

EXHIBIT 8

SECTION P3 AGREEMENT TERM SHEET

The State of Maryland ("**State**") acting by and through the Maryland Transportation Authority, an agency of the State ("**MDTA**") and the Maryland Department of Transportation ("**MDOT**"), a principal department of the State, intends to develop and deliver certain improvements as part of Maryland's Traffic Relief Plan along I-495 and I-270 through a public-private partnership program ("**P3 Program**").

The P3 Program is intended to be delivered through the solicitation of two or more phase developers (each a "**Phase Developer**"). The first solicitation of the P3 Program includes I-495 from the vicinity of the George Washington Memorial Parkway in Virginia, across and including the American Legion Bridge, to its interchange with I-270, and I-270 from its interchange with I-495 to its interchange with I-70 ("**Phase 1**").

Phase 1 may be divided into two or more sections as agreed by MDOT under the terms of the Phase P3 Agreement (each a "**Section**").

Promptly following MDOT's acceptance and the State of Maryland Board of Public Works' ("**BPW**") approval of a Committed Section Proposal and the agreement for a Section of Phase 1, MDOT and MDTA will enter into an agreement for such Section with the Section Developer ("**Section P3 Agreement**").

Below is a description of the indicative key terms that will be contained in each Section P3 Agreement for Phase 1.

Section-specific variations will be introduced for each Section as appropriate, but the terms and conditions described below are generally anticipated to apply across all Section P3 Agreements entered into for the P3 Program. Notwithstanding the foregoing, MDOT and MDTA reserve every right at any time during the solicitation, in their sole discretion, to modify, add to, remove from, or otherwise revise the terms set forth below, and no person will have any right to make a claim or commence any dispute against MDOT or MDTA with respect to any such modification, addition, removal, or other revision.

Capitalized terms used in this term sheet are defined in [Exhibit 1](#).

Part A – Preliminary		
1.	Parties	a) MDOT; b) MDTA; and c) an entity controlled and established by the Phase Developer (the " Section Developer ")
2.	Scope of Work	The Section Developer is required to perform the final design, construction, financing, tolling, operation, maintenance, and handback of the relevant Section of Phase 1. Each Section P3 Agreement will contain a detailed description of the scope of work and technical provisions for its delivery. MDTA will retain responsibility for certain tolling related services, including toll collection processing, account administration, toll violations processing, and back office support for the Section. All roadside and related equipment will be designed, supplied, installed, constructed, tested, commissioned, operated, and maintained by the Section Developer.
3.	Predevelopment Work	The Parties acknowledge that prior to the execution of the Section P3 Agreement the Phase Developer shall perform Predevelopment Work (as defined in the Phase P3 Agreement) in collaboration with MDOT in accordance with the Phase P3 Agreement. The Predevelopment Work will inform the Section

		<p>Work (as defined in the Phase P3 Agreement) and, to the extent risks are addressed by Relief Events or Compensation Events in this term sheet, the risk allocation under the Section P3 Agreement. Without limiting the scope of the Predevelopment Work (including the terms of Exhibit 6 (<i>Predevelopment Work Requirements</i>) of the Phase P3 Agreement), the Predevelopment Work includes the following:</p> <ul style="list-style-type: none"> a) The further investigation of existing utilities, geotechnical conditions, hazardous materials, endangered species, and archaeological remains present at the Setting Date Site. To the extent that a Compensation Event is included in this term sheet, the results of these investigations shall inform the baseline used for permitted claims with respect to "unknown" site conditions. The Phase Developer and MDOT shall agree to the limits of the Setting Date Site in which these investigations shall focus. b) Progress design and work with MDOT to identify and agree any additional right-of-way that will be needed, progress discussions with landowners, and advance property acquisition to the extent permitted by law and in accordance with the Uniform Act. c) Minimize risk of delays by advancing discussions and conducting design reviews with utilities and third parties. Take steps to avoid and minimize the risk of utility owner caused delay. d) Engage with government agencies that will be required to issue permits with respect to the Section and focus on permits and approvals with long lead times to avoid permitting delays. <p>The scope of Predevelopment Work is more fully described in Exhibit 6 (<i>Predevelopment Work Requirements</i>) of the Phase P3 Agreement. Certain details of the Predevelopment Work shall be determined in collaboration between the Phase Developer and MDOT, and MDOT must have reviewed and accepted the applicable Predevelopment Work performed by the Phase Developer prior to the delivery of a Committed Section Proposal with respect to the Section.</p>
4.	Term	The term of the Section P3 Agreement will be 50 years from the Commercial Closing Date (the " Term ").
5.	Representations and Warranties	The Section Developer, MDOT, and MDTA will make representations and warranties to each other that are customary for transactions of this type. The representations and warranties will be made on the Commercial Closing Date and repeated on the Financial Closing Date.
6.	Designation of Representatives	<p>MDOT and the Section Developer shall each designate an individual who will be authorized to make certain decisions on behalf of the Parties.</p> <p>MDTA has appointed MDOT SHA to act as its agent as described in Section 1.4 of the ITP.</p>
Part B – Site and Other General Requirements		
7.	Right of Way	MDOT shall grant to the Section Developer a permit to perform the Work on the Site, subject to the requirements of the Section P3 Agreement. MDOT and MDTA will not grant the Section Developer any leasehold or other real property interest in the Site.

		<p>MDOT shall provide the Section Developer with access to each MDOT Provided Parcel, which may include both permanent parcels for the Section and Temporary Construction Areas, in accordance with an access schedule agreed prior to execution of the Section P3 Agreement. MDOT may enter into Third Party MOUs with governmental entities with respect to the acquisition of certain MDOT Provided Parcels, and any amounts due by MDOT under these Third Party MOUs (including the cost of performing any mitigation, site improvements, modifications, and any other ongoing obligations required to facilitate the conveyance of the parcel or property interest to MDOT) shall be payable at the Section Developer's sole cost and expense.</p> <p>The Section Developer, at its sole cost and expense, will be responsible for the acquisition of, or for causing the acquisition of, any property or property rights not provided for as MDOT Provided Parcels, including those necessary to accommodate necessary permanent and temporary rights, as well as laydown, staging, temporary drainage, and other construction methods in connection with the repair, renewal, operation, or maintenance of the Section ("Additional Properties"). The Phase Developer shall work with MDOT to identify and agree on any Additional Properties that will be needed in order to advance the site acquisition process as part of the Predevelopment Work, as further described in <u>Section 3</u> above and the Phase P3 Agreement.</p> <p>The Section Developer will be required to use its best efforts to minimize the need for the acquisition of Additional Properties. Additional Properties that need to be acquired from private landowners ("Privately Owned Additional Properties") will be treated differently from Additional Properties that need to be acquired from landowners that are governmental entities ("Publicly Owned Additional Properties"), as further described below and in the Section P3 Agreement.</p> <p>If any Privately Owned Additional Properties are needed, the Section Developer shall use its best efforts to acquire Privately Owned Additional Properties. If, in relation to Privately Owned Additional Properties that are permanently needed to construct or maintain the Section, the Section Developer is unable to reach a settlement with any private landowner, then MDOT SHA shall proceed with any necessary condemnation proceedings in accordance with the technical provisions and to the extent permitted by applicable law and in accordance with the Uniform Act. The cost of any Privately Owned Additional Property acquired using condemnation shall be paid by the Section Developer, as further described in Article 8 (<i>Right-of-Way</i>) of Exhibit 6 (<i>Predevelopment Work Requirements</i>) of the Phase P3 Agreement.</p>
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		<p>If any Publicly Owned Additional Properties are needed, MDOT shall use reasonable efforts to negotiate with any governmental entities to acquire such Publicly Owned Additional Properties to the extent permitted by applicable law and in accordance with the Uniform Act. The cost of any Publicly Owned Additional Property acquired by MDOT shall be paid by the Section Developer, as further described in Article 8 (<i>Right-of-Way</i>) of Exhibit 6 (<i>Predevelopment Work Requirements</i>) of the Phase P3 Agreement.</p> <p>The Section Developer shall comply with the Uniform Act with respect to Privately Owned Additional Properties and, if applicable, Publicly Owned Additional Properties. MDOT SHA shall be responsible to FHWA for providing oversight to the Section Developer and ensuring that compliance with the Uniform Act is properly documented, provided that this does not create an obligation for the benefit of the Section Developer.</p> <p>The Section Developer will solely bear the risk of any time and cost impacts to the Work related to the acquisition of Additional Properties including risk associated with delays or impediments to MDOT acquiring such Additional Properties (except to the extent that MDOT fails to comply with its obligation to pursue the acquisition or condemnation, when necessary and appropriate, of Additional Properties in accordance with the Section P3 Agreement).</p>
8.	<p>Surrounding Infrastructure and Adjacent P3 Program Developer Coordination¹</p>	<p>The Section Developer shall coordinate with MDTA's and MDOT's other contractors and third parties (including any VDOT contractors) who have access rights to the Site or perform activities adjacent to the Site. Any contractors of MDTA or MDOT that need to access the Site shall be required to: (i) provide reasonable prior notice to the Section Developer, (ii) not unreasonably interfere with the Section Developer's performance of the Work, and (iii) comply with the Section Developer's reasonable site access and work, health, and safety policies and procedures.</p> <p>The Section Developer, at its sole cost and expense, shall coordinate with any adjacent section developer and (if applicable) phase developer of any adjacent section of the P3 Program (each an "Adjacent P3 Program Developer") (including any adjacent section of Phase 1 or any adjacent part of another phase) to minimize the disruption of any Adjacent P3 Program Developer's construction, operation, and maintenance of its applicable part of Phase 1 or the P3 Program. The Section Developer shall ensure that any part of the Section that meets an adjacent section or phase is designed and constructed to enable viable, logical, safe termination points that do not preclude tie in by an Adjacent P3 Program Developer. Except to the extent expressly covered by any Compensation Event or Relief Event, the Section</p>

¹ **NTD:** During predevelopment MDOT and the Phase Developer shall further discuss, on a Section specific basis, risk that interfacing projects may significantly delay the Section. If a risk of significant delays exists due to that specific third party's action or inaction that are not within the control of the Section Developer or any Section Developer-Related Entity, MDOT remains open to discussing appropriate remedies for the Section Developer in the Section P3 Agreement.

		<p>Developer bears the full risk for both: (i) any impacts to the Section arising from its duty to coordinate with any Adjacent P3 Program Developer or any interference or failure to coordinate by an Adjacent P3 Program Developer, and (ii) any impacts to the Adjacent P3 Program Developer's project arising from the Section Developer's breach under the Section P3 Agreement or negligence or misconduct of any Section Developer-Related Entity.</p> <p>The Section Developer shall indemnify, hold harmless, and, subject to approval by the relevant Indemnified Parties, defend each of the Indemnified Parties for any third party claims asserted by any Adjacent P3 Program Developer to the extent such third party claims arise from the Section Developer's failure to comply with its obligations under the Section P3 Agreement, including the Section Developer's obligation to coordinate with any Adjacent P3 Program Developer, or arise from negligence or misconduct of any Section Developer-Related Entity.</p>
9.	Governmental Approvals	<p>MDOT shall obtain all initial MDOT-Provided Approvals for the Section (and provide copies to the Section Developer) by the Commercial Closing Date. The "MDOT-Provided Approvals" are:</p> <ul style="list-style-type: none"> a) environmental decision documents approved under NEPA covering the limits of the applicable Section; b) USACE permit under Section 404 of the Clean Water Act and accompanying Section 401 Water Quality Certification with respect to the Section; c) designation of the Section (or the P3 Program) by the MDTA Board as a "transportation facilities project" for the purposes of Title 4 of the Transportation Article of the Annotated Code of Maryland; and d) National Park Service special use permits for Maryland and (if applicable) Virginia. <p>The Section Developer will be solely responsible for obtaining all governmental approvals (other than MDOT-Provided Approvals) or modifying MDOT-Provided Approvals as necessary, including any changes in the MDOT-Provided Approvals resulting from differences between the Section Developer's design and that which was used to obtain any MDOT-Provided Approval. The Section Developer must ensure that the Work and its design complies with any MDOT-Provided Approvals and any modifications required to the MDOT-Provided Approvals shall be entirely the risk and responsibility of the Section Developer. MDOT shall provide reasonable assistance to the Section Developer in relation to any application for a governmental approval.</p> <p>The Phase Developer shall initiate certain aspects of the permit approval process as part of the Predevelopment Work, as described in <u>Section 3</u> above.</p>
10.	Wetland and Stream Mitigation	<p>In support of MDOT's application for the Section 404 permit from the Army Corps of Engineers relating to the parts of Phase 1 covered by the I-495 & I-270 Managed Lanes Study (MLS), MDOT is preparing designs for the creation of wetland and stream mitigation credits. MDOT shall make available to the Phase Developer wetland and stream mitigation credits from these designs and within the same watersheds as the Section</p>

		<p>for use to mitigate the impacts of the Work on the following basis:</p> <ul style="list-style-type: none"> a) MDOT shall make available wetland/stream mitigation credits from public sites provided that the Section Developer shall be responsible (at its sole cost) for performing the remaining mitigation work including completion of the design and construction, warranty work, and monitoring and maintenance, as further described in Article 5 (<i>Environmental Management</i>) of Exhibit 6 (<i>Predevelopment Work Requirements</i>) of the Phase P3 Agreement; b) MDOT shall make available wetland/stream mitigation credits relating to private sites to be paid for separately by MDOT. <p>MDOT expect to make payments due under paragraph (b) with proceeds of the MDTA Notes.</p> <p>MDOT has provided Proposers with information regarding the wetland/stream mitigation credits that are available in connection with Phase 1 South (including scope of work to be performed by the Section Developer with respect to the public sites and the amounts payable with respect to private site credits) in Section 5.5.10 (<i>Waters of the US and Wetlands Mitigation</i>) of Exhibit 6 (<i>Predevelopment Work Requirements</i>) of the Phase P3 Agreement.</p> <p>Only the actual quantity of constructed mitigation credits can be used to compensate for impacts created from the Work. Changes or deviations between the mitigation credits required in connection with the Work and the credits presented in the MDOT design being used for the Joint Permit Application for the Section 404 permit are the responsibility of the Section Developer to resolve in compliance with applicable law and procedures of wetland and stream mitigation.</p> <p>MDOT is developing a mechanism to incentivize the Section Developer to reduce wetland, stream, and other potential environmental impacts below a defined baseline. Further details will be provided in the full form of the Section P3 Agreement.</p>
11.	Utilities and Third Parties	<p>MDOT shall endeavor to enter into Utility Framework Agreements with Utility Owners with a Utility located in Phase 1 prior to execution of the Phase P3 Agreement. It is anticipated that more detailed Utility Agreements addressing the Utility Adjustments that may be necessary in the Section shall be entered into once the Phase Developer has been selected.</p> <p>MDOT shall endeavor to enter into Third Party MOUs with certain third parties with an interest in Phase 1 South prior to execution of the Phase P3 Agreement. These third parties will include counties, cities, planning commissions, and park services.</p> <p>The Phase Developer shall advance discussions with the Utility Owners and the third parties as part of the Predevelopment Work, as described in <u>Section 3</u> above.</p>

		<p>The Section Developer will be responsible for coordinating all Utility Adjustments and ensuring that all Utility Adjustment Work and Third Party Work comply with the Section P3 Agreement, all applicable laws, any applicable Utility Framework Agreement or Third Party MOU (which will be provided by MDOT), and any Utility Agreement.</p> <p>The Section Developer will be responsible for all costs of Utility Adjustment Work and Third Party Work unless otherwise agreed under any Utility Framework Agreement, Utility Agreement, or Third Party MOU, or a Compensation Event applies. The Section Developer may be responsible for performing certain of the Utility Adjustment Work, and to the extent that it performs any Utility Adjustment Work, it shall, if directed by MDOT, be required to provide (or require its relevant Contractor performing the work to provide) a warranty with respect to such work directly in favor of the relevant Utility Owner.</p>
12.	Hazardous Materials	<p>Pre-Existing Hazardous Materials</p> <p>The Section P3 Agreement will allocate liability associated with the management and removal of Hazardous Materials as between MDOT and the Section Developer. The Phase Developer shall carry out site investigations with respect to pre-existing Hazardous Materials as part of the Predevelopment Work, as described in <u>Section 3</u> above.</p> <p>The Section Developer shall be deemed the generator with respect to any Section Developer Hazardous Materials Release. The Section Developer shall not be deemed the generator for Hazardous Materials resulting from Pre-existing Hazardous Materials or a Hazardous Materials Release other than a Section Developer Hazardous Materials Release.²</p> <p>Hazardous Materials Release</p> <p>The Section Developer will be responsible for the management, treatment, handling, storage, monitoring, remediation (including obtaining any governmental approval), removal, transport, and disposal of:</p> <ul style="list-style-type: none"> a) prior to Substantial Completion, any Hazardous Materials that are encountered in, under, or on the Site or which migrate from the Site; and b) after Substantial Completion, any Hazardous Materials that are encountered in, under, or on, or which migrate from, the Priced Managed Lanes and other parts of the Site under the control of or maintained by the Section Developer. <p>MDOT will have customary rights to inspect areas of suspected Hazardous Material contamination or to direct remediation action or otherwise step-in and perform remedial action.</p> <p>MDOT shall reimburse the Section Developer's reasonable costs incurred in connection with the remediation of Hazardous Materials Release to the extent such Hazardous</p>

² **NTD:** Generator status subject to further discussion at full documentation of the Section P3 Agreement.

		Materials Release does not constitute a Section Developer Hazardous Materials Release. MDOT will not be liable for lost Toll Revenues except to the extent the Hazardous Materials Release is caused by an MDOT-Related Entity.																				
Part C – Design and Construction																						
13.	Design & Construction – General Obligations	The Section Developer shall perform the D&C Work in accordance with: <ul style="list-style-type: none"> a) good industry practice; b) all applicable laws; c) the requirements of all governmental approvals; d) all requirements of the Section P3 Agreement; e) the technical provisions and all schedules and plans accepted by MDOT in accordance with the technical provisions; f) the Section Developer's technical proposal; and g) with respect to the Construction Work, the released for construction plans and specifications. 																				
14.	Nonconforming and Defective Work; General Purpose Lanes Warranty	The Section Developer shall correct all nonconforming Work and Defects. With respect to any D&C Work performed on the General Purpose Lanes and other Non-Maintained Facilities, the Section Developer shall provide to MDOT a two-year warranty on customary terms and conditions and will be liable to MDOT for GP Latent Defects for 10 years from Substantial Completion (or, with respect to an Interim Completion Element, from Interim Completion).																				
15.	Lane Closure Liquidated Damages	The Section Developer may only close General Purpose Lanes in order to perform D&C Work and O&M Work in accordance with procedures and timeframes to be specified in the Section P3 Agreement. If the Section Developer closes the lanes outside of the times that lane closure is permitted by MDOT or exceeds the permitted closure times, the Section Developer shall pay MDOT liquidated damages in accordance with the below schedule, subject to CPI indexation. <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="4" style="text-align: center;">Lane Closure Liquidated Damages</th> </tr> <tr> <th colspan="4" style="text-align: center;">Liquidated Damage (\$ per minute, per lane)</th> </tr> <tr> <th style="text-align: center;">Elapsed Time (min)</th> <th style="text-align: center;">I-495, I-270, I-370, George Washington Memorial Parkway and All Ramps</th> <th style="text-align: center;">Shady Grove Road, MD 28, Montrose Road, MD 187, MD 190, MD 189 Democracy Boulevard</th> <th style="text-align: center;">All Other Roads</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">0-5, or any portion thereof</td> <td style="text-align: center;">\$3,500</td> <td style="text-align: center;">\$2,000</td> <td style="text-align: center;">\$1,000</td> </tr> <tr> <td style="text-align: center;">Every additional minute or portion thereof after the initial 5 minutes stated above</td> <td style="text-align: center;">\$3,500 per each additional minute after initial 5 minutes</td> <td style="text-align: center;">\$2,000 per each additional minute after initial 5 minutes</td> <td style="text-align: center;">\$1,000 per each additional minute after initial 5 minutes</td> </tr> </tbody> </table>	Lane Closure Liquidated Damages				Liquidated Damage (\$ per minute, per lane)				Elapsed Time (min)	I-495, I-270, I-370, George Washington Memorial Parkway and All Ramps	Shady Grove Road, MD 28, Montrose Road, MD 187, MD 190, MD 189 Democracy Boulevard	All Other Roads	0-5, or any portion thereof	\$3,500	\$2,000	\$1,000	Every additional minute or portion thereof after the initial 5 minutes stated above	\$3,500 per each additional minute after initial 5 minutes	\$2,000 per each additional minute after initial 5 minutes	\$1,000 per each additional minute after initial 5 minutes
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16.	Interim Completion of Elements	Prior to the signing of the Section P3 Agreement, the Phase Developer or MDOT may propose designation of certain Non-Maintained Facilities as Interim Completion Elements. Such designations shall be subject to agreement between MDOT and the Phase Developer. The Section Developer will have the right to handover the Interim Completion Element to MDOT before the Substantial																				

		<p>Completion Date, subject to satisfaction of certain Interim Completion Conditions. Following handover, the Section Developer will cease to be responsible for O&M Work on the Interim Completion Element.</p> <p>Interim Completion Conditions may include:</p> <ul style="list-style-type: none"> a) completion of Design Work and Construction Work with respect to relevant Interim Completion Element; b) completion of Utility Adjustment Work relevant to the Interim Completion Element; c) completion of demobilization from relevant parts of the Site; d) submission of all required Submittals; e) submission of certification as required to any governmental entity; f) satisfaction of all conditions of governmental approvals relating to Design Work or Construction Work; g) non-existence or cure of noncompliance events; h) completion and delivery of progress reports and project schedules; i) non-existence or cure of any Section Developer Default; and j) approval by FHWA related to the Interim Completion Element.
17.	Substantial Completion	<p>Upon the achievement of Substantial Completion, the Section Developer will be entitled to commence tolling in the manner described in the Tolling Services Agreement Term Sheet and the Operating Period will begin.</p> <p>The conditions to achievement of Substantial Completion will be customary for similar projects.</p> <p>The Section Developer will be required to achieve Substantial Completion by the Substantial Completion Long Stop Date, which will be 365 days after the scheduled Substantial Completion date.</p>
18.	Final Completion	<p>The Section Developer will be required to achieve Final Completion by the scheduled Final Completion date.</p> <p>The conditions to achievement of Final Completion will be customary for similar projects.</p>
19.	Delay Liquidated Damages	<p>If the Section Developer fails to achieve Substantial Completion or Final Completion by the scheduled Substantial Completion date or scheduled Final Completion date, the Section Developer shall pay liquidated damages to MDOT. The liquidated damages will be in an amount equal to the projected MDOT contract administration costs and third party advisor costs incurred by MDOT due to the extended period of D&C Work.</p> <p>Approximate amount of the delay liquidated damages is \$39,300/day for failure to achieve Substantial Completion and \$17,900/day for failure to achieve Final Completion.</p>
Part D – Operation and Maintenance		
20.	General Obligations	<p>The Section Developer shall carry out O&M Work in accordance with:</p> <ul style="list-style-type: none"> a) good industry practice;

		<p>b) all applicable laws;</p> <p>c) the requirements of all governmental approvals;</p> <p>d) the technical provisions and all other requirements of the Section P3 Agreement (including all schedules and plans accepted by MDOT in accordance with the technical provisions); and</p> <p>e) the Section Developer's technical proposal.</p> <p>Following the Substantial Completion Date (or, with respect to an Interim Completion Element, the Interim Completion Date), the Section Developer will only be responsible for O&M Work on the maintained facilities (meaning the Priced Managed Lanes and certain other facilities) and will hand over responsibility for operation and maintenance of the General Purpose Lanes and certain other facilities described in Exhibit 6 (<i>Predevelopment Work Requirements</i>) of the Phase P3 Agreement (the "Non-Maintained Facilities") to MDOT, the counties, or certain other entities. In the event that MDOT undertakes certain renewal work on Shared Assets that are within the O&M Limits (each as defined in Exhibit 6 (<i>Predevelopment Work Requirements</i>) of the Phase P3 Agreement), the Section Developer shall reimburse MDOT for the Section Developer's portion of the renewal work as described in Sections 25.2.4 (<i>Shared Operations and Maintenance Responsibilities</i>) and 25.3.14 (<i>Shared O&M Protocols</i>) of Exhibit 6 (<i>Predevelopment Work Requirements</i>) of the Phase P3 Agreement. MDOT shall perform the operation and maintenance of the Shared Assets to the same standard as it operates and maintains equivalent assets on other State highways.</p>
21.	Utility Accommodation	The Section Developer will provide reasonable and customary assistance to MDOT and MDTA with respect to Utility permit applications submitted after the Substantial Completion Date.
22.	Incident Response Services	The Section Developer will be responsible for providing, at the Section Developer's cost and expense, incident response services and courtesy patrol services in the Priced Managed Lanes.
23.	Basic Policing and Toll Enforcement	<p>MDOT will coordinate with the Maryland State Police to provide basic policing services, including traffic patrol and traffic law enforcement services, on the Priced Managed Lanes in Maryland at a level of service equivalent to that provided on other HOV facilities in the State. MDOT will not have any responsibility or liability to the Section Developer resulting from or otherwise relating to a failure of the Maryland State Police to provide such policing services, or any other acts of omissions of the Maryland State Police with respect to such services.</p> <p>The Section Developer may request that MDOT engage the Maryland State Police for additional toll violation enforcement services or enhanced levels of police services for traffic control in Maryland. Upon receipt of such request MDOT shall use reasonable efforts to engage the Maryland State Police on reasonable terms and for a scope of additional service to be agreed with the Section Developer. The Section Developer shall reimburse MDOT for all costs and expenses incurred by MDOT in its engagement of the Maryland State Police.</p>

24.	Handback Obligations	The Section Developer shall hand back the Section to MDOT in accordance with the handback requirements set out in Exhibit 6 (<i>Predevelopment Work Requirements</i>) of the Phase P3 Agreement. The technical provisions will specify the residual life requirements that each Section element must meet at the end of the Handback Period. Beginning five years prior to the end of the Term, the Section Developer, MDOT, and MDTA shall conduct annual inspections to assess the condition of each Section element and agree to a plan of Work to be undertaken by the Section Developer to satisfy the handback requirements. The Section Developer may, at its own expense, engage a suitably qualified independent third party approved by MDOT to perform the inspection and assessment process.
25.	Handback Reserve Account	<p>Prior to the Handback Period, the Section Developer shall create and fund a handback reserve account in which MDOT and MDTA will have a first priority security interest. The handback reserve account may be funded in cash or by posting a letter of credit meeting the requirements of the Section P3 Agreement. The amount to be deposited into the handback reserve account (or the amount of the letter of credit that must be posted) will be initially determined and subsequently adjusted based on the results of the annual inspections conducted during the last five years of the Term. If the Section Developer fails to fund the handback reserve account in the required amount, then MDOT may elect to redirect Toll Revenues to the handback reserve account in the amount of any shortfall.</p> <p>The Section Developer may only withdraw funds upon approval by MDOT and MDTA and only to pay for renewal work that was taken into account in the calculation of the required balance of the handback reserve account.</p> <p>At the end of the Term, MDOT or MDTA may withdraw funds from the handback reserve account or draw upon the letter of credit in the amount required to undertake any renewal work. The balance will be paid to the Section Developer.</p>
Part E – Contracting and Key Personnel		
26.	Subcontracting	The Section Developer will retain only Contractors that are qualified, experienced, and capable of performing the Work in accordance with the terms of the Section P3 Agreement. The retention of Contractors will not relieve the Section Developer of its obligations and will not create any contractual relationship with, or impose any obligation on, MDOT or MDTA.
27.	Prompt Payment to Contractors; No Retainage	<p>The Section Developer shall make prompt payment of undisputed amounts to its Contractors with whom it has privity of contract, and shall require all Contractors to make prompt payment of undisputed amounts to lower-tier Contractors with whom they have privity of contract.</p> <p>The Section Developer shall insert in all contracts to which the Section Developer is a party a requirement for the Contractor to pay all undisputed amounts due to lower-tier Contractors within 10 days of receiving payment for Work satisfactorily performed by such lower-tier Contractors; and</p>

		<p>shall require lower-tier Contractors to insert the same provision in each subcontract at all tiers.</p> <p>Notwithstanding that MDOT and MDTA shall not be making payments to the Section Developer with respect to the D&C Work, (i) in relation to D&C Work, the D&C Contractor will not be permitted to withhold retainage in excess of 5% of the amount otherwise owing from Contractors with whom it has privity of contract and (ii) in relation to all other Work, the Section Developer will not be permitted to withhold retainage in excess of 5% of the amount otherwise owing from Contractors with whom it has privity of contract. If the D&C Contractor or the Section Developer elects to withhold such retainage from a Contractor with whom it has privity of contract, that Contractor shall have the further right to withhold retainage from its Contractors with whom it has privity of contract, not to exceed the amount withheld by the D&C Contractor or the Section Developer (as applicable), and each Contractor from whom retainage is withheld shall have the right to withhold retainage from its lower tier Contractors, not to exceed the amount withheld from the upper tier Contractor.</p>
28.	Key Personnel	The Section Developer and any Key Contractor shall appoint and retain the key personnel throughout the Term, subject to customary procedures for their replacement from time to time as may be approved by MDOT.
29.	Applicable Law; Non-Discrimination; Equal Employment Opportunity³	<p>The Section Developer, its Contractors, and its assignees will be required at all times to comply with all applicable State and federal laws, shall not discriminate, and shall include non-discrimination provisions in their contracts.</p> <p>The Section Developer shall comply with the Civil Rights Act and MDOT's affirmative action requirements and equal employment opportunity requirements.</p>
30.	DBE and MBE Requirements	<p>MDOT anticipates establishing DBE participation goals for the D&C Work.</p> <p>MDOT anticipates establishing MBE participation goals/subgoals for the O&M Work.</p> <p>The Section P3 Agreement will include customary protections for DBE and MBE firms, as well as customary monitoring and reporting regimes. Further details regarding the participation goals are provided in Section 1.20 of the ITP.</p> <p>The Section Developer will be required to perform certain obligations in connection with the Opportunity MDOT program, details of which are provided in Section 1.9 of the ITP.</p>
31.	Prevailing Wages	The Section Developer shall pay or cause to be paid to all applicable workers employed to perform the Construction Work not less than the prevailing rates of wages, as provided in the applicable statutes and regulations, including §§17-201 et seq. of the State Finance and Procurement Article of the Annotated Code of Maryland, COMAR §21.11.11, and the

³ **NTD:** The Section Developer will be required to comply with on-the-job training requirements for the Work, including an OJT Manual that will be provided once approved by FHWA.

