DOMAIN STATEMENT OF THE FLEMISH REGION
TOLGEBIEDVERKLARING VAN HET VLAAMSE GEWEST
DÉCLARATION DU SECTEUR À PÉAGE DE LA RÉGION FLAMANDE

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INTRODUCTION

This toll domain statement of the Flemish Region, as toll charger, has been written in accordance with, *inter alia*, article 5.2 of decision 2009/750/EC of the European Commission, and its annex I, and article 4, § 2 of the decree of the Flemish Region of 3 July 2015.

The annexes to this toll domain statement form an integral part of it.

The first part of this toll domain statement determines the applicable regulations (the specific characteristics of the toll domain of the Flemish Region are mentioned, when necessary). The second part of the toll domain statement determines the general terms and conditions for the provision of services with, *inter alia*, the conditions for registration and acceptance of service providers, other than the single service provider (Satellic NV/SA) to the electronic toll charging services in the toll domains of the Belgian kilometre charging system.

It is aimed at the EETS (European Electronic Toll Service) providers, and *mutatis mutandis*, at the ETS (Electronic Toll Service) providers, as well as at the REETS (Regional European Electronic Toll Service) providers.

The Belgian kilometre charge has been created by the three regions (the Brussels-Capital Region, the Flemish Region, the Walloon Region) and Sofico (Société wallonne de Financement Complémentaire des infrastructures). The system has been standardised in respect of the roads of the Belgian road network subjected to toll (called “kilometre charge”), thanks to the cooperation agreement of 31 January 2014. Part of these roads is subjected to a tariff of zero eurocent, the other part is subjected to a tariff exceeding zero eurocent.

The Walloon Region has given part of its road network in concession to Sofico, who acts as toll charger for these conceded roads.

The kilometre charge for the use of roads conceded by the Walloon Region to Sofico is a retribution which is subjected to VAT.

The kilometre charge charged for the use of non-conceded roads in the toll domains of the Flemish Region and the Brussels-Capital Region is a tax.

The road network conceded to the NV Tunnel Liefkenshoek is not part of the Belgian kilometre charging system.

The party subjected to the kilometre charge must place and activate an OBU in every vehicle subjected to the charge before using the Belgian road network, with a view to (i) registering travel data on the basis of which the service provider will calculate the kilometre charge that is due by the party subjected to it by means of the technology applied by the service provider and/or (ii) applying the provisions regarding the identification of the vehicle in the context of enforcement and sanctioning.

The registration and acceptance procedure is the same for all toll domains of the Belgian kilometre charging system. As a result, every service provider is simultaneously registered (in

case it has not yet been registered as an EETS provider in the EU member state where it is established) and/or accepted to the electronic toll charging services of all toll domains of the Belgian kilometre charging system.

The interregional entity Viapass is the point of contact for the (candidate) service providers.

FOR THE PURPOSE OF THIS DOMAIN STATEMENT, THE FOLLOWING DEFINITIONS APPLY:

active OBU: an OBU (On Board Unit) that has made connection with the back office of the service provider at least once per quarterly period, after the vehicle of the party subject to the charge (co-contractor of the service provider) that is equipped with that OBU has, within said period, proceeded along the Belgian road network and after it crossed the Belgian border for at least 25 meters;

Belgian kilometre charging system: the electronic system for the implementation of the kilometre charge, with the help of OBUs and for the benefit of the toll chargers in Belgium;

Belgian road network: the entire Belgian road network, regardless if the road is subjected to kilometre charge or not, with the exception of the road network that has been conceded to the NV Tunnel Liefkenshoek;

bilateral agreement: agreement reached between on the one hand the service provider, and on the other hand Viapass, the toll chargers of the Belgian kilometre charging system and, if necessary, the Regions or their representatives;

candidate service provider: every legal entity, under private or public law, that is yet to be registered and/or accepted by one of the toll chargers as a service provider;

conciliation body: the entity, established in accordance with, *inter alia,* article 10 of decision 2009/750/EC of the European Commission, that hears disputes which arise between the service providers and the toll chargers and the other parties to the bilateral agreement within the context of their negotiations or contractual relations, and which relate to the general terms and conditions determined in the toll domain statement or to the specific contractual terms;

conceded road: road or part of the road of which management has been conceded;

cooperation agreement of 31 January 2014: the cooperation agreement of 31 January 2014 between the Flemish Region, the Walloon Region and the Brussels-Capital Region concerning the introduction of the kilometre charge on the territory of the three regions and aimed at establishing the interregional partnership Viapass under public law, acting as a common agency in the sense of article 92bis, § 1 of the special act on institutional reform of 8 August 1980, as amended by the cooperation agreement of 24 April 2015 and the possible subsequent amendments;

DBFMO-agreement: the agreement entered into with the single service provider by Viapass, acting in the name and on behalf of the Flemish Region, the Walloon Region, the Brussels-Capital Region and, if applicable, their concessionaires, Sofico included;

decision 2009/750/EC of the European Commission: decision 2009/750/EC of the European Commission of 6 October 2009 on the definition of the European Electronic Toll Service and its technical elements, implementing Directive 2004/52/EC of the European Parliament and of the Council of 29 April 2004 on the interoperability of electronic road toll systems in the Community;

decree of the Flemish Region of 3 July 2015: decree of the Flemish Region of 3 July 2015 introducing the kilometre charge and abandoning the Eurovignette and amending the Flemish Tax Code of 13 December 2013 in that respect;

EETS provider: every service provider which fulfils the requirements of directive 2004/52/EC of the European Parliament and the Council and the requirements of decision 2009/750/EC of the European Commission, and which is registered, in accordance with article 3 of this decision, in the member state where it is established (European Electronic Toll Service);

electronic registration device: electronic on-board equipment aimed at positioning the vehicle in which the on-board equipment has been placed and which, be it with or without the help of remote electronic equipment, exchanges data in order to (i) register the travelled kilometres, as well as calculate the kilometre charge for this registered distance and/or (ii) apply the provisions regarding the identification of the vehicle in the context of enforcement and sanctioning;

ETS provider: every service provider that limits its services to the Belgian territory (Electronic Toll Service);

EURO emission class: the class defined based on emission limits as described in Annex 0 of Directive 1999/62/EC of the European Parliament and the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures;

force majeure: circumstance which leads to the service provider and/or the toll charger not being able to fulfil their obligations under the bilateral agreement and the toll domain statement, inasmuch as this circumstance is the result of one or multiple events or circumstances, of which a limitative list is included below, and was not caused by the person invoking it;

(a) war, civil war, armed conflict, hostile actions in Belgium or involving Belgium;
(b) rebellion, attacks, acts of terrorism, revolution or uprising in Belgium;
(c) nuclear explosions, ionising radiation or radioactive, chemical or biological pollution in or near the Belgian kilometre charging system, insofar as occurring after the bilateral agreement is entered into;
(d) a plane crash or a pressure wave as a result of an aircraft flying at supersonic speed;
(e) natural disasters such as a hurricane, earthquake, tidal wave, landslide or meteor impact, insofar as these events are recognised as natural disasters by the competent authorities;
(f) detonation of explosive materials;
(g) a fire or explosions in the Belgian kilometre charging system;
(h) an interruption, alteration or adaptation of the operation of the satellite link by the owner or the entitled party;
(i) any circumstance in the relation between the toll charger and the single service provider which prevents the toll charger to fulfil its obligations towards the service providers, insofar such circumstance has not been caused by the toll charger or the single service provider;
(j) any circumstance in the relation between the toll charger and the single service provider which renders the Belgian kilometre charging system inoperable, insofar such circumstance has not been caused by the toll charger or the single service provider.

guaranteed payment method: a payment method which allows the service provider to collect the kilometre charge and, if applicable, the collection costs invoiced to the party subjected to the charge, at first request, without further permission from the party subjected to the charge, and without the latter being able to cancel the payment made with the payment method;

kilometre: any distance, expressed in a number of kilometres, rounded up or down to the thousandth, depending on whether the ten thousandth reaches 5;

maximum permitted total weight: the maximum permitted total weight of the vehicles (lorry and trailer) subjected to the Belgian kilometre charging system, and which is over 3.5 tonnes (in the regulation also called the maximum permitted mass);

non-conceded road: road or part of the road of which management has not been conceded;

OBU: see electronic registration equipment;

party subject to the charge: every natural or legal person subjected to the kilometre charge;

provision of services: activity consisting of offering to the party subject to the kilometre charge services of (i) electronic registration of travelled kilometres and calculation of the due kilometre charge for this registered distance (ii) billing the party subject to the charge, collecting and paying the kilometre charge to the toll chargers;

REETS provider: every service provider offering its services across the borders, fulfilling all the requirements of decision 2009/750/EC of the European Commission (Regional European Electronic Toll Service), except for the requirements set out in article 4.1. of that decision;

road: the road and its related installations;

service provider: any legal entity admitted to its toll domain by a toll charger, that provides services of (i) electronic registration of travelled kilometres and calculation of the due kilometre charge for this registered distance, and (ii) billing the parties subject to the kilometre charge, collecting and paying to the toll chargers of the kilometre charge based on data collected by an electronic registration device;

service provision agreement: agreement that shall be entered into between the party subject to the charge and a service provider of his choice for a vehicle before it uses any road;

single service provider: service provider with whom a DBFMO agreement is entered into, in execution of the agreement regarding joint implementation of works, supplies or services, in the sense of article 19 of the Act of 24 December 1993 relating to public procurement and to public works, public supplies and public services contracts, and that provides, at its own responsibility, the fixed and mobile enforcement infrastructure to the regions charged with enforcement of the kilometre charge and that provides services of (i) electronic registration of travelled kilometres and calculation of the due kilometre charge for this registered distance, and (ii) billing the parties subject to the kilometre charge, collecting and paying to the toll chargers, of the kilometre charge based on data collected by an electronic registration device; Satellic NV/SA is the single service provider;

Sofico: the company under public law to which the Walloon Region has conceded the road network as determined in the Annex of the government decision of 11 June 2015 amending the Walloon government decision of 29 April 2009 determining the date of entry into force and concerning execution of article 2 of the decree of 10 December 2009 amending the decree of 10 March 1994 concerning the establishment of the “Société wallonne de Financement complémentaire des Infrastructures”;

tariff zone: a delineated segment of road with a fixed starting and ending point, to which, when a certain road is used in a certain driving direction, a uniform and distance-related tariff Tz applies at any moment;

toll charger(s) (of the Belgian kilometre charging system): the Brussels-Capital Region, the Flemish Region and/or Sofico in its capacity of concessionaire of the Walloon Region;

toll domain: a part of the Belgian road network, including structures such as tunnels, bridges or ferries, for which a toll charger collects kilometre charge, or for which kilometre charge can be collected but for which the tariff is zero eurocent;

toll domain statement: statement with which a toll charger determines the general terms and conditions as, *inter alia*, stated in article 5, 2° of decision 2009/750/EC of the European Commission of 6 October 2009 and with which the service providers must comply in order to obtain access to the toll domain in question;

toll evader: any party subject to the charge whose vehicles make unauthorised use of the roads of the toll domain and/or which does not (or not entirely) pay the kilometre charge due;

toll road network: the roads of the toll domain for which a tariff exceeding zero eurocent applies;

vehicle: a motorized vehicle or a combination of vehicles, intended or used, be it exclusively or not, for transport of goods by road and of which the maximum permitted total weight is over 3.5 tonnes;

Viapass: the interregional partnership incorporated under public law, acting as a common agency in the sense of article 92bis, § 1 of the special act on institutional reform of 8 August 1980, stated in article 18 of the cooperation agreement of 31 January 2014;

working day: any day except a Saturday, Sunday or legal holiday in Belgium.

