

NON-EXCLUSIVE DISTRIBUTION AGREEMENT

THIS NON-EXCLUSIVE DISTRIBUTION AGREEMENT (“Agreement”) is entered into by **NORTH TEXAS TOLLWAY AUTHORITY**, a regional tollway authority and political subdivision of the State of Texas (“NTTA”), and [**COMPANY NAME**] (“Distributor”).

1. GRANT.

NTTA is a regional tollway authority that, pursuant to Chapter 366 of the Texas Transportation Code, operates an electronic toll collection system on its turnpike projects and issues TollTag[®] transponders (“Tags”) to the traveling public for use on those projects. Subject to the terms of this Agreement, NTTA grants Distributor the non-exclusive right to promote and issue Tags at the locations listed on Exhibit A. NTTA reserves the unrestricted right to grant other entities the right to offer and issue Tags on terms and conditions that NTTA deems appropriate in any location, area, or market.

2. TERM.

The term (“Term”) of this Agreement is five years and begins on the Effective Date, as defined on the signature page below. This Agreement will automatically renew and be extended for successive three-year periods, each of which begins on the last day of the then-expiring Term, until the Agreement is terminated in accordance with Section 10. If this Agreement is extended, “Term” includes the extended period.

3. DUTIES OF DISTRIBUTOR.

3.1 **Issuance of Tags.** Distributor is authorized to issue Tags to the public. In connection with the issuance of each Tag, Distributor will comply with the Tag issuance procedures (as they may be amended by NTTA from time to time) that are provided to Distributor during the Term. NTTA will provide training materials to Distributor regarding the procedures. Only Distributor personnel who have been trained will participate in the issuance of Tags under this Agreement.

Before issuing a Tag, Distributor will help applicants open an online TollTag account. Distributor will verify that the applicant has a credit card accepted by NTTA and that the card is issued in the name of the applicant. Upon receiving notification from NTTA that the TollTag account was successfully opened, Distributor will provide the applicant a Tag from Distributor’s inventory.

3.2 **Promotion of Tags.** Distributor is permitted to promote Tags and use the Marks (defined below) for the purposes of the services described in this Agreement. All costs and expenses of promotional activities are the responsibility of Distributor. Distributor’s use of the Marks, as well as any promotional material created by Distributor regarding Tags or the Marks, must be approved in advance in writing by NTTA. NTTA retains the discretion to require Distributor to cease any promotional practice regarding the Tags or the Marks that NTTA deems inappropriate.

3.3 **Payment for Lost Tags.** Distributor will immediately notify NTTA for each Tag that is lost or unaccounted for after receipt by Distributor and before issuance to any customer. Within 30 days, Distributor will pay NTTA \$1.00 for each lost or missing Tag.

3.4 **Distributor-Specific Tags.** At the time Distributor orders Tags, Distributor shall pay NTTA the costs to manufacture each order of Tags containing Distributor's art design.

4. DUTIES OF NTTA.

4.1 **Training Materials.** NTTA will provide Distributor with training materials regarding the issuance of Tags, and Distributor will comply with the tag issuance procedures. In addition, NTTA may, from time to time, provide Distributor with ideas and strategies for promoting Tags; however, Distributor retains the discretion to develop promotional strategies, subject to NTTA's discretion to require Distributor to modify or cease any promotional activity that NTTA deems inappropriate.

4.2 **Tag Inventory.** NTTA will, at its expense, provide Distributor with a mutually-agreeable inventory of Tags. Upon Distributor's receipt of the Tags, Distributor assumes responsibility for them unless and until said Tags are properly issued to customers or returned to NTTA in accordance with this Agreement. Distributor should contact NTTA and order additional Tags when the inventory runs low.

4.3 **Payments to Distributor.** NTTA will pay Distributor \$5.00 for each Tag issued by Distributor in compliance with this Agreement. The payment will be made monthly on or about the 15th of each month for Tags issued in the preceding month.

