

SOFTWARE ESCROW AGREEMENT

This **SOFTWARE ESCROW AGREEMENT** (the “**Escrow Agreement**”) is made and entered into this ____ day of _____, 2025, by and among _____, a _____, with an address of _____ (“**Licensor**”), and Greater New Orleans Expressway Commission (“**Licensee**”), a _____, with an address of _____ and _____, with an address of _____ (the “**Escrowee**”).

Background

A. Licensor provides a suite of proprietary software and other products, which include various applications, features and functions for, among other things, the use in an Upgraded Toll System including lane equipment, host computer, and customer service and violations processing center to manage accounts, process violations and reconcile transactions, as more fully described in the Contract Documents, which it is licensing to Licensee pursuant to that certain License Agreement.

B. The License Agreement requires Licensor to designate and appoint a third party as escrowee to extend certain protections to Licensee as further described herein.

C. Escrowee is willing to accept such appointment.

D. Licensor, Licensee and Escrowee each intend this Agreement to set forth each of their respective rights and obligations in this regard.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Definitions.

1.1 “*Contract Documents*” shall have the meaning as prescribed in the License Agreement.

1.2 “*License Agreement*” shall mean that certain Software License Agreement dated as of the date hereof between Licensor and Licensee, of which this Escrow Agreement is an Exhibit.

1.3 “*Software*” shall have the meaning as prescribed in the License Agreement.

2. Appointment of Escrowee.

2.1 *Designation of Escrowee.* Licensor hereby nominates and appoints Escrowee as escrow agent for the uses and purposes hereinafter described, and Escrowee hereby accepts such appointment subject to the conditions and limitations of this Escrow Agreement. Unless the conditions to delivery of the Software to Licensee set forth in Section 4.1 hereof are satisfied, Escrowee shall continue to hold the Software until the termination or expiration of this Escrow Agreement.

2.2 *Fee.* Escrowee shall receive a fee for its services payable by Licensor in the amount of _____ (\$_____) annually, due and payable on execution hereof and on each anniversary of such date so long as this Escrow Agreement is in effect.

2.3 Term. The term of this Escrow Agreement shall commence as of the date first written above, and shall continue in effect through the delivery of the Software to Licensee as provided in Section 4 hereof.

3. Conditions. The conditions of this escrow are as follows:

3.1 Deposit. Licenser shall deposit the Software and its related source code and object code in a format that is commonly used in the industry with Escrowee for the use and benefit of Licensee. The materials delivered to Escrowee shall include all such source programs and technical documentation as are necessary to produce a machine executable form of the Software, including but not limited to source code, freeware, flowcharts and logic diagrams required for the normal use, maintenance, and correction of the most current version of Software now or hereafter provided to Licensee. Such materials shall be sufficient to allow Licensee to run and maintain the Software itself or to retain a third party to do so on Licensee's behalf. Escrowee shall treat the Software as confidential and proprietary information, and shall not, except as expressly permitted in this Escrow Agreement or with written consent of the parties hereto, at any time use, copy, modify, disclose or transfer any such information except to the extent necessary to carry out the intent of this Escrow Agreement. To the extent Escrowee is required to disclose or provide the Software or any information relating thereto to any third party, Escrowee will immediately notify Licenser and Licensee of the same, and to the extent legally possible, provide Licenser and/or Licensee with an opportunity to contest or defend against such disclosure;

3.2 Representations. Licenser represents that the escrow deposit is and shall at all times be a duplicate of the Software licensed and provided to Licensee under the License Agreement, as such Software may be updated or modified from time to time. Licenser shall identify each item delivered to Escrowee, and certify that the Software is the same as what is provided under the License Agreement, and that the Software is not "copy protected" and can be copied onto magnetic media for use as permitted by this Escrow Agreement and the License Agreement. Within five (5) days after receipt of the Software, Escrowee shall give Licensee written notice of such receipt. Escrowee shall have no responsibility to test, investigate or authenticate such Software, its identity or condition, and is entitled to rely upon the foregoing representation of Licenser;

3.3 Updates. Licenser shall, promptly upon development or the release thereof, deposit into escrow with Escrowee any and all updates, modifications, new releases and other changes and corrections to the Software, including, but not limited to, the most recent version of the Software, and those other materials as herein required, which, at a minimum, must be provided within ten (10) days of the time of (i) Approval of Factory Acceptance Test (FAT), (ii) Approval of Operational Test for Host and CSC/VPC (iii) Approval of Operational Test for in-lane equipment and (iv) Final Acceptance of the Full Upgraded Toll System.

