
	6.1.7	Transition Report.....	30
	6.2	REMEDIATION PHASE .....	30
	6.2.1	Remediation Actions-Round One .....	31
	6.2.1.1	AVI Configuration .....	31
	6.2.1.2	AVI Cabling .....	31
	6.2.1.3	AVI Guard Lanes.....	31
	6.2.1.4	Lane Software .....	32
	6.2.2	Remediation Actions - Round Two .....	32
	6.2.2.1	Exit Loop Addition .....	32
	6.2.2.2	AVC Light Curtain Logic Changes.....	33
	6.2.2.3	VES Rear Camera Installations .....	33
	6.2.2.4	VES Rear Camera and Lighting Adjustments .....	33
	6.2.2.5	VES Front Camera Installations .....	33

	6.2.2.6 Benchmark Lane Test Assessment .....	34
6.3	MAINTENANCE SERVICES .....	34
	6.3.1 Scope of Maintenance .....	34
	6.3.1.1 Type of Maintenance .....	35
	6.3.1.2 Spare Parts and Equipment Management .....	36
	6.3.1.3 Staffing .....	36
	6.3.1.4 Performance .....	36
	6.3.1.5 Communications .....	38
	6.3.1.6 Reports .....	38
	6.3.1.7 Maintenance Logistics .....	38
	6.3.1.8 Software Maintenance .....	38
	6.3.1.9 Interim Maintenance Services (T&M) .....	39
7.	SCHEDULES .....	40
8.	REPORTS .....	46
	8.1 OPERATIONS REPORTS .....	46
	8.2 VIOLATIONS REPORTS .....	46
	8.3 FINANCIAL REPORTS .....	47
	8.4 TOLL REPORTS .....	47
	8.5 RECIPROCITY REPORTS .....	48
	8.6 NEW REPORTS .....	49
	8.7 MAINTENANCE REPORTS .....	50
9.	PERFORMANCE STANDARDS .....	51
	9.1 LANE PERFORMANCE STANDARDS .....	51
	9.2 CSC/VPC PERFORMANCE STANDARDS .....	53
	9.3 CSC ASSUMPTIONS .....	55

# 1. Overview

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The Contractor activities described in this scope of work include:

- Creation of a fully integrated CSC/PC
- Provision for ongoing CSC/PC operations
- Defining the full E-ZPass lane remediation program
- Maintenance of the ETC system
- Documenting several additional work elements that expand the build-out and functionality of the entire E-ZPass system.

## 2. Project Management

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The NJTA has established an E-ZPass Quality Management Team to monitor the Contractor's project operations, both during the transition and for the term of the contract. The NJTA's roles include oversight, policy decision-making, dispute resolution, scope definition, and contract management. The NJTA will have a single point of contact management interface with ACS.

ACS will be required to conduct periodic briefings with the E-ZPass Quality Management Team to review project schedules, review critical action items and resolve any key issues. ACS will also conduct bi-weekly project status meetings until thirty (30) days after cut over date during transition to keep the NJTA informed about progress and issues impacting the transition. ACS will also prepare written progress reports in an agreed upon format that document progress and issue resolution.

# 3. Contract Transition Period

---

ACS is entering into this agreement cognizant that the strategies of WorldCom and JP Morgan Chase for exiting the New Jersey E-ZPass program may not support all of the ACS lane remediation actions along with the CSC/VPC start-up. The NJTA will provide information and assistance to ACS in transition activities and will use reasonable efforts to require the Terminated Contractor(s) to produce transition plans specifying how they will transfer operations to ACS and to provide such further information and assistance as ACS may reasonably require. The NJTA will timely act and use reasonable efforts as the liaison between ACS, WorldCom and JP Morgan Chase to resolve any issues that arise, and ACS will advise NJTA on a timely and continuing basis as to all information required and issues requiring resolution.

In order to promote a successful transition process that furthers the ACS remediation work program and the CSC/VPC start-up, the NJTA will address the following set of activities during the transition process. NJTA will use reasonable efforts to achieve the following:

- The Terminated Contractor(s) will be directed by the NJTA to provide ACS all relevant documents to include: Most recent versions of documentation, source code, object code, development tools, test beds, and test scripts; all licenses and existing maintenance agreements; access to inventory of equipment (including spares) for ACS to conduct a 100 percent physical inventory of all existing equipment, noting equipment condition.
- The Terminated Contractor(s) will be directed by the NJTA to provide ACS direct access to design documents and personnel familiar with the VPC system to assist in the VPC design and operation. The Terminated Contractor(s) will be directed by the NJTA to provide any data and information necessary to assist with the VPC transition.
- JP Morgan Chase will be directed by the NJTA to provide ACS access to the design documents and personnel familiar with the CSC design and operation to assist in the CSC design and the database design needed to support the conversion process.
- JP Morgan Chase will be directed by the NJTA to provide all data specifications required by ACS to fully test and operate the CSC. JP Morgan Chase will be directed by the NJTA to provide all data and information necessary to assist with the CSC transition.
- The NJTA will direct JP Morgan Chase to operate the current CSC during the transition period until the ACS CSC/VPC is placed into operation.

# 4. Overview of the Work Plan

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The following sections define the work plan for a combined CSC/VPC and for lane remediation. The work program links the CSC, VPC, and lane remediation strategies to provide a fully integrated program. While the work plan provides detailed documentation regarding the implementation and start-up of the CSC/VPC operation and the lane remediation program, ACS shall use its best efforts to provide NJTA with the most current technology and processing methods utilized in ACS' ETC operations generally; provided however, that this shall not require ACS to undertake system upgrades or changes which individually or in the aggregate, materially increase the cost to ACS of performing the services without an appropriate change order. ACS may adjust or modify processing means and methods used to provide the tasks associated with E-ZPass Customer Service Center Operations as described in this Statement of Work.

All technical aspects and related methods of physical construction on the New Jersey Turnpike shall be performed in accordance with the New Jersey Turnpike Authority Standard Specifications, fifth edition, 1987 (the NJTA Standard Specifications).

All technical aspects and related methods of physical construction on the Garden State Parkway shall be performed in accordance with the New Jersey Highway Authority Standard Specifications Section 100 – General Provisions 1991 Edition (NJHA Standard Specifications), and the New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction, 1989 Version (NJDOT Specifications).

With respect to any physical construction on the roadways, in the event of any conflict or inconsistency between the NJTA Standard Specifications, the DOT Specifications, this Appendix, and the Agreement of which this Appendix forms a part, the following order of precedence shall apply: As to all technical aspects and related methods of physical construction on the roadways, the NJTA Standard Specifications, the NJHA Standard Specifications, and the NJDOT Specifications shall control, respectively. The Chief Engineer shall have authority to resolve any conflicts or ambiguities between or within the aforementioned documents in the manner provided in the Agreement.

NJTA will provide the Contractor with enforcement rules to be applied with respect to certain tasks pertaining to violation processing and management. Because these rules deal with public safety, revenue collection and enforcement techniques, these rules are not attached to this Agreement but are made available to the Contractor through NJTA on condition that they are to remain confidential information of the Agencies.

All data files in existence as of the date of this contract and identified in the relevant Interface Control Documents shall be transmitted and updated as specified in the ICD as approved by NJTA as of the date of this contract. All such files shall comply with the applicable ICD.

# 5. Work Program – CSC/VPC

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## 5.1 CSC/VPC Operations

This section discusses some of the operational requirements that must be included in the integrated CSC/VPC. CSC and VPC performance shall be in accordance with the performance standards cited in Section 9 of this Statement of Work. Although this section describes E-ZPass customer service separately from violations processing, the processing of similar functions is not segregated. For example, the service center has one call center that handles all types of calls and one lockbox department that processes all types of payments. Where specialization is applicable, as in the case of commercial accounts, separate units shall be created within a department. ACS assumes all responsibility for establishing and maintaining the CSC network connectivity between agency Hosts and the CSC.

### 1.25.2 CSC Functionality

#### 5.2.1 Tag Inventory and Distribution

The tag ordering process is to be initiated by ACS based on current inventory levels at the CSC, the recent trend of tag issuance, and the production turnaround of Mark IV. ACS will prepare a tag purchase order for review, approval and procurement by the Agencies. This purchase order will include quantities for each tag type required, as well as the default fields to be programmed by Mark IV.

When the tags are delivered to the customer service center, the tags will be visually inspected and entered into our Vector software system's inventory system component. ACS will test every tag upon receipt from the manufacturer for the first six months of operations. ACS will enter any failures into the inventory subsystem and document the failure rate of the tags. At the end of the first six months, if the failure rate has not exceeded .001%, ACS will be allowed to discontinue the testing of every tag and revert to a policy of random testing (one tag per box). Upon reasonable suspicion by the Agencies of tag performance problems, the Agencies shall have the authority to require ACS to resume testing of every tag for a period of: (1) 3 months, or (2) until the failure rate is determined to be less than .001%, whichever is longer.

For the starting inventory, ACS can assume that the inventory at the current CSC will be transferred to the ACS CSC at Cut Over. Procedures for the transfer and reconciliation of the inventory will be coordinated with JP Morgan Chase. ACS may assume that the nine Mark IV tag programmers as well as the transponders that are currently in use at the

existing CSC will be transferred to ACS in two phases. ACS may assume that the transfer of 1/3 of the transponders to ACS will occur one month prior to current CSC transition to ACS' CSC. The remaining 2/3 of the transponders will be delivered no later than one week after final transition. ACS may assume that two tag programmers will be delivered to ACS' CSC one month prior to the CSC transition date. The remaining tag programmers will be delivered no later than one week after final transition.

ACS shall conduct complete tag inventories annually. This inventory will include a physical count and reconciliation with the monthly tag inventory report of all transponders, by tag type and color.

#### **4.1.1.15.2.1.1 Tag Ordering and Receiving into Inventory**

#### **5.2.1.2 Tag Distribution**

Tags distributed in the walk-in center at the CSC and through the mail will be in an active status for immediate use in the lanes. ACS will implement the necessary controls to ensure the security of all tags, particularly the tags that are in an active status. These controls include system tracking of all tags in inventory and released to employees for assignment to accounts as well as physical security in the tag inventory rooms.

Tags distributed through the mail will be mailed via first class postage. ACS may be directed by the NJTA to use special delivery requirements for up to two hundred fifty (250) individual tag mailings per calendar year without additional compensation. Tags will be distributed with associated materials to educate the customers about the use of E-ZPass and the required maintenance of the account balance and information. These materials include an account information letter; a customer guide to E-ZPass, two extra tag-mounting strips, a tag read prevention bag, and installation instructions for regular as well as special tags (license plate tags and commercial vehicle tags). Modifications will be made as required to telephone numbers and addresses. ACS may assume that ownership of the PO Box that is printed on the Consortium's tags will be transferred to ACS.

#### **4.1.1.35.2.1.3 Tag Returns**

As tags are returned to the customer service center and determined to be defective while the tag is within the warranty period, ACS will mark the tags defective in the inventory system, coordinate monthly returns to Mark IV, and track the replacement tags that are sent by Mark IV. All tags marked as defective in the tag inventory system will be identified in the monthly tag inventory report by tag number and receipt date.

Disposal and off-site storage of damaged tags and non-functional tags that exceed the warranty period are not included in this scope of work.

Tags that are found to be functioning properly and are within the warranty period will be placed back into inventory for re-issuance no less than 120 days of return to ACS' CSC. Reissued tags that are subsequently returned as defective will not be placed back into inventory. These tags shall be deemed defective.

## 1.1.25.2.2 Account Establishment

ACS will provide account-opening options to customers in the following ways:

Account Establishment Options	
Establishment Method	Payment Method
Web site	Credit card
Mail	Credit card and check
Fax	Credit card
<ul style="list-style-type: none"><li>• Telephone</li></ul>	<ul style="list-style-type: none"><li>• Credit card</li></ul>
<ul style="list-style-type: none"><li>• Walk-in</li></ul>	<ul style="list-style-type: none"><li>• Credit card, check, and cash</li></ul>

Applications received through the mail or via fax will be processed in ACS' lockbox operation. ACS shall make modifications to the current ACS enrollment materials as approved by the NJTA prior to the CSC start up and at subsequent re-ordering points.

ACS will assess a monthly \$1 membership fee to each account on the anniversary date of the account opening date. The membership fee does not apply to post-paid accounts, non-revenue accounts and Delaware residents. The \$1 membership fee shall be deposited in accordance with NJTA rules.

ACS will charge a tag replacement fee equal to the current cost of the tag for replacement of all lost/stolen, defaced or visibly damaged tags. ACS will have the capability to assess a tag replacement fee to any/all customers.

ACS shall service the following account types under the following business rules:

1. Private accounts for accounts with less than five tags and with non-commercial vehicles.

### **Private Standard Plan Rules**

- a. Funding amounts are based upon an estimate of the tolls accrued for 30 days. ACS will evaluate replenishment amounts 35 days after an account is opened and then every 90 days thereafter.
- b. Replenishment amounts are increased and decreased if the toll usage varies from the replenishment amount by a variable percentage, depending on the replenishment amount (Larger replenishment amounts require a smaller percentage variance from toll usage to result in a change in the replenishment amount). Customers will be allowed a one-time reduction in their replenishment upon customer request.
- c. \$25 minimum initial balance plus plan amounts except with PA discount plans;
- d. Must be able to override minimum balance amounts;
- e. Replenishment threshold is 50% of replenishment amount for cash and check accounts and 25% for credit card accounts;

- f. New Jersey residents opening accounts via cash or check will be charged a tag deposit of \$10.00 per tag.
  - g. Vector shall have the ability to charge new accounts opened for non-New Jersey residents a deposit equal to the full value of the tag, and a \$5.00 service fee.
2. Non-revenue plans for agency-approved customers as identified in the discount plan table.
- a. Non-revenue plan shall support both pre-paid accounts and zero balance accounts without tag deposit.
3. Pre-paid commercial accounts for accounts with five or more tags or with any commercial vehicles.
- a. Funding amounts are based upon an estimate of the tolls accrued for 45 days. ACS will evaluate replenishment amounts 35 days after an account is opened and then every 90 days thereafter.
  - b. Replenishment amounts are increased and decreased if the toll usage varies from the replenishment amount by a variable percentage, depending on the replenishment amount (Larger replenishment amounts require a smaller percentage variance from toll usage to result in a change in the replenishment amount). Customers will be allowed a one-time reduction in their replenishment upon customer request.
  - c. Replenishment threshold of 50% of replenishment amount for cash and check customers.
  - d. Replenishment threshold of 25% of replenishment amount for credit card customers.
  - e. New tags issued to commercial accounts will be processed as a tag sale.
4. Post-paid commercial accounts for the New Jersey Turnpike Authority's commercial customers whose monthly toll usage exceeds \$50.
- a. ACS shall establish a separate department within the CSC to handle these accounts.
  - b. This department will handle all calls and correspondence related to the post-paid accounts and will interface directly with the NJTA. Personnel assigned to this department shall be cross-trained to work in other operational departments.
  - c. The ACS system will generate monthly invoices that include toll transactions from the previous month and will calculate and post the applicable discounts.
  - d. Invoice payments will be processed in the lockbox department.
  - e. Reports to track past-due invoices and to compare collateral against toll activity will be reviewed by the post-paid unit. The post-paid account manager will receive authorization from the NJTA before initiating any suspension action on accounts that are delinquent in paying invoices or providing the required collateral.

- f. A post-paid commercial account must have a prepaid account already established with either the ETC Group or with an away agency.
- g. If a post-paid account is invalid, the pre-paid plan will be debited.
- h. Post-paid commercial account customers must post collateral equal to 3 months of tolls plus full value of tags on account.
- i. Collateral shall be a data entry field within the Vector screen.
- j. ACS shall track the number of tags on an account and the number of toll transactions.
- k. For cash or check customers, collateral is: (number of tags multiplied by tag deposit of \$12.00) plus 3 month moving average toll usage for cash or check customers. Collateral for credit card customers is toll usage only.
- l. If pre-paid account is with an away agency, the tag deposit is not needed for collateral calculations.
- m. Toll usage shall be compared to posted collateral on a monthly basis.
- n. Scaled discount rate based on usage to be provided by the NJTA.
- o. If toll usage exceeds collateral posted, a letter shall be sent to the customer requesting additional collateral within 20 days.
- p. If additional collateral is not received within 20 days, a second letter shall be sent to the customer warning of possible account suspension. If additional collateral is not received within 7 days after this second letter, the account shall be eligible for suspension with but only with NJTA approval.
- q. Tolls incurred after the suspension shall be applied to the Pre-Paid account.
- r. Invoices shall be mailed on the 5<sup>th</sup> calendar day of the month for all tolls posted in the previous month with the appropriate discount applied.
- s. Customers have 25 days to pay the invoice. Check payments are the only form of payment currently accepted.
- t. If payment is not received, a past due notice shall be sent 30 days after invoice date.
- u. If payment is not received within 60 days, a final notice shall be sent notifying the customer that the account shall be suspended in 10 days.
- v. The CSC will not suspend an account unless and until suspension is approved by the NJTA.
- w. Due to the need for NJTA approval, the suspensions shall not be automatically applied by the system; rather, they are to be applied manually by a CSC employee.
- x. If a customer has an outstanding invoice, the next invoice will not include a discount for tolls and the customer will be billed for the discount that was applied in the previous invoice.
- y. Manual adjustments will be used to reverse or apply discounts when requested by the NJTA.
- z. ACS will comply with the detailed business rules, required notices and letters, and reports attached as Exhibit A (Commercial Post-Paid Business Rules).

