

STRICTLY CONFIDENTIAL - LEGAL PRIVILEGE

**EETS Provider Agreement**

Concerning the delivery of services under the Danish Kilometer Tolling Scheme

Between            Sund & Bælt Holding A/S  
                         CVR no. 15 69 46 88  
                         Vester Søgade 10  
                         DK-1601 Copenhagen V  
                         Denmark  
                         (the "**Toll Charger**")

and                 [insert name of the EETS Provider]  
                         [insert company registration no. of the EETS Provider]  
                         [insert adress of the EETS Provider]  
                         (the "**EETS Provider**")

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This EETS Provider Agreement (the "**Agreement**") is entered into on the date of the last signature below between:

- (A) Sund & Bælt Holding A/S, a limited liability company incorporated under the laws of Denmark (registered under CVR no. 15 69 46 88 with the Danish Business Authority and with its registered address at Vester Søgade 10, 1601 Copenhagen V, Denmark (the "**Toll Charger**"); and
- (B) [insert name of the EETS Provider], a limited liability company incorporated under the laws of [insert country] (registered under registration no. [insert number] with [insert relevant companies house]) and with its registered address at [insert address] (the "**EETS Provider**")

The Toll Charger and the EETS Provider hereinafter collectively referred to as the "**Parties**" and separately as a "**Party**".

NOW IT IS HEREBY AGREED AS FOLLOWS:

## 1 BACKGROUND

- 1.1 The Parties have agreed to enter into this Agreement regarding the delivery of services (the "**Services**") under the terms and conditions set out below and in compliance with the legislation described in Clause 1.2.
- 1.2 The Applicable Legislation is comprised of:
  - a) Law on kilometer-based toll ("Lov om vejafgift nr. 763 af 13/06/2023") (the "**KmToll Law**"),
  - b) Directive 2019/520/EC of the European Parliament and of the Council of 19 March 2019 on the interoperability of electronic road toll systems and facilitating cross-border exchange of information on the failure to pay road fees in the Union as well as any decisions and delegated acts adopted in accordance with this directive, including  
  
Commission Delegated Regulation (EU) 2020/203 of 28 November 2019 on classification of vehicles, obligations of European Electronic Toll Service users, requirements for interoperability constituents and minimum eligibility criteria for notified bodies, and  
  
Commission Implementing Regulation (EU) 2020/204 of 28 November 2019 on detailed obligations of European Electronic Toll Service providers, minimum content of the European Electronic Toll Service domain statement, electronic interfaces, requirements for interoperability constituents and repealing Decision 2009/750/EC;  
  
(the "**Applicable EETS Legislation**"),
  - c) Directive (EU) 2022/362 of the European Parliament and of the Council of 24 February 2022 amending Directives 1999/62/EC, 1999/37/EC, and (EU) 2019/520, as regards the charging of vehicles for the use of certain infrastructures (the "**Eurovignette Directive**")

The KmToll Law, the Applicable EETS Legislation, and the Eurovignette Directive are collectively referred to as the ("**Applicable Legislation**").
- 1.3 The terms and conditions in this Agreement are valid from the time when signature of the Agreement has been obtained by both Parties (the "**Effective Date**") and will apply indefinitely until one or both Parties decide, for whatever legally justified reason, to terminate the Agreement.
- 1.4 The provision of the Services by the EETS Provider shall commence on the delivery date according to the time schedule of the accreditation procedure described in Annex C (Accreditation Procedure) (the "**Delivery Date**").

**2 DEFINITIONS**

Capitalised terms shall have the meaning set out in (i) Clause 2 and (ii) Applicable Legislation. In case of any conflict between the definitions in (i) Clause 2 of this Agreement and (ii) Applicable Legislation, the definitions in Clause 2 of this Agreement prevail.

**"Agreement"** means this Agreement including Annexes.

**"Annex"** means the annexes to EETS Provider Agreement, or annexes to the EETS Domain Statement, cf. Clause 3.8.

**"Applicable EETS Legislation"** shall have the meaning set out in Clause 1.2.

**"Applicable Legislation"** shall have the meaning set out in Clause 1.2.

**"Billing Details"** shall have the meaning set out in Clause 3.4.

**"Black List"** means the list of invalidated OBE shared between the EETS Provider and the Toll Charger.

**"Business Day"** means Monday through Friday, except for public holidays, i.e., 24, 25, 26 December (Christmas); 31 December and 1 January (New Year); Maundy Thursday, Good Friday, Easter Monday; Ascension Day and Whit Monday (Pentecost); and 5 June (Constitution Day).

**"Clause"** means any clause to this Agreement or Annexes.

**"Conciliation Body"** shall have the meaning defined in the Directive (EU) 2019/520 of 19 March 2019 Chapter III; the Danish Road Directorate ("Vejdirektoratet") has been appointed as Danish Conciliation Body and is thus the relevant Conciliation Body under this Agreement.

**"Confidential Information"** means a Party's commercial and operational information and knowhow, and any other information not generally known or reasonably ascertainable.

**"Delivery Date"** shall have the meaning set out in Clause 1.4.

**"European Electronic Toll Service (EETS)"** means the toll service provided under a contract on one or more EETS domains by an EETS Provider to an EETS User.

**"EETS Domain"** means a road, road network, a structure, such as a bridge or a tunnel, or a ferry, where tolls are collected using an electronic road toll system. The Danish EETS Domain of kilometer-based toll for trucks, can be referred to as **"KmToll Domain"**.

**"EETS Provider"** means an entity which under a contractual agreement grants access to EETS to an EETS User, transfers toll to the relevant Toll Charger, and which is registered by its Member State of establishment; the EETS Provider in this Agreement is **"[insert name of the EETS Provider]"**

**"EETS User"** means the physical or legal person (road user) who has entered into an agreement with the EETS Provider to access EETS in a specific Toll Domain.

