



E-ZPASS ON-THE-GO RETAIL SALES PROGRAM APPLICATION

for Municipalities, State Agencies and Public Colleges and Universities



INSTRUCTIONS:

- Please read the E-ZPass On-the-Go Retail Sales Agreement.
- Complete Sections I through V and mail, fax or e-mail as noted above. (This Application must be completed in its entirety and signed by an authorized representative).
- Upon approval of Application, the Retail Sales Agreement will be sent to Applicant for execution.

NOTE: Municipal Applicants are required to provide an approved Legislative Resolution authorizing the sale of E-ZPass Tags (sample attached).

Section I Applicant Information			
Applicant Name	Authorized Representative Name		Phone No. () -
Doing Business As (DBA)(if applicable)	Federal Employer ID No.		Fax No. () -
Address of Primary Place of Business or Principal Office	City	State	Zip Code -

Section II Retail Location Information	
Number of retail locations: (1) the entity operates _____ (2) applying for E-ZPass On-the-Go Tag distribution _____	Type(s) of retail locations where E-ZPass On-the-Go Tags will be distributed: <input type="checkbox"/> Municipality <input type="checkbox"/> State Agency <input type="checkbox"/> Public College or University <input type="checkbox"/> Other _____

Section III Specific Retail Information for E-ZPass On-the-Go Tag Sales (See Page 2)

Section IV E-ZPass On-the-Go Retail Sales Agreement (See attached)

Section V Applicant Representation and Certification

I hereby represent that all of the information provided in this Application is complete, true and accurate. I further represent that I am authorized to execute this Application on behalf of the entity named in Section I.

Authorized Representative Signature Authorized Representative Title Date

Important Note to Applicants:

Submission of an E-ZPass On-the-Go Retail Sales Program Application does not guarantee that it will be approved. Approval to participate as an E-ZPass On-the-Go merchant is within the sole discretion of the New York State Thruway Authority. Applicants may be required, at the request of the Thruway Authority, to provide additional information regarding the financial responsibility of the applicant.

It is not necessary to employ any person, agency, or organization to assist you in filing this Application. Beware of persons claiming to be able to assist you in securing action on your Application.

If you have questions on the Application or need assistance completing it, contact E-ZPass Operations at the number listed above.

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

**E-ZPASS ON-THE-GO
RETAIL SALES AGREEMENT**

(To be executed after applicant is approved as an E-ZPass On-the-Go Merchant)

This AGREEMENT (hereinafter "Agreement") is made this *[insert day of month]* day of *[insert month and year]*, by and between the New York State Thruway Authority (hereinafter "Authority"), a public corporation organized and existing pursuant to Article 2, Title 9 of the New York State Public Authorities Law, as amended, whose principal office is located at 200 Southern Boulevard, Albany, New York 12209 (Mailing Address: P.O. Box 189, Albany, New York 12201-0189), and *[insert name of Vendor]* (hereinafter "Merchant"), a *[insert organizational form - e.g., corporation, partnership, LLC, LLP, etc.]* duly organized and existing under the laws of the State of *[insert state]*, having its principal office at *[insert address]*.

WITNESSETH:

WHEREAS, the Authority is statutorily responsible for financing, constructing, reconstructing, improving, developing, maintaining and operating a 570-mile superhighway system known as the Thruway; and

WHEREAS, as part of such authorization, the Authority is empowered to collect tolls and fees to maintain its operations and infrastructure; and

WHEREAS, in furtherance of these responsibilities, the Authority implemented an electronic toll collection ("ETC") system known as E-ZPass; and

WHEREAS, E-ZPass is a program whereby a customer pre-pays funds, receives a transponder (Tag) which is then mounted in or on the customer's vehicle, and as the vehicle passes through a toll plaza, an antenna in the lane "reads" that Tag's computerized information and the appropriate toll is deducted from the pre-paid funds; and

WHEREAS, because E-ZPass expedites transactions at the toll plaza thereby reducing congestion, the Authority wishes to expand the use of E-ZPass to as many Authority patrons as possible through the retail sale of E-ZPass Tags, a program known as E-ZPass On-the-Go has been established;

WHEREAS, E-ZPass On-the-Go allows a merchant to sell E-ZPass On-the-Go Tags for 2-axle, 4-tire passenger vehicles that are for private use; and

WHEREAS, Merchant wishes to participate in the E-ZPass On-the-Go program subject to all of the terms and conditions of such program.

NOW, THEREFORE, the parties hereto, for the consideration hereinafter named, do agree as follows:

I. CORPORATE WARRANTIES AND CONDUCT

Section 1.1 – Application Warranties and Changes

A. Merchant represents and warrants that: (i) all of the information provided and statements made in the Application, which is attached hereto and made a part of this Agreement, are complete, true and accurate; and (ii) the business identified on the Application as Merchant is owned in the manner set forth in the Application and that such business is the proprietor of the location(s) at which E-ZPass On-the-Go Tags will be sold.

B. Merchant shall notify the Authority of any changes to any information Merchant supplied on its Application, including any changes in the ownership of such business and the retail locations at which Merchant wishes to sell E-ZPass On-the-Go Tags, within seven (7) calendar days of such change. Merchant shall notify the Authority at least thirty (30) days prior to ceasing business operations, either temporarily or permanently.

Section 1.2 - Observance of Laws

Merchant agrees to observe and obey all applicable Federal, State and local laws, rules, regulations, and policies, and to procure all necessary licenses and permits.

Section 1.3 - Non-Assignment

This Agreement may not be assigned by Merchant nor may its right, title or interest therein be assigned, transferred, conveyed, subcontracted, sublet or otherwise disposed of without the previous consent, in writing, of the Authority and any attempts to assign this Agreement without the Authority's written consent are null and void.

Section 1.4 – Independent Contractor

Merchant is and shall be, in all respects, an independent contractor when participating in the E-ZPass On-the-Go program. In accordance with its status as an independent contractor, Merchant covenants and agrees that neither it nor its agents and/or employees will hold itself or themselves out as or claim to be an officer or employee of the Authority, and that neither Merchant nor its agents and/or employees shall make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Authority, including, but not limited to Worker’s Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement System membership or credit.

II. RETAIL TAG SALES

Section 2.1 – Non-Exclusivity

This Agreement shall in no way be deemed to give Merchant the exclusive right to sell E-ZPass On-the-Go Tags. Merchant acknowledges that the Authority has made no representations with respect to any territorial or geographic exclusivity and that the Authority has the right to utilize other merchants to sell E-ZPass On-the-Go Tags.

Section 2.2 – Sales Locations

A. Merchant may sell E-ZPass On-the-Go Tags only at the retail locations listed on its Application which have been approved by the Authority. Such retail locations must be physically situated in the New York State counties listed below:

Eligible New York State Counties for E-ZPass On-the-Go Sales					
Albany	Cortland	Herkimer	Ontario	Schenectady	Washington
Allegany	Delaware	Jefferson	Orange	Schoharie	Wayne
Broome	Dutchess	Lewis	Orleans	Schuyler	Westchester
Cattaraugus	Erie	Livingston	Oswego	Seneca	Wyoming
Cayuga	Essex	Madison	Otsego	Steuben	Yates
Chautauqua	Franklin	Monroe	Putnam	Sullivan	
Chemung	Fulton	Montgomery	Rensselaer	Tioga	
Chenango	Genesee	Niagara	Rockland	Tompkins	
Clinton	Greene	Oneida	St. Lawrence	Ulster	
Columbia	Hamilton	Onondaga	Saratoga	Warren	

B. Merchant shall not sell E-ZPass On-the-Go Tags at retail locations that are physically situated outside New York State or in the New York State counties listed below.

Ineligible New York State Counties for E-ZPass On-the-Go Sales						
Nassau	Suffolk	New York	Bronx	Kings	Queens	Richmond

C. Merchant shall not sell E-ZPass On-the-Go Tags on the Internet, door-to-door or by mailorder. Merchant may not re-sell or otherwise transfer E-ZPass On-the-Go Tags to another business entity.

Section 2.3 – Sales Offerings

A. Merchant must make E-ZPass On-the-Go Tags available for sale to its customers during all days and hours that Merchant’s retail locations are open for business. Merchant shall display and sell E-ZPass On-the-Go Tags on a first in, first out (FIFO) basis; that is, Merchant shall sell E-ZPass On-the-Go Tags in the date order in which they were received into stock. Merchant shall treat all E-ZPass On-the-Go customers with courtesy and in a manner which is equal to or better than the manner in which Merchant treats its customers in general.

B. Merchant may sell each E-ZPass On-the-Go Tag for an amount Merchant deems appropriate, provided that Merchant shall not sell an E-ZPass On-the-Go Tag for more than \$25.00. The sale of E-ZPass On-the-Go Tags is not subject to sales tax and compensating use tax and Merchant shall not charge or collect such taxes on such sales.

C. Merchant may only sell E-ZPass On-the-Go Tags to customers with 2-axle, 4-tire passenger vehicles that are for private use.

D. Merchant shall not refund to any customer the cost of an E-ZPass On-the-Go Tag once it has been purchased by such customer.

Section 2.4 – Risk of Loss

Risk of loss for all E-ZPass On-the-Go Tags delivered to Merchant passes to Merchant when Merchant takes delivery of Tags. Merchant understands that E-ZPass On-the-Go Tags are pre-valued and must be safeguarded in the same manner that Merchant would safeguard cash. Merchant acknowledges and agrees that if E-ZPass On-the-Go Tags in Merchant's possession are lost, stolen, tampered with, mutilated or destroyed: (i) Merchant is liable in full to the Authority for the value of such Tags; and (ii) the Authority shall not have any obligation to refund to Merchant any amounts relating to such Tags.

Section 2.5 - Marketing

A. Merchant shall prominently display at its retail locations where E-ZPass On-the-Go Tags are sold such E-ZPass On-the-Go signage and promotional materials as may be provided by the Authority. Merchant shall not include the Authority, E-ZPass or E-ZPass On-the-Go names or logos in its own signage, advertising or promotional materials unless such materials have been approved, in advance of usage, by the Authority.

B. Merchant hereby authorizes the Authority to include Merchant's name, likeness, and business name and address in the Authority's advertising and promotions for the E-ZPass On-the-Go program.

C. From time to time, the Authority may require Merchant to advertise special E-ZPass On-the-Go promotions. The commercial terms of such special promotions as between the Authority and Merchant and as between Merchant and customer shall be as set forth in a separate transmittal from the Authority to Merchant.

Section 2.6 – Site Inspections

The Authority shall have the right to conduct site inspections at any of Merchant's retail locations where E-ZPass On-the-Go Tags are sold. At the direction of the Authority, Merchant shall revise signage and promotional materials that have been provided by the Authority.

Section 2.7 – Confidentiality

A. Merchant shall safeguard personal information about its E-ZPass On-the-Go customers to the maximum extent permitted by law.

B. Merchant shall not sell, distribute or make available in any way the names and addresses of E-ZPass On-the-Go customers to any entity that will use such information for any commercial purpose; provided, however, that in the event a customer utilizes a check or credit card to purchase E-ZPass On-the-Go Tags at one of Merchant's retail locations, the foregoing restriction shall not be deemed to preclude Merchant from exchanging such information with the applicable banking or credit card institution for the purpose of effectuating such purchase.

III. MERCHANT E-ZPASS ON-THE-GO TAG ORDERS, PURCHASES DELIVERIES, PAYMENTS AND RETURNS

Section 3.1 – E-ZPass On-the-Go Tag Orders

To initiate participation in the program, Merchant must order a minimum of 25 E-ZPass On-the-Go Tags for sale at approved retail locations. E-ZPass On-the-Go Tag orders will be shipped to the approved retail location(s) specified by Merchant when placing the order.

Re-stocking orders for E-ZPass On-the-Go Tags must be in multiples of 25 Tags. Re-stocking orders will also be shipped to the approved retail location(s) specified by Merchant at the time of the re-stocking order.

Section 3.2 – Purchases and Payments

A. Merchant must pay \$21.00 for each E-ZPass On-the-Go Tag ordered. There will be no additional charge for the shipping of E-ZPass On-the-Go Tags to Merchant.

B. Merchant must make payment for each E-ZPass On-the-Go Tag order within forty-five (45) days of receipt of an invoice for such order.

C. The Authority will provide Merchant with a credit or refund for all E-ZPass On-the-Go Tags that are damaged during delivery and are received by Merchant in a damaged condition provided Merchant notifies the Authority within five (5) days of receipt of such damaged Tags.

IV. TERM AND TERMINATION

Section 4.1 - Term

This Agreement shall commence upon the Authority's acceptance of Merchant's Application and the execution of this Agreement by both parties. This Agreement shall continue in existence until terminated by either party.

Section 4.2 – Termination of Retail Location Participation in Program

The Authority shall have the right, in its sole discretion, to disapprove and terminate the participation of any of Merchant's retail locations in the E-ZPass On-the-Go program, and such action shall in no event be deemed a breach of contract. In the event the Authority exercises that right Merchant shall immediately return to the Authority all E-ZPass On-the-Go Tags that Merchant has in its possession at those retail locations. The Authority will refund to Merchant \$21.00 for each such Tag returned provided the Tag packaging is unopened and in good condition with no physical wear and tear, and there has been no transaction activity on the Tag.

