



E-ZPass® On-the-Go Retail Sales Program Application

INSTRUCTIONS:

- Please read the E-ZPass On-the-Go Retail Sales Agreement prior to completing and submitting this Application.
- Complete Sections I through IV and VI and mail to the address above.
- This Application must be completed in its entirety and signed by an authorized representative.
- Upon approval of Application, the Retail Sales Agreement will be sent to Merchant for execution.

Section I Applicant Information			
Corporate/Business/Entity Name	Authorized Representative Name		Phone No. () -
Doing Business As (DBA)(if applicable)	Federal Employer ID No. (or SS No.)		Fax No. () -
Address of Primary Place of Business or Principal Office	City	State	Zip Code -

Section II Retail Location Information	
Total number of retail locations the entity operates	Total number of retail locations applying for E-ZPass On-the-Go Tag distribution
Type(s) of retail locations where E-ZPass On-the-Go Tags will be distributed (check all that apply)	
<input type="checkbox"/> Gas/Service Station <input type="checkbox"/> Auto Dealership <input type="checkbox"/> Car Wash <input type="checkbox"/> Newsstand/Gift Shop <input type="checkbox"/> Auto Parts Store <input type="checkbox"/> Grocery Store <input type="checkbox"/> Convenience Store <input type="checkbox"/> Fast Food <input type="checkbox"/> Government/Municipal Office <input type="checkbox"/> Other	

Section III Specific Retail Information for E-ZPass On-the-Go Tag Sales (See Page 2)

Section IV Vendor Responsibility Questionnaire (TA-W3205-9)

Section V E-ZPass On-the-Go Retail Sales Agreement (See Attached)

Section VI Applicant Representation and Certification (See Attached)

I hereby represent that all of the information provided in this Application is complete, true and accurate. I further represent that I am authorized to execute this Application on behalf of the entity named in Section I.

Authorized Representative Signature Authorized Representative Title Date

Important Note to Applicants:

Submission of an E-ZPass On-the-Go Retail Sales Program Application does not guarantee that it will be approved. Approval to participate as an E-ZPass On-the-Go merchant is within the sole discretion of the New York State Thruway Authority. Applicants may be required, at the request of the Thruway Authority, to provide additional information regarding the financial responsibility of the applicant.

It is not necessary to employ any person, agency, or organization to assist you in filing this Application. Beware of persons claiming to be able to assist you in securing action on your Application.

E-ZPass® On-the-Go Retail Sales Program Application Retail Information for E-ZPass® On-the-Go Tag Sales

INSTRUCTIONS: Complete information for each retail location that will be selling E-ZPass On-the-Go Tags. Photocopy as needed.

Retail Location Information									
Store/Location Name				Store No. (optional)		E-mail Address			
Store Type (if applicable)			Contact Name				Phone No. () -		
Physical Address					City		State	Zip Code	County
Billing Address <input type="checkbox"/> (Check if same as address on Page 1) <input type="checkbox"/> Other <input type="checkbox"/> (Check if same as physical address)						Average No. of customers per week		Average sales volume per week (if applicable)	
Hours of Operation	Sunday to <input type="checkbox"/> AM <input type="checkbox"/> PM to <input type="checkbox"/> AM <input type="checkbox"/> PM	Monday to <input type="checkbox"/> AM <input type="checkbox"/> PM to <input type="checkbox"/> AM <input type="checkbox"/> PM	Tuesday to <input type="checkbox"/> AM <input type="checkbox"/> PM to <input type="checkbox"/> AM <input type="checkbox"/> PM	Wednesday to <input type="checkbox"/> AM <input type="checkbox"/> PM to <input type="checkbox"/> AM <input type="checkbox"/> PM	Thursday to <input type="checkbox"/> AM <input type="checkbox"/> PM to <input type="checkbox"/> AM <input type="checkbox"/> PM	Friday to <input type="checkbox"/> AM <input type="checkbox"/> PM to <input type="checkbox"/> AM <input type="checkbox"/> PM	Saturday to <input type="checkbox"/> AM <input type="checkbox"/> PM to <input type="checkbox"/> AM <input type="checkbox"/> PM		
Total Square Footage		Do You: <input type="checkbox"/> Lease <input type="checkbox"/> Own	Expiration Date of Lease		Years at Address		Are You Licensed to Sell NYS Lottery? <input type="checkbox"/> Yes - If Yes, give no. _____ <input type="checkbox"/> No		