I. General description

This first part of the toll domain statement provides a general overview of the kilometre charging system introduced by the toll chargers of the Belgian kilometre charging system, with details on the characteristics and provisions that specifically apply to the Flemish Region.

1. Applicable regulations

The organisation of the kilometre charge on vehicles of over 3.5 tonnes, intended or used for goods transport, for the use of the road network on which the Flemish Region levies or can levy kilometre charge, is the result of a regulatory framework that is of a European, regional as well as federal nature. Said framework is presented below. For every regulatory text mentioned, a hyperlink to the text of the official publication is included.

The European texts:

- **Directive 1995/46/EC OF THE EUROPEAN PARLIAMENT AND THE COUNCIL of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, *OJ.L.* 23 November 1995, issue 281.**
  Official publication:
  http://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:31995L0046&qid=1444242197534&from=NL

- **DIRECTIVE 1999/62/EC OF THE EUROPEAN PARLIAMENT AND THE COUNCIL of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures, *OJ.L.* 20 July 1999, issue 187, as modified by Directives 2006/38/EC and 2011/76/EU..**
  Official publication:
  Directive 1999/62/EC
  http://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:31999L0062&qid=1444242398355&from=NL
  Directive 2006/38/EC
  http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006L0038&from=EN
  Directive 2011/76/EU
  http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32011L0076&from=EN

- **DIRECTIVE 2002/58/EC OF THE EUROPEAN PARLIAMENT AND THE COUNCIL of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (directive on privacy and electronic communications), *OJ.L.* 31 July 2002, issue 201.**
  Official publication:
  http://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:32002L0058&qid=1444242526535&from=NL

- **DIRECTIVE 2004/52/EC OF THE EUROPEAN PARLIAMENT AND THE COUNCIL of 29 April 2004 on the interoperability of electronic road toll systems in the Community, *OJ.L.* 30 April 2004, issue 166.**
  Official publication:
  http://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:32004L0052&qid=1444242647466&from=NL

- **DECISION 2009/750/EC of 06 October 2009 of the European Commission on the definition of the European Electronic Toll Service and its technical elements, *OJ.L.* 13 October 2009, issue 268.**
  Official publication:
  http://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:32009D0750&qid=1444242757105&from=NL

The cooperation agreement:

- **Cooperation agreement of 31 January 2014 between the Flemish Region, the Walloon Region and the Brussels-Capital Region concerning the introduction of the kilometre charge on the territory of the three regions and aimed at establishing the Interregional Partnership Viapass under public law, acting as a common agency in the sense of article 92bis, § 1 of the special act on institutional reform of 8 August 1980, *BOG* 14 May 2014.**
  Official publication:
  http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2014/05/14/127651.pdf

  As changed by: **Cooperation agreement of 24 April 2015 changing the cooperation agreement of 31 January 2014 between the Flemish Region, the Walloon Region and the Brussels-Capital Region concerning the introduction of the kilometre charge on the territory of the three regions and aimed at establishing the Interregional Partnership Viapass under public law, acting as a common agency in the sense of article 92bis, § 1 of the special act on institutional reform of 8 August 1980, *BOG* 16 June 2015.**
  Official publication:
  http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2015/06/16/130831.pdf

Flemish decrees regarding kilometre charge:

- **Decree of the Flemish Region of 3 July 2015 introducing the kilometre charge and abandoning the Eurovignette and amending the Flemish Tax Code of 13 December 2013 in that respect, *BOG* 10 August 2015.**
  Official publication:
  http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2015/08/10/131261.pdf

- **Decree of the Flemish Region of 13 December 2013 Flemish Tax Code, *BOG* 23 December 2013.**
  Official publication:

http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2013/12/23/126048.pdf

Execution

- **Decision of the Flemish government of 17 July 2015 amending the decision of the Flemish Tax Code of 20 December 2013, regarding the introduction of the kilometre charge, *BOG* 10 August 2015.**
  http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2015/08/10/131265.pdf

- **Decision of the Flemish government of 20 December 2013 implementing the Flemish Tax Code of 13 December 2013, *BOG* 31 December 2013.**
  Official publication:
  http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2013/12/31/126143.pdf

Federal legislation:

- **Act of 21 December 2006 on the transposition of directive 2004/52/EC of the European Parliament and the Council of 29 April 2004 on the interoperability of electronic road toll systems in the Community, *BOG* 29 December 2006.**
  Official publication:
  http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2006/12/29/102314.pdf

See for the toll domain statements of the other toll chargers of the Belgian kilometre charge system, and the specific applicable regulations: http://www.viapass.be/en/downloads/

2. Interregional entity Viapass

The three regions have established a legal person under public law, named Viapass, which is responsible for certain tasks regarding the kilometre charge, such as *inter alia* described in the articles 19 to 21 of the cooperation agreement of 31 January 2014.

In addition, Viapass keeps, for the regions, the national electronic register as provided for in article 19 of decision 2009/750/EC of the European Commission.

3. The toll domain

The toll domains of the Belgian kilometre charging system consist of, depending on the specific toll domain, non-conceded roads and/or conceded roads.

The toll domain of the Flemish Region consists of non-conceded roads.

The Flemish Region has indicated the roads in the toll domain that are subject to a tariff exceeding zero eurocent in the annex to the decree of the Flemish Region of 3 July 2015. All roads involved have been listed in that annex (see above for the hyperlink to the decree of the Flemish Region).

For the toll domain and the map of the road network subject to a tariff exceeding zero eurocent of the toll domain of the Brussels-Capital Region, see: http://www.viapass.be/en/downloads/

For the toll domain and the map of the road network subject to a tariff exceeding zero eurocent of the toll domain of Sofico, see: http://www.viapass.be/en/downloads/

4. The kilometre charge (the toll)

The kilometre charge is due for the use that a vehicle makes of the mentioned roads, and is determined based on the number of kilometres that are travelled by a vehicle. The registration of the kilometres travelled, which is necessary for calculation of the kilometre charge, is done by means of an electronic registration device.

The kilometre charge is designed as a regional tax in the toll domain of the Flemish Region, based on the autonomous regional tax competence provided by article 170 § 2 of the constitution.

For the nature of the kilometre charge in the toll domain of the Brussels Capital Region, see:
http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2015/08/12/131278.pdf
en
http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2015/10/07/131604.pdf

For the nature of the kilometre charge in the toll domain of Sofico, see:
http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2015/07/28/131199.pdf
and
http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2015/06/24/130901.pdf

5. Technology applied

The GNSS (Global Navigation Satellite System) satellite technology is applied to determine the location, time, driving direction and route of the vehicle and then charge the kilometre charge based on these data.

6. The toll charger

The Flemish Region is the toll charger. The competence has not been conceded.

Regarding the Brussels Capital Region as toll charger, see: http://www.viapass.be/en/downloads/ (toll domain statement of Brussels Capital Region)

For Sofico as toll charger for the roads that have been conceded by the Walloon Region to Sofico, see: http://www.viapass.be/en/downloads/ (toll domain statement of Sofico)

7. The service provider and its obligations

7.1. The service provider

A service provider is any legal entity admitted to its toll domain by a toll charger, that provides services of, on the one hand, electronic registration of kilometres travelled and calculation of the kilometre charge due for this registered distance, and on the other hand, billing the parties subject to the charge, and collection and payment to the toll chargers, of the kilometre charge, based on data collected by an electronic registration device.

Only service providers registered (if necessary) and accepted by the toll charger can offer their services within the toll domain. By entering into the bilateral agreement the service provider is simultaneously accepted by all toll chargers of the Belgian toll charging system to their respective toll domain.

The toll chargers and the Walloon Region have concluded a DBFMO agreement on 25 July 2014 with a single service provider (SSP), in execution of the agreement regarding joint implementation of works, supplies or services, in the sense of article 19 of the Act on public procurement and to some works, supplies and services of 24 December 1993. This same SSP provides, at its own responsibility, the fixed and mobile enforcement infrastructure to the regions that are charged with enforcement of the kilometre charge. Furthermore, the SSP provides services of (i) electronic registration of kilometres travelled and calculation of the kilometre charge due for this registered distance, and (ii) billing the parties subject to the charge, and collection and payment to the toll chargers of the kilometre charge, based on data collected by an electronic registration device. Satellic NV/SA is that single service provider.

7.2. Agreements

The party subject to the charge shall enter into an agreement with a service provider of his choice (service provision agreement), as stipulated under title II.2.

All service providers, other than the SSP, enter into a bilateral agreement, as stipulated under title II.3.

7.3. Rights and obligations

The service provider has multiple rights and obligations, which arise from the applicable regulations, this toll domain statement and the bilateral agreement entered into. The service provider has at least the rights and obligations stated in article 6, § 2 and 3 and in the articles 8 and 9 of the decree of the Flemish Region of 3 July 2015 and in the articles 3.3.1.0.11 and 3.3.1.0.13, § 4 of the Flemish Tax Code of 13 December 2013.

For the rights and obligations in the toll domain of the Brussels Capital Region, see: http://www.viapass.be/en/downloads/ (toll domain statement of Brussels Capital Region)

For the rights and obligations in the toll domain of Sofico, see: http://www.viapass.be/en/downloads/ (toll domain statement of Sofico)

The core obligations of the service providers concern, on the one hand, electronic registration of kilometres travelled and calculation of the kilometre charge due for this registered distance, and on the other hand, billing of the parties subject to the charge, and collection and payment to the toll chargers, of the kilometre charge, based on data collected by an OBU.

The service providers undertake to comply with Belgian legislation on the use of languages, as far as applicable.

The service providers also undertake to act in such a way as to make it possible for the toll chargers to comply with their possible tax and accounting obligations.

8. The person subject to the charge

The person subject to the charge is the holder of the vehicle, meaning:

(i) either the natural person or the legal person in whose name the license plate of the vehicle is registered with the authority charged with the registration of vehicles;
(ii) or the natural person or the legal person in whose name the license plate of the vehicle is registered with the foreign equivalent of the authority charged with the registration of vehicles;
(iii) or, in the absence of registration of the license plate, the person who actually holds the vehicle.

In case of a combination of vehicles, the registration of the motor vehicle (which pulls the other vehicle) is meant.

Contrary to what is set out under (i) and (ii), the holder of the vehicle can, if the vehicle is continuously or usually put at the disposal of a third party by the holder of the said vehicle by means of rent, leasing or any other contract, appoints that third party, after their joint agreement, as the holder of the vehicle. Yet, the original holder of the vehicle remains jointly and severally liable for the good execution of the obligations of the mentioned third party.