Section 4.3 - Suspension, Abandonment and Termination

A. The Authority shall have the right, in its sole discretion, to postpone, suspend, abandon or terminate this Agreement at any time and for any reason, and such action shall in no event be deemed a breach of contract. This includes the Authority's right to terminate this Agreement at any time in the event the Authority finds that Merchant is non-responsible or has failed to accurately disclose vendor responsibility information. In the event the Authority exercises its right to postpone, suspend, abandon or terminate this Agreement, Merchant shall immediately return to the Authority all E-ZPass On-the-Go Tags that Merchant has in its possession. The Authority will refund to Merchant \$21.00 for each such Tag returned provided the Tag packaging is unopened and in good condition with no physical wear and tear, and there has been no transaction activity on the Tag.

B. Merchant may terminate this Agreement upon forty-five (45) days written notice to the Authority. To effectuate such termination, Merchant must return to the Authority all E-ZPass On-the-Go Tags that Merchant has in its possession. The Authority will refund to Merchant \$21.00 for each such Tag returned provided the Tag packaging is unopened and in good condition with no physical wear and tear, and there has been no transaction activity on the Tag.

V. MISCELLANEOUS

Merchant agrees that it shall not make any charges or claims for damages against the Authority for any delays or hindrances from any cause whatsoever during the progress of any portion of the E-ZPass On-the-Go program.

Section 5.1 - Damages for Delay

Any notices permitted or required to be given hereunder shall be in writing and shall be delivered personally, sent by overnight courier or sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

Section 5.2 - Notices

Authority: New York State Thruway Authority
E-ZPass Assistant Operations Manager
200 Southern Boulevard
Albany, New York 12209

Merchant: At the location identified on the Application, as may be updated or amended by Merchant.

Section 5.3 - Liability

Merchant shall be responsible for all damage to life and property due to negligent or otherwise tortious acts, errors or omissions of Merchant in connection with its participation in the E-ZPass On-the-Go program. Further, it is expressly understood that Merchant shall indemnify and save harmless the Authority and/or the State of New York, as their interests may appear, from claims, suits, actions, damages, and costs of every name and description resulting from the negligence of Merchant, and such indemnity shall not be limited by reasons of any insurance coverage. However, Merchant shall not be required to indemnify the Authority for that portion of any claim, suit, action, damage or cost which arises due to the negligent act or omission of the Authority and shall not be required to indemnify the State of New York for that portion of any claim, suit, action, damage or cost which arises due to the negligent act or omission of the State. The provisions of this section shall survive the expiration or termination of this Agreement.

Section 5.4 - Governing Law

This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

Section 5.5 - No Waiver of Provisions

The Authority's failure to exercise or delay in exercising any right or remedy under this Agreement shall not constitute a waiver of such right or remedy or any other right or remedy set forth therein. No waiver by the Authority of any right or remedy under this Agreement shall be effective unless made in a writing duly executed by an authorized officer of the Authority, and such waiver shall be limited to the specific instance so written and shall not constitute a waiver of such right or remedy in the future or of any other right or remedy under this Agreement.

Section 5.6 - Severability Clause

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, but shall remain binding and effective as against all parties hereto.

Section 5.7 - Entire Agreement

This Agreement, together with the Application and any other appendices, attachments, schedules or exhibits, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This Agreement may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties thereto.

Sample Legislative Resolution Municipalities Only

Resolution Authorizing (Municipal Entity) to enter into an agreement with the New York State Thruway Authority to sell E-ZPass Tags.

WHEREAS, (Town, City, County) Clerk’s Office or any other approved municipal location wishes to retail E-ZPass Tags through the New York State Thruway Authority’s E-ZPass On-the-Go Program;

WHEREAS, (Town, City, County) Clerk’s Office or any other approved municipal location will purchase E-ZPass tags for the cost of \$21.00 per Tag from the Thruway Authority and sell the Tags at a cost of \$25.00 per tag, allowing the (Town, City, County) to keep \$4.00 per sale, and

THEREFORE BE IT RESOLVED, that the (Governing Body) of the (municipal entity) hereby authorizes the (town, city, county) Clerk’s office or any other approved municipal location to enter in an agreement with the New York State Thruway Authority to sell E-ZPass Tags provided all legal requirements are complied with.

Moved by:
Seconded by:

Ayes:
Nays:
Abstentions:

stamp or certification