Retail Location Information									
Store/Location Name				Store No. (optional)		E-mail Address			
Store Type (if applicable)			Contact Name				Phone No. () -		
Physical Address					City		State	Zip Code	County
Billing Address <input type="checkbox"/> (Check if same as address on Page 1) <input type="checkbox"/> Other <input type="checkbox"/> (Check if same as physical address)						Average No. of customers per week		Average sales volume per week (if applicable)	
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Retail Location Information									
Store/Location Name				Store No. (optional)		E-mail Address			
Store Type (if applicable)			Contact Name				Phone No. () -		
Physical Address					City		State	Zip Code	County
Billing Address <input type="checkbox"/> (Check if same as address on Page 1) <input type="checkbox"/> Other <input type="checkbox"/> (Check if same as physical address)						Average No. of customers per week		Average sales volume per week (if applicable)	
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Total Square Footage		Do You: <input type="checkbox"/> Lease <input type="checkbox"/> Own	Expiration Date of Lease		Years at Address		Are You Licensed to Sell NYS Lottery? <input type="checkbox"/> Yes - If Yes, give no. _____ <input type="checkbox"/> No		

STATE OF NEW YORK VENDOR RESPONSIBILITY QUESTIONNAIRE

1. Vendor is: <input type="checkbox"/> PRIME CONTRACTOR <input type="checkbox"/> SUB-CONTRACTOR			
2. Vendor's Legal Business Name		3. Identification Numbers a) FEIN # _____ b) DUNS # _____	
4. Doing Business As (D/B/A) (if applicable) & County Filed		5. Website Address (if applicable)	
6. Address of Primary Place of Business/Executive Office		7. Phone No. () -	8. Fax No. () -
9. Address of Primary Place of Business/Executive Office in <i>New York State</i> (if different from above)		10. Phone No. () -	11. Fax No. () -
12. Primary Place of Business in New York State is: <input type="checkbox"/> Owned <input type="checkbox"/> Rented If rented, please provide landlord's name, address, and phone number below:		13. Authorized Contact for this Questionnaire Name _____ Title _____ Phone No. _____ Fax No. _____ E-mail Address _____ _____ _____	
14. Vendor's Business Entity is (check appropriate box and provide requested information):			
a) <input type="checkbox"/> Business Corporation	Date of Incorporation	State of Incorporation*	
b) <input type="checkbox"/> Sole Proprietor	Date Established		
c) <input type="checkbox"/> General Partnership	Date Established		
d) <input type="checkbox"/> Not-for-Profit Corporation	Date of Incorporation	State of Incorporation* _____ Charities Registration No. _____	
e) <input type="checkbox"/> Limited Liability Company (LLC)	Date Established		
f) <input type="checkbox"/> Limited Liability Partnership	Date Established		
g) <input type="checkbox"/> Other - Specify:	Date Established	Jurisdiction Filed (if applicable)	
* If not incorporated in New York State, please provide a copy of authorization to do business in New York or a current certificate of good standing from your state of incorporation.			
15. Primary Business Activity (Please identify the primary business categories, products or services provided by your business).			
16. Name of Workers' Compensation Insurance Carrier:			
17. List below ALL of the Vendor's Principal Owners and the three officers who direct the daily operations of the Vendor (attach additional sheets if necessary):			
a) Name	Title	b) Name	Title
c) Name	Title	d) Name	Title

STATE OF NEW YORK VENDOR RESPONSIBILITY QUESTIONNAIRE

FOR QUESTIONS 18 - 29, A DETAILED EXPLANATION IS REQUIRED FOR EACH QUESTION ANSWERED WITH A "YES", AND MUST BE PROVIDED AS AN ATTACHMENT TO THE COMPLETED QUESTIONNAIRE. YOU MUST PROVIDE ADEQUATE DETAILS OR DOCUMENTS TO AID THE NEW YORK STATE THRUWAY AUTHORITY/CANAL CORPORATION (NYSTA/CC) IN MAKING A DETERMINATION OF VENDOR RESPONSIBILITY. PLEASE NUMBER EACH RESPONSE TO MATCH THE QUESTION NUMBER.

