

## **Mobile Application End User License Agreement**

This Mobile Application End User License Agreement (“Agreement”) is a binding agreement between you (“End User” or “you”) and the North Texas Tollway Authority (“NTTA”). This Agreement governs your use of the NTTA TollMate™ mobile application for Apple iOS or Google Android operating systems (including all related documentation, the “Application”).

BY DOWNLOADING, INSTALLING, OR USING THE APPLICATION, YOU: (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) ACCEPT THIS AGREEMENT (WHICH INCORPORATES AND INCLUDES THE ADDITIONAL NTTA POLICIES REFERENCED BELOW); and (C) AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT DOWNLOAD, INSTALL, OR USE THE APPLICATION. NTTA HEREBY RESERVES THE RIGHT TO REVISE THESE TERMS FROM TIME TO TIME. THIS AGREEMENT CONTAINS DISCLAIMERS AND OTHER PROVISIONS THAT LIMIT NTTA’S LIABILITY TO YOU.

### **Eligibility**

The Application is not targeted towards, nor intended for use by, anyone under the age of 18. AS AN END USER, YOU MUST BE AT LEAST AGE 18 TO ACCESS AND USE THE APPLICATION.

In order to use certain functions of our Application, you will need to register for an account. You agree to: (a) create only one account; (b) provide accurate, truthful, current, and complete information when creating your account; (c) maintain and promptly update your account information; (d) maintain the security of your account by not sharing your password with others and restricting access to your account and your computer; (e) promptly notify NTTA if you discover or otherwise suspect any security breaches relating to the Application; and (f) take responsibility for all activities that occur under your account and accept all risks of unauthorized access.

### **Other NTTA Policies**

This Agreement supplements and incorporates other NTTA policies, including NTTA’s TollTag™ Agreement, NTTA’s Privacy Policy (located at <https://www.ntta.org/Pages/Privacy-Policy.aspx>) and the terms and conditions of the NTTA TollPerks™ Rewards Program (located at <https://tollperks.com/terms/>). You consent to all such NTTA policies, and all actions taken by us with respect to your information, as described in the Privacy Policy. To the extent any of the provisions in other NTTA agreements conflict with this Agreement, the terms of this Agreement will control, solely to the extent such terms apply to the Application.

### **License Grant**

Subject to and only to the extent you comply with the terms of this Agreement, NTTA grants you a limited, non-exclusive, and nontransferable license to download, install, and use the Application

for your personal, noncommercial use on a single mobile device owned or otherwise controlled by you (“Mobile Device”) strictly in accordance with the Application's documentation.

## **License Restrictions**

You shall not:

- (a) copy the Application, except as expressly permitted by this license;
- (b) modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Application;
- (c) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Application or any part thereof;
- (d) remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices from the Application, including any copy thereof;
- (e) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Application or any features or functionality of the Application, to any third party for any reason, including by making the Application available on a network where it is capable of being accessed by more than one device at any time; or
- (f) remove, disable, circumvent, or otherwise create or implement any workaround to any copy protection, rights management, or security features in or protecting the Application.

You agree that the information from this Application is not intended to replace the information provided on the road, such as travel directions, time-based restrictions, lane restrictions, road blockades, traffic signs, traffic lights, police instructions, emergency vehicles, etc. You should not rely on this Application in situations where precise, real-time information is needed or where erroneous, inaccurate, time-delayed, or incomplete data may lead to death, personal injury, or property or environmental damage. And you agree that the results you receive from the Application may vary from actual road, terrain, cycling, or pedestrian paths, or other conditions due to factors that can affect the accuracy of the Application and data therein, such as, but not limited to, weather, road, traffic, and path conditions, and geopolitical events.

**FOR YOUR SAFETY, YOU SHOULD ALWAYS DRIVE VIGILANTLY, USE YOUR INDEPENDENT JUDGMENT, AND ALWAYS PAY ATTENTION TO POSTED SIGNS AND CURRENT ROAD AND ROUTE CONDITIONS. FOLLOW SAFE PRACTICES AND TRAFFIC REGULATIONS.**

## **Reservation of Rights**

You acknowledge and agree that the Application is provided under license, and not sold to you. You do not acquire any ownership interest in the Application under this Agreement, or any other rights thereto other than to use the Application in accordance with the license granted, and subject to all terms, conditions and restrictions, under this Agreement. NTTA reserves and shall retain its entire right, title and interest in and to the Application, including all copyrights, trademarks and other intellectual property rights therein or relating thereto, except as expressly granted to you in this Agreement.

