

**SPECIAL MEETING AGENDA
FOR THE WEST HAYMARKET
JOINT PUBLIC AGENCY (JPA)
TO BE HELD WEDNESDAY, JUNE 7, 2023 AT 2:00 P.M.
CITY-COUNTY BUILDING
COUNCIL CHAMBERS, 1ST FLOOR
555 S. 10TH STREET
LINCOLN, NE 68508**

1. Introductions and Notice of Open Meetings Law Posted by Door.
2. Public Comment and Time Limit Notification Announcement.
Individuals from the audience will be given a total of 5 minutes to speak on specific items listed on today's agenda. Those testifying should identify themselves for the official record.
3. Bill No. WH 23-12
Resolution to approve base rates for private suites and private loges at the Pinnacle Bank Arena to be effective September 1, 2023. (Yohance Christie)
 - Public Comment
 - (Staff recommendation: Approval)
4. Bill No. WH 23-13
Resolution to approve the Private Suite Use Agreement template as the model private suite use agreement and authorizing the Chair to execute the private suite use agreements utilizing the Model Agreement on behalf of the West Haymarket Joint Public Agency without further action of the Board of Representatives. (Yohance Christie)
 - Public Comment
 - (Staff recommendation: Approval)
5. Bill No. WH 23-14
Resolution to approve the Private Loge Use Agreement template as the model private loge use agreement and authorizing the Chair to execute the private loge use agreements utilizing the Model Agreement on behalf of the West Haymarket Joint Public Agency without further action of the Board of Representatives. (Yohance Christie)
 - Public Comment
 - (Staff recommendation: Approval)
6. Bill No. WH 23-15
Resolution to approve an Agreement between the West Haymarket JPA and DLR Group for engineering services for the Pinnacle Bank Arena Pedestrian Bridge project for an amount not to exceed \$17,500.00. (Caleb Swanson)
 - Public Comment
 - (Staff recommendation: Approval)
7. Bill No. WH 23-16
Resolution to approve a Right of Entry Agreement between the West Haymarket JPA and Municipal and Contractors Sealing Products, Inc. to enter upon property legally described as Lot 1, Block 10, West Haymarket Addition for the Salt Valley 48-Inch CMP Rehabilitation project. (Yohance Christie)
 - Public Comment
 - (Staff recommendation: Approval)

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8. Bill No. WH 23-17
Resolution to approve an Agreement between the West Haymarket JPA and First Data Merchant Services, LLC for the total amount of \$2,335,265.10 for a point of sale system for the Pinnacle Bank Arena. (Yohance Christie/Lyn Heaton)
 - Public Comment
 - (Staff recommendation: Approval)

9. Motion to Adjourn

RESOLUTION NO.

1 BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public
2 Agency:

3 1. That the following base rates for private suites set forth herein are hereby accepted
4 and approved as the base rates for the private suites for terms of seven or ten years for each such
5 agreement:

6 Tier I - \$72,000.00 per year;

7 Tier II - \$60,000.00 per year; and

8 Tier III - \$55,000.00 per year.

9 2. That the sum of \$28,000.00 per year for private loges is hereby accepted and
10 approved as the base rate for private loges for terms of seven or ten years for each such agreement.

11 3. Without additional approval of the Board of Representatives, the Chair is
12 authorized to establish appropriate increases for renewals over a period not to exceed four years
13 to reach the base rates for private suites and loges.

14 4. Annual increases of 4% shall be added to each private suite use agreement and loge
15 use agreement in each of the final three years of the agreement term. Current private suite use
16 agreements and loge use agreements shall be subject to the same terms and conditions as set
17 forth herein upon expiration.

18 5. The rates set forth herein shall become effective on September 1, 2023.

Adopted this _____ day of June, 2023.

Introduced by:

WH 23-12

Introduce: 6-7-23

RESOLUTION NO.

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Leirion Gaylor Baird

Tim Clare

Tom Beckius

RESOLUTION NO.

1 BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public
2 Agency:

3 That the Private Suite Use Agreement template attached hereto is hereby accepted and
4 approved as the model private suite use agreement (“Model Agreement”). The Chair is
5 authorized to execute private suite use agreements utilizing the Model Agreement on behalf of the
6 West Haymarket Joint Public Agency without further action by the Board of Representatives.

Adopted this _____ day of June, 2023.

Introduced by:

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Leirion Gaylor Baird

Tim Clare

Tom Beckius

**PINNACLE BANK ARENA
PRIVATE SUITE USE AGREEMENT
TIER__**

1. **PARTIES.** This Private Suite Use Agreement (this “Agreement”) is entered into by and between the West Haymarket Joint Public Agency (the “JPA”) and _____ (the “User”) to be effective on the date of execution by the JPA (the “Effective Date”).

2. **TERM.** This Agreement shall be in full force and effect on the Effective Date, however, the term of the right to use the Private Suite shall be for a period of 7/10 years commencing on September 1, 2023 and terminating on August 31, 20__, (the “Term”) unless this Agreement is terminated earlier pursuant to the provisions hereof.

3. **RIGHT TO USE SUITE.** Subject to the terms and conditions set forth herein and upon payment of the Use Fees, Security Deposit, and other amounts due as set forth in this Agreement, User shall be entitled to the exclusive privilege and right during the Term of this Agreement to use the Suite in the Pinnacle Bank Arena, (the “Suite”) the approximate location of which is indicated on the Pinnacle Bank Arena diagram, which is attached hereto as Exhibit A.

4. **SUITE BENEFITS.**

(a) The benefits granted pursuant to this Agreement including, but not limited to, ticket availability for Pinnacle Bank Arena events, parking rights, suite amenities, and other opportunities (the “Suite Benefits”) are set forth herein and in Exhibit B.

(b) User acknowledges and agrees that there may be certain events for which the Suite Rights may be limited by the JPA in the exercise of its reasonable discretion.

5. **PAYMENTS.**

(a) **Security Deposit.**

User shall submit to the JPA with this executed Agreement a security deposit made payable to the JPA in the amount of FIVE THOUSAND DOLLARS (\$5,000.00) (the “Security Deposit”). The Security Deposit shall be used as security for the prompt and full payment of all fees, including Use Fees, and User’s good faith performance of its obligations hereunder. Application of said Security Deposit is more particularly described in paragraph 12 herein.

(b) **Use Fees.**

User shall pay to the JPA annual Use Fees for the Suite Rights as set forth on Exhibit C, attached hereto and incorporated herein by this reference. Payment of the annual Use Fee shall be paid to the JPA on or before September 1, 2023 for the first year and on or before September 1 of each successive year of the Term.

(c) A portion of the Use Fees shall be utilized by the JPA to fulfill its obligations under this Agreement including, but not limited to, the obligation to provide the tickets and parking

passes included under this Agreement and to satisfy any contractual obligation to pay a commission related to the sale of this right to use the Suite.

(d) User represents and warrants to the JPA that it has not entered into and is not subject to any agreement, arrangement, or understanding with any individual or entity whereby such individual or entity is entitled to a fee or commission with respect to any amount payable under this Agreement.

6. FURNISHINGS, FIXTURES, AND ALTERATIONS.

(a) The Suite shall be furnished and equipped with such fixtures, furnishings, and equipment as set forth in Exhibit B, attached hereto.

(b) The JPA has established and maintains a basic color scheme and a uniform design and aesthetic for the suites in Pinnacle Bank Arena. User shall not make any additions or alterations in the interior or exterior of the Suite or to the fixtures, furnishings, and equipment therein without the prior written consent of the JPA, which may be withheld in its sole discretion. Any approved changes, alterations, or additions authorized by the JPA shall be made at User's sole cost and expense, free of any liens, in a good and workmanlike manner and in compliance with all applicable permits, authorizations, building and zoning laws, and all other laws and ordinances and other legal requirements which may apply. Any fixtures or materials incorporated in or attached to the Suite by User shall become the property of the JPA, unless User has received the JPA's written consent to remove those fixtures or materials on or before the expiration of the Term, in which case User shall, subject to normal wear and tear, restore the Suite to its original condition at User's sole cost and expense.

(c) In the event that the Suite falls into a state of disrepair or substandard condition not attributable to normal wear and tear, the JPA shall notify User in writing to repair and/or refurbish the Suite. User shall, within forty-five (45) days of the date of receipt of said notice, complete such repairs or refurbishments at User's sole expense and subject to the JPA's approval. Should User fail to timely complete said repairs or refurbishments, the JPA shall have the right to complete said repairs and refurbishments and deduct the cost of same from the User's Security Deposit. The JPA shall invoice User for the cost of the repairs and refurbishments to the extent that such cost exceeds the balance of User's Security Deposit. User's failure to pay the JPA within thirty (30) days of receipt of said invoice shall constitute a default of this Agreement.

7. ADMISSION TICKETS.

(a) For all pre-season, regular season, and post season Tenant games held in the Pinnacle Bank Arena, User shall be entitled to receive twelve (12) admission tickets and shall be entitled to purchase eight (8) additional tickets. Tenants are University of Nebraska Men's and Women's Basketball Teams.

(b) Except as provided below, User shall also be entitled to receive twelve (12) admission tickets and shall be entitled to purchase eight (8) additional tickets (also known as "Standing Room Only" or "SRO" tickets) for non-Tenant events at Pinnacle Bank Arena for which User desires to use the Suite, pursuant to Section 1 of Exhibit B, attached hereto. The JPA

specifically reserves and the User specifically acknowledges that the JPA, in its sole discretion, may designate up to three (3) events per calendar year as “Special Events” or other events for which the User must purchase tickets for the event. In addition, for multi-show or performance events, User shall select one (1) show or performance, as applicable, and shall be entitled to receive tickets for the selected show or performance as set forth herein. For the remaining shows and performances relating to such multi-show or performance events, as applicable, User shall have the right to purchase tickets.

(c) User acknowledges and agrees that there may be certain events which are outside the control of the JPA and require that User’s Suite privileges be temporarily relocated to another Pinnacle Bank Arena suite or the next best comparable seating in Pinnacle Bank Arena. In the event User’s Suite privileges are proposed for temporary relocation, the JPA shall provide User advance notice of said relocation and User shall confirm to the JPA whether it desires tickets to such events within ten (10) days of receipt of the aforementioned notice from the JPA. In the event User desires tickets to such events, then the JPA shall use its best efforts to provide User with seating privileges as comparable as possible to those normally enjoyed by User.

(d) In the event that the Suite is deemed restricted by the promoter of any other event in Pinnacle Bank Arena, or in the event the sponsor of certain extraordinary events restricts the sale of tickets, User shall not have the right to purchase admission tickets for the Suite nor to utilize such Suite. The JPA shall notify User of any such restricted events in advance.

(e) Except as otherwise set forth herein, User shall have no right to admit any person to the Suite during any event for which User does not purchase or receive admission tickets.

(f) User acknowledges and agrees that in the event any professional or amateur sports league should award a franchise to play its home games in Pinnacle Bank Arena, User shall have no right to use its Suite nor its admission privileges for any pre-season, regular season, or post season game of such team until such time as the JPA and User renegotiate this Agreement and this Agreement is amended in writing.

8. POSSESSION AND USE.

(a) User shall be entitled to the exclusive use and possession of the Suite during the Term (except for “Special Events” and the other events referenced herein), subject to the provisions of the Agreement. User and User’s guests shall be entitled to use the Suite at all times for which appropriate tickets for admission to the Suite have been obtained. User and User’s guests shall have access to a private lounge, if any, at Pinnacle Bank Arena in accordance with such procedures as shall be established by the JPA. During dates on which events occur, access to the Suite and the suite area, as well as the private lounge facilities, shall be controlled by and shall require the presentation by each person using such area of a ticket for admission to such event. In addition to the benefits described in Exhibit B, attached hereto, User shall be given access to the Suite on other dates upon such terms and conditions as the JPA, in its discretion, may permit or designate. User and User’s guests shall be bound by and shall observe the terms and conditions upon which tickets for admission to Pinnacle Bank Arena have been issued by the JPA or by any event sponsor, including, without limitation, the policy adopted by the issuer of such tickets with respect to the cancellation or postponement of any event.

(b) Access to the Suite shall be from a separate level of Pinnacle Bank Arena. Access to the Suite shall be shared only by persons holding appropriate tickets for admission to the Suite. The Suite shall be provided with a lock on the door.

(c) The Agreement provides User only with the right and privilege to possess and use the Suite in the manner set forth in the Agreement, and, except as it pertains to any special right and privilege to so possess and use the Suite, the Agreement does not confer upon the User nor User's guests any greater or lesser rights and privileges with respect to admission to Pinnacle Bank Arena than that afforded to other holders of tickets for admission thereto.

9. PARKING. User shall have the right to receive, at no additional cost or charge, at all times during which User is entitled to use the Suite under this Agreement, four (4) parking passes for parking in a facility designated by the JPA. User agrees and acknowledges that the number and location of parking spaces is subject to change at the JPA's discretion.

10. FOOD AND BEVERAGE SERVICES. Food and beverage service shall be provided by a caterer designated by the JPA, at prevailing rates established by such caterer, to be billed directly to User. User shall pay on a timely basis all charges and expenses, including applicable taxes for catering and other services incurred by User in connection with the use of the Suite by User or its guests. No food or beverages other than those purchased from such designated caterer or from the Pinnacle Bank Arena concessionaire may be brought into, prepared in, or consumed within the Suite.

11. REPAIRS AND MAINTENANCE. The JPA will be responsible for ordinary repairs and maintenance to the interior and exterior of the Suite, including ordinary cleaning, sweeping, vacuuming, trash removal, and dusting. The JPA reserves the right to charge User for, and User agrees to pay for, the cost of what the JPA considers, in its sole and absolute discretion, to be extraordinary repairs, maintenance, replacements, or cleaning of the Suite resulting from any act or omission of User or its guests. User agrees and acknowledges that the JPA may designate the catering, cleaning, restroom, trash removal, and Suite supply and repair functions to any third party retained or hired by the JPA. The JPA will be responsible for the periodic replacement of wall coverings, furnishings, carpeting, and equipment in the Suite as the JPA determines, in its sole discretion, is necessary due to normal wear and tear.

12. APPLICATION OF SECURITY DEPOSIT.

(a) The Security Deposit may be commingled with other JPA funds and may be used by the JPA for any business purpose. If User complies with the terms and conditions of this Agreement and chooses not to renew the right to use the Suite granted pursuant to the Agreement, then the Security Deposit shall be used to repair any damages to the Suite and to satisfy any unpaid obligations of User under this Agreement. The balance shall be refunded to User within sixty (60) days of termination of the Agreement.

(b) If, at any time during the Term, any portion of the Use Fee or any other amount payable by User to the JPA is not promptly paid when due, the JPA may, without prior notice and without waiving any other remedy which it may have under the Agreement, appropriate and apply

all or any portion of the Security Deposit to the payment of such amount. User shall, upon written demand of the JPA, remit to the JPA an amount sufficient to restore the Security Deposit to the original sum deposited. User's failure to do so within five (5) business days after receipt of such demand shall constitute a breach of the Agreement and the JPA may terminate this Agreement.

(c) If User's right to use the Suite is terminated, the JPA may, at its option, appropriate and apply the Security Deposit, or so much thereof as may be necessary, to compensate the JPA for any loss or damage sustained or suffered by the JPA due to User's breach of this Agreement and the balance shall be refunded to User within sixty (60) days of termination of the Agreement.

13. OBLIGATION TO PAY.

(a) Except as otherwise set forth herein, the obligation of User to pay the Security Deposit, the Use Fees, food and beverage concessions charges, telephone charges, if applicable, or other sums due to the JPA, the JPA's caterers and concessionaires, or any event sponsor is independent of the liabilities or limitations of the JPA under the Agreement. User shall promptly make all such payments without any deductions, setoffs, or counterclaims against such payments on account of any breach or default by or claims against the JPA, or any breach or default by or claims against any caterer or concessionaire or any event sponsor. Nothing in this section shall prevent User from bringing an independent action against the JPA or any caterer or concessionaire or event sponsor.

(b) The JPA shall not be liable for, and User shall not assert any deduction, setoff, or claim of any nature against the JPA for any act or omission of or any breach or default by any caterer or concessionaire or event sponsor. User shall be bound by the terms and conditions established from time to time by the JPA or any event sponsor for cancellation or postponement of an event. Except as otherwise set forth in this Agreement, the JPA shall have no liability to User on account of any such cancellation or postponement or other failure or deficiency in the conduct of such event.

(c) User's rights under the Agreement, including the rights to have access to and use of the Suite and the private suite level facilities and to obtain admission to Pinnacle Bank Arena or the Suite, are subject to the conditions precedent of payment by User to the JPA of all sums then due to the JPA and upon User's continued compliance with the Agreement.

(d) Annual Use Fees for the Suite set forth in Exhibit C, attached hereto, will be billed to User and will be due and payable on before the dates designated in paragraph 5(b). In addition, User shall pay any sales, privilege, rental, use, property, or other taxes due on, or with respect to, the Use Fees or on account of the use of the Suite or the private suite level facilities.

14. NONOCCURRENCE OF EVENTS. The Agreement shall not operate as or constitute any warranty, representation, covenant, or guarantee by the JPA that any number of events or particular event, sports team or individual group shall occur, play, or appear at the Pinnacle Bank Arena during the Term of the Agreement. During the Term of the Agreement, the Pinnacle Bank Arena may be improved, altered, expanded, or enlarged which User acknowledges may cancel certain events and the JPA shall have no liability for such cancellations.

15. LATE FEE. Any Use Fee or other monetary obligation of User under the Agreement not paid to the JPA by the date specified in the Agreement shall bear interest accruing from such date at the rate of fifteen percent (15%) per year or the highest rate permitted by law, whichever is less.

16. RIGHT OF FIRST REFUSAL TO RENEW. If not in default in the performance of its obligations under this Agreement, User shall have the right of first refusal to renew the right of use granted pursuant to this Agreement before the expiration of the Term at such Use Fee and on such other terms and conditions as the JPA may, in its sole discretion, determine. Prior to the expiration of the Term, the JPA shall submit to the User an agreement which sets forth the Use Fee and other terms and conditions established by the JPA for the renewal agreement. User may exercise, if at all, its right of first refusal by executing and returning such agreement to the JPA, together with any deposit or other payment which may be required thereunder within thirty (30) days after the agreement is sent to User or one hundred eighty (180) days before the conclusion of the original Term, whichever comes later.

17. COVENANTS OF USER. User covenants and agrees with the JPA as follows:

(a) User shall keep and maintain the Suite in good repair, order, and condition at all times. Except for ordinary wear and tear, User will reimburse the JPA for the repair of any damage caused to the Suite or the JPA's property in the Suite by User or any of User's guests or invitees.

(b) User shall abide by, and shall notify and require its guests to abide by, such rules, regulations, and policies as the JPA shall establish, in its sole discretion, concerning the use and occupancy of the Suite and attendance at Pinnacle Bank Arena, including any modifications to such rules, regulations, and policies that may be adopted or administered by the JPA or its designee from time to time.

(c) User and User's guests shall at all times maintain proper decorum while using the Suite. User shall be held responsible for its actions as well as those of its guests, including, but not limited to, actions arising from the consumption of alcoholic beverages. Should User or any of User's guests create a disturbance or cause objects to be thrown or dropped from the Suite, the JPA shall have the right to eject the parties responsible for such action, or all the persons in the Suite, from the confines of Pinnacle Bank Arena, or exercise any of the JPA's rights upon default in accordance with the provisions of this Agreement, including, without limitation, termination of this Agreement. User and User's guests shall comply with all applicable present and future laws, ordinances, orders, rules, and regulations and shall not permit any violation thereof.

18. DEFAULT.

(a) In the event User fails to pay when due any amounts to be paid by User pursuant to the Agreement or otherwise defaults in the performance or observation of its duties and obligations under the Agreement, the JPA may, at its option: (i) withhold distribution to User of tickets for games and events played in or held at Pinnacle Bank Arena and parking passes until such time as such default is cured; and/or (ii) terminate the rights of User under the Agreement after giving User not less than twenty (20) days prior written notice of such default or breach. In the event that User shall not have cured the default or breach specified in said notice by the date specified in said

notice, the JPA may terminate the right of User to the use and possession of the Suite and all other rights and privileges of User under the Agreement and declare the entire unpaid balance of the Use Fee (which for purposes hereof shall include the total aggregate unpaid balance of the Use Fees for the remainder of the Term) immediately due and payable, whereupon the JPA shall have no further obligation of any kind to User. The JPA shall use reasonable efforts to re-market the right to the use and possession of the Suite to another party provided that, if there are any other suites in Pinnacle Bank Arena available to be marketed, then the JPA may give priority to marketing such other suites. User shall remain obligated to make all payments due or becoming due under the Agreement, but if the JPA enters into an agreement for the right to use and possess the Suite with another party, then all amounts received from such other party, applicable to the remaining period of the Agreement, shall be applied first to the expense of re-marketing and then to the reduction of any obligations of User to the JPA under the Agreement. If the consideration collected by the JPA upon any such re-marketing is not sufficient to pay the full amount of all such obligations of User, User shall pay such deficiency upon demand.

(b) The foregoing remedies of the JPA shall not be to the exclusion of any other right or remedy set forth in the Agreement or otherwise available to the JPA in law or in equity. User shall be responsible for all attorneys' fees and costs incurred by the JPA in the enforcement of the Agreement whether or not litigation is actually commenced.

(c) No waiver by the JPA of any default or breach by User of its obligations under the Agreement shall be construed to be a waiver or release of any other subsequent default or breach by User under the Agreement, and no failure or delay by the JPA in the exercise of any remedy provided for in the Agreement shall be construed as a forfeiture or waiver of any other right or remedy available to the JPA.

19. DAMAGE OR DESTRUCTION TO SUITE. In the event of damage to or destruction of the Suite which renders the Suite unusable when events are scheduled in Pinnacle Bank Arena, an equitable adjustment to User will be made, unless a reasonably comparable suite is made available to the User. No adjustment will be made if the unavailability of the Suite is caused by the fault or negligence of User or User's guests. If, in the event of any damage to or destruction of the Suite, the JPA elects not to repair or restore the same, this Agreement shall terminate as of the date of such damage or destruction, and a prorated portion of the prepaid annual Use Fee shall be refunded to User. Upon payment of such refund, the JPA shall have no further liability under the Agreement.