### 5.2.2.1 Discount Plans

ACS will support all discount plans identified as described below:

Discount Plans	
Discount Plan	Description
Private (New)	<p><b>ACE Frequent User Plan:</b> Provides discounts to qualified E-ZPass customers who made 30 or more trips during the previous 35-day period on the Atlantic City Expressway. Under this plan, the following discounted toll will be charged per trip during the qualified month:</p> <ul style="list-style-type: none"> <li>• Pleasantville mainline barrier facility—\$0.30</li> <li>• Egg harbor mainline barrier facility—\$1.30</li> <li>• Pomona, Mays Landing, Hammonton, and Winslow—\$0.25</li> <li>• Williamstown ramp \$0.10</li> <li>• Plan is valid for first 35 days after plan enrollment. Every 35 days, toll usage is evaluated for future eligibility as follows:</li> <li>• If average trips per tag is <math>\geq 30</math>, all tags are eligible in next month.</li> <li>• If average is <math>&lt; 30</math>, only tags that took 30 trips are eligible in the next month.</li> </ul>
Private (New)	<p><b>Delaware Turnpike HOV:</b> A tag level plan that requires 20 trips with two or more persons in vehicle per month in staffed lanes between 12:00 a.m. on Monday through 7:00 p.m. on Friday. Tolls are charged at the discounted rate and adjusted at end of month if the minimum is not reached. If a customer goes through a dedicated ETC lane, full fare is charged and the trip does not count towards minimum.</p>
Private (New)	<p><b>Delaware SR-1 HOV Program:</b> A tag level plan that requires 20 trips with two or more persons in vehicle per month in staffed lanes between 12:00 a.m. on Monday through 7:00 p.m. on Friday. Tolls are charged at the discounted rate and adjusted at the end of month if the minimum is not reached. If a customer goes through a dedicated ETC lane, full fare is charged and the trip does not count towards minimum.</p>
Private (New)	<p><b>Delaware SR1 Frequent User Plan (Tag Level):</b> The DelDOT discount plan is a post-usage discount, which is applied to those plan holders who make at least 30 qualifying trips in a 30-day period. No discount is applied for less than 30 trips. There are no unused commuter trips. The discount plan applies only to non-commercial, two-axle vehicles (including motorcycles). These are all vehicles classified by DelDOT as a Class 2 vehicle. The discount plan is tag-specific. The 30-day period is a rolling 30 days and not a calendar month. The discount is applied to the account five days after the end of the 30-day period.</p>
Private	<p><b>PANYNJ Staten Island Bridge Plan:</b> 20 trips within 35 days; first trip used initiates the 35-day period. Once 20 trips are taken, the 21<sup>st</sup> trip initiates a new period. Unused trips are charged to the account balance five days after the end of the 35-day period. No plan suspension is allowed.</p>
Private	<p><b>PANYNJ Carpool Plan:</b> Carpool discount rate applied when the customer uses a staffed lane and the collector confirms the presence of</p>

<b>Discount Plans</b>	
<b>Discount Plan</b>	<b>Description</b>
	three occupants. If a dedicated lane is used, the next level discount plan is applied.
Private	<b>NYSTA Annual Permit Plan (Tag Level):</b> Flat annual fee for permit applies to first 30 miles of trip. Permits are renewed at the end of the calendar year.
Private	<b>Tappan Zee Bridge Commuter Plan:</b> 17 trips in a calendar month. The first discount period begins when the first trip is taken and ends when a full calendar month has passed regardless of the number of trips taken. Subsequent discount periods begin on the same day of the month that the first period started. Unused trips are charged to the account balance five days after the end of the month. Plan suspensions are allowed (four per year, minimum length of one week. Trips taken during the first week are charged full-fare. First use after the first week ends the suspension.)
Private	<b>Tappan Zee Bridge Carpool Commuter Plan:</b> 17 trips in a calendar month. Trips must be made through a staffed lane. First discount period begins when the first trip is taken and ends when a full calendar month has passed, regardless of the number of trips taken. Subsequent discount periods begin on the same day of the month that the first period started. Unused trips are charged to the account balance five days after the end of the month.
Private	<b>MTA B&amp;T Staten Island Resident Plan:</b> Residency requirements must be met either through the address of the registered vehicle or other proof of residency. System verifies license plate against in-house DMV file of Staten Island residents; otherwise, clerk is prompted to ask for proof of residency.
Private	<b>NYSBA Commuter Plan:</b> 17 trips in a calendar month. First discount period begins when first trip is taken and ends when a full calendar month has passed, regardless of the number of trips taken. Subsequent discount periods begin on the same day of the month that the first period started. Unused trips are charged to the account balance five days after the end of the month. Plan suspensions are allowed (four per year, minimum length of one week. Trips taken during the first week are charged full-fare. First use after the first week ends the suspension.)
Private	<b>DRPA Bridge Commuter Plan:</b> Patrons of this plan will receive a rebate/discount of \$14 per tag if 20 trips are made in one calendar month. The E-ZPass Fare is normally \$2.70 for each trip.
Private	<b>DRBA Commuter Plan:</b> This commuter discount plan entitles E-ZPass users to 25 trips on the Delaware Memorial Bridge at \$.75 per trip if taken within a 30- day period. Unused trips are billed to the account.
Private	<b>DRBA Frequent User Plan:</b> This frequent traveler discount plan entitles E-ZPass users to 20 trips on the Delaware Memorial Bridge at \$1.00 per trip if taken within a 90-day period. Unused trips are billed to the account.
Non-revenue (New)	<b>NJTA:</b> This plan allows for non-revenue passage through all NJTA facilities and is available to NJTA authorized users.
Non-revenue	<b>NJHA:</b> The plan allows for non-revenue passage through all NJHA

Discount Plans	
Discount Plan	Description
(New)	facilities and is available only for NJHA authorized users.
Non-revenue (New)	<b>SJTA:</b> The plan allows for non-revenue passage through all SJTA facilities and is available only for SJTA authorized users.
Post-Paid Commercial Accounts (New)	<b>NJ Turnpike Bus Discount Plan:</b> Tolls during morning and afternoon rush hour are free. 6:30 a.m. to 9:30 a.m. and 4:30 p.m. to 7:30 p.m.
Pre-Paid Commercial Accounts (New)	<b>NJ Highway Bus Discount Plan:</b> For a set population of bus companies, each bus company has a fixed number of discounted trips (\$.50) that they can take in a year. Once limit is reached, trips are charged at \$1.00. Specific bus companies to be identified by NJHA.
Post-Paid Commercial Accounts (New)	<b>NJ Turnpike Off-Peak Volume Discount Plan:</b> Discount is based on monthly usage as detailed below: <ul style="list-style-type: none"> <li>• \$0 – 50 no discount;</li> <li>• \$51-200 7.5% discount;</li> <li>• \$201-500 5% discount;</li> <li>• Greater than \$500 2.5% discount.</li> </ul> Discount is calculated based solely on tolls accumulated during off peak hours.
Pre-Paid Commercial Accounts (new)	<b>NJ Highway School Bus Discount Plan:</b> School buses are charged 35 or 25 cents depending on location. Companies approved by ACS using NJHA defined rules.

### 4.1.35.2.3 Customer Service and Account Maintenance

#### 5.2.3.1 Remote Access

ACS shall provide for read-only remote access to the Vector system. Read-only remote access shall be interpreted to mean unlimited access to all customer information available to the ACS (CSC and VPC) service representatives. Remote access will be available to each of the Agencies from their respective facilities. Remote access terminals will have the ability to produce the reports listed in Section 8 of this Scope of Work. Each agency will provide the desktop workstations to provide remote access capabilities. ACS will provide the software required to support remote access in a form that is easily installed on each workstation, which meets the ACS, defined minimum processing capabilities. There shall be no limit as to the number of workstations capable of functioning as a remote access terminal provided that no greater than thirty (30) concurrent ETC Group users are accessing the Vector System as administered and controlled by the NJTA IT-Staff. The limitation of 30 concurrent ETC Group users is subject to review by ACS.

#### 4.1.1.25.2.3.2 Account and Tag Updates

The CSC shall have minimally three departments to handle customer service and account maintenance functions: the walk-in center, the correspondence department, and the call center. The hours of operation for the call center and the walk-in center will be, 7:00 a.m. through 7:00 p.m., Monday through Friday and 8:00 a.m. through 2:00 p.m., Saturday. The call center will be accessed via a toll-free telephone number for E-ZPass customer service. NJTA will make reasonable efforts to obtain transfer of the current toll-free number to ACS.

Customer service representatives shall have the ability to set the account open date for customers.

ACS shall provide, at a minimum, all customer service functions set forth in the table below:

<b>Account Maintenance Functions And Methods</b>					
<b>Function</b>	<b>Walk-in</b>	<b>Telephone</b>	<b>Mail</b>	<b>Fax</b>	<b>Web site</b>
Payment	✓		✓		✓
Demographic Change	✓	✓	✓	✓	✓
Credit Card Change	✓	✓	✓	✓	✓
Vehicle Change/Addition	✓	✓	✓	✓	✓
Customer Inquiries	✓	✓	✓	✓	✓
Plan Addition/Deletion	✓	✓	✓	✓	
Report Tag Lost or Stolen	✓	✓	✓	✓	✓
Additional Tag Request	✓	✓	✓	✓	✓
Close Account	✓		✓		

All updates to accounts, whether they are made by the customer through the Web site or the VRS or by a service center employee, are to be captured on the database with appropriate audit trails. This data will be retained online for 12 months before being archived.

#### **1.1.1.35.2.3.3 Statements**

All statements will be in accordance with the IAG Inter-CSC spec 1.51 requirement in the ACS format. Statements will accommodate flash messages as required by the NJTA given ten-business day notification. All statements will be scheduled based on the anniversary date of the account opening. Statement will accommodate any information required as a result of continued customer out-reach activities as mutually agreed upon between ACS and the NJTA.

ACS shall send statements monthly to private customers for the first six months after new account opening and bi-monthly from then on. All private customers requesting monthly statements after the first six months will be accommodated. Statement methods available are e-mail and paper statements through the mail. If a private customer opts for a monthly statement (e-mail or paper), ACS will continue the current practice of assessing a \$1 statement fee every other month against the account balance, on the account anniversary date.

Commercial customers shall receive monthly statements without charge. Statements will be sent to pre-paid commercial customers on a monthly basis and shall be made available to customers via e-mail, disk or paper at the customer's option. Statements relating to pre-paid transactions will be provided by means of a separate statement in disk, paper, or e-mail format at the customer's option. Post-paid commercial customers will be eligible to receive invoices on disk or paper. Paper invoices shall be sorted by transponder number. All information provided in disk or e-mail form shall be provided in a format readable by Microsoft Excel, for purposes of data manipulation and analysis.

If the statement is returned as undeliverable and no further information is available, the account will be updated to reflect that the address on file is no longer valid and further statements will not be mailed until updated address information is obtained. Statements will reflect a Median Fare indicator as determined in the transactions provided by the NJTA.

#### 1.1.1.45.2.3.4      **Web Site**

ACS will provide and maintain no fewer Web site services than those currently provided by J P Morgan Chase. In addition to all functions provided on the presently existing E-ZPass.com Web site, ACS will include the following functionality:

1. The ability to add or change vehicle information including update of license plate information.
2. Ordering additional tags and obtaining and correlating associated license plate information.
3. Adding or deleting discount plans.
4. Access to commercial accounts.
5. Violation status.
6. Violation payment processing via credit card.
7. Filing of violation disputes, for both customers and non-customers.
8. Allowing customers to add and update license plate information in response to notices of violation.

#### **5.2.3.5      Voice Response System (VRS)**

ACS shall establish a voice response system which includes; the following functionality:

1. Option for both English and Spanish language.
2. Option to be transferred to a customer service representative.
3. Entry of credit card information.
4. All account balance information.
5. Account enrollment.
6. A single password/PIN number for both VRS and web access.
7. Change a PIN number
8. Order transponders and supplies.
9. Update credit card information.
10. Obtain general information (i.e. hours of operation, location of CSC, etc.).

ACS shall prepare and submit a script for approval by the NJTA. Functions in accordance with the Performance Standards set forth in Section 9 of the SOW.

#### **1.1.1.65.2.3.6 Customer Outreach Program**

ACS will develop a customer outreach plan. The plan must document a comprehensive public relations campaign designed to improve customer use of E-ZPass and thereby improve the New Jersey program. The public information campaign will also be designed to attract additional, and retain current, New Jersey customers. Once the NJTA approves the plan, the NJTA will direct JP Morgan Chase to execute the appropriate parts of the plan.

- Within the scope of the Customer Outreach program and without increase in price to the Authority, ACS will provide a radio advertising campaign to promote E-Z Pass and educate customers as to the proper use of transponders, etc. The scope and duration of this campaign will be agreed upon by the Authority and ACS; provided, however, that the value of the advertising campaign shall not exceed \$850,000.00.

#### **5.2.3.7 Credit Card Decline Process**

All rules utilized for the credit card decline process and expiration process for the primary card shall also apply to the secondary card. When a credit card is declined for payment, the replenishment method on the account is to be changed to cash. The tag deposit shall be charged to the account balance 20 days after the account is changed to cash.

The system shall request and accommodate the use of a second credit card number on accounts.

Initial request for payment is to be made against the primary card. For a soft (e.g. over limit) decline as to the primary card, request is to be attempted again after a one-calendar day wait. If a hard decline is received (e.g. card not valid), request for payment is then made against the secondary card. If no secondary credit card is provided, ACS shall make one retry following a rejection.

If the request for payment is denied on a "hard" basis as to the primary card or is declined twice on a "soft" basis, the request shall be redirected to the secondary card. Customer service representatives shall be made aware of the redirection.

If two hard or two soft declines are received as to both the primary and secondary cards, all cards shall be removed from the account, and the customer shall be advised in writing that the account has been converted to a cash account and a tag deposit will be charged 20 days after notice unless a replacement card is provided or the issue relating to the posted card(s) is resolved.

#### **1.1.1.85.2.3.8 Credit Card Expiration Process**

ACS shall mail a credit card expiration letter to customers 20 days prior to the expiration date of the primary card.

#### **1.1.1.95.2.3.9 Replenishment Amount Notification**

ACS shall provide a separate and distinct message on all customer statements indicating when a change of replenishment amount has occurred. A separate letter sent to the customers advising them that their replenishment amount has changed is out of the scope of this contract.

## **1.1.45.2.4 Financial Reconciliation, Settlement, and Investment**

### **5.2.4.1 Identification of Bank Accounts/Deposit of Funds**

NJTA will establish multiple bank accounts for the processing of prepaid tolls, tag deposits, returned checks, refunds, violation payments, unallocated payments, and inter-Agency transfers and may as circumstances warrant, establish accounts for other transactions (collectively, the "NJTA Service Accounts"). Payments are deposited into the prepaid tolls bank account and the applicable tag deposit funds are transferred to the tag deposit bank account on a daily basis. When check refunds are processed, the total amount being refunded for that processing period is transferred from the prepaid tolls and tag deposits accounts to the refund account and refund checks are generated. Credit card refunds and returned checks are applied directly against the prepaid tolls bank account. Revenues received from away agencies shall be deposited into the inter-Agency transfer account and distributed in accordance with the IAG Settlement Report, within one business day after receipt of the revenue. NJTA shall provide appropriate authorization.

ACS will deposit cash and check payments into the prepaid tolls bank account within one business day of receiving the payments. Credit card funds will be deposited directly by the credit card processors (Chase Merchant Services, American Express, and Discover) into the prepaid tolls bank account according to the schedule agreed upon with the processors.

ACS shall reconcile all of the NJTA Service Accounts on a monthly basis and shall forward copies of the completed reconciliation reports to NJTA in accordance with the Performance Standards.

### **1.1.1.25.2.4.2 Books & Records**

ACS shall submit the following:

- Annual audited financial statements for Affiliated Computer Services, Inc., the parent company of the vendor.
- Annual audited financial statements for the CSC/VPC operation by an independent accounting firm approved by the NJTA.
- An annual SAS-70 audit of the CSC/VPC activities must be performed by an independent accounting firm approved by the NJTA. ACS shall comply with the auditors recommendations as to exceptions noted in the SAS-70 report unless specifically relieved of this requirement by the NJTA as to any particular exception.

### **5.2.4.3 Toll Revenue Transfer to Agencies**

At the time required by the Performance Standards, ACS shall wire to the Agencies' designated bank account or accounts, as instructed, all toll revenue calculated with respect to the previous day's transactions and provide all associated revenue reconciliation reports.

The calculation of toll revenue to be wired into each Agency's respective toll revenue account(s) shall be based on the following events pertaining to that Agency during the relevant period:

- Tolls posted to customer accounts (if the value of tolls posted to customer accounts is not available due to volume, an estimated amount shall be used subject to upward or downward adjustment in a subsequent transfer), PLUS

- Violation tolls posted to customer accounts, PLUS OR MINUS
- Net adjustments posted to customer accounts as a result of dispute resolutions, PLUS
- Funds received from away Agencies, PLUS
- Post-paid payments posted against outstanding receivables.

#### **5.2.4.4 Miscellaneous Revenue Transfer**

ACS shall wire to the Agencies' designated bank account or accounts, as instructed, all revenue calculated with respect to the following miscellaneous revenues, on the next business day after posting:

- \$1 membership fees.
- Monthly statement fees.
- Return check fees.
- Tag replacement fees.
- Tag sales.
- NJTA's portion of violation revenue administration fees as calculated in accordance with Appendix B of the Contract.

#### **5.2.4.5 Fees Retained by ACS**

- Statement Archive fees.
- ACS' portion of violation revenue administration fees as calculated in accordance with Appendix B of the Contract.

#### **5.2.4.6 Funds Investment**

The funds in the prepaid tolls and tag deposits bank accounts are eligible for investment based on criteria defined by the Agencies and plans approved by the Agencies, which plans shall be submitted for approval on not less than an annual basis commencing December 31, 2002. ACS will contract with an appropriate institution to perform investment functions. This institution and the investment decisions shall be approved by the NJTA. The yield from the investments, net of management fees, will be deposited into separate bank accounts with respect to prepaid tolls and tag deposits. A daily investment report will be provided to the Agencies. At the end of the month, ACS will wire transfer the yield from the investment accounts to the Agencies' project fund account.

#### **1.1.1.75.2.4.7 Returned Checks, Refunds, and Credit Card Charge-backs**

Returned checks and their associated bank fees will be debited directly against the associated bank account (prepaid tolls or tag deposits, respectively), which accounts shall be established and maintained by the Agencies. The debit, together with a service fee, will be recouped by means of a charge against the customer account balance. ACS shall notify the customer by letter as to the payment reversal, all associated fees, and the amount of money required to replenish the account.

ACS shall provide customer refunds within 10 days of closing the account. Credit card refunds will be credited to the customer's credit card and debited from the prepaid tolls bank

account. Check refunds will be written from the refund account and those sums shall be removed from the prepaid tolls and tag deposits bank accounts.

Credit card charge-backs (e.g. after resolution of customer disputes by the issuing banks) will be debited from the customer account balances and the funds debited from the prepaid tolls bank account. ACS shall provide all relevant evidence to the issuing banks in support of valid charges to customer accounts and shall endeavor to prevent unwarranted charge-backs.

ACS shall provide reconciliation reports to the Agencies concerning all returned checks, refunds and credit-card charge-backs on a monthly basis.

#### **4.1.1.85.2.4.8 Reconciliation and Settlement of Reciprocity Transactions**

ACS will establish a bank account to receive payments due to the ETC Group's Agencies from away Agencies. In all settlements of reciprocity transactions ACS must comply with all IAG agreements relating to same and with current IAG Specification 1.51 and its subparts which include:

1. Inter-Customer Service Center Interface File Specifications (CSC 1.51c, 12/12/2001).
2. Facility Operator to Customer Service Center Interface File and Reporting Specifications (FO 1.51c, 3/8/2002).
3. Inter-Customer Service Center Interface File and Reporting Specifications (CSC 1.51d, 6/12/2002).
4. Inter-Customer Service Center Settlement Report Specifications Non-Toll Activity (IAG-N) (CSC-N 1.51a, 8/23/2001).
5. Inter-Customer Service Center Settlement Report Specifications (CSC-R 1.51a, 8/23/2001).

