

**APPENDIX O**  
**ESCROW AGREEMENT**

THIS ESCROW AGREEMENT is made and entered into as of April --- 2005 (the "Effective Date") by and among TransCore LP, a limited partnership organized pursuant to the laws of Delaware, with its principal offices located at 8158 Adams Drive, Hummelstown, PA 17036 ("TransCore"), the Massachusetts Turnpike Authority, a body politic and corporate organized under the laws of The Commonwealth of Massachusetts, with its principal offices located at 10 Park Plaza, Boston, MA 02116 ("Customer") and Iron Mountain Intellectual Property Management, Inc., a Delaware corporation, with its principal offices located at 2100 Norcross Parkway, Suite 150, Norcross GA 30071 (the "Escrow Agent").

WHEREAS:

- A. TransCore has entered into an Electronic Toll Collection and System Upgrade Contract, dated May 6, 1999, (and amended by the First Amendment to the Contract dated January 1, 2005) with the Customer regarding the development, delivery, installation and maintenance of an electronic toll collection system and a system upgrade (the "System") for the Initial Turnpike and the Metropolitan Highway System, and the provision of services related to the System (incorporated within the Services Contract, Appendix A to the Electronic Toll Collection and System Upgrade Contract (the "Electronic Toll Collection and System Upgrade Contract")); and
- B. TransCore has agreed to deposit into escrow with the Escrow Agent one set of the System Information as defined in Section 10 of the Electronic Toll Collection and System Upgrade Contract and as described in Exhibit B hereto, as submitted hereunder from time to time; and
- C. TransCore has also agreed to grant the Customer access to and the right to use the System Information on the terms and conditions provided herein in order to assure the continual and satisfactory operation of the System under the Electronic Toll Collection and System Upgrade Contract; and
- D. The Escrow Agent has consented to act as escrow agent for and to receive and hold the System Information.

NOW THEREFORE, it is agreed as follows:

1. Capitalized Terms. Capitalized terms used in this Escrow Agreement that are not otherwise defined herein shall have the meaning assigned to such terms in the Electronic Toll Collection and System Upgrade Contract.

## 2. Deposit of Documentation.

(a) Within seven (7) business days following execution of the Electronic Toll Collection and System Upgrade Contract, TransCore shall deposit the then current version of the System Information with the Escrow Agent (the "Initial Deposit").

(b) If TransCore revises, supplements, adds to, enhances or corrects any of the System Information which is contained in the Initial Deposit, TransCore shall deposit with the Escrow Agent such revisions, supplements, additions, enhancements or corrections ("Supplemental Deposit") within thirty (30) business days of the completion thereof.

(c) Each time TransCore makes a Supplemental Deposit with the Escrow Agent, TransCore will produce and send to the Escrow Agent and the Customer a cumulative inventory on Exhibit B of all System Information held by the Escrow Agent, including the Initial Deposit and all Supplemental Deposits.

(d) TransCore hereby certifies to the Customer that it will deliver all System Information to the Escrow Agent as required by the Electronic Toll Collection and System Upgrade Contract and hereby.

## 3. Disposition of Escrow.

### 3.1 Definition of Release Event

A "Release Event" shall mean any of the following:

(i) If an "Event of Default" by TransCore shall have occurred and the applicable cure period shall have expired as provided in Section 35 of the Electronic Toll Collection and System Upgrade Contract;

(ii) If TransCore ceases to engage in the business of selling or servicing conventional or electronic toll collection systems of the type of System used by the Customer, unless such business shall have been sold, transferred or assumed by a person or entity approved by Customer, in Customer's sole discretion;

(iii) If TransCore ceases its business operations or becomes subject to any bankruptcy, reorganization, liquidation or insolvency proceeding, or makes an assignment for the benefit of creditors; or

(iv) If TransCore fails to pay any fees due to the Escrow Agent hereunder.

### 3.2 Filing for Release of Documentation by Customer

Upon notice to the Escrow Agent by the Customer that a Release Event has occurred, the Escrow Agent shall notify TransCore by certified mail, fax or commercial express delivery service, with a copy of the notice from Customer. If TransCore

provides the Escrow Agent with a Contrary Instruction within five (5) business days after the mailing of the notice to TransCore, the Escrow Agent shall not deliver the Systems Information to the Customer, except as provided in Section 3.4. As used herein, "Contrary Instruction" is the filing of an instruction with the Escrow Agent by TransCore in good faith, certified by an officer of TransCore, that a Release Event has not occurred or has been cured.