20. ACCESS BY JPA. The JPA and its agents and employees shall have access to the Suite to the extent deemed necessary by the JPA: (a) for the performance of its obligations under the Agreement and for any and all purposes related thereto, (b) to investigate any suspected violations of the terms and conditions of this Agreement, or (c) otherwise in connection with the Suite, including in the event of an emergency, by use of a master key or forcible entry. User shall not interfere with the JPA's right of access by installation of additional or changed locks or otherwise. Unless the emergency necessitating the forcible entry is caused by the fault or negligence of User or User's guests or User has interfered with the JPA's right of access by installing additional or changed locks or otherwise, the JPA shall repair any property damage to the door or entryway caused by said emergency forcible entry and shall have no other liability for entry into the Suite.

21. DISCLAIMER OF LIABILITY.

(a) Neither the JPA, any Pinnacle Bank Arena manager designated by the JPA (the “Pinnacle Bank Arena Manager”) nor any of their officers, employees, or agents shall be liable or responsible for any loss, damage, or injury to any person or to any property of User or User’s guests in or upon the Pinnacle Bank Arena, resulting from any cause whatsoever, including, but not limited to, theft and vandalism.

(b) User and its guests and invitees hereby assume all risks and danger incidental to the games of basketball, arena football, and hockey and events generally (whether sporting or otherwise), whether occurring prior to, during or subsequent to, the actual playing of the game or conducting of the event, including specifically (but not exclusively) the danger of being injured by balls, pucks, sticks, or other missiles, and agree that the JPA, any sports league, the Pinnacle Bank Arena Manager, the teams, their agents and players, and other individuals performing or participating in events shall not be liable for injuries from such causes.

(c) In addition, User agrees to indemnify and hold the JPA and the Pinnacle Bank Arena Manager harmless from and against any liability, losses, claims, demands, costs, and expenses, including attorneys’ fees and litigation expenses, arising out of any personal injury or property damage occurring in or upon Pinnacle Bank Arena in connection with User’s use or occupancy of the Suite or due to the contravention of the provisions of this Agreement or of any applicable laws, rules, regulations, or order of any governmental agency having appropriate jurisdiction over any actions or negligence of User.

22. INSURANCE. In addition, User shall, at its sole cost and expense, obtain and keep in full force and effect at all times during the Term, a comprehensive general liability insurance policy (including, without limitation, host liquor liability coverage), with a combined single occurrence limit of at least \$1,000,000 and \$2,000,000 aggregate, including coverage for bodily injury or death, property damage, and personal injury liability, and for the performance by User of the indemnity provisions of the Agreement. The limits of this insurance shall not, however, limit the liability of User under the Agreement. Prior to User’s occupancy of the Suite, User shall deliver to the JPA a certificate evidencing the issuance of such insurance policy. User’s comprehensive general liability insurance policy and certificate evidencing such insurance shall (i) name the JPA and the Pinnacle Bank Arena Manager as additional insureds, (ii) contain a provision by which the insurer agrees that the policy shall not be cancelled except after thirty (30) days written notice to the JPA and (iii) be issued by an insurance company reasonably satisfactory to the JPA and qualified to do business in the State of Nebraska. Any liability insurance carried or to be carried by User under this Agreement shall be primary over any policy carried by the JPA or the Pinnacle Bank Arena Manager.

23. ASSIGNMENT: WHEN PERMITTED.

(a) Assignment. User hereby acknowledges and agrees that the identity of Suite Users is of crucial importance to the JPA. Accordingly, User hereby agrees that, unless User has obtained the JPA’s consent as provided herein, it shall not assign, sell, transfer, mortgage, or otherwise alienate or encumber (any such act being to “assign” and to result in an “assignment”) this

Agreement or any interest herein; provided, however, that User may distribute tickets or passes for use of parking spaces to its guests and invitees for use in the manner permitted herein. User further agrees not to sell any tickets or any rights to admission to the Suite, the parking spaces, or any private club lounge or otherwise permit any person to occupy the same for hire, it being expressly understood that the use of the tickets, the Suite, and any private club lounge shall be solely and exclusively for the use, enjoyment, and entertainment of User and officers, employees, visitors, guests, and invitees of User. User agrees not to solicit or accept any direct or indirect payment or income from any person for the use and enjoyment of tickets, the Suite, parking spaces, or any private club lounge. The provisions of this Section shall not prohibit User from requiring its employees, guests, and invitees, pursuant to User's company or internal policy and procedures, to pay or reimburse User for the use of tickets.

(b) Consent. If User desires to assign its interest in this Agreement to any person or entity, User shall notify the JPA in writing of such desire, setting forth the identity of the proposed assignee and the name, address, and telephone number of the individual representing the proposed assignee so that the JPA may communicate with the proposed assignee regarding the assignment. The JPA shall have the right to contact the proposed assignee and conduct such investigation of the creditworthiness of such proposed assignee as the JPA shall deem necessary, including requiring the proposed assignee to submit to the JPA such financial and other information as the JPA shall deem advisable. The JPA shall have the right, in the exercise of its sole discretion, to refuse to consent to such proposed assignment. If the JPA consents to the proposed assignment, it shall not be effective until the JPA has received an instrument executed by the proposed assignee by which it agrees to be bound by this Agreement, and an instrument of assignment satisfactory to the JPA executed by User. Upon the JPA's written consent to the assignment of this Agreement and receipt of such instruments, User shall be released from any further obligations under this Agreement. Any consent by the JPA to any assignment or other transfer by User shall not be deemed to be consent by the JPA to any further assignment or other transfer by the successor User. Any attempted assignment, sale, transfer, sublease, pledge, mortgage, or other alienation or encumbrance of this Agreement or any interest herein in contravention of this Agreement shall be null and void, and further shall constitute a default in the performance of User's duties and obligations under this Agreement.

(c) Suite Not to be Mortgaged or Used as Collateral or Security. User acknowledges and agrees that User's interest in the Suite shall not be used as collateral or security for User to support, finance, or underwrite any other financial obligation of User, nor shall User use its interest in the Suite to obtain any mortgage or monies related to a mortgage. User acknowledges and agrees that any failure to comply with the terms of this paragraph shall constitute a default of this Agreement.

24. COST-SHARING ARRANGEMENTS. User hereby covenants, represents and warrants that, except with respect to the parties disclosed on Exhibit D attached to and made a part of this Agreement, User has not entered into, nor will it enter into, any agreements or arrangements by which User and any other party or parties share the costs attributable to the Suite, including, but not limited to, the Use Fees provided for hereunder, in consideration for the use of the Suite during the Term hereof (a "Cost-Sharing Arrangement"). A Cost-Sharing Arrangement shall include any and all agreements to transfer, for any consideration whatsoever, one or more Suite tickets. In the event that Exhibit D discloses any parties with whom User has entered into a Cost-

Sharing Arrangement, the JPA has approved such arrangements by its execution of this Agreement. In no event shall the JPA's approval of these parties imply approval by the JPA of any other parties. No Cost-Sharing Arrangement shall relieve User from being fully liable for all obligations under this Agreement, including all Use Fees. The JPA shall have the right, exercisable in the JPA's sole and absolute discretion, to prohibit and to reject any proposed Cost-Sharing Arrangement or to limit the number of parties to a Cost-Sharing Arrangement, both upon execution hereof and at any time thereafter. User hereby represents and warrants that all amounts payable by the other parties under any Cost-Sharing Arrangement do not exceed the Use Fees and other costs imposed on User hereunder for the use of the Suite reasonably allocable to the use of the Suite by the other parties to the Cost-Sharing Arrangement. In the event that User desires to enter into a Cost-Sharing Arrangement after execution of this Agreement, User shall be required with respect thereto to provide to the JPA the identity of the parties to the proposed Cost-Sharing Arrangement, and the address and phone number of such parties, so that the JPA may contact them to request such financial or other information as the JPA shall deem advisable. All such future Cost-Sharing Arrangements shall be subject to the same conditions and restrictions as a Cost-Sharing Arrangement disclosed herein. Transfer of Suite tickets for the appropriate allocable cost pursuant to an approved Cost-Sharing Arrangement shall not violate this Agreement.

25. ADMINISTRATIVE MATTERS. User shall provide to the JPA at least twenty (20) days prior to the commencement of the Term the following information:

(a) The name and address of the person to whom all correspondence and emails, including but not limited to tickets and parking passes, relating to the Suite shall be sent.

(b) Unless User is an individual, the name and address of the person authorized to receive notices sent to User and generally bind User with respect to all matters relating to the Suite and this Agreement.

(c) The JPA may from time to time provide a form on which User shall provide such information as required herein, and User shall in any event notify the JPA in writing of any changes in such information.

26. MISCELLANEOUS.

(a) Upon the expiration of the Term (or, if applicable, upon the expiration of any renewal term pursuant to User's right of first refusal) or upon the earlier termination of the Agreement, User shall surrender possession of the Suite to the JPA in the condition in which it was originally delivered to User, normal wear and tear and/or damage caused by casualty or force beyond the control of User or User's guests excepted.

(b) It is understood that the JPA may mortgage, pledge, assign, or otherwise encumber the JPA's rights in the Agreement for any reason, in its sole discretion.

(c) User acknowledges and agrees that Pinnacle Bank Arena is a smoke-free building and environment and that User and its guests shall not smoke anywhere within the Pinnacle Bank Arena or its environment except in designated smoking areas.

(d) User shall not bring or keep animals, birds, fish, or other living creatures in the Suite, with the exception of guide dogs or other service animals specifically trained to assist persons utilizing the Suite. User shall not use or allow the Suite to be used as sleeping quarters.

(e) User shall not display any sign, advertisement, or notice or allow same to be affixed to the Suite or Pinnacle Bank Arena.

(f) All notices, demands, and other communications between the parties required or appropriate hereunder shall be in writing and deemed given if delivered by email or mailed through U.S. Mail as certified mail, return receipt requested, postage prepaid, or actually delivered, to the respective addresses set forth below the signatures of the parties to this Agreement, or to such other address as may be designated by either party, from time to time in writing.

(g) This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Nebraska, without regard to conflicts of law principles. The parties agree that venue of any legal action arising out of this Agreement or incident thereto shall be proper in a court of competent jurisdiction in Lancaster County, Nebraska and each party waives any objection to such venue.

(h) This Agreement, together with the Exhibits attached hereto, contains the entire agreement of the parties with respect to the matters provided for herein, and shall supersede any written instrument or oral agreement previously made or entered into by the parties to the Agreement. In the event of any inconsistency between the Agreement (including the attached Exhibits) and any other documents regarding the Suite, this Agreement shall control.

(i) The JPA makes no representation as to the tax treatment of any payments made to the JPA under this Agreement. User is urged to seek the advice of its professional tax advisor to determine the tax treatment of any payment made under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below to be effective on the date of execution by the JPA.

USER

Date: _____

By: _____

Name

Printed: _____

Title: _____

Address: _____

JPA

Date: _____

By: _____
Chair of JPA

Address: 555 South 10th Street, Room 103
Lincoln, NE 68508

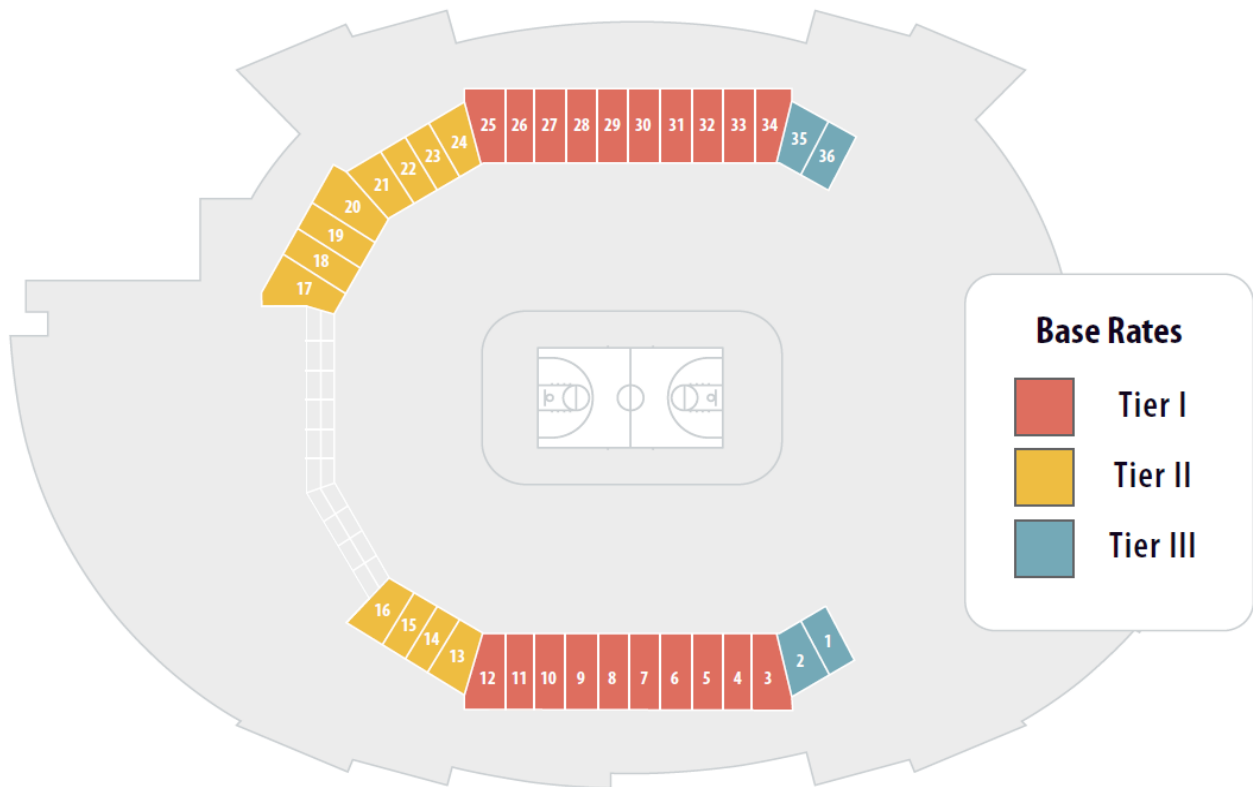
APPROVED:

JPA Attorney

EXHIBIT A

 **PinnacleBank Arena**

Suite Pricing Map



JPA's Approval: _____

User's Approval: _____

EXHIBIT B

Suite Benefits

Subject to the Terms and Conditions of this Agreement, User shall be entitled to the following benefits:

1. Admission Tickets. Subject to User's timely payment for the Suite as set forth in Exhibit C, User shall receive twelve (12) admission tickets to all Pinnacle Bank Arena events with the specific exception of no more than three (3) events per calendar year (the "Special Events") to be designated by the JPA. User shall have the option to purchase eight (8) additional SRO tickets.

2. Parking Passes. The JPA shall provide User, at no additional cost, for all events at the Pinnacle Bank Arena, with the specific exception of the Special Events, four (4) parking passes for non-valet parking in a parking facility near the Pinnacle Bank Arena. User acknowledges and agrees that the number of parking passes to which User is entitled, as well as the location of those parking spaces, is subject to change in the sole discretion of the JPA.

3. Suite Features. Each Suite is currently designed to provide:

- Twelve (12) exterior seats
- Drink rail inside Suite with four (4) bar stools
- Professionally finished interior with upscale furnishings
- Under-counter refrigerator
- Storage cabinets
- Buffet counter
- Wet bar
- Television with in-house feed and cable
- Coat and storage closet
- Company identification at entrance to Suite (optional)

4. Suite Amenities. User shall be entitled to the following amenities:

- Private entrance to Pinnacle Bank Arena
- Private elevator to suite level
- Access to restrooms on the suite level
- Access to private lounge on the suite level
- Concierge service
- Suite attendant
- Day use of Suite during normal Monday-Friday business hours; such use to be permitted at the JPA's discretion, building schedule permitting and advance reservations required, upon such terms and conditions as the JPA may set.

5. The JPA shall use its best efforts to assure that the foregoing Features and Amenities will be included with the Suite, but does not guarantee that changes to the Features and Amenities will not be made over the course of the Agreement.

EXHIBIT C

Tier I (\$72,000.00) Suite

10 year Use Agreement

1. ANNUAL USE FEE. The “Use Fee” payable by User to the JPA in respect of each year of the Agreement is as set forth below:

- \$ _____ for Year 1 (2023-2024)
- \$ _____ for Year 2 (2024-2025)
- \$ _____ for Year 3 (2025-2026)
- \$ _____ for Year 4 (2026-2027)
- \$ _____ for Year 5 (2027-2028)
- \$ _____ for Year 6 (2028-2029)
- \$ _____ for Year 7 (2029-2030)
- \$ _____ for Year 8 (2030-2031)
- \$ _____ for Year 9 (2031-2032)
- \$ _____ for Year 10 (2032-2033)

User Signature

EXHIBIT C

Tier I (\$72,000.00) Suite

7 year Use Agreement

1. ANNUAL USE FEE. The “Use Fee” payable by User to the JPA in respect of each year of the Agreement is as set forth below:

- \$ _____ for Year 1 (2023-2024)
- \$ _____ for Year 2 (2024-2025)
- \$ _____ for Year 3 (2025-2026)
- \$ _____ for Year 4 (2026-2027)
- \$ _____ for Year 5 (2027-2028)
- \$ _____ for Year 6 (2028-2029)
- \$ _____ for Year 7 (2029-2030)

User Signature

EXHIBIT C

Tier II (\$60,000.00) Suite

10 year Use Agreement

1. ANNUAL USE FEE. The “Use Fee” payable by User to the JPA in respect of each year of the Agreement is as set forth below:

- \$_____ for Year 1 (2023-2024)
- \$_____ for Year 2 (2024-2025)
- \$_____ for Year 3 (2025-2026)
- \$_____ for Year 4 (2026-2027)
- \$_____ for Year 5 (2027-2028)
- \$_____ for Year 6 (2028-2029)
- \$_____ for Year 7 (2029-2030)
- \$_____ for Year 8 (2030-2031)
- \$_____ for Year 9 (2031-2032)
- \$_____ for Year 10 (2032-2033)

User Signature

EXHIBIT C

Tier II (\$60,000.00) Suite

7 year Use Agreement

1. ANNUAL USE FEE. The “Use Fee” payable by User to the JPA in respect of each year of the Agreement is as set forth below:

- \$_____ for Year 1 (2023-2024)
- \$_____ for Year 2 (2024-2025)
- \$_____ for Year 3 (2025-2026)
- \$_____ for Year 4 (2026-2027)
- \$_____ for Year 5 (2027-2028)
- \$_____ for Year 6 (2028-2029)
- \$_____ for Year 7 (2029-2030)

User Signature

EXHIBIT C

Tier III (\$55,000.00) Suite

10 year Use Agreement

1. ANNUAL USE FEE. The “Use Fee” payable by User to the JPA in respect of each year of the Agreement is as set forth below:

- \$ _____ for Year 1 (2023-2024)
- \$ _____ for Year 2 (2024-2025)
- \$ _____ for Year 3 (2025-2026)
- \$ _____ for Year 4 (2026-2027)
- \$ _____ for Year 5 (2027-2028)
- \$ _____ for Year 6 (2028-2029)
- \$ _____ for Year 7 (2029-2030)
- \$ _____ for Year 8 (2030-2031)
- \$ _____ for Year 9 (2031-2032)
- \$ _____ for Year 10 (2032-2033)

User Signature

EXHIBIT C

Tier III (\$55,000.00) Suite

7 year Use Agreement

1. ANNUAL USE FEE. The “Use Fee” payable by User to the JPA in respect of each year of the Agreement is as set forth below:

- \$_____ for Year 1 (2023-2024)
- \$_____ for Year 2 (2024-2025)
- \$_____ for Year 3 (2025-2026)
- \$_____ for Year 4 (2026-2027)
- \$_____ for Year 5 (2027-2028)
- \$_____ for Year 6 (2028-2029)
- \$_____ for Year 7 (2029-2030)

User Signature

EXHIBIT D

COST-SHARING ARRANGEMENTS

Subject to the terms and conditions of the Agreement, User may engage in a “Cost-Sharing Arrangement” so that the cost of the subject Suite is borne by more than one person or business entity.

User acknowledges and agrees that said Cost-Sharing Arrangement shall not collectively include any combination of more than three (3) persons and/or business entities, so that the aggregate number of persons or entities controlling access to said Suite does not exceed three (3).

User further acknowledges and agrees that User is responsible for all payments due to the JPA regardless of any Cost-Sharing Arrangement. User further acknowledges and agrees that granting a right to use the Suite in the name of more than one person or entity is not permitted.

User shall inform the JPA of the identity of persons or entities involved in any Cost-Sharing Arrangement and shall supply the contact information for the persons or entities participating in said Cost-Sharing Arrangement below. User shall promptly notify the JPA in writing of any change in the information supplied.

User may identify those persons or entities participating in cost-sharing on any and all permitted signage identifying the users of said Suite.

Names of and contact information for the parties participating in the Cost-Sharing Arrangement are as follows:

User:	_____
Mailing Address:	_____

Telephone:	_____
E-mail address:	_____
Designated Representative:	_____

Cost-Sharer No. 1:	_____
Mailing Address:	_____

Telephone:	_____
E-mail address:	_____

Cost-Share No. 2:

Mailing Address:

Telephone:

E-mail address:

RESOLUTION NO.

1 BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public
2 Agency:

3 That the Private Loge Use Agreement template attached hereto is hereby accepted and
4 approved as the model private loge use agreement ("Model Agreement"). The Chair is authorized
5 to execute private loge use agreements utilizing the Model Agreement on behalf of the West
6 Haymarket Joint Public Agency without further action by the Board of Representatives.

Adopted this _____ day of June, 2023.

Introduced by:

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Leirion Gaylor Baird

Tim Clare

Tom Beckius

**PINNACLE BANK ARENA
LOGE BOX USE AGREEMENT**

1. PARTIES. This Loge Box Use Agreement (“Agreement”) is entered into by and between the West Haymarket Joint Public Agency, (“JPA”) and _____, (“User”) to be effective on the date of execution by the JPA (the “Effective Date”).

2. TERM. This Agreement shall be in full force and effect on the Effective Date, however, the term of the right to use the Loge Box shall be for a period of 7/10 years commencing on September 1, 2023 and terminating on, unless this Agreement is terminated earlier pursuant to the provisions hereof (“Term”).

