

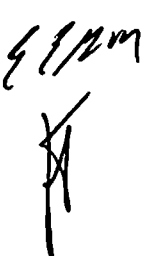
**Schedule 12**  
**ETC Service Terms**  
(See attached.)

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**SCHEDULE 12  
ETC SERVICE TERMS**

All capitalized terms used in this Schedule 12 and not otherwise defined herein shall have the meaning ascribed to them in Section 1.1 of the Toll Road Concession Agreement, dated \_\_\_\_\_, 2023, by and between the Puerto Rico Highways and Transportation Authority and Puerto Rico Tollroads, LLC (the "Concession Agreement").

**Section 1. Background/Definitions**

- 1.1. As of the Effective Date, the Authority is a party to that certain Master Service Agreement, dated as of February 4, 2015 (as amended, and including all of its Annexures and Attachments, the "MSA"), by and among the Authority, Autopistas Metropolitanas de Puerto Rico, LLC ("Metropistas") and Professional Account Management, LLC ("PAM"), as successor in interest to Gila LLC. The MSA provides for the operation and maintenance of the CSC for the Island Network and the RSE/BO of the Toll Roads (except for the roadside equipment for the PR-52 DTL (as defined in Schedule 4)).
- 1.2.  As of the Effective Date, the Authority is a party to that certain Agreement for the Provisions, Design-Build, Operation and Maintenance of Roadside Tolling System, (the "ORT Improvement Contract"), with notice to proceed dated as of September 15, 2022, by and between the Authority and Sice, Inc. ("SICE"). The ORT Improvement Contract provides for the design, construction, implementation, operation and maintenance of a new RSE/BO for the Toll Roads (except for the roadside equipment for the PR-52 DTL).
- 1.3. As of the Effective Date, the Authority is a party to that certain Agreement for the Provision of Toll Collection Equipment and Services, dated as November 5, 2020, as amended (the "Emovis Contract"), by and between the Authority and Emovis Operations Puerto Rico, Inc. ("EMOVIS"). The Emovis Contract provides for the operation and maintenance of the RSE/BO of the PR-52 DTL.
- 1.4. The purposes of this Schedule 12 are, inter alia: (a) to establish the Concessionaire's rights with respect to the MSA in the period during which the Concessionaire is not a party to the MSA; and (b) set forth (i) certain rights and obligations of the Parties with respect to the procurement of replacement ETC Service Contracts, including the replacement for the MSA, and (ii) certain parameters of the Parties' rights vis-à-vis one another with respect to the exercise of certain rights under any such replacement ETC Service Contract;
- 1.5. No provision contained in this Schedule 12 shall be deemed to constitute an amendment, waiver, modification or consent in respect of any other term and condition set forth in the Concession Agreement (or otherwise a waiver of any of the rights of the Parties contemplated in this Schedule 12 or otherwise in the Concession Agreement) unless expressly indicated herein.

1.6. Unless otherwise specified or the context otherwise requires, for the purposes of this Schedule 12, the following terms have the meanings set forth below. Any reference to "its tolled roads" with respect to a Service Recipient means, (a) in the case of the Concessionaire, the Toll Roads, and (b) in the case of the Authority, any toll roads in the Island Network that are operated, maintained and managed by the Authority (which, for the avoidance of doubt, does not include the Toll Roads):

"CSC" means the provision of services related to the operation and maintenance of a customer service center related to central systems by the relevant ETC Service Provider (including, for the avoidance of doubt, PAM pursuant to the MSA), in accordance with the terms of the applicable ETC Service Contract or in accordance with the terms of this Schedule 12. As contemplated in this Schedule 12, and solely to the extent permitted under applicable Law, there shall only be one ETC Service Provider in respect of a CSC for the Island Network unless otherwise agreed to between the Authority and the Concessionaire.

"ETCS" means the electronic tolling system contemplated by any ETC Service Contract, which shall be comprised of a CSC, as well as, to the extent applicable, the RSE/BO services.

"ETC Service Contract" means the then current ETC Service Contract (including, without limitation, the MSA) and any replacement New ETC Service Contract entered into in accordance with the terms hereof. For the avoidance of doubt, although the MSA includes RSE/BO services, any replacement New ETC Service Contract will not include RSE/BO services as RSE/BO services will initially be provided under the ORT Improvement Contract and the Concessionaire is required pursuant to Section 2.3 of this Schedule 12 to deploy and operate the RSE/BO services,

"ETC Service Provider" means the provider of CSC services (subject to Section 5.2(b) of this Schedule 12) for the Island Network, under the then current ETC Service Contract or any replacement New ETC Service Contract, including, without limitation, as of the date hereof, PAM (it being understood and agreed by the Parties that no ETC Service Provider shall be deemed to be a Contractor of the Concessionaire pursuant to the Concession Agreement).

"Island Network" has the meaning set forth in Section 5.1 of this Schedule 12.

"New ETC Service Contract" has the meaning set forth in Section 5.1 of this Schedule 12.

"RSE/BO" means the provision of roadside equipment (and related services), data collection services and transactional "back office" operations as contemplated by any RSE/BO Service Contract.

"RSE/BO Service Contracts" means the then current RSE/BO service contracts (including, without limitation, the MSA, EMOVIS Contract and ORT Improvement Contract) and any replacement RSE/BO Service Contract(s) entered into in accordance with the terms hereof.

"RSE/BO Service Providers" means the providers of RSE/BO services (subject to Section

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2.2(b) of this Schedule 12) for the Toll Roads, under the then current RSE/BO Service Contracts, including, without limitation, as of the date hereof, PAM and EMOVIS.

"**Service Recipient**" shall mean the Authority or Concessionaire, as the context requires, in respect of each parties receipt of services under the ETC Service Contract.

**Section 2. ETCS services and contracts**

2.1 Set forth below is a list of the entities that provide ETCS services to the Authority as of the Closing Date and the applicable contract pursuant to which such services are provided:

- (a) PAM through the MSA (Retained Contract), providing CSC for the Island Network and RSE/BO (except for the roadside equipment for the PR-52 DTL); and
- (b) EMOVIS, through the EMOVIS Contract (Assigned Contract), providing RSE/BO for the PR-52 DTL.

2.2 Upon substantial completion of the ORT Improvement Project, SICE will provide the RSE/BO (except for the RSE/BO for the PR-52 DTL) through the ORT Improvement Contract (Authority Capital Improvement Contract).

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Any amendment to the ORT Improvement Contract shall require the prior written consent of the Concessionaire; *provided, that* any amendment to the ORT Improvement Contract that does not relate to or have any effect on the services otherwise provided to the Concessionaire or the Toll Roads, shall not require the consent of the Concessionaire.

2.3 During the Term, the Concessionaire shall, at its own expense, deploy and operate (or subcontract with another entity to deploy and operate) RSE/BO services in respect of the Toll Roads, including the Concessionaire Bidirectional Project, ensuring that such services are in compliance with the quality requirements set forth in the Concession Agreement and that such services are fully interoperable with the electronic toll collection systems used on the Island Network in accordance with Section 2.3(d) of Schedule 4 and with the ETC Service Provider systems and processes.

**Section 3. Rights and Obligations with Respect to the Operation and Maintenance of the MSA**

3.1. *Scope.* Applicable to the extent that the MSA is a Retained Contract and the Concessionaire is not a party of it. To the extent that the New ETC Service Contract is not entered into by April 29, 2025, the Concessionaire shall automatically become a party to the existing ETC Service Contract.

3.2. *Enforcement of Authority Rights.* The Authority agrees to (a) use Reasonable Efforts to cause PAM to perform its duties and obligations in accordance with the MSA, (b) enforce its rights and perform its obligations under the MSA, any guaranty agreements, performance bonds, letters of credit and other security provided by or on behalf of PAM as such rights relate to the operation and maintenance of the ETCS with respect to the Toll Roads, as directed by the Concessionaire in accordance with the Concessionaire's instructions with respect to the Toll Roads, (c) require PAM to deliver to the Escrow Agent in accordance with the Escrow Agreements any documents or notices as may be required under the relevant Escrow Agreement, including the Traffic Reports (as defined in the Original Escrow Agreement) and the Delinquent Amounts Reports (as defined in the New Escrow Agreement), (d) instruct the Escrow Agent to (i) pay any and all tolls collected in respect of the Toll Roads directly to the Concessionaire in accordance with the Original Escrow Agreement and (ii) Delinquent Amounts (or other amounts) to the Concessionaire in accordance with the New Escrow Agreement, and (e) if the Authority receives any amount or funds that the Concessionaire must receive in accordance with clause (c) above or otherwise, transfer such amounts or funds to the Concessionaire no later than three (3) Business Days after receipt of such amounts by the Authority.

3.3. *Notification of Service Contract Violation.* Upon the Authority's receipt of:

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- (a) a written notice from the Concessionaire with a detailed explanation of an act or omission by PAM relating to the Toll Roads that may constitute a violation of PAM's duties or obligations under the MSA (each, a "Service Contract Violation") or other claim in respect to the Services (as defined in the MSA) relating to the Toll Roads, including with respect to any warranty, Defect (as defined in the MSA), indemnity or insurance provided thereunder (each, a "Claim");
  - (b) supporting documentation or data of such alleged Service Contract Violation or Claim; and
  - (c) a written request from the Concessionaire that the Authority take a specific action that the Authority is permitted to take under MSA to enforce its rights thereunder,

the Authority shall (x) promptly notify PAM of such Service Contract Violation or Claim and request PAM to take all appropriate remedial actions to cure such Service Contract Violation or actions to respond to such Claim and perform the requested obligations under the MSA in respect of such Claim and to take such other reasonable action as is requested by the Concessionaire pursuant to clause (c) above, and (y) provide the Concessionaire with a copy of such notice no later than two (2) Business Days following the date upon which the Authority provided such notice to PAM. The Authority agrees to follow all reasonable instructions provided and decisions made by the Concessionaire with respect to the remediation of such Service Contract Violation, subject to the provisions of the preceding sentence. Any reasonable costs or expenditures incurred by the Authority in connection therewith shall be promptly reimbursed by the Concessionaire. The Authority shall provide the Concessionaire with copies of any and all communications in connection with such Service Contract Violation, and upon request of the Concessionaire, shall

permit the Concessionaire to participate in any and all discussions and negotiations with PAM in connection therewith, as provided in Section 3.4(b) of this Schedule 12.