#### **5.2.4.8.1 Tolls Settlement**

Upon receipt of IAG settlement reports from away Agencies, ACS shall verify the accuracy of the away Agencies' settlement reports. Upon verification ACS shall make payment to away Agencies for tolls incurred by ETC Group Agency customers by wiring payment from the prepaid tolls bank account, in accordance with the Performance Standards.

ACS will prepare and send IAG settlement reports to the away Agencies for payment, within the times set forth in the Performance Standards. On a scheduled basis consistent with Section 8 (Reports) of this scope of work, ACS will prepare, maintain and forward to the NJTA reports concerning the amounts collected, owing and past due from each away Agency. All payments received from the away Agencies shall be deposited into the bank account established by ACS to receive payments due to the ETC Group's Agencies from away Agencies. ACS shall wire these funds to the applicable Agency on the next business day.

#### **4.1.1.1.25.2.4.8.2 Credit Card Fee Settlement**

On a monthly basis, ACS will calculate the amount of credit card fees that are to be billed to away Agencies in accordance with the IAG documents attached as Exhibit B ("Calculation of Credit Card Fees for Reimbursement to Home Agencies" and "Policy Statement – Reimbursement of Credit Card Fees"). ACS will prepare and send statements to the away Agencies for payment pursuant to the calculations in the form set forth therein and shall

direct all payments to the respective ETC Group Agencies. On a monthly basis, ACS will prepare, maintain and forward to the NJTA reports concerning the amounts collected, owing and past due from each away Agency.

Upon receiving credit card fee payment requests from the away Agencies, ACS shall verify the mathematical accuracy of the away Agencies' payment requests and compliance of same with IAG requirements. Upon verification, ACS shall prepare and submit a disbursement certificate to NJTA. ACS shall make payment to the away Agency, upon receipt of payment by the NJTA pursuant to the disbursement certificate.

### **4.35.3 Violation Processing Functionality**

The table below sets forth business rules for processing of specific violation types:

<b>Violation Type</b>	<b>Business Rule</b>
Violation with a tag number where an "invalid account" becomes a "valid account" before posting of the toll transaction is attempted. See enforcement rules.	Image need not be viewed. Toll transaction is posted to the customer account.
Violation with a tag number where account remains an invalid account when posting of the toll transaction is attempted.	Image viewed. Toll transaction shall not be posted to the customer account. Name and address will be Requested from DMV or taken from database if permissible. Violation notice will be sent for each violation (toll plus fee).
Violation without a tag number.	Image viewed. ACS shall first attempt a license plate match against customer license plate file. If match found, toll transaction shall be posted to valid customer account. If no match found, ACS shall then attempt to match license plate to the violation database or relevant DMV to acquire name and address of violator. If name and address is acquired, then ACS shall issue a violation notice (toll + fee).

### **4.1.15.3.1 Reconciliation of Image File and Violation Data Files**

ACS shall verify that the lane control computers shall transmit images to the VPC. Violation data files shall be transmitted to the VPC via the agencies Host servers. On a daily basis, ACS shall match all images received at the VPC with all violation data files received at the VPC.

#### **4.1.1.15.3.1.1 Host/VPC Reconciliation**

Vector will support the generation of a Host reconciliation report by transmitting the appropriate codes to the agencies Host.

#### 1.1.1.25.3.1.2 Image Review Process

ACS shall review each image twice and key the license plate number twice. Separate operators will perform each review for quality assurance. ACS will apply plate-configuration and plate-type edits to the license plate field before sending requests to the various state DMVs.

ACS will apply the applicable enforcement rules when determining whether an image should be rejected. The host reconciliation file will include transactions for rejected images and will include the reject reason entered by the image review clerk when rejecting the image.

#### 1.1.1.35.3.1.3 Customer Account Debit

ACS will process the violations where a tag number was captured and attempt to post the transaction, as long as the tag was not reported lost or stolen.

ACS will apply the applicable enforcement rules in determining the point at which failure to replenish a customer account will be considered a violation.

ACS will post the transaction to the customer's account when the customer is identified through the license plate match process, the name and address match process or the Dispute Form C Resolution process.

#### 1.1.1.45.3.1.4 Name and Address Acquisition

ACS will utilize and maintain its agreements with the DMVs of the District of Columbia, five Canadian provinces and all states except New Jersey. ACS will request names and addresses from all DMVs that the agencies require. With respect to New Jersey, the Agencies will utilize their own arrangements with NJ DMV, under which ACS shall be authorized to request information. DMV fees will be a pass-thru cost.

ACS will utilize existing databases where available and where the applicable DMV agreement allows, will compile for purposes of re-use all names and addresses acquired from a DMV by adding them to a violator database. The NJTA retains proprietary rights in the violator database, which shall be maintained and updated to the maximum extent permissible under the DMV agreements.

#### 1.1.1.55.3.1.5 Noticing

For the violation notification process, ACS will provide the following:

- The first notice will contain the violation image on the front of the notice and the dispute form on the back of the notice, and shall contain all information currently provided as of the date of this contract. During the transition period, ACS shall revise the text of the existing first-notice form as prescribed by NJTA not later than 90 days prior to the Cut-Over Date.
- Second notices shall be sent, at the discretion of ACS, no later than 45 days after the mailing of the first notice, per violation. Images will not be included on the second and subsequent notices. All outstanding violations as of the date of the second notice are to be included in the notice.
- The issuance of subsequent notices will be tested but not implemented on a regular basis without the concurrence of NJTA.

- Current and updated violation information, including individual violation history and status, shall be available in a secure manner on the ACS Web site.

### **5.3.1.6 Payments and Disputes**

Violation payments will be processed in the ACS lockbox department along with the replenishment payments. ACS may for its administrative convenience, establish separate post office addresses for different types of payment. Payments that do not match the amount due on the notice must be reconciled. Violation payments shall be deposited, by means of armored car service within one business day of receipt, into bank accounts designated by NJTA. ACS shall provide reports to the Agencies that summarize violation payments by Agency, which information shall be simultaneously transmitted as a data file to the depository bank in order to expedite transfer. NJTA will authorize transfer of the funds indicated in the ACS violation payment reports, from the designated bank account to each Agency. The host reconciliation file will include payments at the violation transaction level.

Violation disputes will be handled by properly trained personnel within the CSC call center and the correspondence department, who have been specifically trained in the application of the enforcement rules and made subject to confidentiality agreements with respect to same. A sufficient number of Customer Service Representatives shall be cross-trained in violation dispute processing to handle peak volumes. Violation dispute processing services shall be provided during all hours of operation of the CSC call center. ACS shall allow a violator or customer to dispute the violation over the phone without requiring the dispute to be furnished in writing. ACS shall maintain accurate and complete electronic logs as to the time and substance of any verbal (i.e. walk-in or telephonic) response to the notice of dispute. ACS shall notify the customer in writing of its decision regarding all disputes, within the time required by the Performance Standards. If resolution of the dispute requires supporting documentation, the customer will be instructed to provide same and advised that the dispute cannot be resolved until required documentation is provided.

### **4.1.1.75.3.1.7 Returned Checks and Refunds**

A returned check bank account, pre-funded by the Agencies, will be established and this balance will be drawn down as returned checks are debited. ACS will then reverse the violation payment on the database and will provide a returned check report at the violation level so the Agencies can fund the account according to the violations associated with the returned checks.

A refund bank account will be established. Refunds will be calculated and accumulated for processing on a semi-monthly basis or more frequently if directed by NJTA in a particular situation. As part of processing, ACS will provide a report to the Agencies detailing the amount of money needed from each in order to fund the refunds. Check refunds will be drawn upon the refund account and mailed within five business days after the appropriate funds have been transferred to the refund account by the respective Agency. The refund transaction will be reflected on the violations database.

### **4.1.1.85.3.1.8 Three-Strike Rule**

Processing of violations occurring in ACM (Automatic Coin Machine) lanes is outside the scope of this contract.

### 5.3.1.9 In-Lane Speed Violations

ACS will provide an in-lane speed violation noticing system in accordance with Exhibit C. The system shall provide for escalation of warnings and for suspensions at such time and at such levels as shall be authorized by NJTA. Private accounts will accumulate violations at the account level and commercial accounts will accumulate violations at the tag level. ACS will process appeals received from customers, in the same manner as violation disputes.

### 5.3.1.10 Gross Class Mismatch Processing

Gross Class mismatch processing will be performed in accordance with enforcement rules prescribed by NJTA. Data and reports shall be provided in accordance with Exhibit C

## 5.4 CSC/VPC Facility Implementation

This section generally describes the work involved in the transition of the prior New Jersey Regional Consortium CSC/VPC into one integrated system operated by ACS.

### 1.1.15.4.1 The CSC/VPC Facility

The principal CSC/VPC site shall be established at the location that has been approved by NJTA, and shall include adequate first floor space for a walk-in customer service facility and dedicated customer-parking spaces. ACS may provide non customer contact support activities at other facilities.

### 1.1.25.4.2 The CSC/VPC System

The CSC/VPC system shall provide for direct interactions between customers and CSC representatives, and the back office daily processing functions, in all respects sufficient to provide all required Services. Vector currently includes the following subsystems and functions:

Vector Subsystems	
Vector Subsystem	Description
Customer Account Management	The customer account management system encompasses the functions and processes including: account establishment; account maintenance; account financial, and account history.
Device Inventory Management	Device inventory management is the process of ordering, receiving, tracking, and assigning devices for use when an account is opened or updated.
Transaction Process Management	The transaction processing management subsystem provides key functions including: device status generation; transaction processing; transaction posting, and reconciliation.
Financial Processing Management	The financial processing management subsystem provides key functions including: one-time payment processing (credit card rebill); recurring payment processing (cash, check, or credit card); and CSR financial reconciliation.

<b>Vector Subsystems</b>	
<b>Vector Subsystem</b>	<b>Description</b>
Violations Enforcement Management	The violations enforcement management subsystem provides for the three different types of violations and/or warnings: <ul style="list-style-type: none"> <li>• Toll evasion (TE) (non-payment of toll);</li> <li>• Class mismatch (CLMM) (vehicle class of AVI device differs from that sensed in lane);</li> <li>• Speed violation (excessive speed in the lane).</li> </ul>
Systems Administration Management	The systems administration management subsystem provides key functions including: security functions (user controlled access) and information maintenance (personnel authorization).

ACS' system shall at a minimum have the same level of functionality as the high-volume CSC presently in operation at E-ZPass New York. All back-office systems shall be housed in a secure facility operated by experienced ETC and system professionals.

The system and services sizing for the integrated CSC/VPC shall be based upon projected traffic volumes, customer base, and reciprocity transactions. The system and services shall be sized so as to accommodate a reasonable growth volume without an increase in price. In addition, the system must be scalable to accommodate growth for the term of this contract.

The CSC will receive "home" transactions and violation data from three agencies: the New Jersey Turnpike Authority, the New Jersey Highway Authority, and the South Jersey Transportation Authority.

Following system installation, ACS shall perform system configuration testing, witnessed by NJTA, so as to verify the environment stability and network connections. This testing shall be satisfactorily completed prior to any operational testing.

## 5.5 Operations Transition and System Conversion

### 5.5.1 CSC/VPC Operations Transition

Outlined below is a list that generally identifies the transition tasks within each operational department of the CSC/VPC. ACS shall update and review the status of all relevant tasks with the Agencies at every project status meeting.

<b>Tasks And Related Assumptions</b>		
<b>Department</b>	<b>Task</b>	<b>Assumptions</b>
Tag Inventory and Distribution	<ul style="list-style-type: none"> <li>• Purchase high-volume postage machine.</li> <li>• Transfer tag inventory from existing CSC (in phases).</li> <li>• Conduct physical inventory reconciliation and entry into VECTOR database.</li> <li>• Transfer Mark IV tag</li> </ul>	<ul style="list-style-type: none"> <li>• Purchase of new tag programmers is not required.</li> <li>• Some tag programmers will be transferred from JP Morgan Chase to ACS prior to the day of transition. The remainder will be transferred after transition.</li> <li>• Tag inventory will be transferred in phases to ACS in coordination with JP Morgan</li> </ul>

Tasks And Related Assumptions		
Department	Task	Assumptions
	<ul style="list-style-type: none"> <li>programmers.</li> <li>• Arrange pick-up schedule with local post office for outgoing tags.</li> </ul>	<ul style="list-style-type: none"> <li>Chase to ensure that the required inventory is on site prior to the transition. The remainder of the tags can be transferred directly after transition.</li> <li>• The PO Box on the tags will be transferred to ACS.</li> </ul>
Call Center	<ul style="list-style-type: none"> <li>• Purchase telephone system and voice response system.</li> <li>• Order/install telephone lines.</li> <li>• Establish TDD/TTY capability.</li> <li>• Document IVR script and identify telephone CSR queues.</li> <li>• Program and record IVR script in English and Spanish.</li> <li>• Re-point existing 888 telephone number to new CSC.</li> <li>• Identify plan to test re-point of 888 number prior to startup.</li> </ul>	<ul style="list-style-type: none"> <li>• The existing 888 phone number will be transferred from JP Morgan Chase to ACS, in order to eliminate the need for sending out stickers, changing New Jersey signboards, and a major marketing campaign for customer notification.</li> <li>• Spanish is required for the VRS script.</li> </ul>
Correspondence	<ul style="list-style-type: none"> <li>• Order/install fax server.</li> <li>• Establish new PO Box number for correspondence.</li> <li>• Establish new fax number for CSC fax server.</li> <li>• Transfer in-process correspondence to ACS at transition.</li> </ul>	
Lockbox	<ul style="list-style-type: none"> <li>• Establish new PO Box number for payments and applications.</li> <li>• Purchase remittance processing and mail opening equipment.</li> <li>• Transfer in-process payments and applications to ACS.</li> <li>• Negotiate agreement/pick-up schedule with armored courier.</li> </ul>	
Violations	<ul style="list-style-type: none"> <li>• Establish new telephone number for violation calls.</li> <li>• Transfer in-process payments and correspondence to ACS.</li> <li>• Identify DMV request requirements.</li> <li>• Establish new DMV agreements or modify existing ones.</li> </ul>	
Finance	<ul style="list-style-type: none"> <li>• Establish required bank accounts.</li> <li>• Establish communications link to credit card processor.</li> <li>• Acquire credit card merchant IDs.</li> </ul>	
Walk-in	<ul style="list-style-type: none"> <li>• Establish site co-located with main processing center.</li> <li>• Determine required hours of operation.</li> </ul>	

Tasks And Related Assumptions		
Department	Task	Assumptions
Web site	<ul style="list-style-type: none"> <li>Finalize requirements for Website address.</li> </ul>	<ul style="list-style-type: none"> <li>NJTA will arrange for forwarding of Website hits from existing address (e-zpass.com) to new address (ezpassNJ.com).</li> </ul>

### **1.1.25.5.2 Conversion and Software Modifications**

ACS shall implement timely and seamless conversion using the ACS Vector-based integrated CSC/VPC software system with a minimal impact to E-ZPass customers.

#### **1.1.1.15.5.2.1 Conversion**

ACS must develop a conversion specification document, which includes the data elements, format, controls, and frequency of data exchanges required from the current vendor. The Terminated Contractor is expected to submit the information requested in the conversion specification to ACS on schedule in order for a successful conversion to occur. The conversion specification includes those data fields required for processing account and customer information. The required data includes account information, devices, inventory, plans on accounts, plan trip history, transaction history (including tolls), financial information and receivables, and appropriate reciprocity-related transaction information. The NJTA will utilize reasonable efforts to facilitate the data transfer between JP Morgan Chase and ACS.

ACS will convert up to 12 months of all available financial and historical transaction data on each customer's account.

The final conversion for Cut-Over to live operations shall commence in accordance with the schedule contained within this scope of work and will require several processes to stop for up to a week prior to the Cut-Over weekend. These processes include toll transactions, reciprocity transactions with other agencies, violations and image review, applications, payments, credit card re-bill, correspondence, refunds, and account closure. ACS shall develop a detailed Cut-Over schedule and plan and submit same to the authority not less than ten (10) days prior to the beginning of final conversion to Cut-Over.

#### **1.1.1.25.5.2.2 Software Modifications**

The most current deployed version or release of the Vector Software shall be made available, at no additional cost, other than the cost of customization and implementation. ACS will support timely software modifications to accommodate NJTA business rule changes. These modifications shall be implemented upon NJTA approval as agreed upon between ACS and NJTA. ACS shall make every reasonable attempt to abide by the priorities as defined by the NJTA to provide the requested software modifications. ACS shall make available to NJTA, sufficient resources (programmers and other necessary resources) so as to provide NJTA with software modifications on a "priority" basis. ACS shall provide software release notes to the NJTA describing modifications after in-house test and prior to release.

### **1.1.35.5.3 Testing**

The purpose of the described testing is to verify the capability of the various components for Cut-Over and to establish operational readiness for system functionality and data integrity.

The different phases of testing are described in further detail below. ACS will perform evaluations and will provide reports to the Agencies on test results, status, and readiness. All testing must be performed using ACS developed Vector test scripts approved by the E-ZPass Quality Management Team within three business days of receipt or with specific comments so as to mitigate any delay to ACS testing. The NJTA reserves the right to witness all testing. The E-ZPass Quality Management Team reserves all rights to participate in the testing of the CSC/VPC readiness before its deployment.

**4.1.1.15.5.3.1 Configuration Testing**

The purpose of the configuration testing is to verify the functionality of the hardware installation. Configuration testing occurs following the installation of the servers and software applications.

In addition to configuration testing, performance and user workload testing must also be conducted to measure and evaluate system response times, transaction rates and throughput capacity, and other time-sensitive requirements. Online testing of normal everyday tasks will occur. This test will be performed by ACS using test scripts developed for regression testing for designated transactions.

**4.1.1.25.5.3.2 Regression Testing**

Regression testing is to be conducted after any software release performed on behalf of the NJTA and/or conversion. ACS will identify the key high-risk areas as a subset of the regression testing areas listed below. These testing areas will be identified and the results shared with the Agencies for verification by NJTA of the successful operation of the CSC. Regression testing as defined by ACS must address all aspects of the New Jersey E-ZPass system, including but not limited to the following:

<b>Regression Testing</b>	
<b>System</b>	<b>Description</b>
On-line	ACS shall verify proper data acceptance, processing, retrieval, and the correct implementation of all requirements of the Scope of Work.
Web	ACS shall verify continuing functionality of the Web server in accordance with all requirements of the Scope of Work.
IVR	ACS shall verify continuing interface to the IVR server in accordance with all requirements of the Scope of Work.
External Interfaces	External interface testing shall ensure that drop boxes and IP addresses configured for exchanging files between E-ZPass home and away agencies will continue to function in accordance with the ICD and applicable IAG Specs. This testing may be accomplished during batch testing. Testing shall include; <ul style="list-style-type: none"> <li>• Inter/Intra-CSC connectivity,</li> <li>• Verification of Credit card re-bill and mail house interfaces.</li> </ul>
Reports	Actuate reports test shall verify that accurate reports of sample transactions can be generated.
Print Services	Print services test shall verify that online and batch profiles can be printed on MSWord and Jetforms.
Violations Batch	Testing shall verify that all the back-end processes work correctly and that command procedures, logicals, partitions and installation scripts are installed correctly on both the test and production systems.

Regression Testing	
System	Description
Reciprocity	Connectivity will be tested to verify continued validity of the relevant ICDs.

**4.1.1.35.5.3.3 Conversion Testing**

ACS will conduct several file conversions throughout the transition period. The first file conversion shall be conducted immediately upon receipt from the existing vendor. ACS shall analyze reports and verify that the data provided by the current vendor matches the data following conversion on the ACS system. Prior to Cut-Over, screen prints will be made of representative accounts from Chase's production system. After Cut-Over, the data for these accounts will be verified. Following conversion onto the Vector system, ACS will print a series of matching reports to verify the integrity of the data converted. Data conversion categories include but are not limited to: accounts by pay type, account plan detail, tags by type, plan balances, tag deposit, and re-bill conversion.

**4.1.1.45.5.3.4 End-To-End Testing**

The purpose of the end-to-end test (ETET) is to verify that the CSC/VPC and Host are integrated correctly and accurately reflect a complete day's normal operation system flow. ACS will validate through an end-to-end test that transactions are posted correctly and verified with reports correctly generated off the agency Hosts. Agency staff will witness end-to-end testing. Test results will be documented and distributed to the agencies.

**4.1.1.55.5.3.5 Operational Readiness Testing**

Prior to Cut-Over, operational readiness testing will be conducted and witnessed by the Agencies to verify that the integrated CSC/VPC is ready to offer the services described in this assessment, as to each of the Agencies. This testing will include transaction, reconciliation, correction, and tag status files transmitted to and received from a sample away agency's CSC other than ACS. Prior to Cut-Over, ACS will provide to the Agencies an Operational Readiness Test Plan for review and approval.

## 6. Work Programs – Lane Remediation Services and Maintenance Services

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ACS shall address lane remediation in a systematic fashion to ensure that the lanes are made reliable and that the nature of the lane errors is captured, identified, and remediated.

The work program includes remediation of 320 E-ZPass lanes and maintenance of 422 E-ZPass lanes on the Turnpike and Garden State Parkway. The three phases relating to lane improvement are briefly described below.

The Agencies will provide Maintenance Protection of Traffic (MPT) associated with lane remediation activities. The Agencies will provide all vehicles and drivers to be used during lane performance testing.

ACS shall abide by work hours prescribed by NJHA and NJTA respectively, with respect to the affected toll plazas, including night working hours where required by NJTA and/or NJHA. Allowable hours of lane closure are set forth as to NJHA and NJTA, respectively, in Exhibits D and E.

### **Phase I --Transition Phase**

During the remediation period, ACS will minimize lane downtime and will ensure that all lanes subject to remediation continue to function except when their removal from service is necessary for specific remediation activities.

### **Phase II -- Remediation Phase**

ACS will document the installation status to include improvements as a result of ACS remediation efforts of every lane remediated, as contained in this Scope of Work. The remediation strategy shall address the 320 lanes running with E-ZPass service in a dedicated mode.

### **Phase III – Buildout Services**

Upon completion of the Remediation Phase, ACS shall work with the agencies to develop a scope of work for Buildout Services.

Buildout Services may include any or all of the following and such other Services as may be agreed upon:

- Installing integrated "ticketed toll" systems including new processing equipment on the New Jersey Turnpike.
- Adding and/or commissioning E-ZPass lanes to include Hi-Speed E-ZPass lanes and the addition of Interchanges 77 and 89 on the GSP.

- Applying lane and plaza upgrades and improvements, including mixed mode lane operations.

## **6.1 Transition Phase**

### **6.1.1 Baseline**

ACS shall "baseline" all lanes to be remediated, as part of the transition phase. This shall include the following: completion of necessary site surveys of each of the toll lanes to be remediated; collection of drawings, photographs, and written documentation to delineate equipment and software component make and model, component positioning and separation distances, equipment condition, and software versions; and development of a baselining database to capture all data and information for all lanes to be remediated. ACS will provide interim submissions of the baseline documentation at bi-weekly program status meetings. Upon completion, the baseline database will be delivered to the Agencies for record purposes.

#### **1.1.26.1.2 Parts and Equipment Procurement**

For purposes of this initiative, ACS should assume that the Terminated Initial Contractor's inventories are not available for ACS use. ACS will procure all necessary parts and equipment for lane remediation on a cost plus reimbursable basis.

#### **1.1.36.1.3 System Design Review**

ACS shall undertake a comprehensive exercise to examine the existing software applications that control the lane system operations. ACS must establish a simulated toll lane/plaza environment, review design documentation, and analyze source code so that ACS software engineers can efficiently implement changes to lane software code. Prior to release in a production environment, ACS will submit software release notes to the agencies representatives for approval. The simulated environment will be established at the ACS technology center in Rockville, Maryland.

#### **1.1.46.1.4 Requirements**

ACS shall work with Agency staff to determine the correct operating mode of each lane. ACS shall consolidate and provide both technical and executive level information that relates to current system performance. This information may be available from reports, studies, and tests that the Agencies have already undertaken. Information may also be derived from various ACS reviews and studies of the New Jersey toll roads. In some instances, ACS may need to conduct additional tests to collect data. The resulting consolidated set of data will help provide a benchmark of current system performance at the start of this engagement. All collected data will be shared with the agencies.

ACS will also prepare and present to Agency staff its plan for assessing final lane performance. Critical areas such as AVC, AVI, and VES performance will be recorded and reported. The format, detail, and depth of these benchmark assessments will be planned with and agreed to by the NJTA during the transition.

### **1.1.56.1.5 Software Licenses**

ACS will compile from the Agency staff software documentation, including purchase records and licenses of third-party software. Agency staff will provide source code of desired agency custom-developed software, to the extent that the Agencies own the rights to this source code under agreements with existing contractors.

ACS has been provided copies of AVC system logic and VTDM system source code to the extent that the Agencies own the rights to the source code. As source code and related documentation are made available, ACS will verify that these items represent the current versions in use, and if versions are missing, ACS will recommend to the Agencies how to proceed. ACS will purchase all required licenses, software and hardware to complete the plaza, host, and lane test environment in the Transportation Technology Center in Rockville, Maryland. Upon completion of lane remediation ACS will deliver to the agencies all lane source and object code owned by the agencies developed and/or modified as part of this contract. A complete description of the development environment will accompany the delivery of any source and object code.

### **1.1.66.1.6 Logistics**

The Agencies' toll roads have different rules with respect to contractor access to and control of toll lanes and plazas. ACS will meet with Agency staff to fully document and understand the existing overarching rules and each individual Agency's rules for engagement. This will include:

- Plaza and lane access procedures,
- Lane closure notification requirements,
- Lane closure procedures, and
- Traffic protection rules and procedures.

ACS must adhere to all Agency safety rules and operational procedures.

### **1.1.76.1.7 Transition Report**

Upon completion of all base-lining efforts, ACS shall provide the Agencies with a report summarizing the findings of the base lining as outlined above.

## **1.26.2 Remediation Phase**

The remediation strategy is organized into two rounds. Should some unique circumstances become uncovered during these early rounds, ACS must be prepared to fine-tune specific lanes requiring additional attention. Extreme care will be taken to ensure that lanes are properly checked after any changes to verify that the lanes are performing adequately before being returned to service.

## **4.1.16.2.1 Remediation Actions-Round One**

### **6.2.1.1 AVI Configuration**

As part of the study program, Mark IV conducted an engineering review of the AVI performance. Specifically, various reader and antenna configuration settings were analyzed to determine how the current contractor had set them. Mark IV analyzed variations to these settings to provide recommendations on any further adjustments. Those recommendations will be provided to the agencies prior to implementation.

As a result of this initial assessment, some configuration adjustments will be needed to improve performance. ACS (utilizing Mark IV as a sub) will re-tune the system with new parameters that will reduce the incidence of "skip reads", and "cross-lane reads", and will increase the capture zone in the upstream direction. ACS will ensure all AVI Readers are correctly configured and administered. ACS team will implement the configuration adjustments to the 320 E-ZPass lanes and share same with the agencies. Upon completion, ACS team will test each lane for operational performance in a non-degraded mode. Each lane test may be witnessed by agency staff.

### **4.1.1.26.2.1.2 AVI Cabling**

Several serious problems with antenna cable installation have also been identified. In some instances, the cables between the reader and antenna exceeded the manufacturer's specifications that can lead to intermittent transmission problems. In many instances, "synch" cables connecting multiple readers at the same toll plaza were never installed, which contribute problems to reading transponders. In some instances, the cable placement itself was questionable (e.g., near power lines or lighting fixtures), which can affect the transmission of data along these antenna cables.

ACS will undertake a lane-by-lane review of the AVI cabling and make corrections and/or revisions including the re-routing of cables where necessary. As part of this remediation effort, ACS will also make sure all cables are properly terminated and connectors are properly affixed. ACS may assume that 10 percent of the lanes will require this cabling work. If this percentage is higher, a change order will be required to cover the additional costs. ACS will provide each agency a report detailing the results of the remediation.

### **4.1.1.36.2.1.3 AVI Guard Lanes**

It is critical that in some situations, such as plazas with more than one reader or plazas with satellite lanes, to install "guard" lanes to help minimize the incidence of "cross-lane reads" in adjacent lanes. ACS has confirmed through their own observations that the guard lanes were either missing or simply not operational. The initial system design did provide for the inclusion of these guard lanes.

Based on the recently conducted review by Mark IV, ACS will install the recommended guard lanes. Such guard lane installation requires the use of one of the lane slots in the existing reader and, depending on the current reader capacities, may require the procurement and installation of additional readers on a cost plus reimbursable basis.

#### 1.1.1.46.2.1.4 Lane Software

Two major versions of the lane software currently exist: the Phased Deployment (PD) version and the Final Deployment (FD) version. The NJTA believes that in fact multiple variations of each version are installed in lanes. These variations will be included in the baseline database report provided to the agencies. However, limited information is available to demonstrate the procedures currently in place for configuration management are reliable.

The NJTA believes that the FD version of the lane software is stable and operational in several lanes. ACS will test and verify performance of this latest FD version. ACS will then roll out the FD version of the lane software during the first round of remediation. This work will be done in conjunction with the AVI tuning remediation activity.

#### 1.1.26.2.2 Remediation Actions - Round Two

The round two remediation activities will require more work and greater lead time than the work elements included in round one. While work will begin early in the engagement (parallel with round one activity) round two remediation activities will be rolled-out later in the remediation program. Round two changes include a new release of lane software to incorporate software modifications that address round two lane remediation actions including the addition of the exit loops and light curtain adjustments.

#### 1.1.1.46.2.2.1 Exit Loop Addition

The ACS engineering team identified to the NJTA that vehicle framing is a significant problem with the current lane system deployed on the Turnpike and Parkway. Since an E-ZPass lane can be processing three to four vehicles at one time, it is imperative for the lane to accurately track the status of each vehicle. The lane must be able to associate the proper tag read with the proper associated vehicle, match the image with an untagged vehicle, and link the appropriate message to the untagged vehicle. Typically, a combination of devices tracks vehicle positions while the lane software is designed to quickly recover from out-of-synch conditions that typically occur in unattended lanes that are processing high volumes of traffic.

ACS observed and has advised that the current system relies heavily on the Doppler radar mechanism to determine vehicle position and framing. Decisions based on data from the Doppler radar and the light curtain do not appear sufficient for associating E-ZPass tag reads to the corresponding vehicles. ACS also observed and advised the NJTA that the lane software appears to "hang up" when it loses track of vehicles. When it recovers it seems to process these queued transactions improperly.

ACS will install an exit loop in each lane near the trailing edge of the collection point to provide an additional reference point for proper tag assignment. If any loops exist in the lanes, and are suitable for re-use, ACS will use the existing loops. If the loops are not suitable, they will be replaced by ACS upon approval by the NJTA.

ACS will include the exit loop functionality into the new version of lane software that will make use of the signals from the exit loop, in conjunction with other sensor devices, to improve tracking of vehicles in the E-ZPass lanes. This improvement is expected to result in more accurate transactions records. This new version of software release will also seek to improve the handling of recovery processes for instances when out-of-synch conditions

occur in the lane-processing logic. Using the FD version of the software as the base, ACS will engineer further improvements and additional functionality to provide a more efficient and reliable lane software. These improvements will be prototype tested at an agency provided lane and witnessed by agency staff prior to deployment. Prototype test scripts will be provided five days prior to commencement of the prototype test.

#### **4.1.1.26.2.2.2 AVC Light Curtain Logic Changes**

ACS observed and related to the NJTA that there were several situations where the lane software appeared to incorrectly sense the presence of a vehicle, presumably triggered by a person entering the field of view of the light curtain device.

The ACS engineering team will improve the lane performance by improving the light curtain logic. ACS will review the lane software to determine if the latest FD versions properly interpret light curtain messages to filter out instances of non-vehicle presence. If this is not found to be the case, ACS software engineers will seek to make further improvements in this area. As a parallel activity, ACS will explore lane software modifications to improve how AVC sensor messages are handled. Using the FD version of the software as the base, ACS will engineer further improvements and additional functionality to provide a more efficient and reliable lane software. These improvements will be prototype tested at an agency provided lane and witnessed by agency staff prior to deployment. Prototype test scripts will be provided five days prior to commencement of the prototype test.

#### **4.1.1.36.2.2.3 VES Rear Camera Installations**

While conducting baselines during the study program, ACS also observed and advised that VES cameras for capturing rear license plates were not present in all lanes. These lanes will be identified in the baseline database report. Although camera housings were installed, it appeared that the cameras had not been installed in some of these housings during the implementation (or, had been subsequently removed as a spare part for use elsewhere). ACS will install rear cameras where necessary.

#### **4.1.1.46.2.2.4 VES Rear Camera and Lighting Adjustments**

ACS observed and advised that some cameras and lights were misaligned at several plazas. As part of assuming maintenance responsibility for the toll collection equipment, ACS will properly align all cameras and lights in the lanes. ACS will review each camera's horizontal and vertical positioning in reference to the license plate and make necessary corrections to the camera alignment.

#### **4.1.1.56.2.2.5 VES Front Camera Installations**

Very few lanes are outfitted to capture VES images for front license plates. ACS will install cameras and the associated auxiliary lighting in those lanes targeted for VES front cameras. Currently, Parkway lanes and Turnpike entry lanes are not targeted for VES front cameras. The installation will include the appropriate alignment and adjustments for optimal capture rates.

Given the limited installation of front cameras, ACS was not able in their study to validate that the existing lane software properly supports the capture, storage, and/or forwarding of these images. During the remediation effort, ACS will conduct necessary testing to verify that the existing lane software does perform front camera functions properly. If this is found not to be the case, ACS will implement changes to facilitate VES front camera operations.

#### **1.1.1.66.2.2.6 Benchmark Lane Test Assessment**

Once all remediation actions are complete, ACS will benchmark the performance of each lane, and their aggregate average will be in compliance with in lane performance standards. In-lane test scripts will be provided to agency staff for approval and in lane tests may be witnessed by agency staff. Performance standards will include, but not be limited to: customer violation rate, tag to vehicle framing under various conditions, and chronological vehicle sequencing under normal and degraded conditions. The results will be presented in an Executive level and a technical level report to the Agencies.

ACS will undertake remediation actions as required to insure that the aggregate average of all lanes meets the lane performance standards as cited in Section 9. The benchmark lane test assessment, reflecting that the aggregate average of all lanes meets the lane performance standards as cited in Section 9, represents the final work element of the lane remediation process and signals completion of this phase of the project.

If despite remediation any lane fails to perform within five percentage points of any of the Quantified Performance Standards established by the lane performance benchmark assessment ACS may identify such lane(s) to NJTA and recommend that same be excluded from the performance standards as set forth below. For each such lane, ACS shall provide a description of the remediation efforts attempted to that point and shall further recommend to the NJTA a course of corrective action to improve the lane's performance up to the lane performance standards.

At the discretion of the NJTA, each such lane may be excluded from further remediation effort. Any lane that NJTA determines should be excluded, shall then be excluded from the calculation of the aggregate average performance standards required to achieve the conclusion of the remediation effort. Those lanes not excluded will continue to be subject to post remediation efforts not to exceed 90 days and/or at the option of the NJTA, change order remedy.

The performance of any excluded lane will be benchmarked at the time of exclusion and maintained at that level until completion of post remediation, if any, at which time it will be benchmarked again and maintained to that benchmarked standard until such time that its performance can be improved through change order remedies.

### **1.36.3 Maintenance Services**

ACS shall provide maintenance services for the electronic toll collection system installed on the New Jersey Turnpike and the Garden State Parkway. Currently SJTA has a maintenance contract covering the maintenance of their lanes. NJTA reserves the right to include the maintenance of SJTA's lanes under this contract on a change order basis.

#### **1.1.16.3.1 Scope of Maintenance**

ACS shall maintain the following ETC System components:

- Peak Loop System, including controller unit
- Doppler radar
- Light curtains: 3, 5 and 10-foot models (corrective maintenance)
- Light curtain controller board

- SICK Overhead Laser Scanner (corrective maintenance)
- Lane controller computer
- LEC
- SLEC
- Lane application software
- Loop controller boards
- AVI reader and antenna (troubleshooting)
- Ergonomic mount and interface box
- Toll collector touch screen
- VES camera (corrective maintenance)
- Light curtains: 3, 5 and 10-foot models (preventive maintenance)
- SICK Overhead Laser Scanner (preventive maintenance)
- Loops
- VES camera (preventive maintenance)
- VES Lighting

The Agencies will maintain those ETC System components they are presently maintaining and those not enumerated above. ACS and NJTA agree that during the Contract term, they will negotiate in good faith with respect to the transfer of non-proprietary items of maintenance to the Agencies, insofar as may be practicable in light of applicable performance standards, and will provide training services with respect to such transfer of tasks if and as requested. ACS and NJTA agree that any such transfer of responsibility, and the costs of required training, will be done by change order.