3.4 Inspection. Licensee shall have the right to inspect the Software in escrow at anytime to determine the accuracy, completeness, sufficiency and quality of the Software deposited in escrow. To the extent the deposit is incomplete or unsatisfactory as determined by Licensee, Licensee shall notify Escrowee of such deficiencies or incompleteness, and Escrowee shall promptly contact Licenser, who shall promptly cure such deficiencies and/or inaccuracies.

4. Delivery.

4.1 Delivery of the Software by Escrowee. A copy of the Software shall be delivered by Escrowee to Licensee upon the occurrence of the following:

- a) Licensor notifies Escrowee in writing to effect such delivery to Licensee; or
- b) Escrowee receives from Licensee an affidavit from Licensee that one of the following has occurred: (1) the dissolution, liquidation or insolvency of Licensor, or the commencement of any action seeking the same, which action is acquiesced in by Licensor or which is not dismissed within 120 days of the date upon which it was instituted; (2) the appointment of a receiver, trustee, interim trustee or other custodian for Licensor or for all or substantially all of Licensor's assets; (3) the commencement of a case by Licensor under the Federal Bankruptcy Code, or the bringing of an action or petition by Licensor seeking relief under the Federal Bankruptcy Code or seeking similar relief or alleging that Licensor is insolvent or unable to pay its debts as they mature; or (4) the commencement of a case against Licensor under the Federal Bankruptcy Code, or an action or petition against Licensor is brought under the Federal Bankruptcy Code, or any action is brought seeking similar relief or alleging that Licensor is insolvent or unable to pay its debts as they mature, in each case which is consented to or acquiesced in by Licensor or is not dismissed within 120 days of the date upon which it was instituted; or
- c) Any of the Contract Documents is terminated for default as a result of a breach thereof by Licensor; or
- d) The Software fails to operate according to the Contract Documents and Licensor does not correct the error or defect within sixty (60) days of receipt of written notification thereof; or
- e) Upon the expiration of the Initial Term of Maintenance Contract (as that term is defined in the Contract Documents), unless such Contract Documents are extended, then upon expiration of such Contract Documents; or
- f) Licensor has ceased business operations and Licensee provides a statement of supporting facts and copies of such documentation as will enable Licensor to evaluate Licensee's claim promptly and effectively.

4.2 Licensor's Right to Object.

- a) Within three (3) days of receiving notice of any of the events described in Section 4.1 above, Escrowee shall send to Licensor by certified mail, return receipt requested, a copy of such notice (to the extent possible). Licensor shall have ten (10) days from the date it receives such notice to notify Escrowee and Licensee in writing of its objection, if any, to the release of the Software. Such notice shall specify in detail Licensor's objections to the release of the Software.
- b) If Licensor sends such written notice of objection to Escrowee within such ten (10) day period, representatives from each of Licensor and Licensee shall meet and engage in good faith discussions in an effort to resolve the dispute without the necessity of any formal proceeding. If the dispute cannot be resolved by such representatives, then Licensor or Licensee may initiate formal proceedings; provided, however, that formal proceedings for resolution of such

dispute may not be commenced until thirty (30) days after Licenser submits the written notice of objection to Escrowee.

c) Notwithstanding Licenser's objection, and pending its resolution, Escrowee shall deliver the Software (or such portion as the Licensee requests) to Licensee in accordance with Licensee's instructions, and Licensee shall be entitled to use and enjoy the Software for the purposes permitted herein and in the License Agreement, subject to the provisions and limitations thereof.

d) If it is agreed or finally determined that Licensee did not have the right to receive the Software from Escrowee, Licensee shall return the Software to Escrowee and Licensee and Licenser shall continue to have any and all rights then available under the License Agreement.

5. Escrowee Action.

In the event of any dispute between Licenser and Licensee regarding the rights provided hereunder, Escrowee shall have no responsibility to become a party to such dispute. In any such instance, Escrowee shall not be responsible for any alleged damage suffered or claimed either by Licenser or Licensee as a result of their dispute or as a result of Escrowee delivering the Software to Licensee.

6. Default and Termination.

Any breach of this Escrow Agreement by Licenser shall also constitute a breach under the License Agreement, and upon any such breach, Licensee shall, in addition to any of its rights and remedies arising hereunder, have all of those rights and remedies as provided in the License Agreement and the Contract Documents.