**"Effective Date"** shall have the meaning set out in Clause 13.1.1.

**"Eurovignette Directive"** shall have the meaning set out in Clause 1.2.

**"Force Majeure Event"** shall have the meaning set out in Clause 16.5.1.

**"GDPR"** shall have the meaning set out in Clause 12.2.1.

**"Kilometer Tolling Scheme"** means the overall solution that Sund & Bælt Holding A/S is appointed to provide, implement, and operate on behalf of the Danish Ministry of Taxation, under the Law of kilometer-based toll ("Lov om vejafgift nr. 763 af 13/06/2023"), cf. Clause 1.2. The Kilometer Tolling Scheme is also referred to as the **"KmToll Scheme"** in this Agreement.

**"KmToll Law"** shall have the meaning set out in Clause 1.2.

**"OBE"** shall have the meaning set out in Clause 3.5.

**"Payment Claim"** means the periodical request sent from Toll Charger to the EETS Provider stating the amount due based on accepted Billing Details. Payment Claim is only used in Toll Domains where the Billing Details transaction type has been implemented (TC Dominant Toll Domain) set out according to EN 16986:2023, sec. 7.9.

**"Party"** means either the EETS Provider or the Toll Charger, and **"Parties"** means the EETS Provider and the Toll Charger collectively.

**"Section Autonomous Profile"** (with Toll Charger dominance) means a specific charging solution, called a Profile, within the EN 16986:2023 standard, for which charging is based on detection of vehicles making use of toll liable road sections. Vehicles report their locations autonomously, and the Toll Charger calculates the liable toll.

**"Services"** means the EETS Services as set out in Clause 1.1.

**"Toll"** means a tax levied in relation with circulation of a vehicle in the KmToll Domain, cf. the Law on kilometer-based toll ("Lov om vejafgift nr. 763 af 13/06/2023").

**"Toll Charger"** means Sund & Bælt Holding A/S, CVR no. 15 69 46 88, Vester Søgade 10, DK-1601 Copenhagen, Denmark. The Toll Charger can also be referred to as Sund & Bælt, S&B or similar.

**"Toll Declaration"** shall have the meaning set out in Clause 3.4.

**"Toll Ticket"** shall have the meaning set out in Clause 4.1.

**"White List"** means the list of valid OBE shared between the EETS Provider and the Toll Charger.

### 3 INTRODUCTION AND SCOPE OF THIS AGREEMENT

- 3.1 The purpose of this Agreement is to set out the contractual framework for the delivery of Services under the Danish Kilometer Tolling Scheme (the **"KmToll Scheme"**) by the EETS Provider.
- 3.2 The tolled road network falling under the KmToll Scheme will comprise the roads in the geographical area of Denmark as further detailed and shown in Annex A (Tolled Road Network) (the **"EETS Domain"**).
- 3.3 The nature of the toll that needs to be collected and charged (the **"Toll"**) and also the vehicles subject to such Toll under this Agreement are further described in the EETS Domain Statement.
- 3.4 The technical solution of the KmToll Scheme consists of a Global Navigation Satellite System (GNSS)-based tolling system with a Section Autonomous Profile with Toll Charger dominance. The Toll Charger is responsible for calculation of the Toll including tariffing based on received GPS positions sent by the EETS Provider (the **"Toll Declaration"**). The Toll Charger will return the detailed information to be used for invoicing of the EETS User to the EETS Provider (the **"Billing Details"**). Detailed specifications of the technical solution are found in Annex E (Technical Conditions).
- 3.5 The EETS Provider issues and/or manages approved on-board-equipment under Applicable EETS Legislation (the **"OBE"**). The Toll Charger undertakes to accept the OBE issued and/or managed by the EETS Provider if the OBE fulfills the requirements set out in this Agreement. The OBE shall be used by the road user (**"EETS User"**) as a means of identification when accessing the Toll Domain.
- 3.6 The EETS Provider shall be fully responsible and liable for the agreements with the EETS User as further set out in this Agreement. Thus, the EETS Provider shall, without prejudice to the exceptions

set forth to the contrary in Clause 4.3, be liable for all Toll incurred by use of the EETS Provider's OBE in the KmToll Domain towards the Toll Charger as further set out in Clause 15.

- 3.7 The EETS Provider shall be solely responsible and liable for managing the relationship with the EETS User and for providing the EETS User with information regarding the Services within the limits set out in Clause 4.2.

### 3.8 **Annexes applicable for this Agreement**

- 3.8.1 Annexes applicable for this Agreement shall at all times apply to the EETS Provider under this Agreement. These Annexes contain: i) Annexes to the Agreement, ii) the EETS Domain Statement, and ii) Annexes to the EETS Domain Statement.

#### **Annexes to the Agreement**

- 3.8.2 Annexes 1-2 under the Agreement contain documents that apply to all EETS Providers but have to be adjusted specifically to each EETS Provider.

- 3.8.3 Depending on the EETS Provider's credit rating, cf. Clause 10.1, the following documents may apply:

- (i) Annex 1A (Guarantee) containing a template for a on demand guarantee, or
- (ii) Annex 1B (Deposit) containing a template for a deposit.

- 3.8.4 Annex 2 (Preconditions) contains a table overview of the preconditions to be fulfilled by the EETS Provider, in order for the Toll Charger to conclude the Agreement with the EETS Provider. The EETS Provider shall comply with the requirements related to preconditions as described in Annex C (Accreditation Procedure) and provide evidence to this effect in Annex 2 (Preconditions).

#### **The EETS Domain Statement**

- 3.8.5 The EETS Domain Statement is the document setting out the general conditions for any EETS Provider for accessing the KmToll Domain. The content of the EETS Domain Statement contains as a minimum the listed elements of Annex II of the Commission Implementing Regulation (EU) 2020/204 of 28 November 2019.