In case of non-payment by the holder of the vehicle, the one who in fact has the vehicle at his disposal is jointly and severally liable for the payment of the kilometre charge, subject to his recourse against the holder of the vehicle. The driver of the vehicle is considered as a person who in fact has the vehicle at his disposal.

9. The vehicle and its classification

Each motorised vehicle or a combination of vehicles, intended or used, be it exclusively or not, for road transport of goods and of which the maximum permitted total weight is over 3.5 tonnes, is subjected to the kilometre charge. Viapass publishes on its website a list of the motorised

vehicles which do not fall within the scope of that definition, and as a result are not subjected to kilometre charge.

The vehicles subjected to kilometre charge are classified based on two parameters:

(i) the maximum permitted total weight for the vehicle;
(ii) the EURO emission classification of the vehicle.

The maximum permitted total weight is determined by the homologating institution and can be found in the documents of the vehicle. Three categories have been defined:

(i) a maximum permitted total weight exceeding 3.5 tonnes but less than 12 tonnes;
(ii) a maximum permitted total weight exceeding or equal to 12 tonnes but less than or equal to 32 tonnes;
(iii) a maximum permitted total weight exceeding 32 tonnes.

The EURO emission class of the vehicle corresponds with the class defined based on emission limits as described in Annex 0 of Directive 1999/62/EC of the European Parliament and the Council of 17 June 1999 on the charging of heavy goods vehicles for use of certain infrastructures (as amended by Directive 2006/36/EC and Directive 2011/76/EU).

10. Exemptions from the kilometre charge

Are exempt from kilometre charge in the Flemish Region at the request of the party subject to the charge:

(i) vehicles that are used exclusively by and for defence, civil protection, fire brigade or police and are recognisable as such;
(ii) vehicles that are equipped specially and exclusively for medical purposes and are recognisable as such;
(iii) vehicles having the nature of an agricultural, horticultural or forestry vehicle, only used on Belgian public roads to a limited extent, and only used for agriculture, horticulture, fishery or forestry operations.

Vehicles that are exempt from kilometre charge in another Region according to the regulations applying there, are also exempt without the necessity of submitting a new application.

For the exemptions in the toll domain of the Brussels Capital Region, see: http://www.viapass.be/en/downloads/ (toll domain statement of Brussels Capital Region).

For the exemptions in the toll domain of Sofico, see: http://www.viapass.be/en/downloads/ (toll domain statement of Sofico).

11. Calculation of the due kilometre charge

For the calculation of the due kilometre charge, the service provider must differentiate between (i) the kilometre charge levied for the use of a non-conceded road, in which case the kilometre charge is a tax, and (ii) the kilometre charge levied for the use of a conceded road (until further notice, the roads in the Walloon Region who have been conceded to Sofico), in which case the kilometre charge is a retribution on which VAT is applicable.

The kilometre charge is, in general, determined applying the following formula:

$\Sigma z = Tz * Kz$

where
1° Tz = the tariff applying in a certain tariff zone for kilometres travelled in a certain driving direction, at a certain moment in time, expressed in eurocents per kilometre;
2° Kz = the number of kilometres travelled to be charged in each of these tariff zones.

The tariff Tz is construed and determined differently depending on the qualification of the kilometre charge as (i) a retribution, or (ii) a tax.

If the kilometre charge is a tax, the tariff Tz, expressed in eurocents per kilometre, includes a surcharge for external costs. Such surcharge is not included where the kilometre charge is a retribution.

In the Flemish Region the kilometre charge is a tax.

More details on the calculation of the kilometre charge in the Flemish Region can be found in the articles 18 to 21 included of the decree of the Flemish Region of 3 July 2015.

Regarding the nature of the kilometre charge and more details on its calculation for the toll domain of the Brussels Capital Region, see:

http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2015/08/12/131278.pdf
en
http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2015/10/07/131604.pdf

Regarding the nature of the kilometre charge and more details on its calculation for the toll domain of Sofico, see:

http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2015/07/28/131199.pdf
and
http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2015/06/24/130901.pdf

12. Modifications of the kilometre charge

Two essential modifications are possible:

(i) modifications of the tariff (of the base tariff and/or the parameters);
(ii) modifications of the toll domain (of the roads, tariff zones or road sections on which a tariff exceeding zero eurocent applies, as well as of the non-conceded and conceded roads).

Viapass will notify the service providers of these modifications. See also paragraph 4 of annex 4 on this matter.

II. General terms and conditions for the provision of services[1]

1. Access to the Belgian kilometre charging system (registration and/or acceptance)

1.1. Introduction

A candidate service provider that successfully follows the registration procedure (insofar as necessary) or respectively the acceptance procedure, as set out in this toll domain statement, and pays the connected fees, is registered for (insofar as necessary) and/or accepted in all toll domains of the Belgian kilometre charge system, so as to provide his services there.

On its website, Viapass maintains a list of registration and/or acceptance applications that it is processing, as well as a list of service providers registered and/or accepted in the toll domains of the Belgian kilometre charge system.

1.2. Registration procedure for candidate service providers

1.2.1. Introduction

The registration is not to be run through by a candidate EETS provider that has already been registered as EETS provider in the member state in which it is established.

The registration procedure therefore applies to the following candidate service providers that wish to gain access to the toll domain of a toll charger:

(i) candidate EETS providers located in Belgium;
(ii) candidate ETS providers; and
(iii) candidate REETS providers.

For the substantive and practical organisation of this registration procedure, the toll charger is represented by Viapass, which thus acts in name and on behalf of this toll charger.

1.2.2. Registration requirements

The registration is granted if the candidate service provider fulfils the following requirements:

(i) being in possession of an EN ISO 9001 certificate or equivalent recognition;
(ii) demonstrate that it has the necessary technical equipment and possesses the EC declaration or certificate attesting the compliance of the interoperability constituents as laid down in Annex IV point 1 of decision 2009/750/EC of the European Commission;
(iii) demonstrate competence in offering electronic toll charging services or be competent with regard to the fields involved;
(iv) have appropriate financial standing;

[1] For the avoidance of doubt, this part II of the toll domain statement does not apply to the single service provider. Identical or at least equivalent conditions apply to the provision of services by the single service provider pursuant to the DBFMO-agreement.

(v) maintain a global risk management plan which is audited at least every two years;
(vi) be of good repute.

The requirements for registration for candidate service providers, and the documents requested by Viapass to examine whether the aforementioned requirements are met, are elaborated upon in annex 2.

Viapass can request additional information at any time, also after registration of a (candidate) service provider, in order to investigate whether the (candidate) service provider involved (and, if applicable, the connected entity/entities which it invokes) still meet/meets the requirements set for registration, if there are serious indications that one or multiple requirements are no longer met. The (candidate) service provider cooperates by providing the additional information within the term set by Viapass. If this shows that the candidate service provider no longer meets the requirements for registration and does not remedy this within one month after notification by Viapass, Viapass has the right to withdraw registration. Withdrawal of registration is a ground for ending the bilateral agreement with immediate effect.

If the candidate service provider applies for acceptance simultaneously with the registration application, then a letter of intent from a recognised credit institution, which is considered creditworthy by Viapass, shall also be added to the file; credit institutions with at least an A rating according to Standard & Poor's or an A2 rating according to Moody's (or an equivalent rating) will in any case be considered creditworthy by Viapass; said letter of intent shall attest that the candidate service provider, if it is registered and accepted, will receive a bank guarantee for the amount requested in the toll domain statement.

Finally, the application for registration and/or acceptance implies the agreement of the candidate service provider with the conditions of this toll domain statement, including the conditions mentioned under titles II.3.5. and II.3.6.

1.2.3. Letter of intent

The candidate service provider and Viapass sign a *letter of intent* in accordance with the model in annex 3.1 *(Model letter of intent (registration and acceptance))* regarding the process of the registration procedure and, if applicable, the acceptance procedure, before the candidate service provider transfers its files related to registration to Viapass.

Viapass transfers a file with the technical requirements of the Belgian kilometre charging system to the candidate service provider within five working days after the letter of intent is signed and the fixed fees determined under title II.1.2.5. are paid.

1.2.4. Procedure

The registration is requested

(i) via the e-mail address contact@viapass.be; or
(ii) via registered mail with receipt addressed to:

Viapass
Until 28 February 2016: Arenbergstraat 1D, 1000 Brussels
Starting from 1 March 2016: Lavoisier building, rue P. De Koninck 40, boîte 24, 1080 Bruxelles / P. De Koninckstraat 40, bus 24 1080 Brussel.

After submission of the file for registration in accordance with this toll domain statement and annex 2 by the candidate service provider, Viapass assesses the completeness of the file within a term of two weeks after receipt of the application for registration with acknowledgment of receipt.

If the file is assessed to be complete, Viapass provides the candidate service provider with a statement of completeness by means of registered mail.

If the file is assessed not to be complete, Viapass notifies in the same way the candidate service provider that its file is not complete. The same procedure applies after submission of the missing documents by the candidate service provider.

If the file has been assessed to be complete and after receipt of the fee mentioned under title II.1.2.5. below, Viapass has a term of one month within which to assess whether the candidate service provider meets the requirements for registration.

Note that the terms stated under this title are only considered terms of order (i.e. non-binding).

The candidate service provider can submit an application for acceptance simultaneously with a registration application, in compliance with title II.1.3.

1.2.5. Fee

In order to compensate the costs of the investigation and assessment of the file submitted by the candidate service provider with a view to registration, Viapass charges a fixed fee of EUR 20,000. The fixed fee amount excludes VAT. If, based on VAT legislation, VAT is due on the fixed fee, then the VAT will be specified separately on the invoice and it must also be paid by the candidate service provider.

This fee is paid after Viapass has confirmed to the candidate service provider that the file is complete. Viapass will send an invoice to the candidate service provider for this purpose. After receipt of the payment of the invoice, Viapass can start the investigation and assessment of the application for registration.

1.3. Acceptance procedure for candidate service providers

1.3.1. General information

In order to gain access to the toll domain of the toll charger as a candidate service provider,

(i) the EETS provider established in Belgium, the ETS provider and the REETS provider must be registered in compliance with title II.1.2., or
(ii) the EETS provider established in another EU member state must be registered in that other member state,

and it must then follow the acceptance procedure described under this title II.1.3.

For the substantive and practical organisation of this acceptance procedure, the toll charger is represented by Viapass, which acts in name and on behalf of this toll charger.

The procedure consists of different phases:

(i) the acceptance application of the candidate service provider;
(ii) the start of the acceptance procedure;
(iii) the presentation of the technical and commercial concept;
(iv) the test process, with (i) a verification of the conformity(tests), and (ii) suitability tests;
(v) negotiations about the bilateral agreement;
(vi) acceptance to the toll domain of the toll charger.

1.3.2. Acceptance application of the candidate service provider

The registered candidate service provider can submit its application to obtain access to the toll domain of the toll charger in the following way:

(i) via the e-mail address contact@viapass.be; or
(ii) via registered mail with receipt addressed to

Viapass
Until 28 February 2016: Arenbergstraat 1D, 1000 Brussels
Starting from 1 March 2016: Lavoisier building, rue P. De Koninck 40, boîte 24, 1080 Bruxelles / P. De Koninckstraat 40, bus 24, 1080 Brussel.

The registered candidate service provider includes what follows with his application:

(i) Proof of registration as an EETS provider in an EU member state, in the sense of article 3 of decision 2009/750/EC of the European Commission, if the candidate service provider is not established in Belgium and is therefore not registered according to title II.1.2.;
(ii) If not yet submitted: a letter of intent from a recognised credit institution, which is considered creditworthy by Viapass; credit institutions with at least an A rating according to Standard & Poor's or an A2 rating according to Moody's (or an equivalent rating) will in any case be considered creditworthy by Viapass; said letter of intent shall attest that the candidate service provider will receive a bank guarantee for the amount requested in the toll domain statement, in view of the signing of the bilateral agreement.
(iii) If not yet given: contact information of the person responsible for follow-up of the acceptance procedure on behalf of the candidate service provider.

The candidate service providers can submit their application for acceptance as a service provider simultaneously with their registration application in accordance with title II.1.2. It suffices that they confirm, after registration, their acceptance application by email on the address contact@viapass.be.

1.3.3. Start of the acceptance procedure

Within fifteen days after receipt of the application of a registered candidate service provider, Viapass confirms this receipt and transfers a preliminary planning of the acceptance procedure. In consultation with the service provider, another term can be agreed on.

Unless if the candidate service provider has already signed a *letter of intent* with Viapass in accordance with title II.1.2.3., the candidate service provider and Viapass then sign a *letter of intent* in accordance with the model in annex 3.2 *(Model letter of intent (acceptance))* with regard to the process of the acceptance procedure.

Viapass transfers a file with technical requirements of the Belgian kilometre charging system to the candidate service provider within five working days after the letter of intent is signed.

1.3.4. Presentation technical and commercial concept

Viapass invites the registered candidate service provider to present its technical and commercial concept (preliminary business plan) at the Viapass offices at a time to be agreed upon between the service provider and Viapass.

1.3.5. Test process

After the *letter of intent* has been signed, the letter of intent of a recognised credit institution has been submitted and the technical and commercial concept has been presented, the test process takes place.

This test process is described in detail in annex 4.

1.3.6. Negotiations

After successful conclusion of the test process at the latest, Viapass (acting in its own name and in the name of the toll chargers and the Walloon Region) will transfer a proposal of the bilateral agreement to the registered candidate service provider, to complement the general terms and conditions which have been included in this toll domain statement.

Viapass and the registered candidate service provider can then conduct negotiations about this proposal.

If Viapass (acting as representative of the toll chargers of the Belgian kilometre charging system and of the Walloon Region) and the registered candidate service provider do not reach an agreement, then each party (except for the Walloon Region) can take the initiative in presenting

this dispute to the conciliation body, without prejudice to the competence of the ordinary Belgian courts (see title II.3.16).

1.3.7. Acceptance to the toll domain of the toll charger

If Viapass and the registered candidate service provider reach an agreement about the bilateral agreement after successful conclusion of the test process, this bilateral agreement will be entered into between the service provider on one hand, and the toll chargers of the Belgian kilometre charging system, the Walloon Region and Viapass on the other hand.

By entering into the bilateral agreement, all toll chargers of the Belgian kilometre charging system accept the service provider to their respective toll domain.

1.3.8. Fee

To compensate the costs of the acceptance procedure, Viapass charges an incremental fixed fee, which is payable in instalments and which is elaborated upon in annex 5. The fixed fee consists of several sums excluding VAT, due depending on the reached phase of the acceptance procedure. If, based on VAT legislation, VAT is due on the fixed fee, then the VAT will be specified separately on the invoice and it must also be paid by the candidate service provider.

Each instalment of the fee is paid before a new phase of the test process is started. For this purpose, Viapass sends an invoice to the service provider at the start of the test process and after the end of each test phase, except for the last phase. After receipt of the payment of the invoice, Viapass will start a new phase of the test process.

2. Rights and obligations in the relation between the service provider and the party subject to the charge (service provision agreement)

2.1. Content of the agreement between the service provider and the party subject to the charge

The agreement between the service provider and the party subject to the charge ("service provision agreement") must at least encompass the following services, provided by the service provider to the party subject to the charge:

(i) the delivery of an OBU (including its operating manual) which must be placed inside the vehicle, and which meets the requirements of the applicable regulations. The service provider can demand a guarantee from the party subject to the charge for the use of an OBU; this guarantee must be reasonably proportionate to the cost price of the OBU;
(ii) guarantee the sending and receiving of a wireless signal from a suitable OBU, which contains all data required to determine the due kilometre charge;
(iii) if applicable (i.e. if the service provider requires a guaranteed payment method from the party subject to the charge), timely notification of the guaranteed payment method becoming insufficient;

(iv) sending the daily statement to the toll charger by means of an electronic data file, even in cases when no kilometres have been registered for the vehicle;
(v) payment of the kilometre charge due from the party subject to the charge to the toll charger;
(vi) the periodic sending, if possible electronically, of the payment document with the amounts which are due from the party subject to the charge for that period, in which a distinction shall be made between:
    a. the total amount of the kilometre charge, the amount of the infrastructure charge and if applicable the amount of the external cost charge;
    b. if applicable, the cost for optional additional services which the service provider has provided; these costs shall not pertain to the services in the above-mentioned points (i) to (v).
    c. if applicable, the balance after deduction of the amounts paid by means of guaranteed payment methods;

The payment document must contain the following data:
    a. the way in which the party subject to the charge can contest the payment document, as well as the term within which this shall be done;
    b. unless the party subject to the charge decides otherwise, at least the time and place of the travelled distances which have resulted in charging of the kilometre charge, as well as the composition of the kilometre charge insofar as relevant for the party subject to the charge.

Upon request of the party subject to the charge, one payment document is sent for all vehicles involved if a party subject to the charge has multiple vehicles that are subject to the charge.

The service provision agreement must also contain at least the following information:

(i) the identity and contact information of the party subject to the charge;
(ii) the license plate number of the vehicle involved, as well as its maximum permitted total weight and its EURO emission class; in case of a combination of vehicles, the license plate number of the motorised vehicle is intended;
(iii) a reference to the rights and obligations of the party subject to the charge and the service provider as mentioned in the ordinance of the Brussels-Capital Region of 29 July 2015; the decree of the Flemish Region of 3 July 2015 and the Flemish Fiscal Codex of 13 December 2013 and finally the rights and obligations imposed by the decree of the Walloon Region of 16 July 2015 introducing a kilometre charge for road use by heavy lorries;
(iv) notification of issuing the OBU with its operating instructions;
(v) if applicable, receipt of the guarantee paid for the OBU;
(vi) statement indicating whether a guaranteed payment method is required;
(vii) the way in which payment is requested, which meets the requirements of point (vi) of the previous paragraph;
(viii) the way in which the service provider refunds undue payments by the party subject to the charge;
(ix) the way in which the agreement can be terminated.

In order to ensure collection of the kilometre charge and, if applicable, the costs to be charged by the service provider to the party subject to the charge for the collection service, the service provider may in the service provision agreement impose on the party subject to the charge the obligation of providing a guaranteed payment method.

The (candidate) service provider provides to Viapass upon first request the model of the service provision agreement which it enters into with the parties subject to the charge.

2.2. Obligations of the service provider

The service provider undertakes to inform the party subject to the charge correctly about the applicable regulations concerning kilometre charge in the toll domain of the toll charger, without prejudice to the obligation of the service provider to fulfil all other obligations arising from the applicable regulations, this toll domain statement and the bilateral agreement.

The service provider will for example inform the party subject to the charge of the fact that (i) in the absence of sufficient proof of the maximum permitted total weight of the vehicle, the vehicle is considered to have a maximum permitted total weight of more than 32 tonnes and (ii) in the absence of sufficient proof of the EURO emission class of a vehicle subject to the charge of the party subject to the charge, the vehicle is considered to belong to the category of the “other EURO emission classes”. In addition, the service provider shall inform the party subject to the charge that presenting sufficient proof does not influence the charges which are due for kilometres which have been travelled before the verification by the service provider of the data included in the proof provided.

The service provider provides the party subject to the charge with an invoice of the amounts which are due from the party subject to the charge based on the services provided.

The service provider must inform the party subject to the charge with whom it enters into a service provision agreement, that it must have at any time and as soon as it proceeds along the Belgian road network an active OBU at its disposal which meets the requirements of the applicable regulations. This active OBU-obligation applies for all the travelled kilometres within the Belgian road network, resulting in a defect OBU having to be immediately replaced by another OBU (from itself or from another service provider).

2.3. Obligations of the party subject to charge

The party subject to the charge shall contact the service provider immediately in the following cases:

(i) if the OBU signals that it no longer meets legal requirements;
(ii) if there is no signal from the OBU at all; and
(iii) if applicable, if he receives the signal that the guaranteed payment method provided no longer suffices.

The service provider instructs the party subject to the charge where necessary in accordance with the applicable regulations in this respect.

3. Bilateral agreement

3.1. General

The requirements enumerated under title II are the basis for entering into the bilateral agreement, i.e. an agreement between the service provider on one hand and the toll chargers of the Belgian kilometre charging system, the Walloon Region and Viapass on the other hand, in which parties agree on those elements which are not fixed by the legal, financial and technical requirements in this toll domain statement, of which no deviations are allowed. The legal, financial and technical requirements stipulated in this toll domain statement are considered to be part of the bilateral agreement.

3.2. Collection and payment of the kilometre charge

3.2.1. General

The service provider carries out the toll activities of the toll charger in its toll domain by collecting the kilometre charge from the parties subject to the charge within the framework of the agreement which it has entered into with the party subject to the charge (service provision agreement), as an agent, i.e. in name and on behalf of the toll charger.

3.2.2. OBU obligation, toll charging and toll statement

OBU obligation of the party subject to the charge and obligation of the service provider to report active OBUs

Before making use of the Belgian road network, the party subject to the charge has to place and activate an OBU in every vehicle subject to the kilometre charge with a view to (i) the registration of the travelled kilometres, based on which the service provider calculates the kilometre charge due from the party subject to the charge by means of the technology used by such service provider for this purpose and/or (ii) the application of the provisions regarding the identification of the vehicle in the context of enforcement and sanctioning.

The service provider must report all the active OBUs of the party subject to the charge (co-contractor of the service provider) once per quarterly period and per vehicle to the toll chargers/Viapass.

The service provider must simultaneously report per vehicle the active OBUs of the parties subject to the charge which were defect during the said quarterly period and which had to be replaced by another OBU (from the same or another service provider).

The license plate numbers of the vehicles equipped with these active OBUs and the defect and replaced OBUs, their EURO emission class and/or maximum permitted total weight, as well as

the identification of the involved parties subject to the charge, must be able to be verified by the toll chargers/Viapass by means of the transaction monitoring interfaces as stated in annex 7 (point 1.7.1.).

