



MIAMI-DADE EXPRESSWAY AUTHORITY

3790 NW 21 St. // Miami, FL 33142

www.mdxway.com

ASSIGNMENT AND ASSUMPTION AGREEMENT

MDX PROCUREMENT/CONTRACT NO.: MDX-14-03-C

MDX PROJECT/SERVICES TITLE: SYNERGY AUTOMATED/MANUAL IMAGE REVIEW SYSTEM

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement"), dated as of the 1st day of June, 2023 ("Effective Date" or "Assignment Date"), is made by and between ***Open Roads Consulting, Inc.***, an inactive for-profit Virginia corporation, formally existing and doing business in the State of Florida, with offices located at ***1420 Kristina Way, Suite 102, Chesapeake, Virginia 23320***, Federal I.D. No. ***54-2014845*** ("Assignor"); and ***Q-Free America, Inc.***, an active, for-profit California corporation, validly doing business in the State of Florida, with offices located at ***4660 La Jolla Village Drive, Suite 500, San Diego, California 92122***, Federal I.D. No. ***45-4337530*** ("Assignee"); and the ***Miami-Dade County Expressway Authority*** d/b/a Miami-Dade Expressway Authority, a body politic and corporate, a public instrumentality, created by the Board of County Commissioners of Miami Dade County as amended, acting by and through its Governing Board; collectively referred to as the "**Parties**" to this Agreement.

WHEREAS, *Q-Free America, Inc.* was contracted to MDX to provide a software system for the electronic and manual review of toll images through its Synergy System (the "**Services**"), pursuant to the terms of the MDX Procurement/Contract No. MDX-14-03 dated ***September 20, 2013***, and subsequent Amendments one (1) through five (5) were issued; and

WHEREAS, on *February 28, 2017*, the Contract and Amendments were assigned from ***Q-Free America, Inc.*** to ***Open Roads Consulting, Inc.***, referred to as the "Assigned Contract MDX-14-03-B"; and

WHEREAS, *Open Roads Consulting, Inc.* now desires to reassign all of its rights and delegate back to ***Q-Free America, Inc.*** all of its obligations and responsibilities under the Assigned Contract MDX-14-03-B inclusive of Supplemental Agreements one (1) through two (2); and

WHEREAS, Assignee desires to accept such assignment of the Assignor's rights and delegation of obligations and responsibilities under the Assigned Contract MDX-14-03-B under the terms and conditions of this Agreement effective as of the Assignment Date; and

WHEREAS, pursuant to the terms and conditions of this Agreement, MDX consents to the assignment of the Assigned Contract MDX-14-03-B to Assignee; and



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WHEREAS pursuant to the terms and conditions of the Assigned Contract MDX-14-03-B, the Parties wish to exercise the renewal options and the *Extension Offer From Q-Free America, Inc.* on the Agreement; and

WHEREAS, the Parties agree to add additional funds to the Agreement to compensate the Assignee through the extension period and approve the terms of compensation through the extension period; and

WHEREAS, the Parties also wish to revise the Insurance Requirements of the Agreement to include Cyber Liability Insurance; and

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein and made a part hereof by this reference, the mutual covenants, terms and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Assignment and Assumption.**

1.1 **Assignment.**

As of June 1st, 2023 (the "Assignment Date"), Assignor assigns to Assignee:

- (a) All of its rights under the Assigned Contract MDX-14-03-B; and
- (b) Delegates to Assignee all of its obligations and responsibilities under the Assigned Contract MDX-14-03-B.

1.2 **Assumption.**

As of the Assignment Date, Assignee unconditionally accepts all of Assignor's rights, obligations and responsibilities in accordance with the Assigned Contract and assumes and agrees to be bound by, fulfill, and perform all of the liabilities, obligations, duties, and covenants under or arising out of the Assigned Contract as of the Assignment Date of this Agreement until the termination of the Assigned Contract. Assignor, hereby agrees that this Agreement does not relieve Assignor of the contractual liabilities for any failure by Assignee to perform the Services of the Assigned Contract MDX-14-03-B.



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1.3 **Substitution.**

Assignee by this Agreement becomes entitled to all right, title and interest of Assignor in and to the Assigned Contract in as much as Assignee is the substituted party to the Assigned Contract as of and after the Assignment Date. MDX and Assignee shall be bound by the terms of the Assigned Contract in every way as if Assignee is named in the Assigned Contract in place of Assignor as a party thereto.

2. **Outstanding Payments.**

Within thirty (30) days of the Assignment Date, MDX shall remit to Assignor any outstanding payments due to Assignor as compensation for services rendered under the Assigned Contract MDX-14-03-B prior to the Assignment Date.

3. **Extension of Term of Assigned Contract.**

The term of the Assigned Contract MDX-14-03-B has an additional optional renewal of three (3) one (1) year renewals (the "Optional Extension"). However, in accordance with MDX Board approval, the Parties hereby agree to renew the Agreement for one (1) three (3) year renewal term through **August 31, 2026** (the "Optional Extended Term").

4. **Contract Amount.**

The Agreement has a not exceed amount of **Four Million Four Hundred Forty-Seven Thousand, Seven Hundred Sixty Six Dollars and Sixteen Cents (\$4,447,766.16)**. In order to compensate the Assignee through the Optional Extended Term an additional **Two Million, Four Hundred Thousand Dollars and Zero Cents** is hereby added to the Agreement for a not to exceed amount of **Six Million Eight Hundred Forty-Seven Thousand, Seven Hundred Sixty Six Dollars and Sixteen Cents (\$6,847,766.16)**

The Assignee acknowledges the remaining balance on the Agreement after assignment and assumption shall be the total amount less any payments made to the Assignor for invoices for Services completed prior to the Assignment Date.

5. **Compensation Terms for Services Through the Extension Period.**

Pursuant to MDX Board approval and the **Extension Offer From Q-Free America, Inc.** attached and herby incorporated to this Agreement as **Exhibit C**, the Parties agree as follows:



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- a) For the satisfactory performance of the Services, the Assignee shall be compensated with a monthly fixed fee of ***Fifty-One Thousand, Nine Hundred Sixty-Five Dollars and Zero Cents (\$51,965.00)*** for the first year of the Optional Extended Term. The monthly fixed fee is for the maintenance of the software and the automated review of images.
- b) Starting on ***September 1, 2024***, and every subsequent year of the Optional Extended Term, the monthly fixed fee will be subject to an adjustment. The adjustment will be the 12-month percentage change reported by the U.S. Bureau of Labor Statistics Employment Cost Index (BLS-ECI) reported for the quarter ending in June of the adjusting year. Annual adjustments shall not exceed 3% and no adjustments shall be made for years where the BLS-ECI percentage is negative.
- c) The current Agreement requires a base performance of 65% of all images at a 99.95% accuracy for the license plate automation read rate, meaning no manual image review necessary, with an incentive of \$.005 per image for automated rates over 75% of all images at a 99.95% accuracy rate. Each image that is reviewed through automation and does not require a manual review, results in a MDX operational savings of \$.015 per image. The Optional Extended Term hereby increases the base performance Automation rate from the current 65% to 75% while continuing to maintain performance Accuracy of 99.95% (.05% error rate). Any Automation performance below 75% shall be subject to Liquidated Damages in accordance with the terms of the PSA (LD of 1/30th of the monthly fixed fee for every day performance falls below 75% Automation) at a 99.95% accuracy.
- d) The Performance-Based Incentive compensation for Automation performance above 75% in accordance with Supplemental Agreement No. 2 to the PSA shall remain in effect and apply throughout the Extended Term.
- e) The Software License Agreement was previously based on 150 million video-based transactions per year is hereby amended by increasing the License Grant for video-based toll transaction volumes. The License Grant is increased from 150 million video-based transactions per year to a total of 265 million video-based transactions per year. This is about a 76% increase from the current License Grant without an increase to the software license cost.
- f) The Assignee shall hereby provide system enhancements at no additional cost to MDX with a value not to exceed ***Eighty-Five Thousand Dollars and Zero Cents (\$85,000.00)*** annually.



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6. Revised Insurance Requirements.

The Parties hereby acknowledge and agree that the Insurance Requirements to the Agreement are hereby revised to include Cyber Insurance pursuant to ***Exhibit E, Insurance Requirements – Revised 4/25/2023*** attached hereto and incorporated herein.

7. Representations and Warranties.

7.1 Assignor's Representations and Warranties.

Assignor represents and warrants as follows:

- (a) It is duly organized, validly existing and in good standing under the laws of Virginia; and
- (b) It has the full right, corporate power and authority to enter into this Agreement and to perform its obligations hereunder; and
- (c) It has taken all necessary corporate action to authorize the execution of this Agreement by its Representative whose signature is set forth at the end hereof; and
- (d) When executed and delivered by it, this Agreement will constitute the legal, valid and binding obligation of Assignor, enforceable against it in accordance with its terms; and
- (e) To the best of Assignor's knowledge, it is not in material default of the Assigned Contract.

7.2 Assignee's Representations and Warranties.

Assignee represents and warrants as follows:

- (a) It is duly organized, validly existing and in good standing under the laws of California validly existing and doing business in the State of Florida; and
- (b) It has the full right, corporate power and authority to enter into this Agreement and to perform its obligations hereunder; and



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- (c) It has taken all necessary corporate action to authorize the execution of this Agreement by its Representative whose signature is set forth at the end hereof; and
- (d) When executed and delivered by it, this Agreement will constitute the legal, valid and binding obligation of Assignee, enforceable against it in accordance with its terms, and will place MDX in privity with Assignee with regard to the Assigned Contract; and
- (e) It has the requisite skill, knowledge and human, financial, and other resources to perform the obligations of the Assigned Contract and that it shall begin performance of such obligations on the effective date of this Agreement; and
- (f) It has all requisite licenses, permits, and other governmental approvals necessary to perform the obligations of the Assigned Contract in the State of Florida; and
- (g) It shall acquire and provide proof of insurance coverage of such types and with such limits as provided in the Assigned Contract, prior to commencing any work thereunder;

7.3 MDX's Representations and Warranties.

MDX represents and warrants as follows:

- (a) It is a body politic and corporate, a public instrumentality created by the Board of County Commissioners of Miami Dade County as amended, acting by and through its Governing Board; and
- (b) It has the full right, power, and authority pursuant to its Board adopted policies and specific Board approval to enter into this Agreement to perform its obligations hereunder; and
- (c) It has taken all necessary action as required by its Board adopted policies to consent and authorize the assignment contemplated herein and to authorize the execution of this Agreement by its Representative whose signature is set forth at the end hereof; and



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- (d) When executed and delivered by its, this Agreement will constitute the legal, valid and binding obligation of MDX, enforceable against it in accordance with its terms, and will place MDX in privity with Assignee with regard to the Assigned Contract; and
- (e) To the best of MDX's knowledge, it is not in default of the Assigned Contract; and
- (f) To the best of MDX's knowledge, there is no default of the Assigned Contract by Assignor, or any other unsatisfied condition, that would
 - (i) give rise to a claim by MDX for any portion of the performance bond issued on behalf of Assignor for the Assigned Contract or
 - (ii) that would prevent the refund to Assignor of any retainage held by MDX.

8. Miscellaneous.

8.1 Notices.

Each party shall deliver all notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "**Notice**") in writing and addressed to the other party at its address set forth below (or to such other address that the receiving party may designate from time to time in accordance with this section).

Each party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or e-mail of a PDF document (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only

- (a) on receipt by the receiving party, and
- (b) if the party giving the Notice has complied with the requirements of this Section.

Notice to Assignor: Daniel Skiffington
CEO
Open Roads Consulting, Inc.
103 Watson Road
Chesapeake, Virginia 23320



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Notice to Assignee: Bill Rapp
EVP Tolling, North America
Q-Free America, Inc.
4660 La Jolla Village Drive,
Suite 100
San Diego, California 92122

Notice to MDX: Jacqueline Buitrago, CPPB
Procurement Manager
Miami-Dade County Expressway Authority (MDX)
3790 NW 21st Street
Miami, Florida 33142

With a copy to: Carlos M. Zaldivar, Esq.
General Counsel
Miami-Dade County Expressway Authority (MDX)
3790 NW 21st Street
Miami, Florida 33142

8.2 **Headings.**

The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

8.3 **Severability.**

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

8.4 **Entire Agreement.**

This Agreement constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.



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8.5 Further Actions.

Each Party covenants and agrees, at its own expense, to execute and deliver, at the request of the other party, such further instruments of transfer and assignment and to take such other action as such other party may reasonably request to more effectively consummate the assignments and assumptions contemplated by this Agreement.

8.6 Amendment and Modification.

No amendment to this Agreement is effective unless it is in writing, identified as a Supplemental Agreement to this Agreement and signed by an authorized representative of each party to this Agreement. Notwithstanding the foregoing, the Parties acknowledge that any Supplemental Agreement to the Assigned Contract that may occur after the Assignment Date, which do not affect the terms and conditions of this Agreement, may be done solely by and between the Assignee and MDX, without requiring the consent of the Assignor.