#### **Annexes to the EETS Domain Statement**

- 3.8.6 Annexes A-Z contain documents which apply to all EETS Providers without any EETS Provider-specific adjustments. Annexes A-Z are part of the EETS Domain Statement, cf. Clause 6, and contain technical, commercial and procedural conditions that shall be fulfilled by both the EETS Provider and the Toll Charger.

- 3.8.7 Annex Z (Overview of Annexes to the EETS Domain Statement) contains a table overview of Annexes A-Z which are a part of the EETS Domain Statement.

- 3.8.8 The Toll Charger undertakes to inform the EETS Provider with sufficient notice of any changes and/or updates to the EETS Domain Statement and/or the Annexes under the EETS Domain Statement. In addition, the EETS Provider is obliged to keeping itself informed of any change and/or updates.

### 3.9 **Supremacy of Documents**

- 3.9.1 In case of conflict between the terms of this Agreement and any other documents referred to in this Agreement, these are to be interpreted in the following order of priority:

- (i) The Agreement;
- (ii) Annexes 1-2 to the Agreement;

- (iii) EETS Domain Statement including Annexes A-Z;
- (iv) Other documents referred to in the Agreement; and
- (v) Other agreements between the Parties.

## **4 THE PARTIES' RESPONSIBILITIES**

### **4.1 The Toll Charger's responsibilities**

The Toll Charger shall:

- (i) accept a correct transferred Toll Declaration, cf. Annex F (Interface specifications), forwarded by the EETS Provider.
- (ii) calculate the driven distance and apply correct tariffing, cf. Annex B (Tariff tables), which constitute the Toll in order to return Billing Details to the EETS Provider.
- (iii) accept the approved OBE issued or managed by the EETS Provider in order to allow the EETS User to travel in the KmToll Domain;
- (iv) ensure to receive and activate the transmitted Black Lists and White Lists in accordance with the procedure described in Annex E (Technical Conditions);
- (v) ensure that the EETS User with an OBE are able to circulate safely and with a minimum of delay in the event of a malfunction in the KmToll Domain, and without being suspected of failing to pay Toll;
- (vi) establish an effective enforcement procedure in the KmToll Domain, which shall be under the Toll Charger's exclusive control and liability. The Toll Charger shall carry all risks associated with the effective application of the enforcement procedure within the KmToll Domain;
- (vii) implement all security measures defined for the Toll Charger in Annex E (Technical Conditions) and Annex F (Interface Specifications) to achieve secure operational and functional systems;
- (viii) provide and maintain a website describing the Services and the KmToll Domain. This includes at least the type of collection system, the tariffs, the description of traffic signs, and the fallback solution by means of a route-based toll ticket (the "**Toll Ticket**"). The website must as a minimum be available in English in addition to the local language of the Toll Charger; and
- (ix) remunerate the EETS Provider in accordance with Clause 10.4.

### **4.2 The EETS Providers responsibilities**

The EETS Provider shall:

- (i) provide the EETS User with an OBE duly approved as being compliant with the Applicable Legislation, the EETS Domain Statement including Annexes and this Agreement including Annexes. The EETS Provider shall instruct the EETS User to install the OBE in the EETS User's vehicle in accordance with the requirements demanded by the manufacturer of the OBE or other requirements applicable to the OBE;
- (ii) ensure that the Toll Charger is able to easily and unambiguously detect whether a vehicle circulating within the KmToll Domain requiring the use of an OBE and allegedly using EETS is actually equipped with a validated and properly functioning EETS OBE that provides correct information, cf. Annex E (Technical Conditions);
- (iii) handle the initialisation of the OBE, if applicable, supplied to the EETS User, and provide the EETS User with all necessary information on OBE functionality as well as guarantee the functionality and maintenance services of the OBE and all related technical support in favour of the EETS User;

- (iv) instruct the EETS User that the OBE must be active at all times when circulating in the geographical area of Denmark;
- (v) provide all relevant information to the EETS User, including information on specific EETS User requirements regarding the use of the Services and obligations under the Applicable Legislation;
- (vi) continuously provide Toll Declaration, cf. Annex F (Interface Specifications), to the Toll Charger when the EETS User is circulating with the OBE in the vehicle within the KmToll Domain. The EETS Provider shall be held responsible for the correctness of the information provided to or by the OBE;
- (vii) be responsible for managing information of the EETS User and their OBE, including managing the Black List and White List within the KmToll Domain in strict compliance with the procedure as further set out in Annex E (Technical Conditions);
- (viii) receive Billing Details from the Toll Charger and invoice the EETS User according to this Agreement, Annex I (Service Conditions) and the KmToll Law;
- (ix) pay the Toll Charger according to the Payment Claim. The EETS Provider shall guarantee the payment for all Toll due to the Toll Charger;
- (x) provide all necessary proof documents and other relevant information to verify the provided data of the OBE upon written request by the Toll Charger;
- (xi) upon written request provide the Toll Charger with all information necessary for the Toll Charger to (a) verify the Toll, and (b) verify the personalisation, if applicable, of the OBE and/or written information received via the White List;
- (xii) within two (2) Business Days from the Toll Charger's request, provide any relevant information to the Toll Charger regarding toll transactions performed in the KmToll Domain, including EETS User information, provided that such information is necessary for the Toll Charger to comply with its obligations towards authorities, cf. the KmToll Law. For all other information requested by the Toll Charger the EETS Provider must provide the information within ten (10) Business Days, unless another notice is specified in the Agreement or the EETS Domain Statement;
- (xiii) implement all security measures and maintain the safety and security procedures set out in Annex E (Technical Conditions); and
- (xiv) provide and maintain a website describing the Services and the EETS Provider's contracting policy with EETS User.

#### **4.3 Transfer of risk**

4.3.1 The EETS Provider is carrying all risk associated with the collection of the Toll for its EETS Users, except for the following cases where the Toll Charger is carrying the risk for non-payment:

- (i) a claim for improper charge of Toll has been submitted to the Toll Charger by the EETS Provider, and the EETS Provider is able to prove that no circulation has taken place; or
- (ii) that the accuracy of the charged amount is incorrect; or
- (iii) that circulation with the use of an OBE has taken place at a time when the OBE appeared on the Black List in compliance with the procedures in Annex E (Technical Conditions).

