

## PrePass® License Agreement and Terms of Services (Terms of Service)

Last Updated: [Effective October 1, 2023]

- PrePass® License Agreement:** This PrePass® License Agreement and Terms of Service, any End User License Agreement(s) that may be required for a specific Service, any amendments thereof and the PrePass® Service application, (collectively these “Terms”) are entered into between you and the PrePass Safety Alliance, an Arizona non-profit corporation (the “Alliance”) and apply to your access and use of our PrePass® suite of services, including, but not limited to, PrePass® Weigh Station Bypass (“PrePass® Bypass”), PrePass® Plus, PrePass® Tolls, PrePass® Toll Management Services (“Toll Violation Prevention” and/or “Toll Violation Settlement”), PrePass® app, and/or PrePass® AG, (collectively, the “Services”). In these Terms, the “Alliance,” “we,” “us,” and “our” refer to the PrePass Safety Alliance and our affiliates, successors, and assigns, and “Customer,” “Carrier,” “you,” and “yours” refers to any user of the Services.
- Access to the Services:** Your access to and use of the Services are subject at all times to these Terms. Please read these Terms carefully. By accessing or using the Services in any way, you agree to be bound by these Terms. This Agreement shall commence, and you agree to be bound by these Terms on the earlier of (i) accessing or using the Services in any way; or (ii) your acceptance and agreement of the Terms in writing. This Agreement shall remain in full force and effect until terminated in accordance with this Agreement. Either party may cancel this Agreement, for any reason and without cause, at any time with at least thirty (30) days prior written notice (unless stated otherwise within this Agreement) to the other party.
- Modification of the Services:** We may, without prior notice to you and without incurring any liability to you, modify the Services by adding or removing features and functionalities. We may also revise these Terms, including the Fees (as defined below), from time to time in our sole discretion, subject to applicable law. When we revise these Terms, we will post the revised version on [www.prepass.com](http://www.prepass.com) (the “Website”) and will notify you by mail, text or email at the address we have for you in our records or through other reasonable means. You are free to decide whether or not to accept the revised version of these Terms, but accepting these Terms, as revised, is required for you to continue accessing or using the Services. If you do not agree to these Terms or any revised version of these Terms, your sole recourse is to terminate your access or use of the Services. Except as otherwise expressly stated by us, your access and use of the Services are subject to, and constitute your acceptance of, the version of these Terms in effect at the time of your access or use.
- The Services:** The Services are available at certain open weigh stations, ports-of-entry, agricultural interdiction facilities, parking areas, and/or toll facilities. We offer the Services solely for your business purposes. We may grant or deny your registration for the Services in our sole discretion. If we approve your registration to use the Services, you will be authorized to use the Services, subject to these Terms. You must, and shall, ensure that your employees, contractors, agents, and representatives comply with all applicable law and regulations (including but not limited to FMCSA regulations and State and Local Traffic regulations) when using the Services, including, but not limited to, laws governing eligibility for bypass at PrePass® sites, and the PrePass® Driver Information Guide and Bypass Restrictions, which are available at [PrePass.com](http://PrePass.com) (the “Website”).
- Requirements for the Services:** In order to use the Services, you must: (i) be an entity formed or incorporated in the United States or Canada or an individual sole proprietor 18 years of age or older residing in the United States or Canada; (ii) accept and agree to, the Terms in accordance with Section 3 (in writing includes electronically signing); (iii) remain compliant with these Terms at all times while using the Services; (iv) create a user account (a “User Account”) on the Website or through the Customer Service Center identified in Section 23; (v) provide all information requested by us, such as your legal name (or the legal name of your business), your email address, your mailing address, your phone number, your tax identification number, your license plate(s) and vehicle information, USDOT (or applicable Canadian agency) information, payment account information, and such other information as we may request from time to time (collectively, “User Information”); and (vi) comply with the PrePass® SurePay Program requirements (as set forth in Section 8), if applicable.
- User Information:** You represent and warrant that all User Information you provide us from time to time is truthful, accurate, current, and complete. You agree to promptly notify us of changes to your User Information through the Customer Service Center, by e-mail or other written document or by updating your User Account on the Website. You also authorize us to obtain from, and periodically confirm User Information with, government agencies, leasing companies, and/or other third parties, such as third-party credential processors, consumer credit agencies or any third-party FMCSA registered owner of the DOT number provided, as we deem appropriate to validate your eligibility to use the Services, and you hereby authorize such government agencies, leasing companies and other third parties to provide and, as applicable, confirm such User Information to and for us. You acknowledge and agree that failure to promptly update your User Information or otherwise notify the Alliance of changes to your User Information may result in additional service fees or charges. It is the policy of the Alliance to preserve (a) bypass or toll transaction data that is identifiable to a specific carrier or vehicle and (b) all carrier business information, with the utmost confidence. Transaction data that is identifiable to a specific carrier or vehicle is used only for the purpose of managing PrePass Services. Such data is not publicly disclosed and is not permanently retained. For more information, please refer to the [PrePass Event Data Retention Policy](#) located at [PrePass.com](http://PrePass.com).

8. **SurePay:** As a condition of utilizing PrePass® Plus, PrePass® Tolls, PrePass® Toll Management Services you are required to participate in the PrePass® SurePay Program. Under the PrePass® SurePay Program you must deliver a form of payment guarantee to the Alliance in a form and amount acceptable to the Alliance, including a bond, letter of credit, cash deposit or other acceptable form of payment guarantee. The amount of the SurePay Program coverage you must provide (the “Deposit Amount”) will be calculated based on, among other things, the estimated monthly service charges to be incurred by you and your credit report. The Deposit Amount is subject to change by the Alliance at any time, in our sole discretion. You agree that as a condition of continued use of the Services you consent to the use of consumer credit reports as may be necessary and for periodic review to maintain your participation in the SurePay Program. In all instances, you acknowledge the Alliance may periodically review the activity on your User Account and adjust your required Deposit Amount or other SurePay Program, if applicable, to reflect the average monthly charges and fees incurred by you. You may have more than one credit card charge or banking account withdrawal within a one-month period based on your usage and to ensure your Deposit Amount remains at the prescribed minimum amount. Additionally, the Alliance reserves the right, at its sole discretion, to modify, revoke or cancel any portion of the SurePay Program including but not limited to any extension of credit in any form and may refuse to extend future credit when and if applicable. You agree that you are responsible for maintaining a positive balance in your User Account at all times and you agree to allow recurring charges, when applicable, to maintain the required Deposit Amount. Furthermore, you authorize the Alliance to charge against the Deposit Amount or valid payment type to satisfy outstanding service debts and/or to maintain your minimum Deposit Amount, as determined by the Alliance in its sole discretion. Despite the forgoing, should your required Deposit Amount fall below the required minimum amount, the Alliance reserves the right to suspend your User Account until such time as the Deposit Amount is returned to the required minimum amount. The Alliance may determine in its sole discretion that your continued participation in the SurePay Program requires the establishment of an irrevocable letter of credit in favor of Alliance in an amount to be determined based on your actual or anticipated monthly service charges.
9. **PrePass® Toll Management Services:** Subject to Section 9 below, your license plate(s) (“Plate”) not otherwise enrolled in a PrePass® Tolls Services Program (e.g., PrePass Plus or PrePass Tolls), are automatically eligible and may enroll in PrePass® Toll Management Services (Toll Violation Prevention and/or Toll Violation Settlement, as more fully described below). Upon the submission of your Plate list to the Alliance for participation in PrePass® Toll Management Services, the Alliance will enroll and enter your Plate list into each program as so indicated by you. The Alliance will update the enrolled Plate list as provided by you. In no event shall the Alliance be responsible for updating the enrolled Plate list should the Alliance not receive a timely Plate list from you. Furthermore, you acknowledge that Plate list updates may take at least three (3) business days to be effectuated by the applicable toll agency and the Alliance shall not be responsible for additional fees or charges associated with such delay. Nothing herein shall be interpreted as a guarantee by the Alliance that you will receive ZERO violations for an enrolled Plate, as factors outside the control of the Alliance may occur (e.g., misreads). In addition, some States do not process plate only reads and require you to have both a PrePass® device and associated plate entry for agency level violation processing. If you do not have both a PrePass® device and associated plate enrolled, violation coverage in those States is precluded. Participation in PrePass® Toll Management Services shall not exempt you from toll agency pass-through charges where applicable.

**a. PrePass® Toll Management Service – Toll Violation Prevention**

- i. For the Plate participating in PrePass® Toll Violation Prevention, the Alliance will provide the Enrollment Rate and Usage Rate reflected in the Fee Schedule in Section 18 (vi) below.
- ii. Enrolled plates participating in PrePass® Toll Management Violation Prevention, which incur a toll charge during a particular month will be assessed a single fee per Plate, per month, regardless of the number of toll transactions for that participating Plate (“Usage Rate”). If any participating Plate incurs a toll charge in two (2) consecutive months, such Plate shall be automatically enrolled in the applicable PrePass® Toll Services Program and subject to the terms thereof, beginning in the month immediately following the consecutive Usage Rate charge. If a participating Plate subject to automatic enrollment does not qualify for enrollment in a PrePass® Services Program, the non-qualifying Plate shall continue to be subject to the monthly Usage Rate as described herein until such time as such Plate qualifies for the applicable PrePass® Services Program

**b. PrePass® Toll Management Service – Toll Violation Settlement**

- i. For plates participating in PrePass® Toll Violation Settlement, the Alliance will attempt to settle outstanding violation(s) with respective tolling authorities incurred prior to enrollment of such plates in any PrePass® Toll Services Program or PrePass® Toll Violation Prevention, or as otherwise agreed to in writing by the Parties; and receive the Service Fee per settlement as reflected in the Fee Schedule and as further described in applicable PrePass® Toll Violation Settlement documents including but not limited to the PrePass® Toll Management Violation Settlement Memorandum of Understanding.