		Davis Bacon Act, and will bear the risk of any change in the wage or benefit requirements.
32.	Community Benefits	The Section Developer will be required to comply with certain community benefit requirements to be developed in collaboration by MDOT and the Phase Developer, including integration of the local trades and unions, including but not limited to the affected local community and the MBE/DBE community along the P3 Program corridor.
Part F – Noncompliance		
33.	Noncompliance Events	<p>The Section P3 Agreement will include performance requirements and define events that constitute noncompliance events during both the D&C Period and the Operating Period, including applicable mitigation, temporary repair, and permanent repair periods, noncompliance points, and corresponding liquidated damages.</p> <p>The noncompliance events that will be applicable to the Section are set forth in Tables 25-6 (<i>Operating Period Performance</i>) and 25-7 (<i>D&C Period Performance</i>) in Exhibit 6 (<i>Predevelopment Work Requirements</i>) of the Phase P3 Agreement. Each noncompliance point will have a value of \$8,000 in liquidated damages payable to MDOT. This value is based on an assumed capex value for the Section of \$1 billion, and may be subject to adjustment based on the actual capex value of the Section.</p> <p>If the accumulated noncompliance points exceed certain thresholds set forth in the Section P3 Agreement, MDOT will have the right to increase monitoring of the Section Developer's performance and require the Section Developer to prepare a remedial plan, in each case at the Section Developer's cost and expense.</p> <p>If the accumulated noncompliance points exceed certain higher thresholds set forth in the Section P3 Agreement, a Section Developer Default will occur and MDOT will have the right to terminate the Section P3 Agreement.</p>
Part G – Delays and Supervening Events		
34.	Notice of Delays	Within 10 business days of becoming aware that there will be a delay in achieving any scheduled Interim Completion of an Interim Completion Element, the scheduled Substantial Completion date, or the scheduled Final Completion date, the Section Developer shall notify MDOT and provide any information relating to the delay reasonably requested by MDOT.
35.	Compensation Events and Relief Events	<p>To the extent a Compensation Event or a Relief Event directly causes an adverse cost or schedule impact on the Section Developer, the Section Developer may claim an extension to applicable deadlines for performance or relief from compliance with its obligations. Notice of such claim must be provided within 30 days after the date the Section Developer first became aware (or should reasonably have become aware) that the relevant Compensation Event or Relief Event had occurred.</p> <p>If such adverse impact is caused by a Compensation Event, the Section Developer may also claim compensation which places the Section Developer in a "no better/no worse"</p>

		<p>position, as compared to immediately prior to the occurrence of the Compensation Event.</p> <p>The Section P3 Agreement will include "Compensation Events" addressing the following matters, among others:</p> <ul style="list-style-type: none"> a) breach of the Section P3 Agreement by MDOT or MDTA (including a failure by MDOT to provide the Section Developer with access to each MDOT Provided Parcel in accordance with the access schedule agreed under <u>Section 7 (Right of Way)</u>); b) violation of law by MDOT or MDTA; c) Discriminatory Change in Law; d) suspension of the Work (except as permitted by <u>Section 38</u> below) or suspension of tolls in the Priced Managed Lanes (except as permitted by <u>Section 38.A</u> below); e) issuance of directive letters; f) physical damage to the Work caused by other MDOT capital works projects [or VDOT capital works projects]⁴ in the immediate vicinity of the Section (excluding work undertaken by a Section Developer-Related Entity); g) MDOT's or MDTA's exercise of step-in rights except in cases of Section Developer's breach; h) the discovery of any Unknown Utility during the carrying out of the Construction Work; i) the discovery of any Unknown Hazardous Environmental Conditions during the carrying out of the Construction Work; j) the discovery of any Unknown Endangered Species during the carrying out of the Construction Work; k) the discovery of any Unknown Archaeological Remains during the carrying out of the Construction Work; l) issuance of injunctions or restraining orders relating to the Section or the P3 Program that prohibits the performance of a material part of the Work under the Section P3 Agreement or materially and adversely affects a Party's performance under the Section P3 Agreement; m) release of Hazardous Materials caused by an MDOT-Related Entity; n) signing by MDOT or MDTA of new or amended Utility Framework Agreement, Utility Agreement, or Third Party MOU on terms different to the Setting Date MOUs, except to the extent caused by a change to the design made by the Section Developer after the Setting Date (and "Setting Date MOUs" means (i) the MOUs or agreements executed by MDOT or MDTA and the relevant utility/third party and made available to the Phase Developer prior to the Setting Date and (ii) Utility Framework Agreement, Utility Agreement, or Third Party MOU in a form that has not yet been executed at the Setting Date but that has been agreed as between MDOT and the Phase
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⁴ **NTD:** References to Virginia will only be included in the Section P3 Agreement for the Section that includes American Legion Bridge.

		<p>Developer as the form of MOU or agreement that the Phase Developer will base its pricing on at the Setting Date);</p> <ul style="list-style-type: none"> o) construction or expansion of a Competing Facility as defined in Section 37 below; p) an extended Force Majeure Event, to the extent MDOT elects to treat it as a Compensation Event in lieu of termination; q) with respect to the 495 NEXT Project, breach by the 495 NEXT Developer or VDOT of certain defined interface obligations set forth in the Section P3 Agreement; r) any suspension, termination, amendment, or variation to the terms and conditions of any MDOT-Provided Approval, except to the extent that such suspension, termination, amendment, or variation results from failure of any Section Developer-Related Entity to locate or design the Section or carry out the Work in accordance with the relevant MDOT-Provided Approval (including any differences between the Section Developer's design and the design used for the MDOT-Provided Approvals); s) an MDTA Outage occurs that constitutes a Compensation Event in accordance with Section 26 (<i>System Faults and Failures</i>) of the Tolling Services Agreement Term Sheet; and t) changes are made to any of the toll rate setting terms that constitute a Compensation Event in accordance with Section 36 (<i>Change Orders</i>) of the Tolling Services Agreement Term Sheet, except, in each case, to the extent attributable to any breach of the Section P3 Agreement, applicable law, or any governmental approval by, or negligent act or negligent omission of, a Section Developer-Related Entity and subject to such other limitations and conditions as will be set forth in the Section P3 Agreement. <p>The Section P3 Agreement will include "Relief Events" addressing the following matters, among others:</p> <ul style="list-style-type: none"> a) any Changes in Law other than Discriminatory Changes in Law; b) Force Majeure Events (as defined in Section 40); c) floods in excess of the Base Flood, fires, explosions, earthquakes causing ground acceleration in excess of AASHTO design standards, tornadoes, named windstorms, and ensuing storm surges; d) riot or civil commotion; e) blockade or embargo; f) strikes or labor unrest affecting the construction industry generally; g) a failure by a Utility Owner to comply with its obligations under its Utility Framework Agreement or Utility Agreement or to cooperate with the Section Developer in relation to a Utility Adjustment where, in each case, such failure continues for a period of [●]⁵ days or more after the Section Developer has issued
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⁵ **NTD:** This will be agreed during the Predevelopment Work.

		<p>a request for assistance and continues to satisfy certain conditions to assistance under the Section P3 Agreement;</p> <p>h) a delay in obtaining any Major Governmental Approval due to delays in receiving responses from the relevant permitting agency that exceed the applicable Major Governmental Approval Period to the extent that such delay is beyond the reasonable control of any Section Developer-Related Entity;</p> <p>i) Pandemic Event; and</p> <p>j) the release of Hazardous Materials onto the Site that is not caused by a Section Developer-Related Entity, except, in each case, to the extent attributable to any breach of the Section P3 Agreement, applicable law, or any governmental approval by, or negligent act or negligent omission of, a Section Developer-Related Entity and subject to such other limitations and conditions as will be set forth in the Section P3 Agreement.</p>
36.	Mitigation and Burden of Proof	<p>The Section Developer will be required to use reasonable efforts to mitigate delays and other consequences of a Compensation Event or Relief Event, and will have the burden of proving the occurrence of any Compensation Event or Relief Event and its resulting impacts and demonstrating its efforts to mitigate such impacts.</p> <p>The Section Developer's right to relief in respect of any Compensation Event or Relief Event will be subject to a demonstration of the cost and schedule impact associated with the claimed event in accordance with the terms of the Section P3 Agreement.</p>
37.	Competing Facilities	<p>The Section Developer will not have any rights to relief, including to prohibit or interfere, with respect to MDOT's or MDTA's rights to plan, finance, develop, operate, maintain, toll or not toll, repair, improve, modify, upgrade, reconstruct, rehabilitate, restore, renew, or replace any transportation facilities.</p> <p>MDOT's or MDTA's construction or expansion of a Competing Facility will, however, constitute a Compensation Event for which relief is available as described above.</p> <p>"Competing Facilities" means additional traffic lanes to be a part of I-495 or I-270 constructed or created on property within or immediately adjacent to the Section's Permanent ROW during the Term, provided, additional traffic lanes do not include the use of auxiliary lanes for any of their intended uses or the construction or operation and use of new auxiliary lanes for any of their intended uses, the use of the shoulder between auxiliary lanes as an additional travel lane for incident management, maintenance, and construction activities, or any new or expanded capacity added to roads adjacent to, in the vicinity of, or intersecting with the Section.</p> <p>For the purpose of this <u>Section 37</u>, "auxiliary lane" means any portion of the roadway adjoining the traveled way for speed change, turning, weaving, truck climbing, maneuvering of entering and leaving traffic, and other purposes supplementary to through-traffic movement, so long as the auxiliary lane is limited to no more than two consecutive interchanges and is</p>

		<p>less than two-miles in total length between adjacent interchanges.</p> <p>MDOT reserves the right to include in the full form Section P3 Agreement additional carve outs to the definition of Competing Facility to allow MDOT to add additional capacity if certain traffic, revenue, or other triggers are met and subject to certain conditions to be agreed (and provided that, such right shall not have such a material effect on the Section to cause the Section to cease to be Financially Viable (as defined in the Phase P3 Agreement) or to cause the Phase Developer to be unable to pay the Development Rights Fee (as defined in the Phase P3 Agreement) for such Section).</p> <p>Nothing in the Section P3 Agreement will require MDOT to compensate the Section Developer for any Competing Facility that arises as a direct result of infrastructure improvements that are already in the State's Capital Improvement Program or Consolidated Transportation Program planning documents at the time the Section P3 Agreement is signed.</p> <p>MDOT will also have the right, without compensating the Section Developer, to implement certain enhancements to the General Purpose Lanes to accommodate vehicle operation technology enhancements (including for connected/autonomous vehicles) during the Term, provided that the enhancements must be within the footprint of the Permanent ROW, [and such enhancements may include restriping that adds lanes within the Permanent ROW] ⁶. The timing and parameters of this right will be set forth in the Section P3 Agreement.</p>
38.	Suspension of Work	<p>MDOT may at any time suspend, in whole or in part, the D&C Work or the O&M Work by written order to the Section Developer. Any suspension of the Work by MDOT will constitute a Compensation Event except where the suspension order is made in response to (i) any Section Developer breach that constitutes failure to handle archaeological resources or Hazardous Materials or would have a material adverse effect on the Section, (ii) unsafe conditions caused by any breach, act, or omission of the Section Developer or any Section Developer-Related Entity, (iii) failure to provide required insurance coverage or performance security, (iv) failure to comply with a directive letter or change order, (v) failure to remove unqualified individuals or failure to ensure that qualified personnel are furnished for the Work, (vi) noncompliance with DBE or MBE program requirements, or (vii) violation by any Section Developer-Related Entity of any governmental approval. This paragraph does not apply to the suspension of tolling, which is addressed in <u>Section 38.A</u> below.</p>
38.A	Suspension of Tolling	<p>MDOT may order the immediate suspension of tolling on any or all portions of the Section that are designated for immediate use as an emergency mass evacuation route or as a route to respond to a disaster proclaimed by the Governor of Maryland or his or her designee.</p>

⁶ **NTD:** MDOT is willing to consider certain triggers or conditions that would have to be met before restriping or additional capacity could be added. To be further discussed during the predevelopment phase.

		<p>MDOT may order the diversion of traffic onto the Priced Managed Lanes and order the immediate temporary suspension of tolling on the Priced Managed Lanes in the direction(s) of the diversion, if the Priced Managed Lanes are designated for immediate use as the alternate route for the diversion of such traffic from another State Highway or the General Purpose Lanes temporarily closed to all lanes in one or both directions due to: (i) an emergency declared under law by MDOT or any other governmental entity; (ii) a significant incident involving one or more casualties requiring hospitalization or treatment by a medical professional or a fatality on the affected State Highway or General Purpose Lanes from which such traffic is diverted; or (iii) a significant incident that causes the affected State Highway or General Purpose Lanes to be closed for a period of time projected to be for greater than three hours.</p> <p>If MDOT receives an order, request, notice, or demand from federal authorities, MDOT may order the Section Developer to close the Priced Managed Lanes to the public for such period of time as may be necessary for secret service, national security, and homeland security purposes.</p> <p>MDOT will have no liability to the Section Developer for the loss of Toll Revenues or the increase in costs and expenses attributable to any suspension of tolling permitted under this <u>Section 38.A</u> provided that such order is applied in an indiscriminatory manner and lifted promptly.</p>
39.	Section Developer Financing of Section Developer Damages	<p>If requested by MDOT, the Section Developer shall use commercially reasonable efforts to obtain financing for a portion or the full amount of the financial impact of a Compensation Event unless the Section Developer demonstrates that such financing will diminish the value of the Section.</p>
40.	Force Majeure Events	<p>"Force Majeure Event" means the occurrence of any of the following events after the date of the Section P3 Agreement that directly causes either MDOT or the Section Developer (the "Affected Party") to be unable to comply with all or a material part of its obligations under the Section P3 Agreement:</p> <ul style="list-style-type: none"> a) war, civil war, invasion, violent act of foreign enemy or armed conflict, or an act of terrorism; or b) nuclear, chemical, or biological contamination or ionizing radiation unless the source or cause of the contamination is brought to or near the Site by the Section Developer or a Section Developer-Related Entity, or is a result of any breach by the Section Developer of the terms of the Section P3 Agreement. <p>Generally, neither Party may bring a claim for a breach of obligations under the Section P3 Agreement by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party if a Force Majeure Event occurs and the Affected Party is prevented from carrying out its obligations by that Force Majeure Event.</p>

		<p>After a Force Majeure Event occurs, the Parties must consult on appropriate terms to mitigate its effects and facilitate the continued performance of the Section P3 Agreement.</p> <p>If:</p> <ul style="list-style-type: none"> a) as a result of a Force Majeure Event, the Affected Party is unable to comply with any of its material obligations under the Section P3 Agreement for a continuous period of more than 180 days; and b) within such 180 day period, each acting in good faith, the Parties are unable to agree on appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Section P3 Agreement, <p>either Party may deliver notice to the other Party that it wishes to terminate the Section P3 Agreement for an extended Force Majeure Event.</p> <p>If the Section P3 Agreement is terminated by either Party for an extended Force Majeure Event, then the Section Developer will be entitled to termination compensation as more particularly described in <u>Section 63</u>.</p> <p>MDOT will have the right to over-rule an election by the Section Developer to terminate the Section P3 Agreement following an extended Force Majeure Event, in which case the relevant Force Majeure Event will be treated as a Compensation Event.</p>
41.	Change in Law	The Section Developer shall at all times perform the Work in accordance with applicable law, including after any Change in Law.
42.	Change Orders	The Section P3 Agreement will contain customary provisions governing the right of MDOT to issue change orders and directive letters, as well as the right of the Section Developer to propose changes.
Part H – Indemnities, Insurance and Reinstatement, Performance and Payment Security		
43.	Indemnity from Section Developer	<p>The Section Developer shall indemnify, hold harmless, and, subject to approval by the relevant Indemnified Party, defend each of the Indemnified Parties from and against (a) all liability for losses in relation to loss of or damage to real or personal property owned by or in the possession of an Indemnified Party; (b) all losses in relation to personal injury or death of any officers, agents, representatives, or employees of any MDOT-Related Entity; and (c) all losses in relation to third party claims, in each case, arising out of, relating to, or resulting from the Section Developer's design, construction, operation, or maintenance of the Project or the Section Developer's performance or non-performance of the Section Developer's obligations under the Section P3 Agreement.</p> <p>Such indemnity will expressly extend to liability for losses arising from third party claims arising out of (i) the Section Developer's Work, where the claim is from an owner or occupier of an Additional Property and (ii) the interface of the Section Developer with other MDOT contractors carrying out work on, in, or near the Site.</p>

		<p>The Section P3 Agreement shall include a customary indemnity with respect to Hazardous Materials and intellectual property infringement.</p> <p>The Section P3 Agreement will include customary exclusions from the Section Developer's indemnity obligations.</p>
44.	Insurance	<p>The Section Developer and its Contractors shall, at their sole cost and expense, procure and maintain insurance policies that comply with the minimum requirements established in the Section P3 Agreement for the provision of the Work throughout the Term.</p>
45.	Uninsurable Risks and Unavailable Insurance Terms	<p>If MDOT and the Section Developer agree that a risk is an Uninsurable Risk (and not due to any fault of the Section Developer), MDOT and the Section Developer shall consider in good faith alternative insurance packages and programs that provide coverage as comparable as is possible under then-existing insurance market conditions.</p> <p>If after negotiating in good faith MDOT and the Section Developer cannot agree on how to manage an Uninsurable Risk and such Uninsurable Risk is not caused by the actions, breaches, or omissions of the Section Developer or a Contractor, then MDOT and the Section Developer shall appoint an insurance expert panel to review and confirm the insurance requirements of the Section P3 Agreement and the market for such insurance, and recommend the amount and type of insurance that is available on commercially reasonable terms (and at insurance premiums that contractors on comparable infrastructure projects in North America are generally prepared to pay) to be obtained by the Section Developer in lieu of that which was required. The Section Developer will be required to obtain such recommended insurance, and will at all times remain responsible for the cost of such recommended insurance and at risk for any loss to the Section.</p> <p>The Section Developer must make ongoing best efforts to ascertain whether an Uninsurable Risk has become insurable and if so, to obtain the relevant insurance as soon as reasonably practicable.</p> <p>If MDOT and the Section Developer agree that an insurance term is an unavailable term and that its unavailability is not caused by the actions, breaches, omissions, or defaults of the Section Developer or a Contractor, the Section Developer's obligations with respect to that term are waived for so long as it remains unavailable.</p> <p>The Section Developer must make ongoing best efforts to ascertain whether an insurance term is no longer an unavailable term, and if so, to obtain the relevant insurance term as soon as reasonably practicable.</p> <p>If an alternative or replacement term or condition of insurance is available to the Section Developer in the worldwide insurance and reinsurance market with reputable insurers of good standing which, if included in the relevant insurance policy, would fully or partially address the Section</p>

		<p>Developer's inability to maintain or obtain insurance including an unavailable term, at a cost which contractors on similar sized civil engineering projects in North America are (at such time) generally prepared to pay, the Section Developer shall maintain or ensure the maintenance of insurance including such alternative or replacement term or condition.</p>
<p>46.</p>	<p>Performance and Payment Security</p>	<p>On or before the Financial Closing Date, the Section Developer shall furnish, or cause the D&C Contractor to furnish, the following:</p> <ul style="list-style-type: none"> a) a performance bond in the form to be set out in the Section P3 Agreement in an amount equal to 100% of the total value of D&C Work (the "Performance Bond"); and b) a payment bond in the form to be set out in the Section P3 Agreement in an amount equal to 100% of the total value of D&C Work (the "Payment Bond").⁷ <p>Each of the Performance Bond and the Payment Bond must be issued by a surety or an insurance company authorized to issue bonds in the State that is rated in the top two categories by two of the three nationally recognized rating agencies or at least "A-" or better and "Class X" or better according to A.M. Best's Financing Strength Rating and Financial Size Category. In addition any surety or insurance company issuing such bonds must be listed on the current U.S. Treasury Listing of Certified Companies and the limit of the bond written by such surety or insurance company on any one project must not exceed the approved Underwriting Limitation on the U.S. Treasury list.</p> <p>Each of the Performance Bond and the Payment Bond will name MDOT, MDTA, and the collateral agent as additional obligees, and further provide that each of the Performance Bond and the Payment Bond may be transferred by the Section Developer to MDOT, MDTA, or the collateral agent, as beneficiary, with rights to draw upon or exercise other remedies if MDOT, MDTA, or the collateral agent succeeds to the position of the Section Developer under the Section P3 Agreement.</p> <p>In all contracts with respect to the D&C Work entered into by the Section Developer, the Section Developer shall require its Contractors and suppliers to waive any right to seek a mechanic's lien against the Section or the Site in consideration for the Section Developer's provision of the Payment Bond.</p> <p>The Section Developer shall maintain, or cause the D&C Contractor to maintain, each of the Performance Bond and the Payment Bond until the expiry of the GP Defect Remedy Period (subject to step-downs as may be set forth in the Section P3 Agreement).</p> <p>If the Section Developer is required under the terms of the Finance Documents to provide or ensure that a Key</p>

⁷ **Note to Proposers:** MDOT may consider lower amounts for the Payment Bond and the Performance Bond during the predevelopment phase if a benefit of doing so can be demonstrated to MDOT.