3. RIGHT TO USE LOGE BOX. Subject to the terms and conditions set forth herein and upon payment of the Security Deposit, Use Fees, and other amounts due as set forth in this Agreement, User shall be entitled to the privilege and right during the Term of this Agreement to use Loge Box number ____ in the Pinnacle Bank Arena, the approximate location of which is indicated on the Pinnacle Bank Arena diagram, which is attached hereto as Exhibit A (the “Loge Box”).

4. LOGE BOX BENEFITS.

(a) The benefits granted pursuant to this Agreement including, but not limited to, ticket availability for Pinnacle Bank Arena events, parking privileges, Loge Box amenities, and other opportunities (hereinafter the “Loge Box Benefits”) are set forth herein and in Exhibit B.

(b) User acknowledges and agrees that there may be certain events for which the Loge Box Benefits may be limited or made unavailable by the JPA, in the exercise of its reasonable discretion.

5. PAYMENTS.

(a) Security Deposit.

User shall submit to the JPA with this executed Agreement a security deposit made payable to the JPA in the amount of ONE THOUSAND DOLLARS (\$1,000.00) (hereinafter the “Security Deposit”). The Security Deposit shall be used as security for the prompt and full payment of all fees, including Use Fees and User’s good faith performance of its obligations hereunder. Application of said Security Deposit is more particularly described in paragraph 12 herein.

(b) Use Fees.

User shall pay to the JPA annual Use Fees for the Loge Box Benefits as set forth on Exhibit C, attached hereto and incorporated herein by this reference. Payment of the annual Use Fee shall be paid in full to the JPA on or before September 1, 2023 for the first year and on or before September 1 of each successive year of the Term.

(c) User represents and warrants to the JPA that it has not entered into and is not subject to any agreement, arrangement, or understanding with any individual or entity whereby such individual or entity is entitled to a fee or commission with respect to any amount payable under this Agreement.

6. FURNISHINGS, FIXTURES, AND ALTERATIONS.

(a) The Loge Box shall be furnished and equipped with such fixtures, furnishings, and equipment as set forth in Exhibit B, attached hereto.

(b) The JPA has established and maintains a basic color scheme and a uniform design and aesthetic for the loge boxes in Pinnacle Bank Arena. User shall not make any additions or alterations in the interior or exterior of the Loge Box or to the fixtures, furnishings, and equipment therein without the prior written consent of the JPA, which may be withheld in its sole discretion. Any approved changes, alterations, or additions authorized by the JPA shall be made at User's sole cost and expense, free of any liens, in a good and workmanlike manner and in compliance with all applicable permits, authorizations, building and zoning laws, and all other laws, ordinances, and other legal requirements which may apply. Any fixtures or materials incorporated in or attached to the Loge Box by User shall become the property of the JPA, unless User has received the JPA's written consent to remove those fixtures or materials on or before the expiration of the Term, in which case User shall, subject to normal wear and tear, restore the Loge Box to its original condition at User's sole cost and expense.

(c) In the event that the Loge Box falls into a state of disrepair or substandard condition not attributable to normal wear and tear, the JPA shall notify User in writing to repair and/or refurbish the Loge Box. User shall, within forty-five (45) days of the date of receipt of said notice, complete such repairs or refurbishments at User's sole expense and subject to the JPA's approval. Should User fail to timely complete said repairs or refurbishments, the JPA shall have the right to complete said repairs and refurbishments and deduct the cost of same from the User's Security Deposit. The JPA shall bill User for the cost of the repairs and refurbishments to the extent that such cost exceeds the balance of User's Security Deposit. User's failure to pay the JPA within thirty (30) days of receipt of said bill shall constitute a default of this Agreement.

7. ADMISSION TICKETS.

(a) For all pre-season, regular season, and post season Tenant games held in the Pinnacle Bank Arena, User shall be entitled to receive four (4) admission tickets. Tenants are University of Nebraska Men's and Women's Basketball Teams.

(b) Except as provided below, User shall also be entitled to receive four (4) admission tickets for non-Tenant events at the Pinnacle Bank Arena for which User desires to use the Loge Box, pursuant to Section 1 of Exhibit B, attached hereto. The JPA specifically reserves and the User specifically acknowledges that the JPA, in its sole discretion, may designate up to three (3) events per calendar year as "Special Events" or other events for which the User's Suite privileges are relocated. In addition, for multi-show or performance events, User shall be entitled to select one (1) show or performance, as applicable, and receive four (4) admission tickets for that show or performance. For the remaining shows and performances relating to such multi-show or

performance events, as applicable, User shall have the right to purchase tickets. The JPA shall have the right to sell the use of the User's Loge Box for any multi-show or performance event or special event for which User does not purchase tickets.

(c) User acknowledges and agrees that there may be certain events which are outside the control of the JPA and require that User's Loge Box privileges be temporarily relocated to another Pinnacle Bank Arena Loge Box or the next best comparable seating in the Pinnacle Bank Arena. In the event User's Loge Box privileges are proposed for temporary relocation, the JPA shall provide User advance notice of said relocation and User must confirm to the JPA that it desires tickets to such event within ten (10) days of receipt of the aforementioned notice from the JPA. In the event User desires tickets to such events, then the JPA shall use its best efforts to provide User with seating privileges as comparable as possible to those normally enjoyed by User.

(d) In the event that the Loge Box is deemed restricted by the promoter of any event in the Pinnacle Bank Arena, or in the event the sponsor of certain extraordinary events restricts the sale of tickets, User shall not have the right to purchase admission tickets for the Loge Box nor to utilize such Loge Box. The JPA shall notify User of any such restricted events in advance.

(e) Except as set forth herein, User shall not admit any person to the Loge Box during any event for which User does not purchase or receive admission tickets.

(f) User acknowledges and agrees that in the event any professional or amateur sports league should award a franchise to play its home games in the Pinnacle Bank Arena, User shall have no right to use its Loge Box nor its admission privileges for any pre-season, regular season, or playoff game of such team until such time as the JPA and User renegotiate this Agreement and this Agreement is amended in writing.

8. POSSESSION AND USE.

(a) User shall be entitled to the use and possession of the Loge Box during the Term (except for "Special Events" and the other events referenced in Section 7 hereof), subject to the provisions of the Agreement. User and User's guests shall be entitled to use the Loge Box at all times for which appropriate tickets for admission to the Loge Box have been obtained. User and User's guests shall have access to a private lounge, if any, at the Pinnacle Bank Arena in accordance with such procedures as shall be established by the JPA. During dates on which events occur, access to the Loge Box and the Loge Box area, as well as the private lounge facilities, shall be controlled by and shall require the presentation by each person using such area of a ticket for admission to such event. User and User's guests shall be bound by and shall observe the terms and conditions upon which tickets for admission to the Pinnacle Bank Arena have been issued by the JPA or by any event sponsor, including, without limitation, the policy adopted by the issuer of such tickets with respect to the cancellation or postponement of any event.

(b) Access to the Loge Box shall be from a separate level of the Pinnacle Bank Arena. Access to the Loge Box shall be shared only by persons holding appropriate tickets for admission to the Loge Box.

(c) The Agreement provides User only with the right and privilege to possess and use the Loge Box in the manner set forth in the Agreement, and, except as it pertains to any special right and privilege to so possess and use the Loge Box, the Agreement does not confer upon the User nor User's guests any greater or lesser rights and privileges with respect to admission to the Pinnacle Bank Arena than those afforded to other holders of tickets for admission thereto.

9. PARKING. User shall have the right to receive, at no additional cost or charge at all times during which User is entitled to use the Loge Box under this Agreement, one (1) parking pass for parking in a lot designated by the JPA. User agrees and acknowledges that the location of parking spaces is subject to change at the JPA's discretion.

10. FOOD AND BEVERAGE SERVICES. Food and beverage service shall be provided by a caterer designated by the JPA, at prevailing rates established by such caterer, to be billed directly to User. User shall pay on a timely basis all charges and expenses, including applicable taxes for catering and other services incurred by User in connection with the use of the Loge Box by User or its guests. No food or beverages other than those purchased from such designated caterer or from the Pinnacle Bank Arena concessionaires may be brought into, prepared in, or consumed within the Loge Box.

11. REPAIRS AND MAINTENANCE. The JPA will be responsible for ordinary repairs and maintenance to the interior and exterior of the Loge Box, including ordinary cleaning, sweeping, vacuuming, trash removal, and dusting. The JPA reserves the right to charge User for, and User agrees to pay for, the cost of what the JPA considers, in its sole and absolute discretion, to be extraordinary repairs, maintenance, replacement, or cleaning of the Loge Box resulting from any act or omission of User or its guests. User agrees and acknowledges that the JPA may designate the catering, cleaning, restroom, trash removal, and Loge Box supply and repair functions to any third party retained or hired by the JPA.

12. APPLICATION OF SECURITY DEPOSIT.

(a) The Security Deposit may be commingled with the JPA's funds and may be used by the JPA for any business purpose. If User complies with the terms and conditions of this Agreement and chooses not to renew this Agreement, then the Security Deposit shall be used to repair any damages to the Loge Box and to satisfy any unpaid obligations of User under this Agreement. The balance shall be refunded to User within sixty (60) days of termination of the Agreement.

(b) If, at any time during the Term, any portion of the Use Fee or any other amount payable by User to the JPA is not promptly paid when due, the JPA may, without prior notice and without waiving any other remedy which it may have under the Agreement, appropriate and apply all or any portion of the Security Deposit to the payment of such amount. User shall, upon written demand of the JPA, remit to the JPA an amount sufficient to restore the Security Deposit to the original sum deposited. User's failure to do so within five (5) business days after receipt of such demand shall constitute a breach of the Agreement and the JPA may terminate this Agreement.

(c) If User's right to use the Loge Box is terminated, the JPA may, at its option, appropriate and apply the Security Deposit, or so much thereof as may be necessary, to compensate

the JPA for any loss or damage sustained or suffered by the JPA due to User's breach of this Agreement and the balance shall be refunded to User within sixty (60) days of termination of the Agreement.

13. OBLIGATION TO PAY.

(a) Except as otherwise set forth herein, the obligation of User to pay the Security Deposit, the Use Fees, food and beverage concessions charges, or other sums due to the JPA, the JPA's caterers and concessionaires, or any event sponsor is independent of the liabilities or limitations of the JPA under the Agreement. User shall promptly make all such payments without any deductions, setoffs, or counterclaims against such payments on account of any breach or default by or claims against the JPA or any breach or default by or claims against any caterer or concessionaire or any event sponsor. Nothing in this section shall prevent User from bringing an independent action against the JPA or any caterer or concessionaire or event sponsor.

(b) The JPA shall not be liable for, and User shall not assert any deduction, setoff, or claim of any nature against the JPA for any act or omission of or any breach or default by any caterer or concessionaire or event sponsor. User shall be bound by the terms and conditions established from time to time by the JPA or any event sponsor for cancellation or postponement of an event. Except as otherwise set forth in this Agreement, the JPA shall have no liability to User on account of any such cancellation or postponement or other failure or deficiency in the conduct of such event.

(c) User's rights under the Agreement, including the rights to have access to and use of the Loge Box and the private premium level facilities and to obtain admission to the Pinnacle Bank Arena, are subject to the conditions precedent of payment by User to the JPA of all sums then due the JPA and upon User's continued compliance with the Agreement.

(d) Annual Use Fees for the Loge Box set forth in Exhibit C, attached hereto, will be billed to User and will be due and payable on before the dates designated in paragraph 5(b). User shall pay any sales, privilege, rental, use, property, or other taxes due on, or with respect to, the Use Fees or on account of the use of the Loge Box or the premium seating level facilities.

14. NONOCCURRENCE OF EVENTS. The Agreement shall not operate as or constitute any warranty, representation, covenant, or guarantee by the JPA that any number of events or particular event, sports team or individual group shall occur, play, or appear at the Pinnacle Bank Arena during the Term of the Agreement. During the Term of the Agreement, the Pinnacle Bank Arena may be improved, altered, expanded, or enlarged which User acknowledges may cancel certain events and the JPA shall have no liability for such cancellations.

15. LATE FEE. Any Use Fee or other monetary obligation of User under the Agreement not paid to the JPA by the date specified in the Agreement shall bear interest accruing from such date at the rate of fifteen percent (15%) per year or the highest rate permitted by law, whichever is less.

16. RIGHT OF FIRST REFUSAL TO RENEW. If not in default in the performance of its obligations under this Agreement, User shall have the right of first refusal to renew the right

of use granted pursuant to this Agreement during the final year of the Term up to sixty (60) days before the expiration of the Term at such Use Fee and on such other terms and conditions as the JPA may, in its sole discretion, determine. The JPA shall submit to the User an agreement which sets forth the Use Fee and other terms and conditions established by the JPA for the renewal agreement. User may exercise its right of first refusal by executing and returning such agreement to the JPA, together with any deposit or other payment which may be required thereunder within thirty (30) days after the agreement is sent to User or sixty (60) days before the conclusion of the original Term, whichever comes later.

17. COVENANTS OF USER. User covenants and agrees with the JPA as follows:

(a) User shall keep and maintain the Loge Box in good repair, order, and condition at all times. Except for ordinary wear and tear, User will reimburse the JPA for the repair of any damage caused to the Loge Box or the JPA's property in the Loge Box by User or any of User's guests or invitees.

(b) User shall abide by, and shall notify and require its guests to abide by, such rules, regulations, and policies as the JPA shall establish, in its sole discretion, concerning the use and occupancy of the Loge Box and attendance at the Pinnacle Bank Arena, including any modifications to such rules, regulations, and policies that may be adopted or administered by the JPA or its designee from time to time.

(c) User and User's guests shall, at all times, maintain proper decorum while using the Loge Box. User is responsible for its actions as well as those of its guests, including, but not limited to, actions arising from the consumption of alcoholic beverages. Should User or any of User's guests create a disturbance or cause objects to be thrown or dropped from the Loge Box, the JPA shall have the right to eject the parties responsible for such action, or all the persons in the Loge Box, from the confines of the Pinnacle Bank Arena, or exercise any of the JPA's rights upon default in accordance with the provisions of this Agreement, including, without limitation, termination of this Agreement. User and User's guests shall comply with all applicable present and future laws, ordinances, orders, rules, and regulations and shall not permit any violation thereof.

18. DEFAULT.

(a) In the event User fails to pay when due any amounts to be paid by User pursuant to the Agreement or otherwise defaults in the performance or observation of its duties and obligations under the Agreement, the JPA may, at its option: (a) withhold distribution to User of tickets for games and events to be played in, performed in, or held at the Pinnacle Bank Arena and the parking Pass until such time as such default is cured; and/or (b) terminate the rights of User under the Agreement after giving User not less than twenty (20) days prior written notice of such default or breach. In the event that User shall not have cured the default or breach specified in said notice by the date specified in said notice, the JPA may terminate the right of User to the use and possession of the Loge Box and all other rights and privileges of User under the Agreement and declare the entire unpaid balance of the Use Fee (which for purposes hereof shall include the total aggregate unpaid balance of the Use Fees for the remainder of the Term) immediately due and payable, whereupon the JPA shall have no further obligation of any kind to User. The JPA shall

use reasonable efforts to re-market the right to the use and possession of the Loge Box to another party provided that, if there are any other Loge Boxes in the Pinnacle Bank Arena available to be marketed, then the JPA may give priority to marketing such other Loge Boxes. User shall remain obligated to make all payments due or becoming due under the Agreement, but if the JPA enters into an agreement for the right to the use and possession of the Loge Box with another party, then all amounts received from such other party, applicable to the remaining period of this Agreement, shall be applied first to the expense of re-marketing the Loge Box and then to the reduction of any obligations of User to the JPA under the Agreement. If the consideration collected by the JPA upon any such re-marketing is not sufficient to pay the full amount of all such obligations of User, User shall pay such deficiency upon demand.

(b) The foregoing remedies of the JPA shall not be to the exclusion of any other right or remedy set forth in the Agreement or otherwise available to the JPA in law or in equity. User shall be responsible for all attorneys' fees and costs incurred by the JPA in the enforcement of the Agreement whether or not litigation is actually commenced.

(c) No waiver by the JPA of any default or breach by User of its obligations under the Agreement shall be construed to be a waiver or release of any other subsequent default or breach by User under the Agreement, and no failure or delay by the JPA in the exercise of any remedy provided for in the Agreement shall be construed as a forfeiture or waiver of any other right or remedy available to the JPA.

19. DAMAGE OR DESTRUCTION TO LOGE BOX. In the event of damage to or destruction of the Loge Box or the Pinnacle Bank Arena which renders the Loge Box unusable when events are scheduled in the Pinnacle Bank Arena, an equitable adjustment to User will be made, unless a reasonably comparable loge box is made available to User. No adjustment will be made if the unavailability of the Loge Box is caused by the fault or negligence of User or User's guests. If, in the event of any damage to or destruction of the Loge Box, the JPA elects not to repair or restore the same, this Agreement shall terminate as of the date of such damage or destruction, and a prorated portion of the prepaid annual Use Fee shall be refunded to User. Upon payment of such refund, the JPA shall have no further liability under the Agreement.

20. ACCESS BY JPA. The JPA and its agents and employees shall have access to the Loge Box to the extent deemed necessary by the JPA (a) for the performance of its obligations under the Agreement and for any and all purposes related thereto, (b) to investigate any suspected violations of the terms and conditions of this Agreement, or (c) otherwise in connection with the Loge Box, including in the event of an emergency.

21. DISCLAIMER OF LIABILITY.

(a) Neither the JPA, any Pinnacle Bank Arena manager designated by the JPA (the "Pinnacle Bank Arena Manager") nor any of their officers, employees, or agents shall be liable or responsible for any loss, damage, or injury to any person or to any property of User or User's guests in or upon the Pinnacle Bank Arena, resulting from any cause whatsoever, including, but not limited to, theft and vandalism.

(b) User and its guests and invitees hereby assume all risks and danger incidental to the games of basketball, arena football, hockey, or events generally (whether sporting or otherwise), whether occurring prior to, during, or subsequent to, the actual playing of the game or conducting of the event, including specifically (but not exclusively) the danger of being injured by balls, pucks, sticks, or other missiles, and agree that the JPA, any sports league, the Pinnacle Bank Arena Manager, the teams, their agents and players, and other individuals performing or participating in events shall not be liable for injuries from such causes.

(c) In addition, User agrees to indemnify and hold the JPA and the Pinnacle Bank Arena Manager harmless from and against any liability, losses, claims, demands, costs, and expenses, including attorneys' fees and litigation expenses, arising out of any personal injury or property damage occurring in or upon the Pinnacle Bank Arena in connection with User's use or occupancy of the Loge Box or due to the contravention of the provisions of this Agreement or of any applicable laws, rules, regulations, or order of any governmental agency having appropriate jurisdiction over any actions or negligence of User.

22. INSURANCE. In addition, User shall, at its sole cost and expense, obtain and keep in full force and effect at all times during the Term, a comprehensive general liability insurance policy (including, without limitation, host liquor liability coverage), with a single limit coverage of at least \$1,000,000 including coverage for bodily injury or death, property damage, and personal injury liability, and for the performance by User of the indemnity provisions of the Agreement. The limits of this insurance shall not, however, limit the liability of User under the Agreement. Prior to User's occupancy of the Loge Box, User shall deliver to the JPA a certificate evidencing the issuance of such insurance policy. User's comprehensive general liability insurance policy and certificate evidencing such insurance shall (i) name the JPA and the Pinnacle Bank Arena Manager as additional insureds, (ii) contain a provision by which the insurer agrees that the policy shall not be cancelled except after thirty (30) days written notice to the JPA and (iii) be issued by an insurance company reasonably satisfactory to the JPA and qualified to do business in the State of Nebraska. If, during the term of this Agreement, IMG receives notice from its broker that its insurance policy is set to expire or to be cancelled or terminated for any reason, then IMG shall immediately forward a copy of such notice to JPA. Any liability insurance carried or to be carried by User under this Agreement shall be primary over any policy carried by the JPA or the Pinnacle Bank Arena Manager.

23. ASSIGNMENT; WHEN PERMITTED.

(a) Assignment. User hereby acknowledges and agrees that the identity of Loge Box Users is of crucial importance to the JPA. Accordingly, User hereby agrees that, unless User has obtained the JPA's consent as provided herein, it shall not assign, sell, transfer, mortgage, or otherwise alienate or encumber (any such act being to "assign" and to result in an "assignment") this Agreement or any interest herein; provided, however, that User may distribute tickets and/or its parking pass to its guests and invitees for use in the manner permitted herein. User further agrees not to sell any tickets or any rights to admission to the Loge Box, the parking space, or any private club lounge or otherwise permit any person to occupy the same for hire, it being expressly understood that the use of the tickets, the Loge Box, and any private club lounge shall be solely and exclusively for the use, enjoyment, and entertainment of User and officers, employees, visitors, guests, and invitees of User. User agrees not to solicit or accept any direct or indirect

payment or income from any person for the use and enjoyment of tickets, the Loge Box, parking space, or any private club lounge. The provisions of this Section shall not prohibit User from requiring its employees, guests, and invitees, pursuant to User's company or internal policy and procedures, to pay or reimburse User for the use of tickets.

(b) Consent. If User desires to assign its interest in this Agreement to any person or entity, User shall notify the JPA in writing of such desire, setting forth the identity of the proposed assignee and the name, address, and telephone number of the individual representing the proposed assignee so that the JPA may communicate with the proposed assignee regarding the assignment. The JPA shall have the right to contact the proposed assignee and conduct such investigation of the creditworthiness of such proposed assignee as the JPA shall deem necessary, including requiring the proposed assignee to submit to the JPA such financial and other information as the JPA shall deem advisable. The JPA shall have the right, in the exercise of its sole discretion, to refuse to consent to such proposed assignment. If the JPA consents to the proposed assignment, it shall not be effective until the JPA has received an instrument executed by the proposed assignee by which it agrees to be bound by this Agreement, and an instrument of assignment satisfactory to the JPA executed by User. Upon the JPA's written consent to the assignment of this Agreement and receipt of such instruments, User shall be released from any further obligations under this Agreement. Any consent by the JPA to any assignment or other transfer by User shall not be deemed to be consent by the JPA to any further assignment or other transfer by the successor User. Any attempted assignment, sale, transfer, sublease, pledge, mortgage, or other alienation or encumbrance of this Agreement or any interest herein in contravention of this Section shall be null and void, and further shall constitute a default in the performance and observance of User's duties and obligations under this Agreement.

