



E-ZPass

Any Questions Email to:
EZPassOTG@MTABT.org

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

- Please read the E-ZPass On-the-Go Retail Sales Agreement prior to completing and submitting this Application.
- Complete sections 1, 2, 3, 4 and 6 and mail to the address above.
- This Application must be completed in its entirety and signed by an authorized representative of the company.
- Upon approval of the Application, the E-ZPass On-the-Go Retail Sales Account Set Up form will be sent to the Merchant.

1. Corporate Applicant Information	MetroCard Merchant <input type="checkbox"/> Yes - If Yes, give date approved _____ <input type="checkbox"/> No	
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Corporate/Business Name	Authorized Representative	Phone Number
Doing Business As (DBA)	Federal Employer ID# (or SS#)	Fax Number
Address of Primary Place of Business	City	State
		Zip Code

2. Corporate Retail Store Information

Total number of retail stores the company operates	Total number of retail stores applying for E-ZPass On-the-Go Tag distribution
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Type(s) of retail stores where E-ZPass On-the-Go Tags will be distributed (check all that apply)

Gas/Service Station
 Auto Dealership
 Car Wash
 Auto Parts Store
 Newsstand/Giftshop
 Grocery Store
 Convenient Store
 Fast Food
 Parking Garage
 Other _____

3. Specific Retail Store Information for E-ZPass On-the-Go Tag Sales (See Page 3)

4. Vendor References

a) Business Name _____

Product/Service Purchased _____

Contact _____ Account Number _____

City _____ State _____ Zip Code _____

b) Business Name _____

Product/Service Purchased _____

Contact _____ Account Number _____

City _____ State _____ Zip Code _____

c) Business Name _____

Product/Service Purchased _____

Contact _____ Account Number _____

City _____ State _____ Zip Code _____

Property Ownership Is your business premises Owned Rented
(If rented, please complete) Landlord's Business Name _____ Phone () _____

Contact _____ Address _____

City _____ State _____

Renting since _____ Monthly rent _____ Lease expires on _____

Principal Information Please list all partners and principals. For publicly traded corporations list officers and directors and those holding 10% or more of ownership.

Principal(s) operate/manage business Yes No

1. Officer's Name/Title _____ Home Address _____
City _____ State _____ Zip _____ Home Phone () _____

2. Officer's Name/Title _____ Home Address _____
City _____ State _____ Zip _____ Home Phone () _____

5. Bank Account Information Release Authorization For E-ZPass On-The-Go (See Attached)

6. Participating Merchant Responsibility Questionnaire (See Attached)

7. E-ZPass On-the-Go Retail Sales Agreement (See Attached)

8. Merchant Responsibility Questionnaire and Certification

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 company named in section 1.

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 Triborough Bridge and Tunnel Authority. Applicants may be required, at the request of the Triborough Bridge and Tunnel Authority, to provide additional information regarding the financial responsibility and security of the applicant company.

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 Store Information for E-ZPass On-the-Go Tag Sales

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

Retail Store Information							
Store Name			Store No. (optional)		Email Address		
Store Type		Contact Name			Phone Number		
Physical Address (Tags will be shipped here)			City		State	Zip Code	County
Billing Address <input type="checkbox"/> (Check if same as corporate address) <input type="checkbox"/> Other <input type="checkbox"/> (Check if same as physical address)			Average No. of customers per week			Average sales volume per week	
Hours of Operation	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	___ <input type="checkbox"/> AM <input type="checkbox"/> PM to ___ <input type="checkbox"/> AM <input type="checkbox"/> PM	___ <input type="checkbox"/> AM <input type="checkbox"/> PM to ___ <input type="checkbox"/> AM <input type="checkbox"/> PM	___ <input type="checkbox"/> AM - <input type="checkbox"/> PM to ___ <input type="checkbox"/> AM - <input type="checkbox"/> PM	___ <input type="checkbox"/> AM <input type="checkbox"/> PM to ___ <input type="checkbox"/> AM <input type="checkbox"/> PM	___ <input type="checkbox"/> AM <input type="checkbox"/> PM to ___ <input type="checkbox"/> AM <input type="checkbox"/> PM	___ <input type="checkbox"/> AM <input type="checkbox"/> PM to ___ <input type="checkbox"/> AM <input type="checkbox"/> PM	___ <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 Number _____ <input type="checkbox"/> No		