Within this communication, the service provider shall specify whether the vehicles equipped with the OBUs have solely proceeded along toll domain roads subjected to a tariff equal to zero eurocent, or along toll domain roads subjected to a tariff equal and/or exceeding zero euro cent, or proceeded along the road network which is not subjected to kilometre charge.

Billable items

The OBU registers the use of the roads of the toll domain according to the tariff model of the toll charger. The registered movement data are combined per vehicle, per day, per toll charger and per road type (so-called “toll object”) and are enriched with legible labels, which results in a so-called “itemisation document”, which is shown to the party subject to the charge when necessary.

Every day after midnight, the distances are added per vehicle for the past day per toll charger, and rounded up or down to euro cents, which results in billable items, to which a VAT indicator is assigned.

This VAT indicator is “no VAT applicable” for the registered movements on non-conceded roads and “full VAT” for the registered movements on conceded roads.

The billable items are limited to the movement data which were registered, without prejudice to the responsibility of the service provider to guarantee correct registration of movement data. In case of late registration of the movement data within the same cycle, they are combined with the billable items, without extra rounding. The data which have not been registered in the same cycle are billed in the new cycle, without extra rounding.

Daily toll statement

The service provider is required to submit a toll statement on a daily basis (“daily toll statement”) of the kilometres or parts of kilometres registered for a vehicle subject to the charge in a toll domain of the Belgian kilometre charging system.

The service provider submits a toll statement on a daily basis to the toll charger by means of an electronic data file secured in accordance with the specifications set out in annex 7..

The daily toll statement contains in any case at least, per vehicle subject to the charge, the following details which have been authenticated by the service provider:

(i) the number of kilometres or parts of kilometres that have been registered by the OBU during the previous calendar day;
(ii) the license plate number, the EURO emission class and the maximum permitted total weight of the vehicle subject to the charge;
(iii) the kilometre charge due per calendar day in accordance with the tariff used by the toll charger.

The costs relating to this obligation to provide a daily toll statement are borne by the service provider.

Billing of the party subject to the charge

The service provider creates a bill per vehicle subject to the charge and per billing period and per toll charger including all the amounts separately due to the different toll chargers for a billing period, and combined into a total sum indicating the amount due to all the toll chargers together.

Each sum due to a toll charger shall result in a tax statement (if the kilometre charge is a tax) or a fee statement (if the kilometre charge is a retribution). A model of tax and fee statement can be imposed upon the service provider by the toll charger concerned.

In the fee statement, VAT is also calculated and indicated. This VAT is also mentioned on the aforementioned bill.

A daily invoice list ("Daily Invoice List") will be generated by the service provider per toll charger and will be sent to these toll chargers.

In this list, the following data shall be (if applicable) included and completed for each bill that was sent in name and on behalf of the toll charger to the parties subject to the charge:

(i) number of the bill;
(ii) date of the bill;
(iii) identification of the party subject to the charge;
(iv) VAT number of the party subject to the charge;
(v) address of the party subject to the charge;
(vi) country code of the licence plate of the vehicle;
(vii) license plate number of the vehicle;
(viii) provided service;
(ix) amount of the provided service excluding VAT;
(x) VAT;
(xi) amount of the provided service including VAT.

3.2.3. Payment of kilometre charge to toll charger

The service provider is required to pay the kilometre charge, due by the party subject to the charge, with whom it has entered into a service provision agreement, to the toll charger, as long

as the service provider has not notified the toll charger that it has lawfully suspended the performance of said service provision agreement, in accordance with title II. 3.8.1.

The service provider shall pay the kilometre charge due by the parties subject to the charge to the toll charger within a term of forty five calendar days for the number of registered kilometres or registered parts of kilometres declared by the service provider. The aforementioned term commences as of the daily statement.

The incomplete or incorrect statement of the service provider does not relieve the service provider of the obligation to correct without delay this situation and to pay the total amount of due kilometre charge within the mentioned term as calculated on the basis of a complete and correct toll statement.

The toll charger will not send a payment request.

Additionally, the service provider shall provide a list of bills that have been paid every day ("Daily Paid Invoice List") per toll charger, in which all bills which have been issued in name and on behalf of the toll charger and which were paid on the previous day will be stated, along with the following details (if applicable):

(i) number of the bill;
(ii) date of the bill;
(iii) identification of the party subject to the charge;
(iv) VAT number of the party subject to the charge;
(v) address of the party subject to the charge;
(vi) country code of the licence plate of the vehicle;
(vii) license plate number of the vehicle;
(viii) provided service;
(ix) amount of the provided service excluding VAT;
(x) VAT;
(xi) amount of the provided service including VAT;
(xii) date of payment of the bill.

Finally, the service provider provides each of the toll chargers with a daily overview of all total payments which have been done to the respective toll chargers ("Disbursement report").

Credit transfers must be performed by the service provider without bank fees at the expense of the toll charger, and can only be done in euros. All fees imposed by the financial institution with which the toll charger holds its account, are at the expense of the toll charger.

The service provider provides all information, no matter in which format, at the request of the toll charger, which is judged reasonably necessary to verify the payment of the due kilometre charge or the accuracy of the amounts declared by the service provider.

3.2.4. Interest in case of late payment by the service provider

Late payment gives the toll charger the right to charge interest on arrears amounting to 8% per year without previous notice of default. If the payment has still not been performed after notice of default in which an additional payment term of fourteen calendar days was allowed, the toll charger has the right to terminate the bilateral agreement with immediate effect and without any prior notice of default and/or to compensate itself based on the payment guarantee under title II.3.4. and/or to take any other measure allowed for by Belgian law.

3.3. Fees

3.3.1. Fixed fees payable to Viapass

Within the framework of the registration and acceptance procedure, the candidate service provider will pay the fixed fees to Viapass, as stipulated under titles II.1.2.5. and II.1.3.8.

The fixed fees which have been paid will not be reimbursed.

3.3.2. Fees payable to the service provider

As a fee for its services, the toll charger pays the service provider an amount consisting of the following components

(i) The first component is determined by multiplying a percentage by the amount of kilometre charge that the toll charger has received in the past quarterly period from the involved service provider.

No price revision applies to this component.

(ii) The second component is determined by multiplying a fixed amount by the number of active OBUs of the involved service provider during the past quarterly period.

A price revision applies to this component: at the end of each quarterly period, the following price revision formula is applied to this component:

CPI_n/CPI_0

In which CPI_n stands for the most recent value of the Belgian consumer price index of the invoice date involved, and CPI_0 stands for the Belgian consumer price index for April 2016.

The second component is not due for active OBUs which were defect and had to be replaced by another active OBU during the quarterly period.

The aforementioned percentage can vary along a predetermined graduated calculation, depending on the total amount of kilometre charge collected on a quarterly basis by the service provider in the context of the Belgian kilometre charging system.

The aforementioned fixed amount can vary within predetermined limits depending on the nature, the amount and the quality of the services which the service provider has provided during the past quarterly period, and which, for the toll chargers, have a direct or indirect positive influence on the functioning of this system.

The aforementioned graduated calculation and limits are susceptible to periodic review by the toll chargers. No periodic review is applied on a bilateral agreement during the first five years following the signing of that agreement.

More specific information on the aforementioned fixed percentage and fixed amount will only be provided to registered service providers that have submitted an application for acceptance, and following signature of the letter of intent.

This fee will, as the case may be, be increased by a bonus and/or decreased by a penalty and/or fines as stipulated under title II.3.7.

The service provider sends an overview to the toll charger a maximum of twenty working days after the end of each quarterly period. The service provider draws up this overview carefully and truthfully.

The overview contains a statement of the fee. The overview also contains a detailed explanation of the way in which the amounts have been determined, including any bonuses, penalties and fines. The information in the overview must be clear and orderly, and substantiated by easily verifiable written data. An overview is inadmissible and will be considered not to have been received if it does not include all prescribed information or if this information does not meet the requirements stipulated under this title.

A maximum of twenty working days after receipt of the overview by the toll charger, the toll charger will notify the service provider of its comments or approval.

The overview is accompanied by an invoice (credit note in case the overview shows that an amount is due from the service provider to the toll charger).

The toll charger must pay the fee to the service provider every quarterly period, a maximum of fifty calendar days after receipt of the invoice.

If applicable, the service provider must pay the credit note to the toll charger at the latest thirty days after receipt of the credit note.

3.3.3. Interest in case of late payment by the toll chargers

Late payment gives the service provider the right to charge interest on arrears amounting to 8% per year without previous notice of default.

3.4. The guarantee

At the moment the bilateral agreement is entered into and during its duration period, the service provider shall provide for each toll charger a guarantee, *inter alia* to secure its collection and payment obligations, in the form of an abstract, irrevocable and unconditional bank guarantee, payable at the first request of the beneficiary, provided by a credit institution of a member state of the European Union with at least an A rating (according to Standard & Poor's) or an A2 rating (according to Moody's) (or an equivalent rating), according to the model included in annex 6.

The amount of the bank guarantee shall equal the average monthly amount of kilometre charge that the service provider pays for the toll domain in question. The amount is determined based on the total amount of kilometre charge that the service provider has paid for the toll domain in question in the previous year. For new service providers, the amount is based on the average monthly amount of kilometre charge that the service provider is expected to pay for the toll domain in question, in accordance with the number of contracts and the average amount of kilometre charge per contract according to the estimates of the business plan of the service provider.

If it may be reasonably expected that the average monthly amount of kilometre charge that the service provider will pay for the toll domain in question equals zero, the service provider will not need a bank guarantee, subject to re-evaluation of the amount of the bank guarantee, as stipulated below.

The service provider shall notify Viapass, which represents the toll chargers, of the verifiable proof needed and all the documents needed to be able to determine the amount of the bank guarantee when entering into the bilateral agreement, and shall answer all questions from Viapass and/or the toll charger regarding this matter. If the service provider does not provide the necessary proof and documents, despite a request thereto from Viapass and/or the toll charger, discretionary estimates will be made for the amount of the bank guarantee and such amount will be determined by the toll charger based on the expected average monthly turnover.

The service provider shall replenish the bank guarantee to that amount again within ten working days after it has been invoked (unless the bilateral agreement has been terminated by the toll charger in accordance with title II.3.5.2.).

The amount of the bank guarantee is subject to re-evaluation by the toll charger in function of the actual average monthly amounts of kilometre charge that the service provider pays to the toll charger:

(i) every quarterly period during the first year of the duration of the bilateral agreement; and
(ii) when the bank guarantee is extended/renewed/replaced, as stipulated below.

If the re-evaluation shows that the amount of the bank guarantee is too low, the service provider undertakes to have the amount replenished within fifteen working days; if it fails to do so, the toll charger may terminate the bilateral agreement with immediate effect and without prior notice of default.

If the re-evaluation shows that the amount of the bank guarantee is too high, the service provider is entitled to limit the amount to or to provide a new bank guarantee for an amount that equals the average monthly amount of kilometre charge that the service provider pays for the toll domain in question.