(c) Loge Box not to be Used as Collateral, Security, or Mortgaged. User acknowledges and agrees that User's interest in the Loge Box shall not be used as collateral or security for User to support, finance, or underwrite any other financial obligation of User, nor shall User use its interest in the Loge Box to obtain any mortgage or monies related to a mortgage. User acknowledges and agrees that any failure to comply with the terms of this paragraph shall constitute a default of this Agreement.

24. COST-SHARING ARRANGEMENTS. User hereby covenants, represents, and warrants that, except with respect to the parties disclosed on Exhibit D attached to and made a part of this Agreement, User has not entered into, nor will it enter into, any agreements or arrangements by which User and any other party or parties share the costs attributable to the Loge Box, including, but not limited to, the Use Fees provided for hereunder, in consideration for the use of the Loge Box during the Term hereof (a "Cost-Sharing Arrangement"). A Cost-Sharing Arrangement shall include any and all agreements to transfer, for any consideration whatsoever, one or more Loge Box tickets. In the event that Exhibit D discloses any parties with whom User has entered into a Cost-Sharing Arrangement, the JPA has approved such arrangements by its execution of this Agreement. In no event shall the JPA's approval of these parties imply approval by the JPA of any other parties. No Cost-Sharing Arrangement shall relieve User from being fully liable for all obligations under this Agreement, including all Use Fees. The JPA shall have the right, exercisable in the JPA's sole and absolute discretion, to prohibit and to reject any proposed Cost-Sharing Arrangement or to limit the number of parties to a Cost-Sharing Arrangement, both upon execution hereof and at any time thereafter. User hereby represents and warrants that all amounts payable

by the other parties to any Cost-Sharing Arrangement do not exceed the Use Fees and other costs imposed on User hereunder for the use of the Loge Box reasonably allocable to the use of the Loge Box by the other parties to the Cost-Sharing Arrangement. In the event that User desires to enter into a Cost-Sharing Arrangement after execution of this Agreement, User shall be required with respect thereto to provide to the JPA the identity of the parties to the proposed Cost-Sharing Arrangement, and the address and phone number of such parties, so that the JPA may contact them to provide such financial or other information as the JPA shall deem advisable. All such future Cost-Sharing Arrangements shall be subject to the same conditions and restrictions as a Cost-Sharing Arrangement disclosed herein. Transfer of Loge Box tickets for the appropriate allocable cost pursuant to an approved Cost-Sharing Arrangement shall not violate this Agreement.

25. ADMINISTRATIVE MATTERS. User shall provide to the JPA at least twenty (20) days prior to the commencement of the Term the following information:

(a) The name and address of the person to whom all correspondence and emails, including but not limited to tickets and parking pass, relating to the Loge Box shall be sent.

(b) Unless User is a natural person, the name and address of the person who is authorized to receive notices sent to User and generally bind User with respect to all matters relating to the Loge Box and this Agreement.

(c) The JPA may from time to time provide a form on which User shall provide such information as required herein, and User shall in any event notify the JPA in writing of any changes in such information.

26. MISCELLANEOUS.

(a) Upon the expiration of the Term (or, if applicable, upon the expiration of any renewal term pursuant to User's right of first refusal) or upon the earlier termination of the Agreement, User shall surrender possession of the Loge Box to the JPA in the condition in which it was originally delivered to User, normal wear and tear excepted.

(b) It is understood that the JPA may mortgage, pledge, assign, or otherwise encumber the JPA's rights in the Agreement for any reason, in its sole discretion.

(c) User acknowledges and agrees that the Pinnacle Bank Arena is a smoke-free building and environment and that User and its guests shall not smoke anywhere within the Pinnacle Bank Arena or its environment except in designated smoking areas.

(d) User shall not bring or keep animals, birds, fish, or other living creatures in the Loge Box, with the exception of guide dogs or other service animals specifically trained to assist persons utilizing the Loge Box.

(e) User shall not display any sign, advertisement, or notice, or allow the same to be affixed to the Loge Box or the Pinnacle Bank Arena.

(f) All notices, demands, and other communications between the parties required or appropriate hereunder shall be in writing and deemed given if delivered by email or mailed through U.S. Mail as certified mail, return receipt requested, postage prepaid, or actually delivered, to the respective addresses set forth below the signatures of the parties to this Agreement, or to such other address as may be designated by either party, from time to time in writing.

(g) This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Nebraska, without regard to conflicts of law principles. The parties agree that venue of any legal action arising out of this Agreement or incident thereto shall be proper in a court of competent jurisdiction in Lancaster County, Nebraska and each party waives any objection to such venue.

(h) This Agreement, together with the Exhibits attached hereto, contains the entire agreement of the parties with respect to the matters provided for herein, and shall supersede any written instrument or oral agreement previously made or entered into by the parties to the Agreement. In the event of any inconsistency between the Agreement (including the attached Exhibits) and any other documents regarding the Loge Box, this Agreement shall control.

(i) The JPA makes no representation as to the tax treatment of any payment made to the JPA under this Agreement. User is urged to seek the advice of its professional tax advisor to determine the tax treatment of any payment made under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below to be effective on the date of execution by the JPA.

[SIGNATURE PAGE TO FOLLOW]

USER

By: _____

Date: _____

Name Printed: _____

Title: _____

Address: _____

JPA

By: _____
Chair of JPA

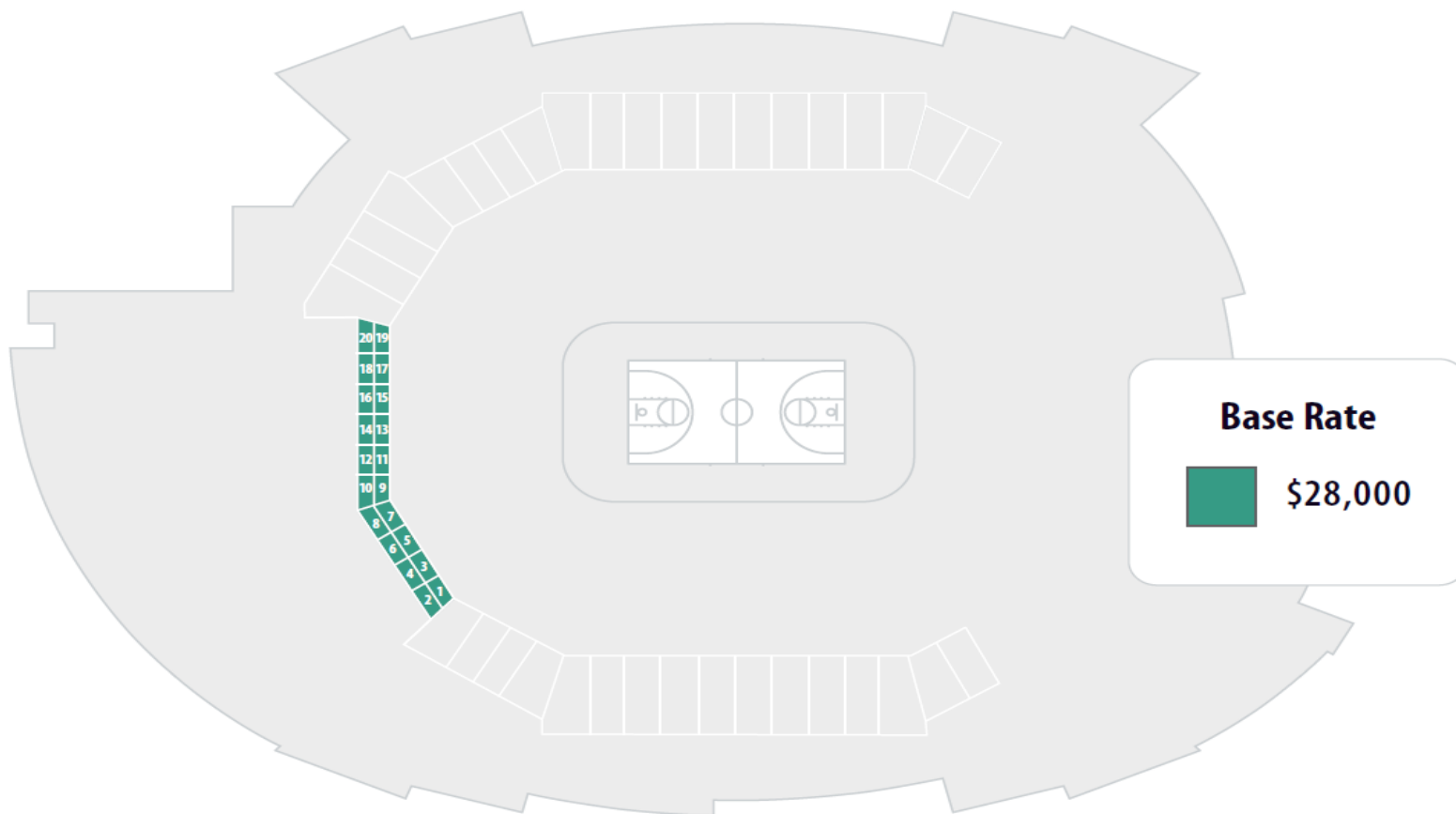
Date: _____

Address: 555 South 10th Street, Room 103
Lincoln, NE 68508

APPROVED:

By: _____
JPA Attorney

EXHIBIT A
Pinnacle Bank Arena
Loge Pricing Map



JPA's Approval: _____

User's Approval: _____

September 1, 2023

EXHIBIT B

Loge Box Benefits

Subject to the Terms and Conditions of this Agreement, User shall be entitled to the following benefits:

1. Admission Tickets. Subject to User's timely payment for the Suite as set forth in Exhibit C, User shall receive four (4) admission tickets to all Pinnacle Bank Arena events with the specific exception of no more than three (3) events per calendar year (the "Special Events") to be designated by the JPA.

2. Parking Pass. The JPA shall provide User, at no additional cost, for all events at the Pinnacle Bank Arena, with the specific exception of the Special Events, one (1) parking pass for parking in a designated parking lot near the Pinnacle Bank Arena. User acknowledges and agrees that the availability of a parking pass, as well as the location of the parking space, is subject to change in the sole discretion of the JPA.

3. Loge Box Features. Each Loge Box is currently designed to provide:

- Four (4) seats with casters
- Drink rail
- Under-counter refrigerator
- Storage cabinets
- Buffet counter
- Television with in-house feed and cable

4. Loge Box Amenities. User shall be entitled to the following amenities:

- Private entrance to the Pinnacle Bank Arena
- Private elevator to Loge Box concourse
- Access to restrooms on the Loge Box concourse
- Access to private lounge on the Loge Box concourse
- Concierge service in lobby area

5. The JPA shall use its best efforts to assure that the foregoing Features and Amenities will be included with the Loge Box, but does not guarantee that changes to the Features and Amenities will not be made over the course of the Agreement.

EXHIBIT C

10 year Use Agreement

1. ANNUAL USE FEE. The “Use Fee” payable by User to the JPA in respect of each year of the Agreement is as set forth below:

User Signature

EXHIBIT C

7 year Use Agreement

1. ANNUAL USE FEE. The “Use Fee” payable by User to the JPA in respect of each year of the Agreement is as set forth below:

User Signature

EXHIBIT D

COST-SHARING ARRANGEMENTS

Subject to the terms and conditions of the Agreement, User may engage in a “Cost-Sharing” arrangement so that the cost of the subject Loge Box is borne by more than one person or business entity.

User acknowledges and agrees that said Cost-Sharing arrangement shall not collectively include any combination of more than three (3) persons and/or business entities, so that the aggregate number of persons or entities controlling access to said Loge Box does not exceed three (3).

User further acknowledges and agrees that User is responsible for all payments due to the JPA regardless of any cost-sharing arrangement. User further acknowledges and agrees that granting a right to use the Loge Box in the name of more than one person or entity is not permitted.

User shall inform the JPA of the identity of persons or entities involved in any cost-sharing arrangement and shall supply the contact information for the persons or entities participating in said cost-sharing arrangement below. User shall promptly notify the JPA in writing of any change in the information supplied.

User may identify those persons or entities participating in cost-sharing on any and all permitted signage identifying the users of said Loge Box.

Names of and contact information for the parties participating in the cost-sharing arrangement are as follows:

User:	_____
Mailing Address:	_____ _____ _____
Telephone:	_____
E-mail address:	_____
Designated Representative:	_____
Cost-Sharer No. 1:	_____
Mailing Address:	_____ _____ _____
Telephone:	_____
E-mail address:	_____

Cost-Share No. 2:

Mailing Address:

Telephone:

E-mail address:

RESOLUTION NO.

1 BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public
2 Agency:

3 That the attached Agreement for Engineering Services between the West Haymarket Joint
4 Public Agency and DLR Group, Inc. for assessment and engineering services for the Pinnacle
5 Bank Arena Pedestrian Bridge project for an amount not to exceed \$17,500.00, is hereby approved
6 and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is
7 hereby authorized to execute said Agreement on behalf of the West Haymarket Joint Public
8 Agency.

Adopted this _____ day of June, 2023.

Introduced by:

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Leirion Gaylor Baird

Tim Clare

Tom Beckius

WEST HAYMARKET JOINT PUBLIC AGENCY AGREEMENT FOR ENGINEERING SERVICES

THIS AGREEMENT is entered into by and between West Haymarket Joint Public Agency, a political subdivision and corporate body politic of the State of Nebraska (WHJPA), and

DLR Group, Inc., a Nebraska Corporation

(Engineer).

In consideration of the mutual covenants herein contained, WHJPA hereby agrees to contract with Engineer to perform engineering and related professional services hereinafter outlined in connection with

Pedestrian Bridge Assessment.

(Work).

SECTION I — SCOPE OF SERVICES

Engineer agrees to timely and professionally complete the Work described above and herein, furnish and pay all costs, including any related taxes, and to furnish all labor, supplies and material and everything else reasonably necessary to complete the same unless specifically provided otherwise in this Agreement for the services listed in the Scope of Services (Scope), attached hereto. Such Scope of Services may also be referred to as “the Work.” To the extent that the Scope, Engineer’s proposal, or any other attachment hereto is in conflict with this Agreement, this Agreement shall control.

SECTION II — COMPENSATION

For the services or Work covered by this Agreement, WHJPA agrees to pay Engineer as follows:

1. **Basic Services.** Engineer shall be paid the compensation set forth in the Scope attached hereto, plus all allowed actual expenses and the total of all fees and allowed actual expenses shall not exceed **\$17,500.00** without written consent of WHJPA. WHJPA is not responsible for fees or expenses incurred prior to the Notice-to-Proceed date or after the completion deadline date stated in the Work Schedule attached to this Agreement unless otherwise agreed to by WHJPA.
2. **Additional Services or Change in Scope.** WHJPA may from time to time, require additional services or change in Scope. Such services, including the amount of compensation for such services, which are mutually agreed upon by and between WHJPA and Engineer, shall be effective when incorporated by written amendments to this Agreement. Additional services or change in Scope shall not begin until the amendment is executed.
3. **Cost Overruns.** Engineer is responsible for determining if the actual fees or expenses will exceed the maximum amount stated above. If at any time during the Work, Engineer determines that the fees or expenses will exceed, or have exceeded the maximum amount

stated above, Engineer must immediately notify WHJPA in writing and describe which fees or expenses are causing the overrun and the reason. Engineer must also estimate the additional fees or expenses needed to complete the Work. WHJPA will then determine if the maximum amount is to be increased, remain the same, or determine if the scope of the Work needs to be modified or terminated. An amendment will be prepared if cost overruns are authorized by WHJPA.

4. **Notice to Proceed.** Following execution of this Agreement, Engineer shall proceed as instructed by WHJPA. Engineer shall not begin the Work under this Agreement until instructed by WHJPA.
5. **Term of Agreement.** The term of this Agreement shall commence upon execution of this Agreement by both parties and shall continue until completion of all obligations of this Agreement, but in no event longer than November 30, 2023, unless approved extensions are issued by written amendment.
6. **Invoices.** Unless otherwise set forth in the attachments, invoices shall be payable as follows:
Monthly ☒ X
Quarterly
Lump Sum
Other: _____

Invoices must present activities of Engineer and/or any subcontractors showing not less than actual hours worked, hourly rates applied, actual expenses incurred unless otherwise specified in the Scope or Fee Schedule, and any applicable supporting documentation, such as, but not limited to, receipts. All invoices shall be in a format acceptable to WHJPA.

7. **Progress Reports.** Invoices shall be substantiated by written progress reports which indicate the percentage of the Work completed or other metrics of progress agreed to or reasonably requested by WHJPA or as set forth in the proposal or Scope. A written progress report shall be provided to WHJPA each month in which Work is done by Engineer. Engineer shall provide a progress report within a reasonable time after a request for such report by WHJPA, separate and apart from the billing process.
8. **Payment.** WHJPA shall pay Engineer within thirty (30) days of approval of Engineer's invoices. WHJPA may reject all or part of any invoice for any reasonable cause. Payment is dependent upon whether the monthly progress reports provide adequate substantiation for the Work and whether WHJPA determines that the Work is satisfactory. Upon determination that the Work was adequately substantiated and satisfactory, payment will be made in the amount of one hundred percent (100%) of the billed actual costs and hourly fees. After Engineer has completed all Work required under this Agreement, a final invoice shall be submitted to WHJPA. Upon acceptance of the Work by WHJPA and final payment is made, an audit of all invoiced amounts may be completed by WHJPA or its authorized representative.
9. **Final Payment.** The acceptance of the final payment will constitute and operate as a release to WHJPA for all claims and liability of Engineer, its representatives, and assigns, for any and all things done, furnished, or relating to the services and Work rendered by or in connection with this Agreement or any part thereof. Engineer agrees to reimburse WHJPA for any

overpayments.

SECTION III — WHJPA'S RESPONSIBILITIES

If available, WHJPA will furnish, as required for the Work and not at the expense of Engineer, the following items:

1. Property, boundary, easement, right-of-way, utility surveys, and property descriptions when such information is required.
2. All maps, drawings, records, audits, annual reports, and other data that are available in the files of WHJPA and which may be useful in the Work involved under this Agreement, including existing surveys, maps, and boring information for the site. Engineer must identify and specifically request available information by itemized written request with sufficient detail to identify existing documents. WHJPA does not warrant or represent that such information is accurate or complete with regard to the Work.
3. Access to public and private property, as necessary, when required in conduct of field investigations.
4. Charges for review of drawings and specifications by governmental agencies required for concurrence or permits, if any.

SECTION IV — OTHER MATTERS

It is mutually understood and agreed:

1. **Termination of Agreement.** Termination may occur for any of the following reasons:
 - a) This Agreement may be terminated by WHJPA or Engineer if the other party fails to adequately perform any material obligation required by this Agreement (Default). Termination rights under this section may be exercised only if the defaulting party fails to cure a Default within ten (10) calendar days after receiving written notice from the non-defaulting party specifying the nature of the Default.
 - b) WHJPA may terminate this Agreement, in whole or part, for any reason for WHJPA's own convenience upon at least ten (10) calendar days' written notice to Engineer.
 - c) WHJPA may terminate this Agreement in whole or in part when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, or otherwise not forthcoming through no fault of WHJPA. In the event of unavailability of funds to pay any amounts due under this Agreement, WHJPA shall immediately notify Engineer, and this Agreement shall terminate without penalty or expense to WHJPA. Upon termination, WHJPA shall pay Engineer for any approved and documented Work completed up to the date of termination, but not to exceed the maximum amount allowed by this Agreement.
 - d) If the Agreement is terminated by WHJPA as provided in (b) or (c) above, Engineer shall be paid for all Work performed, and reimbursable expenses incurred, not to exceed the maximum amounts payable under the compensation section above, up until the date of

termination. Engineer hereby expressly waives any and all claims for damages or compensation arising under this Agreement except as set forth in this section in the event of termination.

- e) Engineer agrees that, upon termination as provided in this section (a) above, Engineer shall not be employed by any developer or other party who is or may be interested in the Work, without prior written approval of WHJPA.
 - f) WHJPA reserves the right to withhold payment for Work rendered that is not in compliance with this Agreement or setoff against payments due.
2. **Project Representatives.** Caleb Swanson, of Project Control, Inc. will act as WHJPA's Authorized Representative for the Work and Scott Shiffermiller will act as Engineer's authorized representative. Engineer's authorized representative shall have direct and responsible charge for timely completing Engineer's responsibilities. All changes and other matters requiring decisions on the part of WHJPA will be administered and directed by WHJPA's authorized representative.
 3. **Cost Estimates.** Engineer represents that construction estimates are done according to the Scope and shall comply with the current applicable WHJPA of Lincoln Standard Specifications for Municipal Construction, using unit prices where possible. Engineer does not warrant that contractor bids will be acceptable to WHJPA.
 4. **Signatures and Approvals.** All submittals by Engineer shall be complete for project purposes and include all required seals, signatures, and approvals.
 5. **Construction Phase Changes.** All design changes made during construction must be approved by WHJPA in a written change order or amendment to this Agreement.
 6. **Advisory Capacity for Disputes.** In disputes between WHJPA and any other party, Engineer shall advise WHJPA on issues concerning the Work.
 7. **Ownership of Drawings and Specifications.** Upon termination or final payment, drawings, specifications, electronic files, and other work product or deliverables (information) shall become the property of WHJPA as soon as payment for the same has been completed or termination has been affected. Engineer may retain copies of all information for its records and use if it so desires. In the event WHJPA elects to use portions of or all of the information contained in the documents prepared for the Work, for any purpose other than the specific purpose for which they were prepared, WHJPA agrees to hold harmless and indemnify Engineer for and against any and all liability in any manner whatsoever arising out of the utilization of such information.
 8. **Engineer's Supervision; Seal.** All required Work shall be performed under the direct supervision of a registered professional engineer licensed to practice in the State of Nebraska. Engineer also hereby agrees to affix the seal of a registered professional engineer licensed to practice in the State of Nebraska on all plans and specifications prepared hereunder.

9. **Independent Contractor.** WHJPA is interested only in the results produced by this Agreement. Engineer has sole and exclusive charge and control of the manner and means of performance. Engineer shall perform as an independent contractor, and it is expressly understood that neither Engineer nor any of its staff are employees of WHJPA and are not entitled to any WHJPA benefits including, but not limited to, overtime, retirement benefits, workers' compensation, sick leave, injury leave, or other leave provisions.
10. **Fair Employment.** Engineer shall not discriminate against any employee (or applicant for employment) with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to the requirements of Lincoln Municipal Code Chapter 11.08, Neb. Rev. Stat. § 48-1122, as amended, or such similar federal law as may be applicable.
11. **Fair Labor Standards.** Engineer shall maintain Fair Labor Standards in the performance of this Agreement as required by Chapter 73, Nebraska Revised Statutes, as amended.
12. **Insurance; Coverage.** Engineer, prior to beginning the Work, shall provide proof of insurance coverage in a form satisfactory to WHJPA, which shall not withhold approval unreasonably, with the coverages, minimum limits, and endorsements described in the attached INSURANCE REQUIREMENTS FOR WEST HAYMARKET JOINT PUBLIC AGENCY attached hereto and incorporated herein as if fully set forth.
13. **Indemnification.** To the fullest extent permitted by law the Engineer shall indemnify and hold harmless the Owner, its elected officials, officers, employees, agents, and consultants, and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the Work itself, but only to the extent caused by the negligent or intentional acts or omissions of the engineer, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by the negligence of a party indemnified hereunder. In the event the claim, damage, loss or expense is caused in part by the negligence of a party indemnified hereunder, the indemnification by the Engineer shall be prorated based on the extent of the liability of the party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce obligations of indemnity which would otherwise exist as to a party or person described in this Section.
14. **Sovereign Immunity.** Nothing contained in this clause or other clauses of this Agreement shall be construed to waive the sovereign immunity of WHJPA.
15. **Copyrights, Royalties, and Patents; Warranty.**
 - a) Without exception, Engineer represents and warrants that the consideration for this Agreement includes Engineer's payment, if any, for any and all royalties or costs due any third party arising from patents, trademarks, copyrights, and other similar intangible rights claimed by any such third party in any way involved with or related to the Work provided

herein by Engineer pursuant to this Agreement. Further, Engineer shall pay all related royalties, license fees, or other similar fees for any such intangible rights. Engineer represents that all materials, processes, or other protected rights, if any, to be used in the creation of the Work have been duly licensed or authorized by the appropriate parties for such use. Engineer agrees to furnish WHJPA upon demand written documentation of such license or authorization and if unable to do so, Engineer agrees that WHJPA may withhold a reasonable amount from Engineer's compensation herein to defray any associated costs to secure such license or authorization or defend any infringement claim.

- b) Engineer shall indemnify WHJPA and defend suits or claims for infringement for damages, including but not limited to attorney's fees, of any patent, copyright, trademark, or other intangible rights that Engineer has used in the course of performing this Agreement.
- c) Engineer represents and warrants to WHJPA that it is free to enter into this Agreement and that the performance thereunder will not conflict with any other Agreement to which Engineer may be a party. Engineer represents and warrants to WHJPA that the Work is unique and original, is clear of any claims or encumbrances, and does not infringe on the rights of any third parties.
- d) Engineer agrees to and hereby transfers all right, title, and interest, including those of a property or copyright nature, in any reports, studies, data, website creation, digital files, imagery, metadata, maps, statistics, forms, and any other works or materials produced under the terms of this Agreement. No such work or materials produced, in whole or in part, under this Agreement, shall be subject to private use or copyright by Engineer without express written consent of WHJPA. WHJPA shall have the unrestricted rights of ownership of such works or materials and may freely copy, reproduce, broadcast, or otherwise utilize such works or materials as WHJPA deems appropriate. Engineer warrants that all materials, processes or other protected rights to be used have been duly licensed or authorized for WHJPA's use.

16. Engineer's Standard of Care. In providing the Work under this Agreement, Engineer shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. Upon notice to Engineer and by mutual agreement between the parties, Engineer will, without additional compensation, correct those services not meeting the standard set forth herein. Engineer further agrees that the Work provided shall conform to the requirements of this Agreement.

17. Compliance with Law. Engineer shall comply with all Federal, State, and local laws, rules, and regulations applicable to the Work, including applying for and obtaining all necessary permits, certifications, licenses, and approvals required by the law or regulations that relate to the Work.

18. Nebraska Law. This Agreement shall be construed pursuant to the laws of the State of Nebraska.

19. **Integration; Amendment; Assignment; Severability; Waiver.** This Agreement represents the entire agreement between the parties, and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended only by written agreement signed by both parties. Any assignment or transfer of any of the Work to be performed by Engineer is hereby prohibited unless prior written consent of WHJPA is obtained. This Agreement shall be binding upon the successors and assigns of the parties hereto. Each section of this Agreement is hereby declared to be independent of every other section so far as inducement for the acceptance of this Agreement, and invalidity of any section of this Agreement shall not invalidate any other section thereof. The failure of either party to enforce any section of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every section of this Agreement.
20. **Audit and Review.** This Agreement shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code, and all parties shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law. Engineer shall maintain, and also require that its Sub-Consultants/Subcontractors maintain, all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and shall make such material available for examination at Engineer's office at all reasonable times during the Agreement term and for five (5) years from the date of final payment under this Agreement. Such materials must be available for inspection by City, State, FHWA, or any authorized representative of the state or federal governments and, when requested, Engineer shall furnish copies.
21. **Federal Immigration Verification.** In accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, Engineer agrees to register with and use a federal immigration verification system to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. §1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized. Engineer shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C. §1324b. Engineer shall require any sub-agreement or to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.
- a) **Attestation Form.** If Engineer is an individual or sole proprietor, Engineer agrees to complete the United States Citizenship Attestation Form as provided by WHJPA and attach it to the Agreement.
- b) **Public Benefits Eligibility Status Check.** If Engineer is agreeing to determine eligibility for and provide a public benefit as public benefit is defined under Neb. Rev. Stat. §§ 4-108 through 4-114, Engineer agrees to have each applicant for public benefits attest that he or she is a U.S. citizen or qualified alien using the form attached. Engineer agrees to register and use the SAVE Program as required under Neb. Rev. Stat. §§ 4-108 through 4-114. If the applicant indicates he or she is an alien, Engineer shall verify the applicant's

lawful presence in the United States as provided under the SAVE Program and retain all documentation and provide copies of such documentation at WHJPA's request. For information on the SAVE program, go to www.uscis.gov/SAVE.

22. **Living Wage.** If the compensation for the Work provided pursuant to this Agreement is equal to or exceeds \$25,000, this Agreement is subject to the Living Wage Ordinance Chapter 2.81 of the Lincoln Municipal Code. The ordinance requires that, unless specific exemptions apply or a waiver is granted, Engineer shall provide payment of a minimum living wage to employees providing services pursuant to this Agreement. Under the provisions of the Living Wage Ordinance, WHJPA shall have authority to terminate this Agreement and to seek other remedies for violation of this ordinance.

23. **Records Retention.** Unless WHJPA specifies in writing a different period of time, Engineer agrees to preserve and make available at reasonable times all of its books, documents, papers, records, and other evidence involving transactions related to this Agreement for a period of five (5) years from the date of the expiration or termination of this Agreement. See WHJPA of Lincoln Records Retention Schedule. Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.

24. **Document Control Clause.** The Agreement includes the following documents:

- a) Scope of Services, Schedule, and Fee;
- b) Insurance requirements, certificates, and endorsements;
- c) Amendments to Agreement (if any);
- d) _____
- e) _____

For Agreement documents submitted prior to execution, if terms and conditions therein conflict with other Agreement documents, those Agreement document with the date closest to the date of execution of this Agreement shall control.

25. **Capacity.** Each party hereby represents and warrants to the other party that the execution of this Agreement is duly authorized and constitutes a legal, valid, and binding obligation of said party.

IN WITNESS WHEREOF, WHJPA and Engineer do hereby execute this Agreement as of the date of execution set forth below.

**WEST HAYMARKET JOINT PUBLIC
AGENCY, a political subdivision and corporate
body politic of the State of Nebraska.**

Date: _____

By: _____
Leirion Gaylor Baird, Chair

ENGINEER

Date: _____

By: _____

Name: _____

Title: _____



DLR Group inc.

a Nebraska corporation

1128 Lincoln Mall, Suite 103

Lincoln, NE 68508

05/19/2023

Caleb Swanson
Project Control
Lincoln, NE 68508

Re: Project Name: PBA Pedestrian Bridge Assessment

Dear Mr. Swanson:

DLR Group is pleased to offer this Fee Proposal to provide services for:

- Assessing existing conditions and extent of damage requiring remediation.
- Providing engineered repair details and associated product specifications.
- Construction administration Services.

PROJECT SERVICES & DELIVERABLES:

- One (1) Initial site visit with project stakeholders to assess damage.
 - Preliminary assessment and draft report will be completed at this time for review and approval by the project stakeholders to move forward with repair design.
- Structural repair designs for conditions discovered during initial site visit.
- Product specifications for required repair products.
- Finalized report incorporating repair designs and product specifications.
- Shop drawing and product data review.
- Site observations during construction.
 - Maximum of three (3).

TIME OF PERFORMANCE: The Project schedule is:

- Work can begin within two weeks of notice to proceed.
- Assessment must be complete when weather conditions allow observations and building areas are not obscured by snow or rain.

FEES AND EXPENSES: DLR Group's proposed compensation is:

- Hourly/NTE seventeen thousand, five hundred dollars (\$17,500).

Caleb Swanson

05/19/2023

Page 2

Limit of Liability: The compensation above assumes DLR Group's cumulative total liability for claims arising from or relating to this Fee Proposal / Letter Agreement shall not exceed DLR Group's total compensation earned under this Fee Proposal.

Additional Services: Any work outside the scope of work described above shall be performed as an additional service in accordance with DLR Group's standard hourly rates. DLR Group shall not proceed with any additional services without the prior written authorization of the Owner.

Acceptance: Signature by the Owner below shall constitute acceptance of this Fee Proposal and a notice to DLR Group to proceed with the services. The Effective Date of this Fee Proposal shall be the date the Owner signs this document.

We look forward to continuing or successful relationship with Project Control. Please contact me if you have any questions regarding this Fee Proposal.

ARCHITECT:

OWNER:

DLR Group (a Nebraska corporation)

West Haymarket JPA

Scott D Shiffermiller, AIA
Architect, Vice President

Signature and Title

Signature and Title

Date: _____

Date: _____

SS:br

Encl:

Exhibit A – Standard Hourly Billing Rates

Exhibit B – Prevailing Reimbursable Expenses

cc:

Jake McConnell

DLR Group

Standard Hourly Billing Rates

Title	Client Hourly Billing Rate
Senior Expert	\$350
Expert	\$300
Practice Leader	\$265
Project Leader	\$235
Senior Professional	\$205
Professional II	\$175
Professional	\$145
Professional Support	\$115
Technical/Clerical	\$90

Rates will be reviewed and adjusted annually based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for that geographic region.

PREVAILING REIMBURSABLE EXPENSES

Effective April 1, 2020

Exhibit B

<u>Description</u>	<u>Rates</u> *
Reproduction/Scanning:	
8-1/2" x 11" B&W Bond	\$.20
8-1/2" x 11" Color	\$ 1.00
Scanning 8-1/2 x 11 (.65 SF) B&W	\$.20
Scanning 8-1/2 x 11 (.65 SF) Color.....	\$.45
11" x 17" B&W Bond.....	\$.50
11" x 17" Color.....	\$ 2.00
Scanning 11 x 17 (1.30 SF) B&W	\$.40
Scanning 11 x 17 (1.30 SF) Color	\$.90
Bond 15x21 to 36x48	\$.65
Scanning 15x21 to 36x48 (2.1875 SF to 12 SF).....	\$.65/SF
Large Format Vellum.....	\$ 1.05/SF
Large Format Mylar	\$ 2.15/SF
HP Plotter B&W Bond Plots	\$.65/SF
HP Plotter B&W Vellum Plots.....	\$ 2.00/SF
HP Plotter B&W Mylar Plots	\$ 2.50/SF
HP Plotter Color Line Plots	\$.65/SF
HP Plotter Color 24-lb. Bond Paper Plots	\$ 4.50/SF
HP Plotter Color Nonglossy 7 mil Paper Plots	\$ 6.00/SF
HP Plotter Color Glossy Paper Plots.....	\$10.00/SF
HP Plotter Color Low Density Bond Print.....	\$.80/SF
HP Plotter Color High Density Bond Print	\$ 1.60/SF

* Rates include all binding, stapling, collating, maintenance, etc.
Shipping and handling not included.

Mileage (rate per mile)	Prevailing Government Rate
Air Fare.....	As billed to DLR Group
Auto Rental.....	As billed to DLR Group
Other Transportation	As billed to DLR Group
Parking and Tolls	As billed to DLR Group
Meals	As billed to DLR Group
Lodging	As billed to DLR Group
Postage	As billed to DLR Group
Delivery Charges	As billed to DLR Group
Telephone (Long Distance).....	As billed to DLR Group
Materials and Supplies.....	As billed to DLR Group
Models and Renderings (Presentation)	As billed to DLR Group
Photographic/Film	As billed to DLR Group
Photographic/Typeset	As billed to DLR Group
Codes/Ordinances	As billed to DLR Group
Legal.....	As billed to DLR Group

Project Reimbursable Expenses will be invoiced at cost, Reimbursable Expenses are subject to periodic adjustment.

DLR Group inc.

Initialed by:

Owner _____ dated: _____

Architect _____ dated: _____

Insurance Requirements

Submitted on	22 May 2023, 1:38PM
Receipt number	917
Related form version	18

The requirements herein apply to contracts to be issued by the City of Lincoln, Lancaster County, the Lincoln-Lancaster County Public Building Commission, and the West Haymarket Joint Public Agency. For purposes of certificates, endorsements and other proof required herein, only include the entity issuing the contract.

DEFINITIONS: For purposes of these Requirements, the following definitions apply:

- **“Agreement”** shall mean the contract between the Owner and the Contractor into which these Insurance Requirements are incorporated by reference.
- **“City”** shall mean the City of Lincoln, NE.
- **“COI”** shall mean a Certificate of Insurance.
- **“Contractor”** shall mean the individual, company, etc. being hired to perform the Work under the Agreement. Contractor shall include all owners, officers, employees, agents, and subcontractors and employees of any of them.
- **“County”** shall mean the County of Lancaster, Nebraska.
- **“Owner(s)”** shall mean any, all, or a combination of the City of Lincoln, NE, County of Lancaster, Nebraska, Lincoln-Lancaster County Public Building Commission, and/or the West Haymarket Joint Public Agency and their elected and appointed officials, officers, employees, agents, contractors, and consultants.
- **“PBC”** shall mean the Lincoln-Lancaster County Public Building Commission.
- **“Site”** shall mean the location the Work is being completed and/or delivered to.
- **“WHJPA”** shall mean the West Haymarket Joint Public Agency.
- **“Work”** shall mean the project being completed, products being delivered, and/or services being provided as contemplated in the Agreement.

OWNERS: The Insurance Requirements apply to the following: WHJPA

PROVISIONS:

- 3. Commercial General Liability
- 4. Automobile Liability
- 5. Workers' Compensation
- 11. Errors and Omissions; Professional Liability

Contractor shall comply with the following provisions:

1. Insurance; Coverage Information

- A. The Contractor shall, prior to beginning work, satisfy all provisions of these Insurance Requirements and shall provide proof of insurance coverage in a form satisfactory to the Owner, which shall not unreasonably withhold approval. Contractor shall comply with these Insurance Requirements, including maintaining all coverages required by these Insurance Requirements, at all times the Work is being done pursuant to the Agreement.
- B. Contractor's insurance shall be primary and non-contributory with any insurance coverage maintained by the Owner. Owner's insurance policies, if any, operate secondary, in excess, separately and independently from policies required to be provided by Contractor. The policies shall be written for not less than the limits of liability required herein. If Contractor maintains higher limits than the minimums shown, the Owner requires and shall be entitled to the higher limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Owner.

Deductibles/Retentions: Deductibles/Retentions above \$25,000.00 shall not be permitted unless written consent is given by the Owner prior to close of an RFP or bid, or upon execution of the Agreement if a formal bid or RFP is not issued.

Owner has sole and exclusive discretion to reject deductibles/retentions that do not meet Owner's satisfaction.

Self-Insurance: In the event Contractor is self-insured for any insurance coverages required in this Agreement, Contractor is required to complete a Self-Insured Certification. If Contractor is self-insured for Workers Compensation, Contractor shall provide Owner a copy of

Owner(s) checked below shall be listed as the Certificate Holder West Haymarket Joint Public Agency
on the COI using the following address: 555 S. 10th St.,
Lincoln, NE 68508

2. Certificates

- A. The Contractor shall provide to Owner, in a form acceptable to Owner, a COI demonstrating the coverage required herein and include copies of all necessary endorsements, waivers, or other documents required by these Insurance Requirements before being permitted to begin the Work pursuant to this Agreement.

3. Commercial General Liability: The Contractor shall have, maintain, and provide proof of Commercial General Liability Insurance.

- A. **Basis:** Occurrence basis.
- B. **Limits:** Not less than \$1,000,000 combined single limit (CSL) each occurrence; \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate.
- C. **Coverage:** Coverage shall include: Premises-Operations, Products/ Completed Operations, Contractual, Broad Form Property Damage, and Personal and Advertising Injury. The required insurance must include coverage for all projects and operations by or on behalf of Contractor or similar language that meets the approval of the Owner, which approval shall not be unreasonably withheld. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in this agreement. Policy shall have a Cross-Liability/Separation of Insureds Clause specifying the insureds' protection under the policy as if each insured had a separate policy, with the exception of the limits of liability and any rights or duties that are designated to be for the first named insured only.
- D. **Additional Insured Endorsement Form:** The Contractor shall name the Owner as additional insured on Contractor's Commercial General Liability policy.
- E. **Waiver of Subrogation/Waiver of Right of Recovery Endorsement Form:** Contractor shall have policy endorsed with a waiver of subrogation/waiver of right of recovery in favor of Owner.

4. Automobile Liability: The Contractor shall have, maintain, and provide proof of Automobile Liability insurance.

- A. **Basis:** Occurrence basis.
- B. **Limits:** Not less than \$1,000,000 CSL per accident. Auto Liability shall not be subject to an aggregate.
- C. **Coverage:** Coverage shall include liability arising out of the ownership, maintenance, or use of any motor vehicle, including Owned, Leased, Hired and Non-Owned.
- D. **Additional Insured Endorsement Form:** The Contractor shall name the Owners as additional insured on Contractor's Automobile Liability policy.
- E. **Waiver of Subrogation/Waiver of Right of Recovery Endorsement Form:** Contractor shall have policy endorsed with a waiver of subrogation/waiver of right of recovery in favor of Owner.

5. Workers' Compensation; Employers' Liability: The Contractor shall have, maintain, and provide proof of Workers' Compensation insurance.

- A. **Limits:** Workers' Compensation coverage not less than statutory requirements under the laws of the State of Nebraska and any other applicable State where Work may be performed. Employer's Liability coverage with limits of not less than \$500,000 each accident or injury shall be included.
- B. **Waiver of Subrogation/Waiver of Right of Recovery Endorsement Form:** Contractor shall have policy endorsed with a waiver of subrogation/waiver of right of recovery in favor of Owner. The Contractor shall have its Workers' Compensation insurance carrier, or, if the Contractor is self-insured, then the Contractor itself shall, waive its subrogation rights/rights of recovery against the Owner and shall provide to Owner, in a form acceptable to Owner, a written document, signed by an authorized Officer of the Contractor confirming Contractor has waived their right of subrogation/waived their right of recovery.
- C. Sole proprietors and certain very small entities may be exempt from these requirements and it is the obligation of the Contractor to submit documentation to the Owner of the basis for any such exemption. Contractor will not hire/engage any employees or independent contractors without procuring a Workers Compensation policy and providing proof to the Owner.

11. Errors and Omissions; Professional Liability: The Contractor shall have, maintain, and provide proof of Errors and Omissions or Professional Liability insurance.

- A. **Basis:** Claims-made unless available as Occurrence basis coverage. Claim-made must have a retrospective date be the earlier of the date of this Agreement or prior to work commencing.
- B. **Limits:** Not less than \$1,000,000 each claim and \$1,000,000 in the aggregate.
- C. **Coverage:** Coverage shall include Owner and third-party bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death, and property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed because of pollution conditions, including asbestos, lead, and mold, arising from Contractor's operations and completed operations. Coverage shall include defense expenses including loss adjustment costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.
- D. **Tail Coverage:** Shall be maintained for a minimum of two (2) years after the latest of the: a) final payment; b) agreement expiration; c) agreement termination or d) completion of the Work. In the event the policy is not renewed, Contractor shall arrange for

a two (2) year extended reporting period provision.

Subcontractors: The Contractor shall ensure that all tiers of Contractor's subcontractors comply with insurance requirements identical to the Insurance Requirements between the Contractor and Owner. Contractor shall provide, upon Owner's request, all documentation evidencing such compliance, to Owner on behalf of Contractor and Contractor's subcontractors.

Cancellation/Renewal Notice: Contractor's policies must contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, non-renewed or aggregate limits exhausted until at least 30 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice from insurer, Contractor shall provide a copy of the notice to Owner. If coverage required under this Agreement is cancelled or non-renewed, Contractor shall provide evidence of replacement coverage, with no lapse in coverage between the policies. Contractor shall provide, prior to expiration of any policy(ies), certificates of insurance and endorsement forms evidencing renewal insurance coverages as required in this Agreement.

Owner's Option: Owner may purchase and maintain at Owner's expense, liability insurance. Contractor cannot rely upon Owner's liability policy(ies) for any of Contractor's insurance obligations required herein.

Umbrella or Excess Liability: The Contractor may use an Umbrella, Excess Liability, or similar coverage to supplement the primary insurance stated above in order to meet or exceed the minimum coverage levels required by this Agreement provided such umbrella/excess coverage is not more restrictive than the primary coverage. Such coverage shall be excess of the Commercial General Liability, Auto Liability and Employer's Liability. If the Contractor is required to have, maintain and provide proof of Garage Liability, the Umbrella/Excess Liability shall also be excess of Garage Liability.

Minimum Rating - Insurer: All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than "A-" VIII, unless Owner has expressly approves in writing.

Reservation of Rights: The Owner reserves the right to require a higher limit of insurance or additional coverages when the Owner determines that a higher limit or additional coverage is required to protect the Owner or the interests of the public.

Sovereign Immunity: Nothing contained in this clause or other clauses of this Agreement shall be construed to waive the Sovereign Immunity of the Owner.

No Waiver by Owner: Failure of the Owner to object to the form or content of the certificate or endorsement or to demand such proof as is required herein shall not constitute a waiver of any insurance requirement set forth herein.

Failure of Owner to demand such certificates of insurance, endorsements or other evidence of the Contractor's full compliance with these insurance requirements, or failure of Owner to identify any deficiency in compliance from the evidence provided, shall not be construed as a waiver of the Contractor's obligation to obtain and maintain such insurance at all tiers.

Claims-made Tail Coverage: Any liability insurance arranged on a claims-made basis, will require an Extended Reporting coverage for the duration specified or the maximum time period the Contractor's insurer will provide, if less than the duration specified. Contractor will be responsible for furnishing certification of Extended Reporting coverage as described or continuous "claims made" liability coverage for the additional period. Continuous "claims made" coverage is acceptable in lieu of Extended Reporting coverage, provided the retroactive date is on or before the effective date of this Agreement and there is no prior or pending date added to the policy after the inception of this Agreement.

QUESTIONS

Consult with your insurance agent or broker on how to acquire the required coverages, endorsements, and waivers needed for your Agreement.

For additional information or questions concerning coverage or acceptable forms, Contractor may contact the Purchasing Division at 402-441-8103, or the Department that issues the Agreement. For general questions regarding Insurance Requirements, please contact the City of Lincoln Risk Management at 402-441-7671 or County of Lancaster, Nebraska's Risk Management at 402-441-6510, as appropriate.

E-mail Address (Internal use only)

cconnolly@lincoln.ne.gov

RESOLUTION NO.

BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public Agency:

That the attached Right of Entry Agreement for construction staging area related to a nearby sanitary sewer rehabilitation project between the West Haymarket JPA and Municipal and Contractors Sealing Products, Inc. (“MCSPI”) allowing MCSPI to enter onto JPA property legally described as Lot 1, Block 10, West Haymarket Addition, until June 30, 2024, is hereby approved and the Chairperson of the West Haymarket Joint Public Agency is hereby authorized to execute the same on behalf of the West Haymarket Joint Public Agency and any extension mutually agreed to by the parties.

Adopted this _____ day of June, 2023.

Introduced by:

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Leirion Gaylor Baird

Tim Clare

Tom Beckius

**RIGHT OF ENTRY AGREEMENT
WEST HAYMARKET JOINT PUBLIC AGENCY**

THIS RIGHT OF ENTRY AGREEMENT (the " Agreement") is made and entered into this ____ day of _____, 2023, by and among the West Haymarket Joint Public Agency, a political subdivision and corporate body politic of the State of Nebraska (hereinafter "JPA"), and Municipal and Contractors Sealing Products, Inc. (hereinafter "MCSPI").

RECITALS

1. The JPA owns the land legally described as Lot 1, Block 10, West Haymarket Addition to the City of Lincoln, Lancaster County, Nebraska ("the Property").
2. MCSPI, wishes to use the land for a construction staging area related to a nearby sanitary sewer rehabilitation project.

NOW, THEREFORE, in consideration of, and based on, the foregoing Recitals and the mutual promises and agreements set forth below, the parties agree as follows:

I. Right of Entry

- a. In consideration of the mutual benefits and obligations of this Agreement, the JPA hereby grants a right of entry to MCSPI, its employees and agents, for the Property for the following purposes and no others:

Storage and staging of materials and equipment located on Lot 1, Block 10, West Haymarket Addition.

- b. It is understood and agreed that MCSPI shall not be liable for trespass of any kind arising out of entering on to the Property for the purposes provided herein. It is further understood and agreed that JPA shall have no right to direct, interfere with, instruct, limit, or participate with, MCSPI with regard to the work.
- c. MCSPI shall carry sufficient insurance or self-insure in an amount of not less than described in Article V below, covering the term of this Right of Entry.

II. Condition of the Property.

The JPA, its board members, and its agents have made no representations to MCSPI about the condition of the property. MCSPI shall use the property **AS IS** and agrees to be exclusively responsible for adequate safety measures being taken before, during, and immediately after the MCSPI's use of the property.

III. Term and Termination.

- a. This Right of Entry shall be in force and effect from and after the execution and approval of this Agreement and shall terminate on June 30, 2024, provided, however, if MCSPI has not yet completed the project described above, MCSPI shall be permitted to extend the term of this Agreement by thirty (30) days by providing written notice to the JPA.

- b. No use of the Property shall commence under this Right of Entry until MCSPI has obtained all insurance required herein and such insurance has been approved by the City Attorney for the City of Lincoln; provided, however, if evidence of the required insurance is provided to the City Attorney for the City of Lincoln and no response is received by MCSPI within five days thereafter, then the City Attorney for the City of Lincoln shall be deemed to have approved the insurance. MCSPI may also provide a letter stating that it will self-insure for this Right of Entry.
- c. The JPA may terminate this Agreement immediately upon written notice to MCSPI if MCSPI violates any of the covenants, agreements, stipulations, or conditions herein, and such violation or default shall continue for a period of five (5) business days after written notice from the JPA to MCSPI of such violation or default, then the JPA may without demand and notice terminate this Agreement and re-enter the Property with or without process of law, using such force as may be reasonably necessary to remove all persons or chattels therefrom, and the JPA shall not be liable for damage by reason of such re-entry or forfeiture.

IV. Indemnification.

- a. Indemnification by MCSPI. To the extent allowed by law, MCSPI agrees to indemnify and hold the JPA, its board members and agents (collectively "the JPA"), harmless against, and will reimburse the JPA upon demand for any payment, loss, cost or expense (including reasonable attorney's fees) made or incurred by or asserted against the JPA, its board members and agents with respect to any and all damages resulting from any omission, misrepresentation, negligence, willful or intentional misconduct of the MCSPI, its professors, instructors, students, or agents, provided, however, in no event shall MCSPI be required to indemnify and hold harmless the JPA for any damages, liabilities or obligations caused by the negligence or willful or intentional misconduct of the JPA.
- b. Conditions of Indemnification. With respect to any actual or potential claim, any written demand, commencement of any action, or the occurrence of any other event which involves any matter or related series of matters (Claim) against which a party hereto is indemnified (Indemnified Party) by another party (Indemnifying Party) under Sections IV(a) or IV(b) hereof:
 - 1. Promptly after the Indemnified Party first receives written documents pertaining to the Claim, or if such Claim does not involve a third-party Claim, promptly after the Indemnified Party first has actual knowledge of such Claim, the Indemnified Party shall give notice to the Indemnifying Party of such Claim in reasonable detail and stating the amount involved, if known, together with copies of any such written documents; and
 - 2. If the Claim involves a third party Claim, then the Indemnifying Party shall have the right, at its sole cost, expense and ultimate liability regardless of outcome, through counsel of its choice, to litigate, defend, settle, or otherwise attempt to resolve such Claim, except that the Indemnified Party may elect, at any time and at the Indemnified Party's sole cost, expense and ultimate liability, regardless of outcome, and through counsel of its choice, to litigate, defend, settle, or otherwise attempt to resolve such Claim. If the Indemnified Party so elects (for reasons other than the

Indemnifying Party's inability, failure, or refusal to provide a defense to such Claim), then the Indemnifying Party shall have no obligation to indemnify the Indemnified Party with respect to such Claim. In any event, all parties hereto shall fully cooperate with any other party and their respective counsel in connection with any such litigation, defense, settlement, or other attempt at resolution.

V. Insurance.

A. General Liability Insurance. MCSPI shall maintain General Liability Insurance at its own expense during the life of this Agreement, naming and protecting MCSPI and JPA, their officials, employees and volunteers as insureds, against claims for damages resulting from (a) all acts or omissions, (b) bodily injury, including wrongful death, (c) personal injury liability, and (d) property damage which may arise from operations under this Agreement whether such operations are carried out by MCSPI or MCSPI's employees or agents. The minimum acceptable limits of liability to be provided by such insurance for the first ten (10) years of the Agreement shall be as follows:

1. All Acts or Omissions - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
2. Bodily Injury/Property Damage - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
3. Personal Injury Damage - \$1,000,000 each Occurrence; and
4. Contractual Liability - \$1,000,000 each Occurrence; and
5. Products Liability and Completed Operations - \$1,000,000 each Occurrence; and
6. Medical Expenses (any one person) - \$10,000; and
7. Fire Damage (any one fire) - \$100,000.

B. Certificate of Insurance. MCSPI shall furnish JPA with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. The JPA shall be specifically named as an additional insured on the General Liability Insurance. Proof of workers' compensation shall be shown as appropriate. All certificates shall provide for thirty (30) days written notice to JPA, and MCSPI prior to the cancellation, non-renewal, or material change of any insurance referred to therein. MCSPI shall provide JPA with a waiver of subrogation.

C. Insurance Review. The parties shall meet and confer every ten (10) years from the effective date of this Agreement regarding insurance limits to update them to current standards used by JPA for leases and contracts with contractors, which shall also conform to those standards used in the industry, subject to JPA's final discretion. MCSPI shall then adjust its insurance limits to those standard limits used by JPA as provided by JPA to MCSPI in writing.

VI. Severability.

If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable, or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any of the other provisions of this Agreement inoperative, unenforceable, or invalid.

VII. Construction.

The parties hereto acknowledge and agree that each party has participated in the drafting of this Agreement and that this document has been reviewed by the respective legal counsel for the parties hereto and that no inference in favor of, or against, any party shall be drawn by the fact that one party has drafted any portion hereof.

VIII. Authority.

This Agreement has been duly executed and delivered by the parties and constitutes a legal, valid and binding obligation of each party, enforceable against the same in accordance with its terms. The JPA owns the Property, and no other persons have any interest in such real estate which would detrimentally affect MCSPI's ability to use the Right of Entry for the purposes stated herein.

IX. Integration and Amendments.

This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended or modified only in writing signed by both Parties.

Executed by West Haymarket Joint Public Agency this _____ day of _____, 2023.

ATTEST:

WEST HAYMARKET JOINT PUBLIC AGENCY,
a political subdivision and corporate body politic of
the State of Nebraska.

City Clerk

By: Leirion Gaylor Baird, Chair

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by Leirion Gaylor Baird, Chair, on behalf of the West Haymarket Joint Public Agency, a political subdivision and corporate body politic of the State of Nebraska.

Notary Public

Executed by Municipal and Contractors Sealing Products, Inc. this _____ day of _____, 2023.

Municipal and Contractors Sealing Products, Inc.

By: _____
President

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by _____, known to me to be the _____ of Municipal Contractors Sealing Products, Inc., on behalf of the corporation.

Notary Public

Insurance Requirements

Submitted on	23 May 2023, 1:01PM
Receipt number	922
Related form version	18

The requirements herein apply to contracts to be issued by the City of Lincoln, Lancaster County, the Lincoln-Lancaster County Public Building Commission, and the West Haymarket Joint Public Agency. For purposes of certificates, endorsements and other proof required herein, only include the entity issuing the contract.

DEFINITIONS: For purposes of these Requirements, the following definitions apply:

- **“Agreement”** shall mean the contract between the Owner and the Contractor into which these Insurance Requirements are incorporated by reference.
- **“City”** shall mean the City of Lincoln, NE.
- **“COI”** shall mean a Certificate of Insurance.
- **“Contractor”** shall mean the individual, company, etc. being hired to perform the Work under the Agreement. Contractor shall include all owners, officers, employees, agents, and subcontractors and employees of any of them.
- **“County”** shall mean the County of Lancaster, Nebraska.
- **“Owner(s)”** shall mean any, all, or a combination of the City of Lincoln, NE, County of Lancaster, Nebraska, Lincoln-Lancaster County Public Building Commission, and/or the West Haymarket Joint Public Agency and their elected and appointed officials, officers, employees, agents, contractors, and consultants.
- **“PBC”** shall mean the Lincoln-Lancaster County Public Building Commission.
- **“Site”** shall mean the location the Work is being completed and/or delivered to.
- **“WHJPA”** shall mean the West Haymarket Joint Public Agency.
- **“Work”** shall mean the project being completed, products being delivered, and/or services being provided as contemplated in the Agreement.

OWNERS: The Insurance Requirements apply to the following: WHJPA

PROVISIONS:

- 3. Commercial General Liability
- 4. Automobile Liability
- 5. Workers' Compensation

Contractor shall comply with the following provisions:

1. Insurance; Coverage Information

- A. The Contractor shall, prior to beginning work, satisfy all provisions of these Insurance Requirements and shall provide proof of insurance coverage in a form satisfactory to the Owner, which shall not unreasonably withhold approval. Contractor shall comply with these Insurance Requirements, including maintaining all coverages required by these Insurance Requirements, at all times the Work is being done pursuant to the Agreement.
- B. Contractor's insurance shall be primary and non-contributory with any insurance coverage maintained by the Owner. Owner's insurance policies, if any, operate secondary, in excess, separately and independently from policies required to be provided by Contractor. The policies shall be written for not less than the limits of liability required herein. If Contractor maintains higher limits than the minimums shown, the Owner requires and shall be entitled to the higher limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Owner.

Deductibles/Retentions: Deductibles/Retentions above \$25,000.00 shall not be permitted unless written consent is given by the Owner prior to close of an RFP or bid, or upon execution of the Agreement if a formal bid or RFP is not issued.

Owner has sole and exclusive discretion to reject deductibles/retentions that do not meet Owner's satisfaction.

Self-Insurance: In the event Contractor is self-insured for any insurance coverages required in this Agreement, Contractor is required to complete a Self-Insured Certification. If Contractor is self-insured for Workers Compensation, Contractor shall provide Owner a copy of Nebraska Certificate of Self-Insurance for Workers' Compensation.

Owner(s) checked below shall be listed as the Certificate Holder West Haymarket Joint Public Agency
on the COI using the following address: 555 S. 10th St.,
Lincoln, NE 68508

2. Certificates

- A. The Contractor shall provide to Owner, in a form acceptable to Owner, a COI demonstrating the coverage required herein and include copies of all necessary endorsements, waivers, or other documents required by these Insurance Requirements before being permitted to begin the Work pursuant to this Agreement.

3. Commercial General Liability: The Contractor shall have, maintain, and provide proof of Commercial General Liability Insurance.

- A. **Basis:** Occurrence basis.
- B. **Limits:** Not less than \$1,000,000 combined single limit (CSL) each occurrence; \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate.
- C. **Coverage:** Coverage shall include: Premises-Operations, Products/ Completed Operations, Contractual, Broad Form Property Damage, and Personal and Advertising Injury. The required insurance must include coverage for all projects and operations by or on behalf of Contractor or similar language that meets the approval of the Owner, which approval shall not be unreasonably withheld. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in this agreement. Policy shall have a Cross-Liability/Separation of Insureds Clause specifying the insureds' protection under the policy as if each insured had a separate policy, with the exception of the limits of liability and any rights or duties that are designated to be for the first named insured only.
- D. **Additional Insured Endorsement Form:** The Contractor shall name the Owner as additional insured on Contractor's Commercial General Liability policy.
- E. **Waiver of Subrogation/Waiver of Right of Recovery Endorsement Form:** Contractor shall have policy endorsed with a waiver of subrogation/waiver of right of recovery in favor of Owner.

4. Automobile Liability: The Contractor shall have, maintain, and provide proof of Automobile Liability insurance.

- A. **Basis:** Occurrence basis.
- B. **Limits:** Not less than \$1,000,000 CSL per accident. Auto Liability shall not be subject to an aggregate.
- C. **Coverage:** Coverage shall include liability arising out of the ownership, maintenance, or use of any motor vehicle, including Owned, Leased, Hired and Non-Owned.
- D. **Additional Insured Endorsement Form:** The Contractor shall name the Owners as additional insured on Contractor's Automobile Liability policy.
- E. **Waiver of Subrogation/Waiver of Right of Recovery Endorsement Form:** Contractor shall have policy endorsed with a waiver of subrogation/waiver of right of recovery in favor of Owner.

5. Workers' Compensation; Employers' Liability: The Contractor shall have, maintain, and provide proof of Workers' Compensation insurance.

- A. **Limits:** Workers' Compensation coverage not less than statutory requirements under the laws of the State of Nebraska and any other applicable State where Work may be performed. Employer's Liability coverage with limits of not less than \$500,000 each accident or injury shall be included.
- B. **Waiver of Subrogation/Waiver of Right of Recovery Endorsement Form:** Contractor shall have policy endorsed with a waiver of subrogation/waiver of right of recovery in favor of Owner. The Contractor shall have its Workers' Compensation insurance carrier, or, if the Contractor is self-insured, then the Contractor itself shall, waive its subrogation rights/rights of recovery against the Owner and shall provide to Owner, in a form acceptable to Owner, a written document, signed by an authorized Officer of the Contractor confirming Contractor has waived their right of subrogation/waived their right of recovery.
- C. Sole proprietors and certain very small entities may be exempt from these requirements and it is the obligation of the Contractor to submit documentation to the Owner of the basis for any such exemption. Contractor will not hire/engage any employees or independent contractors without procuring a Workers Compensation policy and providing proof to the Owner.

Subcontractors: The Contractor shall ensure that all tiers of Contractor's subcontractors comply with insurance requirements identical to the Insurance Requirements between the Contractor and Owner. Contractor shall provide, upon Owner's request, all documentation evidencing such compliance, to Owner on behalf of Contractor and Contractor's subcontractors.

Cancellation/Renewal Notice: Contractor's policies must contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, non-renewed or aggregate limits exhausted until at least 30 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice from insurer, Contractor shall provide a copy of the notice to Owner. If coverage required under this Agreement is cancelled or non-renewed, Contractor shall provide evidence of replacement coverage, with no lapse in coverage between the policies. Contractor shall provide, prior to expiration of any policy(ies), certificates of insurance and endorsement forms evidencing renewal insurance coverages as required in this Agreement.

Owner's Option: Owner may purchase and maintain at Owner's expense, liability insurance. Contractor cannot rely upon Owner's liability policy(ies) for any of Contractor's insurance obligations required herein.

Umbrella or Excess Liability: The Contractor may use an Umbrella, Excess Liability, or similar coverage to supplement the primary insurance stated above in order to meet or exceed the minimum coverage levels required by this Agreement provided such umbrella/excess coverage is not more restrictive than the primary coverage. Such coverage shall be excess of the Commercial General Liability, Auto Liability and Employer's Liability. If the Contractor is required to have, maintain and provide proof of Garage Liability, the Umbrella/Excess Liability shall

also be excess of Garage Liability.

Minimum Rating - Insurer: All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than "A-" VIII, unless Owner has expressly approves in writing.

Reservation of Rights: The Owner reserves the right to require a higher limit of insurance or additional coverages when the Owner determines that a higher limit or additional coverage is required to protect the Owner or the interests of the public.

Sovereign Immunity: Nothing contained in this clause or other clauses of this Agreement shall be construed to waive the Sovereign Immunity of the Owner.

No Waiver by Owner: Failure of the Owner to object to the form or content of the certificate or endorsement or to demand such proof as is required herein shall not constitute a waiver of any insurance requirement set forth herein.

Failure of Owner to demand such certificates of insurance, endorsements or other evidence of the Contractor's full compliance with these insurance requirements, or failure of Owner to identify any deficiency in compliance from the evidence provided, shall not be construed as a waiver of the Contractor's obligation to obtain and maintain such insurance at all tiers.

Claims-made Tail Coverage: Any liability insurance arranged on a claims-made basis, will require an Extended Reporting coverage for the duration specified or the maximum time period the Contractor's insurer will provide, if less than the duration specified. Contractor will be responsible for furnishing certification of Extended Reporting coverage as described or continuous "claims made" liability coverage for the additional period. Continuous "claims made" coverage is acceptable in lieu of Extended Reporting coverage, provided the retroactive date is on or before the effective date of this Agreement and there is no prior or pending date added to the policy after the inception of this Agreement.

QUESTIONS

Consult with your insurance agent or broker on how to acquire the required coverages, endorsements, and waivers needed for your Agreement.

For additional information or questions concerning coverage or acceptable forms, Contractor may contact the Purchasing Division at 402-441-8103, or the Department that issues the Agreement. For general questions regarding Insurance Requirements, please contact the City of Lincoln Risk Management at 402-441-7671 or County of Lancaster, Nebraska's Risk Management at 402-441-6510, as appropriate.

E-mail Address (Internal use only)

cconnolly@lincoln.ne.gov

RESOLUTION NO.

1 BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public
2 Agency:

3 That the attached Agreements between First Data Merchant Services, LLC and the West
4 Haymarket Joint Public Agency to furnish and install a point of sale system at Pinnacle Bank Arena
5 for the amounts listed for each component over the course of the five (5) year agreements are
6 hereby approved:

- | | | | |
|----|------------------------------|----------------|-------------------|
| 7 | a. Hardware Lease: | \$535,962.10 | (five year total) |
| 8 | b. Software Subscription: | \$489,000.00 | (five year total) |
| 9 | c. One-Time Installation: | \$60,303.00 | (first year only) |
| 10 | d. Estimated Acquiring Fees: | \$1,250,000.00 | (five year total) |

11 The costs for the Hardware Lease, Software Subscription, and the One-Time Installation shall not
12 exceed the amounts set forth herein without further approval of the Board of Representatives. The
13 Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby
14 authorized to execute said Agreements on behalf of the Joint Public Agency.

Adopted this _____ day of June, 2023.

Introduced by:

WH 23-17

Introduce: 6-7-23

RESOLUTION NO.

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Leirion Gaylor Baird

Tim Clare

Tom Beckius

MERCHANT PROCESSING APPLICATION AND AGREEMENT

(Page 1 of 3)

CMM_MB_2508

(1) TELL US ABOUT YOUR BUSINESS

CMM_MB_2508

Legal Name:		Store #:	
DBA/Outlet Name:		First/Last Contact Name:	
Address: (No P.O. Box)	Suite #:	City:	State: Zip:
Business Phone:		Customer Service Phone:	
Fax Phone:		Cell Phone:	
E-Mail Address:		Website URL Address:	
TIN Type: <input type="checkbox"/> EIN (Fed Tax ID #) <input type="checkbox"/> SSN Retrieval Requests: <input type="checkbox"/> (02) Dedicated 24 hour fax <input type="checkbox"/> (03) No fax; mail <input type="checkbox"/> (05) Dispute Manager			

NOTE: Failure to provide accurate information may require us to withhold income tax from your funding per IRS regulations.

Name (as it appears on your income tax return)	<input type="checkbox"/> Federal Tax ID# (as it appears on your income tax return)	<input type="checkbox"/> I certify that I am a foreign entity/nonresident alien. (If checked, please attach IRS Form W-8.)
--	--	---

Product/Services you sell: _____

What percentage of your orders are delivered within the following time frames (transaction to delivery)?

0-7 days _____% + 8-14 days _____% + 15-30 days _____% + 31-90 days _____% + 91-180 days _____% + over 180 days _____% = **100%**Who performs product/service fulfillment? Direct _____ Vendor _____ If Vendor, add name, address, phone. ☐ Other: (specify) _____Do you use any third party to store, process or transmit cardholder data? ☐ Yes ☐ No

If yes, give name/address: _____

Please identify any Software used for storing, transmitting, or processing card transactions or authorization requests. _____

(2) OWNERSHIP

Provide the following information for each individual who owns, directly or indirectly, 25% or more of the equity interest of your business.

State Organized: _____ Mo/Yr Started: _____ ☐ Sole Ownership ☐ Partnership ☐ Non Profit/Tax Exempt ☐ Public Corp. ☐ Private Corp. ☐ LLC ☐ Gov't.

Owner/Partner/Officer Name:	D.O.B.:	Social Security #:
Home Phone:	Ownership %:	
Home Address:	City:	State: Zip: Country:
Owner/Partner/Officer Name:	D.O.B.:	Social Security #:
Home Phone:	Ownership %:	
Home Address:	City:	State: Zip: Country:
Owner/Partner/Officer Name:	D.O.B.:	Social Security #:
Home Phone:	Ownership %:	
Home Address:	City:	State: Zip: Country:
Owner/Partner/Officer Name:	D.O.B.:	Social Security #:
Home Phone:	Ownership %:	
Home Address:	City:	State: Zip: Country:

(3) BUSINESS FINANCIAL DATA

Total Annual Volume	This Location	All Locations		Card Present _____%	Swiped _____%
Total Cash and Credit	\$ _____	\$ _____	Average Card Sale Amount \$ _____	Internet _____%	Keyed _____%
Mastercard/Visa	\$ _____	\$ _____		Mail Order / Direct Marketing _____%	Total 100 %
Discover/PayPal	\$ _____	\$ _____		Phone Order _____%	
American Express	\$ _____	\$ _____		Total 100 %	
OptBlue	\$ _____	\$ _____			
Voyager	\$ _____	\$ _____			
WEX	\$ _____	\$ _____			

(4) BANKING AND FUNDING INFORMATION

ABA #: _____	DDA #: _____
<input type="checkbox"/> Attach a copy of funding check or bank letterhead/logo signed by a bank officer with typed ABA/DDA. <u>Must</u> include bank name and address.	
Deduct Fees: <input type="checkbox"/> Daily (excluding Flat Rate) or <input type="checkbox"/> Monthly (fee will apply)	Bank Will Fund: <input type="checkbox"/> Outlet <input type="checkbox"/> Head Office

MERCHANT PROCESSING APPLICATION AND AGREEMENT (Page 2 of 3)

DBA Name: _____ Loc. _____ of _____

CMM_MB_2508

(5) PAYMENTS ACCEPTED

CMM_MB_2508

- | | | |
|--|---|--|
| <input type="checkbox"/> Mastercard/Visa Credit and Signature Debit | <input type="checkbox"/> Voyager Fleet | <input type="checkbox"/> EBT |
| <input type="checkbox"/> Discover Credit and Signature Debit (Full Service Processing) | <input type="checkbox"/> Voyager Tax Exempt Program | <input type="checkbox"/> American Express |
| <input type="checkbox"/> PIN/PINless Debit | <input type="checkbox"/> WEX Full Acquiring | Pass Through SE _____ |
| <input type="checkbox"/> Signature Debit (other than Mastercard/Visa/Discover) | <input type="checkbox"/> WEX (Non-Full Acquiring) | <input type="checkbox"/> Split Dial <input type="checkbox"/> EDC |
| <input type="checkbox"/> American Express OptBlue | <input type="checkbox"/> Mastercard Fleet | <input type="checkbox"/> PayPal and Venmo QR Codes |

(6) EQUIPMENT DETAILS

Rental • Purchase Customer-Owned Lease*	QTY	IP	Equipment Type	Industry Type	Model Code and Name	Unit Price w/o Tax and S&H	For Customer-Owned Equipment Track/Version/Serial #
R P C L*		<input type="checkbox"/>				\$	
R P C L*		<input type="checkbox"/>				\$	
R P C L*		<input type="checkbox"/>				\$	

Shipping and Handling: Standard \$ **19.95** Overnight \$ **65.00** You will be charged for supplies, plus shipping and handling charges, and all applicable tax.*See Equipment Lease Agreement for the Terms and Conditions governing your leased equipment. ☐ Enable EMV**(7) FEE SCHEDULE**

Global Fee Table: _____

In addition to the fees described in this Fee Schedule, you must pay us all Payment Network Charges. "Payment Network Charges" means all fees, charges, liabilities, or obligations that a Payment Network imposes on us (1) in connection with your acceptance of its payment types, (2) in connection with the transactions processed under your MID, (3) as a result of your acts or omissions, or (4) as a result of the acts or omissions of others that act on your behalf or that provide services to you. Payment Network Charges are not subject to the consequential damages exclusion in Section 10.2 and include but are not limited to: interchange; assessments (including but not limited to dues, issuer reimbursements, fines, penalties, and fraud recovery losses); fees established by the Payment Networks (including but not limited to access fees, switch fees, and file fees); adjustments; and Chargebacks. See the Interchange Qualification Matrix and American Express OptBlue Guide available at www.businesstrack.com.

Monthly Product Fees	
Main Street Insights	(49M) \$ _____
Clover Security Plus (TransArmor Solution)	(3CM) \$ _____
*Clover Software Plan	

*Clover software plans are billed separately through the Clover App Market. If you move to a new software plan in the Clover Dashboard, your monthly billing may change. See the Clover Dashboard for any applicable fees.

Compliance Fees	
Monthly Compliance Fee	(38A) \$ _____
Annual Compliance Fee	(42F) \$ _____

Mobile Payments Solution (Clover Go)	
Mobile Payments Monthly Fee (per Terminal ID)	(32Y) \$ _____

eCommerce/Wireless Solutions	
Payeezy Monthly Fee	(40A) \$ _____
Payeezy Authorization Fee	(0FC) \$ _____
Global ePricing Mastercard/Visa Service Fee	(897, 898) _____ %
Third Party Internet Set-Up Fee	(30R) \$ _____
Third Party Internet Authorization Fee	(03R, 04R, 06I, 07I) \$ _____
Third Party Internet Service Fee	(394) \$ _____
Wireless Activation Fee (per Device)	(60I) \$ _____
Wireless Access Fee (per Device)	(60J) \$ _____

Start-Up Fees	
Application Fee (Non-Refundable)	(32I) \$ _____
Reprogramming Fee	(31A) \$ _____
Debit Set-Up Fee	(31B) \$ _____
*Equipment Purchase	(ACH) \$ _____
Total Amount	\$ _____ w/o tax
*Plus applicable State/City/Local sales tax.	

PIN Debit Fees	
*PIN Debit Authorization Fee	(19D) \$ _____
PIN Debit Adjustment Processing Fee	(42Q) \$ _____
*Plus applicable PIN Debit Network Fees	

Petroleum Services	
Datawire Micronode <input type="checkbox"/> Yes <input type="checkbox"/> No	
Monthly Maintenance Fee	(354) \$ _____
Voyager Authorization Fee	(0D0, 0D1, 0DV) \$ _____
Sales/Credit Discount	(766, 767) _____ %
WEX Full Service Authorization Fee	(0D4) \$ _____
Sales/Credit Discount	(840, 841) _____ %
Non-Full Service Authorization Fee	(0B0, 0B1, 0BV) \$ _____

Miscellaneous Fees (If applicable)	
TransArmor Data Protection Token & Encryption	(12E, 12G) \$ _____
TransArmor Data Protection Token & Encryption Verifone	(12I) \$ _____
Non-Receipt of PCI Validation	(42G) \$ _____
Monthly Maintenance Fee	(354) \$ _____
Monthly Account Minimum Fee	(954) \$ _____
Paper Statement Fee (Default is free electronic statement)	(240) \$ _____
Incoming Retrieval Fee	(285, 48E) \$ _____
Incoming Chargeback Fee	(ZZ9, 48F) \$ _____
Incoming Pre-Arb & Pre-Comp Case Fee	(491, 48D) \$ _____
ACH Reject Fee	(401) \$ _____
Batch Settlement Fee	(227) \$ _____
Monthly Funding Advantage	(158, 658) _____ %
AVS	(405, 406, 407, 408, 07A, 07B, 07C, 069, 079, 03G) \$ _____
Voice Authorization	(10B, 10E, 10K, 10Q) \$ _____
Mastercard/Visa Access Fee	(505, 504) \$ _____
Mastercard License Volume Fee	(818) _____ %
American Express Authorization Fee	(10P) \$ _____
EBT	(18E, 18I, 02X, 18H) \$ _____
MC/Visa Comm Card IC Svc Fee (see General Terms & Conditions)	(63M, 63V) _____ 75%
Early Termination Fee (see Section 17 of General Terms & Conditions)	\$ _____
Advantage Deposit ACH Fee (per Credit ACH entry)	(4AB) \$ _____
Advantage Deposit ACH Volume Fee (per Credit ACH entry Amount)	(48J) _____ %
Other:	\$ _____

MERCHANT PROCESSING APPLICATION AND AGREEMENT (Page 3 of 3)

DBA Name: _____ Loc. _____ of _____
 CMM_MB_2508 (7) FEE SCHEDULE (cont'd) CMM_MB_2508

Pricing Method ^A	2-Tier	3-Tier	Transaction Fees	Discount Rate	Interchange Plus
Qualified Discount Rates					
Mastercard/Visa/Discover Ntwk/PayPal Credit Discount Rate (800, 804, 170)	_____ %	_____ %	Mastercard/Visa/Discover Ntwk/PayPal Credit Trans Fee (001, 002, 005, 006, 015, 016) \$ _____	_____ %	_____ %
Mastercard/Visa/Discover Ntwk/PINless POS Signature Debit Discount Rate (850, 854, 964, 27P, 83A)	_____ %	_____ %	Mastercard/Visa/Discover Ntwk/PINless POS Signature Debit Trans Fee (130, 131, 134, 135, 787, 788, 18C, 0A1, 0A2) \$ _____	_____ %	_____ %
American Express OptBlue (164, 165)			Return Trans Fee (014) \$ _____		_____ %
Mid-Qualified Discount Rates (Does not apply to 2-Tier)					
Mastercard/Visa/Discover Ntwk/PayPal Credit Discount Rate (810, 814, 990)		_____ %	Mastercard/Visa/Discover Ntwk/PayPal Credit Trans Fee (611, 612, 615, 616, 717, 718) \$ _____		
Mastercard/Visa/Discover Ntwk Signature Debit Discount Rate (870, 874, 968, 83E)		_____ %	Mastercard/Visa/Discover Ntwk Signature Debit Trans Fee (140, 141, 144, 145, 791, 792, 62X, 62Y) \$ _____		
Non-Qualified Discount Rates					
Mastercard/Visa/Discover Ntwk/PayPal Credit Discount Rate (820, 824, 994)	_____ %	_____ %	Mastercard/Visa/Discover Ntwk/PayPal Credit Trans Fee (621, 622, 625, 626, 721, 722) \$ _____		
Mastercard/Visa/Discover Ntwk Signature Debit Discount Rate (880, 864, 978, 83I)	_____ %	_____ %	Mastercard/Visa/Discover Ntwk Signature Debit Trans Fee (150, 151, 154, 155, 795, 796, 63Q, 63R)		
Mastercard/Visa/Discover Ntwk/PINless POS Authorization & Return Transaction Fee (10A, 10D) (002, 006) (131, 135) (10J, 016, 788, 19E, 11P)				\$ _____	\$ _____
Non-Qual Surcharge Fee (30D) Applies to Non-Qualified Mastercard, Visa, Discover Ntwk/PayPal, and/or Signature Debit Transactions. (excluding Payment Network charges, and any interchange rate difference) Rewards Cards Surcharge Rate (20N)				_____ %	_____ %

^A Interchange Rates are variable and are determined by how your transactions clear. Please see your Interchange Rate Schedule, Interchange Qualification Matrix, Payment Network Pass-Through Fee Schedule and American Express OptBlue Guide for Interchange Rates & Dues/Assessments and qualification criteria as of the date of this Application. The Interchange Rates and Dues/Assessments are subject to change. American Express OptBlue has Program Pricing which is not Interchange and which is subject to change.

The initial term of this Agreement is three years from the date of your approval by our Credit Department (the Initial Term). If you terminate this Agreement before the end of the then current term or otherwise stop processing your transactions with us, you agree that our damages will be equal to the average monthly fees paid by you while this Agreement was in effect (excluding all Payment Network Charges) multiplied by the number of months remaining in the term of the Agreement, and that you will pay this amount to us. After the Initial Term, subject to Section 16.3, this Agreement shall automatically extend for an additional period of one year each (each an Extended Term). Merchant Initials: _____

(8) AGREEMENT APPROVAL

On behalf of myself as an individual, and the entity on whose behalf I am signing, (A) I authorize Servicers, the applicable Payment Networks and its and their Affiliates, third party subcontractors and/or agents: (i) to use, disclose, and exchange amongst them, the information in the Agreement and information about me personally, (including by requesting, personal and business consumer reports, bank references, and other information as necessary from time to time), for marketing and administrative purposes, verification purposes, purposes under the Merchant Processing Application and Agreement ("MPA"), if approved, and any other uses permitted by law; (ii) to inform me directly about the contents of requested consumer reports (including the name and address of the agency furnishing the report), and (iii) to receive any and all personal and business credit financial information from all references, including banks and consumer reporting agencies, which are hereby released to provide that information; and (B) I certify that: (i) The federal taxpayer identification number and corresponding filing name provided herein are correct; (ii) The statements made and agreed to in this MPA, to which I have not made any alterations or stricken out any language, are true, complete and accurate, and may be relied upon as current unless changed or updated per the Notice provisions of Agreement; (iii) I can read and understand the English language; (iv) I have received and read a copy of the (a) MPA (consisting of Sections 1-9), (b) General Terms and Conditions, (c) Confirmation Page (version CMM_MB_2508), and (d) Interchange rate Schedule. I understand that the Interchange Qualification Matrix and American Express OptBlue Guide and Your Payments Acceptance Guide are available at www.businesstrack.com and the signature below is for the entire contents of the listed documents; v) I have authority to bind the entity on whose behalf I am signing below. This Agreement shall become effective upon the later of the date this Agreement is approved by us or the date this Agreement has been accepted by Processor and Bank. Acceptance by Processor and Bank will occur upon the earlier of execution of this Agreement by Processor and Bank, or the commencement of the provision of the Services by Processor and Bank. You acknowledge that we maintain a list of business types that are unqualified for our Services. We reserve the right to immediately terminate your account if it has been inadvertently boarded.

I further acknowledge and agree that I will not use my merchant account and/or the Services for illegal transactions, for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq, as may be amended from time to time or for processing and acceptance of transactions in certain jurisdictions pursuant to 31 CFR Part 500 et seq. and other laws enforced by the Office of Foreign Assets Control (OFAC). To help the government fight the funding of terrorism and money laundering activities, Servicers obtain, verify, and record certain information including your full name, physical address, and any other information needed for identity verification purposes while processing this MPA, as described in the USA Patriot Act.

Merchant's Business Principal/Officer:

Signature X _____ Title _____

Print Name of Signer _____ Date _____

Processor: First Data Merchant Services LLC

Signature X _____ Title: _____

Printed Name: _____ Date: _____

Bank: MetaBank, National Association
 (a member of Visa USA, Inc. and Mastercard International, Inc.)
 By: First Data Merchant Services LLC, pursuant to a limited power of attorney

Signature X _____ Title: _____

Printed Name: _____ Date: _____

(9) PERSONAL GUARANTEE

In exchange for First Data Merchant Services LLC, and MetaBank, National Association, (a member of Visa USA, Inc. and Mastercard International, Inc.), (the Guaranteed Parties) acceptance of the MPA and the General Terms and Conditions, the undersigned ("Guarantor"): (A) Unconditionally and irrevocably guarantees the full payment and performance of Merchant's obligations (i) as they now exist or as modified under the foregoing agreements, (ii) with or without actual notice of changes, and (iii) during and after the term of the agreements; (B) Waives notice of Merchant's default; (C) Shall indemnify the Guaranteed Parties for any and all amounts due from Merchant; (D) Warrants, with knowledge that Guaranteed Parties are acting in full reliance on the same, this Personal Guarantee of payment and not of collection; (E) Acknowledges that (i) the Guaranteed Parties may proceed in law directly against Guarantor and not Merchant, and (ii) this is a continuing personal guarantee and shall not be discharged or affected for any reason.

Signature (Please sign below):

Signature (Please sign below):

_____, an individual _____, an individual

Part 1: Confirmation Page

Processor Information:Name: First Data Merchant Services LLCAddress: 4000 Coral Ridge Drive, Coral Springs, FL 33065URL: merchants.fiserv.comCustomer Service #: 1-866-359-3081

Please read this entire Agreement. It describes the terms on which we will provide merchant processing Services to you. This summary provides answers to commonly asked questions about your Agreement.

1. **Your Discount Rates and other fees** are calculated based on transactions qualifying for certain program pricing and interchange rates levied by the applicable Payment Network. Transactions that fail to qualify for these rates will be charged an additional fee. Interchange and program pricing levied by the Payment Network is subject to change, (see Section 6 of the General Terms & Conditions).
2. **We may debit your bank account** (also referred to as your Settlement Account) for amounts owed to us.
3. **You are liable for Chargebacks and there are many reasons why a Chargeback may occur.** When they occur we will debit your Settlement Account. See Section 8 of the General Terms & Conditions.
4. **In consideration of the Services** provided by us, you shall be charged, and hereby agree to pay us any and all fees set forth in this Agreement (for the purpose of clarity, this includes the Application and any additional pricing supplements or subsequent communications), all of which shall be calculated and payable pursuant to the terms of this Agreement and any additional pricing supplements or subsequent communications. If you wish to dispute any charge or funding, you must notify us within 60 days of the date of the statement on which the charge or funding appears.
5. **This Agreement limits our liability to you.** See Section 10 of the General Terms & Conditions for further details.
6. **We have assumed certain risks** by agreeing to provide you with the Services. Accordingly, we may take certain actions to mitigate our risk, including termination of this Agreement, and holding monies otherwise payable to you (see Sections 16 and 18 of the General Terms & Conditions).
7. **By executing this Agreement with us** you authorize us and our Affiliates to obtain and share financial and credit information regarding your business and the signers and guarantors of this Agreement until all your obligations to us and our Affiliates are satisfied.
8. **Early Termination Fee:** If you terminate this Agreement before the expiration of your initial 3 year term, you may have to pay an early termination fee. See Section 17 of the General Terms & Conditions.
9. **Arbitration:** This Agreement contains a binding arbitration provision in Section 29 that affects your rights under this Agreement with respect to all Services.
10. **For questions or concerns regarding your merchant account,** contact customer service at the number located on your Merchant Services Statement.

Information about Bank:

- a) Your Bank, who is a Visa and Mastercard Member Bank, is MetaBank, National Association (**Bank**), 5501 S. Broadband Lane, Sioux Falls, SD 57108, (866-550-6382).
- b) Bank is the entity approved to extend acceptance of Visa and Mastercard products directly to you and will be a party to the sections of this Agreement listed in Section 2.2.
- c) Bank works with Processor to provide the Services to you with respect to Visa Cards and to Mastercard Cards.
- d) Bank shall, either directly or through Processor, advise you of pertinent Payment Network Rules with which you must comply.
- e) Bank is responsible for and must provide settlement funds to you and will be responsible for all funds held in a reserve.

Your Responsibilities:

- a) You must comply in full at all times with this Agreement, all Payment Network Rules, Your Payment Acceptance Guide, and all Cardholder and customer data security and storage requirements.
- b) You may view and download the Your Payments Acceptance Guide at <https://www.buinessstrack.com>
- c) You may view and download the Interchange Qualification Matrix and American Express OptBlue Guide at <https://www.buinessstrack.com>
- d) You may download the Visa and Mastercard rules at: <https://usa.visa.com/dam/VCOM/download/about-visa/visa-rules-public.pdf> www.mastercard.us/content/dam/mccom/global/documents/mastercard-rules.pdf
- e) For your account to stay operational, you must keep fraud and Chargeback levels below Payment Network thresholds.
- f) Please retain a signed copy of your Agreement.

Print Merchant's Business Legal Name: _____**By signing below, you:**

1. confirm that you have received and read the Application, General Terms & Conditions, consisting of 13 pages including this Confirmation Page and Interchange Rate Schedule; and
2. agree to all terms in this Agreement in your capacity as a person authorized to sign on behalf of the business set out in the Application; and
3. acknowledge that if you have executed the Agreement using an electronic signature process, that signature reflects your agreement to be bound to the General Terms found in the Agreement and has the same legal effect as if you had signed it by hand.

NO SALES REPRESENTATIVE IS AUTHORIZED TO ACCEPT OR AGREE TO ANY ALTERATIONS TO THIS AGREEMENT.**Business Principal Signature:**

(Please sign below)

X _____

Title

Date

Please Print Name of Signer

Part 2: General Terms & Conditions

1 Your Payments Acceptance Guide and Payment Network Rules

- 1.1 The General Terms & Conditions (**General Terms**), together with your Application, the Interchange Rate Schedule and the Your Payments Acceptance Guide constitute the agreement for Card Transaction acceptance and other related Services (this **Agreement**).
- 1.2 You agree to comply with the Your Payments Acceptance Guide and the Payment Network Rules relevant to you, as they may change over time. The current Your Payments Acceptance Guide is available at www.businessstrack.com.
- 1.3 If there are any inconsistencies between the General Terms and the Your Payments Acceptance Guide, or the Payment Network Rules, the General Terms will govern.
- 1.4 You may not alter this Agreement.