## **Email Communications**

By signing up for a TollTag account through this Application, you agree to receive electronic communications from NTTA about your account, including monthly account statements, invoices, and other notices. Alternatively, at your request and for the applicable fee, NTTA will mail you a monthly Account statement. You may access, change, or update your account free of charge through the Application, NTTA's website, or at any customer service center.

### **Third-Party Content**

This Application may display, include, or make available content, data, information, applications, or materials from third parties ("Third-Party Content"), including, for example, third-party maps. NTTA is not responsible for the content, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality, route practicability, or efficiency or any other aspect of such Third-Party Content. The Third-Party Content may contain proprietary content, information, and material that is protected by applicable intellectual property and other laws, including but not limited to copyright and trademark laws. You may not use such proprietary content, information, or materials in any way whatsoever except to use the Application for its intended purposes as provided herein.

Through your use of Third-Party Content, you hereby agree to be bound by such terms and conditions as are required by each Third Party.

### **Collection and Use of Your Information**

You acknowledge that when you download, install or use the Application, NTTA may use automatic means (including, for example, cookies and web beacons) to collect information about your Mobile Device and about your use of the Application. We automatically gather Application usage data for analysis and security purposes, and we may use service providers to assist us in doing so. This may include collection and use of your IP address or other device identifiers. We may also use cookies and similar technology in order to enable certain features of our Application and to preserve your preferences and customize your experience when you use our Application.

You also may be required to provide certain information about yourself as a condition to downloading, installing, or using the Application or certain of its features or functionality, including your driver's license number, license plate number, information about your vehicle(s), and credit card or other payment information. The Application may also provide you with opportunities to share information about your location with parties other than NTTA, including through your use of the Roadside Help functionality or use of Third-Party applications.

### **Updates**

NTTA may from time to time in its sole discretion develop and provide Application updates, which may include upgrades, bug fixes, patches, and other error corrections and/or new features (collectively, including related documentation, "Updates"). Updates may also modify or delete in their entirety certain features and functionality. You agree that NTTA has no obligation to provide any Updates or to continue to provide or enable any particular features or functionality. Based on your Mobile Device settings, when your Mobile Device is connected to the internet either:

- (a) the Application will automatically download and install all available Updates; or
- (b) you may receive notice of or be prompted to download and install available Updates.

You shall promptly download and install all Updates and acknowledge and agree that the Application or portions thereof may not properly operate should you fail to do so. You further agree that all Updates will be deemed part of the Application and be subject to all terms and conditions of this Agreement.

### **Term and Termination**

- (a) The term of Agreement commences when you download/install the Application and will continue in effect until terminated by you or NTTA as set forth in this Section.
- (b) You may terminate this Agreement by deleting the Application and all copies thereof from your Mobile Device.
- (c) NTTA may terminate this Agreement at any time without notice if it ceases to support the Application, which NTTA may do in its sole discretion. In addition, this Agreement will terminate immediately and automatically without any notice if you violate any of the terms and conditions of this Agreement.
- (d) Upon termination:
  - (i) all rights granted to you under this Agreement will also terminate; and
  - (ii) you must cease all use of the Application and delete all copies of the Application from your Mobile Device and account.
- (e) Termination will not limit any of NTTA's rights or remedies at law or in equity.

### **Disclaimer of Warranties**

THE APPLICATION IS PROVIDED TO YOU "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. NTTA SHALL HAVE NO OBLIGATION OR LIABILITY WITH RESPECT TO THE USE OR PERFORMANCE OF THIS APPLICATION OR YOUR ACCOUNT. YOU UNDERSTAND THAT NTTA IS A POLITICAL SUBDIVISION OF THE STATE OF TEXAS AND AGREE TO HOLD NTTA HARMLESS FROM AND AGAINST ALL DAMAGE, LOSS, COST, EXPENSE, OR LIABILITY RELATING TO, ARISING FROM, OR BECAUSE OF THE USE OR PERFORMANCE OF THIS APPLICATION OR YOUR ACCOUNT. THIS PROVISION APPLIES EVEN IF SUCH DAMAGE, LOSS, COST, OR EXPENSE IS ATTRIBUTABLE TO THE NEGLIGENCE OR OTHER FAULT OF NTTA.