Apart from this re-evaluation, the amount of the bank guarantee is not subject to price revisions.

The bank guarantee covers the service provider failing to fulfil its payment obligations based on the bilateral agreement, including, but not limited to:

(i) non-payment of the kilometre charge by the parties subject to the charge until the moment when the service provider has notified the toll charger of the lawful suspension of the performance of its agreement with the party subject to the charge pursuant to title II.3.8.1.;
(ii) the collection risk in case of liquidation, bankruptcy, discontinuity or any other event of concurring rights, on the part of the service provider;
(iii) bad management of the financial flow of the kilometre charge collected from the parties subject to the charge;
(iv) non-payment of the penalties, the fines and the penalty points discount in accordance with title II.3.7.

In the event of non-payment by the service provider, the toll charger is allowed to immediately invoke the bank guarantee, even if the toll charger has sent the service provider a notification of default and has allowed an additional payment term which has not yet ended.

In case of and to the extent that the toll charger has invoked the bank guarantee for foregone kilometre charge and this foregone kilometre charge is subsequently collected by the service provider (and is actually transferred to the toll charger), the amount equalling this recuperated kilometre charge will be refunded to the service provider within a term of fifty calendar days from receipt of payment by the toll charger.

Upon prior written request by the service provider, the toll charger shall declare the guarantee to have been cancelled, and return the original of the guarantee to the issuing credit institution within ten working days after the bilateral agreement has ended.

The duration of the bank guarantee must be at least thirteen months, and must be extended/renewed/replaced by a term of thirteen months a maximum of fourteen calendar days

before the end of each term of thirteen months. When the bank guarantee is extended/renewed/replaced, the amount of the bank guarantee is determined based on the total amount of kilometre charge paid for the toll domain in question by the service provider in the past twelve months. If the extension/renewal/replacement of the bank guarantee does not occur in due time, the toll charger has the right to invoke the bank guarantee and to retain the amount received as security for fulfilment of the payment obligation of the service provider based on the bilateral agreement.

In deviation from the above, the service provider can be allowed within the framework of the bilateral agreement to provide one single bank guarantee for the benefit of all toll chargers of the Belgian kilometre charging system for which a bank guarantee is needed, instead of one bank guarantee for each toll charger. This collective bank guarantee shall be in accordance with the same principles and the same model as stipulated above. The amount of this collective bank guarantee shall equal the sum of the average monthly amounts of kilometre charge which the service provider pays for all toll domains of the Belgian kilometre charging system. In case of one collective bank guarantee, each toll charger may invoke the bank guarantee, within the limits of the average monthly amount of kilometre charge that the service provider pays for the toll domain of the toll charger in question, after having sought prior advice from Viapass concerning this.

3.5. Duration and termination of the bilateral agreement

3.5.1. Duration and termination option

The bilateral agreement enters into force from the date it is signed by the parties and is of indefinite duration.

The bilateral agreement can be terminated by the service provider following a notice period of three months, on the last day of every month at the latest, by means of a letter sent by registered mail to each toll charger, with a copy provided to Viapass.

The other parties can terminate the bilateral agreement early, in the cases stated under title II.3.5.2.

The termination of the bilateral agreement by or with regard to one of the toll chargers automatically causes the termination of the bilateral agreement with regard to all parties.

3.5.2. Early termination

Early termination by the toll charger

The toll charger has the right to terminate the bilateral agreement with immediate effect in the following circumstances:

(i) if compensation due is not paid by the service provider, despite a formal notice of default by registered mail in which an additional payment term of fourteen calendar days is granted;

(ii) in case of repeated failure of the service provider to fulfil the bilateral agreement, despite a formal notice of default by registered mail granting an additional term of fourteen calendar days to remedy the defaults;

The toll charger has the right to terminate the bilateral agreement with immediate effect and without prior notice of default in the following circumstances:

(iii) in case of fraud and/or a serious shortcoming with regard to the bilateral agreement, which is not remedied by the service provider, despite instruction from the toll charger to that effect;
(iv) in case of force majeure which persists for at least one month;
(v) in case the registration of the service provider is withdrawn;
(vi) in case the extension/renewal/replacement and/or replenishing of the bank guarantee, as stipulated under title II.3.4., does not occur in due time;
(vii) in other cases stated in this toll domain statement.

If the bilateral agreement has been terminated by the toll charger with immediate effect and without prior notice of default, and except in case of termination due to *force majeure*, the toll charger has the right to refuse to enter into a new bilateral agreement with the service provider or with a legal person substantially identical to the service provider with whom the bilateral agreement was terminated (in terms of shareholdership or management structure), if no proof can be provided that reliable corrective measures have been taken by the service provider in order to ensure that no similar breach of the bilateral agreement will occur in the future.

The termination of the bilateral agreement is without prejudice to the obligations of the service provider set forth under the title II.3. with regard to the kilometre charge due from the party subject to the charge during the whole term of the bilateral agreement.

Early termination by the toll charger in case the kilometre charging system is not adapted in due time

If the service provider does not adapt its system of electronic kilometre charging in due time after the system in the toll domain has been modified, causing the service provider to be unable to offer services, the bilateral agreement will automatically and as of right terminate at the moment when the service provider can no longer offer its services, unless the service provider proves that he is not accountable, nor directly or indirectly, for the delay.

Early termination by the toll charger due to an enforceable judicial decision

The toll charger has the right to terminate the bilateral agreement with the service provider taking into account a notice period of six months, if the kilometre charge can no longer be collected and claimed due to an enforceable judicial decision, except in case this decision has established that the impossibility to collect and claim the kilometre charge is caused by fraud, intentional fault or serious fault of the toll charger.

If the toll charger does not respect this six months' notice period (partly or entirely), the service provider is entitled to a prorate calculated fixed compensation of the amount equal to the average monthly compensation calculated over a period of a year (or the duration of the bilateral agreement if this agreement was in force for a period of less than a year) prior to the date notice is given, multiplied by the length of the notice period (calculated, as much as possible, in months and in days for the rest) which the toll charger does not respect. In case the bilateral agreement has been in force less than a year at the moment notice is given, the average compensation for the period during which the bilateral agreement was in force, is taken into account.

Compensation in case of stopping the kilometre charging system

Only in case of stopping of the kilometre charging system within a period of three years starting from the moment the (candidate) service provider applies for registration or acceptance (if he is already registered as an EETS provider in another member state of the European Union), shall the (candidate) service provider have the right to claim damages from the toll chargers and the Walloon Region, provided that the service provider provides the proof of an extra-contractual or contractual breach of one or more toll chargers and/or the Walloon Region, in causal connection with the damage, proved by the service provider, due to the stopping of the kilometre charging system. The total (potential) liability of the toll chargers and the Walloon Region combined, shall in any case be limited to an amount of EUR 5,000,000.

The toll chargers cannot be held jointly and severally liable, mutually or together with the Walloon Region.

Duty to inform

The service provider undertakes to inform the parties subject to the charge in due time in case the bilateral agreement is terminated and in case of stopping of the kilometre charging system, notifying them that they no longer have the right to use the services of this service provider via their OBU. The toll charger will not be liable for any loss or damage suffered as a result of termination of the bilateral agreement by the parties subject to the charge who make use of the services of the service provider.

Early termination by the service provider

The service provider has the right to terminate the bilateral agreement with immediate effect in the following circumstances:

(i) in case of repeated failure of the toll charger to fulfil the bilateral agreement, despite a formal notice of default by registered mail granting an additional term of fourteen calendar days to remedy the defaults;

The service provider has the right to terminate the bilateral agreement with immediate effect and without prior notice of default in the following circumstances:

(ii) in case of fraud and/or a serious shortcoming with regard to the bilateral agreement, which is not remedied by the toll charger, despite instruction from the toll charger to that effect;
(iii) in case of *force majeure* which persists for at least one month;
(iv) in other cases stated in this toll domain statement.

3.6. Liability

3.6.1. General

The provisions of this title II.3.6 regarding the toll charger are *mutatis mutandis* applicable to the Walloon Region.

Except if there are deviations in the applicable regulations, this toll domain statement or the bilateral agreement, the service provider and the toll charger are liable towards each other on grounds of general principles of Belgian law.
The toll chargers cannot be held jointly and severally liable, mutually or together with the Walloon Region,

3.6.2. Limitation of liability of the toll charger

Except in case of fraud or intent, the total liability of each toll charger towards the service provider by virtue of its contractual as well as its extra-contractual and pre-contractual liability starting from the moment of application for registration and/or acceptance until termination of the bilateral agreement, is limited to an amount of EUR 500,000.

Except in case of fraud or intent, the total liability of Viapass towards the service provider by virtue of its contractual as well as its extra-contractual and pre-contractual liability starting from the moment of application of the service provider for registration and/or acceptance until termination of the bilateral agreement, is limited to an amount of EUR 100,000.

3.6.3. Warranty by the service provider

To the extent that the claims and/or fines are not the result of a shortcoming directly attributable to the toll charger and/or Viapass, the service provider shall guarantee and indemnify the toll charger and Viapass regarding:

(i) claims of third parties for compensation of damage suffered due to a shortcoming or unlawful act of the service provider, its staff and/or representatives;
(ii) claims of third parties with regard to a shortcoming that can be attributed to the service provider;
(iii) fines imposed on the toll charger by a thereto competent authority which are the result of a shortcoming that can be attributed to the service provider;
(iv) the costs of the legal proceedings introduced by third parties against the toll charger(s) and/or Viapass, because of shortcomings or wrongful acts of the service provider, its staff and/or representatives.

This warranty and indemnification by the service provider does not pertain to claims of third parties based on an agreement which these third parties have entered into with the toll charger or Viapass.

Please note that “third parties” in the sense of this title does not refer to the toll charger or Viapass.

To avoid any misunderstanding, the “parties subject to the charge” with whom the service provider has entered into a service provision agreement are considered “third parties” in the sense of this title.

3.7. The penalty system

3.7.1. Key Performance Indicators (KPIs)

Whether the service provider is given a bonus or a malus is determined for each quarterly period on the basis of the measurements of the actual performances of the service provider as specified in annex 8.

The KPIs are enumerated in annex 7.

Only the KPIs listed under 1.2.1. of annex 7 can give rise to a bonus or a malus, while the other KPI’s of *Annex 8* can only give rise to a malus.

The bonuses and the maluses are enumerated in annex 7.

3.7.2. Penalties for violations of technical requirements

The service provider is required to respect the technical requirements as determined in annex 7. If the service provider does not adhere to these technical requirements, the penalties mentioned that annex apply.
If no penalty is determined, the service provider shall nonetheless be liable according the rules of Belgian common law.

3.7.3. Penalty points and penalty point discounts

Penalty points (PPs)

If an event or circumstance occurs (except in case of *force majeure*) that is covered by one of the categories mentioned in the table included in annex 9, Viapass, acting on behalf of the toll charger, may set the penalty points listed in the table for the category in question (the penalty points or PPs). If the toll charger decides to set penalty points, it is required to apply the number of penalty points specified in the table for the category in question, no more or less, and in an exhaustive manner.