4.3.2 In cases of improper and/or incorrect charges, cf. 4.3.1 the Parties shall loyally cooperate in order to make the necessary corrections.

4.3.3 Unless otherwise agreed, the Parties shall bear their own costs associated with claims from the EETS User as further set out in the claim handling procedure in Annex I (Service Conditions).



## **5 COLLABORATION BETWEEN THE PARTIES**

- 5.1 The requirements pertaining to the collaboration between the Toll Charger and the EETS Provider during operation, including service conditions which the EETS Provider shall fulfill, are specified in Annex I (Service Conditions). Both Parties shall participate in the collaboration in a constructive and active manner.

## **6 TECHNICAL AND INTERFACE REQUIREMENTS**

- 6.1 The Toll Charger has defined the specific technical requirements to be fulfilled by the EETS Provider in order for the EETS Provider to deliver the Services to the EETS User in the KmToll Domain. These requirements are set out in Annex E (Technical Conditions).
- 6.2 During the delivery of the Services, data exchange between the Toll Charger and the EETS Provider will take place. The definition and the procedure of this data exchange are set out in Annex E (Technical Conditions) and Annex F (Interface Specifications).
- 6.3 The EETS Provider and the Toll Charger acknowledge and accept that the management of the data of the EETS User, and the collection, the exchange, and the electronic processing of such data obtained in the performance of this Agreement as set out in Annex E (Technical Conditions) and Annex F (Interface Specifications) shall be strictly limited to the management of the data necessary to comply with the Applicable Legislation, achieve the purposes of the Services, and allow the validity checking of the OBE when the EETS User circulates in the KmToll Domain. It is understood that under no circumstances shall such management violate any legislation, regulation, discipline, rule, and public measure both at European and national level relating to protection of personal data.

## **7 HANDLING OF THE EETS USER**

- 7.1 The EETS Provider and the Toll Charger recognise that EETS User contacts shall exclusively be channeled through the EETS Provider as the EETS Provider has an EETS User agreement with the EETS User.
- 7.2 The Parties agree that there is no time bar provision in excess of the governing law regarding any claim based on improper charge of Toll between the Toll Charger and the EETS Provider.
- 7.3 In order to secure the EETS User's rights as described in the KmToll Law, any complaint from the EETS User regarding the Toll shall be handled by the EETS Provider according to the claim handling procedure described in Annex I (Service Conditions).
- 7.4 The EETS Provider shall provide reasonable assistance to the Toll Charger as far as it is concerned in the handling of a lawsuit filed by an EETS User with the aim of finding a quick and fair resolution of the subject matter. In the event the Toll Charger refuses the claim, the Toll Charger shall bear all costs associated with the defense of the claim.

## **8 ENFORCEMENT PROCEDURE**

- 8.1 The Toll Charger shall be responsible for the enforcement of the collection of the Toll in accordance with the terms and conditions in this Agreement.
- 8.2 The Parties agree to mutually assist each other without undue delay with the exchange of information regarding the EETS User in order for the Toll Charger to handle the enforcement procedure in accordance with the terms and conditions in this Agreement, and, if relevant, including but not limited to the EETS Provider providing the Toll Charger with data concerning the vehicles and the owners or holders of vehicles suspected of a failure to pay Toll.

## 9 KPI AND SERVICE LEVELS

- 9.1 The Parties shall perform their responsibilities related to the delivery of the Services in accordance with the KPIs and service levels set out in Annex G (Key Performance Indicators) and Annex I (Service Conditions).
- 9.2 If the Services are changed, modified, or enhanced, the Parties will review the KPI and service level measurement procedures then in effect, and will in good faith determine whether such KPI and service level measurement procedures should be adjusted, and whether other KPI and service level measurement procedures should be implemented. Such possible adjustment of the KPI and service level measurement procedures shall be made in accordance with the procedure and methodology set out in Annex G (Key Performance Indicators) and Annex I (Service Conditions).
- 9.3 The Parties shall report on achievement of the quality systems and KPI measurement procedures in accordance with Annex G (Key Performance Indicators) and Annex I (Service Conditions).

## 10 ECONOMIC AND FINANCIAL CONDITIONS

### 10.1 Guarantee and deposit

- 10.1.1 Prior to entering into this Agreement, the Toll Charger will conduct a financial strength indicator of the EETS Provider with the rating agency Dun & Bradstreet. The EETS Provider's financial strength indicator may affect the payment terms for the EETS Provider, cf. Clause 10.2.1, and, furthermore, may entail a demand for the EETS Provider's provision of an unconditional and irrevocable guarantee or a deposit, as further described in the Clauses 10.1.2-10.1.6.
- 10.1.2 Prior to entering this Agreement or anytime during the Term of the Agreement, the Toll Charger is without prior consent of the EETS Provider entitled to request that the EETS Provider issues an unconditional and irrevocable guarantee or deposit to the Toll Charger if the EETS Provider has a Financial Strength Indicator with the rating agency Dun & Bradstreet (or similar rating) that is lower than 2A based on Net Worth/2AA based on paid up capital (or similar rating). The EETS Provider shall provide the unconditional and irrevocable guarantee or deposit according to Clause 10.1.3.
- 10.1.3 Issuance of an unconditional and irrevocable guarantee or payment of a deposit to the Toll Charger under this Agreement shall be completed by the EETS Provider according to the terms and conditions in Annex 1A (Guarantee) or Annex 1B (Deposit). The amount in the unconditional and irrevocable guarantee or deposit shall cover the average monthly toll transaction amount paid by the EETS Provider for the Toll Charger's EETS Domain. The amount shall be determined based on the total toll transaction amount paid by the EETS Provider for the Toll Charger's EETS Domain in the previous year. If the EETS Provider is new with the Toll Charger, the amount shall be based on the expected average monthly toll transactions payable by the EETS Provider for the Toll Charger's EETS Domain within the invoicing period based on the number of contracts and average toll per contract estimated in the EETS Provider's business plan for the specific EETS Domain.
- 10.1.4 The EETS Provider shall bear all costs in relation to issuance of an unconditional and irrevocable guarantee or payment of a deposit. The EETS Provider will not receive interest of the amount in the deposit.
- 10.1.5 If the EETS Provider has already provided the Toll Charger with an unconditional and irrevocable guarantee or deposit, but the Toll Charger notices an increase in the EETS Provider's turnover in the total toll transaction amounts in the Toll Charger's EETS Domain, the Toll Charger may demand an increase in the amount of the unconditional and irrevocable guarantee or deposit and a change in payment terms in accordance with Clause 10.2.
- 10.1.6 The EETS Provider's failure to issue an unconditional and irrevocable guarantee or deposit demanded by the Toll Charger under this Agreement (including any failure to fulfill a demand of an increase of the amount of the unconditional and irrevocable guarantee or deposit, cf. Clause 10.1.5)

within thirty (30) Business Days is considered to be a material breach of the EETS Provider's obligations under the Agreement as further set out in Clause 13.3.

## 10.2 Financial settlement and clearing

10.2.1 The amounts due to the Toll Charger will be invoiced as follows:

- (i) the amounts due to the Toll Charger will be invoiced on a calendar-monthly basis if at any time during the term of the Agreement the EETS Provider has a Financial Strength Indicator with the rating agency Dun & Bradstreet (or similar rating) that is similar to or higher than 2A based on Net Worth/2AA based on paid up capital (or similar rating). The EETS Provider shall pay the Toll Charger all amounts due, which have not been rejected by the EETS Provider, on the 15th Business Day of the calendar-month following the transmission of the transaction data pursuant to the conditions stated in Annex F (Interface Specifications) and Annex I (Service Conditions), or
- (ii) the amounts due to the Toll Charger will be invoiced on a weekly basis if at any time during the term of the Agreement the EETS Provider has a Financial Strength Indicator with the rating agency Dun & Bradstreet (or similar rating) that is lower than 2A based on Net Worth/2AA based on paid up capital (or similar rating). The EETS Provider shall pay the Toll Charger all amounts due, which have not been rejected by the EETS Provider, on the 7th Business Day of the following week of the transmission of the transaction data pursuant to the conditions stated in Annex F (Interface specifications) and Annex I (Service Conditions).

Furthermore, the EETS Provider shall issue an unconditional and irrevocable guarantee or deposit to the Toll Charger as further described in Clause 10.1.2.

10.2.2 If the EETS Provider fails to make any payment under this Agreement, the EETS Provider is obligated from the date on which the payment was due to pay the Toll Charger interest on the unpaid amount corresponding to the default interest in accordance with the Danish Interest on Overdue Payment Act ("Renteloven"). Such interest – which is calculated and based on the account statement from the Toll Charger - is payable without any further notice from the Toll Charger to the EETS Provider.

## 10.3 EETS User invoicing requirements

10.3.1 The EETS Provider's invoicing of the EETS User in the name and on behalf of the Toll Charger under this Agreement shall comply with the invoicing requirements described in the Applicable Legislation and Annex I (Service Conditions).

10.3.2 The EETS Provider shall clearly inform the EETS User that the payment of Toll by the EETS User to the EETS Provider shall be deemed to fulfill the EETS User's payment obligation to the Toll Charger.

10.3.3 The EETS Provider shall implement any changes to the invoicing requirements provided by the Toll Charger in line with the timing required by the Applicable Legislation and bear all associated costs in connection with the implementation.

10.3.4 Upon request the EETS Provider shall provide the Toll Charger with examples of the invoices generated for the Toll Charger for verification of correct implementation.

## 10.4 Remuneration

10.4.1 The remuneration to be paid by the Toll Charger to the EETS Provider for the Services rendered, and which are pursuant to the terms and conditions of this Agreement, are described in Annex D (Remuneration).

- 10.4.2 The Toll Charger may reduce the remuneration paid to the EETS Provider based on their fulfillment of KPI and/or service levels pursuant to the terms and conditions described in Annex D (Remuneration).

## **11 CHANGES**

- 11.1 Any changes and/or amendments to this Agreement or to the scope of the Services shall be made in writing unless otherwise set out below. An agreement to suspend or deviate from the obligation in this Clause must also be made in writing.

- 11.2 During the term of the Agreement, the Parties shall adapt their own systems at their own expense to comply with changes or modifications pursuant to the Agreement. Other changes, which are necessary in order to ensure a joint wish to improve the Services, are subject to an agreement between the Parties regarding the split of costs related hereto.

### **11.3 Changes by the Toll Charger**

- 11.3.1 At all times and without the prior consent of the EETS Provider, the Toll Charger is entitled to modify this Agreement upon three (3) months' written notice if such modification is deemed necessary by the Toll Charger in order to comply with Applicable Legislation, including decisions or delegated acts by the European Commission or implementing acts.

- 11.3.2 At all times and without the prior consent of the EETS Provider, the Toll Charger is entitled to change the set-up of the KmToll Scheme and thereby the requirements to the EETS Provider. The Toll Charger is obligated to inform the EETS Provider as early as possible of such change(s) and the implications for the EETS Provider, and the expected time frame for implementation of the change(s). Furthermore, the Toll Charger will present the EETS Provider with a reasonable time frame by which the EETS Provider shall have taken the necessary measures to comply with the changed requirements.