3.4. *Disputes.*

- (a) The Concessionaire or the Authority may submit any dispute, among themselves, with respect to the existence of any Service Contract Violation or other violation of this Schedule 12 in accordance with the dispute resolution procedures set forth in Article 19 of the Concession Agreement.
- (b) The Authority shall submit any dispute with respect to any Service Contract Violation, Claim or other violation of the MSA asserted by the Concessionaire in accordance with the dispute resolution procedures set forth in Section 32 of the MSA.
- (c) With respect to any meetings, negotiations or dispute resolution process between the Authority (either on its own behalf or on behalf of the Concessionaire) and PAM (or among any other Service Recipient (as defined in the MSA)) that relates to the Toll Roads, the Authority agrees to:
  - (i) provide the Concessionaire with copies of all communications, documents and information relating thereto;
  - (ii) permit the Concessionaire to participate in any such meetings, negotiations and processes; and
  - (iii) not conclude or resolve any such negotiations or dispute resolution process or reach any settlement with respect thereto without the prior written consent of the Concessionaire, which consent shall not be unreasonably withheld or denied.

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3.5. *Amounts Recovered by the Authority.* The Authority agrees to pay to the Concessionaire all amounts recovered by the Authority from PAM related to a Service Contract Violation, reduced by any amounts not indemnified and paid pursuant to Section 3.8(c) of this Schedule 12.

3.6. *Limitations on Authority Liability for ETCS.* Notwithstanding any other provision of the Concession Agreement, the Parties agree that the Authority's liability to the Concessionaire for any breach by PAM of the MSA with respect to the maintenance and operation of the ETCS shall be limited to the amounts actually recovered by the Authority from PAM under the MSA, to the extent such amounts relate to the Toll Roads.

3.7. *Instructions and Notices to ETC Service Provider.* The Authority agrees to provide PAM all notices and instructions the Concessionaire reasonably requests in writing; *provided that* such notices and instructions are not prohibited under the MSA or this Schedule 12.

3.8. *Obligations of the Concessionaire.*

- (a) *Acknowledgement.* The Concessionaire hereby acknowledges the contractual relationship between PAM and the Authority and shall not interfere with, the duties and obligations owed by the Authority and PAM to each other under the MSA; provided that, in no case shall the Concessionaire's exercise of its rights under this Schedule 12 or under the Concession Agreement constitute such interference.
- (b) *General.* The Concessionaire agrees to cooperate fully with the Authority and provide reasonable assistance (of a non-monetary nature) to the Authority in connection with any negotiations or dispute resolution process under the MSA involving or affecting the Toll Roads.
- (c) *Indemnity Obligation of the Concessionaire.* The Concessionaire agrees to indemnify the Authority in full for any Loss suffered by the Authority arising in connection with, or resulting from, any action taken by the Concessionaire (or by the Authority on the Concessionaire's behalf) pursuant to Sections 3.2 and 3.3 of this Schedule 12; provided that the Concessionaire shall not be responsible to indemnify the Authority for any Losses caused by the gross negligence, willful misconduct, or fraud of the Authority, or caused by the breach of the Concession Agreement or this Schedule 12 by the Authority
- (d) *Payments Relating to the ETCS Maintained by PAM for the Toll Roads.* The Authority shall remain responsible under the terms of the MSA for all payments required to be made by the Authority to PAM thereunder; *provided, however,* that the Concessionaire shall pay to PAM (on behalf of the Authority) each month in arrears (and pro rata for partial months), until the expiration or termination of the MSA, all Fees (as defined in the MSA) owed to PAM under and in accordance with the terms of the MSA, in each case as such Fees relate to the services provided with respect to the Toll Roads, including CSC Fees, CSRT Fees, Merchant Fees, ILR Fees and mailing Fees. .

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3.9. *ETCS Prepayment Account.* The Authority agrees to require PAM to deliver to the Concessionaire on a weekly basis, in addition to the applicable Traffic Report (as defined in the Original Escrow Agreement) and the applicable Delinquent Amounts Report (as defined in the New Escrow Agreement), a report prepared by PAM indicating the number and class of vehicles that have driven through each toll plaza in the Toll Roads and, separately, the tolls registered by the ETCS, and such other information as the Concessionaire reasonably requests in cooperation with the Authority and PAM to the extent that information is available under the terms of the MSA.

3.10. *Authority's Notice, Consents and Approvals under the MSA.* Until such time, to the extent applicable, as the Concessionaire becomes a party to the MSA, the following terms shall apply. The Authority may not provide any consent, waiver, approval or notice (written

or otherwise) (each, an "Authority Approval") under the MSA to the extent such Authority Approval relates directly and solely to the operations of the Toll Roads without the prior written consent of the Concessionaire (such consent shall not be unreasonably withheld, conditioned or delayed), including, without limitation:

- (a) any change order under the MSA directly affecting the Toll Roads;
- (b) any notice to proceed in relation to any change order under the MSA affecting the Toll Roads; and
- (c) any notice of termination of the MSA;

*provided that*, any Authority Approval to the MSA that relates solely and exclusively to roads other than the Toll Roads, and does not have any effect on the services otherwise provided to the Concessionaire under the MSA or any obligation of PAM or right of the Authority thereunder that impacts the same, shall not require the consent of the Concessionaire. The Authority shall promptly and timely act, in accordance with the written instructions of the Concessionaire, to enforce any obligation of PAM under the MSA or to exercise any right afforded to the Authority thereunder that has any effect on the services otherwise provided to the Concessionaire under the MSA or any obligation of PAM in respect of the same. Upon such time as the Concessionaire shall become a party to the MSA, notwithstanding the foregoing, no consent, waiver, approval or other similar action shall be provided by the Authority under the MSA without the prior written consent of the Concessionaire.

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For avoidance of doubt, any amendment, modification or supplement of the MSA shall be governed by Section 4 of this Schedule 12 and shall not be deemed an Authority Approval subject to this Section 3.10 of this Schedule 12.

- 3.11. *Payments by PAM.* In the event that, pursuant to the MSA, PAM is obligated to pay the Authority liquidated damages, lost revenues or any other indemnification amounts resulting from a default or non-performance of any of the PAM's obligations under the MSA that relate to or have affected the Toll Roads, the Authority shall promptly, and in any event in no more five (5) Business Days following receipt, remit to the Concessionaire such amounts as relate to PAM's default or non-performance with respect to the Toll Roads (and no amounts which relate to PAM's default or non-performance with respect to other toll roads in Puerto Rico); *provided that* the Authority's obligation to make any payment to the Concessionaire with respect to any default or non-performance pursuant to this Section 3.11 of this Schedule 12 shall be limited to the amounts actually received by the Authority from or on behalf of PAM with respect to any such default or non-performance; *and provided further* that the preceding proviso is solely for the benefit of the Authority and shall not in any way affect the liability of PAM to the Authority for any such default or non-performance pursuant to the MSA.
- 3.12. *Instructions by the Concessionaire.* If the Authority fails to deliver to PAM any instruction requested by the Concessionaire to be delivered to PAM in respect of any

rights of the Authority or obligations of PAM, in each case, under the MSA, in connection with or otherwise affecting the Toll Roads, the Authority hereby agrees and authorizes the Concessionaire to deliver such instructions directly to PAM.

**Section 4. Amendment of the MSA**

The Authority shall not amend the MSA without the prior written consent of the Concessionaire; *provided, that* any amendment to the MSA that does not relate to or have any effect on the services provided to the Concessionaire or the Toll Roads or any obligation of PAM or right of the Authority in respect of the same, shall not require the consent of the Concessionaire. Notwithstanding the foregoing, at such time, to the extent applicable, as the Concessionaire becomes a party to the MSA, any proposed amendment of the MSA shall directly require the prior written consent of the Concessionaire. The Authority shall provide the Concessionaire with notice and copies of any proposed amendments, modifications, consents, waivers, replacements of or supplements to the MSA at least fifteen (15) days prior to the effective date thereof. The Authority shall provide the Concessionaire with complete, correct and fully executed copies of any amendment, modification, consent, waiver, replacement or supplement of or to the MSA within ten (10) days following execution thereof.

**Section 5. New ETC Service Contract**

5.1 *Procurement.* Promptly following the date on which the Authority shall have selected a preferred bidder as contemplated in this Section 5.1 and in any event no later than twelve (12) months prior to the date of termination or expiration of an ETC Service Contract (other than the MSA), the Authority shall enter into a new contract (the "New ETC Service Contract") for the provision of the tolling services described in this Schedule 12 on all of the toll roads in the Commonwealth, including the Toll Roads and the PR-52 DTL (collectively, the "Island Network"), subject to and in accordance with the following procedures, terms and conditions:

- (a) the Authority shall procure the New ETC Service Contract by means of a competitive solicitation, commenced no later than eighteen (18) months prior to expiration of the then current ETC Service Contract (other than the MSA) (or, except as otherwise set forth in Section 5.2(c) of this Schedule 12, promptly following any earlier termination thereof), based on commercially reasonable criteria for contract award (including, without limitation, technical qualifications, relevant experience and bid price) in accordance with applicable Law;
- (b) the new ETC Service Provider selected as part of the procurement process described in clause (a) above shall be entitled to commence any required transition services in respect of such appointment by no later than twelve (12) months prior to the expiration of the then current ETC Service Contract (other than the MSA);

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- (c) the New ETC Service Contract shall (i) subject to Section 5.2(b) of this Schedule 12, require, in respect of the Island Network, the provision of CSC services of the type, scope and quality that are substantially similar to (or better than) the services provided under the then current ETC Service Contract and, (ii) be at least as protective of the Authority and the Concessionaire (other than in the case of the MSA, which does not have protections related to the Concessionaire) as the warranties and indemnities provided to the Authority and the Concessionaire (other than in the case of the MSA, which does not have indemnities or warranties related to the Concessionaire) in the then current ETC Service Contract, in each case (x) as they exist at the time of such procurement and (y) unless the Concessionaire agrees to a lesser requirement, warranty or indemnity, and (iii) provide for itemized costs as agreed to by the Authority, the Concessionaire and the applicable ETC Service Provider;
- (d) the Authority may elect, in its sole discretion, to restrict the Concessionaire and its Affiliates from participating directly or indirectly as the potential provider of the CSC (including, without limitation, as a subcontractor to any such provider) in the procurement of the New ETC Service Contract;
- (e) subject to applicable Law, the Authority shall, in respect of the procurement of the New ETC Service Contract, consult with the Concessionaire regarding the preparation of any requests for information, requests for qualifications and requests for proposals, the evaluation of any responses thereto and the designation of the preferred bidder for the award of the New ETC Service Contract, in each case to ensure that the Concessionaire's reasonable requirements with respect to the Toll Roads are taken in account in such requests, evaluation or designation;
- (f) during any period of negotiations with the bidders for the New ETC Service Contract, the Authority shall (i) report regularly in writing to the Concessionaire on the progress of such negotiations, (ii) to the extent reasonable, allow the Concessionaire to participate in meetings regarding such negotiations, (iii) consult regularly with the Concessionaire regarding any terms or conditions proposed for the New ETC Service Contract that relate to the Toll Roads or generally to the type, quality and scope of services to be provided for the Island Network, and (iv) consider in good faith the Concessionaire's reasonable requests for any modification or supplement of such terms or conditions (and, to the extent such requests directly affect the Toll Roads, make such requests of bidders); *provided that* the Concessionaire shall be entitled to request modifications or supplements during any such negotiations and the Authority shall incorporate any such Concessionaire requests to the extent such requests relate to the Toll Roads;
- (g) for avoidance of doubt, the Authority shall retain the exclusive right to select the preferred bidder in the procurement of the New ETC Service

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Contract after consultation with the Concessionaire; *provided that* the Authority shall select as the preferred bidder in the procurement of the New ETC Service Contract that bidder, if any, whose proposal has been reasonably demonstrated by the Concessionaire to be materially better, in respect of either price, quality of service or other material terms and conditions, than any proposal made by other bidders in the procurement of the New ETC Service Contract; and

- (h) at least thirty (30) Business Days prior to the execution and delivery of the New ETC Service Contract, the Authority shall notify the Concessionaire in writing of its intention to deliver the New ETC Service Contract to the preferred bidder, and such notice shall include the time, date and location designated for the delivery thereof. The Concessionaire shall join with the Authority and execute the New ETC Service Contract as parties thereto, at such time, date and place reasonably designated by the Authority in such notice.

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5.2 Procurement Invalidation.

- (a) In the event that, notwithstanding compliance by the Authority with its obligations pursuant to Sections 5.1 of this Schedule 12 in connection with the procurement of a New ETC Service Contract, (i) a bidder is not selected by the Authority, (ii) a New ETC Service Contract is not executed, or (iii) the procurement process or the New ETC Service Contract executed is subsequently invalidated or vacated or rendered unenforceable, by judicial process or otherwise, the Authority shall, subject to applicable Law, (w) extend the then-existing ETC Service Contract on the same terms and conditions as they relate to the Concessionaire, (x) subject to clause (b) below, accede to any contract with an ETC service provider under contract with the Concessionaire (other than the ETC Service Provider), (y) exercise its powers to procure a substitute ETC Service Contract without a competitive procurement process under applicable Law, if any, or (z) use any other method that is in the mutual best interests of the Authority and the Concessionaire and consistent with applicable Law, in order to prevent the interruption of ETCS services or any other negative impact on the use of the Toll Roads by the public or a loss of funds by the Authority. To the extent the Authority proceeds as set forth in the immediately preceding clauses (y) or (z), the Authority shall designate, with the prior written consent of the Concessionaire (such consent not to be unreasonably withheld or denied), an alternate ETC Service Provider that is best suited to provide the required services, taking into account the scope of the requirements contemplated in the Concession Agreement (including this Schedule 12) and the most recent (or the current) ETC Service Contract, while addressing any significant risk of interruption in the provision of ETCS services or a negative impact on the use of the Toll Roads by the public. Moreover, if the Authority proceeds as set forth in clauses (y) or (z)

of this Section 5.2(a), it shall use its commercially reasonable efforts to procure such ETC Service Contract on overall terms and conditions (including in respect of pricing) for the Authority and the Concessionaire that are no worse than those under the most recent (or then current) ETC Service Contract; and in accordance with the rights provided to the Concessionaire in Section 5.1.

- (b) Any ETC Service Contract entered into in accordance with the terms of Section 5.2(a) of this Schedule 12 shall be deemed to be a "New ETC Service Contract" for all purposes under this Schedule 12 until such contract expires or is duly terminated or replaced in accordance with its terms, this Schedule 12 and applicable Law. Further, the Concessionaire shall join and execute such New ETC Service Contract as a party thereof.

5.3 *Procurement of Replacement of an ETC Service Contract.* Unless otherwise agreed by the Parties and except as otherwise provided in Section 5.2(a) of this Schedule 12, in connection with the termination, expiration, replacement or renewal of any ETC Service Contract, the Authority shall replace such contract in accordance with the terms of Section 5.1 of this Schedule 12. Any replacement contract procured in accordance herewith shall be deemed to be a "New ETC Service Contract" for all purposes under this Schedule 12 until such contract expires or is duly terminated or replaced in accordance with its terms.

5.4 *Transition/Joint Working Group.* In connection with the termination, expiration, replacement or renewal of any ETC Service Contract, the Authority and the Concessionaire shall establish a joint working group, not later than twenty four (24) months prior to the planned expiration, termination, replacement or renewal of such ETC Service Contract, to confer regarding the terms and conditions of such contract and the replacement thereof, including any procurement process contemplated in respect of such replacement.

**Section 6. Rights and Obligations with Respect to the Operation and Maintenance of the CSC**

The rights and obligations of each of the Authority, the Concessionaire and the applicable ETC Service Provider under any ETC Service Contract (other than the MSA) shall be as set forth in the relevant ETC Service Contract; *provided, however*, that as between the Authority and the Concessionaire, any joint or shared rights and obligations, including in respect of any termination rights, shall be exercisable as set forth in Annex 1 to this Schedule 12.

**Section 7. Concessionaire as an ETC Service Provider**

To the extent the Concessionaire is selected as the preferred bidder as part of a solicitation process as described and set forth herein, the rights and obligations of the Concessionaire in respect of its relevant ETC Service Contract shall be as negotiated and included in the relevant New ETC

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Service Contract with the Authority.

**Section 8. Supplementary Arrangements with ETC Service Provider**

During the term of any ETC Service Contract, the Concessionaire may enter into any supplementary arrangement directly with the ETC Service Provider, to clarify or add to any of the provisions of such ETC Service Contract, relating exclusively to the Toll Roads or to create new arrangements between the Concessionaire and the ETC Service Provider in relation to matters not currently provided for in such ETC Service Contract. The Concessionaire will provide written notice of these to the Authority and shall bear all costs related thereto.

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Annex 1 to Schedule 12

To the extent that Concessionaire exercises its right to join and execute the ETC Service Contract as a party thereto in accordance with Schedule 12, this Annex 1 sets forth the terms and conditions under which the Authority and Concessionaire will meet each of their obligations, and exercise each of their rights, under the ETC Service Contract. For the avoidance of doubt, the terms of this Annex 1 shall not apply to the MSA.

**Section 1. Obligations.**

Each Service Recipient shall, at its cost and expense, fulfill its obligations under the ETC Service Contract to the extent such obligations relate to its tolled roads, intellectual property or other assets or its receipt of the services under the ETC Service Contract. If a Service Recipient fails to fulfill an obligation in accordance with the preceding sentence and the other Service Recipient fulfills such obligation, the non-compliant Service Recipient shall be obligated to reimburse the other Service Recipient the cost and expense incurred by it in connection with such compliance, subject to the other Service Recipient making a claim in respect of such non-compliance.

**Section 2. Non-Material Rights.**



Each Service Recipient may exercise a right under the ETC Service Contract that does not affect, or increase the cost of, the other Service Recipient's receipt of the services under the ETC Service Contract; *provided, however*, that the exercising Service Recipient provides the other Service Recipient's Relationship Manager (as defined below) at least five (5) Business Days prior written notice of its intent to exercise such right and, if possible, allows the other Service Recipient to participate in the exercise of such right should the other Service Recipient desire to participate; *provided, further*, that such participation shall be at the other Service Recipient's cost and expense and shall not delay or otherwise modify the exercising Service Recipient's exercise of such right. Notwithstanding the foregoing, if the exercising Service Recipient cannot, in its reasonable judgment, provide five (5) Business Days prior written notice due to reasons beyond its control, it shall provide such notice as soon as reasonably practicable given the applicable facts and circumstances.

**Section 3. Material Rights.**

Except as set forth in Section 4 of this Annex 1 below, a Service Recipient may not exercise a right under the ETC Service Contract that affects, or increases the cost of, the other Service Recipient's receipt of the services (a "Material Right") without the prior written consent of the other Service Recipient, such consent not to be unreasonably withheld, conditioned or delayed. If a Service Recipient seeks to exercise a Material Right, it shall provide the other Service Recipient's Relationship Manager (as defined below) at least twenty (20) Business Days prior written notice of its intent to exercise such right and describing in reasonable detail the expected impact of the exercise of such right on the other Service Recipient's cost or receipt of the services. Notwithstanding the foregoing, if the exercising Service Recipient cannot, in its reasonable judgment, provide twenty (20) Business Days prior written notice due to reasons beyond its control, it shall provide such notice as soon as reasonably practicable given the applicable facts and circumstances. If a Service Recipient exercises a Material Right without first obtaining the

prior written consent of the other Service Recipient, then, in addition to any other rights and remedies it may have, the exercising Service Recipient shall reimburse the other Service Recipient for any increase in its cost to receive the services.

For the avoidance of doubt, rights under the ETC Service Contract in respect of the CSC are Material Rights.

**Section 4. Exceptions to Material Rights.**

Notwithstanding Section 3 of this Annex 1, with respect to those contractual provisions described below, each Service Recipient shall comply with the applicable obligations set forth in the Section 4 of this Annex 1 in respect of each such contractual provision. When applicable, the Service Recipient seeking to exercise a right under the contractual provisions described below shall provide the other Service Recipient's Relationship Manager (as defined below) at least ten (10) Business Days prior written notice of its intent to exercise such right.

1. **Build SOW** - To the extent that Service Recipients jointly execute a "Build SOW", the agreement of both Service Recipients shall be required with respect to any instructions issued to the ETC Service Provider under such Build SOW.
2. **Extensions of Term** - The agreement of both Service Recipients shall be required with respect to any extension or renewal of the term of the ETC Service Contract.
3. **Amendments** - The agreement of both Service Recipients shall be required with respect to any amendment to the terms and conditions of the ETC Service Contract, or with respect to any Change Orders (i.e., a modification to the services, but not amendment to the terms and conditions of the ETC Service Contract) that affects the Toll Roads.
4. **Subcontractors** - Either Service Recipient may reject the use of an agent, contractor, subcontractor or any similar entity or person by ETC Service Provider under the ETC Service Contract.
5. **Testing** - The Authority shall be responsible for reimbursing ETC Service Provider for its reasonable costs incurred in connection with any tests conducted at the Authority's direction. The Concessionaire shall be responsible for reimbursing ETC Service Provider for its reasonable costs incurred in connection with any tests conducted at the Concessionaires' direction.
6. **Key Individual** - Either Service Recipient may reject the use of an individual to serve in a key individual role for the contractor under the ETC Service Contract.
7. **Suspension of Services** - Either Service Recipient may suspend services that relate solely to its tolled roads. The agreement of both Service Recipients shall be required with respect to any suspension of a service that relates to the tolled roads of both Service Recipients.
8. **Step-In** - Either Service Recipient may initiate a step-in with respect to services that relate

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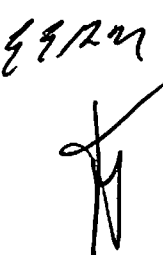

solely to its tolled roads. The prior written consent of both Service Recipients shall be required to initiate a step-in for services that relate to the Island Network.

9. **Terminations Rights with respect to the CSC** - The prior written consent of both Service Recipients shall be required with respect to any termination of the ETC Service Contract with respect to the CSC for any reason other than its expiration pursuant to its terms. If the reason a Service Recipient seeks to terminate the ETC Service Contract with respect to the CSC is due to breach of the ETC Service Contract by the ETC Service Provider, the other Service Recipient must consent to such termination, such consent to not be unreasonably withheld, delayed or conditioned. Failure to provide such consent shall be resolved pursuant to the dispute resolution procedure set forth in Article 19 of the Agreement.
10. **Termination Without Cause** - A Service Recipient may not terminate the services it receives under the ETC Service Contract for its convenience without the prior written consent of the other Service Recipient.
11. **Termination for Cause** - The ETC Service Contract may not be terminated for cause, as defined in the ETC Service Contract, without the written consent of both Service Recipients. Cause may include, subject to the provisions of the ETC Service Contract, breach by the ETC Service Provider, deterioration of financial condition of the ETC Service Provider, key performance indicator failure, change in law, failure to perform of the ETC Service Provider due to a force majeure event, or other similar termination rights.
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12. **Effects of Termination** - Any shared equipment or leases for real property used to provide the services by ETC Service Provider shall, after a termination or expiration of the ETC Service Contract, be provided or assigned to the Authority; *provided, however*, if the Authority does not want such equipment or leases and the Concessionaire does want such equipment or leases, the ETC Service Provider shall, after a termination or expiration of the ETC Service Contract, provide or assign to the Concessionaire such equipment and leases. For clarity, this provision shall not apply with respect to any intellectual property that is jointly owned by the Authority and Concessionaire.
13. **Termination Assistance** - The agreement of both Service Recipients shall be required with respect to any instructions to the ETC Service Provider for termination assistance services.
14. **Dispute Resolution** - The agreement of both Service Recipients shall be required with respect to any decisions regarding the selection of any expert, arbitrator or mediator in connection with a dispute under the ETC Service Contract that involves a service being received by both parties and any settlements in respect thereof. Notwithstanding anything the contrary, either Service Recipient may obtain equitable relief under the law with respect to the ETC Service Contract.
15. **Waivers** - Any waivers granted under the ETC Service Contract shall only be applicable with respect to the Service Recipient providing the waiver.
16. **Insurance** - The agreement of both Service Recipients shall be required with respect to any

changes to, or waivers under, the insurance coverages required to be maintained by the ETC Service Provider under the ETC Service Contract.

17. **Settlements** - The agreement of both Service Recipients shall be required with respect to any compromise, settlement, prosecution or enforcement of a claim under any insurance required to be maintained by the ETC Service Provider that affects both Service Recipients.
18. **Assignment (by ETC Service Provider)** - The agreement of both Service Recipients shall be required with respect to any assignment by the ETC Service Provider of any right, interest or obligation under the ETC Service Contract.
19. **Assignment (by a Service Recipient)** - If a Service Recipient elects to assign its rights and obligations under the ETC Service Contract to a third party, the assigning Service Recipient must notify the other Service Recipient of such assignment and comply with the applicable provisions set forth in Article 17 of the Concession Agreement, *mutatis mutandis*, to such assignment. For the avoidance of doubt, the foregoing shall not limit or affect the Authority's ability to assign its rights and obligations under the ETC Service Contract to a concessionaire of one or all of its other toll roads.

## Section 5 Intellectual Property

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- 5.1. The Authority and the Concessionaire shall jointly own all right, title and interest in and to the electronic toll collection system (other than the name AutoExpreso, which is and shall be solely owned by the Authority), and all intellectual property rights therein, developed by the ETC Service Provider under the ETC Service Contract (the "Jointly-Owned IP") and shall have equal and independent rights to use, exploit and license the Jointly-Owned IP for any purposes allowed by applicable Law without requirement of consent from the other Service Recipient. The Authority hereby grants the Concessionaire during the Term a nonexclusive, transferable, royalty-free, irrevocable, fully paid up right and license to use and sublicense the name AutoExpreso.
  - 5.2. Neither Service Recipient shall have any duty to account or any obligation to pay royalties to the other Service Recipient with respect to the use, exploitation or licensing of the Jointly-Owned IP, and the Concessionaire shall not have any duty to account or any obligation to pay royalties to the Authority with respect to the Concessionaire's use or exploitation of the name AutoExpreso.
  - 5.3. Each Service Recipient shall promptly notify the other Service Recipient of any known infringement of the Jointly-Owned IP by a third party. The Authority shall have the first option to bring and control any suit related to the infringement, misappropriation or other violation of the Jointly-Owned IP. In the event the Authority chooses not to pursue any such enforcement action with respect to the Jointly-Owned IP, the Concessionaire (or its designated affiliate) shall have the right to bring and control any such suit. Each Service Recipient shall reasonably cooperate with the other Service Recipient bringing any such suit. Each Service Recipient will be entitled to a percentage of all damages, recoveries and other amounts awarded in connection therewith, after deduction of all reasonable costs and

expenses incurred by both Service Recipients with respect to such enforcement action, in proportion to the number of transactions processed by each Service Recipient on its tolled roads during the twelve (12) month period immediately preceding the date on which any such damages, recoveries or other amounts are awarded.

5.4. Each Service Recipient hereby agrees not to grant any licenses in the Jointly-Owned IP to the any third party without the prior written consent of the other Service Recipient. For the avoidance of doubt, this Section 5.4 of this Annex 1 shall not apply, limit or affect the Authority's right to grant a license in the Jointly-Owned IP to any concessionaire of its tolled roads without the prior written consent of the other Service Recipient.

5.5. The Authority has the sole right to prepare applications for, prosecute and maintain any patents claiming the Jointly-Owned IP. The Authority may assign this right to Concessionaire.

**Section 6. Tag Revenues.**

The Service Recipients agree that the ETCS tags will be sold to customers. All costs associated with the sale of ETCS tags and profits generated by the sale of ETCS tags shall be for the account of the Authority.

**Section 7. Relationship Managers.**

7.1. Within thirty (30) days of executing the ETC Service Contract, the Authority (through its Executive Director) and the Concessionaire shall each appoint a relationship manager (each, a "Relationship Manager") who shall each be authorized to act on behalf of the Authority and Concessionaire, respectively, in connection with the day-to-day business, rights and obligations of each party under the ETC Service Contract. A Service Recipient may change its Relationship Manager upon prior notice to the other Service Recipient. All notices to each Relationship Manager hereunder shall be in writing and shall be mailed, hand delivered, or couriered to the notice addresses established in each appointment.

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Until such appointment is made by the Authority, the Relationship Manager for the Authority shall be the Assistant Executive Director for Highways and Transit; if there is no Assistant Executive Director for Highways and Transit appointed, then the Relationship Manager shall be the Deputy Executive Director; if there is no Deputy Executive Director appointed, then the Executive Director himself shall be the Relationship Manager, and the applicable notice address shall be the address set forth in the Concession Agreement.

Until such appointment is made by the Concessionaire, the Relationship Manager for the Concessionaire shall be the Concessionaire's Chief Operating Officer, and the applicable notice address shall be the address set forth in Section 20.1 of the Concession Agreement.

Any party hereto may change the address or facsimile number for receipt of communications by giving written notice to the other.

7.2. The Relationship Managers shall schedule a regular set of meetings to discuss matters pertaining to the ETC Service Contact. A Service Recipient may request an emergency meeting, in which case the other Service Recipient shall use reasonable efforts to accommodate such meeting as soon as possible. Meetings may be held in person or by teleconference. Such meetings shall be conducted, at a minimum, (a) weekly or bi-monthly during the term of a "Design and Build SOW" with respect to matters thereunder and (b) quarterly during the term of an "Operations and Maintenance SOW" with respect to matters thereunder. The Relationship Managers may change the frequency of meetings, upon their agreement.

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