18. Is the vendor certified in New York State as a (please check): Yes No

- Minority Business Enterprise (MBE)
- Women's Business Enterprise (WBE)
- Disadvantaged Business Enterprise (DBE)

Please provide a copy of any of the above certifications that apply.

19. Does the vendor use, or has it used in the past ten (10) years, any other business name, FEIN, DUNS or D/B/A other than those listed in items 2-4 above? Yes No

List all other business name(s), FEIN(s), DUNS(s) or any D/B/A names and the dates that these names or numbers were/are in use. Explain the relationship to the vendor.

20. Are there any individuals now serving in a managerial or consulting capacity to the vendor, including principal owners and officers, who now serve or in the past three (3) years have served as:

a) a full or part-time employee at the NYSTA/CC or a New York State agency, or as a consultant, in an individual capacity, to the NYSTA/CC or a New York State agency? Yes No

List each individual's name, business title or consulting capacity, New York State agency name (if applicable) and employment position with applicable service dates.

b) If yes to item #20a, did this individual perform services related to the solicitation, negotiation, operation and/or administration of public contracts for the NYSTA/CC or a New York State agency? Yes No

List each individual's name, business title or consulting capacity, New York State agency name (if applicable) and the consulting/advisory position with applicable service dates. List each contract name and assigned contract number.

21. Within the past five (5) years, has the vendor, any individuals serving in a managerial or consulting capacity, principal owners, officers, major stockholder(s) (10% or more of the voting shares for publicly traded companies, 25% or more of the shares for all other companies), affiliate¹ or any person involved in the bidding, contracting, or leasing process:

a) i. be suspended, debarred or terminated by a local, state or federal authority in connection with a contract or contracting process; Yes No

ii. been disqualified for cause as a bidder on any permit, license, concession franchise or lease;

iii. agreed to a voluntary exclusion from bidding/contracting;

iv. had a bid rejected on a NYSTA/CC or a New York State agency contract for failure to comply with the MacBride Fair Employment Principles;

v. had a low bid rejected on a local, state or federal contract for failure to meet statutory affirmative action or M/WBE requirements on a previously held contract;

vi. had status as a Women's Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise denied, de-certified, revoked or forfeited;

vii. been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any local, state or federal government contract;

viii. been denied an award of a local, state or federal government contract, had a contract suspended or had a contract terminated for non-responsibility; or

ix. had a local, state or federal government contract suspended or terminated for cause prior to the completion of the term of the contract?

b) been investigated, indicted, convicted, received a judgement against them or grant of immunity for any business-related conduct constituting a crime under local, state or federal law including, but not limited to, fraud, extortion, racketeering, price-fixing, bid collusion or any crime related to truthfulness and/or business conduct? Yes No

**STATE OF NEW YORK
VENDOR RESPONSIBILITY QUESTIONNAIRE**

- c) been issued a citation, notice, violation order, or are pending an administrative hearing, proceeding or determination for violations of: Yes No
- i. federal, state or local health laws, rules or regulations, including but not limited to Occupational Safety & Health Administration (OSHA) or New York State labor law;
 - ii. state or federal environmental laws;
 - iii. unemployment insurance or workers' compensation coverage or claim requirements;
 - iv. Employee Retirement Income Security Act (ERISA);
 - v. federal, state or local human rights laws;
 - vi. civil rights laws;
 - vii. federal or state security laws;
 - viii. federal Immigration and Naturalization Services (INS) and Alienage laws;
 - ix. state or federal anti-trust laws; or
 - x. charity or consumer laws
- d) been investigated by any federal, state or local government agency for a civil violation for any business related conduct? Yes No

For yes answers to any of the above, detail the situation(s), the date(s), names(s), title(s) and address(es) of any individuals involved and, if applicable, any corrective action(s) taken by the vendor.