Retail Store Information							
Store Name			Store No. (optional)		Email Address		
Store Type		Contact Name			Phone Number		
Physical Address (Tags will be shipped here)			City		State	Zip Code	County
Billing Address <input type="checkbox"/> (Check if same as corporate address) <input type="checkbox"/> Other <input type="checkbox"/> (Check if same as physical address)			Average No. of customers per week			Average sales volume per week	
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Store Type		Contact Name			Phone Number		
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Billing Address <input type="checkbox"/> (Check if same as corporate address) <input type="checkbox"/> Other <input type="checkbox"/> (Check if same as physical address)			Average No. of customers per week			Average sales volume per week	
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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 Number _____ <input type="checkbox"/> No		

**BANK ACCOUNT INFORMATION RELEASE
AUTHORIZATION FOR E-ZPass On-the-Go
MERCHANT APPLICANTS**

ISIS STAFFING SOLUTIONS, INC.

160 Broadway, Suite 905

New York, NY 10038

Phone:(212) 406-0062

Fax: (212) 406-5882

email: INFO@ISISSTAFFINGSOLUTIONS.COM

Requested by: E-ZPass On-the-Go Retail Sales
2 Broadway, 23rd Floor
New York, NY 10004

Date _____

To Whom It May Concern,

I, _____ of (Company Name), herein, authorize the following information Name of Bank, Address, Bank Phone # Bank Contact Person to release the information to Isis Staffing Solutions, Inc. (ISIS) a duly authorized representative of the Triborough Bridge and Tunnel Authority (TBTA), E-ZPass On-the-Go Retail Sales program, any information requested in respect to my account(s) shall be for Official Use by TBTA only. Should there be any questions as to the validity of this release, you may contact ISIS directly.

Account Number _____ Routing Number _____

Signature _____ Print Name _____

Telephone _____

Please Attach a copy of a Voided Check

Merchant Responsibility Questionnaire

INFORMATION TO BE FURNISHED BY APPLICANT

(Note: For purposes of this questionnaire, the term "Participating Merchant" refers both to an applicant and to a merchant approved to participate in the E-ZPass on-the-go program.)

I. Identity of Merchant ("Participating Merchant"): _____

Participating Merchant's Full Legal Name: _____

Participating Merchant's federal taxpayer identification number: _____

II. Questions to be answered "Yes" or "No"

A. Within the past three (3) years, has applicant or any of applicant's principals, officers, or owners had any claims, judgments, injunctions, liens, fines, or penalties entered against it by any governmental agency?

Yes

No

(If the answer is "Yes", applicant must state the nature of the claim, judgment, or other action and provide the name(s) and address(es) of the particular government agency(ies) to which that obligation is owed)

B. During the past three (3) years, has applicant failed:

To file returns or to pay any applicable federal, state, or City taxes?

Yes

No

(If the answer is "Yes", applicant must identify the taxing authority or jurisdiction, the type of tax, years of liability, and the amounts and current status of that tax liability)

C. Has applicant had any bankruptcy cases or proceedings filed by it or against it within the past seven (7) years or is there any bankruptcy case now pending against the applicant?

Yes

No

(If the answer is “Yes”, applicant must identify the court or jurisdiction where the bankruptcy case was or is now pending)

- D. Has applicant or any individual who is an owner, director, officer, principal, or managerial employee of the applicant been convicted by plea or verdict of guilty, or otherwise, to a misdemeanor or felony in any federal, state, or local court?

Yes

No

- E.. Has applicant or any individual who is an owner, director, officer, principal, or managerial employee of the applicant currently the subject of a pending investigation by any grand jury or any federal, state, or local law enforcement agency in connection with the alleged commission of a crime?

Yes

No

III. Pursuant to Public Authorities Law §2879 (5) (d) The Triborough Bridge and Tunnel Authority may not enter into a contract with a "foreign business enterprise", as defined in New York State's Public Authorities Law §2879 (5), which has its principal place of business located in a "discriminatory jurisdiction", as defined in New York State's Public Authorities Law §2879 (5), contained on the list prepared by the Commissioner of Economic Development. The following states are included on the list of discriminatory jurisdictions: Alaska, Hawaii, Louisiana, South Carolina, West Virginia and Wyoming.

The following question pertaining to New York State's Public Authorities Law §2879 (5) (d) will be answered by the applicant. In the event that additional information is required, the Authority reserves the right to inquire further with respect to the responses provided.

Where is the applicant’s “principal place of business” located?

(Principal place of business is generally considered to be the enterprise’s main office, where the regular meeting of its board of directors occur, and where the company’s business is managed, conducted and directed, regardless of where the administrative departments or the physical property of the business is located.)

VI. Certification of Compliance with the Metropolitan Transportation Authority Vendor Code of Ethics

1. Consistent with the terms of the MTA Vendor Code of Ethics (the “Code”), which are incorporated herein by reference, the Applicant, by signing the application, certifies that during the course of this Solicitation and any resultant contract or agreement:
 - a. The Applicant has notice of all of the terms of the Code;
 - b. No Gift, as defined by the Code, has been or will be offered to the Authority in connection with this Application or any resultant contract or agreement;
 - c. No conflicts of interest exist or will exist;
 - d. All officers and personnel of the Applicant who have interacted or will interact with the Authority have been or will be provided a copy of the Code; and
 - e. The Applicant will obtain certifications similar to those made herein from all of its lower tier subcontractors, subconsultants and suppliers that the Applicant engaged or are being solicited for work under any contract resulting from this procurement. Receipt and retention of these lower tier certifications shall be subject to audit by the Authority.

Applicant must sign here: _____ Date_____

VERIFICATION AND ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____)

On the ____ day of _____, 20__, before me personally came and appeared _____ by me know to be said person, who swore under oath as follows:

1. He/she is _____ of _____.
(Print title) (Print name of firm)
2. He/she is duly authorized to sign this questionnaire on behalf of said firm and duly signed this document pursuant to said authorization.
3. The answers to the questions set forth in this questionnaire and the representations set forth in this questionnaire, are true, accurate and complete and were made to induce the award of this contract.
4. He/she acknowledged and understands that the questionnaire includes provisions which are deemed included in the contract or agreement if awarded to the firm.

Sworn to before me the ____ day of _____, 2006

Notary's stamp and signature. _____

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 Triborough Bridge and Tunnel Authority (hereinafter "Authority"), a public benefit corporation organized and existing under the Laws of the State of New York whose principal office is located at 2 Broadway, New York, NY 10004, 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, 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 retail store 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 store 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.

Section 2.2 – Sales Locations

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					
New York City (Bronx, Manhattan, Queens, Kings and Richmond Counties)	Nassau	Suffolk			

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					
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	

C. Merchant shall not sell E-ZPass On-the-Go Tags on the Internet, door-to-door or by mail order. 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 maintain inventory 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 for more than \$30.00. 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 50 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 \$25.00 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 within forty-five (45) days of receipt of an invoice for such order. After forty-five (45) days, a late fee of three (3%) percent will be assessed on any unpaid balance.

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 \$25.00 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 \$25.00 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 \$25.00 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: Triborough Bridge and Tunnel Authority
Director, E-ZPass Customer Service Center
2 Broadway
New York, NY 10004

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 effected, 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