		<p>Contractor provides any performance security, including any performance bond, letter of credit, cash collateral, or parent guarantee put in place to secure obligations of a Contractor under a contract, the Section Developer shall:</p> <ul style="list-style-type: none"> a) with respect to any performance bond, ensure that MDOT and MDTA are named as an additional obligee (on terms reasonably acceptable to MDOT and MDTA); and b) deliver to MDOT and MDTA a copy of any such performance security promptly upon obtaining it.
Part I – Principal Section Developer Documents, Financing, Refinancing, Financial Model, Tolling		
47.	Key Contracts	<p>The Section Developer shall not permit any termination (except for default of a Key Contractor), amendment to, or material departure from a Key Contract, except with MDOT's prior approval, if the proposed course of action may reasonably be expected to have a material adverse effect on the ability of the Section Developer to perform its obligations under the Section P3 Agreement.</p> <p>The Section Developer shall not permit any substitution, replacement, or assignment of any Key Contractor except with MDOT's prior approval (subject to certain carve outs to be included in the Section P3 Agreement).</p>
48.	Financing	<p>Without prejudice to the Phase Developer's obligations under the Phase P3 Agreement, the Section Developer is responsible for financing the Section at its own cost and risk without recourse to MDOT, MDTA, or the State. The repayment of any debt or equity arranged by the Section Developer to finance the Section will be the sole responsibility of the Section Developer. MDOT and MDTA will be required to provide disclosure (if required) and customary legal opinions and certifications related thereto in connection with a bond offering.</p> <p>All Section Debt or other obligations issued or incurred by a Section Developer-Related Entity in connection with the Section P3 Agreement or the Section must be issued or incurred only in the name of a Section Developer-Related Entity.</p> <p>Subject to the lenders direct agreement, MDOT and MDTA will not have any obligation to any Lender under the Section Documents.</p>
49.	Changes to the Interest Rate, Design-Build Price, and Predevelopment Costs	<p>The Section P3 Agreement will contain a mechanism allowing an adjustment to the Upfront Payment resulting from:</p> <ul style="list-style-type: none"> a) changes in the benchmark interest rates and credit spreads occurring between the submission of the Committed Section Proposal and the Financial Closing Date with respect to bank, bond, or TIFIA financings, in each case on terms and conditions customary for similar transactions; b) extraordinary changes in the cost of performing the D&C Work evidenced by changes in a construction price index occurring between (i) 240 days after the submission of the Committed Section Proposal and (ii) the Financial Closing Date, if such delay to the

		<p>Financial Closing Date is caused by MDOT or MDTA; and</p> <p>c) changes to Allowed Costs to reflect actual costs approved by MDOT that were incurred between the submission of the Committed Section Proposal and the Financial Closing Date provided that the total Allowed Costs reimbursed on Financial Close do not exceed the Predevelopment Cost Cap.</p> <p>The above changes will be made to the Initial Base Case Financial Model and the resulting, adjusted financial model will be the Base Case Financial Model.</p>
50.	Upfront Payment	On the Financial Closing Date, the Section Developer shall pay to MDOT an amount to be set forth in the Section P3 Agreement (the " Upfront Payment "). The amount of the Upfront Payment may be adjusted to account for the financial risk sharing, all as described in Section 49 .
51.	Development Rights Fee relating to the Section	On the Financial Closing Date, the Section Developer shall advance funds to the Phase Developer in the amount of the applicable installment of the Development Rights Fee (as defined in the Phase P3 Agreement) due under the Phase P3 Agreement and shall cause the Phase Developer to pay the applicable installment of the Development Rights Fee in accordance with the Phase P3 Agreement.
52.	Regional Transit Improvements	<p>Specific transit service improvements developed in coordination with Frederick and Montgomery counties and MDOT under the terms of memoranda of understanding will be provided as part of the Section P3 Agreement. This will ensure these regional transit service improvements are provided at defined and predictable times.</p> <p>The scope and terms of the transit service improvements to be included in the Section P3 Agreement will be determined following execution of the Phase P3 Agreement. The scope of the transit service improvements will not exceed an amount that would cause the Section to be undeliverable without Maryland Funding (as defined in the Phase P3 Agreement).</p>
53.	Excess Revenue Payments	<p>Annually throughout the Term, as partial compensation for MDOT's and MDTA's grant of rights to the Section Developer under the Section P3 Agreement, the Section Developer shall make payments to MDOT in amounts equal to 50% of Excess Revenue calculated for that period ("Excess Revenue Payments").</p> <p>To the extent that the restricted payment conditions included in the TIFIA loan agreement have not been met, Excess Revenue Payments shall be held in the designated distribution lock-up account and released once the TIFIA loan agreement restricted payment conditions have been met. Amounts in the designated distribution lock-up account will be available for insufficiencies in higher priority levels of the revenue account waterfall. Any shortfall will be paid to MDOT when available for distribution.</p> <p>With respect to any Section within Phase South A only, if both (i) the Phase Developer included in its proposal a Development Rights Fee equal to zero for each Section of Phase South A, and (ii) the Alternative Equity IRR for such</p>

		<p>Section is less than the Proposal Equity IRR, the Base Case Gross Revenue applicable for the purpose of calculating Excess Revenue shall be adjusted as follows. The Base Case Financial Model (as adjusted in accordance with <u>Section 49</u> above) shall be re-solved by increasing gross toll revenue (by the same percentage each year of operations), holding all other inputs static, such that the Alternative Equity IRR equals the Proposal Equity IRR, and the resulting gross toll revenue will be the Base Case Gross Revenue for the purpose of calculating Excess Revenue. This adjustment to the Base Case Gross Revenue for the purpose of calculating Excess Revenue shall not be included in a Section P3 Agreement for a Section within Phase South A if either or both of the following apply: (i) the Phase Developer included in its proposal a Development Rights Fee greater than zero for any Section in Phase South A or (ii) the Alternative Equity IRR for such Section is equal to or greater than the Proposal Equity IRR.</p> <p>The terms Development Rights Fee, Alternative Equity IRR, and Proposal Equity IRR have the meaning set out in the Phase P3 Agreement.</p>
54.	Refinancing	<p>With certain limited exceptions, the Section Developer may not enter into any Qualifying Refinancing without obtaining MDOT's prior written consent.</p> <p>Any Refinancing Gain arising from a Qualifying Refinancing will be included in the calculation of Excess Revenue.</p> <p>Upon the reasonable request of the Section Developer, MDOT and MDTA shall provide reasonable assistance to the Section Developer in undertaking:</p> <ul style="list-style-type: none"> a) any Exempt Refinancing or Notifiable Refinancing; or b) any Qualifying Refinancing with respect to which MDOT has provided its prior written consent.
55.	MDTA Note Purchase by Section Developer	<p>MDTA and the Section Developer shall enter into MDTA Financing Documents based on the terms set out in the MDTA Notes Term Sheet. At Financial Close for the Section, the Section Developer shall purchase the MDTA Notes using equity provided by its shareholders and debt raised from the Section Developer's Lenders. The principal amount of the MDTA Notes at Financial Close will vary for each Section. The total value of the MDTA Notes for Phase 1 South is not expected to exceed \$100m. The proceeds of the MDTA Notes shall be used for eligible project costs (including those referred to in <u>Section 10</u>).</p>
56.	MDTA Refinancing	<p>At any time from and including the 10th anniversary of the Commercial Closing Date and prior to the 40th anniversary of the Commercial Closing Date, MDTA may optionally redeem the MDTA Notes and issue new MDTA notes in a private placement to the Section Developer on substantially the same terms as the original MDTA Notes, under which the then-outstanding debt under the original MDTA Notes will be refinanced, with the final maturity date thereunder being the last day of the Term (such refinancing, the "MDTA Refinancing"). If MDTA fails to close the MDTA Refinancing on or prior to the 40th anniversary of the Commercial Closing Date (except to the extent caused by the Section Developer's failure to cooperate in a reasonably timely manner), MDOT</p>

		<p>will be deemed to terminate the Section P3 Agreement for convenience.</p> <p>The Section Developer shall cooperate with the MDTA Refinancing and shall apply all amounts outstanding under the MDTA Notes to purchase the new MDTA Notes issued pursuant to the MDTA Refinancing.</p>
57.	Tolling	<p>MDTA shall apply toll revenue as set out in the MDTA Financing Documents.</p> <p>None of MDOT and MDTA or the State will provide a revenue guarantee to the Section Developer, nor will the revenues from any other project (including other phases or sections of the P3 Program) be used by MDTA to make payments of principal and interest on the MDTA Notes or Section Developer Toll Payments to the Section Developer.</p>
58.	Toll Rates	Toll revenue shall be payable to the Section Developer in accordance with the terms of the MDTA Notes as set out in the MDTA Notes Term Sheet.
59.	Tolling Services Agreement	Each Section Developer and MDTA will enter into a Tolling Services Agreement in the form attached to the Section P3 Agreement based on the terms set out in the Tolling Services Agreement Term Sheet.
59.A	Other Revenue	The Section Developer shall not (without the prior written approval of MDOT) engage in, or permit the Section to be used for, any business or revenue generating activity, other than the generation of Toll Revenue in accordance with the Tolling Services Agreement, the MDTA Notes, and the Section P3 Agreement; provided that MDOT may be willing to negotiate specific exceptions during the predevelopment period.
Part J – Termination and Step-In		
60.	Termination for Convenience	<p>MDOT may terminate the Section P3 Agreement for convenience upon the provision of 30 days written notice to the Section Developer.</p> <p>If MDOT terminates the Section P3 Agreement for convenience prior to the Financial Closing Date, the Phase P3 Agreement will obligate MDOT to also terminate for convenience the Phase P3 Agreement and, unless otherwise agreed by MDOT and the Phase Developer, any other Section P3 Agreement that has not reached Financial Close. With respect to the termination of the Section P3 Agreement for convenience prior to the Financial Closing Date, MDOT will pay to the Section Developer an amount equal to the Allowed Costs that the Section Developer would have been permitted to recover at Financial Close, provided that the aggregate amount payable by MDOT under the Phase P3 Agreement, the Section P3 Agreement, and all other "Section P3 Agreements" that have not reached Financial Close and are terminated for convenience shall be subject to the Phase South Termination Cap or the Phase North Termination Cap, each as defined in the Phase P3 Agreement (as applicable) (the "Pre-Financial Close Termination Sum").</p> <p>If MDOT terminates for convenience on or after the Financial Closing Date, MDOT shall pay compensation to the Section Developer in an amount equal to the MDOT Termination Sum.</p>

		<p>The "MDOT Termination Sum" will be calculated as follows:</p> <ul style="list-style-type: none"> a) fair market value of the share capital or other equity interests in the Section Developer and any outstanding Section Equity Member Debt (as determined by an independent appraiser); plus b) Lenders' Liabilities; plus c) subcontractor/employee breakage costs; minus d) principal amount outstanding under the MDTA Notes; minus e) account balances; minus f) insurance proceeds; minus g) deferred equity amounts; minus h) any liquidated damages not paid by the Section Developer.
61.	Termination for MDOT Default	<p>The occurrence of any one or more of the following will constitute an "MDOT Default":</p> <ul style="list-style-type: none"> a) MDOT or MDTA fails to make any payment due to the Section Developer under the Section P3 Agreement or the MDTA Financing Documents when due (subject to all applicable cure periods), except to the extent such payment is subject to a good faith dispute; b) any representation or warranty made by MDOT or MDTA under the Section P3 Agreement or by MDTA under the MDTA Financing Documents is materially false, misleading, or inaccurate; c) MDOT or MDTA fails to perform any of its obligations under the Section P3 Agreement, which substantially frustrates or renders it substantially impossible for the Section Developer to perform its obligations under the Section P3 Agreement for a continuous period to be set forth in the Section P3 Agreement; d) MDOT, MDTA, or any other governmental entity confiscates, sequesters, condemns, or appropriates the whole or any material part of the Section, or the whole or any material part of the Section Developer's interest, excluding the exercise of a right set out in the Section P3 Agreement; or e) termination, revocation, or suspension of the designation of the Section as a "transportation facilities project" for the purposes of Title 4 of the Transportation Article of the Annotated Code of Maryland. <p>MDOT's or MDTA's failure to cure an MDOT Default within the applicable cure period will entitle the Section Developer to terminate the Section P3 Agreement upon 30 days' written notice.</p> <p>If the Section Developer terminates the Section P3 Agreement for an MDOT Default, it will be entitled to the MDOT Termination Sum (set out in Section 60).</p>
62.	Termination for Section Developer Default	<p>If a Section Developer Default occurs and the Section Developer fails to cure within the applicable cure period or fails to comply with the terms of a remedial plan, then MDOT may terminate the Section P3 Agreement upon 30 days' written notice.</p>

		<p>Upon a termination for Section Developer Default, the Section Developer will be entitled to the Section Developer Default (D&C Period) Termination Sum if termination is prior to Substantial Completion or Section Developer Default (Operating Period) Termination Sum if termination is on or after Substantial Completion.</p> <p>The "Section Developer Default (D&C Period) Termination Sum" will be equal to:</p> <ul style="list-style-type: none"> a) the lower of (i) the D&C contract price minus the cost to complete the D&C Work and (ii) Lenders' Liabilities minus account balances minus insurance proceeds; minus b) the principal amount outstanding under the MDTA Notes; plus c) any amounts payable as compensation with respect to D&C Work relating to Compensation Events agreed between the Parties which remains unpaid; minus d) any liquidated damages not paid by the Section Developer. <p>The "Section Developer Default (Operating Period) Termination Sum" will be equal to:</p> <ul style="list-style-type: none"> a) the lower of (i) the fair market value of the Section Developer's interest in the Section P3 Agreement (as determined by an independent appraiser) and (ii) 80% of Lenders' Liabilities; minus b) the principal amount outstanding under the MDTA Notes; minus c) the cost to bring the Section into and maintain future compliance with the Section P3 Agreement; minus d) account balances; minus e) insurance proceeds; minus f) deferred equity amounts; minus g) any liquidated damages not yet paid by the Section Developer; plus h) the balance of the handback reserve account (if any); plus i) any amounts payable as compensation relating to Compensation Events agreed between the Parties which remains unpaid. <p>If it is finally determined under the dispute resolution procedures that MDOT was not entitled to terminate for a Section Developer Default, MDOT shall pay compensation to the Section Developer in the amount equal to the MDOT Termination Sum.</p>
63.	Termination for Extended Force Majeure	<p>If either Party terminates the Section P3 Agreement in accordance with <u>Section 40</u>, the Section Developer will be entitled to the No Fault Termination Sum.</p> <p>The "No Fault Termination Sum" will be equal to:</p> <ul style="list-style-type: none"> a) return of outstanding equity investment or Section Equity Member Debt (principal only less distributions or any payments made to the Section Equity Members); plus b) Lenders' Liabilities; plus c) subcontractor/employee breakage costs; minus d) account balances; minus

		<ul style="list-style-type: none"> e) insurance proceeds; minus f) any liquidated damages not yet paid by the Section Developer; plus g) any amounts payable as compensation relating to Compensation Events agreed between the Parties which remains unpaid; minus h) the principal amount outstanding under the MDTA Notes.
64.	Termination by Court Ruling	<p>The Section P3 Agreement may be terminated by the issuance of a final, non-appealable order by a court of competent jurisdiction:</p> <ul style="list-style-type: none"> a) to the effect that either the Section P3 Agreement or the MDTA Financing Documents are void, unenforceable, or impossible to perform in its entirety; or b) upholding the binding effect on the Section Developer, MDOT, or MDTA of a Change in Law that causes impossibility of either performance of a fundamental obligation or exercise of a fundamental right by the Section Developer, MDOT, or MDTA under the Section P3 Agreement or the MDTA Financing Documents. <p>If the Section P3 Agreement is terminated under <u>clause (a)</u> above, and the Section P3 Agreement is void, unenforceable, or impossible to perform by reason of the Section Developer's acts, omissions, negligence, willful misconduct, fraud, or breach of warranty or representation, then the Section P3 Agreement will be deemed to be terminated due to a Section Developer Default under <u>Section 62</u>.</p> <p>If the Section P3 Agreement is terminated under this <u>Section 64</u> and the above paragraph does not apply, then, the Section Developer will be entitled to the No Fault Termination Sum (set out in <u>Section 63</u>).</p>
65.	Termination for Failure to Achieve Financial Close	<p>MDOT or the Section Developer may terminate the Section P3 Agreement if Financial Close does not occur by the Financial Close deadline and such failure is solely due to MDOT or MDTA failing to satisfy the conditions precedent to Financial Close for which MDOT and MDTA are responsible under the Section P3 Agreement.</p> <p>The Financial Close deadline shall be the earlier of (i) the last day of the validity period of the Committed Section Proposal for that Section, and (ii) the applicable Predevelopment Milestone Deadline for Financial Close of the Section set out in the Phase P3 Agreement, provided that the Financial Close deadline may be extended if the NEPA approval for the Section is subject to legal challenge or litigation which prevents any Section from achieving Financial Close by the Financial Close deadline.</p> <p>If MDOT or the Section Developer terminates the Section P3 Agreement pursuant to the above, MDOT will pay the Phase Developer the Pre-Financial Close Termination Sum.</p> <p>On the Commercial Closing Date, the Section Developer shall deliver to MDOT an irrevocable standby letter of credit or demand guarantees in the aggregate amount of \$10 million</p>

		(the " Closing Security "). If any of the Section Developer's conditions precedent are not satisfied or waived by the Financial Close deadline, MDOT may: (A) draw and retain the full amount of the Closing Security, and (B) terminate the Section P3 Agreement and may have recourse against the Phase Developer as set out in the Phase P3 Agreement. Under the Phase P3 Agreement, MDOT may terminate the Phase P3 Agreement and draw upon the Development Rights Fee Security (if applicable) and the Performance Security (each as defined in the Phase P3 Agreement).
66.	MDOT Step-In	If MDOT reasonably believes that it needs to take action in connection with the Work because: <ul style="list-style-type: none"> a) an emergency has arisen; b) a Section Developer Default has occurred and has not been cured within the relevant cure period (if any); or c) the Section Developer has failed to meet any safety standard or comply with any safety compliance order within a reasonable period of time under the circumstances, MDOT may upon written notice (which is not required in the case of an emergency) step in, subject to the lenders direct agreement. The Section Developer shall reimburse MDOT for all reasonable costs and expenses incurred by MDOT in the exercise of its step-in rights resulting from a Section Developer breach of the Section P3 Agreement.
Part K – Miscellaneous		
67.	Intellectual Property	Customary provisions dealing with intellectual property rights will be included in the Section P3 Agreement.
68.	Assignment and Transfer; Fundamental Changes	Except to the extent permitted in the lenders direct agreement, the Section Developer shall not assign, transfer, pledge, mortgage, or otherwise encumber any of its rights or obligations under the Section P3 Agreement without MDOT's written consent and, under certain circumstances, the approval of BPW. <p>MDOT or MDTA may, upon 10 days' prior notice but without the Section Developer's consent, transfer and assign their respective interests in the Section to another governmental entity that (i) succeeds to the governmental powers and authority of MDOT or MDTA and (ii) if the assigning party is MDOT, has sources of funding to perform the payment obligations of MDOT under the Section P3 Agreement that are at least as adequate and secure as MDOT's at the time of the assignment. MDOT or MDTA may also transfer and assign their respective interests in the Section to any other party with the Section Developer's prior written consent.</p>
69.	Change in Ownership	The Section Developer shall not effect or permit to occur any Change in Ownership unless: <ul style="list-style-type: none"> a) the Change in Ownership has been approved in writing by MDOT in accordance with the Section P3 Agreement and complies with any conditions that may be imposed by MDOT in connection with that approval; and b) if the Change in Ownership is subject to §10A-202 of the State Finance and Procurement Article of the Annotated Code of Maryland, additional conditions set out in the Section P3 Agreement have been satisfied. These conditions include that MDOT and MDTA have

		<p>made a responsibility determination under §10A of the State Finance and Procurement Article of the Annotated Code of Maryland, the required 45-day notice period has expired, and BPW has approved the Change in Ownership).</p> <p>The Section P3 Agreement will include Pre-Approved Changes in Ownership (which will have each been pre-approved by the BPW for the purposes of §10A-202(e) of the State Finance and Procurement Article of the Annotated Code of Maryland).</p> <p>With respect to <u>clause (a)</u> above:</p> <ul style="list-style-type: none"> (i) if the Change in Ownership occurs during the applicable Lock-Up Period, then MDOT may approve (and include any conditions to its approval) or withhold its approval to the proposed Change in Ownership in its absolute discretion; and (ii) if the Change in Ownership occurs after the applicable Lock-Up Period, then MDOT will act reasonably in determining whether to approve (and include any conditions to its approval) or withhold its approval to the proposed Change in Ownership. <p>If a Change in Ownership (excluding a Pre-Approved Change in Ownership) occurs during the Lock-Up Period or during the Mandatory Equity Sale Period, then MDOT will be entitled to payment of an amount equal to 50% of the difference between the sale price of the equity interests subject to the Change in Ownership and the amounts paid to the Section Developer by way of equity contribution for the equity subject to the Change in Ownership (less any amounts previously paid to MDOT in accordance with the prior sale of equity).</p> <p>The "Lock-Up Period" means the period beginning on the Commercial Closing Date and ending on (i) the third anniversary of Substantial Completion or (ii) if the relevant Change in Ownership would cause (A) the Phase Developer to cease holding at least a 51% of the equity ownership in the Section Developer or (B) the initial equity investors in the Phase Developer to cease holding a controlling interest in the Phase Developer, the third anniversary of substantial completion of the final Section of the Phase.</p> <p>The "Mandatory Equity Sale Period" means the period beginning on the third anniversary of Substantial Completion and ending on the earlier to occur of (i) the occurrence of the mandatory equity sale in accordance with <u>Section 70</u>, and (ii) the 10th anniversary of Substantial Completion.</p> <p>Notwithstanding any other provision of the Section P3 Agreement to the contrary, any Change in Ownership that does not change the percentage of the issued share capital or membership interests in the Section Developer owned (directly or indirectly) by each Qualified Investor (i) will not constitute a change in the ownership composition of the Section Developer for the purposes of §10A-202(e) of the State Finance and Procurement Article of the Annotated Code of Maryland, and (ii) will not be subject to the pre-approval of MDOT.</p>
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		<p>A Change in Ownership which is undertaken in breach of the Section P3 Agreement will constitute a "Prohibited Change in Ownership", which will constitute a Section Developer Default.</p>
70.	<p>Mandatory Sale of Equity in the Section Developer</p>	<p>At any time during the Mandatory Equity Sale Period, MDOT may give notice and require the Section Developer to undertake a competitive, arms-length sale of 18% of the equity interests in the Section Developer. The equity interest subject to the mandatory sale: (i) is not required to carry typical minority shareholder rights and (ii) is not required to be a pro-rata sale by each Section Equity Member, provided that, at all times prior to the third anniversary of substantial completion of the final Section of the Phase, the mandatory sale must not cause either (A) the Phase Developer to cease holding at least a 51% of the equity ownership in the Section Developer or (B) the initial equity investors in the Phase Developer to cease holding a controlling interest in the Phase Developer. This right shall only be exercisable by MDOT once. MDOT will be entitled to payment of an amount equal to 50% of the difference between the sale price and the net present value of 18% of all equity distributions included in the Base Case Financial Model from the date of sale to the end of the Term, discounted back to the closing date of the sale at the Base Case Post-Tax Equity IRR (less any amounts previously paid to MDOT in accordance with any prior sale of equity). To the extent the payment to MDOT is not deductible for tax purposes, the payment to MDOT will be adjusted accordingly.</p> <p>MDOT's right to require the sale of equity will be subject to the approval provisions included in any relevant TIFIA loan agreement.</p> <p>On receipt of notice from MDOT described in the first paragraph of this <u>Section 70</u>, the Section Developer may notify MDOT and elect, at its sole option and expense, to undertake an appraisal of the fair market value of 18% of the equity interests in the Section Developer by an independent appraiser in lieu of a sale. The fair market value shall be consistent with the approach applicable to termination for convenience while accounting for the non-controlling nature of the level of equity interest being appraised. Upon finalization of the valuation, the Section Developer shall pay to MDOT within 180 days, 50% of the difference between the appraised value of the equity interests in the Section Developer and the net present value of 18% of all equity distributions included in the Base Case Financial Model from the date of sale to the end of the Term, discounted back to the closing date of the sale at the Base Case Post-Tax Equity IRR (less any amounts previously paid to MDOT in accordance with any prior sale of equity).</p> <p>Under no circumstances will the election to pursue a sale of equity result in a payment being due from MDOT or MDTA to the Section Developer.</p> <p>A Change in Ownership occurring under this <u>Section 70</u> will be subject to all approvals referred to in <u>Section 69</u>.</p>
71.	<p>Governing Law and Jurisdiction</p>	<p>The Section P3 Agreement will be governed in accordance with the laws of the State of Maryland.</p>

		The Section Developer will consent to the jurisdiction of any court in the State of Maryland.
72.	Federal Requirements	The Section Developer shall comply with, and require its Contractors to comply with, all federal requirements applicable to the Section under law, including federal requirements applicable to transportation projects that receive federal credit or funds. FHWA Buy America requirements at 23 CFR §635.410 are applicable to the Section.
73.	Other	Customary provisions will be included in the Section P3 Agreement with respect to record keeping and audits, confidentiality and public disclosure, sole remedy and waiver of consequential damages, dispute resolution, amendments, waivers, independent contractor status, agency, personal liability, taxes, successors and assigns, survival, limitation on third party beneficiaries, notices, integration and severability, and counterparts.
74.	Appropriations	<p>All claims of the Section Developer against MDOT or MDTA under the Section P3 Agreement will be payable solely from (x) the toll revenues collected from users of the Section or (y) such amounts as may be appropriated by the Maryland General Assembly to MDOT from time to time.</p> <p>The Section Developer will have no claim against any asset of MDTA (except to the extent set out in the MDTA Notes), and the Section Developer will waive any right to enforce a judgment holding MDTA liable against any such asset of MDTA.</p> <p>All amounts payable by MDOT to the Section Developer under the Section P3 Agreement or any other Section Document will be subject to appropriations by the Maryland General Assembly in accordance with and to the extent required under applicable law. MDOT will have customary obligations to seek appropriations sufficient to pay when due any amounts owed to the Section Developer under the Section P3 Agreement.</p>

Exhibit 1 – Defined Terms

"Abandon" means to abandon all or a material part of the Section, which abandonment will be deemed to have occurred if:

- a) the Section Developer demonstrates through statements, acts, or omissions an intent not to continue (for any reason other than a Compensation Event or Relief Event that materially interferes with its ability to continue) to design, construct, operate, or maintain all or a material part of the Section, including any written repudiation of the Section P3 Agreement; or
- b) no significant Work (taking into account the Section schedule, if applicable, and any Compensation Event or Relief Event) on the Section is performed for a continuous period of more than 60 days.

"Additional Properties" is defined in Section 7, and includes Privately Owned Additional Properties and Publicly Owned Additional Properties.

"Additional TCAs" means Additional Properties that are not Permanent Additional Properties.

"Adjacent P3 Program Developer" is defined in Section 8.

"Affected Party" is defined in Section 40.

"Affiliate" means, in relation to any Person, any entity which, directly or indirectly, through one or more intermediaries:

- a) has a 10 percent or more voting or economic interest in such Person; or
- b) Controls, is Controlled by, or is under common Control with such Person.

"Allowed Costs" means Allowed Costs as defined in the Phase P3 Agreement.

"Associated Company" means with respect to a relevant company, a company which is a subsidiary, a holding company, or a company that is a subsidiary of the ultimate holding company of that relevant company, and in the case of the Section Developer, includes each of the Section Equity Members.

"Base Case Financial Model" means the financial model at Financial Close, as adjusted from the Initial Base Case Financial Model in accordance with Section 49 (and subsequently updated from time to time in accordance with the terms of the Section P3 Agreement).

"Base Case Gross Revenue" means the Section Developer Toll Payments and MDTA Notes principal and interest for the applicable period, included in the Base Case Financial Model at Financial Close, or, if applicable, adjusted in accordance with Section 53.

"Base Case Post-Tax Equity IRR" means the Post-Tax Equity IRR included in the Base Case Financial Model as of the Financial Closing Date, which is equal to [•]⁸.

"Base Flood" means a 25-year storm event as defined by National Oceanic and Atmospheric Administration (NOAA) for the NOAA data gathering location that is nearest the Site.

"Board of Public Works" or **"BPW"** is defined in the introductory paragraphs.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601-9675).

"Change in Law" means the introduction or repeal (in whole or in part) of, the amendment, alteration, or modification to, or the change in interpretation of (in each case including, to the extent applicable,

⁸ To be populated upon Financial Close from the Base Case Financial Model.

by retroactive effect), any applicable laws, standards, practices, or guidelines issued or published by any governmental entity that occur at any time after the Setting Date and that are either:

- a) binding on the Section Developer; or
- b) if not binding on the Section Developer, both (i) typically complied with in the construction or relevant maintenance industries and (ii) necessary in order to comply with good industry practice or the provisions of the Section P3 Agreement.

"Change in Ownership" means:

- a) any sale, transfer, assignment, mortgage, encumbrance, conveyance, or disposal of any legal, beneficial, or equitable interest in any or all of the shares or membership interests in the Section Developer or any Related Entity;
- b) any change in the direct or indirect control over:
 1. the voting rights conferred on the shares or membership interests of the Section Developer or any Related Entity;
 2. the right to appoint or remove directors of the Section Developer or any Related Entity;
 3. the right to receive dividends or distributions of the Section Developer or any Related Entity;
 4. the direction or control of the management of the Section Developer, any Related Entity, or the Section; or
- c) any other arrangements that have or may have the same effect as clause (a) or clause (b) of this definition.

"Closing Security" is defined in Section 65.

"Commercial Closing Date" means the date that the Section P3 Agreement is signed by all of the Parties.

"Committed Section Proposal" means the proposal and commitments submitted by the Phase Developer or the Section Developer under the Phase P3 Agreement with respect to the Section.

"Compensation Event" is defined in Section 35.

"Competing Facilities" is defined in Section 37.

"Construction Work" means all Work related to the construction of the Section carried out prior to Final Completion.

"Contractor" means:

- a) any Person (other than MDOT and MDTA) with whom the Section Developer has entered into a contract to perform any part of the Work or provide any materials, equipment, or supplies for the Work, on behalf of the Section Developer; and
- b) any other Person with whom any Contractor has further subcontracted any part of the Work, at all tiers.