10. **Toll Violation Processing & Fees:** All toll violation fees and transaction assessments against your User Account are your responsibility at all times.
- a. In the event you incur a toll violation, you must notify us immediately and send us copies of toll violation notices within three (3) days of receipt of such notice to allow us to better assist you in an effort to avoid additional toll authority charges and fees that may result from escalated actions. The Alliance will process violation notices submitted to the Alliance for any Plate that is not registered in the User Account or participating in PrePass® Toll Management Services at a fee of \$5.00 per toll violation transaction. All assessed violation tolls and applicable fees will be invoiced to you on your PrePass® invoice as per the Fee Schedule below. In addition, you authorize the Alliance to work with the applicable toll authority to try to reduce or waive toll authority assessed violation fees on any toll violation that is eligible for reduction or waiver based on the toll authority rules and regulations. There is no guarantee that we will be successful in obtaining a reduction or waiver on your behalf. Failure to submit applicable vehicle and Plate information with each violation notice submission, including the Device ID and/or Equipment ID of the vehicle that incurred the violation, will impede our ability to assist you in obtaining a toll violation reduction or waiver.
  - b. In the event you wish to dispute a non-violation related toll transaction, you must notify the Alliance in writing at the following address within sixty (60) days of the posted transaction date; in no event shall a toll dispute be reviewed if such dispute is received more than sixty (60) days after the posted transaction date of the transaction. Toll disputes should be sent to [toll disputes@prepass.com](mailto:toll disputes@prepass.com) and must include your User Account and Plate information, along with the detail of the transaction(s) being disputed. Upon proper receipt of a toll dispute, the Alliance will review the nature of the toll dispute and determine in its sole discretion if any account credit is due. Nothing herein shall be construed as to guarantee an account credit where a dispute is received.
11. **Alliance Devices:** Any transponder or other electronic device of any nature, software and equipment, including but not limited to any item bearing the PrePass® logo issued to you by or on behalf of the Alliance shall collectively be referred to as an “Alliance Device” or “Alliance Devices”. All Alliance Devices are assets of the Alliance that are loaned to you solely for your use with the Services in accordance with these Terms and only for use with vehicles designated by you and approved by us. You may not use any Alliance Device for any other purpose. You must mount, install, and use Alliance Devices in accordance with instructions provided by the Alliance and as governed by applicable law. The Alliance Devices are to be assigned to a specific vehicle and are not to be removed, transferred, or temporarily used with another vehicle without prior notification to the Alliance. Misuse of any Alliance Device may lead to suspension or termination of your User Account. Without limiting the foregoing, we do not guarantee that the Services will allow you to bypass all participating PrePass® facilities at all times, and you must enter and/or stop at a PrePass® participating facility and follow such facility’s specific instructions, as applicable, unless an Alliance Device provides a bypass signal.
12. **Lost, Stolen or Damaged Alliance Devices:** You must not, and must ensure that your employees, contractors, agents, and representatives do not, open, x-ray, disassemble, decompile, modify, repair, reverse engineer, or tamper with an Alliance Device or allow anyone else to do so. You must, and must ensure that your employees, contractors, agents, and representatives protect Alliance Devices from damage and misuse. You are responsible for any loss of or damage to any Alliance Device issued to you, except as expressly provided in these Terms. In the event an Alliance Device issued to you is lost, stolen, or otherwise, damaged (including damage to or removal of the security tape), defaced, not returned and/or written on, you must pay the applicable non-refundable Fee (“Device Fee”) set forth in the Fee Schedule below. You must notify us immediately if any Alliance Device is lost or stolen or if the vehicle to which it was assigned is stolen. You are responsible for all Fees and transaction charges incurred by your Alliance Devices until you provide written notice of such loss or theft to us. Failure to update your Alliance Device or User Information may result in additional Fees. Notwithstanding the foregoing, we will replace, at no cost to you, any Alliance Device that fails to work properly as long as such failure was not caused by the actions or inactions of you or your employees, contractors, agents, or representatives.
13. **Return of Alliance Devices:** In accordance with the return instructions set forth below or otherwise provided by us, you must return all Alliance Devices to us that are not assigned to a vehicle within your fleet to use the Services within 30 days of activation, unless otherwise agreed to in writing by the Parties. In addition, you must return all Alliance Devices to us within 30 days of your User Account cancellation or termination at your expense. Failure to return Alliance Devices within 30 days will result in a \$100 Device Fee assessment per Alliance Device as set forth in the Fee Schedule below. For Customers in good standing at the time of cancellation or termination (as determined by the Alliance in its sole discretion), the Alliance will provide a return credit for all Alliance Devices that have been assessed a Device Fee that are returned undamaged and not defaced (as determined by the Alliance in its sole discretion) no later than 90 days from the date of such non-assignment, cancellation or termination. You are responsible for such Alliance Devices, including any toll or violation charges incurred by or assessed against such device, until they are received by us. Notwithstanding anything to the contrary in these Terms, Fusion transponders may not be eligible for a return credit once a lost, stolen, damaged or not-returned fee has been assessed per the Fee Schedule below. In addition, you agree to pay any tolls and assessed charges for each Alliance Device that is permanently suspended from using the Services for continual

violations or otherwise permanently deactivated from the Services. Notwithstanding anything stated in this paragraph to the contrary, all Alliance Devices with PrePass® Plus or PrePass Tolls functionality eligible for a return credit shall be subject to a \$20.00 Device Refurbishment Fee.

14. **Third-Party Transponders:** Subject to our prior written authorization, you may use a third-party transponder(s) or electronic device(s) ("Third-Party Transponders") with the Services in accordance with these Terms and only with vehicles designated by you and approved by us. You must mount, install, and use Third-Party Transponders in accordance with instructions provided by us and these Terms and, upon our request, provide us with proof of ownership, manufacturer serial number, and any other information about your Third-Party Transponders that we request. In addition to any other Fees set forth herein, the Alliance reserves the right to assess a monthly Third-Party Transponder fee (per device) for your access to and use of any services within our PrePass® suite of services.
15. **PrePass® app.** By accessing and downloading the PrePass® app, you are agreeing to the terms contained in the [PrePass Event Data Retention Policy](#) located at PrePass.com. Furthermore, you understand and agree to allow the PrePass® app to collect and access User Information including location information for the purposes listed in the PrePass® Privacy Policy and to ensure optimum functionality of the PrePass® app; should you opt out of the collection of such information you acknowledge that such opt out may result in the loss of functionality of certain features of the PrePass® app and you shall not hold the Alliance responsible for lost functionality in such circumstances. In addition, you expressly authorize the Alliance to share collected information with Third Party Partners to ensure the performance and functionality of the PrePass® app. Additionally, you agree to only utilize the PrePass® app for its intended purpose and to comply with all applicable laws while using the PrePass® app.
16. **Representations and Warranties:** In addition to any other representations and warranties set forth in these Terms, you represent and warrant to us that: (i) if applicable, you are duly organized, validly existing, and in good standing under the laws of the jurisdiction of your formation or incorporation; (ii) if applicable, you are qualified to transact business and in good standing in each jurisdiction in which you operate; (iii) you have all requisite right, power, and authority to accept and agree to these Terms and perform your obligations and grant the rights and authorizations granted by you hereunder; (iv) your employees, contractors, officers, representatives, and other agents accessing the Services are duly authorized to access the Services and legally bind you to these Terms; and (v) you and all of your employees, contractors, officers, representatives, and other agents that use the Services will comply with these Terms and all applicable law in the performance of your obligations and exercise of your rights under these Terms.
17. **Suspension and Termination of Your User Account:** We may, in our sole discretion, suspend, limit, or terminate your User Account and your access to or use of the Services for any reason, at any time, and without incurring any liability to you. We will use commercially reasonable efforts to notify you of any such suspension, limitation, or termination. You may terminate your User Account and terminate these Terms at any time by notifying us in writing, at least 30 days in advance of your intent to terminate ("Notice of Termination"), paying any outstanding charges, fees, taxes and other amounts due and owing for your access to or use of the Services, and returning all Alliance Devices as provided herein. Upon the termination of your User Account, you must immediately cease all use of the Services. Termination of your User Account will not affect any of our rights or your obligations arising under these Terms. You shall remain and be liable for payment of all fines, penalties, costs, fees, and any other monies owed pursuant to these Terms and any applicable laws. Provisions of these Terms that, by their nature, should survive termination or cancellation of your User Account will survive such termination or cancellation. Without limiting the foregoing, Sections 13 and 16 – 20 shall survive any termination or cancellation of the Terms. Notwithstanding the foregoing, should the Carrier terminate in part or in whole, for any reason, the Alliance shall be entitled to receive just and equitable compensation, not to exceed the agreed amount for services provided for any satisfactory work completed prior to receipt of the Notice of Termination including expenses then incurred. In no event shall the Alliance be liable to Carrier for any outstanding toll violation(s) or other charges which remain outstanding upon the cessation of these Terms whether by operation of term expiration or Termination.
18. **Fees and Taxes:**
  - (i) In consideration for the Services, in addition to monthly service charges per Alliance Device for use of the Services, you agree to pay the applicable fees specified in the Fee Schedule below, which may be amended from time to time (collectively, the "Fees"). All Fees are stated in U.S. dollars and are non-refundable, except as otherwise required by applicable law. All Fees to be paid by you are exclusive of any applicable sales, use, excise, value added, and other taxes. You acknowledge and agree that you are responsible for paying all taxes, duties, and other governmental assessments associated with your use of the Services and the Alliance Devices.
  - (ii) On a monthly basis or such other basis determined by us in our discretion, we will provide invoices to you for the Fees via email, text, mail, the Website, or through other reasonable means (the manner of delivery is to be in our discretion). Should the Customer choose to receive their invoices for Fees via mail, the Alliance reserves the right (at the Alliance's sole option) to charge the then prevailing postage rate for delivery of such invoices via mail. You must review each invoice promptly

and notify us in writing at the PrePass Service Center identified in Section 24 of these Terms if you have any questions or suspect any errors regarding an invoice or the Fees included therein. If you do not provide such notice to us within 21 days of the applicable invoice date, the invoice, including any Fees therein, will be deemed to have been accepted by you.

- (iii) Invoiced Fees are due in full upon receipt of an invoice. All customers that have PrePass® Plus or PrePass Tolls Service may be required to (1) maintain an available balance in the customer's User Account with the Alliance (the amount of such balance will be based upon the Alliance's estimate of the Fees that the customer will incur in the upcoming month, and the Alliance will give advance notice of such amount by email, text, mail, the Website, or through other reasonable means); (2) agree that the Alliance may set up (a) subaccounts for each Alliance Device linked to the User Account, and may (b) charge any subaccount or transfer funds between subaccounts (in the Alliance's sole discretion) for any amount needed to maintain an available balance or pay any estimated Fees; (3) agree that the Alliance may charge the User Account for the amount of any estimated Fees in the upcoming month (the Alliance will give advance notice of such amount by email, text, mail, on the Website, or through other reasonable means); (4) agree to identify and maintain a valid deposit account or credit card that the Alliance may debit or charge to maintain the required available balance (the Alliance will give advance notice of the amount it will debit or charge by email, text, mail, on the Website, or through other reasonable means); (5) agree to maintain the required available balance; and (6) agrees that the Alliance may require that you establish an automatic payment method and authorize the Alliance to charge the established payment method on a monthly basis to coincide with invoiced Fees and required Deposit Amounts. No interest will be paid on any amount held in a User Account or subaccount.
- (iv) If any Fees remain outstanding for more than 21 days, your User Account will be assessed a Late Fee and will incur the loss of any toll discounts reflected in the outstanding Fees. In addition, we may, in our sole discretion, suspend or terminate your User Account and your access to and use of the Services. In our discretion, subject to applicable law, we may report information about the status of your User Account to credit bureaus. Late payments, missed payments, and/or other payment defaults relating to your User Account may be reflected in your credit report. If we send any unpaid invoices to a third-party collection service, your Alliance Devices will be deemed lost and will not be eligible to be returned to us for credit, and you may not be eligible to use the Services in the future. You will be responsible for any and all costs of collection, including but not limited to claims, suits, damages, costs, lawsuits, fines, penalties, liabilities, collection costs and expenses (including reasonable attorneys' fees). If we authorize you to resume using the Services, you must pay all Fees due, including the Alliance Device Reactivation Fee per Alliance Device (including any Third-Party Transponder), as specified in the Fee Schedule below, and you will lose any price discounts previously provided.
- (v) In the event of termination of the Services, if you have a remaining balance in your User Account after payment of all Fees, outstanding tolls and other legally permitted charges (which payment you authorize the Alliance to debit from your User Account), the Alliance will send you a check or initiate a deposit or credit to your valid deposit account or credit card for the amount (the method of payment to be determined in the Alliance's sole discretion) or escheat such amount in accordance with applicable law.
- (vi) Fee Schedule

Fee Schedule	Amount
Monthly Alliance Device Service Charge	Customer will be advised of amount; amount subject to change
PrePass® Toll Management Service Charge (Toll Violation Prevention and Toll Violation Settlement)	Customer will be advised of amount; amount subject to change
Toll Charges including any toll device fee assessment from any Agency, Authority, Commission or other governmental, quasi-governmental, public or private entity authorized to make such an assessment (collectively, " <u>Toll Authority</u> ").	Pass-Through
Toll Violation Processing Fee for each toll violation transaction incurred for vehicle and/or plates not enrolled in any PrePass® Services Program	\$5.00 per toll violation transaction processed
Handling Fee*—for toll charges (or deposit payments associated with toll charges) that are paid with a method other than check or ACH payment/wire transfer.  *(There are no Handling Fee charges for a payment for any listed E-ZPass Agency program. See Section 22 [E-ZPass Listed Agencies] for listing of applicable Agencies.)	1.99% of Charges

Invoice Redelivery Fee	\$2.00 per invoice
Device Fee for Lost, Stolen, or Damaged Alliance Device	\$100 per Alliance Device
Device Fee for failing to return an Alliance Device to the Alliance within 30 days of non-assignment or cancellation or termination of your Account.	\$100 per Alliance Device
Check Processing Fee—when a physical check is not mailed to the lockbox payment address specified in the invoice	\$5.00 per check
Administrative Fee—if a refund is requested on an active User Account when the error was Customer-related	\$10.00 per refund requested
Returned ACH Payment Fee	\$25.00 per returned payment
Late Fee (for unpaid Fees outstanding for 21+ days)	Greater of \$10.00 or 1% of unpaid Fees per month
Collection Costs	Per Terms
Alliance Device Reactivation Fee (including any Third-Party Transponder)	\$25.00 per Alliance Device (including any Third-Party Transponder)
Specialized billing and reporting services as agreed upon by the Alliance and Customer	\$75.00 per hour, with a half-hour minimum
Paper Invoices Mailed via USPS	Prevailing USPS cost
Device Refurbishment Fee	\$20.00 per Alliance Device
Third-Party Transponder Fee	Customer will be advised of amount if applicable; amount subject to change

19. **Intellectual Property:** If your access or use of the Services is prohibited by applicable law, you are not authorized to access or use the Services. We are not responsible if you access or use the Services in any manner that violates applicable law. You acknowledge and agree that the Services are protected by copyright, trademark, patent, and other intellectual property laws, and that we retain any and all right, title, and interest in, to, and under the Services, including any updates, upgrades, modifications, or derivative works of the Services, and any associated patent rights, trademark rights, copyright rights, mask work rights, trade secret rights, and other intellectual property rights in any of the foregoing (collectively, “Intellectual Property Rights”). Except as expressly set forth in these Terms, we do not grant you any licenses, express or implied, to the Services, any updates, upgrades, modifications, or derivatives of the Services, or any of the Intellectual Property Rights. Except as expressly provided by these Terms or with our prior written consent, you may not use, modify, disassemble, decompile, reverse engineer, reproduce, distribute, rent, sell, license, publish, display, download, transmit, or otherwise exploit the Alliance Devices, the Services, or any updates, upgrades, modifications, or derivatives of the Services in any form by any means.

20. **Limited Warranty:** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THESE TERMS, YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED TO YOU STRICTLY ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT ANY WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE HEREBY DISCLAIM ANY AND ALL CONDITIONS, REPRESENTATIONS, AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS.

WITHOUT LIMITING THE FOREGOING, WE MAKE NO WARRANTY THAT (A) THE SERVICES WILL MEET YOUR REQUIREMENTS; (B) THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (C) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE; (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICES WILL MEET YOUR EXPECTATIONS; OR (E)



**ANY ERRORS IN THE SERVICES WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY US OR ANY OF OUR AUTHORIZED REPRESENTATIVES WILL CREATE ANY WARRANTY.**

21. **Indemnification:** You agree to indemnify, hold harmless, and (at our request) defend us, our affiliates, and our and their employees, contractors, subcontractors, officers, directors, agents, and representatives from and against all claims, suits, damages, costs, lawsuits, fines, penalties, liabilities, and expenses (including reasonable attorneys' fees) that arise from a third party's claim arising out of or on account of or resulting from your: (a) breach or alleged breach of these Terms; (b) violation of any applicable law; (c) infringement of any third-party intellectual property rights; and (d) other actions or omissions resulting in liability to us, our affiliates, or any of our or their employees, contractors, subcontractors, officers, directors, agents, or representatives. We reserve the right to assume the exclusive defense and control of any matter subject to indemnification by you, in which event you will cooperate in asserting any available defenses.
22. **Limitation of Liability:** **IN NO EVENT WILL THE ALLIANCE, ITS AFFILIATES, OR ITS OR THEIR EMPLOYEES, OFFICERS, DIRECTORS, OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, INCLUDING DAMAGES OR COSTS INCURRED AS A RESULT OF LOSS OF TIME, SAVINGS, PROPERTY, PROFITS, BUSINESS, CONTRACTS, REVENUE, ANTICIPATED SAVINGS, DATA, OR GOODWILL, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR THE SERVICES, EVEN IF THE ALLIANCE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO CUSTOMER.**
23. **Miscellaneous:**
- a. **Entire Agreement.** These Terms constitute the entire agreement between you and us relating to the Services and supersede and replace any prior agreement and communications between us, whether written or oral. In the event that the Alliance and you enter into an Addendum(s) modifying these Terms, any such Addendum shall become part of these Terms, and to the extent such Addendum is in conflict with these Terms, the Addendum shall take precedence over these Terms.
- b. **Governing Law.** These Terms are governed by the laws of the State of Arizona without giving effect to any principles that provide for the application of the law of another jurisdiction.
- c. **Dispute Resolution by Binding Arbitration.** You and we agree that any Claim (as defined below) shall be settled exclusively by binding arbitration administered by the American Arbitration Association ("AAA") in accordance with its applicable Arbitration Rules and procedures, including the Optional Rules for Emergency Measures of Protection (collectively, the "AAA Rules"). The AAA Rules are available online at [www.adr.org](http://www.adr.org) or by calling the AAA at 1-800-778-7879. This arbitration provision is made pursuant to a transaction involving interstate commerce, and the Federal Arbitration Act shall apply to the construction, interpretation, and enforceability of this provision notwithstanding any other choice of law provision contained in these Terms. For purposes of this Section, "Claim" means any and all disputes, controversies, and claims, whether based on contract, tort, fraudulent misrepresentation, statute, regulation, constitution, common law, equity, or any other legal basis or theory, and whether present or future, that arise out of or relate to these Terms or the Services, including the alleged breach of these Terms, the benefits provided by these Terms, oral or written statements related to these Terms, the relationships that result from these Terms, or the scope or enforceability of these Terms, including the determination of this arbitration provision.

You should review this arbitration provision carefully. This provision limits your and our ability to litigate Claims in court, and you and we each agree to waive our respective rights to a jury trial. Any arbitration under this provision shall take place on an individual basis; class arbitrations and class actions are not permitted. You will not have the right to participate as a class representative, private attorney general, or as a member of any class of claimants for any Claim subject to arbitration. A Claim by, or on behalf of, other persons will not be considered in, joined with, or consolidated with, the arbitration proceedings between you and us. Any dispute regarding the prohibitions in the prior sentence shall be resolved by the arbitrator in accordance with this arbitration provision.

The arbitration tribunal shall consist of a single arbitrator mutually agreed upon by you and us, or, in the absence of such agreement within 30 days from the first referral of the dispute to the AAA, the arbitrator will be designated by the AAA. The arbitrator shall be an active member in good standing of the bar for any state in the continental United States and shall be either actively engaged in the practice of law for at least five years or a retired judge. You and we understand that in arbitration, discovery is more limited than in a court and review by courts is very limited. You and we agree that the arbitrator shall: (a) limit discovery to non-privileged matters directly relevant to the arbitrated Claim; (b) grant only relief that is based upon and

consistent with substantial evidence and applicable substantive law; (c) have authority to grant relief only with respect to Claims asserted by or against you individually; and (d) provide a written statement stating the disposition of each Claim and a concise written explanation of the basis for the award and shall make specific findings of fact and conclusions of law to support any arbitration award. The place of arbitration shall be Maricopa County, Arizona, and you will be given the opportunity to attend the proceeding and be heard. The arbitral award shall be final and binding. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding this arbitration provision, you and we retain the right to seek relief in a small claims court in the state or municipality of our respective places of business within the jurisdictional limits of the small claims court and as long as such matter is only pending in that court.

Nothing in this arbitration provision shall limit the right of you or us, whether before, during, or after the pendency of any arbitration proceeding, to exercise any self-help remedies or to seek judicial assistance to: (a) compel arbitration; (b) obtain provisional or ancillary remedies or measures of protection prior to or pending arbitration; (c) seek injunctive relief in the courts of any jurisdiction as may be necessary and appropriate to enforce intellectual property rights; and (d) enforce any decision of the arbitrator, including the final award. You and we agree that the taking of these actions or any other participation in such litigation by you or us does not waive any right that either you or we have to demand arbitration at any time with respect to any subsequent or amended Claim filed against you or us after commencement of litigation between you and us. In no event shall you or we be entitled to punitive, exemplary, or similar damages. Unless inconsistent with applicable law, and except as otherwise provided herein, you and we shall each bear the expense of our respective attorney, expert, and witness fees, regardless of whether you or we prevail in the arbitration. The arbitrator will decide whether we or you ultimately will be responsible for paying any fees or other costs in connection with the arbitration under the AAA Rules.

Demand for arbitration under these Terms must be made before the date when any judicial action upon the same Claim would be barred under any applicable statute of limitations; otherwise, the Claim also is barred in arbitration. Any dispute as to whether any statute of limitations, estoppel, waiver, laches, or other doctrine bars the arbitration of any Claim shall be decided by arbitration in accordance with the provisions of these Terms. If any portion of this arbitration provision is deemed invalid or unenforceable, the remaining portions of this arbitration provision will remain valid and enforceable. This arbitration provision shall survive expiration or termination of these Terms.

- d. **Assignment.** You may not assign all or part of any rights and/or obligations under these Terms without our prior written consent, which may be withheld in our sole and absolute discretion. We may assign our rights and/or obligations under these Terms without restriction and without your prior written consent.
- e. **Severability.** If any of the provisions of these Terms is held invalid or unenforceable, the remainder of these Terms shall remain in effect and shall be enforceable as if not containing the invalid or unenforceable clause.
- f. **Waiver.** The failure of the Alliance to insist upon strict adherence to any obligation of these Terms shall not be considered a waiver or deprive the Alliance of the right thereafter to insist upon strict adherence to that obligation or any other obligation of these Terms.
- g. **Notices.** Notices to you under these Terms will be sent to your billing address or email address in our records. All notices to us that are intended to have a legal effect must be in writing and delivered by a means evidenced by a delivery receipt, to PrePass® Legal Department, 101 E. Washington St. Ste 500 Phoenix, AZ 85004.
- h. **Calls and Messages:** You agree that we, including our service providers and agents, may use automated telephone dialing, text messaging systems and electronic mail to provide messages to you or contact you about scheduled payments, customer surveys missed payments and with other important information regarding your User Account and this Agreement or your relationship with us. Telephone calls may include a pre-recorded message and may be played by a machine automatically when the telephone is answered whether answered by you, someone else or a voice mail or answering machine. You authorize us to call or send a text message to any telephone number you have given us or you give to us in the future. You also give us permission to communicate such information to you by e-mail. In the event the communication is a customer survey, your response is voluntary and will be kept anonymous unless you choose to identify yourself or unless identification of a respondent is necessary to ensure compliance with, or investigate possible violations of, law or Alliance Terms of Service. The Alliance will use your response in its sole discretion including but not limited to advertising, marketing and for publication in various forms; you expressly authorize the Alliance to publish your responses, in whole or in part, for any purpose at the Alliance's sole discretion. If you are given an opportunity to submit free-form responses to a survey, refrain from including in your response your personal information. Survey results may be stored and archived for future access and use by the Alliance, its agents, affiliates, successors or assigns. You understand that, when you receive calls, texts or e-mails from the Alliance, you may incur a charge from the company that provides you with telecommunications, wireless and/or internet services. You agree that we will not be liable to you for any fees, inconvenience, annoyance or loss of privacy in connection with such calls, texts or e-mails. You understand that anyone with



access to your telephone, answering machine or email account may listen to or read the messages, notwithstanding our efforts to communicate only with you. This authorization is part of our bargain concerning your use of the Services and this Agreement and we do not intend it to be revocable. However, to the extent we are required by applicable law to allow you to revoke your consent to these automatic reminders, you may do so by contacting us at the PrePass Service Center at the address or phone number shown in Section 24 below.

- i. **ECOA Notice.** The Federal Equal Credit Opportunity Act prohibits discrimination against credit applicants on the basis of race, color, religion national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law is the Federal Trade Commission, Division of Credit Practices, 6th Street and Pennsylvania Avenue, NW, Washington, DC 20580.

24. **Customer Service and Contact Information:**

Please direct all inquiries and questions about the Services to:

PrePass® Service Center  
2500 South 3850 West (2500 Waterton Place), Suite C West Valley City, UT 84120 1-800-PREPASS (1-800-773-7277)  
(currently Monday through Friday, 6:00am to 7:00pm MT, excluding holidays)  
[PrePassUpdates@PrePass.com](mailto:PrePassUpdates@PrePass.com)

For Alliance Device returns: You must prepay postage/shipping, insure each Alliance Device for \$100.00 with delivery confirmation, enclose a list of Alliance Devices being returned and maintain a copy thereof for your records, and ship the Alliance Devices to:

PrePass® Alliance Device Returns  
1670 South 5500 West Suite 300 Salt Lake City, UT 84104

25. **E-ZPass Listed Authorities:** The following authorities are within the E-ZPass network as of April 1, 2016. The Alliance reserves the unilateral right, in its sole discretion, to amend this list by adding authorities to or deleting authorities from this list:

Authority Code	Authority Description
395EXP	395 Express Lanes (VA)
495EXP	495 Express Lanes (VA)
64EXP	64 Express Lanes (VA)
66EXP	66 Express Lanes (VA)
95EXP	95 Express Lanes (VA)
BCBC	Burlington County Bridge Commission
CB	George P. Coleman Bridge
CBBT	Chesapeake Bay Bridge Tunnel
CHESAPEAKE	Chesapeake Expressway
CHICAGO	Chicago Skyway
DELDOT	Delaware DOT
DRBA	Delaware River and Bay Authority
DRJTBC	Delaware River Joint Toll Bridge Comm
DRPA	Delaware River Port Authority
DTR	Dulles Toll Road
ERT	Elizabeth River Tunnels
GSP	Garden State Parkway
GW	Dulles Greenway
ILTOLL	Illinois Tollway (I-Pass)
ITRCC	Indiana Toll Road

MassDOT	Massachusetts DOT
MASSPIKE	Massachusetts Turnpike
MASSPort	Massachusetts Port Authority
MDTA	Maryland Transportation Authority
META	Maine Turnpike Authority
METL	Maryland Express Toll Lanes
MICC	Maryland Intercounty Connector
MTAB&T	MTA Bridges and Tunnels
NCTA	North Carolina Turnpike Authority
NFBC	Niagara Falls Bridge Commission
NHDOT	New Hampshire DOT
NJTP	New Jersey Turnpike Authority
NYSBA	New York State Bridge Authority
NYSTA	New York State Thruway Authority
OTC	Ohio Turnpike Commission
OTIC	Ohio Turnpike Commission
PANYNJ	The Port Authority of NY & NJ
PBA	Peace Bridge Authority
POCA	Pocahontas 895
PTC	Pennsylvania Turnpike Commission
PW	Powwhite Parkway Extension
RITBA	Rhode Island Turnpike and Bridge Auth
RMA	RMTA Expressway System
SJTA	South Jersey Transportation Authority
SNJB	South Norfolk Jordan Bridge
VDOT	Virginia DOT
WVPEDTA	West Virginia Parkways Authority