8.7 Waiver.

- (a) No waiver under this Agreement is effective unless it is in writing and signed by an authorized representative of the party waiving its right.
- (b) Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion.
- (c) None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege or condition arising from this Agreement:
 - (i) Any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under this Agreement; or
 - (ii) Any act, omission or course of dealing between the Parties.

8.8 Cumulative Remedies.

All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.



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8.9 No Third Party Beneficiaries.

This Agreement benefits solely the Parties to this Agreement and their respective successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

8.10 Prohibition Against Contingent Fees.

Assignee warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Assignee, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for Assignee any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the making of this Agreement.

8.11 Choice of Law; Venue; Waiver of Trial by Jury.

This Agreement is governed by, and construed in accordance with, the laws of the State of Florida without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of Florida. In the event of any dispute related to this Agreement, venue for any ensuing litigation shall be in Miami-Dade County in a court of competent jurisdiction. Each party hereby knowingly, irrevocably, voluntarily, and intentionally waives its right to trial by jury.

8.12 Independent Contractor.

In accepting the assignment and assuming the role of Assignor, Assignee and its employees, personnel, subconsultants, subcontractors, volunteers, and agents shall be and remain independent contractors and not agents or employees of MDX with respect to all of the acts and services performed pursuant to the terms of the Assigned Contract.

8.13 Counterparts.

This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together is deemed to be one and the same agreement.



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A signed copy of this Agreement delivered by e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

8.14 Acknowledgement & Representation.

The Parties to this Contract individually represent, warrant, and agree that:

- (a) They have been represented by legal counsel of their choice in connection with the Contract;
- (b) They are fully aware and clearly understand all of the terms and provisions contained in this Contract;
- (c) They have voluntarily, with full knowledge and without coercion or duress of any kind, entered into this Contract;
- (d) They are not relying on any representation, either written or oral, express or implied, made to them by any other party other than as set forth in this Contract; and
- (e) The consideration received by them to enter into this Contract and the settlement contemplated by this Contract has been actual and adequate.

8.15 Certification.

This document is an MDX form maintained in an electronic format and no changes may be made to this document without approval from MDX.

The Consultant must submit any requested changes or revisions to MDX for approval prior to the Consultant executing this Agreement.

By signing this document, the Consultant hereby represents that no change has been made to the text of this document.

You MUST certify by checking the box below:

- ☒ No changes have been made to this Agreement.



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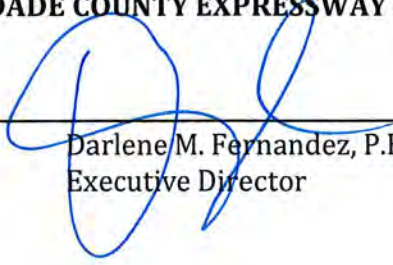
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IN WITNESS WHEREOF, the Parties hereto, intending to be bound as of the Effective Date written above, have executed this Agreement.

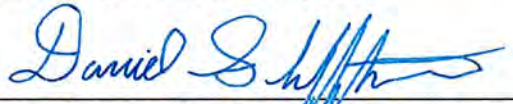
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By: _____


Darlene M. Fernandez, P.E.
Executive Director

OPEN ROADS CONSULTING, INC.

By: _____



Signature of Authorized Officer

Daniel Skiffington

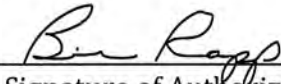
Print Name of Authorized Officer

CEO

Title of Authorized Officer

Q-FREE AMERICA, INC.

By: _____



Signature of Authorized Officer

Bill Rapp

Print Name of Authorized Officer

Executive VP, Tolling, Q-Free America, Inc.

Title of Authorized Officer

Approved by MDX Board: 4/25/2023

- Exhibit A - Assigned Contract MDX-14-03-B
- Exhibit B Assignment Letter from Q-Free America, Inc.
- Exhibit C Extension Offer from Q-Free America, Inc.
- Exhibit D - Sworn Statement on Public Entity Crimes and Debarment
- Exhibit E MDX Annual Disclosure
- Exhibit F Insurance Requirements – Revised 4/25/2023

Assignment and Assumption Agreement

Assignor JS

Assignee AR