The term "Contractor" includes each Key Contractor.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

"DBE" means those firms identified with Disadvantaged Business Enterprise certification by MDOT's Office of Minority Business Enterprise.

"D&C Contract" means the agreement entered into between the Section Developer and the D&C Contractor for third party management, direction, supervision, or performance of all of the D&C Work.

"**D&C Contractor**" means [●]⁹, and its permitted successors and assigns.

"**D&C Period**" means the period commencing on the Commercial Closing Date and ending on Final Completion.

"**D&C Work**" means the Design Work and the Construction Work.

"**Defect**" means any defect in any of the D&C Work attributable to:

- a) defective design;
- b) defective workmanship or defective materials, plant, or machinery used in such construction having regard to good industry practice and to appropriate industry standards and codes of practice current at the date of construction;
- c) the use of materials in the D&C Work which (whether defective or not defective in themselves) prove to be defective in the use to which they are put; or
- d) defective installation.

"**Design Work**" means all Work related to the design, redesign, engineering, or architecture for the Section carried out prior to Final Completion.

"**Discriminatory Change in Law**" means a Change in Law that is the adoption of any State law [or law of the Commonwealth of Virginia]¹⁰ or any change in any State law [or law of the Commonwealth of Virginia] or in the interpretation or application of any State law [or law of the Commonwealth of Virginia] that:

- a) is principally directed at and the effect of which is principally borne by the Section, the Section Developer, or operators of private toll roads in the State [or the Commonwealth of Virginia], except where such State law [or law of the Commonwealth of Virginia] or change in State law [or law of the Commonwealth of Virginia] or in interpretation or application (i) is in response, in whole or in part, to any failure to perform or breach of the Section P3 Agreement or other Section P3 Agreement, violation of law or Governmental Approval, culpable act, omission, or negligence on the part of any Section Developer-Related Entity or (ii) is otherwise permitted under the Section P3 Agreement;
- b) permits vehicles other than Permitted Vehicles to travel on the Priced Managed Lanes; or
- c) permits vehicles then paying tolls to travel on the Priced Managed Lanes at reduced tolls or without tolls,

except that none of the following will be a Discriminatory Change in Law:

- a) the development and operation of any existing or new mode of transportation (including a road, street, highway, or mass transit facility) that results in the reduction of toll revenues or in the number of vehicles using the Priced Managed Lanes;
- b) the development and operation of any other transportation facilities that do not constitute a Competing Facility;
- c) any changes in taxes of general application;
- d) the exercise by the State of its police powers;
- e) any safety compliance order issued under the Section P3 Agreement;
- f) changes to the multiplier applied to the Effective Rate (as defined in the Tolling Services Agreement Term Sheet) for non-transponder transaction, changes to any associated fees or penalties applicable to non-transponder transactions, or changes to fees and charges associated with non-payment or late payment of any toll or any other tolling violations; or
- g) any Change in Law suspending tolling to the extent that MDOT would be permitted to suspend tolling without it constituting a Compensation Event in accordance with Section 38.A above.

"**Early Termination Date**" means the effective date of termination of the Section P3 Agreement for any reason prior to the end of the Term.

⁹ **Note to Proposers:** To be identified in the Committed Section Proposal.

¹⁰ **NTD:** References to Virginia will only be included in the Section P3 Agreement for the Section that includes American Legion Bridge.

"Excess Revenue" means the lower of:

- a) the amount equal to:
 1. total Section Developer Toll Payments in the current fiscal year; plus
 2. total MDTA Notes principal and interest payments in the current fiscal year; plus
 3. total Refinancing Gains in the current fiscal year; less
 4. total Base Case Gross Revenue for the current fiscal year; and
- b) the amount equal to:
 1. cumulative sum of all Section Developer Toll Payments from the Commercial Closing Date through and including the current fiscal year; plus
 2. cumulative sum of all MDTA Notes principal and interest payments from the Commercial Closing Date through and including the current fiscal year; plus
 3. cumulative sum of all Refinancing Gains received from the Commercial Closing Date through and including the current fiscal year; less
 4. cumulative sum of all Base Case Gross Revenue from the Commercial Closing Date through and including the current fiscal year.

In no circumstances shall Excess Revenue be less than zero.

"Excess Revenue Payment" is defined in Section 53.

"Exempt Refinancing" means:

- a) any amendment, modification, or supplement to any finance document which does not provide a financial benefit to the Section Developer;
- b) the exercise by a Lender of rights, waivers, consents, and similar actions in the ordinary course of day-to-day loan administration and supervision, in each case, which do not provide a financial benefit to the Section Developer;
- c) any of the following acts by a Lender:
 1. the syndication in the ordinary course of business of any of such Lender's rights and interests in the Finance Documents;
 2. the sale of a participation, assignment, or other transfer by such Lender of any of its rights or interests, with respect to the Finance Documents, in favor of any other Lender or any investor; or
 3. the grant by such Lender of any other form of benefit or interest in either the Finance Documents or the revenues or assets of the Section Developer, whether by way of security or otherwise, in favor of any other Lender or any investor;
- d) any amendment or supplement to any Finance Documents in connection with the funding of a change in the scope of work proposed by MDOT;
- e) a re-set of an interest rate (excluding margin) under the express terms of any Finance Documents; or
- f) any sale of any equity interests in the Section Developer by a Section Equity Member or securitization of the existing rights or interests attaching to any equity interests in the Section Developer or its direct, 100% Section Equity Member, if any.

"Exempt Vehicles" is defined in the Tolling Services Agreement Term Sheet.

"FEIS" means Final Environmental Impact Statement for the I-495 and I-270 Managed Lane Study.

"FHWA" means the United States Department of Transportation Federal Highway Administration.

"Final Completion" means satisfaction of all of the conditions to final completion set out in the Section P3 Agreement.

"Finance Documents" means the Funding Agreements and Security Documents.

"Financial Close" means the satisfaction or waiver of all conditions precedent to the initial disbursement to the Section Developer or utilization by the Section Developer of Section Debt proceeds or the effectiveness of the Lenders' commitments under the Finance Documents (other than any condition as to the occurrence of the Financial Closing Date under the Section P3 Agreement).

"Financial Closing Date" means the date on which all of the conditions precedent to Financial Close set forth in the Section P3 Agreement have been satisfied or otherwise waived in accordance with the Section P3 Agreement.

"Force Majeure Event" is defined in Section 40.

"Funding Agreements" means the documents identified in the Section P3 Agreement, together with any other document designated by the Parties (acting jointly) as a Funding Agreement relating exclusively to the financing of the Section. The Section Equity Member Funding Agreements will not be classified as "Funding Agreements" for the purposes of the Section P3 Agreement.

"General Purpose Lanes" means the general purpose traffic lanes (in either or both directions) that are separated from the adjacent Priced Managed Lanes within the Section. All lanes on the Site will be considered General Purpose Lanes at all times until Substantial Completion.

"GP Defect Remedy Period" means the period commencing on the Substantial Completion Date (or, with respect to an Interim Completion Element, the applicable Interim Completion Date) and ending on the second anniversary of the Substantial Completion Date (or, with respect to an Interim Completion Element, the applicable Interim Completion Date); provided, that the GP Defect Remedy Period will be extended for an additional 12 months from the date of repair or replacement with respect to any Defect that is corrected during the final year of the initial GP Defect Remedy Period.

"GP Latent Defect" means a Defect in the Non-Maintained Facilities that could not reasonably be identified by a competent person acting in accordance with good industry practice prior to the expiry of the GP Defect Remedy Period.

"Handback Period" means the period beginning on the date that is five years before the scheduled end of the Term and ending on the termination date.

"Hazardous Environmental Condition" means the presence of any Hazardous Materials on, in, under, or about a Site at concentrations or in quantities that are required to be removed or remediated by any applicable law or in accordance with the requirements of the Section P3 Agreement, any governmental entity, or any governmental approval.

"Hazardous Materials" means any element, chemical, compound, mixture, material, or substance, whether solid, liquid, or gaseous, which at any time is defined, listed, classified, or otherwise regulated in any way under any applicable law (including CERCLA), or any other such substances or conditions (including mold and other mycotoxins, fungi, or fecal material) which may create any unsafe or hazardous condition or pose any threat or harm to the environment or human health and safety.

"Hazardous Materials Release" means any spill, leak, emission, release, discharge, injection, escape, leaching, dumping, or disposal of Hazardous Materials into the soil, air, surface water, groundwater, or environment, including any exacerbation of an existing release or condition of Hazardous Materials contamination.

"HOV" is defined in the Tolling Services Agreement Term Sheet.

"Indemnified Parties" means MDOT, MDTA, the MDOT-Related Entities, and their respective officers, agents, representatives, and employees.

"Independent Quality Firm" means the independent quality firm(s) selected by the Section Developer with the approval of MDOT to serve in such capacity.

"Initial Base Case Financial Model" means the financial model submitted with the Committed Section Proposal that is accepted and approved as part of the MDOT, MDTA, and BPW processes for the Section.

"Interim Completion" means, in relation to any Interim Completion Element, the satisfaction of all the Interim Completion Conditions for such Interim Completion Element.

"Interim Completion Conditions" means those conditions set out in Section 16.

"Interim Completion Date" means the date that Interim Completion has been achieved for any Interim Completion Element.

"Interim Completion Element" means an element identified in the Committed Section Proposal as an Interim Completion Element.

"IQF Contract" means the agreement between the Section Developer and the Independent Quality Firm.

"ITP" means the Instructions to Proposers in the RFP.

"Key Contract" means:

- a) the D&C Contract;
- b) to the extent the O&M Work is not self-performed by the Section Developer, each O&M Contract;
- c) the Toll Systems Integration Contract;
- d) the Toll Systems Operation Contract;
- e) the IQF Contract; and
- f) any guarantee, performance or payment security, or any other support provided with respect to the obligations of a Key Contractor under any of the foregoing (including the D&C guarantees).

"Key Contractor" means:

- a) the D&C Contractor;
- b) the O&M Contractor (if any);
- c) the Toll Systems Integrator;
- d) the Toll Systems Operator; and
- e) the Independent Quality Firm.

"Lender" means any Person that:

- a) provides Section Debt, together with their successors and assigns; or
- b) is appointed by any Person referred to in clause (a) as its agent or trustee in connection with the Section Debt.

"Lenders' Liabilities" means, at the relevant time, the aggregate of (without double-counting):

- a) all principal, interest (including default interest under the Finance Documents, but with respect to default interest, only to the extent that it arises as a result of MDOT making any payment later than the date that it is due under the Section P3 Agreement or any other default by MDOT under the Section P3 Agreement), banking fees, and premiums on financial insurance policies, costs and expenses, and other amounts properly incurred owing or outstanding to the Lenders by the Section Developer under the Finance Documents on the Early Termination Date, including any prepayment costs, make-whole amounts, and breakage costs; plus
- b) hedging liabilities; minus
- c) hedging receipts.

"Lock-Up Period" is defined in Section 69.

"Major Governmental Approval" means:

- a) MDOT SHA Plan Review Division and Maryland Department of the Environment (MDE) permits and approvals as described in Article 13 (*Drainage, Stormwater Management, & Erosion and Sediment Control*) of Exhibit 6 (*Predevelopment Work Requirements*) of the Phase P3 Agreement;
- b) Maryland National Capital Park and Planning Commission approvals;
- c) Department of Natural Resources forest conservation permits and approvals as described in Article 5 (*Environmental Management*) of Exhibit 6 (*Predevelopment Work Requirements*) of the Phase P3 Agreement;
- d) Federal Emergency Management Agency CLOMR and LOMR approvals as described in Article 5 (*Environmental Management*) of Exhibit 6 (*Predevelopment Work Requirements*) of the Phase P3 Agreement.

"Major Governmental Approval Period" means [*the time periods for responses from the permitting agency with respect to any Major Governmental Approval specified in the Section P3 Agreement to be agreed during the Predevelopment Work. Any Submittal provided by the Section Developer in relation to such Major Governmental Approval must be complete and compliant for the relevant approval period to commence*].

"Mandatory Equity Sale Period" is defined in Section 69.

"MBE" means those firms identified with Minority Business Enterprise certification by MDOT's Office of Minority Business Enterprise.

"MDOT" is defined in the introductory paragraphs.

"MDOT Default" is defined in Section 61.

"MDOT-Provided Approval" is defined in Section 9.

"MDOT Provided Parcel" means a parcel which MDOT is required to provide the Section Developer with access to as set out in an Exhibit to the Section P3 Agreement. Rights in the MDOT Provided Parcels are either presently owned by MDOT or shall be acquired by MDOT, at the Section Developer's sole cost and expense. All MDOT Provided Parcels for Phase South that are not presently owned by MDOT have been identified in a reference information document released with the RFP.

"MDOT-Related Entity" means:

- a) MDOT, including MDOT SHA;
- b) MDTA;
- c) [VDOT]¹¹;
- d) other entities as may be specified in the Section P3 Agreement; and
- e) the State.

"MDOT SHA" means Maryland Department of Transportation State Highway Administration, a modal administration of MDOT.

"MDOT Termination Sum" is defined in Section 60.

"MDTA" is defined in the introductory paragraphs.

¹¹ **NTD:** References to Virginia will only be included in the Section P3 Agreement for the Section that includes American Legion Bridge.

"MDTA Board" means the Chairman and members of the Maryland Transportation Authority Board.

"MDTA Financing Documents" means the MDTA Master Trust Agreement, the Section Supplemental Trust Agreement, and the MDTA Notes.

"MDTA Master Trust Agreement" means that certain trust agreement relating to the issuance by MDTA of notes relating to the P3 Program, including the MDTA Notes issued to the Section Developer under the Section Supplemental Trust Agreement relating to the Section.

"MDTA Notes" means the Section 1 Notes, as defined in the MDTA Notes Term Sheet.

"MDTA Notes Outstanding Principal Amount" means the principal amount outstanding under the MDTA Notes on the Early Termination Date.

"MDTA Notes Term Sheet" means the MDTA Notes Term Sheet attached as Exhibit 3.

"MDTA Outage" is defined in the Tolling Services Agreement Term Sheet.

"MDTA Refinancing" is defined in Section 56.

"NEPA" means the National Environmental Policy Act of 1969.

"No-Fault Termination Sum" is defined in Section 63.

"Non-Maintained Facilities" is defined in Section 20.

"Notifiable Refinancing" means any proposed refinancing that is neither:

- a) a Qualifying Refinancing; nor
- b) a refinancing falling into the description set out in clause (b) or clause (c) of the definition of Exempt Refinancing.

"O&M Contract" means any agreement entered into by the Section Developer for third party management, direction, supervision, or performance of all of the O&M Work or any significant portion of the O&M Work with a contract value in excess of an amount to be specified in the Section P3 Agreement. There may be more than one O&M Contract concurrently in effect.

"O&M Contractor" means [●], or any Person entering into a Contract with the Section Developer to perform any part of the O&M Work.¹²

"O&M Work" means all routine maintenance, renewal work, and operations. Commencing on the Substantial Completion Date, "O&M Work" will also include all activities and obligations of the Section Developer relating to tolling of the Priced Managed Lanes.

"Operating Period" means the period starting on the Substantial Completion Date plus one day and ending on the date of termination of the Section P3 Agreement.

"P3 Program" is defined in the introductory paragraphs.

"Pandemic Event" means an epidemic in the State of Maryland or (if applicable) the Commonwealth of Virginia or a pandemic directly affecting the State of Maryland or (if applicable) the Commonwealth of Virginia which, in each case:

¹² **Note to Proposers:** To be identified in the Committed Section Proposal.

- a) is the subject of a federal travel advisory or restriction or an emergency declaration or other order regarding public conduct in response to such epidemic or pandemic issued by the State of Maryland or (if applicable) the Commonwealth of Virginia; and
- b) has resulted in a quarantine of, or in legal restrictions on travel to, from, or within the Site or an area within 50 miles of any part of the Site or legal restrictions on the performance of the Work at the Site or an area within 50 miles of any part of the Site.

"**Party**" means MDOT, MDTA, or the Section Developer, as the context may require, and "**Parties**" means MDOT, MDTA, or the Section Developer, as the context may require, collectively.

"**Payment Bond**" is defined in Section 46.

"**Performance Bond**" is defined in Section 46.

"**Permanent Additional Properties**" means Additional Properties that are permanently needed to construct or maintain the Section.

"**Permanent ROW**" means the permanent right-of-way for the Section provided as part of the MDOT Provided Parcels together with the Permanent Additional Properties.

"**Permitted Vehicles**" means (a) vehicles with two axles or more including motorcycles, (b) transit vehicles, commuter buses, and school buses, and (c) Exempt Vehicles.

"**Person**" means an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization, or a governmental authority.

"**Phase 1**" is defined in the introductory paragraphs.

"**Phase 1 North**" means I-270 from I-370 to I-70.

"**Phase 1 South**" means I-495 from the vicinity of the George Washington Memorial Parkway to I-270 and I-270 from I-495 to I-370.

"**Phase Developer**" is defined in the introductory paragraphs.

"**Phase P3 Agreement**" means the Phase P3 Agreement that will be entered into among the Phase Developer, MDOT, and MDTA.

"**Phase South A**" means I-495 from the vicinity of the George Washington Memorial Parkway to I-270.

"**Post-Tax Equity IRR**" means the nominal post-tax internal rate of return on equity investment (on a cash-on-cash basis) over the full Term calculated using the Base Case Financial Model, as the discount rate that, when applied to the distributions gives a net present value equal to the net present value of the equity investment.

"**Pre-Approved Change in Ownership**" means each of the following:

- a) the grant of security in favor of the Lenders over or in relation to any share or membership interest in the Section Developer under a security document, in strict compliance with any requirements of the Section P3 Agreement;
- b) the exercise of any Lender remedy under the lenders direct agreement, including (i) a transfer of custody and control of the Section or the Section Developer to a step-in entity, (ii) a transfer to a substitute approved by MDOT, or (iii) foreclosure;
- c) a bona fide upstream business reorganization, consolidation, or other transfer in equity of a parent entity with an interest in the Section Developer where the transferor and transferee are under the same ultimate parent organization with ultimate power to direct or control or cause

- the direction or control of the management of the Section Developer and so long as there occurs no change in such entity as part of such reorganization, consolidation, or other transfer in equity;
- d) a transfer of interests between managed funds that are under common ownership or control, or between the general partner, manager, or the parent company of such general partner or manager, and any managed funds under common ownership or control with such general partner or manager (or parent company of such general partner or manager), so long as there occurs no change in the entity or entities with ultimate power to direct or control or cause the direction or control of the management of the Section Developer;
 - e) a Change in Ownership due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, including transactions involving an initial public offering; and
 - f) the exercise of minority veto or minority voting rights that are exercised under applicable law, or that are exercised under the Section Developer's organizational documents (or under related member, shareholder, or similar agreements (where MDOT has received copies of such agreements)).

"Pre-existing Hazardous Materials" means Hazardous Materials that exist in, on, or under the Site (except each Additional TCA) prior to the date on which the Section Developer gains access to a relevant portion of the Site, including those that manifest themselves after that date.

"Pre-Financial Close Termination Sum" is defined in Section 60.

"Predevelopment Cost Cap" means [●], as may be adjusted in accordance with the Phase P3 Agreement.¹³

"Predevelopment Work" means Predevelopment Work as defined in the Phase P3 Agreement.

"Priced Managed Lanes" means the toll lanes and the associated entry and exit ramps within the Permanent ROW that are separated from the adjacent General Purpose Lanes, and the use of which is restricted under the Section P3 Agreement.

"Privately Owned Additional Properties" is defined in Section 7.

"Prohibited Change in Ownership" is defined in Section 69.

"Proposer" means each firm or team of firms that was shortlisted in accordance with the RFQ and invited to submit a proposal to MDOT in response to the RFQ.

"Publicly Owned Additional Properties" is defined in Section 7.

"Qualified Investor" means [●].¹⁴

"Qualifying Refinancing" means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing.

"Refinancing" means:

- a) any amendment, novation, supplement, or replacement of any Finance Document;
- b) the issuance by the Section Developer of any indebtedness in addition to the initial Section Debt, secured or unsecured;
- c) the exercise of any right, or the grant of any waiver or consent, under any Finance Document;

¹³ To be populated based on the predevelopment cost cap included in the Phase P3 Agreement.

¹⁴ Qualified Investor definition will list each Committed Section Proposal Equity Member (and any guarantor thereof) approved under a Committed Section Proposal for the Section.

- d) the disposition of any rights or interests in, or the creation of any rights of participation with respect to, any Finance Document or the creation or granting of any other form of benefit or interest in either a Finance Document or the contracts, revenues, or assets of the Section Developer whether by way of security or otherwise; or
- e) any other arrangement put in place by the Section Developer or another Person which has an effect which is similar to any of clause (a) to (d) or which has the effect of limiting the Section Developer's or any Associated Company's ability to carry out any of clause (a) to (d).

"**Refinancing Gain**" means an amount equal to the greater of zero and $\{(A-B)-C\}$, where:

- A = the net present value using the Base Case Post-Tax Equity IRR as the discounting rate of the distributions projected immediately prior to the refinancing (taking into account the effect of the refinancing (including any breakage costs of the existing project financing or refinancing as well as reasonable transaction costs incurred in arranging the planned refinancing) and using the Base Case Financial Model as updated (including as to the performance of the Section up to the date of the refinancing) so as to be current immediately prior to the refinancing) to be made over the remaining term of the Section P3 Agreement following the refinancing;
- B = the net present value using the Base Case Post-Tax Equity IRR as the discounting rate of the distributions projected immediately prior to the refinancing (but without taking into account the effect of the refinancing and using the Base Case Financial Model as updated (including as to the performance of the Section up to the date of the refinancing) so as to be current immediately prior to the refinancing) to be made over the remaining term of the Section P3 Agreement following the refinancing; and
- C = any adjustment required to raise the pre-refinancing Post-Tax Equity IRR to the Base Case Post-Tax Equity IRR (if the pre-refinancing Post-Tax Equity IRR is lower than the Base Case Post-Tax Equity IRR, the adjustment is calculated as the amount that, if received by equity members at the estimated date of the refinancing, would increase the pre-refinancing Post-Tax Equity IRR to be the same as the Base Case Post-Tax Equity IRR).

"**Related Entity**" means [●].¹⁵

"**Relief Event**" is defined in Section 35.

"**RFP**" means the Request for Proposals with respect to Phase 1 of the P3 Program.

"**RFQ**" means the Request for Qualifications for Phase 1 issued by MDOT and MDTA on February 7, 2020.

"**Section**" is defined in the introductory paragraphs.

"**Section Debt**" means all outstanding obligations from time to time under the Finance Documents.

"**Section Developer**" is defined in Section 1.

"**Section Developer Default**" means the occurrence of any of the following:

- a) the Section Developer Abandons the Section;
- b) the Section Developer fails to achieve Substantial Completion by the Substantial Completion Long Stop Date;
- c) a Prohibited Change in Ownership occurs;
- d) the Section Developer fails to comply with restrictions on assignment, transfer, and fundamental changes;
- e) an insolvency event arises with respect to the Section Developer;

¹⁵ Related Entity definition will list each entity in the ultimate ownership structure between the Section Developer and each Qualified Investor (not including the Section Developer or the Qualified Investors).

- f) during the D&C Period, an insolvency event arises with respect to the D&C Contractor, any D&C Contractor member, or any D&C guarantor, unless replaced by a reputable counterparty reasonably acceptable to MDOT (or MDOT is reasonably satisfied the work can be completed by the remaining entities);
- g) an insolvency event arises with respect to the O&M Contractor, unless replaced by a reputable counterparty reasonably acceptable to MDOT (or MDOT is reasonably satisfied the work can be completed by the remaining entities);
- h) the D&C Contract is terminated (other than non-default termination on its scheduled termination date), unless the Section Developer has entered into a replacement contract with a reputable counterparty reasonably acceptable to MDOT within a specified period, or such longer period as agreed with MDOT;
- i) an O&M Contract is terminated (other than non-default termination on its scheduled termination date), unless the Section Developer has entered into a replacement contract with a reputable counterparty reasonably acceptable to MDOT within a specified period, or such longer period as agreed with MDOT (or MDOT is reasonably satisfied the work can be completed by the Section Developer);
- j) the Section Developer fails to pay any amount due to MDOT or MDTA, except to the extent such payment is subject to a good faith dispute;
- k) the Section Developer fails to deposit funds in the handback reserve account or fails to deliver to MDOT a handback letter of credit in accordance with the Section P3 Agreement (except to the extent that the amount thereof is subject to a good faith dispute);
- l) any representation or warranty made by the Section Developer in the Section P3 Agreement or any certificate, schedule, report, instrument, or other document delivered under the Section P3 Agreement is materially false or misleading or inaccurate;
- m) the Section Developer fails to materially comply with any governmental approval or applicable law;
- n) the Section Developer fails to promptly comply with any written suspension of Work order issued in accordance with the terms of the Section P3 Agreement;
- o) the cumulative number of noncompliance points (excluding any noncompliance points caused by any Relief Event or Compensation Event) exceeds thresholds to be specified in the Section P3 Agreement;
- p) the Section Developer fails to obtain, provide, and maintain the required insurance policies and the performance security;
- q) a persistent closure occurs, subject to exclusions for the extent to which any persistent closure is caused by any Relief Event or Compensation Event to be set out in the Section P3 Agreement;
- r) after exhaustion of all rights of appeal:
 1. there occurs any suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, of the Section Developer, any affiliate of the Section Developer, the D&C Contractor, or the O&M Contractor (if any) whose work is not completed, from bidding, proposing, or contracting with any federal or State department or agency (unless the person subject to the suspension, debarment, or agreement for voluntary exclusion is the D&C Contractor or the O&M Contractor, and such person is replaced in accordance with the agreement within a specified period); or
 2. the Section Developer, the D&C Contractor, or the O&M Contractor (if any) who have ongoing Work, or any of their respective officers, directors, or administering employees have been convicted of, or plead guilty or nolo contendere to, a violation of applicable law for fraud, conspiracy, collusion, bribery, perjury, or material misrepresentation, as a result in whole or in part of activities relating to any project in the United States, and such failure continues without cure for a specified period (provided that (A) if the offending person is an officer, director, or employee of the D&C Contractor or the O&M Contractor, cure may be effected by replacing the D&C Contractor or the O&M Contractor in accordance with the agreement within a specified period and (B) if the offending person is the D&C Contractor or the O&M Contractor, cure may be effected by replacing such person in accordance with the agreement within a specified period).
- s) a persistent breach by the Section Developer occurs;

- t) the Section Developer fails to cooperate in a reasonably timely manner in connection with the MDTA Refinancing or fails to execute the documents required to implement the MDTA Refinancing;
- u) the Section Developer fails to comply with non-discrimination or prevailing wages provisions or certain sanctions for improper acts set forth in the Section P3 Agreement apply;
- v) the Section Developer fails to comply with DBE or MBE program requirements;
- w) the Section Developer fails to complete a Qualifying Refinancing or mandatory sale of equity interest as required by MDOT under Section 70;
- x) without limiting the foregoing, the Section Developer breaches any other material obligation under the Section P3 Agreement, other than:
 - 1. a breach for which a noncompliance point was or could have been assessed; or
 - 2. a breach that arises as a direct result of the occurrence of a Compensation Event or Relief Event.

"Section Developer Default (D&C Period) Termination Sum" is defined in Section 62.

"Section Developer Default (Operating Period) Termination Sum" is defined in Section 62.

"Section Developer Hazardous Materials Release" means any Hazardous Materials Release:

- a) involving any Hazardous Materials arranged to be brought onto the Site or any other location by any Section Developer-Related Entity, regardless of cause;
- b) to the extent attributable to the breach of any applicable law, governmental approval, or the Section P3 Agreement (including any acts or omissions that are not in accordance with good industry practice), negligence, or willful misconduct by any Section Developer-Related Entity; or
- c) without prejudice to the generality of clause (b), to the extent attributable to the use, containment, storage, management, handling, transport, and disposal of any Hazardous Materials by any Section Developer-Related Entity in breach of any of the requirements of the Section P3 Agreement or any applicable law or governmental approval.

"Section Developer-Related Entity" means:

- a) the Section Developer;
- b) the Phase Developer;
- c) any section developer for any other section of the P3 Program that is under common control with the Section Developer, and any Person described in paragraphs (d) – (h) of this definition as it applies to such other section developer;
- d) the Section Equity Members;
- e) the Contractors (including suppliers);
- f) any other Person performing any of the Work for or on behalf of the Section Developer;
- g) any other Person for whom the Section Developer may be legally or contractually responsible; and
- h) the employees, agents, officers, directors, representatives, consultants, successors, and assigns of any of the foregoing.

"Section Developer Toll Payment" means the Section 1 Developer Toll Payment, as defined in the MDTA Notes Term Sheet.

"Section Documents" means the Section P3 Agreement, the Tolling Services Agreement, the Key Contracts, the D&C Contractor direct agreement, the MDTA Financing Documents, and the Finance Documents.

"Section Equity Member" means each Person that directly holds an equity interest (legal or beneficial) in the Section Developer, including, on the Commercial Closing Date, the Phase Developer.

"Section Equity Member Debt" means any obligations created, issued, or incurred by a Section Developer for borrowed money that:

- a) is owned by a Section Equity Member, Related Entity, Qualified Investor, any Affiliate of a Section Equity Member, or an Affiliate of the Section Developer; and
- b) is subordinated in priority of payment and security to all Section Debt held by Persons who are not Section Equity Members, other than any mezzanine debt that is provided by a party referred to in clause (a) on an arm's length basis.

"Section Equity Member Funding Agreements" means any loan agreement, credit agreement, or other similar finance agreement or subordination agreement providing for or evidencing Section Equity Member Debt.

"Section P3 Agreement" is defined in the introductory paragraphs.

"Section Supplemental Trust Agreement" means the supplemental trust agreement relating to this Section dated on or about the Financial Closing Date and supplementing the MDTA Master Trust Agreement.

"Security Documents" means the documents identified in the Section P3 Agreement, together with any other document designated by the Parties (acting jointly) as a Security Document.

"Service Line" means (a) a Utility line, the function of which is to directly connect the improvements on an individual property to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system or (b) any cable or conduit that supplies an active feed from a Utility Owner's facilities to activate or energize MDOT's or a local agency's lighting and electrical systems, traffic control systems, communications systems, or irrigation systems.

"Setting Date" means a fixed date in advance of the submission date of a Committed Section Proposal by the Phase Developer under the terms of the Phase P3 Agreement.

"Setting Date MOU" is defined in Section 35.

"Setting Date Site" means the area upon which, at the Setting Date, the Section Developer anticipates will be used for the permanent construction of the Section. The Setting Date Site shall be agreed between the Phase Developer and MDOT prior to the Setting Date. The Phase Developer is required to focus its existing site condition due diligence and predevelopment work on the Setting Date Site.

"Site" means, collectively, the Permanent ROW, each Temporary Construction Area prior to the applicable TCA Expiry Date, and each Additional TCA.

"State" is defined in the introductory paragraphs.

"State Highway" means a travel way for vehicular traffic that is included in the State or federal highway system in Maryland.

"Submittal" means any document, work product, or other written or electronic product or item required under the technical provisions to be delivered or submitted to MDOT for approval, acceptance, review, comment, or otherwise.

"Substantial Completion" means satisfaction of all the conditions to substantial completion to be set out in the Section P3 Agreement.

"Substantial Completion Date" means the date that Substantial Completion has been achieved for the Section.

"Substantial Completion Long Stop Date" means the date that is 12 months after the scheduled Substantial Completion date, as such date may be extended in accordance with the Section P3 Agreement.

"TCA Expiry Date" means, for each Temporary Construction Area, the date after which access to such Temporary Construction Area is no longer available to the Section Developer, as set forth in the RFP.

"Temporary Construction Area" means those temporary construction areas that are provided as part of the MDOT Provided Parcels and will be identified under the Section P3 Agreement for which the Section Developer will be granted access for activities not part of the permanent Work.

"Term" is defined in [Section 4](#).

"Third Party MOU" means each memorandum of understanding between MDOT and various third parties in relation to the Section.

"Third Party Work" means all efforts and costs necessary to accomplish the Work required under the Third Party MOU, including all coordination, design, design review, permitting, construction, inspection, and maintenance of records, whether provided by the Section Developer or by the applicable third party.

"TIFIA" means the Transportation Infrastructure Finance and Innovation Act of 1998, codified at 23 U.S.C. §§601 et seq., as amended and as it may be amended from time to time.

"Toll Revenue" means all amounts payable to the Section Developer pursuant to the terms of the MDTA Notes.

"Toll Systems Integration Contract" means the contract under which the Toll Systems Integrator is appointed as responsible for performing the design, construction, integration, and testing of the toll systems for the Section.

"Toll Systems Integrator" means [●]¹⁶, and its permitted successors and assigns.

"Toll Systems Operation Contract" means the contract under which the Toll Systems Operator is appointed as responsible for performing the operation of the toll systems for the Section.

"Toll Systems Operator" means [●]¹⁷, and its permitted successors and assigns.

"Tolling Services Agreement" means an agreement between MDTA and the Section Developer for certain tolling related services for the Section.

"Tolling Services Agreement Term Sheet" means the Tolling Services Agreement Term Sheet attached as [Exhibit 2](#).

"Uniform Act" means Public Law 91-646, the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

"Uninsurable Risk" means a risk for which:

- a) insurance is not available to the Section Developer with respect to the Section in the worldwide insurance or reinsurance markets on the terms required in the Section P3 Agreement with reputable insurers of good standing; or
- b) the insurance premium payable for insuring that risk on the terms required in the Section P3 Agreement is at such level that the risk is not generally being insured against in the worldwide

¹⁶ **Note to Proposers:** To be identified in the Committed Section Proposal (subject to pre-approval and requirements set out in Exhibit 6 of the Phase P3 Agreement).

¹⁷ **Note to Proposers:** To be identified in the Committed Section Proposal (subject to pre-approval and requirements set out in Exhibit 6 of the Phase P3 Agreement).

insurance or reinsurance markets with reputable insurers of good standing by contractors in relation to comparable infrastructure projects in North America.

"Unknown Archaeological Remains" means any archaeological remains discovered within the Setting Date Site that, as of the Setting Date, were neither:

- a) known to the Section Developer or the Phase Developer; nor
- b) reasonably capable of being identified by an appropriately qualified and experienced contractor or engineer exercising due care and skill and good industry practice, including through review and analysis of (i) the reference information documents, (ii) any publicly available information, (iii) any access to the Setting Date Site granted or available prior to the Setting Date, or (iv) the complete and proper performance by the Phase Developer of the Predevelopment Work relevant to the Section in accordance with the Phase P3 Agreement.

Archaeological remains that the Section Developer would have known about but for errors or omissions in the performance of the Predevelopment Work, or the incomplete performance of the Predevelopment Work as required under the Phase P3 Agreement will not be considered Unknown Archaeological Remains.

"Unknown Endangered Species" means any endangered species discovered within the Setting Date Site, the temporary, continual, or habitual presence of which, as of the Setting Date, was neither:

- a) known to the Section Developer or the Phase Developer; nor
- b) reasonably expected to be found temporarily, continually, or habitually at the Site based on review and analysis of (i) the reference information documents, (ii) any publicly available information, (iii) any access to the Setting Date Site granted or available prior to the Setting Date, or (iv) the complete and proper performance by the Phase Developer of the Predevelopment Work relevant to the Section in accordance with the Phase P3 Agreement.

Endangered species that the Section Developer would have known about but for errors or omissions in the performance of the Predevelopment Work, or the incomplete performance of the Predevelopment Work as required under the Phase P3 Agreement will not be considered Unknown Endangered Species.

"Unknown Hazardous Environmental Condition" means any Hazardous Environmental Condition that existed on any part of the Setting Date Site on or prior to the Setting Date, excluding any Hazardous Environmental Condition:

- a) on any site identified in the FEIS or any other document released to the public pursuant to NEPA as being a site on which a Hazardous Material may be encountered;
- b) that was known to the Section Developer or the Phase Developer at the Setting Date; or
- c) that could reasonably have been identified or discovered prior to the Setting Date by an appropriately qualified and experienced contractor or engineer exercising due care and skill and good industry practice based on (i) the reference information documents, (ii) any publicly available information, (iii) any access to the Setting Date Site granted or available prior to the Setting Date, or (iv) the complete and proper performance by the Phase Developer of the Predevelopment Work relevant to the Section in accordance with the Phase P3 Agreement.

Hazardous Environmental Conditions that the Section Developer would have known about but for errors or omissions in the performance of the Predevelopment Work, or the incomplete performance of the Predevelopment Work as required under the Phase P3 Agreement will not be considered Unknown Hazardous Environmental Conditions. "Unknown Hazardous Environmental Condition" does not include contaminated soil or other materials which do not constitute a Hazardous Environmental Condition but for which the Section Developer may incur additional testing, handling, and disposal costs due to the presence of such contamination or other materials.

"Unknown Utility" means any Utility present within the Setting Date Site that was not identified or was materially incorrectly shown, identified, or described in the reference information documents, in each case excluding any Utility that:

- a) was known to the Section Developer or the Phase Developer at the Setting Date;
- b) was installed on a part of the Setting Date Site after right of entry was granted to the Section Developer in relation to the relevant part of the Setting Date Site in accordance with the terms of the Section P3 Agreement;
- c) is a Service Line; or

- d) could reasonably have been identified or discovered prior to the Setting Date by an appropriately qualified and experienced contractor or engineer exercising due care and skill and good industry practice, including through (i) review and analysis of the reference information documents, (ii) review and analysis of any publicly available information, (iii) any access to the Setting Date Site granted or available prior to the Setting Date, or (iv) the complete and proper performance by the Phase Developer of the Predevelopment Work relevant to the Section in accordance with the Phase P3 Agreement,

and, provided that, (A) inaccuracies in the location of an underground Utility indicated in the reference information documents will be considered Unknown Utilities only if the Utility's actual centerline location is more than three feet distant from the horizontal centerline location shown in the reference information document, without regard to vertical location and (B) Utilities that the Section Developer would have known about but for errors or omissions in the performance of the Predevelopment Work, or the incomplete performance of the Predevelopment Work as required under the Phase P3 Agreement, will not be considered Unknown Utilities.

"Upfront Payment" is defined in Section 50.

"USACE" means the United States Army Corps of Engineers.

"Utility" means a privately, publicly, or cooperatively owned line, facility, or system for transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, a combined stormwater and sanitary system, or other similar commodities, including wireless telecommunications, television transmission signals, and publicly owned fire and police signal systems, which directly or indirectly serve the public. The term Utility excludes (a) streetlights and traffic signals and (b) ITS (intelligent transportation systems) and IVHS (intelligent vehicle highway systems) facilities. The necessary appurtenances to each Utility facility will be considered part of such Utility. Without limitation, any Service Line connecting directly to a Utility will be considered an appurtenance to that Utility, regardless of the ownership of such Service Line.

"Utility Adjustment" means each relocation (temporary or permanent), abandonment, protection in place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, or modification of existing Utilities necessary to accommodate construction, operation, maintenance, or use of the Section or the Work. The term Utility Adjustment will not refer to any of the work associated with facilities owned by any railroad. The Utility Adjustment Work for each crossing of the Permanent ROW by a Utility that crosses the Permanent ROW more than once will be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Permanent ROW, the Utility Adjustment Work for each continuous segment of that Utility located within the Permanent ROW will be considered a separate Utility Adjustment.

"Utility Adjustment Work" means all efforts and costs necessary to accomplish the required Utility Adjustments during the D&C Period, including all coordination, design, design review, permitting, construction, inspection, and maintenance of records, whether provided by the Section Developer or by the Utility Owners.

"Utility Agreement" means each utility agreement entered into with a Utility Owner relating to Utility Adjustment Work within the Section.

"Utility Framework Agreement" means each framework agreement between MDOT and any Utility Owner in relation to the P3 Program.

"Utility Owner" means the owner or operator of any Utility (including both privately held and publicly held entities, cooperative Utilities, and municipalities and other governmental agencies).

"VDOT" means the Virginia Department of Transportation.

"Work" means the Design Work, Construction Work, and the O&M Work, and all other work, services, and obligations required to be performed and provided by the Section Developer under the Section P3 Agreement.

Exhibit 2 – Tolling Services Agreement Term Sheet

[To be attached]

EXHIBIT 2

KEY TERMS OF THE TOLLING SERVICES AGREEMENT

Each Section Developer will be responsible for tolling operations and congestion management within its Section, including by setting the dynamic toll rate (subject to the toll rate setting requirements set out herein) and submitting toll data to MDTA for processing and collection. Each Section Developer and MDTA will enter into a tolling services agreement (the "**TSA**") which will include, among other things, details of the Section Developer's obligation to submit tolling data to MDTA.

Below is a description of the indicative key terms that will be contained in each TSA for Phase 1. A full form of the TSA will be provided to the Section Developer following the execution of the Phase P3 Agreement. Section-specific variations will be introduced for each Section as appropriate, but the terms and conditions described below are generally anticipated to apply across all TSAs entered into for the P3 Program.

Capitalized terms used in this term sheet are defined in Appendix 1 (*Defined Terms*).

Part A – Preliminary		
1.	Parties	a) MDTA; and b) Section Developer
2.	General	Pursuant to the Section P3 Agreement, the Section Developer shall design, construct, integrate, test, operate, and maintain all roadside and related tolling equipment and software for the Section. The Section Developer will take all traffic and revenue risk for the Section (subject to the Section Developer's rights with respect to Compensation Events). MDOT will take all toll collection, enforcement of toll collection, and associated leakage risk for Valid Trips submitted for the Section in accordance with the TSA. The Section Developer may designate a subcontractor or another entity to submit Trips relating to its Section on its behalf.
3.	Term	The TSA shall remain in effect until the expiration or earlier termination of the Section P3 Agreement.
4.	Representations and Warranties	The Section Developer and MDTA will make representations and warranties to each other that are customary for transactions of this type. The representations and warranties will be made on the effective date of the TSA.
Part B – Rights and Obligations of the Section Developer		
5.	Equipment	Article 24 of the Predevelopment Work Requirements requires the Section Developer to design, develop, fabricate, test, integrate, deploy, construct, operate, maintain, and upgrade to maintain the ETCS throughout the Term.
6.	Data Capture	The Section Developer shall be responsible for capturing data evidencing each Toll Transaction and transmitting a properly formed Trip to MDTA (which will include all of the information required for a Valid Trip, as further defined herein). Without limiting the foregoing, the Section Developer shall be responsible for (a) determining the applicable dynamic toll rate and vehicle classification for each Toll Transaction (in accordance with Appendix 2 (<i>Toll Rate Setting</i>)), and transmitting the applicable toll information to MDTA; (b) conducting all video image reviews to define the license plate type, license plate number, and license plate jurisdiction in accordance with MDTA rules and requirements; and (c) matching Toll Transactions applicable to the same vehicle within Phase 1 in coordination with other section developers, as required in order to consolidate all Toll Transactions within Phase 1 into a single Trip transmission to MDTA. The Section Developer shall ensure that trip data for any vehicle traveling on

		the Priced Managed Lanes in the Section and any other section(s) of Phase 1 as part of a continuous period of travel within the Priced Managed Lanes in the same direction is consolidated into a single Trip before it is submitted to MDTA.
7.	Marketing	Sections 4.6 and 4.7 of the Predevelopment Work Requirements require the Section Developer to comply with certain marketing requirements.
7A	Improvement to MDTA's System prior to commencement of tolling	MDTA shall incur certain costs in connection with certain improvements that it shall make to its existing tolling system prior to the commencement of tolling on the Section in order to accommodate the receipt and processing of Trips from the Section Developer and the collection of tolls for the Section. The Section Developer shall make a lump sum payment to MDTA during the D&C Period in an amount to be agreed during the predevelopment period to cover such system improvement costs. Alternatively, MDTA may elect to cover such costs using proceeds of the MDTA Notes.
8.	Change in Toll System Technology	The Section Developer shall make no change to the toll system technology deployed for the Priced Managed Lanes that will adversely affect the reliability of, or the ability to, meet performance requirements set forth in Table 25-6 (Operating Period Performance) of the Predevelopment Work Requirements (the " Performance Requirements ") and applicable standards for, and transmission of, data to MDTA. Any changes to the toll system technology shall be coordinated with MDTA and meet the Performance Requirements.
9.	Commencement of tolling operations	Upon the achievement of Substantial Completion of the Section, the Section Developer will be entitled to commence tolling of the Priced Managed Lanes.
10.	Permitted Vehicles	The Section Developer shall ensure that all Permitted Vehicles are provided access to the Priced Managed Lanes.
11.	Toll Rates	<p>The Section Developer shall be responsible for setting and calculating the Toll Rate applicable to each vehicle in the Priced Managed Lanes in the State. There shall be no restrictions on the Base Toll Rate except as set forth in Appendix 2 (<i>Toll Rate Setting</i>).</p> <p>The Section Developer shall, at all times, set the Base Toll Rate and operate the Priced Managed Lanes in compliance with the provisions of applicable law (including, if the lanes are operating as High-Occupancy Toll (HOT) lanes, 23 U.S.C. §166) and ensure that the average speed of travel on the Priced Managed Lanes is 45 mph or greater, provided that the Section Developer shall not be in breach of this provision to the extent that required operating speeds were not met on any part of the Section at times when that part of the Section is operating at a Base Toll Rate set at the Toll Rate Range Maximum.¹</p> <p>In the event (i) there is the occurrence of certain minimum traffic conditions or average speeds to be defined in the Tolling Services Agreement, (ii) the Section Developer is unable to comply with the requirements set out in the above paragraph, or (iii) either party reasonably believes that the Section Developer will be unable to comply with the requirements set out in the above paragraph within the next [●] years, then the Section Developer, MDOT, and MDTA shall consult with respect to possible methods of improving the performance of the Priced Managed Lanes, including: increasing the occupancy requirement for HOVs, making changes to the Permitted Vehicles, increasing the capacity of the facility, or increasing the Toll Rate Range Maximum; provided that MDTA gives no commitment to implement such changes and shall be under no obligation to take any action relating to the same.</p>

¹ NTD: These provisions may ultimately be located in the Section P3 Agreement, rather than the TSA.

		<p>Toll Rates for Trips that are not Transponder Transactions will be calculated by MDTA based on the Trip Toll provided by the Section Developer, by applying the non-transponder multiplier or fees set by the MDTA Board to the applicable Transponder rate determined by the Section Developer. Any associated fees/penalties assessed for non-transponder transactions with the collection or enforcement of tolls shall be set and collected by MDTA.</p>
12.	Toll System Services	<p>The Section P3 Agreement requires the Section Developer to operate and maintain the ETCS required to capture, construct, and transmit all Toll Transactions and Trips for which a toll is due to MDTA.</p> <p>Toll Transactions Capture Section 25.6.1 of the Predevelopment Work Requirements sets out the requirements of the ETCS that the Section Developer shall be responsible for delivering.</p> <p>Vehicle Classification The ETCS shall classify every vehicle that passes through a Tolling Point in accordance with Appendix 2 (<i>Toll Rate Setting</i>).</p> <p>Trip Construction The Section Developer shall be responsible for all trip building operations in accordance with Appendix 3 (<i>Valid Trip Requirements</i>).</p> <p>ETCS Host The Section Developer's ETCS shall include an ETCS Host that shall collect Toll Transactions data from all parts of Phase 1 and function as the back office system for the entire Phase 1.</p> <p>Testing The Section Developer shall be responsible for all testing of the ETCS as defined in the Predevelopment Work Requirements, including testing as to interoperability with MDTA's current Tolling Back-Office System.</p> <p>The Section Developer shall be responsible for all testing of the ETCS interoperability with MDTA's Tolling Back-Office Systems following (i) any upgrades or replacements to the ETCS or (ii) any upgrades, replacements, or changes to MDTA's Tolling Back-Office System or changes to MDTA's CSC Operator.²</p>
13.	Performance Standards	<p>The Performance Requirements for the ETCS are set out in the Predevelopment Work Requirements.</p>
14.	Section Developer Records, Inspections, and Audits	<p>The Section Developer shall keep and maintain all records relating to tolling, the ETTM Data, and the ETCS; and make all such records available for inspection or audit by MDTA, MDOT, or its consultants and designees. The Section Developer shall comply with all applicable law, including Maryland Annotated Code, General Provisions Article, Section 4-319, with respect to the ETTM Data. Further, the Section Developer shall comply with all applicable laws, rules, and legal requirements that would apply to MDTA with respect to the treatment and disclosure of all ETTM Data.</p> <p>MDTA and MDOT shall have access to all ETTM Data and may use the ETTM Data for any purpose.</p>
15.	User Confidential Information	<p>The Section Developer shall comply with all applicable law, including Maryland Annotated Code, General Provisions Article, Section 4-319,</p>

² **Note to Proposers:** MDTA anticipates that it shall resolicit its CSC Operator four times during the Term, and MDTA's Tolling Back Office may be subject to upgrades following such solicitations or at any other time.

		related to the handling, confidentiality, and privacy of personal data and images collected in relation to Users of the Priced Managed Lanes.
16.	Interface Control Document	<p>The Section Developer, at its expense, shall design, install, operate, and maintain the ETCS and interconnections of the ETCS with MDTA's Host. Such design and installation shall be consistent with, and meet all requirements of, the Interface Control Document (the "ICD").</p> <p>The Section Developer shall collaborate with MDTA and adopt detailed requirements to be set out in the ICD developed by MDTA to ensure the correct processing of each Trip to be sent to MDTA. The ICD shall be based on the current ICD for MDTA's toll systems in the State, and MDTA shall discuss any modifications suggested by the Section Developer to improve the transmission of Trip data for both parties. The ICD applicable to the Section shall be finalized prior to commencement of tolling operations for the Section.</p> <p>The ICD is subject to change with reasonable advance written notice from MDTA. The Section Developer must comply with the new interface requirements set out in any updated ICD at no cost to MDTA.</p> <p>The Section Developer acknowledges that the ICD is intended to be a framework for the interface between a third party and MDTA; it supports many different types of systems with different unique needs, requirements, and contractual obligations; and it is subordinate to, and is not intended to supersede or alter, any of the express provisions of the TSA or the Section P3 Agreement.</p>
17.	Modifications to Systems	<p>The Section Developer shall make any necessary modifications or upgrades to the ETCS to ensure continued compatibility and interoperability with MDTA's system in accordance with Section 24.1 of the Predevelopment Work Requirements, and will be responsible for any and all system maintenance, changes, modifications, or upgrades to the ETCS or operations. If any changes, modifications, or upgrades to the ETCS or other system modifications will adversely impact MDTA's Back-Office Systems or operations in any material respect, the parties agree to make good faith efforts to resolve such impact to each party's satisfaction; provided, however, that any such changes, modifications, or upgrades must be ultimately compatible with MDTA's system and operations. Either party will notify the other in writing at least 90 days in advance of any changes or modification to such party's system equipment that may affect the other's system equipment or operations in any material respect.</p> <p>MDTA shall exercise due care and diligence in planning and implementing modifications, upgrades, and associated testing of its Back-Office System at levels which are reasonable given the schedule, scope, and budget for the ETCS, and will not require that the Section Developer exceeds what is considered customary and reasonable for hardware and software processing systems. However, MDTA provides no guarantee against adverse impacts to the performance of the hardware or software in the Section Developer's or others' systems. While precautions will be taken by MDTA to help mitigate the risk of occurrence of such adverse impacts to the Section Developer, neither MDOT nor MDTA will, unless MDTA is in breach of its duty of due care and diligence, be financially responsible for the occurrence of adverse impact to the Section Developer or other third parties affected during such modifications, upgrades, and associated testing.</p>
18.	Business Rules	MDTA may elect to document certain provision of this term sheet in a set of business rules that will apply to the entire P3 Program (the " Business Rules "). In this event the Section Developer shall be obliged to comply

		with the requirements of the Business Rules. Amendments to the Business Rules by MDTA shall be permitted subject to the same restrictions that apply with respect to Change Orders as set out in Section 36 (<i>Change Orders</i>).
Part C – Obligations and Rights reserved for MDTA		
19.	Services Performed by MDTA	MDTA shall reserve for itself (and the Section Developer shall not be entitled to perform) the following functions: (a) functions pertaining to toll collection and toll collection enforcement (excluding HOV enforcement); (b) customer service operations; (c) account management; (d) Transponder issuance; and (e) Trip Toll processing.
20.	MDTA Appointment of a CSC Operator	MDTA may appoint a third party contractor to operate the CSC and back-office systems (the " CSC Operator "). Presently MDTA's CSC Operator is [TransCore LLC]. MDTA may designate a different CSC Operator from time to time during the term. If directed by MDTA the Section Developer shall deliver Trip data directly to CSC.
21.	MDTA Records, Inspections, and Audits	MDTA will (and shall ensure that its CSC Operator will): (a) provide the Section Developer with reconciliation files as required; (b) maintain accurate and complete records relating to Toll Transactions for the Section; (c) implement data backup and disaster recovery systems; (d) permit the Section Developer to review MDTA's records pertaining to Valid Trips at reasonable times upon request; (e) make its records relating to the Section available for audit and inspection by the Section Developer during normal business hours; (f) permit the Section Developer to monitor, audit, and investigate its records related to the Section and monitor its systems, practices, and procedures related to confidential information; and (g) maintain records: (1) transaction data 4 years from when the transaction is closed (i.e., transaction posted to an account, dismissed, or sent to an away agency and settled), (2) transaction images 1 year from when the transaction is closed, and (3) video clips 1 year from data creation; and implement data backup and disaster recovery systems. Transaction data, images, and video clips for unclosed transactions will be stored indefinitely.
22.	Transponder Master List	MDTA will consolidate all Transponders and their current status (such consolidated list the " Transponder Master List ") and electronically distribute the consolidated information to the Section Developer. Status designations shall be in accordance with the ICD. MDTA will make such electronic distribution of the Transponder Master List to the Section Developer daily (provided that, if MDTA fails to provide an updated Transponder Master List then the Section Developer shall be entitled to rely on the most recent Master Transponder List provided by MDTA). MDTA will provide the list of Transponders for Exempt Vehicles within the Transponder Master List. The Section Developer shall be responsible for identifying whether each vehicle in the Priced Managed Lanes is listed in the Transponder Master List as an Exempt Vehicle, filter out the Toll Transactions relating to Exempt Vehicles, and not submit these as Trips to MDTA. Generally, Exempt Vehicles will be required to be equipped with a properly mounted MDTA-issued non-revenue Transponder, but there will be some exceptions to this and some Exempt Vehicles may not have non-revenue Transponders and may not be included as Exempt Vehicles on the