The event or circumstance giving rise to penalty points is determined by the toll charger by means of a signed and dated official report, a copy of which is sent to the service provider within two working days by e-mail, confirmed by registered mail.

If the event or circumstance leads to the application of 25 penalty points, this event or circumstance must be rectified within 24 hours of the determination by official report.

If the event or circumstance leads to the setting of not more than 5 penalty points, the toll charger shall first send the service provider a written warning.

If the service provider fails to rectify the event or circumstance (excluding instances of force majeure) within fifteen calendar days of this warning for events or circumstances that lead to the setting of fewer than 5 penalty points (namely 1, 2 or 3) and within five calendar days of this warning for events that lead to the setting of 5 penalty points, a determination by official report shall follow in accordance with this title.

If an event or circumstance for which penalty points were applied or for which a written warning was issued recurs within the same or subsequent payment period, the toll charger may again set the same number of penalty points:

(i) without prior warning; or
(ii) apply penalty points immediately, without written warning, if no penalty points have yet been set for the prior event or circumstance;
(iii) plus one penalty point the first time, two penalty points the second time, etc., up to a maximum of ten additional penalty points.

If an event or circumstance referred to in the table persists for more than one week after expiry of the fifteen or five calendar days warning term, the toll charger may set 1 additional penalty point for each additional week that the event or circumstance persists beyond that week, up to a maximum of 10 additional penalty points.

In case of doubt as to the qualification of the event or circumstance, the toll charger is entitled to apply the qualification with the highest number of penalty points. If an event or circumstance falls

into more than one category, the category with the highest number of penalty points must be used.

If an event or circumstance with the character of administrative negligence, is punished with a fine on the basis of the applicable legal rules, the penalty points are reduced by the amount of the fine actually imposed and paid. The service provider must provide evidence that the administrative fine has been imposed and actually paid. The number of penalty points thus obtained may never be less than zero.

The imposition of penalty points does not affect the obligation of the service provider, if possible, to rectify shortcomings attributable to it as quickly as possible.

Actions performed in accordance with the instructions of the toll charger do not result in the application of penalty points.

Calculating penalty points discount

The penalty points discount is equal to EUR 5,000 times the penalty points (PPs) applied during a specific quarterly period. The amount of EUR 5,000 is indexed using the following formula:

CPI_n/CPI_0

In which CPI_n stands for the most recent value of the Belgian consumer price index of the invoice date involved, and CPI_0 stands for the Belgian consumer price index for April 2016.

If the number of penalty points (PPs) in the quarterly period in question is equal to or less than 4, the penalty point discount is zero.

Assistance or representation by Viapass

The toll charger can be represented and/or assisted by Viapass in the performance of its rights and obligations under this title II.3.7.

3.8. Blocking of parties subject to the charge - *black list* and *white list*

3.8.1. Blocking of parties subject to the charge - *black list*

The service provider is only entitled to suspend its agreement with the party subject to the charge if:

(i) the party subject to the charge fails to comply with its payment obligations to the service provider, as specified in the agreement between the service provider and the party subject to the charge;
(ii) if applicable, in case the party subject to the charge has not provided any or a sufficient guaranteed payment method;
(iii) the party subject to the charge uses the OBU in a manner contrary to the operating instructions made available by the service provider;
(iv) the party subject to the charge fails to report a defect in the OBU to the service provider;
(v) the party subject to the charge does not follow the service provider's instructions with a view to replacing or repairing a defective OBU.

The service provider shall immediately notify the party subject to the charge at its own expense and risk of the suspension of the performance of the agreement.

The service provider must also send the toll chargers and the Walloon Region, as quickly as possible and at least once per period of twenty-four hours, at its own expense and risk, an electronic list of all parties subject to the charge whose service provision agreement was suspended (hereafter, the "*black list*"). The format of the *black list* shall be provided by Viapass. If the sending of the updated *black list* is not possible within a period of twenty-four hours, the changed data shall be sent per e-mail and/or per fax within the period of twenty-four hours.

The information on the *black list* shall be sent to the toll charger and the Walloon Region. The risks and costs associated with transferring the information shall be borne by the service provider. The toll charger is required to accept the transferred data. The *black list* is drawn up strictly in compliance with the privacy rights and legislation, as specified in title II.3.10.

Provided a party subject to the charge is included on the *black list* and the *black list*, whether or not in incremental form, was sent to the toll charger and the Walloon Region in accordance with this toll domain statement, the service provider is no longer liable for the kilometre charging that arises out of a service provision agreement with the party subject to the charge that was suspended. The kilometre charge is then recoverable directly from the party subject to the charge and the toll charger must contact the party subject to the charge directly for payment.

If the *black list* information cannot be made available by the service provider for technical or other reasons, the *black list* that was applicable at that moment shall continue to apply.

The service provider cannot invoke any shortcoming of the toll chargers, its co-contractors or third parties in order not to comply with its obligation to send, at least once per period of twenty-four hours, an updated *black list* or, if not possible, its obligation to send the changed data per e-mail or per fax. The service provider is only relieved form these obligations in case of *force majeure* (which includes only for purposes of this paragraph, shortcomings by third parties for whom the service provider is not responsible) and/or shortcoming of the toll charger persisting at least during a period of twenty-four hours and which makes the update of the *black list* and/or the communication of the changed data per fax and/or e-mail by the service provider to the toll chargers impossible.

3.8.2. *White list*

At least once per period of twenty four hours, at its own expense and risk, the service provider shall inform each the toll charger and the Walloon Region of the additions to and deletions from the electronic list (hereafter, the *"white list*") in the format to be provided by Viapass. This list contains information regarding agreements with parties subject to the charge with the aim of carrying out random checks of parties subject to the charge and vehicles that use the toll domain in a manner not permitted and/or have not or not fully paid the due kilometre charge (hereafter, toll evaders). The (additions to and deletions from the) *white list* is (are) drawn up strictly in compliance with the privacy rights and legislation, as specified under title II.3.10., with the provision that the white list must specify at least the name and place of residence or registered office of each registered party subject to the charge.

The service provider is required to update the *white list* according to a schedule specified by Viapass and is liable for the accuracy and completeness of the list. The toll charger and the Walloon Region are not required to check the accuracy and completeness of the data on the *white list*.

The inclusion of a vehicle on the *white list* is indicative and does not constitute indisputable proof for legal access to the kilometre charging system of the party subject to the charge.

3.9. Enforcement

3.9.1. General

The service provider is required to collaborate with the toll charger and the Walloon Region to ensure that the applicable regulations are respected by the parties subject to the charge, by, among other things, complying with the requirements under this title.

If legal proceedings are brought against a party subject to the charge for non-payment of kilometre charge owed, the service provider is required, on first request, to offer the toll chargers and the Walloon Region support, such as, but not limited to, providing the name, address and/or place of residence/registered office of the party subject to the charge and, as the case may be, the reasons for the suspension or termination of the service provision agreement with that party subject to the charge.

If the toll chargers and/or the Walloon Region are confronted with a toll evader, the following cases should be distinguished:

3.9.2. Suspension of the service provision agreement, mentioning on the *black list* and communication of the *black list* to the toll chargers and the Walloon Region

The service provider is no longer liable for the kilometre charge that results from the agreement with the party subject to the charge, on cumulative condition that (i) the service provider has suspended its agreement with the party subject to the charge, (ii) this party subject to the charge has been added to the *black list* and (iii) the *black list* has been sent to the toll charger and the Walloon Region in accordance with this toll domain statement. The kilometre charge for kilometres registered as from the day following the day on which all three conditions are fulfilled, is recoverable directly from the party subject to the charge and the toll charger must contact the party subject to the charge directly for payment.

In this case, the service provider shall not be required to pay the evaded kilometre charge.

The potential fines shall be recovered directly from the toll evader by the respective Regions.

In that case and as far as technically possible, the service provider will be bound to submit daily statements (different from the “daily toll statement”) regarding the kilometres or parts of kilometres that were registered within the toll domain for the vehicle falling under this provision.

3.9.3. All other cases

If the toll chargers notify the service provider of the existence of a violation of the kilometre charge by the party subject to the charge, the service provider shall pay the kilometre charge owed by the party subject to the charge to the toll charger as long as the toll charger is able to prove that no correct payment of the kilometre charge has been made and the service provider did not comply with the conditions determined under title 3.9.2. here above.

Potential fines shall, however, be recovered directly from the toll evader by the respective Regions.

3.10. Data protection

The service provider shall guarantee that when data of parties subject to the Belgian kilometre charge are processed by it or by others used by the service provider for that purpose, these are registered and managed in such a way that the privacy rights and all current and future applicable privacy legislation, including, but not limited to, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and Directive 2002/58/EC of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (directive on privacy and electronic communications) and their respective transposing laws, are respected.

Where necessary, the service provider shall assist the toll charger and the Walloon Region in order to comply with the applicable data protection legislation in the context of the bilateral agreement and within the framework of its contractual relationship with the parties subject to the charge. As part of this assistance, the service provider shall (i) anticipate, proactively contact the toll charger and the Walloon Region and inform the latter of issues that arise in connection with the applicable data protection legislation, and shall (ii) answer the questions of the data protection authorities.

The service provider must:

(i) take suitable technical and organisational measures to protect personal data from any destruction (accidental or unlawful), loss, alteration, unauthorised disclosure or access, and against any other form of unlawful processing. These measures must guarantee an appropriate and high level of protection, taking account of the relevant state of the art and the costs of applying the measures, as well as the amount and the nature of the data to be protected and the potential risks. The technical and organisational measures shall be reviewed by the service provider on a regular basis and whenever required by the state of the art (the prevailing industrial standards), by new regulations or by any other cause of such a nature that a review is required, and shall review technical and organisational measures immediately if potential incidents make this necessary;

(ii) immediately correct any potential errors or inaccuracies in personal data that were caused by processing, as soon as it becomes aware of such errors or inaccuracies, and regardless of whether these are caused by the service provider, any potential subcontractors or the toll charger and the Walloon Region;

(iii) make the facilities it uses for processing available for an audit by a qualified impartial and independent expert and offer any assistance required by the toll charger for such an audit. If the audit reveals that the service provider has violated one of its data protection obligations, the service provider must remedy this violation within five working days.

At the request of the toll charger, the service provider shall provide the toll charger and the Walloon Region in writing with all the information they need to prepare notifications and to obtain and retain the authorisations required to implement the kilometre charge, such as, for example, the authorisation from the competent sectoral committee to gain access to certain databases.

The service provider undertakes to appoint a *data processing officer* to act as special contact for the toll charger and the Walloon Region, for all matters relating to data protection.

The service provider undertakes to prevent all possible damage to the toll chargers, the Walloon Region and third parties and to indemnify and hold harmless the toll charger and the Walloon Region in respect of all possible damage they suffer or have suffered as a result of complaints, demands and proceedings against the toll charger and/or the Walloon Region (i) in relation to the processing of personal data by the service provider (including those persons acting under its authority) and/or its subcontractors, or (ii) as a result of a violation by the service provider (including those persons acting under the authority of the service provider and/or its subcontractors) of the applicable data protection legislation or of the toll domain statement and the provisions of the bilateral agreement.