### 3.3 Transmission of Contrary Instruction to the Customer

The Escrow Agent shall send a copy of any Contrary Instruction by certified mail, fax or commercial express delivery service to the Customer within five (5) business days of its receipt thereof. The Escrow Agent shall notify both TransCore and the Customer that there is a dispute to be resolved. Upon receipt of the Contrary Instruction, except as provided in Section 3.4 hereof, the Escrow Agent shall continue to store the System Information pending TransCore's and Customer's joint instruction, resolution of dispute through arbitration as provided in Section 3.5 hereof, order by a court of competent jurisdiction, or termination of the Escrow Agreement.

### 3.4 Release of Documentation to Customer

If the Escrow Agent does not receive a Contrary Instruction from TransCore within the five (5) business day period, the Escrow Agent shall promptly and without delay release the System Information in escrow to the Customer. The Escrow Agent shall also promptly and without delay release such of the System Information as is required by the Customer, notwithstanding a Contrary Instruction from TransCore, if the Customer shall certify that it needs access to such System Information in order to conduct its toll collection operations and that it has no reasonable alternative method for conducting such operations without having access to the System Information. Any such certification and release of System Information shall be effective only until the dispute has been resolved by arbitration pursuant to Section 3.5 hereof or otherwise. The Customer shall use any System Information which it receives pursuant to this Section 3.4 solely to conduct and maintain its toll collection operations and for no other purposes and shall take all reasonable precautions to protect the confidentiality of such System Information. Irreparable harm may result to the Customer if the Receiving Party fails to release the System Information in escrow within the time frame designated. In the event of such failure the Customer shall be entitled to injunctive relief.

### 3.5 Resolution of Disputes

Any dispute, controversy, claim or difference arising out of, or in connection with, or resulting from this Escrow Agreement, its application or interpretation, or a breach thereof, including any dispute arising out of any Contrary Instruction, which cannot be settled by the parties, shall be resolved by arbitration under the Rules of Procedure of the American Arbitration Association (the "Rules") then prevailing, conducted in Boston, Massachusetts. The arbitration shall be by one (1) arbitrator chosen in accordance with the Rules who shall be appointed within ten (10) calendar days after demand for arbitration. The arbitrator shall render his decision within sixty

(60) days of his appointment. The decision of the arbitrator shall be final and binding on the parties, and judgment upon any award rendered may be entered in any court having jurisdiction thereto. All costs for the arbitrator, and for any Escrow Agent services required in connection with any arbitration, shall be shared equally between TransCore and the Customer. The Customer and TransCore shall each be responsible for its own costs, fees and expenses, legal or otherwise incurred in connection with any dispute, controversy, claim or difference.

### 3.6 Fees of Escrow Agent

If TransCore fails to pay the Escrow Agent any fee due hereunder, the Escrow Agent shall so notify the Customer and the Customer may, but shall have no obligation to, make such payment in order to continue in effect this Escrow Agreement and the Escrow Agent's services hereunder.

### 3.7 Distribution by Consent

The Escrow Agent shall promptly make distributions of all or any part of the System Information at any time and from time to time upon receipt of instructions signed by both the Customer and TransCore.

### 3.8 Distribution Pursuant to Court Order

The Escrow Agent shall distribute the System Information at any time as directed by a final judgment of a court of competent jurisdiction with respect to which no appeal has been taken or is allowed within the time provided by law. Said final judgment will be accompanied by an opinion of counsel to the effect that said judgment is final and not appealable and the Escrow Agent may rely on such legal opinion.

### 3.9 License

All System Information released to Customer pursuant to this Escrow Agreement shall be subject to a license to use the Systems Information as provided in Section 14 of the Electronic Toll Collection and System Upgrade Contract and the Software License Agreement entered into in connection therewith.