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, NTTA, ON ITS OWN BEHALF AND ON BEHALF OF ITS LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE APPLICATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, NTTA PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND

THAT THE APPLICATION WILL BE ACCURATE, ACCESSIBLE, TIMELY, UPDATED, MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

### **Limitation of Liability**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL NTTA OR ANY OF ITS RESPECTIVE LICENSORS OR SERVICE PROVIDERS, HAVE ANY LIABILITY FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OR IN ANY WAY CONNECTED WITH THIS SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE, EVEN IF SUCH PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, NOR FOR ANY DAMAGES ARISING FROM OR RELATED TO YOUR USE OF OR INABILITY TO USE THE APPLICATION. THE FOREGOING LIMITATIONS WILL APPLY WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR NTTA WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### **Indemnification**

To the extent authorized by the law, you agree to indemnify, defend and hold harmless NTTA and its officers, directors, employees, agents, affiliates, successors and assigns from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, arising from or relating to your use or misuse of the Application or your breach of this Agreement.

### **Export Regulation**

The Application may be subject to US export control laws, including the US Export Administration Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the Application to, or make the Application accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule or regulation. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Application available outside the US.

### **Severability**

If any provision of this Agreement is illegal or unenforceable under applicable law, the remainder of the provision will be amended to achieve as closely as possible the effect of the original term and all other provisions of this Agreement will continue in full force and effect.

### **Dispute Resolution and Class Action Waiver**

THIS AGREEMENT INCLUDES A WAIVER OF CLASS ACTION. PLEASE READ CAREFULLY.

Subject to this subsection, as a condition to bringing any suit, proceeding, claim, or crossclaim arising out of or relating to this Agreement, you must first use good faith efforts to resolve the dispute with NTTA before pursuing a resolution through the methods permitted by this subsection.

Any dispute arising under this Agreement that you and NTTA are unable to resolve shall be governed and construed in accordance with the laws of the State of Texas and without giving effect to conflicts of laws principles, and nothing in this Agreement constitutes a modification or waiver of NTTA's governmental immunity. You and NTTA each acknowledge that the exclusive venue for any such dispute is any court sitting in Collin County, Texas, and you and NTTA waive the right to sue or be sued elsewhere. IN THE EVENT THAT ANY DISPUTE BETWEEN YOU AND NTTA IS FILED OR PRESENTED IN COURT, AND REGARDLESS OF WHETHER NTTA EXERCISES ITS RIGHTS AND REMEDIES UNDER THE STATUTES SET FORTH BELOW, YOU AND NTTA EACH AGREE TO WAIVE THE RIGHT TO PARTICIPATE IN, BE A MEMBER OF, AND TO SERVE AS A REPRESENTATIVE FOR A CLASS ACTION IN CONNECTION WITH ANY CLAIM(S) YOU AND NTTA MAY HAVE OR ASSERT AGAINST ONE ANOTHER. NO CLASS ACTION OR OTHER CLASS PROCEEDING SHALL BE CONDUCTED EITHER IN COURT OR IN ANY OTHER FORUM OR PROCEEDING. NEITHER YOU NOR NTTA MAY ACT AS A PRIVATE ATTORNEY GENERAL OR IN ANY OTHER REPRESENTATIVE CAPACITY. YOU AND NTTA ALSO AGREE TO WAIVE THE RIGHT TO HAVE ANY CLAIM CONSOLIDATED WITH, JOINED WITH, OR COMBINED WITH ANY CLAIMS OR ANY OTHER PARTY OR PARTIES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, NTTA MAY AVAIL ITSELF OF ALL APPLICABLE RIGHTS AND REMEDIES PROVIDED BY SECTION 366.178 AND CHAPTER 372 OF THE TEXAS TRANSPORTATION CODE AND ANY STATUTES REFERENCED THEREIN OR CONFERRING SPECIFIC RIGHTS AND REMEDIES FOR TEXAS TOLL AUTHORITIES.

### **Entire Agreement**

This Agreement, our TollTag Agreement, and the Other NTTA Policies referenced above (which includes our Privacy Policy) constitute the entire agreement between you and NTTA with respect to the Application and supersede all prior or contemporaneous understandings and agreements, whether written or oral, with respect to the Application.

### **Waiver**

No failure to exercise, and no delay in exercising, on the part of either party, any right or any power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power hereunder preclude further exercise of that or any other right hereunder. In the event of a conflict between this Agreement and any applicable purchase or other terms, the terms of this Agreement shall govern.