### **11.4 Changes by the EETS Provider**

- 11.4.1 The EETS Provider is obliged to inform the Toll Charger of changes which might have an impact on the Toll Charger's system and which are deemed necessary by the EETS Provider in order to comply with domestic legislation, security measures, etc. The EETS Provider must inform the Toll Charger as soon as possible from the time the EETS Provider becomes aware that the changes might impact the Toll Charger. The Toll Charger reserves the right to use up to six (6) months to implement the change, unless more time is needed or otherwise agreed between the Parties.

- 11.4.2 The EETS Provider may suggest changes, however, such changes shall be subject to an agreement between the Parties.

## **12 COMPLIANCE WITH REGULATORY REQUIREMENTS**

### **12.1 Compliance with regulatory requirements**

Each Party shall be responsible for compliance with regulatory requirements, including local data protection regulations as further set out in Clause 12.2 below and local invoicing regulations.

### **12.2 Data protection requirements**

- 12.2.1 Under this Agreement and for the purposes of Regulation (EU) 2016/679 of 27 April 2016 (the General Data Protection Regulation "**GDPR**") and any applicable national regulations implementing the GDPR, including Applicable Legislation, the Parties will be acting as data controllers of personal data to be collected and processed by said entities under this Agreement. The EETS Provider is the data controller of all personal data relating to its contractual relationship with the EETS User. The Toll Charger is the data controller of all personal data collected from such EETS User in connection with the EETS User's circulation in the KmToll Domain. For the purpose of enabling the Services and the provision of this Agreement, personal data needs to be exchanged between the Parties.

- 12.3 Based on the above, the Parties have agreed on the following data protection requirements.
- 12.3.1 The terms "personal data", "process/processing", "data controller", "data processor" and "technical and organisational measures" as used in this Clause (and otherwise in the Agreement) shall be understood in accordance with the GDPR as implemented by applicable national legislation.
- 12.3.2 As data controllers, the Parties (and its subcontractors) shall:
- (i) process personal data only in accordance with applicable data protection law;
  - (ii) ensure that personal data is kept confidential;
  - (iii) process the personal data only to the extent, and in such manner, necessary for the provision of the Agreement, Applicable Legislation, and the Services;
  - (iv) implement appropriate technical and organisational measures to protect the personal data against accidental or unlawful destruction or accidental loss, and to prevent any unlawful forms of processing, in particular any unauthorised disclosure, dissemination or access, or alteration of personal data;
  - (v) take satisfactory steps to ensure the reliability and trustworthiness of any of the personnel who have access to the personal data; and
  - (vi) ensure that all the personnel required to access the personal data are informed of the confidential nature of the personal data.
- 12.3.3 If any supervisory authority in any country having jurisdiction over this Agreement requests information from the EETS Provider and/or the Toll Charger regarding the processing and handling of personal data under this Agreement, the Parties shall inform one another of such requests, and cooperate and assist one another in producing the requested information.

## 13 TERM AND TERMINATION

### 13.1 Term of the Agreement

- 13.1.1 This Agreement enters into force when signed by both Parties (the "**Effective Date**") and shall remain in force until terminated by either Party in accordance with Clauses 13.2 and 13.3 below.

### 13.2 Termination for convenience

- 13.2.1 The Parties shall be entitled to terminate the Agreement for convenience to the end of a calendar month by giving a written notice to the other Party of at least eight (8) months. The Toll Charger may not terminate the Agreement for convenience without offering the EETS Provider the possibility to enter into a new agreement concerning delivery of Services in the EETS Domain in compliance with the Applicable EETS Legislation, though, this is subject to the EETS Provider fulfilling the requirements to be registered as an EETS Provider in accordance with the Applicable EETS Legislation.
- 13.2.2 Should there be any issues which have been impossible to settle at the time of termination, these shall be handled loyally by the terminating Party in accordance with the terms and conditions of this Agreement. This also applies to any unforeseeable unresolved issues and any foreseeable unresolved issues, such as the settlement of transactions made until the date of termination.

### 13.3 Termination for cause

- 13.3.1 If a Party is in material breach of any of its obligations under this Agreement, provided that such breach is not capable of being remedied, or if the breach is capable of being remedied, provided that the Party in breach has failed to remedy such error or omission within twenty (20) Business Days after having received written notice thereof stating the particulars of the breach, the other Party is entitled to terminate this Agreement with immediate effect by written notice to the Party in breach.

13.3.2 The EETS Provider and the Toll Charger agree that the following shall be considered material breach of the Parties' obligations under this Agreement:

- (i) the breach has affected the effectiveness, functionality, and reliability of the Services and/or its trustworthiness towards the EETS Provider, the EETS User, the Toll Charger, or any other third parties; or
- (ii) the breach has caused significant damages to the EETS Provider or the Toll Charger.

13.3.3 The termination of this Agreement shall not affect any further possible right to indemnification or any other remedy belonging to the EETS Provider or the Toll Charger towards the defaulting Party.

## 13.4 Effects of termination

13.4.1 Upon expiry of the Agreement, and no matter the reason for expiry, the following shall apply:

- (i) none of the Parties are granted any compensation for any taken investments;
- (ii) either Party has to observe all financial obligations of this Agreement until the termination becomes effective;
- (iii) either Party has to support the other Party for twelve (12) months after the termination with relevant information concerning its period of operation. For a Party ceasing its activities, this time period can be shorter depending on the actual date of liquidation;
- (iv) the EETS Provider loses all rights to further use any Toll Charger's intellectual property rights related to the Services. Any use after the date of termination is considered an infringement;
- (v) all other not previously defined financial, technical, and operational effects and consequences of such a termination of this Agreement have to be agreed upon and settled between the Parties;
- (vi) the EETS Provider shall provide written notice to the EETS User about the termination/expiry and its effective date no less than three (3) months prior to such effective date, or in case of termination for cause, without undue delay after the EETS Provider obtaining knowledge of the effective date of termination; and
- (vii) the EETS Provider shall support the EETS User with relevant information concerning the Services in a period of six (6) months after the effective date of termination.