22. In the past five (5) years, has the vendor or its affiliates¹ had any claims, judgements (satisfied or unsatisfied), injunctions, liens, fines or penalties secured by any governmental agency including, but not limited to, judgements based on taxes owed or fines or penalties assessed by any federal, state or local government agency? Yes No

Indicate if this is applicable to the submitting vendor or affiliate. State whether the situation(s) was a claim, judgement, injunction, lien or other with an explanation. Provide the name(s) and address(es) of the agency, the amount of the original obligation and outstanding balance. If any of these items are open or unsatisfied, indicate the status of each item as "open" or "unsatisfied".

23. Has the vendor (for profit and not-for-profit corporations) or its affiliates¹, in the past three (3) years, had any governmental audits that revealed material weaknesses in its system of internal controls, compliance with contractual agreements and/or laws and regulations or any material disallowances? Yes No

Indicate if this is applicable to the submitting vendor or affiliate. Detail the type of material weakness found or the situation(s) that gave rise to the disallowance, any corrective action take by the vendor and the name of the auditing agency.

24. Is the vendor exempt from income taxes under the Internal Revenue Code? Yes No
Indicate the reason for the exemption and provide a copy of any supporting information.

25. During the past three (3) years, has the vendor failed to:
- a) file returns or pay any applicable federal, state or city taxes? Yes No

Identify the taxing jurisdiction, type of tax, liability year(s), and tax liability amount the vendor failed to file/pay and the current status of the liability.

- b) file returns or pay New York State unemployment insurance? Yes No

Indicate the years the vendor failed to pile/pay the insurance and the current status of the liability.

26. Have any bankruptcy proceedings been initiated by or against the vendor or its affiliates¹ within the past seven (7) years (whether or not closed) or is any bankruptcy proceeding pending by or against the vendor or its affiliates regardless of the date of filing? Yes No

Indicate if this is applicable to the submitting vendor or affiliate. If it is an affiliate, include the affiliate's name and FEIN. Provide the court name, address and docket number. Indicate if the proceedings have been initiated, remain pending or have been closed. If closed, provide the date closed.

27. Is the vendor current insolvent, or does the vendor currently have reason to believe that an involuntary bankruptcy proceeding may be brought against it? Yes No

Provide financial information to support the vendor's position, for example, Current Ratio, Debt Ratio, Age of Accounts Payable, Cash Flow and any documents that will provide the NYSTA/CC with an understanding of the vendor's situation.

28. Has the vendor been a contractor or subcontractor on any contract with any New York State agency and/or with the NYSTA/CC in the past five (5) years? Yes No

List the agency name, address and contract effective dates. Also provide state contract identification number, if known.

STATE OF NEW YORK VENDOR RESPONSIBILITY QUESTIONNAIRE

29. In the past five (5) years, has the vendor or any affiliates¹ :
- a) defaulted or been terminated on, or had its surety called upon to complete, any contract (public or private) awarded; Yes No
- b) received an overall unsatisfactory performance assessment from any government agency on any contract; or
- c) had any liens or claims over \$25,000 filed against the firm which remain undischarged or were unsatisfied for more than 90 days?

Indicate if this is applicable to the submitting vendor or affiliate. Detail the situation(s) that gave rise to the negative action, any corrective action taken by the vendor and the name of the contracting agency.

¹"Affiliate" meaning: (a) any entity in which the vendor owns more than 50% of the voting stock; (b) any individual, entity or group of principal owners or officers who own more than 50% of the voting stock of the vendor; or (c) any entity whose voting stock is more than 50% owned by the same individual, entity or group described in clause (b). In addition, if a vendor owns less than 50% of the voting stock of another entity, but directs or has the right to direct such entity's daily operations, that entity will be an "affiliate" for purposes of this questionnaire.