7. Limitations.

7.1 Limitation on Responsibility of Escrowee.

a) In no event shall Escrowee be required to interpret the respective rights and obligations of the parties, the validity or meaning of their agreements or the entitlement of either one to the Software. The sole responsibility of Escrowee shall be to exercise reasonable care in holding the Software for the term of this Escrow Agreement unless the conditions to release of the Software described in Section 4 are met or an earlier order from a court of competent jurisdiction as to the disposition of such Software.

b) Escrowee shall be protected in acting upon any written notice, request, waiver, consent, certificate, receipt, authorization, power of attorney or other paper or document which Escrowee in good faith believes to be genuine and what it purports to be.

7.2 Counsel. Escrowee may consult with legal counsel in the event of any dispute or question as to the construction of any of the provisions hereof or its duties hereunder.

8. Miscellaneous.

8.1 All notices and requests in connection with this Escrow Agreement shall be provided in accordance with, and upon those terms and conditions as described in, the applicable provisions of the Contract Documents.

8.2 Licensors may not refer to Licensee in any advertising or publicity without obtaining Licensee's prior written consent.

8.3 The relationship of Licensors, Licensee and Escrowee established by this Escrow Agreement is that of independent contractors. Nothing in this Escrow Agreement shall be construed to create any partnership, joint venture, agency or other similar relationship between Licensors, Licensee and Escrowee. Neither party shall have any right, power or authority to assume, create or incur any expense, liability or obligation, express or implied, on behalf of the other.

8.4 No failure or delay of either party to exercise any rights or remedies under this Escrow Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any rights or remedies preclude any further or other exercise of the same or any other rights or remedies.

8.5 If any provision of this Escrow Agreement is held invalid or unenforceable in any circumstance by a court of competent jurisdiction, the remainder of this Escrow Agreement, and the application of such provision in any other circumstances and in any other jurisdiction shall not be affected thereby.

8.6 Nothing in this Escrow Agreement shall prevent either party from seeking equitable relief by way of one or more preliminary or permanent injunctions (i) restraining any act which would constitute a breach hereof, or (ii) compelling the performance of any obligation which, if not performed, would constitute a breach hereof, or (iii) if a party or any of its representatives breach or threaten to breach any of the provisions of this Escrow Agreement.

8.7 This Agreement shall be governed by and construed and enforced in accordance with State of Louisiana, excluding its principles of conflicts of law. It is the intent of both parties hereto that any controversy, claim or dispute between the parties, directly or indirectly, concerning this Agreement or the breach hereof, or the subject matter hereof, shall be resolved amicably if possible and without resort to civil suit. In the event such a controversy, claim or dispute does arise whether during the term hereof, or any time after the expiration of its term, the parties shall first attempt to resolve such controversy, claim or dispute by good faith discussions. In the event good faith discussions fail to resolve the controversy, claim or dispute, the matter shall be submitted to non-binding mediation with a mutually agreeable mediator in the Parish of Jefferson. In the event, and only in the event, that good faith discussions and non-binding mediation has not resulted in the resolution of the controversy, claim or dispute, it may be litigated in the Twenty Fourth Judicial District Court, Parish of Jefferson, State of Louisiana.

8.8 All exhibits, schedules and appendices attached to this Escrow Agreement are incorporated into and form a part of this Escrow Agreement.

8.9 Headings contained in this Escrow Agreement are for reference purposes only and shall not affect in any way the meaning and interpretation of this Escrow Agreement.

8.10 This Escrow Agreement may be executed in one or more counterparts.

8.11 This Escrow Agreement, along with the Contract Documents, constitutes the entire agreement of the parties, superseding any and all previous agreements and understandings whether oral or written. No modification or waiver of the provisions of this Escrow Agreement shall be valid or binding on either party unless in writing and signed by both parties.

8.12 The provisions of this Escrow Agreement that, by their nature, should survive termination hereof, including, but not limited to Sections 4, 6, 7, and 8 shall survive the termination or expiration of this Escrow Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Escrow Agreement as of the day and year first above written.

[Licensor]

By _____
Name:
Title:
Date:
Address:

400

Phone
Facsimile:
E-mail:

[Licensee]

Greater New Orleans
Expressway Commission

By _____
Carlton Dufrechou
General Manager
Date: _____
GNOEC Administration Office
3939 N. Causeway Blvd., Suite
Metairie, Louisiana 70002

Phone: (504) 835-3118
Facsimile: (504) 835-2518
E-mail: gnoec@gnoec.org

[Escrowee]

By _____
Name:
Title:
Date:
Address:

Phone:
Facsimile: