

TOLL AGENCY AGREEMENT

For the

PROVISION OF SERVICES

Between

Electronic Toll Collection (Pty) Ltd

(Registration Number: 2005/003404/07)

(Herein referred to as “ **the Contractor**”)

A Private Company registered in terms of the Companies Act, as amended, and duly represented herein by:

..... (Name & Surname), id. No.:, in his/her capacity as of the Electronic Toll Collection (Pty) Ltd and duly authorized to act in such capacity.

And

The Toll Agency Operating

(Registration Number:)

(Herein referred to as “**TA**”)

A Private Company registered in terms of the Companies Act, as amended, and duly represented herein by:

..... (Name & Surname), id. No.:, in his/her capacity as of the TA and duly authorized to act in such capacity.

(Individually referred to as “the Party” and collectively as “The Parties”)

Witnesses initial here	Signatories initial here

Table of Contents

1. AGREEMENT OVERVIEW	3
2. PURPOSE AND OBJECTIVES.....	4
3. DEFINITIONS	5
4. INTERPRETATION	7
5. DURATION AND TERMINATION OF THE AGREEMENT	8
6. MANAGEMENT OF THE TA - ETC INTEGRATION.....	8
7. COMMERCIAL/FINANCIAL TERMS	13
8. MANAGEMENT OF EXEMPT TRANSACTIONS.....	15
9. CONTRACT MANAGEMENT.....	15
10. NON-COMPLIANCE WITH OBLIGATIONS AND DISPUTE RESOLUTION	16
11. MUTUAL SUPPORT	16
12. BREACH AND TERMINATION OF CONTRACT.....	16
13. CATASTROPHIC EVENTS.....	17
14. HANDOVER/TRANSFER OF THE CONTRACT:	17
15. CONFIDENTIALITY	18
17. LIMITATION OF LIABILITY	18
18. ADDRESSES AND NOTICES.....	19
19. CHANGE AND CONTROL OF THE AGREEMENT	19

Witnesses initial here	Signatories initial here

1. AGREEMENT OVERVIEW

- 1.1. The South African National Road Agency SOC Ltd (Hereinafter referred to as "the Employer") developed a project known as the Gauteng Freeway Improvement Project ("GFIP") to improve, upgrade and/or construct national roads in the Gauteng Province, providing a safe and reliable strategic road network and optimize the movement of traffic, freight and road based public transport;
- 1.2. The improved road network of the GFIP is tolled utilizing Open Road Tolling ("ORT") with electronic and automated methods of levying and collecting toll charges. The 1st phase of the GFIP is known as the Gauteng ORT Project;
- 1.3. For this Project, the Employer procured a National Electronic Toll Collection interoperable solution, which allows a Road User to register a toll account valid for use across all current and future electronic toll collection enabled toll roads nationally. To this end, a Transaction Clearing House ("TCH") was established, which undertakes central Customer Account management and transaction clearing services in respect of all electronic toll transactions, including those transactions generated (and to be generated in the future) by the Employer on other toll roads (which are operated by other parties on behalf of the Employer), and those transactions as implemented by the current Concessionaires, namely the N3 Toll Concession (Proprietary) Limited, Trans African Concessions (Proprietary) Limited and Bakwena Platinum Corridor Concessionaire (Proprietary) Limited. Future Concessionaires may also implement electronic toll collection and shall therefore also be required to use the TCH for account management and transaction clearing;
- 1.4. The Employer and the Contractor entered into an agreement whereby the Contractor is contracted to GFIP and GORT to ensure that the Contractor interoperable solution is realized;
- 1.5. Similarly, the Employer and the TA entered into a CTROM agreement whereby the TA is contracted to ensure that the interoperable solution is realized from the TA point of view;
- 1.6. The purpose of this agreement is therefore to define the responsibility with regards to Interoperability;
- 1.7. Paragraph 1.3 above summarized a portion of the works performed by the Contractor, but most importantly details that the Contractor, through TCH, undertakes central Contractor Customer Account management and transaction clearing services in respect of all the Contractor transactions (herein after referred to as the "Service"), which may include current and future Concessionaires (hereinafter referred to as the "TA");

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- 1.8. Any further reference to the Contractor will include services provided by TCH, the TCH Operator and TCH Back Office; and
- 1.9. Therefore, the Parties will forthwith formalize this agreement to govern and regulate the relationship between the Parties for the performance of the Service, which in summary will include to consider, but are not limited to, the following:
 - 1.9.1. The exchange of data and fees between TCH and the TA within the defined timelines;
 - 1.9.2. The regulation and payment of transaction records and fees;
 - 1.9.3. The distribution and management of tags; and
 - 1.9.4. The provision of Customer Service Centre (CSC) facilities.

2. PURPOSE AND OBJECTIVES

- 2.1. Paragraph 1 above details certain aspects of the Agreement Overview relevant to the purpose and objective of this Agreement.
- 2.2. Various terms in the Main Agreement between the Contractor and the Employer contributes to the purpose and objectives of this agreement. Note however that reference to these clauses do not at this point in time result in any obligation or right for either Party, but **are merely references**, referred to highlight the purpose and objective of this agreement to the Parties, and are as follow:
 - 2.2.1. Volume 2, Book 2c, TCH Operation Specifications, sub-clause 4.6.10.1 states that ETC shall prepare and enter into **service level agreements** with each Toll Agency that interfaces to it.
 - 2.2.2. Volume 2, Book 5, Standard Specifications for Operations and Maintenance, refers to an 'agreement', such as:
 - 2.2.2.1 **Sub-clause 3.1.3:** "The one Tag principle requires the implementation of technical- and procedural interoperability, while the one account principle requires the implementation of contractual- and procedural interoperability";
 - 2.2.2.2 **Sub-clause 3.1.3.3:** "Contractual interoperability ensures data and/or financial reconciliation between the TCH and different Toll Authorities or Toll Agencies who accommodate electronic toll collection Technology, to implement the required technical and procedural measures and put appropriate agreements in place to achieve and regulate the exchange of data and fees to and from the TCH.";
 - 2.2.2.3 **Sub-clause 3.2:** "National Interoperability via the TCH" includes:
 - a) **Sub-clause 3.2.1:** "The implementation plan for electronic toll collection in South Africa is to, on a national scale, obtain

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interoperability through a Transaction Clearing House (TCH), i.e. a central account system. The TCH will undertake central ETC Customer Account management and transaction clearing services in respect of all ETC transactions, including those ETC transactions generated (and to be generated in the future) on Toll Roads implementing ETC, and those ETC transactions taking place and/or that will take place on the Concession roads. The Concessionaires are independent Toll Authorities obliged to transfer all ETC transaction data (excluding violation enforcement related data, which is not obligatory and is only required from Opt-in Toll Agencies) to the TCH in accordance with an agreement to be set-up with the Concessionaires.”;

- b) **Sub-clause 4.1.1:** “The Tags will be procured by the TCH (once the TCH is deployed) and will be distributed to TAs in accordance with Business Rules and **contractual agreements**.”;
- c) **Sub-clause 5.2.5:** “The Customer Accounts and funds will be held by the TCH and the TCH shall:”

2.3. Please note that this document is fulfilling the function of the ‘Service Level Agreements’ between the TA and TCH as referred to in the CTROM and TCH requirements.

2.4. The purpose of this Agreement is therefore to regulate the relationship between the Contractor and the TA w.r.t. interoperability, in order to improve efficiency and effectiveness of the service through a greater understanding of the needs and is constraints of the Parties and through greater accountability.

2.5. The objective of this Agreement is to:

- 2.5.1. Ensure that the Parties clearly understand factors related to service ownership, accountability, roles and/or responsibilities;
- 2.5.2. Ensure that the Parties can find middle ground regarding each Party’s expected perceptions of the Service versus the actual service support & delivery, and
- 2.5.3. Ensure that the daily processing of Tags and transactions, exemption management, query resolution and turnaround times are adhered to by the Parties.

3. DEFINITIONS

In this Agreement, the following expressions and words have the meaning assigned to them below and derivative expressions and words have a corresponding meaning, unless inconsistent with or otherwise indicated by the context:

Witnesses initial here	Signatories initial here

**Toll Agency Service Level Agreement
VERSION 2.4**

- 3.1. "Agreement" means the contents of this Agreement together with any Annexures hereto;
- 3.2. "Business Day" means any day in the RSA which is not a Saturday, Sunday or official public holiday within the meaning of the Public Holidays Act, 1994 and all references in this Agreement to days shall be deemed calendar days, unless specifically stipulated as being Business Days;
- 3.3. "CSC" means a physical face-to-face interaction between a customer services agent and a Road User or customer;
- 3.4. "Central Operations Centre" is the Centre established by the Employer to coordinate the Project with its principal place of business at 36 Assegaai Wood Street; Rooihuiskraal, Ext 39, Centurion, Gauteng, 0157;
- 3.5. "CTROM" means Comprehensive Toll Road Operations and Maintenance;
- 3.6. "Effective Date" means the date upon which the last Party signed this Agreement;
- 3.7. "Electronic Toll Road" means a declared toll road in terms of section 27 of the SANRAL Act where electronic equipment is utilized to identify a motor vehicle operated on such road for the purpose of charging a toll;
- 3.8. "Employer" means the South African National Roads Agency SOC Ltd or its legal successor in title;
- 3.9. "Exempt Vehicle" means a vehicle for which the operator shall grant free passage as approved by the Minister of Transport and published in the Government Gazette from time to time;
- 3.10. "Free Passage Vehicle" means a vehicle for which the TA shall grant a free passage based on the Regulations published in the Government Gazette from time to time. Free passage is Project specific;
- 3.11. "Month" means a calendar month;
- 3.12. "Parties" means ETC and the TA;
- 3.13. "Performance Measurement" means the agreed mechanism for monitoring and reviewing service level specification;
- 3.14. "Project" means the provision of an electronic interface between the Toll Plaza system and the TCH;
- 3.15. "Project Manager" means the representatives of the Parties appointed by them;
- 3.16. "Road User" means any user of an Electronic Toll Road, regardless of whether the Road User has a customer account or not;
- 3.17. "RSS" means the Road Side System which capture and frame all Transaction Records for every vehicle passing under a RSS Tolling Point or gantry.
- 3.18. "SANRAL Act" means the National Roads Agency SOC Limited and National Roads Act, 1998 (Act No. 7 of 1998) as amended;
- 3.19. "Toll Agency (TA)" means the entity responsible for the collection of tolls on a Toll Road.

Witnesses initial here	Signatories initial here

- 3.20. "Tag" means an DSRC (Dedicated Short-Range Communications) based electronic equipment installed within a vehicle or onto a motorcycle and is also known as an OBU (On-Board Unit), which is compliant with EN 15509 ;
- 3.21. "Tariff Table" means a data set produced by the TA, and sent to the TCH for distribution, that defines all tolls, including discounts, tolling periods and related application data to be used in a tolling scheme from time to time;
- 3.22. "Transaction Clearing House (TCH)" means the entity owned by the Employer and currently operated by the Contractor to provide transaction clearing services for tolling nationally in South Africa.
- 3.23. "Toll Plaza" means a structure on a toll road where toll is payable, or any electrical, electronic or mechanical device on a toll road for recording the liability to pay toll, or any combination of such a structure and such a device and includes the lane area;
- 3.24. "Transaction Record" means a record by the tolling point for the passage of a single vehicle through a tolling point, containing relevant information about the passage and applicable images, and which information shall be appended by the ORT Back Office, TCH and VPC.

4. INTERPRETATION

- 4.1. In this Agreement, unless the context indicates a contrary intention, an expression which denotes:
- 4.1.1. Any reference to the singular includes the plural and vice versa;
- 4.1.2. Any reference to natural persons includes legal persons and vice versa;
and
- 4.1.3. Any reference to a gender includes the other gender.
- 4.2. If any definition contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it was a substantive provision in the body of this Agreement, notwithstanding that it is only in the definition clause.
- 4.3. Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 4.4. Annexures to this Agreement and annexures to be agreed upon in writing by the Parties to this Agreement shall be deemed to have been incorporated herein and shall form an integral part hereof. In the case of a conflict between a provision in the main body of this Agreement and an annexure, the provisions of the main body of the Agreement shall prevail. Annexures will also be signed by the Parties in two originals and each Party shall keep a signed original for evidentiary purposes.
- 4.5. A reference to a Party in a document includes that Party's permitted assignees.

Witnesses initial here	Signatories initial here

- 4.6. When any number of days is prescribed in this Agreement, same shall, unless otherwise specifically stated, be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Sunday or public holiday, in which case the last day shall be the next succeeding business day.
- 4.7. A reference to a document includes an amendment or supplement to, or replacement or notation of that document, provided that such will not be binding on a Party unless signed by or on behalf of that Party.
- 4.8. Where figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail.
- 4.9. Where any provision contemplates a notice to be given, such notice shall, unless expressly provided otherwise, be made in writing.
- 4.10. If any provision of this Agreement is in any way inconsistent with the provisions of any applicable legislation, the provisions of the legislation shall prevail and this Agreement shall be read in all respects subject thereto.

5. DURATION AND TERMINATION OF THE AGREEMENT

- 5.1. This Agreement shall commence on the Effective Date.
- 5.2. This Agreement shall remain in force and only be terminated subject to the terms of sub-clause 12 below.

6. MANAGEMENT OF THE TA - ETC INTEGRATION

- 6.1. The Parties agree that:
 - 6.1.1. An interface between the Contractor and the TA shall be implemented, tested and signed off by both Parties in accordance with the requirements as set out in the TA_TCH Interface Description Document version 14.00 or the latest officially submitted version of the document and as required in terms of the relevant Operations and Maintenance Contract ("Tendered Contract") concluded between the TA and the Employer;
 - 6.1.2. The duties and responsibilities of the TA in the management of the TA-TCH integration are set out in clause 6.2 below;
 - 6.1.3. The duties and responsibilities of the Contractor in the management of the TA-TCH integration are set out in clause 6.3 below;
 - 6.1.4. The duties and responsibilities of the Parties with regards to commercial and financial terms are set out in clause 7 below;
 - 6.1.5. The duties and responsibilities with regards Exempt vehicles are set out in clause 8 below; and
 - 6.1.6. The Contractor shall act as the first point of contact for the TA's RUs queries with regards to electronic toll collection, except for instances where the RU interacts via a CSC provided by the TA.

Witnesses initial here	Signatories initial here

**Toll Agency Service Level Agreement
VERSION 2.4**

6.2. With regards to the duties and responsibilities of the TA:

- 6.2.1. The rights and obligations are more detailed in the Toll Agency Operational Communications Plan (herein after referred to as "OCP"). Rev 04.00 is attached hereto and marked **Annexure A**;
- 6.2.2. The OCP details all procedures, processes and agreements by both the Employer and TAs that are using the TCH services and governs the rules and definitions of inter-operability;
- 6.2.3. The processes and procedures as described above are based on particular rights and obligations derived from the agreement between the Contractor and the Employer, (refer paragraph 1.4 above), whereby the Contractor is contracted to ensure that the interoperable solution is realised;
- 6.2.4. The TA will be subject to the KPIs agreed to in writing between the Employer and the TA as far as it pertains to this agreement;
- 6.2.5. Tariff Table:
The TA shall prepare its own Tariff Table in the agreed format and at agreed times and transmitting it to the Contractor. Refer to the OCP 7.7.2;
- 6.2.6. Temporary Suspension of Tolling:
The TA shall notify the Contractor of the locations and durations of any suspensions, should it occur. Refer to the OCP;
- 6.2.7. Discounts:
Discounts shall be applied at TA level. Transaction records for the vehicles to which discounts apply shall have the discounted toll amount. Refer to the OCP 7.2.4 and 7.7.2;
- 6.2.8. Operational Queries:
The TA shall communicate with the Contractor with regards to operational queries according to the procedures as set out in the OCP 7.2.7 within a turnaround time of 2 days (as per the Toll Agency Operational Communications Plan). Operational queries include, but are not limited to, case types such as class discrepancies, duplicate transactions, image requests, discounts, exempts, transactions not paid, etc.
- 6.2.9. Technical Queries (TQ) and System Incidents (SI):
 - The TA shall follow the procedures as set out in the Toll Agency OCP 7.3 should there be any Technical query or System incidents and resolve the TQ or SI within the timelines as specified in the OCP (7.3);
 - Priority Items 1 to 3 above are detailed in Service Desk Matrix attached hereto as **Annexure B**;
 - Technical queries and Systems Incident must be submitted to the Contractor by the TA Representative trained on Solve Direct in terms

Witnesses initial here	Signatories initial here

of this agreement, but must be preceded by an internal investigation and finding regarding the said incident and/or query (Refer to **Annexure C** for contact details);

- Where the Contractor responds to the TQ or SI by way of issuing notice that the TA needs to take a corrective measure to correct the TQ/IS, such corrective measures will be subject to the same timelines as stated above;
- The Contractor will advise the TA of resolution upon which the TA will have 48 hours to advise the Contractor that the matter is not resolved, otherwise the matter will be deemed resolved; and
- Technical queries will have a turnaround time of 7 days.

6.2.10. Road User Queries:

- The TA shall respond to TA specific Road User complaints received through the TCH Inter-active voice response (IVR), such as complains on road conditions or TA toll equipment;
- The TA shall be responsible for Road User claims or complaints that relates to services provided or fees charged by the Toll Agency as per the Toll Agency OCP 7.6.3.

6.2.11. The Contractor and/or TA will have the right to extend the period to respond to queries as per paragraphs 6.2.8, 6.2.9 and 6.2.10 where, based on the nature of the query, the Contractor and/or TA would require a greater response time;

6.2.12. E-tag stock control:

- The TA shall manage stock levels of tags to ensure that demand is met within the period as to be agreed to between the parties;
- The TA shall also provide monthly tag forecasts to the Contractor as part of its month-end reporting. A lead time of two (2) months is required for the re-ordering of stock;
- When new tags have to be ordered, the TA request a quotation from the Contractor. As soon as the TA confirms the order, the Employer creates and invoice. The TA have to pay the Employer for the tags before it is issued.

6.2.13. Transaction submission:

- The TA shall send transaction records according to the timelines as set out in Volume 2 Book 8a;

6.2.14. Transactions submitted after 24 hours will not be guaranteed:

- The TA and Contractor shall agree upon a procedure to manage rejected transactions;

Witnesses initial here	Signatories initial here

**Toll Agency Service Level Agreement
VERSION 2.4**

- The TA shall ensure that the validation lists are updated in 4 (four) hours or as determined by the Interface specification document, based on the risk associated with the updates.

6.2.15. Operate the CSC Facilities on behalf of the Contractor:

- The TA shall provide the staff to operate the CSC on behalf of the Contractor in terms of the Tender Contract;
- The TA shall monitor the availability of the CSC and ensure that they are within the performance levels (KPI CT9) in terms of the Contract;
- The TA shall ensure that the accuracy of Account Registration Processing is within performance levels (KPI CT14) in terms of the Contract;
- The TA shall ensure that accuracy of charging and charge reconciliation processes are within performance levels (KPI CT10) in terms of the Contract;
- The TA shall be available to answer calls from Customers in terms of the Contract. **(KPI CT6a)**

6.2.16. First Line Hardware Maintenance and Support:

- The TA shall perform first line maintenance and support and/or remote assistance in identifying and resolving problems relating to the tolling system and tolling system interfaces (Vol 2 Book 2a, 14.4.3.6). It includes, but is not limited to the following:
 - Initial identification of the problem;
 - Attempt to solve issue;
 - If not successful, contact the Contractor and assist in resolving the problem by providing relevant system support if required.

6.2.17. Non-compliance with obligations by the TA:

- Where the TA does not comply with the terms of this agreement the matter should be referred to the Employer or his Representative.

6.3. The Contractor has the following rights and obligations with regards to:

6.3.1. Security Keys:

The Contractor is responsible for the managing and secure distribution of security keys. Refer to the OCP 7.7.2;

6.3.2. Data Transfer:

- The Contractor shall ensure that updates of the validation list are done timeously. Validation lists should be timestamped when a change in status occurred. Updates shall at least be every 30 minutes;
- The Contractor publishes the validation list. It is the responsibility of the TA's to poll the TCH system to get either a complete list, or the

Witnesses initial here	Signatories initial here

**Toll Agency Service Level Agreement
VERSION 2.4**

Delta list. (According to the business rules, the transactions will still be guaranteed for a period of 4 hours after the status change to red);

- The Contractor shall generate daily TA statements with unique reference numbers. The Contractor prepares two reconciliations per week. Payments to the TA are only made twice a week;
- Also refer to paragraph 13 with regards to a Catastrophic Event.

6.3.3. Customer Service Centres:

- The Contractor shall procure and install a CSC workstation, with an operating system, TCH application desktop and TCH software. The installation shall include tag readers, signature devices and devices to link to banking institutions;
- The Contractor shall perform training to the TA's staff to operate the TCH Back Office and perform CSC services and shall perform skills assessments to ensure the quality and sufficiency of the training done by the entities to their staff;
- The Contractor shall monitor the levels of service and the cost effectiveness of provision of face to face customer service provided by Toll Agencies in order to meet the required performance levels;
- Where the TCH Back Office handles accounts that are migrating from another Toll Agency, it shall seek to ensure that the overall customer service provided by the Contractor is at least as good as that experienced by the Customer before migration.

6.3.4. Tag distribution and management:

- The Contractor shall provide the tags to the TA.

Witnesses initial here	Signatories initial here

6.4. The Contractor shall, within the periods specified:

- 6.4.1. Provide the TA with detailed documentation and reports (Refer to OCP 7.4 & 7.7.2):
 - Daily transaction statement
 - Invoices for processing fees charged
 - Final account statement
 - Payment reconciliations
- 6.4.2. The reports shall be submitted electronically to the TA;
- 6.4.3. Reports shall contain accurate information so as to enable the TA to monitor and manage their performance and reconcile with the TCH Back Office;
- 6.4.4. The agreement between the Contractor and the Employer subjects the Contractor to certain Key Performance Indicators (KPI) in terms of which its performance is categorised;
- 6.4.5. The agreement between the Contractor and the Employer details the Employer's requirements and encapsulates Business Rules (BR) that supplement the operation management requirement and considers primarily the commercial and operational relationship between entities and others involved in providing or using the overall Contractor services.

7. COMMERCIAL/FINANCIAL TERMS

7.1. The TA has the following obligations with regards to:

7.1.1. Cash deposits:

The following principles shall be followed for Cash deposits:

- There will be a separate/additional cash-up for CSC income;
- There will be separate bank accounts for the CSC where the cash should be deposited;
- The CSC shall be able to accept credit cards;
- Reconciliation shall be done on CSC accounts by the TA for both credit cards (speed-point transactions) and cash.

7.1.2. Processing fee:

- The TA has to pay a processing fee for every electronic toll transaction record. The processing fee shall be agreed between the Employer and the TA and has to be communicated to the Contractor;
- If the electronic toll transactions have to be resubmitted, no additional processing fees shall be applied if the need to resubmit had not arisen from any act or omission of the TA. If the resubmission is needed due to an act or omission of the TCH, then no processing fee shall apply to the initial and subsequent submission of the same the Contractor transaction record;

Witnesses initial here	Signatories initial here

**Toll Agency Service Level Agreement
VERSION 2.4**

- An additional processing fee will apply to each resubmission of the electronic toll transaction records previously validly rejected by the TCH if the rejection had arisen from an act or omission of the TA. Additional fee to be agreed to between the TA and the Employer and to be confirmed to the Contractor;
- The processing fee shall not apply to the electronic toll transaction records submitted by the TA relating to Exempt and Free Passage accounts which is defined as such in the Validation List.

7.2. The Contractor has the following obligations with regards to:

7.2.1. Toll Transaction payment:

- Payment for TCH toll transactions shall be indicated as a separate entry on the Payment Reconciliation. The TA statement provided by the TCH shall be the source document;
- The TCH payment frequency is not impacted by interest for late deposits since it is an assumed payment on submission. In case of TA's operated by CTROM contracts there is no flow of cash, only an accounting entry.

7.2.2. Invoicing of processing fee:

- Processing fees shall be indicated as a separate entry on the Payment Reconciliation. The TA statement provided by the TCH shall be the source document;
- Processing fees will be a separate invoice and should not be set off against the transaction income.

7.2.3. Tax and VAT requirements:

To assist with the processing and administration of all the transactions relating to, inter alia, GFIP, the TCH performs the following functions on behalf of the Toll Agencies:

- The registration of road users;
- The allocation of toll transactions to individual customer accounts;
- The processing of tax invoices, issued by TCH on behalf of the TA's to customers (please see detailed description below);
- The processing of payments received from customers; and
- The identification of unpaid transactions and referral to the VPC after expiration of the grace period.

Witnesses initial here	Signatories initial here

With regards to the processing of payments:

- TCH processes and issues tax invoices and collects payments on behalf the TA's as agent. The tax invoices are issued under the VAT registration numbers of the TA's respectively and the VAT on the e-toll fees received from the road users are accounted for by the TA's;
- A consolidated tax invoice (i.e. an invoice which reflects the cumulative total of all e-toll transactions allocated to a road user's e-toll account during the period for a specific TA) is made available through the SANRAL website at regular intervals and after an e-toll transaction has been allocated to a road user's e-toll account;
- Where a road user elected to receive tax invoices, SANRAL will send the tax invoice to the road user by preferred method (e.g. e-mail or post) for record purposes;
- If a road user is in default (i.e. where payment is not made within the grace period), the transaction is transferred to VPC, which is responsible to issue a tax invoice to the default road user.

The TA has to perform a monthly reconciliation.

8. MANAGEMENT OF EXEMPT TRANSACTIONS

8.1. The TA has the following obligations with regards to:

8.1.1. Exempt and emergency transactions:

- South African Police Services, Department of Defence and Metropolitan Police vehicles are exempted according to law and shall be exempted at toll plazas;
- Exempt vehicles will be tagged and ANPR (Automatic Number Plate Recognition) or any other form of number plate checking (eg a manual process) is required;
- If an Exempt vehicle has a valid tag, no official warrant is required in addition to the tag.

9. CONTRACT MANAGEMENT

- 9.1. As soon as possible after the Effective Date, the Parties shall each appoint a project manager and notify the other Party of such appointment;
- 9.2. The project managers shall be responsible for the overall management of this Agreement and the fulfilment of the obligations of both Parties;
- 9.3. Either Party shall be entitled, at any time, to terminate the appointment of its project manager by notice to the other Party or to appoint any other person as project manager and such termination shall take effect in terms of such notice;
- 9.4. Each Party's project manager shall be authorised to manage this Agreement on behalf of the Party making the appointment and the Parties shall ensure that

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their project managers will have the necessary skill, expertise, and experience to carry out such responsibility;

- 9.5. All communications concerning the management of this Agreement shall, unless otherwise agreed to between the Parties, take place between the Parties' respective project managers;
- 9.6. In the event that the project managers cannot agree on a matter required for the successful execution of the project, the matter will be referred to the Employer's Representative of both Parties for resolution.

10. NON-COMPLIANCE WITH OBLIGATIONS AND DISPUTE RESOLUTION

- 10.1. In the event that any of the Parties do not comply with its obligations, then the "innocent party" will by written notice and within 72 hours from becoming aware of the event, notify the party in breach "offending party" of its non-compliance and request such party to remedy the breach;
- 10.2. The notice must be addressed to the offending party's Project Manager;
- 10.3. If the breach in paragraph 10.1 cannot be resolved as stipulated, then the breach must be escalated to Senior Management to be resolved within 48 hours from confirmation of non-resolution of the process in paragraph 10.1;
- 10.4. If the breach in paragraph 10.3 cannot be resolved in the prescribed period, then the affected party will have the rights as per paragraph 12 below.

11. MUTUAL SUPPORT

The Parties undertake at all times to do all such things, perform all such actions and take all such steps and to facilitate the procurement of such things, actions or steps to the best of their ability, that are necessary or incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.

12. BREACH AND TERMINATION OF CONTRACT

- 12.1. The process herein may only be followed subsequent to the process described in paragraph 10 above;
- 12.1.1. Either Party shall, notwithstanding clause 12.2, with or without cause, be entitled to terminate this Agreement upon 30 (thirty) days written notice to the other Party.
- 12.2. In addition to any rights of cancellation, which either Party may have at common law, this Agreement may be terminated as follows:
- 12.2.1. By either Party ("Innocent Party") in the event of the other Party ("Offending Party") committing a material breach of any of the terms of this Agreement and failing to remedy such breach within a period of 10 (ten) days after receipt of written notice, or such period as may be agreed to between the parties in writing, given by the Innocent Party to

Witnesses initial here	Signatories initial here

the Offending Party drawing attention to the breach and demanding that it be remedied;

12.2.2. By either Party in the event that the other Party is at any time placed in liquidation, whether provisional or final, or if it compromises with its creditors, or if it has had any judgment given against it and such judgment is final or becomes final and is not satisfied within 21 (twenty-one) days.

12.3. Termination of this Agreement for whatever reason shall not affect the rights of either Party's outstanding debts and/or duties in terms of this Agreement. The Parties agree that the undertakings given in relation to their respective confidential information and intellectual property rights shall survive the termination of this Agreement.

12.4. In addition, the Contractor and/or TA shall have the right to terminate this Agreement in the event that:

12.4.1. The Project is terminated by the Employer for any reason whatsoever; or

12.4.2. An alteration of the works and/or services provided under the Project influences the requirements of the services to be performed or delivered;
or

12.4.3. The Employer applies for an interruption of the works and/or services provided under the Project.

13. CATASTROPHIC EVENTS

13.1. In terms Catastrophic Events mean: An event or occurrence that is the type of event which is not part of the normal operations or where the event and migration thereof is not under the clear control of either party;

13.2. The Parties agree to be subject to the terms of the OCP regarding Catastrophic Events Refer OCP 7.12 – 7.15;

13.3. The Contractor will be responsible for reporting on Catastrophic Events to the nominated members of the Management Committee on a monthly basis.

14. HANDOVER/TRANSFER OF THE CONTRACT:

Whenever the current Contracts are handed over to new TA Operators, the Agreement will be signed by the new Operators and the Annexures will be updated accordingly.

Witnesses initial here	Signatories initial here

15.CONFIDENTIALITY

- 15.1. Both Parties agree that Confidential Information disclosed to the other Party by the disclosing Party shall be used by the other Party solely in connection with the provision of the Services as recorded under this Agreement.
- 15.2. Neither Party shall use the Confidential Information of the other Party for any purpose other than in the lawful carrying out of its Duties under this Agreement.

16.LIMITATION OF LIABILITY

- 16.1. Direct Damages: The Parties agree that, in the event of a breach of any of the provisions of this Agreement, the defaulting Party shall be liable to the other Party for all losses which constitute direct and/or general damages.
- 16.2. Neither Party shall be liable to the other for any losses which constitute indirect, special or consequential damages.
- 16.3. Exception: Notwithstanding anything to the contrary set forth in clause 16.2 above or the Agreement in general, the Parties agree that they shall be liable to the other for-
- 16.3.1. Losses which constitute indirect, special and/or consequential damages where such damages are caused by a breach of any Intellectual Property and/or Confidential Information undertaking contained in the Agreement; and
- 16.3.2. All Losses which arise out of their gross negligence or wilful or fraudulent misconduct.
- 16.4. Both Parties shall be under a duty to mitigate any costs suffered or incurred as a result of any breach of this Agreement by the other Party.

Witnesses initial here	Signatories initial here

17. ADDRESSES AND NOTICES

For the purpose of this Agreement, including the giving of notices in terms hereof and the serving of legal process, the Parties choose their addresses as follows:

ETC 36 Assegai Wood Street
 Rooihuiskraal Ext 39
 Centurion
 0157

TA

17.1. Each Party shall be entitled from time to time to give written notice to amend the *domicilium citandi et executandi* by giving any other address within the Republic of South Africa, which shall not be a post office box or *poste restante*.

17.2. All notices given in terms of this Agreement shall be valid and effective only if in writing.

18. CHANGE AND CONTROL OF THE AGREEMENT

Procedure for adopting legislative changes and/or contractual changes enacted during the duration of the Agreement:

18.1. Either Party may propose an amendment to this Agreement;

18.2. The Party proposing an amendment to this Agreement shall submit such proposal and supporting details to the other Party in writing, and copy the Employer's Representative;

18.3. Any amendment to this Agreement shall not be effective unless signed by both Parties;

18.4. The amending Agreement will come into effect on the date the last party signed the documented amendment.

Witnesses initial here	Signatories initial here

**Toll Agency Service Level Agreement
VERSION 2.4**

THUS DONE AND SIGNED BY THE PARTIES AS FOLLOWS:

ETC

WITNESS

WITNESS

Date.....

Place.....

TOLL AGENCY

WITNESS

WITNESS

Date.....

Place.....

Witnesses initial here	Signatories initial here