		<p>Transponder Master List. In this event the Section Developer will be expected to identify Exempt Vehicles before submission of the same to MDTA (except in circumstances where visual identification of an Exempt Vehicle is not possible) and not submit Trip data relating to Exempt Vehicles to MDTA. In any event Trips relating to Exempt Vehicles shall not be Valid Trips.</p> <p>The Section Developer must have the capability to support notification of Users, who opt in, via (a) feedback transponders, which notify Users through audio signals, and (b) communication with MDTA's back office for notification through a mobile application sent for (x) Valid Transactions for vehicles with Active Transponders included on the Transponder Master List, (y) vehicles with Transponders associated with accounts with low balances, and (z) vehicles associated with a Transponder on the Transponder Master List which is reading as inactive.</p>
23.	Transponder Issuance; Competitive Actions	<p>The Section Developer shall not issue any Transponders other than as expressly permitted by the TSA or as approved by MDTA in writing (acting in its sole discretion), and the Section Developer otherwise shall not take any actions in competition with the rights and responsibilities of MDTA. The Section Developer shall not sell Transponders other than those under MDTA's On-the-Go (OTG) program. If the Section Developer wishes to sell such Transponders, it will be required to enter into a separate agreement with MDTA which will govern the sale of OTG Transponders.</p>
Part D – Valid Trip		
24.	Valid Trip	<p>Appendix 3 (<i>Valid Trip Requirements</i>) sets out all required information and data that must be included in any Trip submitted to MDTA.</p> <p>For Trips that do not meet these requirements, MDTA may reject the Trip and provide the Section Developer with a code identifying the reason for rejection. Such reason codes will be detailed in the full form TSA (or the ICD). A report explaining the reasons for such rejection shall be provided monthly in order for the Section Developer to independently identify the affected Trips and verify the rejection reason(s).</p>
25.	Resubmission of corrected Trip data	<p>In the event that a Trip submitted to MDTA is rejected by MDTA immediately for any error that is determined without any processing of the Trip (e.g., a corrupt file format), the Section Developer may resubmit the Trip to MDTA for processing after resolving the error. In this situation the Section Developer shall incur a Transaction Fee with respect to the resubmitted Trip but not with respect to the rejected Trip.</p> <p>In the event that a Trip submitted to MDTA is rejected on the basis that it is not a Valid Trip after MDTA has processed the Trip data (e.g., a license plate is deemed to be invalid by MDOT MVA, and MDTA is not able to read the license plate based on the image provided by the Section Developer), MDTA will not accept resubmission of such Trip after the issue has been corrected (except to the extent resubmission is expressly permitted in accordance with Appendix 4 (<i>MDTA's Right to Stop Accepting and Processing Trips</i>)).</p>
26.	System Faults and Failures	<p>If either the Section Developer or MDTA (or its CSC Operator) receives notice of any system failure or degradation that may affect tolling operations, the relevant party shall report such notice as promptly as possible to the other party.</p> <p>The Section Developer's system shall have the capacity to buffer transactions for 90 days and the ability to resend transaction if requested. In the event that the Section Developer is unable to send Trip data for the Section for periods in excess of 24 hours, the Section Developer must notify MDTA prior to sending any backlogged Trip data to MDTA (and such</p>

		<p>backlogged trips shall only be considered "submitted" for the purpose of calculating the Section Developer Toll Payment at the time that MDTA is reasonably able to process them).</p> <p>In the event that MDTA or the designated CSC Operator is unable to receive Trips or process the collection of tolls for any reason (including, without limitation, due to planned system maintenance or an unplanned outage) (an "MDTA Outage") then MDTA may notify the Section Developer that it must withhold Trips and not submit them to MDTA until such MDTA Outage has been resolved. Following the resolution of an MDTA Outage, MDTA shall instruct the Section Developer to recommence the submission of Trip data to MDTA. The Section Developer shall submit any Trips that were withheld (and shall resubmit any other Trips impacted by the MDTA Outage as requested by MDTA) in the order in which they were received and processed by the Section Developer, and for the purposes of calculating the Section Developer Toll Payment such Trips shall be considered submitted to MDTA upon such submission to MDTA following the resolution of such MDTA Outage; provided that any MDTA Outage that (a) causes a decrease in the Section Developer Toll Payment for the month in which the MDTA Outage occurs due to a reduced number of Valid Trips being submitted in such month and (b) exceeds [3] days, then it shall be considered a Compensation Event (provided that MDTA may elect to eliminate the impact of MDTA Outage on the Section Developer Toll Payment by deeming any Valid Trips for which submissions to MDTA were delayed by an MDTA Outage to have been submitted to MDTA at the time that they would have been submitted but for the MDTA Outage).</p>
27.	MDTA's Right to Stop Processing Trips	Appendix 4 (<i>MDTA's Right to Stop Accepting and Processing Trips</i>) describes the occurrence of certain specified events that are likely to cause material customer service issues and following which MDTA has the right to stop accepting and processing Trips.
Part E – Payments		
28.	Transaction Fee	<p>MDTA will deduct a Transaction Fee from the amounts due to the Section Developer under the MDTA Notes. The Transaction Fee will be charged for each Trip submitted to MDTA on a "per trip" basis, and shall be the same amount for Trips based on Transponder Transactions and Trips based on Image-Based Transactions. The Transaction Fee is updated annually.</p> <p>The "Transaction Fee" shall be the sum of the following fees and costs:</p> <ul style="list-style-type: none"> (a) ETC Fee, (b) Personnel Oversight Costs, and (c) Capital Cost Fee. <p>The "ETC Fee" shall be the average cost expected to be incurred by MDTA for the processing of a Transponder-based Trip. The ETC or Transponder costs shall be comprised of:</p> <ul style="list-style-type: none"> (a) CSC Operator back-office costs: fixed and variable costs such as system costs, account management fees, staffing, interoperability, and communications (letters, website, IVR, chat, push notifications, etc.). Fixed costs are allocated to the ETC Fee using both a manual percentage allocation method, as well as a weighted method based on the number of transactions; (b) MDTA <i>E-ZPass</i>®/Transponder Operations and Finance fully loaded payroll costs is an allocated cost of staff involved in, and administering, the toll operations. The allocation to the ETC Fee is periodically updated based on the percentage of time staff spent devoted to each transaction type; (c) Transponder costs;

		<p>(d) <i>E-ZPass/Transponder Customer Service Center/Walk-in Centers</i> costs: costs associated with operating new walk-in customer service to support the P3 Program (outside MDTA’s current presence). Costs are allocated based on the percentage of time staff spend devoted to each transaction type; and</p> <p>(e) Credit card fee (such costs to be consistent across all other MDTA facilities and the P3 Program):</p> <ol style="list-style-type: none"> 1. fixed fee being the fixed per transaction credit card fee payable by MDTA for processing Transponder based Trips; and 2. variable fee being the variable credit card fee payable by MDTA for processing Transponder based Trips. <p>Based on MDTA's current projections as of November 2020, the estimated ETC Fee that will apply in 2027 (being the assumed opening year) is \$0.11 per Trip, plus a fixed credit card fee of \$0.01 per Trip and a variable credit card fee of 2.25% of nominal gross toll revenue.</p> <p>Annually, MDTA calculates its actual cost per transaction by transaction type and uses this to determine the ETC Fee for the following year. A cost allocation matrix is used to allocate costs to each type of transaction, and all costs allocated to Transponder Transactions and transactions processed to a Transponder account (including i-Toll transactions) shall be aggregated to determine the average cost per transaction.</p> <p>Any overestimate or underestimate in the projected ETC Fee or Personnel Oversight Costs shall lead to a true-up adjustment to the ETC Fee or Personnel Oversight Costs in the subsequent year. The ETC Fee shall be adjusted on an annual basis as described in Section 29 (<i>Determination of ETC Fee</i>).</p> <p>"Personnel Oversight Costs" will be calculated based on the fully-loaded costs for all MDTA staff required to reconcile transactions relating to the Section; address inquiries regarding rejected transactions relating to the Section; monitor, report, and act upon key performance indicator outcomes relating to the Section; and any other coordination efforts between MDTA and the Section Developer.</p> <p>"Capital Cost Fee" will be calculated based on the projected cost MDTA expects to incur in the performance of back-office system improvements and basic system maintenance of its toll collection system allocated to the P3 Program during the next 5 years divided by the projected number of Trips to be submitted during the next 5 years with respect to the P3 Program as further described in Section 30 (<i>Determination of Capital Cost Fee</i>).</p>
29.	Determination of ETC Fee	<p>MDTA shall comply with the following principles when determining the ETC Fee (unless otherwise agreed between MDTA and the Section Developer):</p> <ol style="list-style-type: none"> a) MDTA shall perform ETC/Transponder transaction toll collection for the P3 Program in the same manner that it does on other toll roads operated by MDTA. Changes made to the scope or service levels of transponder processing and collection activities being recovered through the ETC Fee shall not exceed changes being made consistent with best industry practices in transponder based tolling in the US toll road industry. b) MDTA shall take reasonable steps to ensure that costs it incurs that are recovered through the transponder fee are at reasonable market prices. All pricing shall be agreed at arm's length using competitive public solicitation or such other methods as may be

		<p>agreed with the Section Developer(s). MDTA shall use the same contractor(s) for the P3 Program and all other MDTA toll facilities.</p> <p>The Section Developer(s) shall be consulted by MDTA in advance of any potential change to the ETC fee (including with respect to the process it will go through to determine any change to the ETC fee), and MDTA shall consider in good faith any comments or concerns raised by the Section Developer.</p>
30.	Determination of Capital Cost Fee	<p>MDTA shall comply with the following principles when determining the Capital Cost Fee (unless otherwise agreed between MDTA and the Section Developer):</p> <ul style="list-style-type: none"> a) MDTA's capital upgrades to its tolling systems being used for any Section of the P3 Program and recovered through the Capital Cost Fee shall not exceed (i) the upgrades being carried out with respect to the tolling system for MDTA's other facilities and (ii) updates reasonably necessary in accordance with best industry practices in the US toll road industry. b) MDTA shall take reasonable steps to ensure that costs it incurs for any capital improvement work to its tolling system are at reasonable market price. All pricing shall be agreed at arm's length using competitive public solicitation or such other methods as may be agreed with the Section Developer. MDTA shall use the same contractors for the P3 Program related tolling systems and all other MDTA toll facilities. c) MDTA shall only include in the Capital Cost Fee passed onto the Section Developer(s) the incremental additional capital costs of its system improvements that exceed the amount that MDTA would have incurred to carry out such improvements for only its other facilities (excluding the P3 Program). d) MDTA shall use reasonable efforts to avoid charging any capital improvement costs more frequently than once every ten (10) years during the Term. e) The Section Developer(s) shall be consulted by MDTA in advance of any potential capital improvement cost that will be passed onto the Section Developer(s) through a capital costs fee (including with respect to the process MDTA will go through to determine such cost), and MDTA shall in good faith consider any comments or concerns raised by the Section Developer(s).
31.	Determination of Personnel Oversight Costs	<p>The number of staff is heavily influenced by automation and the number of issues relating to the Section that require attention from MDTA staff. MDTA's present assumption is that Phase South will require 2 MDTA staff. Currently fully loaded MDTA employee costs are estimated at \$65,000 per annum, each. However, the actual costs shall be passed on which will vary depending on numerous factors including the quality of the Trip data that is provided by the Section Developer.</p>
32.	Allocation of costs between Sections	<p>The Transaction Fee applicable to Trips through more than one Section shall be split across Sections. The Section Developer shall identify the allocation of the Trip Toll and Transaction Fee across the different Sections in its Trip data.</p>
33.	Rejected Trips	<p>If MDTA rejects a Trip in accordance with Section 25 (<i>Resubmission of Corrected Trip Data</i>) then the rejected Trip shall not be included in the calculation of the Section Developer Toll Payment. The treatment of the Transaction Fee for rejected Trips is set out Section 25 (<i>Resubmission of Corrected Trip Data</i>) above.</p>
34.	Clawback	<p>In the event that (i) MDTA accepts a Trip as a Valid Trip and includes such Valid Trip in the calculation of the Section Developer Toll Payment due to the Section Developer under the MDTA Notes, and (ii) it is subsequently determined that the Trip was not a Valid Trip (due to Trips being submitted</p>

		<p>for an Exempt Vehicle, deficiencies, or errors with the Trip data (including errors that lead to the User being mischarged) or for any other reason causing the Trip not to comply with the requirements of a Valid Trip then MDTA may recover from the Section Developer the relevant Trip Toll applicable to such Section. MDTA shall collect such amount by withholding it from the next Section Developer Toll Payment due under the MDTA Notes. MDTA shall notify the Section Developer in writing of any amount to be clawed back not less than [5] days before the relevant withholding is applied, including the Trips rejected and the supporting code identifying the reason for the rejection.</p> <p>MDTA may exercise its right to such clawback at any time. The Section Developer acknowledges that it may take months for MDTA to become aware of issues with Trip data, particularly those in which the customer identifies the issue.</p>
Part J – Termination and Step-In		
35.	Termination	The TSA shall automatically terminate, without notice, upon the termination of the Section P3 Agreement without liability of either party (except as may be set forth in the Section P3 Agreement). The lenders direct agreement shall include terms to ensure that the Section P3 Agreement and the TSA are transferred together in the event of a foreclosure.
Part K – Miscellaneous		
36.	Change Orders³	<p>The TSA will contain customary provisions governing the right of MDTA to issue change orders and directive letters in relation to the Tolling Services Agreement and the ICD, as well as the right of the Section Developer to propose changes, provided that (i) the Section Developer is required to accommodate, without cost to MDTA or MDOT, changes proposed by MDTA to the Tolling Services Agreement or the ICD that do not give rise to costs for the Section Developer in excess of []% of Toll Revenues received by the Section Developer during the Term, and (ii) this paragraph shall be without prejudice to the Section Developer's obligations under Section 17 (<i>Modifications to Systems</i>) to accommodate changes to MDTA's system without cost to MDTA or MDOT (and such costs shall not be counted towards the threshold set out in (ii)).</p> <p>Changes to (i) the Toll Rate Range Maximum, (ii) the Toll Rate Soft Cap, (iii) the escalation factor applicable to the Toll Rate Soft Cap or the Toll Rate Range Maximum (or a failure by MDTA to apply such escalation factor), (iv) Operational Metrics associated with the Toll Rate Soft Cap, (v) the vehicle Classification Multipliers, or (vi) the definition of Permitted Vehicles, Exempt Vehicles, or HOVs, will give rise to a Compensation Event under the Section P3 Agreement. The multiplier or additional charges applicable to Trips being billed by MDTA as non-transponder transactions and any associated fees/penalties applicable to non-transponder transactions may be adjusted by MDTA or any other governmental entity without liability to MDOT or MDTA, and such changes shall not be considered a Compensation Event or a change order. Further, any change to fees and charges associated with non-payment or late payment of any toll or tolling violations shall not give rise to a Compensation Event or change order or any liability for MDOT or MDTA.</p>
37.	Partnering	The partnering programs put in place in relation to the Section P3 Agreement shall accommodate issues that arise in relation to the TSA, and such partnering programs shall be used to resolve issues that arise under the TSA.

³ **NTD:** These provisions may ultimately be located in the Section P3 Agreement, rather than the TSA.

38.	Governing Law	The TSA will be governed in accordance with the laws of the State of Maryland.
39.	Assignment	<p>Section Developer may not transfer nor assign the TSA except to its permitted assignee of its interests in the Section P3 Agreement (the permissibility of which shall be determined solely under the Section P3 Agreement).</p> <p>MDTA may not transfer nor assign the TSA except (i) with the prior consent of the Section Developer, in the Section Developer's discretion, or (ii) without the Section Developer's consent, to any other Person that succeeds to (1) all the governmental powers and authority of MDTA or (2) all the tolling service functions and operations of MDTA in the State.</p>
40.	Dispute Resolution	Disputes shall be governed by the dispute resolution procedures set forth in the Section P3 Agreement.
41.	Other	Customary provisions will be included in the TSA with respect to waiver of consequential damages, mitigation of damages, waivers, independent contractor status, agency, personal liability, successors and assigns, limitation on third party beneficiaries, notices, authorized representatives, and counterparts.
42.	Limited Liability of MDTA	<p>The Section Developer will have no claim against any asset of MDTA (except to the extent set out in the MDTA Notes), and the Section Developer will waive any right to enforce a judgment holding MDTA liable against any such asset of MDTA.</p> <p>The remedies of the Section Developer with respect to breach of the TSA by MDTA shall be limited to those set out in the Section P3 Agreement.</p>

Appendix 1

Defined Terms

Capitalized terms used in this term sheet but not defined in this Appendix 1 have the meaning given to such term in Exhibit 1 to the Section P3 Agreement Term Sheet.

"**Active Transponder**" means any Transponder identified on the current Transponder Master List provided by MDTA to the Section Developer pursuant to Section 22 (*Transponder Master List*).

"**Base Toll Rate**" is defined in Section 5.4(a) of Appendix 2 (*Toll Rate Setting*).

"**Business Rules**" is defined in Section 18 (*Business Rules*).

"**Capital Cost Fee**" is defined in Section 28 (*Transaction Fee*).

"**Classification Multiplier**" means each of the classification multipliers set out in the table in Section 5.5 of Appendix 2 (*Toll Rate Setting*).

"**CSC**" means the portion of an ETCS providing Customer Relationship Management services, such as account management, financial processing, call centers and IVR, website services, interoperability tracking, accounting reconciliation and settlement services, and violation processing services. The CSC will also be the final repository for all MDTA toll system data. The CSC for this project will be provided by MDTA or the CSC Operator under a 3rd party agreement.

"**CSC Operator**" is defined in Section 20 (*MDTA Appointment of CSC Operator*).

"**Displayed Effective Rate Commitment**" is defined in Section 5.3(a)(ii) of Appendix 2 (*Toll Rate Setting*).

"**Effective Rate**" is defined in Section 5.2 of Appendix 2 (*Toll Rate Setting*).

"**ETC**" is defined in the Predevelopment Work Requirements.

"**ETC Fee**" is defined in Section 28 (*Transaction Fee*).

"**ETCS**" means the roadside electronic toll collection system provided by Section Developer, including its components, systems and subsystems, the hardware and physical infrastructure, and the software.

"**ETCS Host**" means the main or controlling computer connected to other computers or terminals to which it provides data or computing services via a network for the ETCS.

"**ETTM**" means electronic toll and traffic management.

"**ETTM Data**" means all data generated by or accumulated in connection with the operation of the ETTM System, including but not limited to User specific information.

"**ETTM Equipment**" means the automatic vehicle identification equipment, video monitoring equipment, vehicle occupancy detection equipment, toll violator systems, and electronic toll data collection equipment, including its components, systems, and subsystems; the traffic management system equipment; communications equipment, and all associated hardware and physical infrastructure and other computer hardware and software necessary to meet the performance specifications for ETTM.

"**ETTM Facilities**" means the administration/operations building, toll gantries, and technical cabinets, utility connections, lighting facilities, and other facilities associated with electronic toll and traffic management.

"ETTM System" means the ETTM Facilities, ETTM Equipment, and the Software which monitors, controls, or executes the ETTM Equipment, all of which will meet the minimum performance criteria established by the Predevelopment Work Requirements. The ETTM System includes the ITS and the ETCS.

"Exempt Vehicles" is defined in Attachment A to Appendix 2 (*Toll Rate Setting*).

"E-ZPass InterAgency Group" or **"IAG"** means the E-ZPass InterAgency Group (IAG) which operates the largest, most successful toll interoperability network in the world. As of the date of this Term Sheet, the IAG is comprised of 31 toll entity members (39 operating toll agencies) across 18 states. Maryland tolling is governed by the IAG adopted protocols – <https://e-zpassiag.com/>.

"Grace Period" is defined in Section 5.3(a)(i) of Appendix 2 (*Toll Rate Setting*).

"HOV" is defined in Attachment A to Appendix 2 (*Toll Rate Setting*).

"Image-Based Transaction" means a Toll Transaction where the vehicle is identified by a photographic image of the license plate.

"Interface Control Document" or **"ICD"** is defined in Section 16 (*Interface Control Document*).

"Interoperability Agreement" means an agreement between MDTA and one or more other Toll Account Providers that sets out protocols and arrangements pursuant to which the parties thereto covenant to remit payment to one another for all Toll Transactions that meet the terms for transmission, debiting and payment, and are required to be included in the current payment cycle, as set forth in the protocols and arrangements specified in such agreement. These agreements include both the IAG and regional interoperability agreements.

"Interoperable Toll Account" means a Toll Account provided by an Interoperable Toll Account Provider or E-ZPass member.

"Interoperable Toll Account Provider" means a Toll Account Provider, other than MDTA or an E-ZPass member, that is party to a valid and enforceable Interoperability Agreement with MDTA.

"Interoperable Transponder" means a Transponder linked to an Interoperable Toll Account.

"ITS" is defined in the Predevelopment Work Requirements.

"MDTA Outage" is defined in Section 26 (*System Faults and Failures*).

"MDTA's Host" means the main or controlling computer connected to other computers or terminals to which it provides data or computing services via a network for the ETCS.

"MDOT MVA" means the Maryland Department of Transportation Motor Vehicle Administration.

"Operational Metrics" means those metrics set forth in Section 5.4(f) of Appendix 2 (*Toll Rate Setting*).

"Performance Requirements" is defined in Section 8 (*Change in Toll System Technology*).

"Personnel Oversight Costs" is defined in Section 28 (*Transaction Fee*).

"Predevelopment Work Requirements" means those provisions set forth in Exhibit 6 to the Phase P3 Agreement.

"Reinitiation Conditions" are set out in the table at Section 1.2 of Appendix 4 (*MDTA's Right to Stop Accepting and Processing Trips*).

"Term" is described in Section 3 (*Term*).

"Toll Account" means a User's electronic toll account with a Toll Account Provider from which the User's toll payments are debited.

"Toll Account Provider" means an agency or other person that provides and maintains Toll Accounts for Users.

"Toll Rate" is defined in Section 5.3(a) of Appendix 2 (*Toll Rate Setting*).

"Toll Rate Range Maximum" is defined in Section 5.4(c) of Appendix 2 (*Toll Rate Setting*).

"Toll Rate Range Minimum" is defined in Section 5.4(c) of Appendix 2 (*Toll Rate Setting*).

"Toll Rate Sign" is defined in Article 4 of Appendix 2 (*Toll Rate Setting*).

"Toll Rate Soft Cap" is defined in Section 5.4(e) of Appendix 2 (*Toll Rate Setting*).

"Toll Transaction" means an electronic record of a toll and a related set of contemporaneous vehicle images representing a vehicle that passes through a specific Tolling Point on a Priced Managed Lane on the Section. Toll Transactions may be either a Transponder Transaction or an Image-Based Transaction.

"Tolling Back-Office System" means the portion of the ETCS or MDTA's customer service system that works behind the scenes to minimize human intervention in transaction processing, account management and reconciliation. The Tolling Back-Office System for each party's system is the interface between the Section Developer's ETCS Host and MDTA's CSC Host.

"Tolling Point" means a single point on the Priced Managed Lanes at which Toll Transaction data is collected with respect to vehicles using the Priced Managed Lanes. Each Tolling Point shall collect data associated with the use of a defined part of the Priced Managed Lanes.

"Transaction Audit" is defined in Section 1.4 of Appendix 4 (*MDTA's Right to Stop Accepting and Processing Trips*).

"Transaction Fee" means the fee due to MDTA with respect to each Trip submitted to MDTA for processing by the Section Developer and calculated pursuant to Section 28 (*Transaction Fee*).

"Transponder" means an in-vehicle device which is designed to transmit information used to collect tolls and is associated with a particular Toll Account. For the avoidance of doubt, however, "Transponder" does not include a vehicle's license plate or other identifying markers that require the use of image-reading technology.

"Transponder Master List" is defined in Section 22 (*Transponder Master List*).

"Transponder Transaction" means a Toll Transaction with respect to a vehicle meeting equipped with an *E-ZPass* or an Interoperable Transponder and that is an Active Transponder.

"Trip" means a bundled group of Toll Transactions relating to a single trip or passage on the Priced Managed Lanes by a vehicle within Phase 1.

"Trip Toll" is defined in Section 5.1 of Appendix 2 (*Toll Rate Setting*).

"**TSA**" is defined in the opening paragraphs of this Term Sheet.

"**Unacceptable Customer Service Event**" is defined in Section 1.2 of Appendix 4 (*MDTA's Right to Stop Accepting and Processing Trips*).

"**User(s)**" means (i) the registered owner of a vehicle traveling on the Priced Managed Lanes or any portion thereof, (ii) any other Person traveling in a vehicle on the Priced Managed Lanes or any portion thereof, and (iii) any other Person responsible under applicable law for payment of a toll for a vehicle traveling on the Priced Managed Lanes or any portion thereof.

"**Valid Trip**" is described in Section 24 (*Valid Trip*).

Appendix 2

Toll Rate Setting

1. VEHICLE CLASSIFICATION

The ETCS shall classify every vehicle that passes through a Tolling Point based on a user configurable set of parameters that includes number of axles (with tires in contact with the road), and vehicle height, length, and width. For example, it shall be possible to classify a 2-axle pickup towing a 1-axle trailer differently than a 3-axle dump truck.

For computation of the applicable Toll Rate pursuant to Article 5, vehicles shall be classified as listed below. For graphical representations, please refer to Attachment B (*P3 Program PML Vehicle Classifications*).

Vehicle Class	Description
Class 2	Two-axle vehicles including passenger cars, smart cars, ambulances, pickup trucks, and vans; RVs; and commercial trucks.
Class 3A	Two-axle vehicles towing a 1-axle Trailer.
Class 3B	"Heavy" Three-axle vehicles such as busses or commercial trucks.
Class 4A	Two-axle vehicles towing a two-axle trailer.
Class 4B	"Heavy" Four-axle vehicles including single and multi-unit commercial trucks.
Class 5	Five-axle vehicles or combination of vehicles.
Class 6	Six or more-axle multi-unit commercial trucks and commercial trucks with trailers.
Class 8	Motorcycles and other vehicles with a single wheel on at least one axle.

2. TOLLING POINTS

The Priced Managed Lanes shall have numerous entry and exit points at which vehicles may join or leave them. Between each entry point and the next possible exit point there shall be a Tolling Point. The Section Developer shall set the number of miles of Priced Managed Lane associated with a Tolling Point prior to commencement of tolling operations. The number of miles of Priced Managed Lane associated with a Tolling Point shall (a) be calculated along the centerline of the Priced Managed Lanes, (b) be the minimum number of miles a User could travel with respect to that Tolling Point, and (c) exclude any part or mileage of Priced Managed Lane located in Virginia. The Section Developer may not modify the entry or exit points associated with any Tolling Point without the prior written consent of MDTA.

The Section Developer shall only be permitted to (a) locate Tolling Points within Maryland and (b) calculate tolls based on distances travelled in the Priced Managed Lanes located in Maryland.

3. **TRIP LENGTH**

3.1 **Trip Starting Point**

The first Toll Transaction within a vehicle's trip within Phase 1 shall be at the first Tolling Point crossed by the vehicle. This Tolling Point may be at one extremity of Phase 1 in either direction or an interior Tolling Point.

3.2 **Trip End Point**

The last Toll Transaction of a vehicle's trip shall be at the last Tolling Point crossed by the vehicle. This Tolling Point may be at one extremity of Phase 1 in either direction or an interior Tolling Point. Until a User exits the Priced Managed Lanes, all Toll Transactions for such User within the Phase shall be recorded as one single Trip.