#### 4.1.4.16.3.1.1 Type of Maintenance

ACS shall provide Corrective and Preventive Maintenance services to NJTA.

Corrective Maintenance activities shall be provided to repair or restore the system to normal operating conditions when problems occur. Corrective Maintenance shall be broken down into categories based on the severity of the problem as follows:

- **Priority 1** – instances that cause excessive traffic congestion, create an unsafe traffic condition or prevent the ability to collect toll revenue;
- **Priority 2** – instances that affect operation of the lane that are apparent to the motoring public;
- **Priority 3** – All other ETC failures.

Preventive Maintenance activities shall be based on a preventive maintenance schedule developed in conjunction with the manufacturer's recommendations for the various components in a toll operation environment and shall include such actions as visual inspection, cleaning, adjustment, lubrication, and parts replacement. In the event that the manufacturer offers a PM schedule for both typical and heavy usage, these schedules will be written to reflect heavy usage. PM Schedules shall be submitted in advance to the NJTA for approval.

ACS shall use historical maintenance data and vendor mean time between failure forecasts to predict maintenance needs based for certain component replacements before failures occur.

ACS shall accommodate NJTA requests for OJT type and field type instruction for its technicians of hardware maintenance. Formal classroom training will be made available to the NJTA at their request as a change order to this contract.

Design and installation of system upgrades and enhancements are not considered part of the basic maintenance service. ACS will provide assistance to identify requirements for possible upgrades and enhancements, and can assist with these activities when directed via an appropriate Change Order.

#### **1.1.1.26.3.1.2 Spare Parts and Equipment Management**

ACS shall establish a program for managing Spare Parts and Equipment in a secure manner that includes record keeping of inventories, determination of reorder points, maintaining supplier information, and conducting parts acquisition and distribution. ACS shall establish a maintenance facility to store Spare Parts and Equipment, but also anticipates that NJTA will make available where possible space at plazas for storing key components that may be critical to responsive repair service. ACS shall be responsible for stocking Spare Parts and Equipment at the NJTA facilities and shall maintain same in a manner that does not interfere with NJTA operations. ACS shall manage Spare Parts and Equipment on a "first-in, first-out" basis so as to maximize the availability of manufacturers' warranties that commence on delivery. ACS shall also conduct a "burn-in" test of not less than one hour (for touch terminals, eight hours) as soon as practicable so as to determine the initial functionality of all Spare Parts and Equipment, and shall return all defective Spare Parts and Equipment to the respective manufacturers for replacement.

#### **1.1.1.36.3.1.3 Staffing**

ACS shall determine its need for technicians, supervisors, and administrative support and staff accordingly to provide these maintenance services. ACS may use various subcontractors to assist with delivery of these services in order to provide NJTA with a quality and cost-effective maintenance program. These staff will be appropriately trained in order to provide these maintenance services for the various system components. ACS will share an organization chart with NJTA so they are aware of the staffing assigned to this maintenance service in the field. NJTA will be apprised of changes to the staffing levels.

#### **1.1.1.46.3.1.4 Performance**

ACS shall establish a maintenance service program that includes coverage 24 hours a day, 7 days a week, 365 days a year. On-site coverage will be provided on non-holiday weekdays between the hours of 7 a.m. and 7 p.m., with on-call service provided for the other hours.

Response time shall be the elapsed time between notification from NJTA to the ACS dispatcher and the time ACS calls ETC Maintenance Control at the time of the technician's arrival on site. If the problem is of a software nature or otherwise of a type that can be resolved remotely, response time shall be measured as the time from notification until the technician logs into the relevant system, at which time the technician shall call ETC Maintenance Control to advise.

Priority 1 and 2 repairs shall be performed on an expedited basis. Technicians shall be furnished with sufficient tools and Spare Parts and Equipment, or such Spare Parts and Equipment shall be conveniently prepositioned, so as to expedite repairs. Properly marked

ACS maintenance vehicles shall be permitted to utilize the shoulders of the roadways to respond to calls when circumstances dictate and such use can be safely made.

ACS shall respond to Priority 1 service calls within 2 hours of notification from NJTA, to Priority 2 service calls within 3 hours, and to Priority 3 service calls within 4 hours unless otherwise directed as a non-priority by the ETC Maintenance Center. ACS will respond to emergency service calls as quickly as possible not to exceed one hour. Emergency service calls are not anticipated to exceed five annual calls. Beginning with the calendar month that follows the 60<sup>th</sup> day after assumption of full maintenance by ACS, whichever is later, failure to meet the response times set forth above (not including calls affected by exceptional traffic or weather conditions, widespread power outages, or widespread system failures outside ACS' control that prevent timely response), shall entitle NJTA to corrective fee reduction as follows:

Failure to meet Priority 1 response time, as measured on a monthly average basis, \$2,000.00 per hour rounded up to the next quarter hour by which the monthly average response time exceeds two hours, multiplied by the total number of Priority 1 calls during the month. (EXAMPLE: 25 Priority 1 calls during the month, average response time 2:20. Corrective fee reduction = \$2,000 X 1/2 hour X 25 calls = \$25,000)

Failure to meet Priority 2 response time, as measured on a monthly average basis, \$1,000.00 per hour rounded up to the next quarter hour by which the monthly average response time exceeds three hours, multiplied by the total number of Priority 2 calls during the month. (EXAMPLE: 25 Priority 2 calls during the month, average response time 3:35. Corrective fee reduction = \$1,000 X 3/4 hour X 25 calls = \$18,750)

The ACS representative shall immediately notify the NJTA ETC Maintenance Control Center if any required response time cannot be met in a particular case, the reason why, and the anticipated time of response. This notification shall not in and of itself, excuse any failure to meet a required response time.

NJTA will monitor performance of all toll lanes on a regular basis, and will do so in cooperation with, and support from, ACS. This monitoring will include assessing lane performance against a set of key metrics that will be mutually identified and agreed upon by NJTA and ACS. When lane performance falls outside these established metrics (e.g., violation rates exceed a certain percentage in a given lane), then ACS and NJTA will dispatch appropriate maintenance service personnel to troubleshoot and remedy the situation.

Following completion of remediation, remediated lanes shall be maintained throughout the term of the Contract so that the performance of each remediated lane shall be within five percent (percentage points) of each of the average performance values established by the lane performance benchmark assessment. Failure of a lane to meet performance standards, attributable to failure or malfunction of equipment not maintained by ACS, shall excuse failure to meet performance standards to the extent prevented by such failure or malfunction. To the extent observed by ACS in the course of its maintenance activities ACS shall advise NJTA as to equipment not maintained by it, that appears to be malfunctioning. For purposes of this Paragraph, "failure or malfunction" shall mean performance of equipment at a level below the manufacturer's standard specification (or "heavy use" specification if such is provided by the manufacturer) for such equipment.

#### 1.1.1.56.3.1.5      **Communications**

ACS will establish an 800 number telephone service available 24 hours a day, 7 days a week, 365 days a year for purposes of placing a service call to technicians. This 800 number will be answered by a qualified dispatcher rather than an electronic answering device. NJTA will ensure that calls are placed with all the necessary relevant information such as date and time of problem, location of problem, contact person, description of problem, etc.

NJTA will make available to ACS a single point of contact (e.g., a NJTA ETC Maintenance Control Center) for all instances where a maintenance service call is required. ACS will alert the NJTA ETC Maintenance Control Center when a failure is detected by ACS and its technician has been dispatched.

#### 1.1.1.66.3.1.6      **Reports**

ACS will make the following reports available to NJTA as part of its maintenance services program:

- **Availability** – monthly summary of the availability of the lane subsystem.
- **Call History** – daily, weekly, or monthly listing of all calls performed for the specified dates including problem reported, resolution, date and time of completion, technician assigned, and parts used. These calls include preventive maintenance activities.
- **Open Calls** – daily, weekly, or monthly listing of all currently open calls by lane or by call type. These calls include preventive maintenance activities.
- **Calls Exceeding Response Time** – daily, weekly, or monthly listing of all priority 1 calls that exceeded the repair and response time.
- **Inventory Reorder** – listing that indicates part number, vendor, manufacturer, current quantity on hand, and reorder points.

ACS will implement a Maintenance On-Line Management System (MOMS) for purposes of this record keeping. The MOMS will not be integrated with the existing toll system (for purposes of automated call logging); however, ACS will assess the possibility of that interface being incorporated at a later date and present such a proposal to NJTA for its consideration.

#### 1.1.1.76.3.1.7      **Maintenance Logistics**

ACS will maintain various maintenance facilities along the roadways, as determined necessary for technician staff activities, parts storage, record keeping activities, etc. ACS will equip its field technicians with vehicles, tools, telephones, computers, safety equipment, etc. as necessary for conducting its activities.

Where Maintenance and Protection of Traffic and extensive test vehicles and drivers are required to conduct certain activities, NJTA will make those services available to ACS.

#### 1.1.1.86.3.1.8      **Software Maintenance**

ACS will provide up to 4160 hours annually to support the lane application software covering such activities as troubleshooting, analysis, requirements definition, code development,

testing, and release management. ACS will use its Transportation Technology Center to provide these services, and will track these service requests in separate reports from the other maintenance activity reporting described above.

ACS will provide NJTA with release notes when a new version of lane software is to be installed. New versions of lane software will undergo appropriate testing at various levels: in the test facility at the Transportation Technology Center, in a test lane at one toll plaza, and then piloted in limited lanes at one toll plaza. NJTA personnel will be welcomed to participate in observing testing in the lanes and plazas. Upon reviewing results of testing, ACS will await approval from NJTA before then installing new versions of lane software to all other toll lanes. Software will be managed in accordance with the ACS software life cycle standards, which will be supplied to the NJTA upon award of this contract.

There will be instances when lane software changes require plaza and/or host software changes. These latter changes are the responsibility of NJTA maintenance services. In such instances, the ICD will be reviewed/modified in advance to identify these changes.

This lane software maintenance service assumes that NJTA will make available to ACS a test set up of all relevant lane, plaza, and host components for each particular roadway for which maintenance services are to be provided (as each roadway has different components and software in use).

#### **1.1.1.96.3.1.9 Interim Maintenance Services (T&M)**

During the time between authorization to proceed with maintenance and the commencement of the full maintenance services described above (assumed to be approximately 90 days), ACS will provide interim maintenance services to their best effort on a Time & Material basis. NJTA will identify lanes requiring interim maintenance upon authorization to proceed. Interim maintenance services will be gradually increased through the term of the anticipated 90 days so that all performance standards relating to maintenance will be capable of being met when full maintenance begins. These services will include all maintenance activities currently being performed by WorldCom. This will include all lanes in the process of being remediated and all lanes with the equipment identified in the Scope of Maintenance section that has been installed. Preventive Maintenance will only be performed on in use, operational equipment. Interim maintenance services will conclude upon completion of lane remediation services.

# 7. Schedules

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The schedules set forth in this scope of work addresses the fast-track implementation of an integrated CSC/VPC to support the Agencies and the remediation of 320 E-ZPass lanes.

ACS will establish a process whereby the New Jersey Turnpike Authority is provided regular schedule updates throughout the transition timeframe. Such changes will not require amendment to this Appendix.

The following schedules identify the major project milestones relating to the CSC/VPC implementation and lane remediation program.

## Lane Remediation

Begin Baseline Lanes and Documentation	8/19/02
Set up Lane/Plaza Test Benches and Source Code	9/12/02
Begin AVI Tuning	10/7/02
Begin Rollout of Software Ver. 4.0	10/7/02
Inventory Existing Components for Remediation	12/9/02
Complete Baseline Lanes and Documentation	12/17/2002
Complete Front VES Camera Installation	1/13/03
Complete AVI Sync Cables	2/12/03
Complete Rear VES Camera/Light Adjustments	2/19/03
Complete AVI Tuning & Configuration	2/28/03
Complete Rollout of Software Ver. 4.0	2/28/03
Commence CSC/VPC cutover	3/1/03
Begin Benchmark Lane Test Assessment	3/3/03
Complete AVI Guard Lanes	3/21/03
Complete Rollout of Software for Loops	3/21/03
Complete Exit Loop Installation	3/21/03
Complete Benchmark Lane Test Assessment	4/25/03

Note: Completion of the tasks identified by dates prior to the CSC/VPC cutover date are considered those that are critical to the CSC/VPC cutover. If determined that any remaining tasks will have any significant effect on lane performance, processing actions will be taken in CSC/VPC operations.

**CSC/PC**

Authorization to Proceed	8/2/02
Transmit Customer Service Center Specifications to JP Morgan Chase	8/9/02
Draft Scope of Work and business rules established	10/25/02
Commence regression & performance testing with test data	11/4/02
Sign facility lease	11/21/02
First complete 5 month history customer database delivery received from JP Morgan Chase	11/22/02
Enforcement rules, business rules and Statement of Work finalized	12/19/02
Agency and ACS prime contract complete	12/19/02
Refined and corrected 5 month history customer database delivery required from JP Morgan Chase	1/2/03
Twelve month complete customer database delivery required from JP Morgan Chase	1/31/03
Complete facility build-out	1/31/03
Begin CSR Training Classes	2/3/03
Begin Operational and Readiness Testing	2/18/03
Refined, corrected, updated twelve month + customer database delivery required from JP Morgan Chase	2/24/03
Commence CSC/PC cutover	3/1/03

**Table 14 Estimated CSC/VPC Statistics (as of May 31, 2002)**

<b>Category</b>	<b>Volume Provided by Agencies</b>	<b>Comments</b>
<b>Customer Activity</b>		
<b>Total Active Tags (as of 6/4/02)</b>	1.8 million	
Tags Issued Per Month	11,000/week combined	
Tags Returned Per week	1,500	
Tags Lost/Stolen Per Month	Unknown	
Average Tags Per Account	1.8	
Individual Accounts		
Commercial Accounts		
Number of Active Accounts (Includes all accounts)	1,000,000	
Individual Accounts	980,000	
Prepaid Commercial Accounts	16,000	
Postpaid Commercial Accounts	600	All companion accounts – prepaid acct required, either home or away
Non-Revenue Accounts	1,500	
Number of Accounts Opened Per Month	25,000-28,000	<i>To date, accounts opened via:</i> 2.6% Secaucus walk-in 1.3% Mobile Van 2.5% Del Dot walk-in 1% AC walk-in 51.9% Web 17.5% Phone 23.1% Mail-in
Replenishment Payment Transactions Per Month		
By Credit Card		Assumes 1 per month per account
By Check	18,000	
Accounts Closed Per Month	Unknown	
Refund Transactions Per Month	Unknown	
Accounts Revoked Per Month	Unknown	
Number of Credit Card Charge backs Per Month	Unknown	
Hours of Operation - Walk-in Center	7am-7pm M-F	
Walk-Ins	200/day	
New Account Openings	40 customers/day	
Tags issued	80 customers/day	
Replenishment Payments	80/day	

Category	Volume Provided by Agencies	Comments
<b>Call Center Activity</b>		
Hours of Operation – Call Center	7am-7pm M-F	
Phone Calls Per Day (not including violations)	11,000	As reported for 10/21/02
Handled by VRS	60%	
Handled by CSR	40%	
Average Call Length	3.25 minutes	Includes wrap time
Average Hold Time	3 minutes	
Total CSC Outgoing Mail Per Day	20,000	No breakdown, includes statements (mail and e-mail)
Customer Statements		
Disk		For post-paid –read only
E-Mail	230,000 bimonthly 40,000 monthly	
Mail	600,000 bimonthly 110,000 monthly	
Replenishment Evaluation Letter		Not sent—statement message used
Credit Card Decline Letter		Not sent
Credit Card Expiration Letter		Single letter – 60 days prior to expiration
Total Incoming Mail Per Month (mail, fax, and e-mail)	15,000 - mail/fax 9,000 - E-mail	
Tag Requests/Close Accounts	12,000	
Account Information Changes	3,000	
Toll Disputes	Unknown	
Credit Card Disputes	Unknown	
Other	Unknown	

**Table 22 Web-Related Volume Statistics**

Category	Volume Provided by Agencies
Home Page Hits	250,000/month
Account Look-up	5,000/day
Account Changes	Unknown
"Contact Us" Requests	9,000/month

**Table 33 Violations-Related Volume Statistics**

Category	Volume Provided By Agencies	Comments
Number of Violation Transactions	1.8	
Customer	55%	After all activities (noticing)
Non-Customer	45%	
Number of Images Reviewed Per Month	1.6 million	
Image Reject Rate	22.3%	
DMV Requests Per Month	419,000 (April) 83% hit rate	45 States – 10 states are accessed directly, 35 through 3 <sup>rd</sup> party vendor
Toll Evasion		
1 <sup>st</sup> Notices Sent Per Month	349,000	
Payments Processed	Not available	
Daily Customer Disputes Processed	11,000 home 8-10,000 away	Form C disputes
Other Disputes	36,000 per week	Got in lane by accident, vehicle was stolen, etc
Gross Class Mismatch Images Reviewed Per Month	25 per lane per day 90 lanes on Turnpike 159 lanes on Parkway None for SJTA	
Lane Speed Enforcement		
Notices Issued Per Year	80,000	
Appeals Filed Per Month	Unknown	
Walk-Ins Payments Per Day		Not accepted in walk-in center
Violation Phone Calls Per Day	900	All handled by CSR
Handled by VRS	0%	
Handled by CSR	100%	
Average Call Length (minutes)	2.5 minutes	
Average Hold Time	.25 minutes	

**Table 44 Discount Plan Volumes**

<b>Discount Plan</b>	<b>Volume Provided by Agencies</b>
Atlantic City Frequent User	68,485
Del Turnpike (I-95) HOV	6,605
SR1 HOV	5,124
SR1 Frequent User	49,368
DRBA commuter	693
DRBA Frequent User	2,200
DRPA	16,000
PASI	5,207
PACP	8,100
NYSTA Permit	1,529
TZC	2,777
TZCP	187
NYSBA	21,911
SIR	884

# 8. REPORTS

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ACS will provide the CSC/VPC reports currently in production for E-ZPass New York. ACS will also add new CSC/VPC reports specific to New Jersey to address financial reconciliation, the post-paid commercial plan, and violations. If desired, ACS will also make available to the Agencies a series of maintenance reports regarding lane statistics, the price (if any) of which will be determined by change order. The following sub-sections describe the reports that ACS will deliver, covering the functional areas of the program. Where applicable, reports will be made available at both agency and ETC Group levels.

## 1.18.1 Operations Reports

### **Account Plan Status**

Tracks tags by plan type per Agency.

### **Telephone System Reports**

Provides daily statistics on call center performance. Generated by the phone system software.