State of: _____ } ss:
County of: _____

CERTIFICATION:

The undersigned: recognizes that this questionnaire is submitted for the express purpose of assisting the New York State Thruway Authority/Canal Corporation (NYSTA/CC) in making a determination regarding an award of contract or approval of a subcontract; acknowledges that the NYSTA/CC may in its discretion, by means which it may choose, verify the truth and accuracy of all statements made herein; acknowledges that intentional submission of false or misleading information may constitute a felony under Penal Law Section 210.40 or a misdemeanor under Penal Law Section 210.35 or Section 210.45, and may also be punishable by a fine and/or imprisonment of up to five years under 18 USC Section 1001 and may result in contract termination; and states that the information submitted in this questionnaire and any attached pages is true, accurate and complete.

The undersigned certifies that he/she:

- has the financial resources necessary to fulfill the requirements of the proposed contract;
- has not altered the content of the questions in the questionnaire in any manner;
- has read and understands all of the items contained in the questionnaire and any pages attached by the submitting vendor;
- is knowledgeable about the submitting vendor's business and operations;
- understands that the NYSTA/CC will rely on the information supplied in this questionnaire when entering into a contract with the vendor; and
- is under a duty to notify the NYSTA/CC of any material changes to the vendor's responses herein prior to the NYSTA's/CC's execution of the contract.

Name of Business _____ Signature of Owner/Officer _____
Address _____ Printed Name of Signatory _____
City, State, Zip _____ Title _____

Sworn to before me this _____ day of _____, 20____;

Notary Public

Signature

Print Name

Date

E-ZPass On-the-Go Retail Sales Program Application

**E-ZPASS ON-THE-GO
RETAIL SALES AGREEMENT**

(To be executed after applicant is approved as an E-ZPass On-the-Go Merchant)

This AGREEMENT (hereinafter "Agreement") is made this *[insert day of month]* day of *[insert month and year]*, by and between the New York State Thruway Authority (hereinafter "Authority"), a public corporation organized and existing pursuant to Article 2, Title 9 of the New York State Public Authorities Law, as amended, whose principal office is located at 200 Southern Boulevard, Albany, New York 12209 (Mailing Address: P.O. Box 189, Albany, New York 12201-0189), and *[insert name of Vendor]* (hereinafter "Merchant"), a *[insert organizational form - e.g., corporation, partnership, LLC, LLP, etc.]* duly organized and existing under the laws of the State of *[insert state]*, having its principal office at *[insert address]*.

WITNESSETH:

WHEREAS, the Authority is statutorily responsible for financing, constructing, reconstructing, improving, developing, maintaining and operating a 570-mile superhighway system known as the Thruway; and

WHEREAS, as part of such authorization, the Authority is empowered to collect tolls and fees to maintain its operations and infrastructure; and

WHEREAS, in furtherance of these responsibilities, the Authority implemented an electronic toll collection ("ETC") system known as E-ZPass; and

WHEREAS, E-ZPass is a program whereby a customer pre-pays funds, receives a transponder (Tag) which is then mounted in or on the customer's vehicle, and as the vehicle passes through a toll plaza, an antenna in the lane "reads" that Tag's computerized information and the appropriate toll is deducted from the pre-paid funds; and

WHEREAS, because E-ZPass expedites transactions at the toll plaza thereby reducing congestion, the Authority wishes to expand the use of E-ZPass to as many Authority patrons as possible through the retail sale of E-ZPass Tags, a program known as E-ZPass On-the-Go has been established; and

WHEREAS, Merchant wishes to participate in the E-ZPass On-the-Go program subject to all of the terms and conditions of such program.

NOW, THEREFORE, the parties hereto, for the consideration hereinafter named, do agree as follows:

I. CORPORATE WARRANTIES AND CONDUCT

Section 1.1 – Application Warranties and Changes

A. Merchant represents and warrants that: (i) all of the information provided and statements made in the Application, which is attached hereto and made a part of this Agreement, are complete, true and accurate; and (ii) the business identified on the Application as Merchant is owned in the manner set forth in the Application and that such business is the proprietor of the location(s) at which E-ZPass On-the-Go Tags will be sold.

B. Merchant shall notify the Authority of any changes to any information Merchant supplied on its Application, including any changes in the ownership of such business and the retail locations at which Merchant wishes to sell E-ZPass On-the-Go Tags, within seven (7) calendar days of such change. Merchant shall notify the Authority at least thirty (30) days prior to ceasing business operations, either temporarily or permanently.

Section 1.2 - Observance of Laws

Merchant agrees to observe and obey all applicable Federal, State and local laws, rules, regulations, and policies, and to procure all necessary licenses and permits.

Section 1.3 - Non-Assignment

This Agreement may not be assigned by Merchant nor may its right, title or interest therein be assigned, transferred, conveyed, subcontracted, sublet or otherwise disposed of without the previous consent, in writing, of the Authority and any attempts to assign this Agreement without the Authority's written consent are null and void.

Section 1.4 – Independent Contractor

Merchant is and shall be, in all respects, an independent contractor when participating in the E-ZPass On-the-Go program. In accordance with its status as an independent contractor, Merchant covenants and agrees that neither it nor its agents and/or employees will hold itself or themselves out as or claim to be an officer or employee of the Authority, and that neither Merchant nor its agents and/or employees shall make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Authority, including, but not limited to Worker’s Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement System membership or credit.

II. RETAIL TAG SALES

Section 2.1 – Non-Exclusivity

This Agreement shall in no way be deemed to give Merchant the exclusive right to sell E-ZPass On-the-Go Tags. Merchant acknowledges that the Authority has made no representations with respect to any territorial or geographic exclusivity and that the Authority has the right to utilize other merchants to sell E-ZPass On-the-Go Tags.

A. Merchant may sell E-ZPass On-the-Go Tags only at the retail locations listed on its Application which have been approved by the Authority. Such retail locations must be physically situated in the New York State counties listed below:

Eligible New York State Counties for E-ZPass On-the-Go Sales					
Albany	Cortland	Herkimer	Ontario	Schenectady	Washington
Allegany	Delaware	Jefferson	Orange	Schoharie	Wayne
Broome	Dutchess	Lewis	Orleans	Schuyler	Westchester
Cattaraugus	Erie	Livingston	Oswego	Seneca	Wyoming
Cayuga	Essex	Madison	Otsego	Steuben	Yates
Chautauqua	Franklin	Monroe	Putnam	Sullivan	
Chemung	Fulton	Montgomery	Rensselaer	Tioga	
Chenango	Genesee	Niagara	Rockland	Tompkins	
Clinton	Greene	Oneida	St. Lawrence	Ulster	
Columbia	Hamilton	Onondaga	Saratoga	Warren	

B. Merchant shall not sell E-ZPass On-the-Go Tags at retail locations that are physically situated outside New York State or in the New York State counties listed below.

Ineligible New York State Counties for E-ZPass On-the-Go Sales						
Nassau	Suffolk	New York	Bronx	Kings	Queens	Richmond

C. Merchant shall not sell E-ZPass On-the-Go Tags on the Internet, door-to-door or by mailorder. Merchant may not re-sell or otherwise transfer E-ZPass On-the-Go Tags to another business entity.

Section 2.3 – Sales Offerings

A. Merchant must make E-ZPass On-the-Go Tags available for sale to its customers during all days and hours that Merchant’s retail locations are open for business. Merchant shall display and sell E-ZPass On-the-Go Tags on a first in, first out (FIFO) basis; that is, Merchant shall sell E-ZPass On-the-Go Tags in the date order in which they were received into stock. Merchant shall treat all E-ZPass On-the-Go customers with courtesy and in a manner which is equal to or better than the manner in which Merchant treats its customers in general.

B. Merchant may sell each E-ZPass On-the-Go Tag for an amount Merchant deems appropriate, provided that Merchant shall not sell an E-ZPass On-the-Go Tag for more than \$25.00. The sale of E-ZPass On-the-Go Tags is not subject to sales tax and compensating use tax and Merchant shall not charge or collect such taxes on such sales.

C. Merchant shall not refund to any customer the cost of an E-ZPass On-the-Go Tag once it has been purchased by such customer.