4. **TOLL RATE SIGNS⁴**

At each entry point to the Priced Managed Lanes, the Section Developer shall include a sign or series of signs (each, a "**Toll Rate Sign**") that displays the aggregate toll payable by a Class 2 Vehicle to use the Priced Managed Lanes to each [major exit] within the next [] miles. The toll rates displayed on the Toll Rate Signs shall be based on the current Base Toll Rate at each Tolling Point between the applicable Toll Rate Sign and the stated end point of the Trip. The Toll Rate Signs shall meet the requirements of the Predevelopment Work Requirements and be located to provide sufficient time for vehicles to elect not to cross the Tolling Point.

5. **TOLL CALCULATION**

5.1 **Trip Toll Rate**

The "**Trip Toll**" applicable to any vehicle traveling on the Priced Managed Lanes within any phase of the P3 Program is the sum of all Effective Rates applicable to such vehicle for each Tolling Point included in the relevant Trip. Such Trip Toll shall be a single sum which is provided to MDTA as part of a Valid Trip for each User of the Priced Managed Lanes.

Vehicles may only be charged for the miles they have actually traveled.

5.2 **Effective Rate**

The "**Effective Rate**" with respect to any vehicle at any Tolling Point is (i) the Toll Rate applicable to such vehicle at the relevant Tolling Point multiplied by (ii) the number of miles associated with the Tolling Point where the vehicle is detected (and rounded to the nearest \$0.01).

5.3 **Toll Rate**

(a) The "**Toll Rate**" associated with any Tolling Point for any vehicle using the Priced Managed Lanes is the product of (i) the Base Toll Rate associated with such Tolling Point multiplied by (ii) the applicable Classification Multiplier for such vehicle, subject to any adjustments to the Base Toll Rate applicable to any vehicle based on the following:

(i) If there is any change in the toll rate displayed on a Toll Rate Sign between the time that any vehicle entering the Priced Managed Lanes is able to observe a Toll

⁴ **NTD:** The identity of the major exits to be displayed on each Toll Rate Sign will be agreed between the Section Developer and MDOT. A table/diagram identifying and describing these major exits will be added to the final agreement prior to execution

Rate Sign and the time that it passes through the first Tolling Point of its trip, there shall be a grace period sufficient to allow the User of a vehicle entering the Priced Managed Lanes immediately prior to such Tolling Point time to (A) observe the Toll Rate Sign, (B) make a decision about whether or not to accept the displayed toll rate, and (C) take action to avoid entering the Priced Managed Lanes or proceed to the relevant Tolling Point (the "**Grace Period**") during which the Base Toll Rate applicable to any vehicle entering the Priced Managed Lanes immediately prior to such Tolling Point will be the lower of (X) the Base Toll Rate used to calculate the toll rate displayed immediately before the toll rate currently displayed and (Y) the Base Toll Rate used to calculate the toll rate currently displayed. The Section Developer will be responsible for ensuring the Grace Period is sufficient to deliver this outcome for all vehicles.

- (ii) If a vehicle is shown one or more toll rates on any Toll Rate Sign(s) during any trip, then the Base Toll Rate applicable to that vehicle for any Tolling Point will be the lower of (i) the Base Toll Rate used to calculate the toll rate displayed on the Toll Rate Sign and (ii) the Base Toll Rate currently applicable to such Tolling Point (the "**Displayed Effective Rate Commitment**"). The Displayed Effective Rate Commitment is determined with reference to the Grace Period.
- (b) The Base Toll Rate associated with each Tolling Point is determined as set out in Section 5.4 below. Classification Multipliers are set out in Section 5.5 below.

5.4 Base Toll Rate

- (a) The "**Base Toll Rate**" associated with any Tolling Point is the per mile Transponder toll rate set by the Section Developer for a Class 2 vehicle subject to the caps set out below. The Section Developer may change the Base Toll Rate associated with any Tolling Point not more frequently than once every [5] minutes.
- (b) *[Once MDTA has set the toll rate range following completion of the toll rate setting process in accordance with applicable law then this language shall be included here in the full version of the TSA:]* MDTA has established a toll rate range with respect to the dynamic pricing mileage rate and a soft cap applicable to the Section in accordance with Section 11.07.05 of COMAR and Transportation Article, §4-312, Annotated Code of Maryland, as further set out below.
- (c) *[Once MDTA sets the toll rate range following completion of the toll rate setting process in accordance with applicable law then details shall be included here in the full version of the TSA:]* MDTA has established the following toll rate range for each vehicle classification [which shall be subject to escalation in accordance with paragraph [(g)] below]⁵:

Vehicle Class	The minimum toll rate per mile transponder toll rate (the " Toll Rate Range Minimum ")	The maximum toll rate per mile transponder toll rate (the " Toll Rate Range Maximum ")
Class 2	<i>[Table to be populated based on rates set by MDTA in accordance with applicable law prior to execution of the TSA]</i>	
Class 3A		
Class 3B		

⁵ **NTD**: To be included only if MDTA sets escalation.

Class 4A	
Class 4B	
Class 5	
Class 6	
Class 8	

- (d) The Section Developer shall in no event set the applicable toll rate for a vehicle higher than the Toll Rate Range Maximum applicable to that vehicle's classification or lower than the Toll Rate Range Minimum applicable to that vehicle's classification. The Section Developer shall in no event set the Base Toll Rate for a Class 2 vehicle higher than the Toll Rate Range Maximum for a Class 2 vehicle or lower than the Toll Rate Range Minimum for a Class 2 vehicle.⁶
- (e) ⁷ [If MDTA sets soft caps following completion of the toll rate setting process in accordance with applicable law then details shall be included here in the full version of the TSA] [MDTA has established the soft cap per mile transponder toll rate (the "**Toll Rate Soft Cap**"), [which shall be to subject to indexation in accordance with paragraph [(g)] below]⁸].

Vehicle Class	Toll Rate Soft Cap
Class 2	<i>[Table to be populated based on rates set by MDTA in accordance with applicable law prior to execution of the TSA]</i>
Class 3A	
Class 3B	
Class 4A	
Class 4B	
Class 5	
Class 6	
Class 8	

The toll rate applicable to any vehicle may only exceed the soft cap applicable to that Class of vehicle in the circumstances set out in Section 5.4(f) below. The Section Developer must set the Base Toll Rate for each Tolling Point at or below the Toll Rate Soft Cap applicable to Class 2 vehicles when the Operational Metrics are being met within the Priced Managed Lanes associated with such Tolling Point. If the Operational Metrics are not being met within any part of the Priced Managed Lanes associated with any Tolling Point, the Section Developer may set the Base Toll Rate for the applicable Tolling Point(s) exceeding the Toll Rate Soft Cap (but at all times not to exceed the Toll Rate Range Maximum applicable to Class 2 vehicles).

⁶ **NTD** The "Base Toll Rate" is used in the calculations set out above and is the Class 2 vehicle rate, which is then converted to the Toll Rate applicable to a vehicle based on the classification multiplier set out in Section 5.5. However, for completeness, the table set out above includes all classifications for additional detail.

⁷ **NTD**: To be included only if MDTA set a soft cap.

⁸ **NTD**: To be included only if MDTA sets escalation.

- (f) ⁹[Subject to the requirement that Section Developer may not change the Base Toll Rate more frequently than once every five minutes], the Base Toll Rate applicable to any Tolling Point may exceed the Toll Rate Soft Cap only if the Section Developer complies with the following provisions (the "**Operational Metrics**"):

(i) *[to be determine by MDTA]*

- (g) *[If MDTA approves escalation of the Toll Rate Range Minimum, the Toll Rate Range Maximum or the Toll Rate Soft Cap then details shall be included here].*

5.5 **Classification Multipliers**

The table below sets forth the Classification Multiplier that shall apply to each vehicle class.

Vehicle Class	Classification Multiplier
Class 2	1
Class 3A	1.5
Class 3B	2
Class 4A	2.5
Class 4B	3
Class 5	6
Class 6	7.5
Class 8	0

5.6 **HOVs and Exempt Vehicles**

Notwithstanding any other provision of this Appendix 2:

- (a) The Toll Rate applicable to all Exempt Vehicles shall be zero dollars (\$0) per mile.
- (b) If the Priced Managed Lanes are operating as High Occupancy Toll (HOT) lanes, the Toll Rate applicable to HOVs shall be zero dollars (\$0) per mile.
- (c) If the Priced Managed Lanes are not operating as High Occupancy Toll (HOT) lanes then mass transit and over the road buses shall be categorized as Exempt Vehicles.

⁹ **NTD:** To be included only if MDTA set a soft cap.

Attachment A

Exempt Vehicles and HOV

"**Exempt Vehicles**" are those vehicle classes listed below:

- (a) emergency responder vehicles in response mode;
- (b) State and federal law enforcement vehicles in pursuit/call-response mode;
- (c) Maryland National Guard vehicles;
- (d) Maryland National Guard member's personal vehicles when traveling on official orders; and
- (e) other vehicle classes to be granted Exempt Vehicle non-revenue status at any Section Developer's discretion; however, such other vehicle classes shall be Exempt Vehicles only when traveling on the Priced Managed Lanes within such Section Developer's section of the P3 Program.

"**HOV**" are those high occupancy vehicles list below:

- (a) Class 8 motorcycles;
- (b) mass transit and over the road buses¹⁰; and
- (c) any Class 2, Class 3A, Class 3B, Class 4A, Class 4B, Class 6 vehicle (except Mass Transit and Over the Road Buses) that is operating with a minimum number of three live human occupants and where the operator has followed the required procedure to declare high occupancy mode status. The procedure for designating as an HOV must be agreed between MDOT and the Section Developer and (i) shall not be more onerous on the User than customary in the US toll road industry and (ii) shall be updated from time to time as technology and industry practice changes.

¹⁰ **NTD**: If the Priced Managed Lanes are not operating as High Occupancy Toll (HOT) lanes then mass transit and over the road buses shall be categorized as Exempt Vehicles.

Attachment B

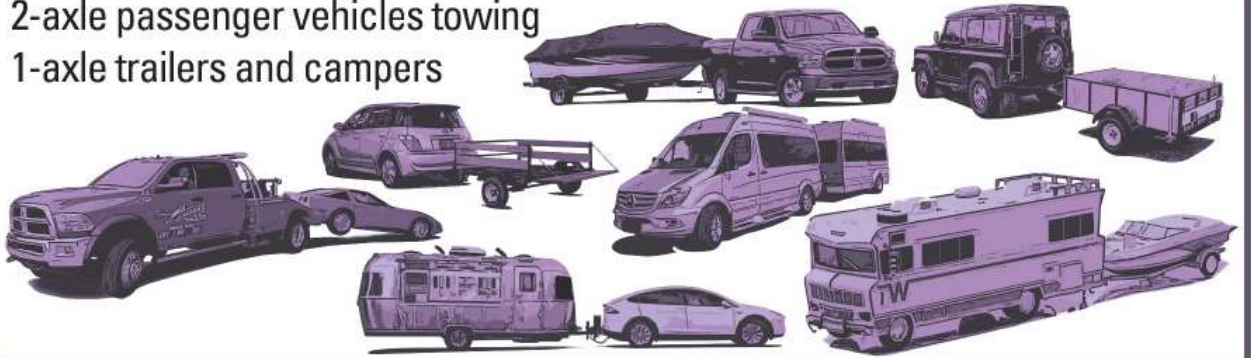
Graphic Vehicle Classifications

- (a) Below are graphical depictions of vehicle classifications: 2-Axle; 3A-Axle Light; 3B-Axle Heavy; 4A-Axle Light; 4B-Axle Heavy; 5-Axle; 6+ Axle; and Motorcycles and other small vehicles. The classification of Exempt Vehicles, [HOVs] or other designated vehicles exempted tolling shall supersede the images shown in these classification tables.



3A-AXLE LIGHT

2-axle passenger vehicles towing
1-axle trailers and campers



3B-AXLE HEAVY

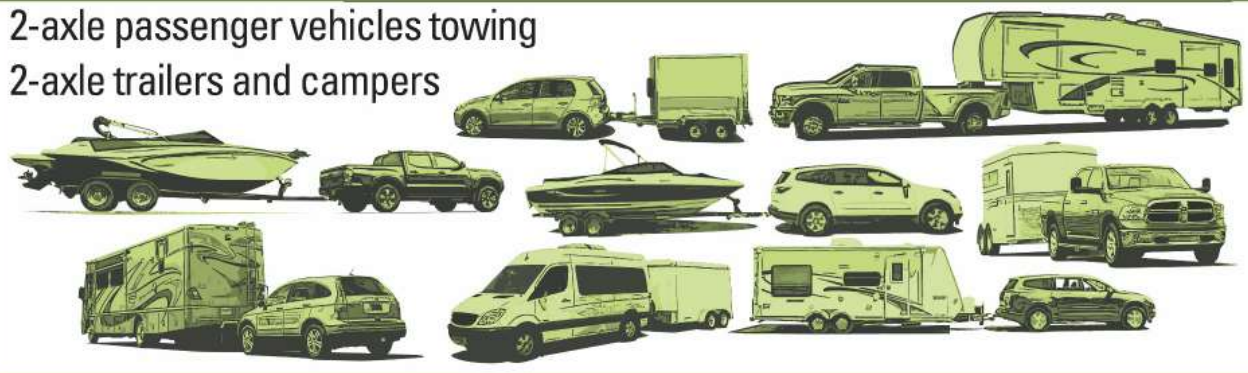
All 3-axle vehicles not included in 3A



- (b) Note: 3B-Axle Heavy buses depicted above are defined as HOV and the multiplier for bus transactions is as detailed in Section 5.6 of this Appendix 2.

4A-AXLE LIGHT

2-axle passenger vehicles towing
2-axle trailers and campers



4B-AXLE HEAVY

All 4-axle vehicles not included in 4A



5-AXLE (No change)

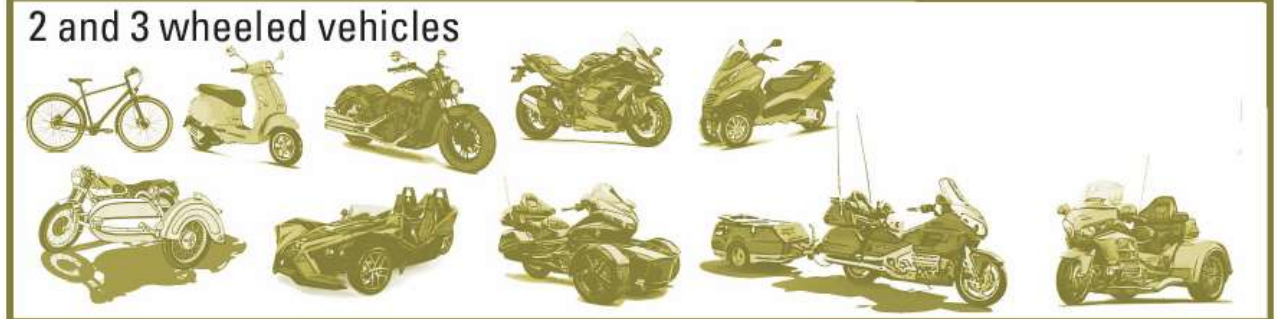


6+ AXLE (No change)



MOTORCYCLES & SMALL VEHICLES

2 and 3 wheeled vehicles



Appendix 3

Valid Trip Requirements

Prior to commencement of tolling on any part of the Section and from time to time during the Term, MDTA and the Section Developer shall agree all required information and data that must be included in any Trip submitted to MDTA, together with the format of such data, in order for such Trip to be deemed to be a Valid Trip. Any Trips submitted to MDTA which do not comply with these requirements may be rejected by MDTA. This Appendix 3 sets out the minimum requirements for a Valid Trip, which shall be developed and supplemented as described above.

A Trip will not be a Valid Trip if submitted to MDTA more than 30 days after the date of the Trip.

1. All Trips shall:
 - (a) contain all Toll Transactions for such trip, each complying with the requirements set out below;
 - (b) contain a unique sequential number associated with the Trip;
 - (c) identify the vehicle classification (and not include any conflicting classifications in different Toll Transactions submitted with such Trip);
 - (d) not relate to an Exempt Vehicle or HOV;
 - (e) identify the entry and exit date and time for each Trip;
 - (f) include the Effective Rate upon entry of the Trip;
 - (g) identify the amount of the Trip Toll for such Trip;
 - (h) identify the Section Developer that should be paid with respect to any Trip, and in the event that any Trip traverses more than one section of a phase, identify (i) the amount of the Trip Toll attributable to Toll Transactions in each section and the section developer that should be paid with respect to each part of the Trip Toll and (ii) the amount of the Transaction Fee for such Trip allocated to each section developer (in each case in accordance with the ICD); and
 - (i) contain an image of the vehicle at the exit point (last Tolling Point) of the Trip along with an image of the vehicle's region of interest conforming to the quality defined in the Predevelopment Work Requirements. Note that MDTA is required to use an image from the last Tolling Point (front or rear) in the Trip, unless such image is corrupted in which case the process set forth in Section 25.6.1.3 of the Predevelopment Work Requirements shall be followed.

2. All Toll Transactions included as part of a Trip shall:
 - (a) contain a unique sequential number associated with the Toll Transaction;
 - (b) contain a transaction date and time in a format consistent with the ICD and the Predevelopment Work Requirements;
 - (c) identify the Tolling Point and the number of miles of Priced Managed Lane applicable to such Tolling Point;
 - (d) contain a valid vehicle classification;
 - (e) not relate to an Exempt Vehicle or HOV;
 - (f) contain the valid Effective Rate for such Tolling Point applicable to that vehicle classification;
 - (g) contain a front and rear image of the vehicle conforming to the quality defined in the Predevelopment Work Requirements;^{11 12}
 - (h) contain an image of the region of interest conforming to the quality defined in the Predevelopment Work Requirements; and

¹¹ **NTD:** A trip may be accepted by MDTA if the Section Developer does not have an image for all gantries/Tolling Points. When this situation occurs under MDTA's current system they include the missing gantry if the dwell time between the gantries captured are within certain parameters.

¹² **NTD:** If MDTA receive a valid Transponder read without an image, they would typically process the Trip as valid. However, this must not become a frequent occurrence and if the customer contests the Trip, MDTA would clawback the payment to the Section Developer.

- (i) contain the license plate number, state or jurisdiction, and license plate type.¹³
3. All Toll Transactions that are Transponder Transactions shall:¹⁴
- (a) contain all required transponder data, including the transponder protocol (TDM, 6b, 6c); and
 - (b) if multiple Active Transponders are present in a vehicle: (i) identify an active Maryland transponder (if present), or (ii) if no active Maryland transponder is present, select an active IAG transponder, or (iii) if neither is present, select any other Active Transponder. MDTA may elect to change this requirement to require that the Section Developer sends information regarding all Active Transponders as part of the Trip for selection by MDTA, and such change shall not entitle the Section Developer to a claim for the cost of implementing or complying with such change.

¹³ **NTD:** If OCR cannot read the license plate then the Section Developer is required to manually review the image before submitting the trip to MDTA. If, following submission to MDTA, MDOT MVA flags a license plate as unregistered then MDTA shall review the image and correct when possible. If not possible to correct due to image quality then MDTA will reject the Trip and deduct from monies owed to Section Developer, if previously paid. Such Trip will not be eligible for resubmission.

¹⁴ **NTD:** MDTA may accept a Trip which does not have an Active Transponder read for all Tolling Points if the affected Toll Transactions contain the necessary front and rear image of the vehicle conforming to the quality defined in the Predevelopment Work Requirements, including the license plate number, state or jurisdiction, and license plate type. However, this must not become a consistent issue.

Appendix 4

MDTA's Right to Stop Accepting and Processing Trips

1. Unacceptable Customer Service Events

- 1.1 The Section Developer shall proactively ensure that Trip data submitted to MDTA meets or exceeds performance standards as well as actively and honestly communicate to MDTA any issues that occur (or may occur) with Trip data. The parties acknowledge and agree that whenever possible MDTA shall learn of issues with respect to Trip data from the Section Developer and not from Users or the general public. If the Section Developer experiences quality issues with respect to Trip data, it shall communicate such issues to MDTA immediately (notwithstanding that the Section Developer may not be aware of the cause or resolution of such issue). The Section Developer shall keep MDTA informed as to the status of the issue as it works to identify the cause of and correct the issue. MDTA may relax the requirements of Noncompliance Event ID#15.3 (Trip Processing) in Table 25-6 (Operating Period Performance) of the Predevelopment Work Requirements for Trips that are affected by issues that are promptly reported to MDTA in accordance with this Section 1.1.
- 1.2 Subject to the subsequent provisions of this Article 1, if any of the events set out in the table below (each an "**Unacceptable Customer Service Event**") occurs and is continuing, MDTA may (i) refuse to continue processing any category of Trips affected by such event and (ii) deem that such Trips are not Valid Trips. If MDTA exercises its rights pursuant to this Section 1.2, it shall promptly notify the Section Developer and provide details of the Unacceptable Customer Service Event.

	Unacceptable Customer Service Event	Reinitiation Conditions
(a)	Greater than 2% of Trips submitted to MDTA within any period of time (within any relevant category of Trips based on a sample referred to in Section 1.4 below) which are being processed based on Image-Based Transactions are reported to MDTA with inaccuracies with respect to any license plate attributes (characters, State, plate type, etc.), and such inaccuracies may lead to any person being charged the incorrect toll.	The root cause of the Unacceptable Customer Service Event has been determined and at least 99.50% of Trips within the relevant category of Trips that was subject to the Unacceptable Customer Service Event are accurate with respect to all license plate attributes in accordance with MDOT MVA rules.
(b)	Greater than 2% of Trips submitted to MDTA within any period of time (within any relevant category of Trips based on a sample referred to in Section 1.4 below) are reported to MDTA with the incorrect vehicle classification.	Option 1: The Section Developer may modify all Trips to post as class 2 to avoid any overcharges until the Reinitiation Conditions set out below at Option 2 are achieved. Trips submitted to MDTA under this option may not be resubmitted with a different vehicle classification following resolution of the issue. Option 2: The root cause of the Unacceptable Customer Service Event has been determined and, with respect to Trips within the relevant category of Trips that was subject to the Unacceptable Customer Service Event, at least 99.80% of 2-axle vehicles shall

		be classified correctly and at least 98.00% of 3+ axle vehicles shall be classified correctly.
	Greater than 2% of Trips submitted to MDTA within any period of time (within any relevant category of Trips based on a sample referred to in Section 1.4 below) are reported to MDTA with inaccurate Effective Rate data, and such inaccuracies may lead to any person being charged the incorrect toll.	The root cause of the Unacceptable Customer Service Event has been determined and all Trips within the relevant category of Trips that was subject to the Unacceptable Customer Service Event are accurate with respect to Toll Rate data at least 99.50% of the time.
	Greater than 2% of Trips submitted to MDTA within any period of time (within any relevant category of Trips based on a sample referred to in Section 1.4 below) are reported to MDTA with the incorrect image associated with any Toll Transaction forming part of that Trip, and such inaccuracies may lead to any person being charged the incorrect toll.	The root cause of the Unacceptable Customer Service Event has been determined and all Trips within the relevant category of Trips that was subject to the Unacceptable Customer Service Event are associating the correct image with each Toll Transaction forming part of the Trip.
	Greater than 2% of trips made by HOVs (that are correctly declaring) within the relevant Section are incorrectly submitted to MDTA within any period of time (within any relevant category of Trips based on a sample referred to in Section 1.4 below), and such errors may lead to any person being charged the incorrect toll.	The root cause of the Unacceptable Customer Service Event has been determined and at least 99.95% of trips made by HOVs (that are correctly declaring) within the relevant category of Trips that was subject to the Unacceptable Customer Service Event are not being submitted to MDTA.
(d)	Greater than 2% of Trips submitted to MDTA within any period of time (within any relevant category of Trips based on a sample referred to in Section 1.4 below) either: (i) contain inaccurate or missing data or (ii) are duplicate of any other Trip submitted to MDTA or should have been submitted as part of the same Trip (i.e. split trip), and such inaccuracies may lead to any person being charged the incorrect toll.	The root cause of the Unacceptable Customer Service Event has been determined and all Trips within the relevant category of Trips that was subject to the Unacceptable Customer Service Event are accurate and do not contain duplicate or split trips at least 99.50% pf the time.

1.3 MDTA shall only exercise its right to refuse to continue processing Trips pursuant to Section 1.2 above with respect to any category or categories of Trips that MDTA reasonably determines to be affected by the Unacceptable Customer Service Event following determination by MDTA in accordance with Section 1.4 that the relevant Unacceptable Customer Service Event has occurred (provided that, if MDTA believes, in its sole discretion, that an Unacceptable Customer Service Event has occurred and is ongoing it may immediately cease to continue to process Trips in accordance with this Article 1 for a period of not more than [48] hours while it performs a Transaction Audit of the relevant Trips in accordance with Section 1.4 (and shall promptly notify the Section Developer of such action and the outcome of the relevant Transaction Audits). If MDTA exercises its right to cease processing Trips while it performs a Transaction Audit of the relevant Trips to determine whether or not an Unacceptable Customer Service Event is continuing, and the Transaction Audit(s) do not demonstrate that an Unacceptable Customer Service Event is ongoing then MDTA shall promptly process the relevant Valid Trips and such

Valid Trips shall be deemed to be received by MDTA at the time that MDTA makes the determination that it shall recommence processing.

- 1.4 Unless promptly communicated by the Section Developer in accordance with Section 1.1, MDTA may obtain knowledge of the occurrence of an Unacceptable Customer Service Event only following receipt of customer complaints or refund requests. MDTA may at any time audit a sample of not less than 100 Trips selected by MDTA from one or more categories of Trip (a "**Transaction Audit**") and may determine the occurrence of an Unacceptable Customer Service Event with respect to such category of Trips based on the outcome of such Transaction Audit. Transaction Audits shall be performed with respect to any time period determined by MDTA. MDTA shall promptly notify the Section Developer of the outcome of any Transaction Audit that demonstrates that an Unacceptable Customer Service Event has occurred, and the Section Developer shall cease submitting the affected category of Trips to MDTA for processing until the issue has been resolved.
- 1.5 If (i) an Unacceptable Customer Service Event has ceased and (ii) the Reinitiation Conditions (set out in the table at Section 1.2 above) have been achieved for a continuous period of not less than [48] hours (or such shorter time as MDTA may agree), MDTA shall recommence processing of all categories of Trips affected by such Unacceptable Customer Service Event. MDTA shall perform one or more Transaction Audits to determine whether the Reinitiation Conditions have been met.
- 1.6 The Section Developer shall at all times during the occurrence of an Unacceptable Customer Service Event (i) take diligent steps to remedy or mitigate such event and (ii) provide MDTA with regular updates with respect to the issue. If the Section Developer believes that the Reinitiation Conditions have been met, then it may request that MDTA perform a Transaction Audit.
- 1.7 Once the Reinitiation Conditions have been achieved and MDTA has recommenced processing the category of Trips affected by any Unacceptable Customer Service Event, the Section Developer may resubmit to MDTA corrected Trips that had not been previously processed by MDTA, provided that no Trip may be resubmitted more than 45 days after the date of the relevant Trip (or such longer period as MDTA may agree in writing). Such resubmitted transactions shall be deemed to be Valid Trips submitted on the resubmittal date provided that the other requirements for a Valid Trip have been met. If any Trip is not capable of being corrected, then it may not be resubmitted to MDTA.
- 1.8 For the purpose of this Article 1, the "category of Trip" to which an Unacceptable Customer Service Event may apply shall be interpreted broadly and may include Trips relating only to specific vehicle classifications; Trips that are processed based on Image-Based Transactions; Trips that are processed based on Transponder Transactions; or Trips that include Toll Transactions from one or more Tolling Point, gantry, reader, or are associated with any specific part of the ETCS or any other feature of a Trip.