## 4. Verification

TransCore and the Customer, during the Escrow Agent's business hours, shall be entitled to inspect, under the supervision of an officer of the Escrow Agent at the Escrow Agent's facilities, the System Information in order to verify that it comports with the Exhibit Bs submitted hereunder and that it is in condition fit for its intended use. A party seeking such verification shall give the other party and the Escrow Agent five (5) business days notice of its inspection. The other party shall have a right to be present at any such inspection.

## 5. The Escrow Agent

(a) The Customer and TransCore hereby engage the Escrow Agent and the Escrow Agent hereby accepts such engagement subject to the terms and conditions of this Escrow Agreement.

(b) The Escrow Agent shall accept and hold the Systems Information in a fireproof vault or similar facility and provide for the safe keeping of the Systems Information until released as provided by this Escrow Agreement.

(c) TransCore and the Customer agree to defend and indemnify Escrow Agent and hold the Escrow Agent harmless from and against any and all claims, actions and suits, whether in contract or in tort, and from and against any and all liabilities, losses, damages, costs, charges, penalties, counsel fees and other expenses of any nature (including, without limitation, settlement costs) incurred by the Escrow Agent as a result of performance its obligations under of this Escrow Agreement except in the event of a judgment which holds that the Escrow Agent acted with negligence or willful misconduct. In no event shall any party to this Escrow Agreement be liable to another party hereto for any punitive damages.

(d) Notwithstanding anything else herein, all liability, if any, whether arising in contract, tort (including negligence) or otherwise, of any party to this agreement shall be limited to the amount equal to one year of fees paid or owed to iron mountain under this agreement. If claim or loss is made in relation to a specific deposit or deposits, such liability shall be limited to the fees related specifically to such deposits. This limit shall not apply to any party for: (i) any claims of infringement of any patent, copyright, trademark or other proprietary right; (ii) liability for death or bodily injury; (iii) damage to tangible property (excluding the deposit items); (iv) theft; or (v) proven gross negligence or willful misconduct.

(e) In no event shall any party to this agreement be liable to another party for any incidental, special, punitive or consequential damages, lost profits or lost data or information, any costs or expenses for the procurement of substitute services, or any other indirect damages, whether arising in contract, tort (including negligence) or otherwise even if the possibility thereof may be known in advance to one or more parties.

(f) All of the terms and conditions in connection with the Escrow Agent's duties and responsibilities and the rights of TransCore and Customer are contained in this instrument, and the Escrow Agent is not expected or required to be familiar with the provisions of any other instrument or agreement, and shall not be charged with any responsibility or liability in connection with the observance or non-observance of any such other instrument or agreement.

(g) The Escrow Agent may rely on and shall be protected in acting upon any document or instrument which is be submitted to it in connection with its duties hereunder and which Escrow Agent believes to be genuine and to have been signed or presented by the proper party or parties and the Escrow Agent shall have no liability or responsibility with respect to the form, execution or validity thereof.

(h) The Escrow Agent shall not be bound or in any way affected by any modification of this Escrow Agreement unless it and the other parties hereto have agreed to such modification.

(i) If TransCore and the Customer shall disagree about the interpretation of this Escrow Agreement, or about the rights and obligations, or the propriety of any action contemplated by the Escrow Agent hereunder, either of them may initiate arbitration proceedings as set forth in Section 3.5 hereof to resolve the disagreement. The Escrow Agent shall be indemnified by TransCore and Customer for all of its costs, including reasonable attorneys' fees, incurred in connection with any such action.

## 6. Term of the Escrow Agreement

(a) This Escrow Agreement shall commence upon the Effective Date and shall automatically renew annually for as long as the Electronic Toll Collection and System Upgrade Contract shall remain in effect, or for the term of the Services Contract if it remains in effect for longer than the Electronic Toll Collection and System Upgrade Contract. Upon any termination of this Agreement at the end of the term of the Electronic Toll Collection and System Upgrade Contract or Services Contract, as the case may be, the Escrow Agent shall deliver the System Information to TransCore. This Escrow Agreement may terminate earlier upon release of the System Information as provided herein. This Escrow Agreement may also terminate for any reason other than non-payment, by the Escrow Agent following one hundred and twenty (120) days advance written notice to TransCore and the Customer. Termination by the Escrow Agent for non-payment shall follow the process stated herein.

(b) Upon the termination of this Escrow Agreement by joint written instruction of Customer and TransCore, the Escrow Agent shall deliver all System Documentation in accordance with the written instrument.

(c) If for any reason the Escrow Agent is unable to continue to serve as the Escrow Agent hereunder, TransCore and the Customer shall promptly enter into a substantially similar agreement with another entity willing and able to perform the functions of the Escrow Agent hereunder.

(d) TransCore shall pay all fees and expenses of the Escrow Agent due under this Escrow Agreement. In the event of the nonpayment of fees owed to Escrow Agent, Escrow Agent shall provide written notice of delinquency to TransCore and the Customer.

If the Escrow Agent is not paid within one (1) month after the date of such notice, then the Escrow Agent shall have the right to terminate the Agreement any time thereafter by sending written notice of termination to TransCore and the Customer. If TransCore fails to pay the Escrow Agent prior to the expiration of the one (1) month notice, the Customer shall then have the right to make the payment to Escrow Agent to cure the default, provided that if the Customer shall make such payments a Release Event under Section 3.1(iv) shall have occurred. The Escrow Agent shall have no obligation to deliver the deposited System Information or to take

any other action under this Agreement so long as any payment which is due to Escrow Agent remains unpaid.

7. Amendments

This Escrow Agreement may not be modified without the written consent of all parties hereto.

8. Jurisdiction

This Escrow Agreement shall be governed by the substantive laws of the Commonwealth of Massachusetts in all respects, including matters of construction, validity and performance, notwithstanding any Massachusetts rules regarding conflicts of law. The parties agree to commence any action under this Agreement to which the Customer is a party in the Superior Court Department of the Trial Court, Suffolk County, Massachusetts, unless requirements of jurisdiction or venue require resort to a different forum, provided, however, that in no event may resort be had to a court outside the Commonwealth. The provisions of this Section do not limit the ability of either party to intervene in any action, wherever pending, to which the other is a party.

9. Successors

The rights created by this Escrow Agreement shall inure to the benefit of, and the obligations created hereby shall be binding upon, any successors and assigns of the Escrow Agent and any successors and assigns of TransCore and the Customer permitted under the Electronic Toll Collection and System Upgrade Contract or hereunder.

10. No Assignment

Neither the Escrow Agent, TransCore nor the Customer may assign this Escrow Agreement without the prior written consent of all parties hereto. Notwithstanding the foregoing, the Customer, without TransCore's consent, may grant a security interest in its interest under this Escrow Agreement as may be required by Customer's lenders or other financing sources, and the Escrow Agent and TransCore consent to such grant and agree to accept and act upon instruction from such lenders or any trustee or collateral agent on their behalf.

11. Notices

All notices, demands, waivers, and other communications, hereunder shall be in writing and shall be mailed, registered or certified (first class, postage paid, return receipt requested) or telefaxed or sent by messenger or overnight courier with method for verification and tracking delivery to the parties at the addresses shown on Exhibit A attached, or to such other address as a party may specify by written notice given in accordance with this section.

## 12. General

(a) The Escrow Agent hereby represents that to the best of its knowledge neither it nor any of its personnel has been the subject of any investigation or been convicted or indicted for commission of any crime involving misconduct, corruption, bribery, or fraud in connection with any public contract in The Commonwealth of Massachusetts or any other jurisdiction, except as has been specifically disclosed in writing to the Customer, and that, should any such conviction or indictment be obtained or such investigation commenced prior to the expiration of the term hereof, regardless of the date of the occurrence giving rise to the subject matter of such conviction, indictment or investigation, it will be disclosed in writing to the Customer and TransCore.

(b) No member, officer or employee of the Customer, TransCore, or Escrow Agent shall be liable personally hereunder or by reason hereof.

### (c) Headings

The headings in this Escrow Agreement are for convenience only and do not affect the meaning of this Escrow Agreement.

### (d) Independent Contractor

The Customer, TransCore and the Escrow Agent are and shall be independent contractors under this Escrow Agreement and except as provided herein nothing shall be construed to create a partnership, joint venture or agency relationship among them.

### (e) Confidentiality

The Escrow Agent and Customer shall not divulge, disclose or otherwise make available to third parties or use the System Information except as specifically provided in this Escrow Agreement and the Electronic Toll Collection and System Upgrade Contract.

### (f) Entire Agreement

This Escrow Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and there are no other terms or conditions expressed or implied, written or oral, except as set forth in the Electronic Toll Collection and System Upgrade Contract.

### (g) Counterparts

This Escrow Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed an original, but all of which, taken together, shall constitute one and the same Escrow Agreement.

(h) Bankruptcy Code.

TransCore and the Customer intend that this Escrow Agreement is supplementary to the Electronic Toll Collection and System Upgrade Contract as provided under 11 U.S.C. §365(n).

IN WITNESS WHEREOF the undersigned have duly executed this Escrow Agreement on the \_\_\_\_\_ day of April 2005.

**TransCore LP**

By: \_\_\_\_\_

**Massachusetts Turnpike Authority**

By: \_\_\_\_\_

**Iron Mountain Intellectual Property Management**

By: \_\_\_\_\_

**DESIGNATED CONTACTS**

Notices, Deposit Material returns and communication, including delinquencies to TransCore should be addressed to:

Company Name: TransCore, LP  
Address: 8614 Westwood Center Dr.  
Ste. 310  
Vienna, VA 22182

Designated Contact: Contracts Manager  
Telephone: (703) 288-8574  
Facsimile: (703) 748-5380

State of Incorporation: Delaware

Notices, Deposit Material returns and communications, including delinquencies to TransCore should be addressed to:

Company Name: Massachusetts Turnpike Authority  
Address: 10 Park Plaza  
Boston, MA 02116

Designated Contact: William Catania,  
(Title) Chief Information Officer  
Telephone: (617) 263-7909  
Facsimile: (617) 263-7949

Requests from TransCore or Customer to change the Designated Contact should be given in writing by the Designated Contact or an authorized employee of TransCore or Customer

Contracts, Deposit Materials and notices to Agent should be addressed to:

Iron Mountain Intellectual Property Management  
2100 Norcross Pkwy., Ste. 150  
Norcross, GA 30071  
Telephone: (770) 239-9200  
Facsimile: (770) 239-9201

Invoices to TransCore should be addressed to:

TransCore  
8158 Adams Drive  
Liberty Centre Bldg. 200  
Hummelstown, PA 17036

Invoice Contact: Controller  
Telephone: (717) 561-2400  
Facsimile: (717) 564-8439

Invoices to Customer should be addressed to:

Massachusetts Turnpike Authority  
10 Park Plaza  
Boston, MA 02116

Invoice Contact: William Catania,  
(Title) Chief Information Officer  
Telephone: (617) 263-7909  
Facsimile: (617) 263-7949

Escrow payments should be addressed to:

Iron Mountain Intellectual Property Management  
P. O. Box 27131  
New York, NY 10087-7131

DESCRIPTION OF DEPOSIT MATERIAL

Deposit Account Number: \_\_\_\_\_

Depositor Company Name: \_\_\_\_\_

DEPOSIT TYPE: \_\_\_\_\_ Initial \_\_\_\_\_ Supplemental \_\_\_\_\_ Replacement  
If Replacement: \_\_\_\_\_ Destroy Deposit \_\_\_\_\_ Return Deposit \_\_\_\_\_

ENVIRONMENT:

Host System CPU/OS \_\_\_\_\_ Version \_\_\_\_\_ Backup \_\_\_\_\_

Source System CPU/OS \_\_\_\_\_ Version \_\_\_\_\_ Compiler \_\_\_\_\_

Special Instructions: \_\_\_\_\_

DEPOSIT MATERIAL:

Exhibit B Name \_\_\_\_\_ Version \_\_\_\_\_

Item label description	Media	Quantity
------------------------	-------	----------

Exhibit D Name \_\_\_\_\_ Version \_\_\_\_\_

Item label description	Media	Quantity
------------------------	-------	----------

For Depositor, I certify that the above described Deposit Material was sent to Iron Mountain Intellectual Property Management:

For Iron Mountain Intellectual Property Management, I received the above described Deposit Material subject to the term of that Escrow Agreement by and among TransCore LP, Iron Mountain Intellectual Property Management and Massachusetts Turnpike Authority dated \_\_\_\_\_.

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date of Acceptance: \_\_\_\_\_

EX. B# \_\_\_\_\_