Section 2.4 – Risk of Loss

Risk of loss for all E-ZPass On-the-Go Tags delivered to Merchant passes to Merchant when Merchant takes delivery of Tags. Merchant understands that E-ZPass On-the-Go Tags are pre-valued and must be safeguarded in the same manner that Merchant would safeguard cash. Merchant acknowledges and agrees that if E-ZPass On-the-Go Tags in Merchant's possession are lost, stolen, tampered with, mutilated or destroyed: (i) Merchant is liable in full to the Authority for the value of such Tags; and (ii) the Authority shall not have any obligation to refund to Merchant any amounts relating to such Tags.

Section 2.5 - Marketing

A. Merchant shall prominently display at its retail locations where E-ZPass On-the-Go Tags are sold such E-ZPass On-the-Go signage and promotional materials as may be provided by the Authority. Merchant shall not include the Authority, E-ZPass or E-ZPass On-the-Go names or logos in its own signage, advertising or promotional materials unless such materials have been approved, in advance of usage, by the Authority.

B. Merchant hereby authorizes the Authority to include Merchant's name, likeness, and business name and address in the Authority's advertising and promotions for the E-ZPass On-the-Go program.

C. From time to time, the Authority may require Merchant to advertise special E-ZPass On-the-Go promotions. The commercial terms of such special promotions as between the Authority and Merchant and as between Merchant and customer shall be as set forth in a separate transmittal from the Authority to Merchant.

Section 2.6 – Site Inspections

The Authority shall have the right to conduct site inspections at any of Merchant's retail locations where E-ZPass On-the-Go Tags are sold. At the direction of the Authority, Merchant shall revise signage and promotional materials that have been provided by the Authority.

Section 2.7 – Confidentiality

A. Merchant shall safeguard personal information about its E-ZPass On-the-Go customers to the maximum extent permitted by law.

B. Merchant shall not sell, distribute or make available in any way the names and addresses of E-ZPass On-the-Go customers to any entity that will use such information for any commercial purpose; provided, however, that in the event a customer utilizes a check or credit card to purchase E-ZPass On-the-Go Tags at one of Merchant's retail locations, the foregoing restriction shall not be deemed to preclude Merchant from exchanging such information with the applicable banking or credit card institution for the purpose of effectuating such purchase.

III. MERCHANT E-ZPASS ON-THE-GO TAG ORDERS, PURCHASES DELIVERIES, PAYMENTS AND RETURNS

Section 3.1 – E-ZPass On-the-Go Tag Orders

To initiate participation in the program, Merchant must order a minimum of 25 E-ZPass On-the-Go Tags for sale at approved retail locations. E-ZPass On-the-Go Tag orders will be shipped to the approved retail location(s) specified by Merchant when placing the order.

Re-stocking orders for E-ZPass On-the-Go Tags must be in multiples of 25 Tags. Re-stocking orders will also be shipped to the approved retail location(s) specified by Merchant at the time of the re-stocking order.

Section 3.2 – Purchases and Payments

A. Merchant must pay \$21.00 for each E-ZPass On-the-Go Tag ordered. There will be no additional charge for the shipping of E-ZPass On-the-Go Tags to Merchant.

B. Merchant must make payment for each E-ZPass On-the-Go Tag order within forty-five (45) days of receipt of an invoice for such order.

C. The Authority will provide Merchant with a credit or refund for all E-ZPass On-the-Go Tags that are damaged during delivery and are received by Merchant in a damaged condition provided Merchant notifies the Authority within five (5) days of receipt of such damaged Tags.

Section 3.3 - Returns

Merchant must return to the Authority any E-ZPass On-the-Go Tag that Merchant does not sell to a customer within one (1) year from the date when Merchant takes delivery of such Tag. Merchant must return all such unsold E-ZPass On-the-Go Tags to the Authority within fifteen (15) months of receipt of such Tags. The Authority will deactivate all Tags not sold or returned within fifteen (15) months of delivery. Merchant shall pay the Authority a \$5.00 restocking fee for each unsold E-ZPass On-the-Go Tag it returns to the Authority in excess of fifteen (15) months from date Merchant has taken delivery of Tag.

IV. TERM AND TERMINATION

Section 4.1 - Term

This Agreement shall commence upon the Authority’s acceptance of Merchant’s Application and the execution of this Agreement by both parties. This Agreement shall continue in existence until terminated by either party.

Section 4.2 – Termination of Retail Location Participation in Program

The Authority shall have the right, in its sole discretion, to disapprove and terminate the participation of any of Merchant’s retail locations in the E-ZPass On-the-Go program, and such action shall in no event be deemed a breach of contract. In the event the Authority exercises that right Merchant shall immediately return to the Authority all E-ZPass On-the-Go Tags that Merchant has in its possession at those retail locations. The Authority will refund to Merchant \$21.00 for each such Tag returned provided the Tag packaging is unopened and in good condition with no physical wear and tear, and there has been no transaction activity on the Tag.

Section 4.3 - Suspension, Abandonment and Termination

A. The Authority shall have the right, in its sole discretion, to postpone, suspend, abandon or terminate this Agreement at any time and for any reason, and such action shall in no event be deemed a breach of contract. This includes the Authority’s right to terminate this Agreement at any time in the event the Authority finds that Merchant is non-responsible or has failed to accurately disclose vendor responsibility information. In the event the Authority exercises its right to postpone, suspend, abandon or terminate this Agreement, Merchant shall immediately return to the Authority all E-ZPass On-the-Go Tags that Merchant has in its possession. The Authority will refund to Merchant \$21.00 for each such Tag returned provided the Tag packaging is unopened and in good condition with no physical wear and tear, and there has been no transaction activity on the Tag.

B. Merchant may terminate this Agreement upon forty-five (45) days written notice to the Authority. To effectuate such termination, Merchant must return to the Authority all E-ZPass On-the-Go Tags that Merchant has in its possession. The Authority will refund to Merchant \$21.00 for each such Tag returned provided the Tag packaging is unopened and in good condition with no physical wear and tear, and there has been no transaction activity on the Tag.

V. MISCELLANEOUS

Section 5.1 - Damages for Delay

Merchant agrees that it shall not make any charges or claims for damages against the Authority for any delays or hindrances from any cause whatsoever during the progress of any portion of the E-ZPass On- the-Go program.

Section 5.2 - Notices

Any notices permitted or required to be given hereunder shall be in writing and shall be delivered personally, sent by overnight courier or sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

Authority: New York State Thruway Authority
E-ZPass Assistant Operations Manager
200 Southern Boulevard
Albany, New York 12209

Merchant: At the location identified on the Application, as may be updated or amended by Merchant.

Section 5.3 - Liability

Merchant shall be responsible for all damage to life and property due to negligent or otherwise tortious acts, errors or omissions of Merchant in connection with its participation in the E-ZPass On-the-Go program. Further, it is expressly understood that Merchant shall indemnify and save harmless the Authority and/or the State of New York, as their interests may appear, from claims, suits, actions, damages, and costs of every name and description resulting from the negligence of Merchant, and such indemnity shall not be limited by reasons of any insurance coverage. However, Merchant shall not be required to indemnify the Authority for that portion of any claim, suit, action, damage or cost which arises due to the negligent act or omission of the Authority and shall not be required to indemnify the State of New York for that portion of any claim, suit, action, damage or cost which arises due to the negligent act or omission of the State. The provisions of this section shall survive the expiration or termination of this Agreement.

Section 5.4 - Governing Law

This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

Section 5.5 - No Waiver of Provisions

The Authority's failure to exercise or delay in exercising any right or remedy under this Agreement shall not constitute a waiver of such right or remedy or any other right or remedy set forth therein. No waiver by the Authority of any right or remedy under this Agreement shall be effective unless made in a writing duly executed by an authorized officer of the Authority, and such waiver shall be limited to the specific instance so written and shall not constitute a waiver of such right or remedy in the future or of any other right or remedy under this Agreement.

Section 5.6 - Severability Clause

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, but shall remain binding and effective as against all parties hereto.

Section 5.7 - Entire Agreement

This Agreement, together with the Application and any other appendices, attachments, schedules or exhibits, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This Agreement may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties thereto.

EXECUTED AFTER APPROVAL