Exhibit 3 – MDTA Notes Term Sheet

[To be attached]

EXHIBIT 3

MDTA NOTES TERM SHEET¹

This non-binding term sheet sets forth the material terms and conditions that are expected to be included in the MDTA Master Trust Agreement ("**MDTA Master Trust Agreement**") and the Supplement Trust Agreement for the first section ("**Section 1**") of Phase 1 (the "**Section 1 Supplemental Trust Agreement**") for the I-495 and I-270 P3 Program (the "**P3 Program**"). Each subsequent Section of Phase 1 is expected to have its own supplemental trust agreement on the same terms as the Section 1 Supplemental Trust Agreement. All terms not defined in this term sheet shall have the meanings given them in the Section P3 Agreement Term Sheet.

Part A – MDTA Master Trust Agreement		
1.	Parties	The Parties to the MDTA Master Trust Agreement will be: (a) The Maryland Transportation Authority, an agency of the State of Maryland (" MDTA "); and (b) The Bank of New York Mellon (the " Trustee ").
2.	Trustee	The Trustee shall be appointed on behalf of the Noteholders (as defined in Section 3) and Section Developers. The Trustee's appointment shall be subject to standard provisions relating to duties, limitations, and indemnities. The Trustee shall also be appointed as trustee for the Section 1 Supplemental Trust Agreement and any future supplemental trust agreement supplementing the MDTA Master Trust Agreement (each a " Supplemental Trust Agreement ").
3.	Noteholders	The Section 1 Noteholder and the holder of any notes issued pursuant to any Supplemental Trust Agreement (the " Noteholders "). Substantially the same form of supplemental trust agreement shall be entered into with the Noteholders and Section Developers for each Section of Phase 1 and of any subsequent sections of future phases of the P3 Program.
4.	Upfront Payment Account	The Trustee shall create an upfront payment account (the " Upfront Payment Account "). Any development rights fees paid by any Phase Developer under any Phase P3 Agreement or any Upfront Payment paid by any Section Developer under any Section P3 Agreement, with respect to any phase or section of the P3 Program shall be credited to the Upfront Payment Account. MDTA shall (upon direction from MDOT) direct the Trustee to make payments from the Upfront Payment Account. The amount on deposit in the Upfront Payment Account shall not be available to satisfy claims of the Noteholders or the Section Developers. The funds may be used (i) to pay costs of the P3 Program, including (A) a subsidy payment for other sections, (B) any claims under the Section P3 Agreement, (C) MDOT costs associated with the P3 Program, and (D) funding the Operating Reserve Account; (ii) following substantial completion of all sections of the last phase of the P3 Program, to pay costs of the Traffic Relief Plan (including costs associated with the construction of the Baltimore-Washington Parkway); and (iii) following substantial completion of all elements of the

¹ NTD: This term sheet shall be attached as Exhibit 3 to the Section P3 Agreement Term Sheet.

		Traffic Relief Plan, as MDOT may elect (subject to any applicable law).
5.	P3 Program Notes are Limited Recourse Obligations	Neither the State nor any political subdivision of the State, MDOT, nor MDTA shall be obligated to pay any of the notes issued under any Supplemental Trust Agreement (the " P3 Program Notes ") or the interest thereon except as provided for in the MDTA Master Trust Agreement or the Supplemental Trust Agreements, and neither the faith and credit nor the taxing power of the State, any political subdivision of the State, MDOT, or MDTA is pledged to the payment of the P3 Program Notes or the interest thereon. The issuance of the P3 Program Notes shall not directly or indirectly or contingently obligate the State or any political subdivision of the State to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. MDTA has no taxing powers.
6.	P3 Program Account	<p>MDTA shall maintain an account for the purpose of collection of all toll revenue relating to the P3 Program (the "P3 Program Account"). The P3 Program Account is not a trust account and is not held by the Trustee.</p> <p>MDTA shall credit all toll revenues received with respect to the P3 Program (including the Section 1 Toll Revenues (as defined in Section 13)) into the P3 Program Account at a frequency consistent with MDTA's typical funds payment operations.</p> <p>On the 18th day of each month (or if such day is not a business day, on the preceding business day), MDTA shall apply funds in the P3 Program Account as follows:</p> <p><i>First:</i> in payment of MDTA's back office and collection costs and expenses incurred in relation to the P3 Program during the preceding month;</p> <p><i>Second:</i> all principal and interest that shall be due and payable under the P3 Program Notes on the next payment date to the relevant Section's P3 Program Notes debt service payment account under (and as defined in) the applicable Supplemental Trust Agreement; and</p> <p><i>Third:</i> all remaining toll revenues received with respect to the P3 Program relating to trips that occurred during (or prior to) the preceding month <i>excluding</i> any P3 Program ETC Away Collections (less any amounts transferred pursuant to <i>First</i> and <i>Second</i> above), to the Operating Reserve Account.</p> <p>On the last day of each month (or if such day is not a business day, on the preceding business day), MDTA shall transfer from the P3 Program Account to the Operating Reserve Account an amount equal to all P3 Program ETC Away Collections relating to trips that occurred during (or prior to) the preceding month.</p> <p>"P3 Program ETC Away Collections" shall mean the toll revenues received by MDTA with respect to the P3 Program relating to any transponder transactions associated with</p>

		Transponders that are issued by an interoperable toll account provider or an <i>E-ZPass</i> ® member other than MDTA.
7.	Operating Reserve Account	<p>The Trustee shall create an operating reserve account (the "Operating Reserve Account") and shall segregate the funds and investment earnings thereon from the funds and investment earnings for all other accounts.</p> <p>MDTA shall make payments into the Operating Reserve Account in accordance with Section 6 (P3 Program Account) above. MDTA shall direct the Trustee to make payments of amounts held in the Operating Reserve Account accordance with the MDTA Master Trust Agreement, the Section 1 Supplemental Trust Agreement and any other supplemental agreement, or as otherwise directed by MDOT.</p>
8.	Rate Covenant Shortfall	<p>MDTA shall, on an annual basis (on the anniversary of Substantial Completion of the first section of Phase 1), determine the Rate Covenant Shortfall (as defined below) for each of the next 12 months.</p> <p>If there is projected to be a Rate Covenant Shortfall in any of the next 12 months, MDTA shall promptly, in consultation with MDOT, determine if there are any administrative or operational changes that can be made by MDTA to eliminate the Rate Covenant Shortfall within 12 months.</p> <p>Following such determination MDTA shall either:</p> <p>(a) if it is determined by MDTA that there are administrative or operational changes that will eliminate the Rate Covenant Shortfall as described above, then MDTA shall promptly implement such changes so that, within 12 months of the determination that a Rate Covenant Shortfall exists, the Rate Covenant Shortfall for each of the subsequent 12 months is eliminated; or</p> <p>(b) if it is determined by MDTA that there are not administrative or operational changes that will eliminate the Rate Covenant Shortfall as described above, then MDTA staff shall, within three months of determination that a Rate Covenant Shortfall exists (or such longer period as may be necessary to comply with any applicable law) and in consultation with MDOT Secretary and Chief Financial Officer, present to the MDTA Board for consideration a toll proposal to commence the toll rate setting process as set forth in §4-312 of the Enabling Legislation. The toll proposal shall include changes necessary, to fix, revise, charge, and collect the tolls in the P3 Program (such action may include, without limitation, increasing tolls, changing regulations including revising any relevant citation fees, the multiplier applicable to non-transponder transactions and any associated fees/penalties applicable to non-transponder transactions, or making changes to fees and charges associated with non-payment or late payment of any toll or tolling violations) so that, within 12 months of the commencement of actions in accordance with this paragraph (b), the Rate Covenant Shortfall for each of the subsequent</p>

	<p>12 months is eliminated. MDTA shall promptly implement any changes approved by the MDTA Board.</p> <p>Nothing in this Section 8 shall require MDTA to (i) take any action which is not in accordance with applicable law, rule, and regulation; or (ii) take any action that would constitute a Compensation Event (as defined in the applicable P3 Program Section P3 Agreement) or could lead to the Section Developer having a claim under the applicable P3 Program Section P3 Agreement.</p> <p>"Rate Covenant Shortfall" means, for any month:</p> <p>(i) all amounts projected to be payable from the Operating Reserve Account to all Section Developers of all sections of all phases of the P3 Program during such month and all principal and interest that shall be due and payable to all Noteholders under any notes issued pursuant to each supplemental trust agreement as calculated by MDTA; <i>minus</i></p> <p>(ii) projected toll revenues collected across all sections of all phases of the P3 Program during such month (including all payments of tolls received via E-ZPass or other transponder transaction, all payments of tolls received via any means other than transponder transactions, all video toll premiums, account service charges, late fees, penalties, or other amounts arising out of or relating to the payment of tolls by users of all sections of all phases of the P3 Program) less MDTA's projected costs and expenses payable from the P3 Program Account with respect to such month,</p> <p>provided that only sections that have been in operation for at least 24 months following substantial completion of such sections shall be included in such calculation; provided further, if the Rate Covenant Shortfall for any month is less than zero it shall be deemed to be zero for such month. Projections for (i) and (ii) above shall use the current best estimate of toll revenues and prior twelve-month historical observations for establishing assumptions of the distribution of payment method, vehicle classification and in-state vs. out-of-state vehicles. Reasonable adjustments shall be made to these assumptions to account for changes in collections.</p>
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Part B – Section 1 Supplemental Trust Agreement		
9.	Parties	<p>The Parties to the Section 1 Supplemental Trust Agreement will be:</p> <ul style="list-style-type: none"> (a) The Maryland Transportation Authority, an agency of the State of Maryland ("MDTA"); (b) The Bank of New York Mellon (the "Trustee"); and (c) [●] as section noteholder (the "Section 1 Noteholder") and as section developer (the "Section 1 Developer") who shall be the Section Developer under the Section P3 Agreement for Section 1.
10.	Purchase of Section 1 Notes	At financial close for Section 1, MDTA will issue and sell to the Section 1 Noteholder and the Section 1 Noteholder will purchase from MDTA, the Section 1 Notes in the principal amount specified in the Section 1 Supplemental Trust Agreement. The proceeds shall be deposited by MDTA into the Section 1 Note Proceeds Account (as defined below).
11.	Terms of Section 1 Notes	<p>[●] notes in the amount of \$[●]² will be issued by MDTA on financial close of Section 1 at a fixed interest rate (the "Section 1 Notes"). MDTA may issue the Section 1 Notes at a premium.</p> <p>Term: The term of the notes shall be 40 years from the date of financial close of the Section P3 Agreement for Section 1. MDTA will have the option to redeem the Section 1 Notes commencing 10 years from the date of the Section P3 Agreement for Section 1.</p> <p>Interest rate: Fixed rate of [●]% per annum. Interest shall accrue from the date falling 3 months after the Substantial Completion Date for Section 1 and shall be payable monthly on the Section 1 Toll Payment Date (defined below). The yields on the Section 1 Notes are expected to be reflective of 30-year US Treasury yields at the time of issuance.</p> <p>Amortization: Principal on the Section 1 Notes shall be repaid monthly on each Section 1 Toll Payment Date such that total monthly debt service (principal plus interest) equals \$[●] commencing on the date falling [6/7] years from the date of [Section P3 Agreement]/[financial close] for Section 1.</p> <p>Interest on the Section 1 Notes is expected to be taxable to the extent provided under applicable federal and State law.</p>
12.	Early Prepayment	Section 1 Notes shall only be subject to early prepayment (i) as referenced in Section 11 above ³ and (ii) upon termination of the Section P3 Agreement for Section 1.

² **NTD:** The total principal amount of the MDTA Notes for Phase 1 South is not expected to exceed \$100 million.

³ **NTD:** See Section 56 of the Section P3 Agreement Term Sheet which sets out MDTA's right to redeem the Section 1 Notes and the consequences of any decision not to refinance.

<p>13.</p>	<p>Pledge of Section 1 Toll Revenues</p>	<p>MDTA shall pledge to the Trustee in order to secure the payment of the principal, interest, and all other amounts due by MDTA under the Section 1 Notes and the Section 1 Supplemental Trust Agreement, for the benefit of the Section 1 Noteholder and Section 1 Developer, a security interest in all of the right, title, and interest of MDTA in and to the Section 1 Toll Revenues (the "Section 1 Trust Estate").</p> <p>"Section 1 Toll Revenues" means all revenues collected from Users of Priced Managed Lanes in Section 1 with respect to the Priced Managed Lanes in Section 1, including all payments of tolls received via <i>E-ZPass</i>® or other types of Transponders, all payments of tolls received via any means other than Transponders, all video toll premiums, account service charges, late fees, penalties, or other amounts arising out of or relating to the payment of tolls by Users of the Priced Managed Lanes in Section 1.</p> <p>"Transponders" has the meaning set out in the Tolling Services Agreement Term Sheet.</p> <p>"User(s)" has the meaning set out in the Tolling Services Agreement Term Sheet.</p>
<p>14.</p>	<p>Section 1 Notes are Limited Recourse Obligations</p>	<p>Neither the State nor any political subdivision of the State, MDOT, nor MDTA shall be obligated to pay the Section 1 Notes or the interest thereon except as provided for in the MDTA Master Trust Agreement or the Section 1 Supplemental Trust Agreement, and neither the faith and credit nor the taxing power of the State, any political subdivision of the State, MDOT, or MDTA is pledged to the payment of the P3 Program Notes or the interest thereon. The issuance of the P3 Program Notes shall not directly or indirectly or contingently obligate the State or any political subdivision of the State to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. MDTA has no taxing powers.</p>
<p>15.</p>	<p>Establishment of Section 1 Note Proceeds Account</p>	<p>The Trustee shall create a Section 1 note proceeds account (the "Section 1 Note Proceeds Account") and shall segregate the funds and investment earnings thereon from the funds and investment earnings for all other reserve subaccounts. The amount on deposit in the Section 1 Note Proceeds Account shall be held by the Trustee only for the benefit of MDTA, and shall not be available to satisfy claims of Noteholders or the Section Developer.</p> <p>The Section 1 Note Proceeds Account shall be funded with the proceeds from the sale of the Section 1 Notes upon financial close for Section 1, net of issuance expenses. MDTA shall (upon direction from MDOT) direct the Trustee to make payments from the Section 1 Note Proceeds Account from time to time during the term of the Section 1 Supplemental Trust Agreement to pay (i) upfront Trustee fees and Trustee fees incurred in relation to Section 1 prior to Substantial Completion of Section 1; (ii) <i>[use of funds to pay eligible project costs related to Section 1 to be determined during the Predevelopment</i></p>

		<p>Work for Section 1]; and (iii) any other costs as determined by MDTA.</p>
16.	Section 1 Debt Service Payment Account	<p>The Trustee shall create a Section 1 Debt Service Payment Account (the "Section 1 Debt Service Payment Account") and shall segregate the funds and investment earnings thereon from the funds and investment earnings for all other accounts.</p> <p>MDTA shall make payments into the Section 1 Debt Service Payment Account in accordance with Section 6 (P3 Program Account) above. Amounts held in the Section 1 Debt Service Payment Account shall be applied in payment of principal and interest due under the Section 1 Notes in accordance with Section 17 below.</p>
17.	Payments to the Noteholder and Section 1 Developer	<p>On each Section 1 Toll Payment Date (defined below), MDTA shall direct the Trustee to make the following payments:</p> <ul style="list-style-type: none"> a) Payment from the Operating Reserve Account of an amount equal to all fees and other amounts due to the Trustee in connection with the Section 1 Supplemental Trust Agreement, the Master Trust Agreement and all other supplemental trust agreement. b) Payment from the Section 1 Debt Service Payment Account to the Section 1 Noteholder of the amount of principal and interest due to the Section 1 Noteholder on such date, provided that the amount of such payment obligation shall be capped at the amount available in the Section 1 Debt Service Payment Account (the "Section 1 Notes P&I Payment"). In the event that there are insufficient funds in the Section 1 Debt Service Payment Account to pay the scheduled Section 1 Notes P&I Payment on any Section 1 Toll Payment Date, the unpaid amount of the scheduled Section 1 Notes P&I Payment shall be due on the next Section 1 Toll Payment Date that sufficient funds are available. c) Payment from the Operating Reserve Account, to the Section 1 Developer the Section 1 Developer Toll Payment (defined below). <p>The payments due under clause (b) and (c) above are absolute payment obligations of MDTA payable from the Section 1 Trust Estate and due to the Section 1 Noteholder and Section 1 Developer, as applicable, on each Section 1 Toll Payment Date. MDTA will satisfy such payment obligations by directing the Trustee to make such payments from the Section 1 Debt Service Payment Account or the Operating Reserve Account (as applicable). Non-payment of principal and interest on the Section 1 Notes will be a MDOT Default under the Section P3 Agreement (subject to a customary cure period), unless such non-payment is caused by a shortfall in funds in the Section 1 Debt Service Payment</p>

		<p>Account. Non-payment of the Section 1 Developer Toll Payment will be a MDOT Default under the Section P3 Agreement (subject to a customary cure period), and an insufficiency of funds in the Operating Reserve Account shall not excuse MDTA from the performance of such payment obligation.</p> <p>"Section 1 Developer Toll Payment" means, on any Section 1 Toll Payment Date, an amount equal to:</p> <ol style="list-style-type: none"> 1) the aggregate of all Trip Tolls (as defined and calculated in accordance with the Tolling Services Agreement Term Sheet) with respect to each Valid Trip submitted to MDTA during the previous calendar month⁴; <i>less</i> 2) the Transaction Fee (as defined in the Tolling Services Agreement Term Sheet) charged by MDTA for each Trip submitted to MDTA in accordance with the Tolling Services Agreement Term Sheet; <i>less</i> 3) the scheduled Section 1 Notes P&I Payment due on such date; <i>less</i> 4) any amounts that MDTA is permitted to claw-back under Section 34 (Clawback) of the Tolling Services Agreement Term Sheet, provided that if the Section Developer Toll Payment for any month is less than zero it shall be deemed to be zero for such month. <p>The Section 1 Noteholder will have no right to receive video surcharges, account fees, fines, penalties, or other amounts from Users of Section 1.</p> <p>"Section 1 Toll Payment Date" means the 20th day of each month, commencing from the first full calendar month to occur after tolling commencement for Section 1.</p> <p>"Valid Trip" is defined in the Tolling Services Agreement Term Sheet.</p>
<p>18.</p>	<p>Section 1 Noteholder Representations & Warranties</p>	<p>The Section 1 Noteholder makes the following representations upon which MDTA and the Trustee may rely:</p> <ol style="list-style-type: none"> (a) it is (i) a "qualified institutional buyer" as that term is defined in Rule 144A under the Securities Act of 1933, as amended (the "Securities Act") or (ii) an "accredited investor" within the meaning of Rule 501(a) (<i>Accredited investor</i>) of Regulation D (<i>Rules Governing the Limited Offer and Sale of Securities without Registration under the Securities Act of 1933</i>) ("Regulation D")⁵;

⁴ NTD: The Trip Toll is calculated based on the transponder rates and does not vary if a Trip is processed as a non-transponder transaction or otherwise subject to surcharges or any citations. "Trip Tolls" is not the same as "Section 1 Toll Revenue."

⁵ NTD: As a condition precedent to close under the Section P3 Agreement for Section 1 (or as a CP under the Section 1 Supplemental Trust Agreement), the Section 1 Developer shall have provided MDTA with all evidence that MDTA requires in order to verify that the Developer is an "qualified institutional buyer" or "accredited investor" (as defined above).

		<p>(b) it is purchasing the Section 1 Notes for its own account and not with a view to the distribution thereof;</p> <p>(c) in connection with any permitted transfer of any Section 1 Notes, it will not engage in any form of general solicitation or general advertising within the meaning of Rule 502(c) under the Securities Act with respect to such transfer of Section 1 Notes;</p> <p>(d) it understands and acknowledges that (i) the Section 1 Notes have not been registered under the Securities Act or any other applicable securities law and that the Section 1 Notes are being offered for sale in transactions not requiring registration under the Securities Act pursuant to Section 4(a)(2) thereof, (ii) in addition to any other restrictions on the resale of the Section 1 Notes, the Section 1 Notes may be resold only if an exemption from registration is available, except under circumstances where such an exemption is not required by law, and (iii) MDTA is not required to register the Section 1 Notes;</p> <p>(e) it acknowledges that it has either been supplied with or been given access to information, including a term sheet outlining material information, which it has requested from the issuer and to which a reasonable investor would attach significance in making investment decisions, and the Section 1 Noteholder has had the opportunity to ask questions and receive answers from knowledgeable individuals, including its own counsel, concerning the issuer and the Section 1 Notes and the security therefor so that, as a reasonable investor, the Section 1 Noteholder has been able to make a decision to purchase the Section 1 Notes. The Section 1 Noteholder has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of its prospective investment in the Section 1 Notes; and</p> <p>(f) it shall not transfer, or permit the transfer of, directly or indirectly, any equity interest in the Section 1 Noteholder if such transfer would cause the Section 1 Noteholder to cease to be a "qualified institutional buyer" (as defined above) or an accredited investor (as defined above). Not less than 20 business days prior to any proposed transfer of any direct or indirect equity interest in the Section 1 Noteholder, the Section 1 Noteholder shall deliver to MDTA (i) notice of the proposed transfer and (ii) all evidence that MDTA requires to demonstrate that following such proposed transfer, the Section 1 Noteholder shall continue to be a "qualified institutional buyer" (as defined above) or an accredited investor (as defined above).</p>
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<p>19.</p>	<p>MDTA Representations & Warranties</p>	<p>MDTA represents and covenants that:</p> <ul style="list-style-type: none"> (a) it is duly authorized under the Constitution and laws of the State to issue the Section 1 Notes, to enter into the MDTA Master Trust Agreement and Section 1 Supplemental Trust Agreement, and to pledge the Section 1 Trust Estate in the manner and to the extent set forth in the Section 1 Supplemental Trust Agreement; (b) all action on its part for the issuance of the Section 1 Notes has been duly and effectively taken; (c) the Section 1 Notes when issued in accordance with the Section 1 Supplemental Trust Agreement will be valid and binding limited obligations of MDTA; and⁶ (d) as of its date and the date hereof, the information contained in the Disclosure Documentation is complete, true and accurate, and such information does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.⁷
<p>20.</p>	<p>MDTA Covenants</p>	<p>MDTA covenants that it shall:</p> <ul style="list-style-type: none"> a. pay or cause to be paid the principal of and interest on every Section 1 Note on the date (and no earlier date) and at the place and in the manner provided for in the Section 1 Supplemental Trust Agreement, provided that (i) the Section 1 Notes shall be limited obligations of MDTA payable solely from the Section 1 Trust Estate and (ii) payment of the principal of and interest on the Section 1 Notes shall only fall due to the extent that sufficient funds are available in the Section 1 Debt Service Payment Account are sufficient; b. not create or incur any indebtedness (including the issuance of any additional notes under the Section 1 Supplemental Trust Agreement) payable from any portion of the Section 1 Trust Estate; c. take all reasonable measures permitted by law to enforce payment to it of the Section 1 Toll Revenues due and payable; d. permit any filing necessary to evidence the grant to the Trustee of the interest in the Section 1 Trust Estate; and

⁶ NTD: MDTA's bond counsel shall issue a typical opinion as a condition precedent to closing confirming that (1) the Section 1 Notes have been duly authorized and issued and (2) the Section 1 Notes are valid and legally binding obligations of MDTA.

⁷ NTD: As a condition precedent to funding, MDTA will provide disclosure documentation as required by applicable law (the "**Disclosure Documentation**").

		<p>e. except as permitted by the Section 1 Supplemental Trust Agreement, not sell, lease, pledge, assign, or otherwise dispose of its interest in the Section 1 Trust Estate.</p>
21.	Acceleration of the Section 1 Notes	<p>There shall be no events of default under the Section 1 Notes and the Section 1 Notes shall not be accelerated or subject to early prepayment except following the termination of the Section P3 Agreement or as referenced in Section 11.</p> <p>Upon any termination of the Section P3 Agreement, the Section 1 Noteholder will be paid the par value of the outstanding Section 1 Notes (plus, if applicable, any unamortized premium) and the outstanding MDTA Notes will be redeemed, assigned, or transferred to another party or assumed by MDOT, at MDOT's sole direction. As a condition precedent to payment of the par value of the outstanding Section 1 Notes (plus, if applicable, any unamortized premium), the Section 1 Noteholder must take all reasonable steps requested by MDOT or MDTA to effect such redemption, assignment, transfer, or assumption.</p> <p>Following any termination of the Section P3 Agreement MDTA may elect (in coordination with MDOT) to issue new notes under a new Section 1 supplemental trust agreement to repay the Section 1 Notes and the Section 1 Trust Estate may be pledged to secure such new notes.</p> <p>The Section 1 Noteholder's, and Section 1 Developer's recourse and that of its Lenders for non-payment under the Section 1 Supplemental Trust Agreement shall be through the terms of the Section P3 Agreement and neither the Trustee, nor the Section 1 Noteholder, Section 1 Developer, or their Lenders shall take any action against MDTA or claim any amount in any MDTA account for any non-payment, or to enforce a security interest over the Section 1 Trust Estate.</p>
22.	Registration	<p>The Section 1 Notes shall be negotiable instruments for all purposes and shall be transferable by delivery, subject only to (i) the restrictions set out in Section 23 (<i>Transferability Restrictions</i>) and (ii) the provisions for registration and registration of transfer endorsed on the Section 1 Notes, which requirements shall not include registration with the Securities and Exchange Commission. The Trustee shall act as register for the Section 1 Notes and shall keep registration of transfers of the Section 1 Notes.</p>
23.	Transferability Restrictions	<p>Except to the extent expressly permitted pursuant to this Section 23, (i) the Section 1 Noteholder shall not assign or transfer any of the Section 1 Notes or its right to repayment of principal or interest under the Section 1 Notes to any other Person and (ii) the Section Developer shall not assign or transfer its rights and obligations under this Supplemental Trust Agreement to any other Person.</p>

		<p>The Section 1 Noteholder may grant a security interest in the Section 1 Noteholder's rights under the Section 1 Notes to its lenders (provided such lenders are "qualified institutional buyers" (as defined above)). The Section 1 Developer may pledge its rights to receive the Section Developer Toll Payment to its lenders.</p> <p>In the event that the Section 1 Developer transfers its rights and obligations under the Section P3 Agreement to another party (pursuant to a foreclosure or as otherwise permitted under the Section P3 Agreement):</p> <p>(A) the Section 1 Noteholder shall simultaneously transfer its rights and obligations under the Section 1 Notes to the substitute party, <i>provided that</i> any transfer of the Section 1 Notes permitted pursuant to this paragraph shall only be permitted if (a) the transferee is a qualified institutional buyer (as defined above) or an accredited investor (as defined above) and (b) not less than 20 business days prior to the proposed transfer, the Section 1 Noteholder has delivered to MDTA (i) notice specifically identifying the proposed transferee and (ii) all evidence that MDTA requires to demonstrate that such proposed transferee is an accredited investor under Rule 501(a) of Regulation D; and</p> <p>(B) the Section Developer shall simultaneously transfer all of its rights and obligations under this Supplemental Trust Agreement to the substitute party.</p>
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