5. NTTA MARKS.

NTTA hereby grants Distributor a limited non-transferable, non-sublicensable, non-exclusive license during the Term to use NTTA's trademarks, trade names, service marks, logos, and the "TollTag" mark (collectively, the "Marks"), subject to the terms and conditions of this Agreement and solely for the purpose of performing services under this Agreement. Distributor agrees to discontinue the use of the Marks or change the manner in which the Marks are displayed or used if requested to do so by NTTA.

6. RELATIONSHIP OF THE PARTIES.

Distributor is an independent contractor that is authorized to distribute Tags pursuant to a non-exclusive agreement with NTTA, and nothing in this Agreement is intended to make either party a general or special agent, fiduciary, joint venture partner, franchisor/franchisee, or employee of the other for any purpose whatsoever.

7. CONFIDENTIALITY, PRIVACY, AND INFORMATION SECURITY.

NTTA maintains sensitive and confidential personal and financial information about Tag applicants ("NTTA Confidential Information"). Distributor acknowledges that NTTA is the exclusive owner of NTTA Confidential Information and will use such information only in connection with the issuance of Tags under this Agreement and shall maintain the absolute

confidentiality of NTTA Confidential Information during and after the term of this Agreement. Distributor will implement reasonable security measures, including without limitation those specified in the Information Security Exhibit attached hereto as Exhibit B and incorporated herein, to protect the confidentiality of all Tag account information, credit card information, license plate numbers, and all other NTTA Confidential Information. Distributor shall not disclose NTTA Confidential Information to any party other than authorized personnel of NTTA, unless disclosure of the information is required by law. Distributor shall notify NTTA as soon as practicable after it discovers or has reason to believe that NTTA Confidential Information has been lost or improperly accessed or disclosed. Distributor shall engage with NTTA in reasonable remedial efforts following any loss or breach of NTTA Confidential Information.

8. INSPECTIONS.

NTTA will have the right, upon reasonable notice to Distributor, to inspect and copy any books, records, and documents of Distributor relating to the issuance of Tags or use of the Marks.

9. OWNERSHIP AND TRANSFER REQUIREMENTS.

This Agreement is fully transferable by NTTA only. Distributor may not transfer this Agreement without NTTA's prior written approval. Any purported transfer that is made by Distributor without NTTA's prior written approval is void.

10. TERMINATION.

10.1 **Default.** This Agreement terminates if a party fails to correct its non-compliance with any provision of this Agreement within five business days after receipt of written notice of said noncompliance from the other party.

10.2 **Non-Default.** This Agreement terminates upon thirty days prior written notice by either party to the other party of its intent to terminate this Agreement for any reason.

11. RIGHTS AND OBLIGATIONS UPON TERMINATION OF THIS AGREEMENT.

11.1 **Payment of Amounts Owed.** NTTA and Distributor each agree to pay each other all amounts owed under this Agreement within thirty days after the effective date of termination of this Agreement.

11.2 **Compliance.** Distributor agrees that immediately upon the termination of this Agreement, it shall: (a) cease promoting and issuing Tags; (b) cease any and all use of NTTA Confidential Information, Marks, and, at NTTA's sole election, either return all NTTA Confidential Information and materials bearing the Marks to NTTA or destroy them; and (c) return all unissued Tags to NTTA at the location designated in Section 12.5 below.

12. MISCELLANEOUS.

12.1 **Severability.** Each provision of this Agreement is severable. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

12.2 **No Waiver.** A party's failure to exercise a right available to that party under this Agreement or by law will not be deemed a waiver of that right. Similarly, either party's waiver of any particular breach or series of breaches under this Agreement shall not affect either party's right to enforcement with respect to any later breach.

12.3 **Applicable Law.** THIS AGREEMENT SHALL BE INTERPRETED AND CONSTRUED UNDER TEXAS LAW AND EXCLUSIVE VENUE SHALL LIE IN ANY COURT SITTING IN COLLIN COUNTY, TEXAS. DISTRIBUTOR AND NTTA WAIVE THE RIGHT TO SUE OR BE SUED ELSEWHERE.

12.4 **Entire Agreement.** This Agreement constitutes the entire agreement between Distributor and NTTA, and there are no other oral or written understandings or agreements between Distributor and NTTA concerning the subject matter of this Agreement. This Agreement may be modified only by written agreement signed by both Distributor and NTTA.