The compensation obligation includes all damage, including, but not limited to, damage linked to loss of income (with or without retroactive effect) as a result of modifications to or replacements of (parts of) the system arising from adverse judicial rulings and damage to the reputation of the toll charger and/or the Walloon Region.

3.11. Monitoring

3.11.1. Checking the operations of the service provider

The toll charger reserves the right to check the operations of the service provider concerning the parties subject to the charge in the Belgian kilometre charging system at any moment, to ensure it is fulfilling its obligations under the bilateral agreement.

To that end, the toll charger is entitled to inspect (or have inspected) at any time whether the service provider is fulfilling its obligations under the bilateral agreement. These inspections may either be announced or unannounced.

The service provider must, on request, grant the party carrying out the inspections access to the locations where this bilateral agreement is being executed, and provide the party with any information said party considers necessary to carry out the inspections. The service provider is allowed to attend the inspections.

Without prejudice to the general obligation of the toll charger to act reasonably and diligently, the inspections (announced or otherwise) shall:

(i) only be carried out during normal working hours and may not un- reasonably disturb the proper functioning of the kilometre charging system;
(ii) only be carried out by an expert figuring on the list attached to the bilateral agreement; and
(iii) be carried out in accordance with the usual access and safety procedures that do not compromise proper inspections and, where applicable, the confidentiality of relevant information.

The service provider shall send the toll charger on first request a copy of the service provision agreements it has entered into with the parties subject to the charge.

The toll chargers and the Walloon Region have the right to request that the service provider discloses to them the vehicle documents of the parties subject to the charge with whom the service provider has entered into a service provision agreement, and on which documents the EURO emission class and the maximum permitted total weight of the vehicle are found. Disclosure of these documents will be requested to verify whether the EURO emission class and/or maximum permitted total weight applied by the service provider for determination of the tariff of the kilometre charge are in accordance with the actual EURO emission class and/or maximum permitted total weight, which is stated on the vehicle documents.

3.11.2. Testing the toll charging system

The toll charger has the right to request the cooperation of a service provider to subject the toll charging system to extensive tests without notice, in which vehicles are checked that are driving or have driven in the toll domain of the toll charger. The number of vehicles subjected to such tests each year for a particular service provider is proportional to the average annual traffic or the average annual traffic forecasts of the service provider in the toll domain of the toll charger.

3.11.3. Measuring the Key Performance Indicators

During the operational phase, the service provider must monitor the quality of its services and report accordingly to the toll charger. Every three months, the service provider must report on the KPI measurements. The procedure for measuring KPIs is described in annex 8.

3.11.4. Assistance or representation by Viapass

The toll charger can be assisted and/or represented by Viapass in the performance of its rights and obligations under this title 3.11.

3.12. Intellectual property rights

The provisions relating to intellectual property rights can be found in annex 10.

3.13. Confidentiality

3.13.1. General

The provisions of this title 3.13. regarding the toll charger are *mutatis mutandis* applicable to the Walloon Region.

For the purposes of this toll domain statement, confidential information is understood to mean: (i) all information exchanged in the course of the registration and acceptance procedure between the candidate service provider, the toll charger and Viapass in any way whatsoever and which is not in the public domain at the time of notification; (ii) the contents (though not the existence) of the negotiations with respect to the bilateral agreement and the contents (though not the existence) of the bilateral agreement and all associated information that must remain confidential due to its nature, such as documents, computer files, specifications, formulae, evaluations, methods, processes, technical descriptions, reports and other data, files, drawings, models and calculations.

Except with the prior written consent of the toll charger and Viapass, or respectively the service provider, the service provider, or respectively the toll charger and Viapass, are not permitted, either directly or indirectly, for example through an intermediary or a legal entity in which the service provider or the toll charger and Viapass are involved as shareholder, director or otherwise:

a) To use any part of the confidential information otherwise than in the context of the registration and/or acceptance procedure, or for a purpose other than the negotiation on and the performance of the bilateral agreement;

b) To divulge any part of the confidential information to third parties, other than those (legal) persons who must reasonably have access to the confidential information by virtue of their position at, their professional relationship with, their direct or indirect contractual link with the service provider or the toll charger and Viapass (hereafter jointly “the representatives”). To the extent that, by virtue of their professional activity, these representatives are not bound by statutory professional secrecy and therefore by a professional duty not to divulge this confidential information, these representatives must declare expressly and in writing that they are bound by the terms of this title. The service provider, or respectively the toll charger and Viapass undertake that the representatives they involve in the registration and/or acceptance procedure and the performance of the bilateral agreement shall comply with the commitments set out in this title.

Without prejudice to the foregoing, the service provider and the toll charger and Viapass shall take all necessary or useful measures to prevent the disclosure of confidential information contrary to this title and the service provider and the toll charger shall take all necessary or useful measures to guarantee compliance with the terms of this title by each of them and their representatives.

3.13.2. Exceptions

The duty of confidentiality applicable to the confidential information shall not apply if it concerns information that:

(i) has entered or enters the public domain without this being the result of an unauthorised disclosure of this information by the service provider or the toll charger and Viapass or by a person to whom one of them has made this confidential information available;
(ii) was already known to the service provider or the toll charger and/or Viapass at the time the information was disclosed to it;
(iii) was given to one of them on a non-confidential basis by a third party that is lawfully in possession of this information and is entitled to disclose such information;
(iv) is subject to the obligation to be made public:

i. pursuant to regulations (other than under regulations relating to public access to government documents)
ii. in the context of administrative supervision or parliamentary control
iii. on the basis of a court decision.

Except in the cases referred to above, the service provider must consult with the toll charger and Viapass before the confidential Information is disclosed.

3.13.3. Means of disclosing confidential information

If the service provider or the toll charger and Viapass are required to disclose confidential information pursuant to regulations, in the context of administrative supervision or parliamentary control or on the basis of a court decision, the service provider or the toll charger and Viapass shall as far as possible, prior to this disclosure, inform the other immediately and in writing of this obligation, as well as the requested documents that must be disclosed, and the service provider and the toll charger and Viapass shall consult in relation to the timing and contents of the disclosure.

Before disclosing confidential information, the service provider or the toll charger and Viapass must:

(i) notify the other party in writing and as quickly as is practically possible of the confidential information that is to be disclosed, before the information in question is disclosed;
(ii) only provide that part of the confidential information that is required by the regulations, the administrative supervision, the parliamentary control or the court decision;
(iii) endeavour to obtain reliable assurance that the confidential information will be treated confidentially.

3.13.4.Duration of the confidentiality

The obligations as determined under this title II.3.13. apply for a period of 24 months as of the date of the *letter of intent*, except when expressly stipulated differently in the bilateral agreement.

3.14.Modifications

The service provider must adapt its kilometre charging system, at its own expense (subject to what is set forth in point 3.14.3.) to the extent such expense is reasonable, to the kilometre charging system of the toll charger due to a modification of the kilometre charging system (point 3.14.1. hereinafter), a modification of the toll domain statement (point 3.14.2. hereinafter) and a modification of the kilometer charge (point 3.14.3. hereinafter).

The service provider must adapt its system no later than on the day on which the modification in question will enter into force as notified by the toll charger and further specified in points 3.14.1. 3.14.3.

For each calendar day of delay counting from the date of such entry into force the service provider shall owe the toll charger a fixed compensation equal to 20.000 euro per calendar day of delay, whereby every started day will be considered as a day of delay without prejudice to the right of the toll charger to claim a compensation equal to the higher losses that it suffers as because of the delay. This fixed compensation will not be due by the service provider that proves that the delay is not directly or indirectly imputable to it.

A delay of more than 15 calendar days counting from the date of such entry into force that is directly or indirectly imputable to the service provider, is considered to constitute a serious shortcoming under the bilateral agreement, which is not remedied by the service provider, despite instruction from the toll charger to that effect, in the sense of point 3.5.2. (iii), which justifies termination of the bilateral agreement with immediate effect and without prior notice of default. This applies without prejudice to the right of the toll charger, as from the first day of delay, to call upon a serious shortcoming of the service provider justifying termination of the bilateral agreement with immediate effect.

3.14.1. Modifications to the kilometre charging system

The service provider must adapt its systems, at its own expense, to the extent such expense is reasonable, to modifications to the kilometre charging system made by the toll charger (e.g. changes to the technology relating to the kilometre charging system).

The toll charger shall notify the service provider within a reasonable time period and at least three months before the modification is made of specifically intended modifications to the kilometre charge.

In this notification, the toll charger shall mention the time period in which the service provider will have to make the adaptation, taking into account the testing period of minimum one month that will have to precede the execution of the modification.

The toll charger cannot, in any case, be held liable by the service provider in the event of changes to the kilometre charging system of which the service provider was notified in good time in accordance with the previous paragraph.

3.14.2. Modifications to the toll domain statement

The toll charger is entitled to amend these general terms and conditions as well as the other provisions of the toll domain statement at any time.

These amendments will be notified in writing to the service provider within a reasonable term and at least one month before they take effect.

3.14.3. Modifications to the kilometre charge

The toll charger is also entitled to amend the applicable tariffs (i.e. the base tariff and/or parameters) and the toll domain (for example roads, tariff zones or road sections on which the tariff exceeding zero eurocent applies, as well as non-conceded and conceded roads).

Viapass will notify these amendments to the service provider and they will have to be integrated in the system of the service provider as set out in section 4 of annex 4.

3.15.Customer service

The relationship with the party subject to the charge, with respect to the collection of the kilometre charge, only exists between the service provider and the party subject to the charge; as a result, the service provider alone is responsible for organising a customer service for the party subject to the charge. If the party subject to the charge contacts the toll charger directly with questions relating to the kilometre charge, the toll chargers are entitled (but are not obliged) to refer the party subject to the charge to the service provider.

The relationship between the service provider and the party subject to the charge does not affect the legal relationship between all parties subject to the charge having to pay kilometre charge and the toll chargers regarding the use of the toll roads.

The service provider shall designate a suitable contact point that is at the service of the toll charger, if required, and supply an organisational chart of its organisation.

3.16. Conciliation body

A conciliation body for the kilometre charge will be established by a cooperation agreement between the Brussels-Capital Region, the Flemish Region and the Walloon Region. This conciliation body will, *inter alia*, be competent to hear disputes between the service provider on the one hand, and the toll charger, the Walloon Region and/or Viapass on the other hand, in the context of their contractual relationship or negotiations relating to the contractual terms and conditions.

Bringing a dispute before the conciliation body does not affect the competence of the ordinary judicial authorities.

3.17.Competent court and applicable law

Belgian law is applicable to the execution and interpretation of this toll domain statement.

Any dispute that cannot be resolved in accordance with the procedure described under title II.3.16. (conciliation body) falls within the competence of the Belgian judicial authorities.

4. The technical conditions for the provision of services

The applicable technology, technical requirements and Key Performance Indicators are described in annex 7.

5. The register of service providers

See http://www.viapass.be/en/downloads/