## 14 LIMITATION OF LIABILITY

14.1 The Parties shall not be held liable for indirect or consequential damages such as (but not limited to) loss of production, revenue, or profit in connection with this Agreement.

14.2 Save for acts or omissions arising out of gross negligence or willful misconduct, the aggregated liability in any given calendar year of the Parties under the Agreement in respect of any and all claims made in such calendar year cannot exceed a total amount corresponding to the average monthly toll transaction amount paid in the last 12 calendar months by the EETS Provider for the Toll Charger's EETS domain.

14.3 If the EETS Provider has been in operation in the KmToll Domain for less than 12 consecutive calendar months, the average monthly toll transaction will be calculated based on an average of the number of calendar months the EETS Provider has been in operation.

## 15 REPRESENTATIONS AND WARRANTIES

### 15.1 The Toll Charger's representations and warranties

15.1.1 The Toll Charger represents and warrants that the execution of this Agreement and the fulfilment of the obligations provided herein do not infringe:

- (i) any domestic legislation, regulation, statutory discipline, and rule and/or any public authorisation or any other public measure entitling the Toll Charger to provide, implement, and operate the Danish Kilometer Tolling Scheme on behalf of the Danish Ministry of Taxation;
- (ii) the Toll Charger's articles of association (if applicable); and
- (iii) any contractual obligation and/or any decision, order, or judicial or arbitrary proceeding issued towards the EETS Provider or the Toll Charger.

## 15.2 The EETS Provider's representation and warranties

- 15.2.1 The EETS Provider represents and warrants that it has full title, pursuant to the European and domestic legislation, regulations, statutory disciplines and rules and/or public authorization or any other public measure (if any), to issue or register OBE and to carry out each of the activities to be performed according to the terms and conditions of this Agreement, and that it has the capability and all necessary powers to sign and execute this Agreement and to undertake the obligations provided herein. The signing and the execution of this Agreement have been duly authorised in accordance with the EETS Provider's articles of association and/or in compliance with the local legislation, regulations, statutory disciplines, and rules and/or public authorisation or any other public measure (if applicable to the EETS Provider), and do not require any further consent, authorisation, approval, or issuance of authorisations, concessions, licenses and/or any other measure by any private or public administration.
- 15.2.2 The EETS Provider represents and warrants that it shall exclusively supply OBE to the EETS User, which have been tested according to Annex H (Testing) fulfilling the requirements, cf. Annex E (Technical Conditions) and Annex F (Interface Specifications), and have been duly approved by the Toll Charger.
- 15.3 The EETS Provider represents and warrants that it fulfills the requirements to be registered as an EETS Provider, and, furthermore, that it has obtained the applicable certification as further set out in the Applicable EETS Legislation.
- 15.3.1 The EETS Provider represents and warrants that it has implemented the standards defined by the Toll Charger as further set out in the EETS Domain Statement.
- 15.3.2 The EETS Provider represents and warrants that it will carry out any and all activities, and adopt all measures that are necessary in order to correctly handle the Services, including the collection service, the management of the Black List and White List.

## 16 GENERAL CONTRACTUAL ISSUES

### 16.1 Confidentiality

- 16.1.1 The Parties shall not, apart from what is required by applicable law or by any court or other authority of competent jurisdiction, make use of, except for the purposes contemplated by this Agreement, disclose to any third party, or publish any Confidential Information received by one Party from or in respect of the other Party under or in connection with this Agreement.
- 16.1.2 The Parties shall ensure that their employees and advisors also observe Clause 16.1.
- 16.1.3 The provisions of Clause 16.1 are indefinite.

### 16.2 Trademark protection

- 16.2.1 The Parties shall only be entitled to use the other Party's trademark, and any other intellectual property rights of the other Party, upon the prior written consent of the other Party.

### 16.3 Use of third parties and/or subcontractors

- 16.3.1 The EETS Provider is entitled to use business partners, sales partners or/and other third parties to wholly or partly fulfill the EETS Provider's rights and obligations under the Agreement and/or to carry out the processes and deliver the Services that the EETS Provider must perform under this Agreement. The EETS Provider using such business partners, sales partners and/or other third parties shall at all times and under all circumstances be fully responsible for any and all acts and omissions of such business partners, sales partners and/or other third parties.
- 16.3.2 The Parties are entitled to use subcontractors, including for data processing purposes as set out in Clause 12.2, without the prior written approval of the other Party. The Parties are obliged to enter into data processing agreements with the subcontractor when necessary. The Party using a subcontractor shall at all times and under all circumstances be fully responsible for any and all acts and omissions of such subcontractor.
- 16.3.3 Unless otherwise agreed, the Toll Charger will not accept to be contacted by any of the EETS Provider's third parties and/or subcontractors regarding this Agreement. All communication regarding this Agreement shall at all times be made directly between the Toll Charger and the EETS Provider, cf. Clause 16.9.

## 16.4 Assignment

- 16.4.1 The Parties agree that a Party is not entitled to assign or transfer its rights and duties under this Agreement to any third party without the prior written consent of the other Party.
- 16.4.2 Notwithstanding the foregoing, without the prior written consent of the other Party, each Party is entitled to assign or transfer its rights and duties under this Agreement to an affiliate within its own group provided that the Party remains liable as a guarantor for such affiliate's performance under this Agreement, and that such affiliate at any time is compliant with the requirements in this Agreement, including the credit rating stated in Clause 10.1.3. An affiliate means any individual, corporation, or other undertaking who directly or indirectly controls, is controlled by, or is under common control by a Party to this Agreement, such control being determined in accordance with the term "koncern" ("group") in Sections 6 and 7 of the Danish Companies Act ("Selskabsloven").

## 16.5 Force majeure

- 16.5.1 Either Party is entitled to suspend the performance of its obligations under this Agreement if such performance is impeded or causes an unreasonable hardship on the Party due to force majeure, meaning any extraordinary circumstances beyond the reasonable control of such Party ("**Force Majeure Event**"). Force Majeure Events include, but are not limited to,
- (i) acts of war, terror, sabotage, and civil unrest;
  - (ii) acts of government;
  - (iii) natural disasters and other unusual weather conditions e.g., fire;
  - (iv) interruption of telecommunications not caused by the Party;
  - (v) cybersecurity incidents which could not have been prevented through protection measures required under the Agreement or generally used in the industry;
  - (vi) strikes and lockouts; and/or
  - (vii) epidemics and pandemics.

For the avoidance of doubt, a Party is only entitled to suspend performance of its obligations by reference to the listed examples of Force Majeure Events if and to the extent that such Force Majeure Event actually impedes or causes unreasonable hardship to the performance of a Party's obligations.



16.5.2 A Force Majeure Event, whether occurring prior to or after entering into this Agreement, only entitles a Party to suspension if the effect of the Force Majeure Event on the performance of this Agreement could not have been foreseen at the time of entering into this Agreement.

16.5.3 The Party claiming to be affected by a Force Majeure Event shall use all reasonable efforts to mitigate the effects of the Force Majeure Event upon the performance of its obligation.

16.5.4 The Party claiming to be affected by a Force Majeure Event shall, without undue delay, notify the other Party of the intervention and of the cessation of the Force Majeure Event.

16.5.5 Notwithstanding any other provisions of this Agreement, either Party is entitled to terminate this Agreement with immediate effect by written notice to the other Party if it is clear from the circumstances that the performance of this Agreement will be and is suspended for more than 90 days, cf. Clause 16.5.1.

## 16.6 Language

16.6.1 This Agreement is made in English, and the English version prevails in the event that this Agreement is translated into another language regardless of the purpose for the translation.

## 16.7 Interpretation

16.7.1 The headings used in this Agreement and its division into Clauses shall not affect the interpretation of this Agreement.

## 16.8 Severability

16.8.1 If any provision or part thereof under this Agreement is found to be inconsistent with or void under any applicable law, the validity of the remaining part of that provision and the other provisions shall not be affected by this. In such case, the Parties shall replace the ineffective provision or part(s) thereof with a provision of fundamentally the same content and effect, also taking into consideration any amendments to the Agreement, which, however, are legally valid, binding, and enforceable under said law.

## 16.9 Notices

16.9.1 Any communication or notice to be made under this Agreement shall be provided in writing by means of a written return receipt (by email) with attention to the individual set out below:

to the Toll Charger:

Sund & Bælt Holding A/S  
Vester Søgade 10  
DK-1601 Copenhagen  
Denmark  
Attn.: Arjun Thomassen  
Email: EETS-KmToll@sbf.dk

to the EETS Provider:

[insert name of the EETS Provider]  
[insert address of the EETS Provider]  
[insert country of the EETS Provider]  
Attn.: [insert name, title]  
Email: [insert email address]

or to another individual, corporation or other undertaking, address and/or email address, which either Party notifies to the other Party.

## 16.10 Applicable law

16.10.1 This Agreement shall be governed by Danish law disregarding the Danish choice of law rules and without regard to the United Nation's Convention of Contracts for the International Sale of Goods (CISG).

#### 16.11 Disputes

16.11.1 Any dispute, controversy or claim arising from or in connection with this Agreement, or the breach, termination, or invalidity thereof, shall first be referred to negotiation in good faith between the Parties, whereby the Parties shall use all reasonable efforts to find a compromise that is reasonably satisfactory to the Parties. For this purpose, the Parties shall each appoint a representative, and subsequently, the representatives shall together appoint a third person. Such third person shall also be the chairman of the negotiation group. Notwithstanding the above, either Party may at any time request a competent Conciliation Body to issue its opinion on the dispute in accordance with the procedure set out in articles 11 and 12 of the Directive 2019/520/EC of 19 March 2019. An opinion issued by a Conciliation Body shall be (i) confidential, (ii) non-binding to the Parties, and (iii) without prejudice to subsequent arbitral proceedings.

16.11.2 If (i) the dispute is not resolved by negotiations within sixty (60) calendar days following notice to initiate such negotiations from any of the Parties, or if (ii) a Conciliation Body has not rendered its opinion within six (6) months after a Party requesting the Conciliation Body to intervene in the dispute, or if (iii) a Party risks losing a claim or other rights by following either of the aforementioned procedures, the dispute may then be submitted by either Party to arbitration administered by the Danish Institute of Arbitration pursuant to the rules of the Danish Institute of Arbitration as in force at the time when such proceedings are commenced. The seat of arbitration shall be in Copenhagen, Denmark, and the language to be used in the arbitral proceedings shall be English (or Danish, if the Parties choose so).

16.11.3 The Parties undertake and agree that all proceedings conducted with reference to Clause 16.11.2 will be kept strictly confidential. This confidentiality shall cover all information disclosed in the course of such arbitral proceedings, as well as any decision or award that is made or declared during the proceedings. This notwithstanding, a Party shall not be prevented from disclosing such information in order to safeguard, in the best possible way, its rights in connection with the dispute, or if such a right exists pursuant to mandatory regulation, a decision by an authority or the like.

#### 16.12 Entire Agreement

16.12.1 This Agreement constitutes the entire understanding between the Parties in respect of the subject matter of this Agreement and supersedes all prior agreements, negotiations, and discussions between the Parties relating to it.

### 17 SIGNATURES

17.1 This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same Agreement. Furthermore, this Agreement may be executed electronically.

- 0 -

Copenhagen, \_\_\_\_\_ 2023

[insert place], \_\_\_\_\_ 2023

For and on behalf of  
the **Toll Charger**:

For and on behalf of  
the **EETS Provider**:

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Name Ole Lykke Christensen  
Title Managing Director Tolling

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Name [insert representative of the EETS Provider]  
Title [insert title]