12.5 **Notices.** Any and all notices required or permitted under this Agreement shall be in writing and shall be delivered in person or by air courier or U.S. Mail to the following address:

Notices to NTTA: North Texas Tollway Authority
5900 W. Plano Parkway, Suite 100
Plano, Texas 75093
Attn: Manager of Key Accounts Department

By phone: 214-224-2322

Notices to the Distributor: [Insert **COMPANY NAME**, CONTACT NAME, AND ADDRESS]

By email: [Insert **CONTACT EMAIL**]

By phone: [Insert **CONTACT PHONE**]

Any notice shall be deemed to have been given at the time of personal delivery or, in the case of expedited delivery service, upon receipt or, in the case of U.S. mail, three days after mailing.

12.6 **NTTA INDEMNIFIED.** Distributor will indemnify and hold harmless NTTA and its officers, directors, employees, agents, consultants, and representatives (collectively, the "Indemnitees") from any claims, costs, or liabilities of any type or nature, and by or to any persons whomsoever, to the extent arising from Distributor's actions or inactions (including negligence) related to this Agreement whether such claim or liability is based in tort or strict liability or caused by an employee, agent, or subcontractor of Distributor. In such event, Distributor also will indemnify and hold harmless the Indemnitees from any and all expenses,

including reasonable attorneys' fees, incurred by NTTA in litigating or otherwise responding to said claim or liabilities. In the event that any of the Indemnitees is/are found to be partially at fault, Distributor will, nevertheless, indemnify the Indemnitees from and against the expenses, claims, or liabilities relating to the percentage of fault attributable to Distributor, its employees, agents, or subcontractors or to their actions or inactions. The provisions of this section will survive the termination of this Agreement for any reason, including pursuant to any termination right provided for or allowed hereunder.

IN WITNESS WHEREOF, the Parties have executed this Amendment to be effective as of the last date set forth below (the "Effective Date").

COMPANY NAME

NORTH TEXAS TOLLWAY AUTHORITY

By: _____

By: _____

Name:

Name:

Title:

Title:

Date Executed:

Date Executed:

EXHIBIT A

LOCATION ISSUING TAGS

Insert COMPANY NAME and LOCATION

EXHIBIT B

INFORMATION SECURITY EXHIBIT

Distributor acknowledges and agrees that it is responsible for the confidentiality and security of NTTA Confidential Information, including Tag applicants' license plate numbers, credit card information, and other personal information. Distributor must at all times maintain appropriate administrative, technical, and physical safeguards in its handling of NTTA Confidential Information and shall abide by applicable law. Distributor may not provide access to NTTA Confidential Information to any person (other than NTTA) for any purpose without NTTA's advance written permission.

Distributor must immediately notify NTTA in writing of any actual or reasonably suspected internal or external breach of NTTA Confidential Information. In such event, Distributor shall, at its cost, reasonably cooperate with NTTA's efforts to determine the nature and extent of the breach. Upon NTTA's written request, Distributor shall provide reasonable cooperation and permit NTTA reasonable access to Distributor's records, procedures, and security measures to verify Distributor's compliance with its obligations hereunder.

With respect to all payment card numbers and other information subject to the Payment Card Industry Data Security Standard ("PCI DSS"), Distributor shall: (a) abide by PCI DSS, as updated from time to time; (b) cooperate with any reasonable requests by NTTA concerning PCI DSS reports, scans, assessments, or audit; and (c) at such times as NTTA may reasonably request, provide NTTA with a certification demonstrating Distributor's compliance with PCI DSS in the relevant capacity. Without limiting the foregoing: (i) Distributor shall never record or store (on paper or electronically) any CVV or other payment card security codes; (ii) Distributor shall encrypt payment card account numbers if stored electronically and shall physically secure such numbers if stored on paper records, and (iii) Distributor shall securely dispose of payment cardholder information when no longer needed in a manner that complies with PCI DSS Requirement 9.

This Exhibit shall remain in effect for so long as NTTA Confidential Information remains in the possession, custody, or control of Distributor.