### **Tag Sales by Account/Plan**

Shows tag sales by account plan and method of payment by Agency.

### **Inventory Forecast Report**

Identifies tag purchase requirements based on current inventory levels and recent tag issuance trends.

## 1.28.2 Violations Reports

### **Toll Violations and Class Mismatches by Plaza/Lane**

Displays the total toll evasion and class mismatch violations that occurred in a range of dates by lane identifier(s).

### **Summary of Rejected Violation Transactions**

Gives image rejections by reason, per lane and plaza.

### **Image Review Statistics -DMV**

By ad hoc request only, this report provides a summary of images received categorized by the license plate of the issuing state.

### **Violation Status -Monthly**

Displays all violation counts and citation details by different violation reasons grouped by week.

### **Monthly Toll Evasion Summary**

Associates revenue with notice tracking.

### **Toll Evasion and Speed Daily Notice Generation vs. Mailing**

Provides daily mailing statistics.

### **Violation Daily Production Statistics**

Provides daily production information (payments and disputes) related to violation activity.

## **1.38.3 Financial Reports**

### **Revenue Reconciliation**

Displays the tag deposit and toll deposit revenue collected under different functional/business points.

### **Daily CC Reconciliation**

Provides reconciliation between amounts sent to processors and amounts authorized by processors.

### **Daily cash/Check Reconciliation**

Provides reconciliation between amount deposited and amounts credited on bank statements.

### **External Reports**

Provided by bank and credit card processors.

### **Credit Card Fee Reconciliation**

Monthly reconciliation of fees charged by processors.

### **Credit Card, Cash, and Check Summary**

Monthly summary of the daily reconciliation reports.

### **Violation Payment Summary**

Monthly summary of violation deposit reconciliation.

### **Refund Report**

Picks up all the refunds, reversals, and adjustments corresponding to refunds.

### **Monthly Refund Log**

Monthly listing of all refunds processed.

### **Unused Commuter Trip Fees**

Displays the total trips and amount charged and also the average amount per trip for each agency and each plan for a range of reconciliation dates.

### **NSF Check Log**

A detailed listing of check refunds.

## **1.48.4 Toll Reports**

### **Tolls by Lane Plaza**

Displays posted toll and full fare amount and count for different plan types grouped under a plaza for different agencies.

### **TCR - Tolls Posted by Collection Date**

Displays total vehicle count and amount of the posted transactions by collection/posted date.

### **Transaction Reconciliation Report**

Displays received transactions divided under separate subcategories of posted and rejected status grouped under one collection date and file ID.

### **Transactions Not Posted**

Displays rejected transaction details and reason for different agencies.

## **1.58.5 Reciprocity Reports**

### **ICRX Files -Outgoing**

Consistent with IAG specification.

### **ICRX Files by Agency (Out)**

Consistent with IAG specification.

### **ICRX Files -Incoming**

Consistent with IAG specification.

### **ICRX Files by Agency (In)**

Consistent with IAG specification.

### **Toll Correction Reconciliation**

Consistent with IAG specification. Displays correction reconciliation transactions and amounts for the inbound IRXC files acknowledged within the supplied date range.

### **Toll Correction Reconciliation**

Consistent with IAG specification. Displays correction reconciliation transactions and amounts for the outbound IRXC files acknowledged within the supplied date range.

### **Correction Reject**

Consistent with IAG Specification. Displays the details of the rejected corrections.

### **Unpaid Transactions**

Consistent with IAG Specification. Displays rejected transaction details per ICRX acknowledgement file by agency and by acknowledgement date.

### **ICTX Files Aging**

Consistent with IAG specification. Displays ICTX file names, corresponding vehicle counts, and amounts that have not been processed for more than five, 10, 15, and 20 days.

### **NPST**

Consistent with IAG specification. Displays NPST transaction details based on the ICRX acknowledgement file by agency and by acknowledgment date.

### **Local Use by ACK Date**

Consistent with IAG specification.

### **Detailed Local Use by ACK Date**

Consistent with IAG specification. Displays the POST, PPST, PSNT, and NPST transactions by agency, plaza, and plan type for each ICRX file by acknowledgement date.

### **Disputed Tolls Report -Disputes Reciprocity**

Consistent with IAG specification. On hold

### **ACK File Status Reports**

Consistent with IAG specification.

### **Inter-CSC Non-Toll Reconciliation**

Consistent with IAG specification.

### **Inter-CSC Non-Toll Reconciliation**

Consistent with IAG specification

### **Inter-CSC Correction Reconciliation**

Consistent with IAG specification.

**Inter-CSC Correction Reconciliation -Reversal**

Consistent with IAG specification.

**Inter-CSC Rejected Non-Toll Transaction**

Consistent with IAG specification.

**Inter-CSC Rejected Non-Toll Corrections**

Consistent with IAG specification.

**Inter-CSC Declined Non-Toll Transactions**

Consistent with IAG specification.

**Inter-CSC Non-Toll Aggregate Funds Report**

Consistent with IAG specification.

**Facility Operator Period Summary (INRX)**

Consistent with IAG specification.

**Facility Operator Period Summary (FRXN)**

Consistent with IAG specification.

**Facility Operator Period Summary (FRXN)**

Consistent with IAG specification.

**Facility Operator Transaction Reconciliation Detail**

Consistent with IAG specification.

**Facility Operator Correction Reconciliation**

Consistent with IAG specification.

**Facility Operator Correction Summary Report**

Consistent with IAG specification.

## **4.68.6 New Reports**

**Daily VPC Executive Summary Report**

Key operating statistics of the VPC.

**Daily Transaction Matching Report**

Indicates images & transactions received and matched at the VPC.

**Daily Operations Master Tracking Report**

Summary of transactions flow through the operational steps of the VPC

**Daily Lockbox Report**

Detailed listing of all items processed by the Lockbox by Agency.

**Bi-Weekly Unallocated Funds Report**

Detailed listing of all APRs allocated through the manual review process.

**Daily Summary Report**

High level summary report of CSC activities.

**Daily Payments Report**

Summarization of money to be wired to the agencies on a daily basis.

**Monthly Transaction Reconciliation Report**

Files processed by the CSC.

**Post Paid Reports**

Per the requirements of the Commercial Post Paid Business Rules Exhibit A.

**Daily Adjustment Report**

Provides details for all transaction adjustments summarized by reason code.

## 1.78.7 Maintenance Reports

**Availability Status**

Summary of availability of system equipment.

**Work Order Summary**

Summary of work orders, associated failures, assigned maintenance technician, and when repaired.

**Open Work Order Summary**

Summary of open work orders and assigned maintenance technician.

**Time To Repair Exception**

Summary of work orders taking longer than the established performance threshold.

**Parts Inventory Reorder**

Summary of parts currently below the minimum stocking level and the associated lead-time to reorder them.

# 9. Performance Standards

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## 9.1 Lane Performance Standards

There are four (4) Lane Performance Standards that are relevant to the ACS' Lane Remediation Program:

**1. Automatic Vehicle Classification 99.5% (Live Traffic)**

Vehicles are properly classified; standard is calculated as total vehicles less misclassified vehicles divided by total vehicles.

**2. Image Acceptance Rate (Live Traffic)**

Captured images which contain a complete view of a license plate are legible. High Speed Lanes Acceptance Rate will be established separately.

**3. Vehicle Sequence Rate 99.99% (Live Traffic)**

Vehicle sequence count as reflected on the detail transaction report listed chronologically and in sequence without skipping sequence numbers.

**4. Vehicle Framing 99.99% (Test Traffic)**

Vehicle to tag association with all tags associated to proper vehicle for 10,000 vehicles.

In order to establish the Lane Performance Standards metrics, a total of twelve (12) lanes will be randomly selected from both roadways inclusive. The NJTA will develop and submit to ACS for approval, test scripts describing the aforementioned tests. The NJTA will assume responsibility for conducting the test and documenting the results. ACS shall provide personnel to witness the test. The metrics for each of the four tests will be calculated by averaging the results from each type of test, the results of which will become the Lane Performance Standards, provided that the Lane Performance Standards for tests 1, 3 and 4 shall not exceed the values stated above.

The breakout of the test lanes is as follows:

**1. NJTA**

- Five (5) PD lanes (No Image Acceptance Rate testing)
- Four (4) FD lanes

**2. NJHA**

- One (1) PD lane (No Automatic Vehicle Classification testing)

- Two (2) FD lanes

No lanes will be chosen that have already had any level of ACS remediation applied. Also, consideration will be given to traffic flow, patron safety and the overall operation of the roadways.

ACS' compliance with the Lane Performance Standards will be assessed as each of the original 12 test lanes complete round 2 of the ACS Lane Remediation Program. The aggregated average of ALL remediated lanes shall continue to meet the Lane Performance Standards throughout the term of this contract. These standards shall continue to be applied to ACS during its performance of the maintenance portion of this contract.

The NJTA will make every effort to complete the testing of the Lane Performance Standards by December 1, 2002.

## 1.29.2 CSC/IPC Performance Standards

CATEGORY / Task	Performance Standard
B VRS Call Duration	Under 1.5 minutes *
B VRS Response Time	4 seconds *
B VRS Availability	98% *(24 hours/day, 7days/week) excluding scheduled maintenance
A CSR Availability	CSR's available from 7:00 am to 7:00 pm Eastern time Monday through Friday, and 8:00 AM to 2:00 PM Saturday. Excluding holidays.
A Bank Deposit	The following business day or given to armored car service.
A Telephone wait Time for a CSR	<ul style="list-style-type: none"> <li>• 80% within 45 seconds *</li> <li>• 95% within 2 minutes *</li> <li>• Abandon Rate less than 4% *</li> </ul>
B Phone Inquiry Responses	90% of phone inquiries not requiring investigation shall be resolved on the first call. *
B Response to all inquiries & Disputes requiring investigation	80% in 5 days * 100% in 10 days *
B Transfer Complaints to Agencies for agency related correspondence.	Within 3 days of receipt. *
B Issue Refunds	10 days from account closing (customers).* 30 days from dispute resolution (violator).*
B Wait Time for Walk in Customers	No longer than 10 minutes.*
A Revenue & Administrative fee Wire Transfers	Transmitted to each agency's specified bank account no later than 10:30 A.M. each day (as for weekend and holiday transactions, by 10:30 A.M. of the next business day).
C Reconciliation reports with respect to NJTA Service Accounts	Within 30 calendar days of month end ***
A SAS-70 and all Financial Statements	No Later Than November 30 of the current year. Fiscal year defined as November 1 through October 31.
A Daily Payments Report as identified in Section 8	Provided no later than 2 Business Days after report date. **
C Reports identified in Section 8 of this SOW, other than Daily Payments Report.	Provided no later than: <ul style="list-style-type: none"> <li>• Daily – 2 Business Days after report date.***</li> <li>• Weekly – 3 Business Days after report date.***</li> <li>• Monthly – 7 Business Days after report date.***</li> </ul>
C Report Accuracy	All financial and management reports shall be accurate and complete in all material respects.
B Account Opening	2 days after receipt of complete application.*
B Mail Tag (private and pre-paid commercial)	4 days from receipt of complete application.*
A Replenishment Payments	Deposit within 1 business day of receipt
A Reconciliation Files	Transmitted to agency's Host no later than 8:00AM each day.

	<ul style="list-style-type: none"> <li>• E-ZPass Reconciliation</li> <li>• Transaction Adjustment</li> <li>• Agency Adjustment</li> </ul>
A Bank Deposit Wire Files	Transmitted to agency's Host no later than 10:00 AM each day.
A VPC Reconciliation Code Files	Transmitted to agency's Host no later than 10:00 AM each day.
<b>CATEGORY / Task</b>	<b>Performance Standard</b>
C Additional Files as required by ICD's	Transmitted to agency's Host no later than 10:00 AM each day.
A Away Agency Transaction Files (IAG ICTX Files).	Transmitted no later than 2 calendar days from receipt of transaction files from agencies Host.
B Away Agency Reconciliation Files (IAG ICRX Files)	Transmitted to away agencies within 4 calendar days of the ICTX ACK file date.
A Inter-Agency Settlement Reports	According to the settlement schedule established by IAG.
A Settlement funds transferred to home agencies	Within one day of receipt of funds from away agencies.
A Settlement funds transferred to away agencies	Within 2 days of transmission of Inter-Agency Settlement Report.
A Tag Status File	Comprehensive Updates must be sent to agencies Host daily no later than 6:00 am Eastern Time.
B Return Incomplete Applications	3 days after receipt.*
B Speed appeal resolution notification	80% in 2 days, 100% in 3 days of receipt.
B Mail Post-Paid Customer Invoices	2 days after the monthly invoice date.*
B Mail Customer Statements	7 days after anniversary date.*
A First APR Generation	If the total elapsed time from the violation date until DMV name and address information is received is 20 calendar days or less, 100% of validated violation notices meeting this criterion will be issued within 30 calendar days or a greater time period that may be prescribed by law.
A APR Accuracy	The Percent of violation disputes dismissed due to ACS' processing errors will be less than 1% of all violations noticed.*
B Decision Letter Regarding APR Disputes	95% of decision letters will be mailed within 5 Days from decision. The remaining 5% of decision letters to be mailed within 10 Days of decision.
C Gross Class Mismatch Image Review	All Reviews of Gross Class Mismatch transactions will occur within three Days after the image and transaction has been matched.*
C Gross Class Mismatch Matching Process	The matching process shall occur once a day. Transaction data file will be matched with the associated image file no less than 3 days after receipt of both files.*
A Identification of Unallocated Funds	Unallocated funds must be identified and reported to applicable ETC Group Agencies within fourteen calendar days from the Friday ending date.

### 1.39.3 **CSC Assumptions**

Following is a summary list of the assumptions applicable to the above performance standards.

- All items received after 3.00 p.m. are considered next business day.
- Day of receipt, except if noted, is not included in the business day calculation (for example, for mail received on Monday, the calculation starts on Tuesday).
- All Days referenced in CSC Performance Standards are considered to be a Business Day unless otherwise noted.
- All Performance Standards noted with an asterisk (\*) are considered to be calendar monthly averages.
- Performance Standards noted with a double asterisk (\*\*) must be met in 90% of cases in a calendar month.
- All Performance Standards noted with a triple asterisk (\*\*\*) must be met as to 90% of all required reports. Daily-, weekly-, and monthly-interval reports are measured separately.
- "Peak" days resulting from unusual circumstances as agreed by ACS and NJTA. shall be excluded from Volume related performance standards subject to monthly averaging .

**EXHIBIT A**

**COMMERCIAL POST PAID BUSINESS RULES**

**EXHIBIT B**

**CALCULATION OF CREDIT CARD FEES  
FOR REIMBURSEMENT TO HOME AGENCIES**

**EXHIBIT C**

**GROSS CLASS MISMATCH  
AND IN-LANE SPEED VIOLATION NOTICING RULES**

**ENFORCEMENT RULES –  
NOT FOR PUBLIC DISTRIBUTION**

**EXHIBIT D**

**NEW JERSEY HIGHWAY AUTHORITY**  
**MANUAL FOR TRAFFIC CONTROL**  
**IN WORK AREAS**

**EXHIBIT E**

**NEW JERSEY TURNPIKE AUTHORITY**  
**GENERAL GUIDELINES FOR INTERCHANGE**  
**LANE CLOSINGS**

## APPENDIX B

### COMPENSATION

#### DEFINITIONS

- A. Labor Wrap Rate Defined.** The term "Labor Wrap Rate" wherever used in this Appendix shall mean an hourly rate to be paid to the Contractor in respect of substantiated hours of work on the Project, which rate shall serve to compensate the Contractor for all costs and expenses of whatever nature pertaining to the item to which the Labor Wrap Rate is applicable, including direct and indirect labor costs, general and administration costs, overhead, and all other costs except for Other Expenses as defined in Section B below.
- B. Other Expenses Defined.** The term "Other Expenses" wherever used in this Appendix shall mean and include only the following:
- i. Substantiated and reasonable costs incurred under Subcontracts, not including any Subcontract with any person or entity affiliated with Contractor; and
  - ii. Substantiated and reasonable costs of goods purchased and equipment rented by the Contractor for exclusive use in the performance of Services, and the reasonable rental value of equipment, based upon Blue Book rental rates, owned by the Contractor during the time said equipment was used exclusively in Lane Remediation Services.

#### 1.0 LANE REMEDIATION SERVICES COMPENSATION

- 1.1 Lane Remediation Services Compensation.** The Contractor's total compensation for Lane Remediation Services (also, LRS) shall consist of the sum of the following, all as defined in this Section: LRS Mobilization Cost, LRS Procurement Cost, and LRS Implementation Cost.
- 1.2 LRS Mobilization Cost.** On or before August 12, 2002 the Authority shall pay Contractor the sum of \$2,311,000.00 (Two Million Three Hundred Eleven Thousand Dollars). This sum shall fully compensate the Contractor for all costs incurred in the Contractor's performance of Lane Remediation Services (including all Subcontractors) prior to August 23, 2002, regardless of the nature of same or when same were invoiced. This sum shall be referred to "LRS Mobilization Cost."

- 1.3 LRS Procurement Cost.** The Authority shall pay to the Contractor the sum of \$850,000.00 (Eight Hundred Fifty Thousand Dollars), which sum shall compensate the Contractor for a) all Lane Remediation Services in the nature of procurement, warehousing, and processing Services related to the acquisition of Spare Parts and Equipment, test equipment and software required for Lane Remediation Services and for b) the preparation of a transition report after completion of Lane Remediation Services. This amount, referred to hereafter as the "LRS Procurement Cost," shall be invoiced separately by the Contractor on a monthly progress-payment basis corresponding to the percentage of the Contractor's completion of Lane Remediation Services.
- 1.4 LRS Cost Advance.** The Authority shall pay the Contractor, upon its submission of properly prepared invoices including all required cost substantiation, the sum of \$16,000,000.00 (Sixteen Million Dollars) as an advance payment for Lane Remediation Services. This sum shall be referred to hereafter as "LRS Cost Advance." This amount shall be paid in five monthly installments of \$3,200,000.00 (Three Million Two Hundred Thousand Dollars) each, commencing with the month of August 2002. All amounts paid to the Contractor by means of the LRS Cost Advance shall be subject to the calculation and adjustment of LRS Implementation Cost as set forth in Section 1.11. At the time of submission of invoices for the LRS Cost Advance the Contractor shall also invoice the Authority for the cost of Equipment, component parts, and software licenses purchased by the Contractor for use in LRS and shall provide copies of all vendor invoices for same. The Contractor shall be entitled to reimbursement at vendor cost plus 20% for all such Equipment and component parts.
- 1.5 LRS Delivery Cost Defined.** "LRS Delivery Cost" shall mean the Contractor's cost, determined in accordance with this Section, of providing all Lane Remediation Services that are not included within LRS Mobilization Cost or LRS Procurement Cost.
- 1.6 Items Included in LRS Delivery Cost Calculation.** The calculation of LRS Delivery Cost shall include only those items identified in the following subsections 1.6.1 and 1.6.2:
- 1.6.1** Labor hours with respect to persons employed by the Contractor in the following job titles or their functional equivalents (Labor Hours):
- i. Software developers.
  - ii. Engineers.
  - iii. Project managers.
  - iv. Construction managers.
  - v. ETC Technicians.

- vi. Starting Level Technicians.
- vii. Electricians; and

**1.6.2 Other Expenses.**

**1.7 Required Cost Substantiation.** Together with each monthly invoice for payment of LRS Cost Advance amounts, the Contractor shall provide substantiation in a form acceptable to the Chief Engineer and certified by the Contractor, as to all Labor Hours and Other Expenses included within LRS Delivery Cost, and including at a minimum all of the following information:

**1.7.1** Time records substantiating all claimed Labor Hours;

**1.7.2** Substantiation for all amounts claimed to have been incurred for Other Expenses, including certified payrolls as and to the extent required by law, and copies of invoices where requested; and

**1.7.3** Such other information as shall be reasonably necessary to satisfy the Chief Engineer that all claimed costs have actually been incurred and are properly includible within LRS Delivery Cost.

**1.7.4** Within 60 days of the date of the Authority's signature of this Contract the Contractor shall provide all required cost substantiation for any Lane Remediation Services which it claims to be includible within LRS Delivery Cost and that were performed and/or as to which costs were incurred before said date.

**1.8 Required Accounting.** The Contractor shall maintain a timesheet accounting system capable of allocating or separately recording personnel costs between LRS Delivery Cost, LRS Procurement Cost and interim maintenance services. All time records provided to the Authority shall clearly differentiate between these cost categories. No items of LRS Mobilization Cost, LRS Procurement Cost, or interim maintenance services shall be included within the costs submitted to the Authority as being included within LRS Delivery Cost, and each certification by the Contractor of costs and expenses shall warrant to the Authority that these costs are excluded from LRS Delivery Cost.

**1.9 Labor Wrap Rate for Purposes of LRS Delivery Cost.** The Labor Wrap Rate shall be \$143.00 (One Hundred Forty Three Dollars). The parties agree that the Labor Wrap Rate shall serve to compensate the Contractor for all costs and expenses of whatever nature relating to LRS Delivery Cost, only excepting Other Expenses.

- 1.10 Calculation of LRS Delivery Cost.** Following the completion of Lane Remediation Services, the LRS Delivery Cost shall be determined by multiplying all substantiated Labor Hours by the Labor Wrap Rate, multiplying all substantiated and allowable Other Expenses by 1.25, and adding these two figures.
- 1.11 Calculation of LRS Implementation Cost..** The total sum payable to the Contractor for LRS Implementation Cost shall be adjusted and paid as follows:
- 1.11.1** At the time of completion of Lane Remediation Services, the Contractor shall compile all substantiated costs submitted by the Contractor for review and approval of the Chief Engineer, and shall calculate the LRS Delivery Cost.
- 1.11.2** The LRS Delivery Cost shall then be compared against \$18,944,000.00 (the "LRS Target Cost"), as modified by duly approved Change Orders, if any. The cost of Equipment, component parts and software licenses shall not be included within either LRS Target Cost or LRS Delivery Cost. The Contractor shall calculate, and the Chief Engineer shall then determine LRS Implementation Cost as follows:
- i.** If LRS Delivery Cost is less than LRS Target Cost, the Contractor shall be entitled to receive 20% of the excess of LRS Target Cost over LRS Delivery Cost and the Authority shall be entitled to retain 80%. The Authority shall pay this amount (subject to (iii) below) plus the LRS Delivery Cost to the Contractor within 45 days of receipt of all required cost substantiation, less any amounts previously paid for the LRS Cost Advance.
  - ii.** If the LRS Delivery Cost is greater than LRS Target Cost, the Authority shall pay the Contractor 80% of the excess of LRS Delivery Cost over LRS Target Cost (subject to (iii) below) plus the LRS Delivery Cost and the Contractor shall absorb the remaining 20%. The Authority shall pay this amount to the Contractor within 45 days of receipt of all required cost substantiation, less any amounts previously paid for the LRS Cost Advance.
  - iii.** If the LRS Cost Advance exceeds the amount due the Contractor after the cost adjustment made in accordance with this Section, the Contractor shall refund all monies due the Authority within 30 days of notification of same.

- iv. If, at the completion of the Lane Remediation Services, the Chief Engineer determines pursuant to the Contract that certain lanes will undergo an additional 90 days of remediation activities, a partial calculation of LRS Implementation Cost will be made as described above for those lanes that have completed remediation, using the ratio of completed lanes to 320 lanes. . A separate calculation of LRS Implementation Cost, using the lanes as to which the additional 90 days' remediation has been required, will be made following completion of the extended remediation.
- v. The calculation of LRS Implementation Cost if extended remediation of some lanes is required, as described above, shall be performed as follows:
- 1) Formula A: \$18,944,000 divided by 320 lanes = \$59,200, multiplied by the number of lanes considered remediated.
  - 2) Formula B: Actual costs incurred by ACS in the remediation process will be divided by 320 lanes (cost per lane) and then multiplied by the number of lanes considered remediated.
  - 3) In order to arrive at the true-up, take the results of Formula A above minus the result of Formula B above. If there is a positive result, the Contractor shall be entitled to receive 20% of the excess and the Authority shall be entitled to receive 80%. Should the result be negative, then the Authority shall pay the Contractor 80% of the difference between the two amounts and the Contractor shall absorb the remaining 20%.
  - 4) Formula D: For the lanes remaining in "post remediation" the new "target cost" shall be \$18,944,000 minus the result of Formula A above.
  - 5) Formula E: the lanes remaining in "post remediation," actual costs shall be the actual costs per lane identified in Formula B above multiplied by the number of lanes requiring post remediation, plus additional actual costs incurred for those "post remediation" lanes.

- 6) Upon completion of "post remediation" in order to arrive at the true-up, take the results of the Formula D above minus the result of Formula E. Once this amount is known, the 80/20 split identified in 3) above will become effective.

## 2.0 LANE MAINTENANCE COMPENSATION

- 2.1 **Lane Maintenance Compensation.** The Contractor shall receive the annual sum of Fifteen Million Dollars (\$15,000,000.00) for the performance of Maintenance Services as set forth in Appendix A, Statement of Work; provided, however, that the Contractor's compensation for the first twelve months of full Maintenance Services shall be Fourteen Million Two Hundred Thousand Dollars (\$14,200,000.00). The payment by the Agencies to the Contractor of this amount shall compensate the Contractor for all costs incurred in the performance of Maintenance Services. The Contractor's compensation for Maintenance Services shall be paid by the Agencies in equal monthly installments. These monthly installments shall begin with the month in which Lane Remediation Services are completed and interim Maintenance Services end, both in accordance with the Statement of Work, Appendix A, and shall end with the month of July 2012 unless sooner terminated in accordance with the Contract.
- 2.2 **Spare Parts and Equipment Allowance.** The payment to the Contractor for Maintenance Services as set forth in Section 2.1 above shall include within same, an allowance for Spare Parts and Equipment to be purchased by the Contractor for use in performing Maintenance Services in accordance with the Statement of Work, Appendix A, up to an annual amount of \$1,000,000.00 (One Million Dollars). This allowance shall apply to parts requiring replacement due to normal wear and tear and corrective and preventive maintenance, but not to Spare Parts and Equipment requiring replacement due to motor vehicle accidents and other casualty losses. The first one-year measuring period for this allowance shall commence on August 2, 2002. Each monthly invoice submitted by the Contractor shall include a detailed, itemized listing of all Spare Parts and Equipment purchased by the Contractor for use in Maintenance Services during the invoice month, and shall attach copies of all vendor invoices therefor. The calculation of the allowance shall be based upon the vendor cost of such Spare Parts and Equipment, without markup. Spare Parts and Equipment purchased by the Contractor during the measuring period in excess of the \$1,000,000 allowance shall be reimbursed to the Contractor on a monthly basis at vendor cost plus 20% and shall be invoiced to NJTA and NJHA in the percentages set forth in Section 10.3.

- 2.3 Interim Maintenance Services.** All properly substantiated Subcontractor labor costs incurred by the Contractor in the performance of interim Maintenance Services shall be paid by at an hourly Labor Wrap Rate of \$100.00. The Contractor shall be reimbursed in an amount not to exceed a total of \$800,000.00 for properly substantiated Other Expenses and costs incurred for interim maintenance, establishment and ramp-up of maintenance services, parts procurement, handling and warehousing at cost plus 25%, and for Spare Parts and Equipment installed as part of interim Maintenance Services at vendor cost plus 20%. Labor costs incurred by the Contractor shall be paid at a labor wrap rate of \$116.00 per hour. Overtime hours, which shall be approved by the Authority prior to being incurred, will be paid at the above rates multiplied by 1.50. Sunday and Holiday hours will be paid at the above rates multiplied by 2.00. Each monthly invoice submitted by the Contractor shall include detailed time records during the invoice month, and shall attach copies of all vendor invoices..
- 2.4 Application of Cost of Initial Full Maintenance Inventory.** Upon the completion of interim Maintenance Services as to all Lanes, the Contractor shall provide NJTA with a complete inventory of all Spare Parts and Equipment on hand as of the completion of interim Maintenance Services, and the vendor cost thereof. The value of this inventory, at vendor cost, shall be applied against the first year's (August 2, 2002 – August 2, 2003) \$1,000,000 allowance for the purchase of Spare Parts and Equipment. Within 30 days of the commencement of full Maintenance Services, the Contractor shall refund to the Authority a) all markups paid by the Authority and the Agencies during the interim maintenance period with respect to the Spare Parts and Equipment that are contained in the inventory and b) an amount, not to exceed \$400,000.00 (Four Hundred Thousand Dollars), representing a refund of advance payments made by the Authority and the Agencies with respect to the Spare Parts and Equipment contained in the inventory.
- 2.5 Cost of Spare Parts and Equipment.** The vendor cost of all Spare Parts and Equipment shall not exceed the actual cost of same net of all discounts, incentives, and other pricing arrangements provided to the Contractor by any vendor, plus delivery, sales tax if charged, and other applicable vendor costs. As part of each invoice, the Contractor shall provide the Authority with substantiation of all costs. The Chief Engineer may refuse to reimburse the Contractor with respect to any prices, any portion thereof reasonably deemed excessive or with respect to any purchases of Spare Parts and Equipment from Subcontractors, subsidiaries, or affiliated companies, provided that the latter may be allowed with the prior written approval of the Chief Engineer, both as to the purchase and as to price, with respect to any Spare Parts and

Equipment not reasonably available from other sources. The Contractor shall make all reasonable efforts to obtain competitive prices, discounts and other considerations so as to minimize the cost of Spare Parts and Equipment.

### 3.0 CSC/VPC COMPENSATION

3.1 **CSC Compensation.** The Authority shall compensate the Contractor for the operation of the CSC in accordance with this Section. The total amount payable to the Contractor hereunder for the operation of the CSC (also including the VPC) shall be referred to hereafter as "CSC Compensation."

3.2 **Components of CSC Compensation.** The following are the components of CSC Compensation, all as calculated pursuant to this Appendix:

3.2.1 CSC Mobilization Charge.

3.2.2 Annual Fixed-Fee CSC Services Charge.

3.2.3 ETC Transactions Adjustment.

3.2.4 Annual Fixed-Fee VPC Services Charge.

3.2.5 Contractor's APR Share.

3.2.6 Offset Charges.

3.2.7 Shared Charges.

3.2.8 Additional/Optional CSC Services Charges.

3.3 **CSC Mobilization Charge.** The Authority shall pay the Contractor the sum of \$6,435,000.00 for the establishment of the CSC. This amount shall be billed and paid as follows:

August 2002	\$2,000,000.00
September 2002	\$2,000,000.00
October 2002	-0-
November 2002	-0-
December 2002	\$1,000,000.00
January 2003	\$1,435,000.00

3.4 **Annual Fixed-Fee CSC Services Charge.** Commencing August 1, 2003 the Contractor shall receive as compensation for the operation of the

CSC, the sum of \$25,000,000.00 (Twenty Five Million Dollars) as Annual Fixed-Fee CSC Compensation for the one-year period commencing August 1, 2003 and ending July 31, 2004 (the "CSC Operations Year,") which term shall also include all subsequent twelve-month periods during the Contract Term during which the Contractor is performing CSC Services. The Annual Fixed-Fee CSC Compensation shall be payable in equal amounts of \$2,083,333.33 (Two Million Eighty Three Thousand Three Hundred Thirty Three and 33/100 Dollars), in arrears, as to each month of the CSC Operations Year. Annual Fixed-Fee CSC Compensation shall be pro-rated commencing on the Cut-Over Date through July 31, 2003 as to each month of operations.

**3.5 ETC Transactions Adjustment.**

**3.5.1 ETC Transactions Defined.** For purposes of calculating the ETC Transactions Adjustment described in this Section, an ETC Transaction shall consist of any electronic toll transaction (home agency or away agency account) that takes place on the New Jersey Turnpike, Garden State Parkway, or Atlantic City Expressway, including any and all toll transactions recognized as "non-revenue" by the Agencies, and new business/non-toll transactions, as such may exist or to be developed in the future.

**3.5.2 Transactions Not Read in Lanes.** Electronic toll transactions posted by means of image review and matching ("Vtolls") shall be included in the calculation of total ETC Transactions and in the amount of the ETC Transactions Adjustment.

**3.5.3 Measurement of ETC Transactions Adjustment.** The Contractor shall receive an upward adjustment in CSC Operations Compensation (the "ETC Transactions Adjustment") by reason of total ETC Transactions in excess of 417,000,000 (Four Hundred Seventeen Million) during each CSC Operations Year. With respect to each ETC Measuring Period except for the first and last CSC Operations Years, which shall be pro-rated, the ETC Transactions Adjustment shall be calculated as follows:

NUMBER OF TRANSACTIONS	ETC TRANSACTIONS ADJUSTMENT PER TRANSACTION
0 - 417,000,000	\$0.000
417,000,001 - 475,000,000	\$0.060
475,000,001 - 500,000,000	\$0.055
500,000,001 - 525,000,000	\$0.050
525,000,001 - 550,000,000	\$0.045
550,000,001 - 575,000,000	\$0.040
575,000,001 - 600,000,000	\$0.035
Over 600,000,000	\$0.030

**3.5.4 Payment of ETC Transactions Adjustment, Annual "True-Up."** The ETC Transactions Adjustment due the Contractor, if any, shall be paid with respect to each calendar month that the total number of ETC Transactions exceeds 34,750,000 (417,000,000/12), at the ETC Transactions Adjustment Per Transaction rate for the 417,000,001 – 475,000,00 tier, applied to each ETC Transaction exceeding 34,750,000. Within ten days of the end of each CSC Operations Year the Contractor shall provide the Chief Engineer with the total number of ETC Transactions during the CSC Operations Year. The Contractor's CSC Operations Compensation for the CSC Operations Year will then be adjusted by means of a "true-up" of the amount due the Contractor by reason of actual ETC Transactions during the CSC Operations Year applied to the applicable ETC Transactions Adjustment Per Transaction rates in the above table, against all amounts paid to the Contractor during that CSC Operations Year. (Example: In a year in which the true-up calculation indicates 515,000,000 transactions, the calculation shall be as follows:  $((475,000,000 \times .06) + (25,000,000 \times .055) + (15,000,000 \times .05))$  Any amounts due the Contractor as a result of this true-up computation shall be paid, and any amounts due the Authority will be credited, against the next CSC Operations Compensation invoice due the Contractor. The true-up computation for any partial year shall be done by annualizing the total ETC Transactions for the partial year.

**3.6 Annual Fixed Fee VPC Compensation.** Commencing August 2, 2002 the Contractor shall receive as compensation for VPC Operations, the sum of \$5,000,000.00 (Five Million Dollars) as Annual Fixed-Fee VPC Compensation for the one-year period commencing August 1, 2002 and ending July 31, 2003 (the "VPC Operations Year,") which term shall also include all subsequent twelve-month periods during the Contract Term during which the Contractor is performing VPC Services, The Contractor shall receive Annual Fixed-Fee VPC Compensation for each such year.

**3.7 Contractor's APR Share Defined.** Thirty Five Percent (35%) of all administrative fees actually collected by the Contractor by reason of the assessment of same in conjunction with the issuance of Advisory and Payment Requests ("APR's") during a VPC Operations Year shall be referred to hereafter as the "Contractor's APR Share."

**3.8 Agencies' APR Share Defined.** Sixty-Five Percent (65%) of all administrative fees actually collected by the Contractor by reason of the assessment of same in conjunction with APR's during a VPC Operations Year shall be referred to hereafter as the "Agencies' APR Share."

- 3.9 Offset Charges Defined.** "Offset Charges" shall be the following charges, and calculated in accordance with Section 3.12. The following Miscellaneous Charges shall be deemed Offset Charges:
- 3.9.1 Toll Posting Charges.**
  - 3.9.2 Violation Processing Charges.**
  - 3.9.3 Fifty Percent (50%) of Accuracy Validation Charges.**
  - 3.9.4 Violation Response Charges, and**
  - 3.9.5 DMV Lookup Charges up to \$35,000.00, per CSC Operations Year or pro-rated portion thereof.**
  - 3.9.6 In-Lane Speed Notice Charges, up to 80,000 notices per CSC Operations Year or pro-rated portion thereof.**
- 3.10 Calculation of Offset Charges.** At the end of each calendar month of each CSC Operations Year, the Contractor shall provide the Authority with a calculation detailing the following:
- 3.10.1** The amount of the Contractor's APR Share collected during the month;
  - 3.10.2** The amount of the Agencies' APR Share collected during the month;
  - 3.10.3** The amount of each category of Offset Charge incurred during the month;
  - 3.10.4** The difference, positive or negative, between the total of Offset Charges incurred during the month and the amount of the Agencies' APR Share collected during the month; and
  - 3.10.5** The cumulative year-to-date difference between Offset Charges incurred for the CSC Operations Year and the Agencies' APR Share collected for the CSC Operations Year.
- 3.11 Annual Refund of Agencies' APR Share.** The Contractor shall retain the Agencies' APR Share during the CSC Operations Year. At the end of each CSC Operations Year the Contractor shall pay the Authority the excess of the total Agencies' APR Share for the CSC Operations Year over the sum of the following: a) total Offset Charges incurred for the CSC Operations Year, and b) total Offset Charge deficiencies carried over from prior years in accordance with Section 3.12.
- 3.12 Carryover of Excess Offset Charges.** If the total of Offset Charges incurred during any CSC Operations Year exceeds the total Agencies' APR Share for such CSC Operations Year, the excess of Offset Charges shall be carried over into the following CSC Operations Year and applied against the Agencies' APR Share collected for that CSC Operations Year. Offset Charges shall be carried over on a cumulative basis until the end of the Contract Term. Notwithstanding the foregoing, however, under no circumstances shall the Authority nor the Agencies shall be

liable to pay any amount by which the cumulative total amount of Offset Charges incurred during the Contract Term exceeds the cumulative total amount of Agencies' APR Share collected during the Contract Term.

**3.13 Shared Charges.** The following portions of Miscellaneous Charges shall be payable to the Contractor on a monthly as-incurred basis, in addition to the portions thereof that are payable as Offset Charges:

**3.13.1** Fifty Percent (50%) of Accuracy Validation Charges (Section 4.3), and

**3.13.2** DMV Lookup Charges (Section 4.5) in excess of \$35,000.00 per CSC Operations Year or pro-rated portion thereof.

**3.13.3** In-Lane Speed Notice Charge (Section 4.6) of \$0.90 (Ninety Cents) for notices mailed by U.S. Mail per VPC Operations Year in excess of 80,000 or pro-rated portion thereof.

#### **4.0 MISCELLANEOUS CHARGES**

**4.1 Toll Posting Charge.** The Contractor shall be entitled to receive a fee of \$0.29 (Twenty Nine Cents), hereinafter the "Toll Posting Charge," for the posting of each Vtoll, also including gross class mismatch transactions, that requires image review and results in the successful match of an image to a customer account and the successful posting of a toll.

**4.2 Violation Processing Charge.** The Contractor shall be entitled to receive the following fees with respect to Violation notices (the "Violation Processing Charge"):

**4.2.1** \$1.69 (One Dollar Sixty-Nine Cents) per initial Violation notice mailed by U.S. Mail less any Negative Balance Waived-Violation Notice Charges.

**4.2.2** \$1.38 (One Dollar Thirty Eight Cents) for each additional Violation notice mailed by U.S. Mail with respect to the same transaction, in accordance with the Statement of Work, Appendix A.

**4.3 Accuracy Validation Charge.** The Contractor shall be entitled to receive a fee of \$0.04 (Four Cents) for each second review of an image by a different reviewer (the "Accuracy Validation Charge").

**4.4 Violation Response Charge.** The Contractor shall be entitled to receive a fee of \$0.75 (Seventy-Five Cents) for each response mailed by U.S. Mail to customers returning Violation response Forms A, B, or C, and \$0.11 (Eleven Cents) for each such response transmitted by electronic mail (the "Violation Response Charge"). Before imposing any Violation

Response Charges ACS shall develop a format for these responses and the same shall be approved by the Authority.

- 4.5 DMV Lookup Charges.** The Contractor shall be entitled to be reimbursed for the actual cost of lookups from the respective State Departments of Motor Vehicles, as a Pass-Through Cost without markup during any CSC Operations Year or pro-rated portion thereof (the "DMV Lookup Charges"). The Authority reserves the right to direct the Contractor to refrain from lookups as to States where in the Authority's sole business judgment such lookups are not cost-effective.
- 4.6 In-Lane Speed Notice Charge.** The Contractor shall be entitled to receive a fee of \$0.90 (Ninety Cents) (the "In-Lane Speed Notice Charge"), for notices mailed by U.S. Mail per VPC Operations Year.

## **5.0 ADDITIONAL/OPTIONAL CSC SERVICE CHARGES**

The Contractor shall make the following additional/optional Services available at the following costs:

- 5.1 Negative Balance Waived-Violation Notice Charge.** Where a Violation is the result of a negative-balance situation subsequently rectified by the customer and the Authority pursuant to the business or enforcement rules determines to waive the Violation, the Contractor shall be entitled to receive a fee of \$1.69 (One Dollar Sixty-Nine Cents) per notice of same that is mailed by U.S. Mail (the Negative Balance Waived-Violation Charge").
- 5.2 Special Mailing Charge.** The Contractor shall be entitled to receive a fee of \$0.90 (Ninety Cents) (the "Special Mailing Charge") for each notice that a customer's credit card has been declined sent in accordance with the applicable business rules and mailed by U.S. Mail, and for any special mailings directed by the Authority.
- 5.3 Statement Insert Charge.** The Contractor shall be entitled to receive a fee of \$0.04 (Four Cents) (the "Statement Insert Charge") for each insert provided by the Authority and directed to be inserted in customer notices otherwise sent in accordance with the applicable business rules and mailed by U.S. Mail, including median fare cards if and as directed.
- 5.4 No Activity Statement Charge and Extra Statements Charge.** The Contractor shall be entitled to receive a fee of \$0.75 (Seventy-Five Cents) (the "No Activity Statement Charge") for each statement to a customer for a period (after the initial six-month period) in which the customer has had no ETC Transaction activity, or for each statement otherwise in excess of bimonthly sent in accordance with the applicable business rules and

mailed by U.S. Mail. For each such statement that is e-mailed, the No Activity Statement Charge and Extra Statements Charge shall be \$0.11 (Eleven Cents).

**5.5 Tag Testing Charge.** The Contractor shall be entitled to receive a fee of \$5,000.00 (Five Thousand Dollars) monthly for any period beyond the six-month period required by the Statement of Work, Appendix A, during which the Authority requires that the Contractor suspend random testing and instead test all transponders received (the "Tag Testing Charge"). If the Authority requires this additional testing to be performed for less than a one-month period, the Tag Testing Charge shall be pro-rated.

**5.6 Audited Financial Statements and SAS 70 Review.** The Contractor shall be entitled to receive \$250,000 annually for providing combined audited financial statements to the Authority for CSC and VPC cash flows, assets and liabilities, and supporting SAS 70 review.

**5.7 Extra Bonding Costs.** The Contractor shall be entitled to reimbursement for 50% of its actual surety bond premium costs, at standard rates for surety bonds of the type and amount provided and without markup, that is attributable to the difference between a penal sum of \$10,000,000 and the required penal sum of the bond. Said reimbursement shall be paid to the Contractor within 30 days of a properly substantiated invoice therefor.. If NJTA determines to refuse to accept a substituted bond in accordance with Section 34.3.2 or 34.3.3 of this Contract at the time required therein due to a withholding circumstance in accordance with Section 45.1.3, 45.1.4, or 45.1.5 of this Contract, and determines to require the previously provided bond to remain in place until such circumstance is cured, then NJTA shall pay 100% of the premium cost attributable to the difference between a penal sum of \$10,000,000 and the required penal sum until such time as NJTA determines to accept the reduced bond.

**6.0 ONE-TIME CHARGES** In addition to the other items of compensation as set forth in this Appendix the Contractor shall be entitled to receive the following amounts, payable as set forth below:

**6.1 Enhanced Cut-Over Date Functionality.** The Authority shall pay the Contractor the fixed fee of \$200,000.00 (Two Hundred Thousand Dollars) together with the CSC Operations Compensation invoice that includes the Cut-Over Date, in compensation for the Contractor's inclusion in CSC Services as of the Cut-Over Date, of all of the following functions and maintaining same throughout the Contract Term in accordance with the requirements of Appendix A:

- 6.1.1 Incorporation and collection of a \$1.00 per month, per account, membership fee (such fees shall exclude Delaware residents).
- 6.1.2 Administration and collection of transponder deposits for all accounts established with addresses outside New Jersey.
- 6.1.3 Programming for the generation of credit card decline letters.
- 6.1.4 Formatting and programming with respect to notices of Violation so as to provide for only one notice of Violation per day per account with respect to Violations that take place on the Atlantic City Expressway or separately, the Garden State Parkway; provided, however, more than one notice of Violation shall be sent in those cases where the number of Violations per day per account on the aforementioned roadways exceeds the number that can be practically included within a single notice of Violation.

**6.2 Enhanced Post Cut-Over Date Functionality.** The Authority shall pay the Contractor a fixed fee together with the CSC Operations Compensation invoice that follows the date on which all of the following functions are made operational, in the amount of \$310,000.00 (Three Hundred Ten Thousand Dollars). Said amount shall represent compensation for the Contractor's inclusion in CSC Services as soon as practicable after the Cut-Over Date, of all of the following functions and maintaining same throughout the Contract Term in accordance with the requirements of Appendix A or such further document as shall be agreed upon between the parties as representing the scope of these functions:

- 6.2.1 Implementation of New Jersey Highway School Bus Discount Plan, (the Contractor shall attempt to implement this prior to Cut-Over Date);
- 6.2.2 Website functionalities as follows:
  - i. Customer plan addition and deletion;
  - ii. Commercial account access;
  - iii. Customer payment of Violation fees by credit card; and
  - iv. Customer submission of "Dispute C" form with ability to update license plate information.
- 6.2.3 Customer ability to order supplies by means of the voice response system.

6.2.4 Recheck of account validity after receipt of name and address information from the applicable Department of Motor Vehicles.

6.2.5 Generation of a Defective Tag Report which shall identify tags returned due to defects.

6.3 **Additional Reports.** The Authority shall pay the Contractor the one-time sum of \$6,000.00 (Six Thousand Dollars) each for Monthly Billing Report and Monthly Aging report, to be provided through Vector on the Web-based report server. Further additional reports consisting of the following will be provided for a one-time charge of \$6,000.00 each if requested by the Authority:

- Daily Payment Report
- Current Month Active Customer Report
- Collateral Replacement Report
- Monthly Security Deposit Overpayment/Underpayment Report
- Weekly Past Due Report
- Monthly Collateral Analysis (3 month)
- Weekly Collateral Analysis (70%)
- Request for Collateral Increase (3 month)
- Request for Collateral Increase (70%)
- Request for Collateral Decrease Report
- Open Security Deposit Replacement Report

## 7.0 COST OF LIVING ADJUSTMENT

7.1 **Manner of Calculation of Cost of Living Adjustment ("COLA").** The COLA applicable to the charges set forth in this Section shall be calculated as follows:

7.1.1 The "COLA Base Measuring Date" shall be December 31, 2002.

7.1.2 The change in the applicable index shall be calculated on a "point to point" basis as of each successive December 31 following the COLA Base Measuring Date.

7.1.3 The date of adjustment with respect to each COLA shall be March 1, 2004 or the first anniversary of the month within which the Cut-Over Date falls, whichever is later.

7.1.4 The COLA shall be calculated on a weighted basis as follows:

- i. 60% of the total adjustment shall reflect the change in the Wages and Salaries Employment Cost Index, Northeast Region.

- ii. 30% of the total adjustment shall reflect the change in the CPI-U (Consumer Price Index, All Urban Consumers), New York – Northern New Jersey SMSA.
- iii. 10% of the total adjustment shall reflect the change, if any, in first-class postage rates, or bulk rates as applicable, between the date of adjustment and the date of adjustment that preceded same.

**7.2 3% Cap on COLA Adjustment.** With respect to 7.1.4 i and ii combined, under no circumstances shall the increase applicable to any fee or charge by reason of any COLA adjustment exceed 3% (three per cent), regardless of the result of the COLA adjustment calculation performed pursuant to this Section. Changes to first-class postage rates, or bulk rates as applicable, shall be outside this 3% cap.

**7.3 Fees Subject to COLA Adjustment.** The following Fees shall be subject to COLA Adjustment:

- 7.3.1 Annual Fixed-Fee CSC Compensation (Section 3.4).
- 7.3.2 Lane Maintenance Compensation (Section 2.1)
- 7.3.3 Spare Parts and Equipment allowance (Section 2.2)
- 7.3.4 ETC Transactions Adjustment (Section 3.5.3).
- 7.3.5 Annual Fixed-Fee VPC Compensation (Section 3.6).
- 7.3.6 Toll Posting Charge(Section 4.1).
- 7.3.7 Violation Processing Charges (Section 4.2).
- 7.3.8 Accuracy Validation Charges (Section 4.3).
- 7.3.9 Violation Response Charges (Section 4.4).
- 7.3.10 Negative Balance Waived-Violation Notice Charges (Section 5.1).
- 7.3.11 In-Lane Speed Notice Charges (Section 4.6).
- 7.3.12 Special Mailing Charges (Section 5.2).
- 7.3.13 Statement Insert Charges (Section 5.3).
- 7.3.14 No Activity Statement Charges (Section 5.4).
- 7.3.15 Tag Testing Charges (Section 5.5).
- 7.3.16 Audited Financial Statements and SAS 70 Review (Section 5.6)
- 7.3.17 Change Order Rates (Section 11.1)

**8.0 POSTAGE RATE ADJUSTMENT.** If at any time during the Contract Term the Postal Service permits mailing of the predominance of CSC and VPC mailed items at bulk rates or other mailing rates below those in effect as of Cut-Over, the Contractor shall so advise the Authority and shall reduce the applicable COLA adjustment calculation under 7.1.4 iii by an amount equal to the differential in applicable postage rate(s). If at any time during the Contract Term the Postal Service permits mailing of any item subject to Miscellaneous Charges or Additional/Optional CSC Services Charges at bulk rates or other mailing rates below those in effect as of Cut-Over, the Contractor shall so

advise the Authority and shall reduce the applicable charge by an amount equal to the differential in applicable postage rate(s).

## 9.0 FIBER OPTIC MAINTENANCE COMPENSATION

9.1 **Compensation.** (To be determined)

9.2 **Payment of Compensation.** The Authority shall pay to the Contractor, all amounts due with respect to Fiber Optic Compensation, upon submission by the Contractor of two invoices: the invoice submitted to the Contractor by the Fiber Optic Subcontractor for the relevant period, and an invoice of the Contractor in the amount of five per cent (5%) of the invoice of the Fiber Optic Subcontractor.

9.3 **Amount of Compensation; Compensation Held in Trust.** Following its approval of the invoice submitted by the Fiber Optic Subcontractor and the underlying invoice of the Fiber Optic Subcontractor, the Authority shall issue two checks, one corresponding to each invoice, as follows: The check in the amount of 5% (Five Percent) of the invoice shall be payable to the Contractor alone and shall compensate the Contractor for its costs relating to the administration of the Fiber Optic Subcontract. The check in the amount of the invoice of the Fiber Optic Subcontractor, shall be a joint check payable to both the Contractor and the Fiber Optic Subcontractor. The Contractor shall endorse the latter check so as to be payable to the Fiber Optic Subcontractor and shall serve as the Fiber Optic Subcontractor's trustee and fiduciary with respect to same. Accordingly, the Contractor shall not under any circumstances whatsoever, have the right to retain, divert, commingle, or otherwise withhold these funds.

## 10.0 INVOICING AND METHOD OF PAYMENT

10.1 **Authority's Right of Setoff.** The Authority shall have the right to set off any and all amounts due the Authority under the Contract from any and all amounts due the Contractor, in the manner that in the Authority's sole judgment is most advantageous to it. Notwithstanding the foregoing, however, the Authority's right of setoff shall not extend to the amount of the invoice of the Fiber Optic Subcontractor except with respect to specific Events of Default directly attributable to the acts or omissions of the Fiber Optic Subcontractor.

10.2 **Method of Payment.** Contractor shall present invoices on a monthly basis, in arrears for all items specified in this Appendix. The invoice shall include a brief description of the services being billed, a reference to the pertinent section of this Appendix, and a statement of the time period covered. The invoice shall also include all required calculations and

supporting documentation. Supporting documentation will include, where applicable, invoices, reports, etc., that detail and substantiate the basis for compensation calculations. In addition to the above, each invoice must include a properly completed, "Certification of Subcontractor/Supplier Payment By Prime Contractor" form attached hereto as Exhibit B-1. Each invoice shall also detail all Pass-Through Charges and provide all required invoices and cost substantiation with respect thereto.

**10.3 Invoicing of Agencies.** The Contractor shall invoice each of the Agencies as follows with copies of all such invoices and supporting documentation sent simultaneously to the Chief Engineer:

- i. For Lane Remediation Services the Contractor shall invoice NJTA on a monthly basis for 50.3% of all amounts due and shall invoice NJHA on a monthly basis for 49.7% of all amounts due.
- ii. For Maintenance Services the Contractor shall invoice NJTA on a monthly basis for 40.5% of all amounts due and shall invoice NJHA on a monthly basis for 59.5% of all amounts due.
- iii. For CSC Services (including VPC) the Contractor shall invoice NJTA on a monthly basis for 57.8% of all amounts due, shall invoice NJHA on a monthly basis for 38.6% of all amounts due, and shall invoice SJTA for 3.6% of all amounts due.

**10.4 Payment by Agencies.** Unless contested by proper notice to the Contractor by the Chief Engineer and in accordance with reasons for withhold, reduction or setoff under the Contract, all invoices shall be paid by the agencies in full within 30 days of receipt by the Chief Engineer of properly substantiated invoices.

## **11.0 CHANGE ORDERS**

**11.1 Method of Payment.** Payment for Change Orders shall be made in accordance with the agreement of the Authority and the Contractor with respect thereto, as negotiated pursuant to the pertinent provisions of the Contract. If such agreement cannot be reached, the Contractor shall be compensated with respect to its own personnel at the Labor Wrap Rates of \$116.00 per hour for software development personnel and \$45.00 for administrative personnel involved in CSC operations. With respect to change orders, subcontractor costs shall be reimbursed at cost plus 25% and Other Expenses shall be compensated at cost plus 20%. Subcontractor costs shall not be payable except with the prior approval of

NJTA and shall be thereafter subject to NJTA's approval on an annual basis thereafter.

- 12.0 PRICING ADJUSTMENTS** Without limiting the Contractor's general right to request a Change Order as described in the Contract, the Contractor and NJTA recognize the following circumstances as being outside the parameters of the above Compensation provisions, so as to necessitate a review of Compensation by the Contractor and a proposal for a Change Order under the provisions of the Contract relating to same:
- 12.1** Initiation by NJTA or the Agencies of a formal program of swapping transponders due to either battery life limitations or any technology change that may occur during the term of this contract.
  - 12.2** A significant migration of customer accounts (e.g., the Port Authority of New York and New Jersey accounts from the E-ZPass New York Customer Service Center) to the New Jersey Customer Service Center during the term of this contract as the result of changes in business rules (e.g. incentives or disincentives) or other actions by either ETC Group Agencies or non-ETC Group agencies, which materially increase the Contractor's costs.
  - 12.3** Growth in Customer accounts at a rate exceeding 40% per year for more than two consecutive years during the term of this Contract or exceeding 4,000,000 accounts within five years from Cut-Over.

**END OF APPENDIX B**