2 Services and Non-Bank Services

- 2.1 Your Application will identify the Services you will receive. Certain Services referred to in this Agreement may not be available to you. Certain Services may require additional terms.
- 2.2 Subject to Payment Network Rules, Services may be performed by us, our Affiliates, our agents, or other third parties we may designate. References to "we", "our", and "us" shall be deemed to be references to Bank and Processor except for the purposes of Sections 2.1, 2.3, 2.4, 4.7, 6.9, 11.2, 11.5, 11.6, 11.7, 13.1, 21, 25, 34 and 38. Bank shall not be a party to the aforementioned Sections nor shall Bank have any responsibility or liability pursuant to such Sections. Third Party Services, including products, promotions, any apps available in an application marketplace, or voice, or data services you purchase directly from a third party provider, are not governed by this Agreement and we are not responsible for providing, maintaining, servicing or supporting such services. If you decide to use Third Party Services, you will be responsible for reviewing and understanding the terms and conditions associated with Third Party Services. Any third party content downloaded or otherwise obtained through the use of the Services is downloaded at your own risk. **We will not be responsible for any actions or any failures to act of any third party, and we expressly disclaim any liability related to all Third Party Services. We do not warrant, endorse, guarantee, or assume responsibility for any third party service or product, advertised or offered, through the Services or any hyperlinked website or service, or featured in any banner or other advertising, and we will not be a party to or in any way monitor any transaction between you and providers of Third Party Services or products.**
- 2.3 If you do not qualify for our full service program but have otherwise been approved for accepting American Express or WEX, your American Express and WEX transactions will be processed through and funded by American Express or WEX (as applicable). American Express and WEX will provide you their own agreements governing those transactions. You agree that (a) we are not responsible and assume no liability for any such transactions; and (b) American Express and WEX may charge additional fees for the services they provide.
- 2.4 Rather than accepting all categories of Cards, you have the option to elect to accept only certain categories of Cards (**Limited Acceptance**). If you wish to elect Limited Acceptance, you must complete the Limited Acceptance Form and agree to be bound by the additional terms and conditions set out in that document.

3 Access and Use of Services

- 3.1 Except as specified in the Your Payments Acceptance Guide, or otherwise agreed in writing, the Services shall be for your internal business use in the United States only.
- 3.2 You shall not and shall not permit any third party to: (a) access or attempt to access any Service that is not intended to be available to you; (b) access or use (in any format) the Services (or any part) through any time-sharing service, service bureau, network, consortium, or other means; (c) without our advanced written consent, use, ship or access Services (or any part) outside or from outside of the United States; (d) perform or attempt to perform any actions that would interfere with the proper working of any Service, prevent access to or use of any Service by other users, or in our reasonable judgment, impose a large load on our infrastructure, network capability, or bandwidth; or (e) use the Services (or any part) except as permitted in this Agreement.

- 3.3 You may use the eligible TransArmor services and portals only to scan IP addresses, URLs, and domain names owned by and registered to you.
- 3.4 We have the right to rely on user names, password, and other sign on credentials/access controls for the Services or any Software provided or approved by us to authenticate access to, and use of, the Services and any Software.
- 3.5 Your use of the Clover Services is governed by Clover's Terms and Conditions of Use, which are available at <https://clover.com/terms> and Clover's Privacy Policy available at <https://www.clover.com/privacy-policy>.

4 Settlement

- 4.1 As part of the Services, we will process Transaction Data received from you and facilitate the transfer of funds for your Card sales to your Settlement Account.
- 4.2 We may debit your Settlement Account for any amounts owed to us, including any amounts paid to you in error. We may also offset any amounts owed to us or our Affiliates related to activity in other accounts maintained in your name or which you, any of your principals, guarantors, or authorized signors guarantee.
- 4.3 You are responsible for providing us with accurate information regarding your Settlement Account. If you change the Settlement Account in which you receive the proceeds of your transactions, you must notify us immediately. If you accept payment types other than Visa, Mastercard, American Express, Discover Network and PayPal, such as TeleCheck Services, you are also responsible for contacting the Payment Networks or companies governing those Cards, or payment types, to notify them of this change. We shall not be liable for delays in receipt of funds, or errors in debit and credit entries caused by you or any other Person, including any delays or errors resulting from errors in Settlement Account information you provide.
- 4.4 If a Default occurs, you agree we may without notice change processing or payment terms and/or suspend credits or other payments of any amounts due, or which become due to you.
- 4.5 Your right to receive any amounts due, or to become due, from us is expressly subject and subordinate to Chargeback, setoff, lien, security interest, and our rights to withhold settlement funds under this Agreement without regard to whether such Chargeback, setoff, lien, security interest and the withholding of settlement fund rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured or unmatured.
- 4.6 If you undertake Global ePricing (**GeP**) Transactions, you acknowledge that: (a) Settlement by us of GeP Transactions shall be made in the Local Currency on the basis of the Transaction Price of the GeP Sales Transaction under the process defined by the Payment Networks; (b) you shall be subject to any and all Foreign currency exchange rate exposure in connection with all GeP Transactions; and (c) you are solely responsible for all aspects of the GeP Transaction (other than the performance of GeP Services), including obtaining the Cardholder's agreement to a GeP Transaction, and complying with all Payment Network Rules applicable to you. Dynamic Currency Conversion as defined by Payment Network Rules is not permitted nor provided as part of the GeP Services.
- 4.7 If you accept Alipay, you non-exclusively appoint First Data Merchant Services LLC (**FDMS**) as your agent solely for the limited purpose of receiving settlement funds from Alipay on your behalf for the transactions submitted from your participating locations. You acknowledge that payment of settlement funds to FDMS by Alipay constitutes full and final settlement of such amounts payable to you by Alipay. Alipay is provided to you by Processor and not Bank.
- 4.8 If you accept PayPal and Venmo QR Codes, you non-exclusively appoint FDMS as your agent solely for the limited purpose of receiving settlement funds from PayPal and Venmo on your behalf for the transactions submitted from your participating locations. You acknowledge that payment of settlement funds to FDMS by PayPal and Venmo for PayPal and Venmo QR Codes transactions constitute full and final settlement of such amounts payable to you by PayPal and Venmo for PayPal and Venmo QR Codes transactions. PayPal and Venmo QR Codes is being provided to you by Processor and not Bank.

5 Exclusivity

- 5.1 You will use us as your exclusive provider of all Services during the Term of this Agreement.

6 Fees; Adjustment; Collection of Amounts Due

- 6.1 You will be charged, and agree to pay us, all fees set out on your Fee Schedule or elsewhere in this Agreement.
- 6.2 The fees specified on your Fee Schedule are based on the assumption that your transactions will qualify at the Anticipated Interchange and Program Pricing Levels associated with your account. If a transaction fails to qualify at the Anticipated Interchange Program Pricing Levels, you will be charged a Non-Qualified Fee, plus a Non-Qualified Surcharge for each such non-qualifying transaction.
- 6.3 If you accept a Card or transaction other than the type anticipated for your account, we will charge you our then-current transaction fee(s) for the Card or transaction and you will be responsible for the transaction to the same extent as you would be if it were of a Card or transaction type elected and approved.
- If your fees are not paid through our automatic debiting process, and we are required to pursue collection efforts, you will reimburse us for our costs in an amount of not less than \$100.
- 6.4 The fees specified on your Fee Schedule are based on (a) estimated annual volume and average transaction size for all Services provided under this Agreement; and (b) your method of doing business. If the actual volume or average transaction size are not as expected, or if you significantly alter your method of doing business, we may adjust our fees without prior notice to you. It is your responsibility to notify us of any such changes to your business.
- 6.5 We may adjust our fees to reflect new or increased fees, taxes or assessments imposed by any Payment Network or other Persons related to the Services. It is your responsibility to pay all such adjusted fees effective from the date specified in our notice to you.
- 6.6 Any Account Minimum Fee set out in your Application will be charged monthly (beginning in the calendar month after your Application is approved) for each location and will be calculated as the Account Minimum Fee set forth in your Application less the "Discount Fees" and "Other Payment Fees" that you incur for that month and location. The Account Minimum Fee shall never be less than zero.
- 6.7 An Equipment rental fee will be charged each month for each piece of Equipment rented from us, plus tax as applicable. You will also be charged for shipping and supplies.
- 6.8 An Authorization fee will be charged for each Authorization requested, whether the response is approved or declined. If you are being charged a combined fee for both Authorization and Capture we may charge this fee on the communication of all instructions that you transmit to us from your point of sale (POS) Device or other systems to our systems, whether the communications are for Authorization requests or any other capture of information, whether or not related to any individual transaction.
- 6.9 A fee will be charged for each Address Verification Service (AVS) request submitted, whether or not we are able to provide a response to the request.
- 6.10 Clients opting out of Clover Security Plus will be charged a Compliance Fee. The Compliance Fee covers our costs for systems maintenance and upgrades, mandatory IRS reporting, as well as costs associated with our required tracking and reporting of your PCI compliance. We will provide a monthly vulnerability "scan," if required, of up to 5 IP addresses. Additional required scans are your responsibility. Payment of the Compliance Fee does not discharge your responsibility to maintain PCI DSS compliance at all times.
- 6.11 You will be charged a monthly Non-Receipt of PCI Validation fee unless, within 60 days from the date this Agreement is submitted with your signature and on an annual basis after that:
- (a) you obtain any quarterly or other periodic PCI-approved vulnerability scans that the Payment Network Rules require you to obtain (for example, if you accept internet transactions);
 - (b) you remediate vulnerabilities identified by your scans in ways that enable you to comply with the Payment Network Rules and applicable standards (including the PCI DSS); and
 - (c) you confirm that you are following certain data security protocols by (i) completing an online self-assessment questionnaire (SAQ), which we will make available to you, regarding your systems and payments acceptance practices, or (ii) using PCI-

approved methods, providing us with other written evidence of your PCI DSS compliance.

If you materially change the systems you use to accept payments and you wish to avoid paying the monthly Non-Receipt of PCI Validation fee, you will need to promptly complete a new SAQ or (using PCI-approved methods) promptly provide us with other written evidence of your PCI DSS compliance.

- 6.12 In the event the State of Washington charges us business and occupation tax on the fees or amounts imposed by Payment Networks, interchange, and any other fees or assessments passed through to us associated with or charged to your transactions (**Pass-Through Fees**), you will pay us an additional monthly fee equal to the then-current rate of that tax multiplied by all Pass-Through Fees for all of your locations in Washington State for that month.
- 6.13 If you believe any adjustments should be made to your Settlement Account, you must notify us in writing within 60 days after any debit or credit is, or should have been, effected. If you notify us after 60 days, you agree we have no obligation to investigate or effect any adjustments. Any voluntary efforts by us to assist you in investigating such matters do not obligate us to continue such investigation or to conduct any future investigation.

7 Electronic Funding Authorization

- 7.1 All payments to you shall be made through the Automated Clearing House system (ACH) and shall normally be electronically transmitted directly to the Settlement Account you have designated or any successor account designated to receive provisional funding of your transactions pursuant to this Agreement. You agree that any Settlement Account designated by you will be an account primarily used for business purposes. We cannot guarantee the timeframe in which payment may be credited by your financial institution.
- 7.2 You agree to be bound by the operating rules of the ACH and you authorize us to (a) access information from the Settlement Account; (b) initiate credit and/or debit entries by wire or ACH transfer; (c) instruct your financial institution to (i) block or to initiate, if necessary, reversing entries and adjustments for any original entries made to the Settlement Account; and (ii) provide such access and to credit and/or debit, or to block the Settlement Account.
- 7.3 If we cannot process an ACH payment, we may (a) charge you the applicable fee set out in the Fee Schedule; and (b) suspend all subsequent funding until a new electronic funding agreement is signed by you, or you notify us that ACH payments can be processed.

8 Chargebacks, Fines, and Penalties

- 8.1 Cardholders and Issuers are authorized by Payment Network Rules and by law to reverse and Chargeback transactions that you submit to us. Further details are set out in the Your Payments Acceptance Guide and in the Payment Network Rules.
- 8.2 You are obligated to reimburse us (and authorize us to debit your Settlement Account) for (a) all refunds, credits, Chargebacks, and adjustments relating to transactions that you submit for processing; and (b) any fees, fines, assessments, obligations or other charges a Payment Network imposes on us in relation to your acts or omissions, or the acts or omissions of your agents or those acting on your behalf.
- 8.3 Refunds, credits, returns, and Chargebacks for GeP Transactions shall be treated as independent transactions with a Transaction Rate as determined by the Payment Network.

9 Your Representations and Warranties

- 9.1 By submitting a transaction to us, you represent and warrant that the transaction:
- (a) is genuine and arises from a genuine sale or service that you directly sold or provided as described on your Application. (The submission of Authorization requests and/or Card transaction by you for Card sales or cash advances transacted by another business is considered laundering or factoring and is prohibited);
 - (b) represents the correct amount of the goods or services purchased by the Cardholder from your business as identified on your Application;
 - (c) is not subject to any dispute, set-off, or counterclaim;
 - (d) to your knowledge, is not the result of fraud and has been authorized by the Cardholder;
 - (e) does not violate the law of any applicable jurisdiction, including the jurisdiction where you are located, where the Cardholder is located, or where we are located;

- (f) except for any delayed delivery or advance deposit Card transactions expressly authorized under this Agreement, includes your simultaneous delivery of the goods or services to the Cardholder; and
 - (g) complies with this Agreement and Payment Network Rules.
- 9.2 You further represent and warrant, as of the date of this Agreement and at the time of submission of each transaction, that:
- (a) you are validly existing, in good standing and free to enter into this Agreement;
 - (b) you have not changed the nature of your business or practices in a way not previously disclosed to us;
 - (c) each statement made on the Application or other information provided to us in support of this Agreement is true, accurate and complete, and you have maintained and updated this information to keep it true, accurate, current and complete;
 - (d) you have not filed a bankruptcy petition not previously disclosed to us;
 - (e) you will not process any credit transactions that do not correspond to a previous transaction on the original sales draft;
 - (f) you will not at any time during the Term of this Agreement, or until all amounts have been paid in full under this Agreement, grant or pledge any security interest or lien of any type in any Reserve Account, Settlement Account or in any of the transaction proceeds to any Person without our consent; and
 - (g) where you provide FNS, SNAP or WIC Benefits (as described in the Your Payments Acceptance Guide), you are an FNS authorized merchant and are not disqualified or withdrawn from redeeming food stamp coupons or otherwise disqualified or withdrawn by FNS.

10 Limitations of Liability; Exclusion of Consequential Damages

- 10.1 ***This Agreement is a service agreement. Use of the Services, Software, or any Equipment (including any Services, Software or Equipment provided by or through a third party) is at your own risk and to the maximum extent permitted by applicable law, the Services, Equipment, and any Software is provided "as is" and we disclaim all representations or warranties, express or implied, made to you or any other person, including any warranties regarding quality, suitability, merchantability, fitness for a particular purpose or that Services, Equipment, or any Software will operate uninterrupted or error free or that the Services, Equipment, or Software are secure, free of viruses or other harmful components, or do not infringe the rights of any person.***
- 10.2 ***In no event shall we or our Affiliates or any of our or their respective directors, officers, employees, agents or subcontractors, be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether any person has been advised of the possibility of such damages.***
- 10.3 ***Notwithstanding anything in this Agreement to the contrary (including Section 28):***
- (a) ***Our cumulative liability for all losses, claims, suits, controversies, breaches or damages for any cause whatsoever (including those arising out of or related to this Agreement and any indemnities), regardless of the form of action or legal theory, shall not exceed, (i) \$50,000; or (ii) the amount of fees received by us under this Agreement for Services performed in the immediately preceding 12 months, whichever is less;***
 - (b) ***Any liability that we may have to you for any delay in funding transactions will be limited to interest computed from the date that you submit the transaction to the date that we fund the transaction at the rate of the federal funds as set by the federal reserve bank of New York, New York, less 1%; and***
 - (c) ***Our liability arising out of or in any way connected with any Equipment or Software shall not exceed the purchase price or prior 12 month's rent or fees, as applicable, paid to us for the particular Equipment or Software involved.***

11 Communicating with Customers Through the Services

- 11.1 You shall provide and obtain any disclosures and consents related to the E-SIGN Act that may be required in connection with your communications and agreements with your customers through the Services.
- 11.2 If you are able to discern any information about a particular entity or individual from the information available through Main Street Insights or any other Service, either alone or with other information in your possession, you agree that the information may be subject to certain privacy, marketing, insider trading, or other applicable laws and you shall limit your use and disclosure of that information in accordance with all applicable laws.
- 11.3 With respect to each customer who desires to receive marketing material, transaction receipts, or other communications from you via text message or email, such customer must give the appropriate consent in writing; you are NOT permitted to add or modify a customer's consent indication on behalf of the customer.
- 11.4 You (or your agents acting on your behalf) shall only send marketing materials or other communications to a customer's provided phone number, street address, and/or email address if the customer has specifically consented in writing executed by the customer.
- 11.5 If you offer any loyalty program to customers through the Services or otherwise, you are solely responsible for any and all offerings made available to customers in connection with your loyalty program (each, an **Offer**). The Offer and all of the related information, including branding (trademarks and logos) and images (collectively, the **Content**) are provided and determined by you. You are solely responsible for ensuring the accuracy of the Offer and Content.
- 11.6 By providing Content to us as part of our Services, you grant us the right and license to use, modify (e.g. for formatting and display purposes), publicly perform, publicly display, reproduce and distribute such Content on and through the Services, including any Software we make available to you. This license includes the right for us to make Content available to other users who may access and use your Content.
- 11.7 You are solely responsible for (a) fulfilling the terms of your Offers and determining the criteria for your customers to earn and redeem perks, rewards, stamps, credits or incentives (**Rewards**); and (b) honoring Rewards for eligible customers who earn those Rewards and you agree not to withdraw or terminate any Offer after it has been made publicly available to your customers without offering a reasonable alternative method for customers to redeem any Rewards related to the Offer.
- 11.8 You are solely liable for, and we shall have no liability in relation to, any costs or expenses (including refunds) associated with your Offers or Rewards or your failure to issue, accept, fulfill or redeem any Rewards.

12 Confidentiality

- 12.1 You shall safeguard all confidential information we supply or otherwise make accessible to you (including the terms of this Agreement) using a reasonable degree of care. You shall only use our confidential information for the purposes of this Agreement and shall not disclose our confidential information to any person, except as we may agree in advance and in writing. At our request, you shall return to us or destroy all of our confidential information in your possession or control.
- 12.2 You agree that breach of the restrictions on use or disclosure of our confidential information would result in immediate and irreparable harm to us, and money damages would be inadequate to compensate for that harm. We shall be entitled to equitable relief, in addition to all other available remedies, to redress any breach.
- 12.3 You may submit comments or ideas about our Services, including about how to improve our Services. By submitting any idea, you agree that: (a) we expressly disclaim any confidentiality obligations or use restrictions, express or implied, with respect to any idea; (b) your submission will be non-confidential; and (c) we are free to use and disclose any idea on an unrestricted basis without notifying or compensating you. You release us from all liability and obligations that may arise from our receipt, review, use or disclosure of any portion of any idea.

13 Use of Data

- 13.1 You agree we may use Transaction Data for the purpose of providing additional products and services to you, other merchants, or third parties. This includes using Cardholder Information, dates, transaction

details, and other Transaction Data to provide you with analytics products and services as well as collecting and using Transaction Data aggregated with other merchants' Transaction Data to provide you, other merchants, and third parties with analytic products and services.

13.2 In the course of providing Services, we may collect information relating to activities on your network, including network configuration, TCP/IP packet headers and contents, log files, malicious codes, and Trojan horses. We retain the right to use this information or aggregations of this information, in addition to the Transaction Data described above, for any reasonable purpose.

13.3 You agree that we may obtain relevant information from any applicable telecommunications provider you utilize, as necessary to investigate any allegation of fraud, suspected fraud or other actual or alleged wrongful act by you in connection with the Services.

14 Intellectual Property Rights

14.1 All right, title, and interest in and to all confidential information and intellectual property related to the Services (including the Marks, all Software, the content of any materials, web screens, layouts, processing techniques, procedures, algorithms, and methods and any updates, changes, alterations, or modifications to or derivative works from such intellectual property), owned, developed or licensed by us prior to, during the Term of, or after this Agreement, or employed by us in connection with the Services, shall be and remain, as among the parties, our or our Affiliates', our vendors' or our licensors' (as applicable) sole and exclusive property and all right, title and interest associated with the Services, Equipment, and Software not expressly granted by us in this Agreement are deemed withheld. You may not use our Marks in any manner, including in any advertisements, displays, or press releases, without our prior written consent.

14.2 You may not, nor may you permit any third party to do any of the following: (a) decompile, disassemble, reverse engineer, or otherwise attempt to reconstruct or discover by any means any source code, underlying ideas or algorithms of the Service (or any part), Software or Equipment, except to the extent that such restriction is expressly prohibited by law; (b) modify, translate, or alter in any manner, the Service (or any part), Software, Equipment, or the Marks; (c) create derivative works of or based on the Service (or any part), Software or the Marks; (d) except for backup and archival purposes, directly or indirectly copy the Service (or any part) or any Software; (e) republish, upload, post, transmit, disclose, or distribute (in any format) the Service (or any part) or Software except as permitted in this Agreement; or (f) remove, relocate, or otherwise alter any proprietary rights notices from the Service (or any part), Software or documentation or the Marks.

14.3 If we provide you with copies of or access to any Software or documentation, unless otherwise expressly stated in writing, that Software and documentation is provided on a personal, non-exclusive, non-transferable, non-assignable, revocable limited license for the period of your subscription to the applicable Service and solely for you to access and use the Software and documentation to receive the relevant Services for its intended purpose on systems owned or licensed by you. Software can only be used with certain computer operating systems and it is your responsibility to ensure that you have the appropriate hardware and software to use the Software.

14.4 You shall not take any action inconsistent with the stated title and ownership in this Section 14. You will not file any action, in any forum that challenges the ownership of any part of the Service or any Software, materials or documentation. Failure to comply with this provision will constitute a material breach of this Agreement. We have the right to immediately terminate your access to and use of the Service in the event of a challenge by you.

14.5 If you are acquiring any Services on behalf of any part of the United States Government (**Government**): (a) any use, duplication, or disclosure by the Government is subject to the restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer Software-Restricted Rights clause of FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and in similar clauses in the NASA FAR Supplement; and (b) we are the contractor/manufacturer, with the address set forth in this Agreement.

15 Assignment

15.1 Any attempt to transfer or assign this Agreement in whole or part, or rent, lease, sell, sublicense, or otherwise transfer any licensed rights, without our prior written consent, including by operation of law, transfer of voting control of you or your parent or otherwise, is

prohibited and voidable by us and, in such event we may: (a) suspend Services at any time and without notice, (b) hold you and your guarantors liable for all obligations incurred by such purchaser or transferee, and (c) offset funding and obligations incurred on your accounts without regard to whether such funding or obligations relate to activities of you or of such purchaser or transferee.

15.2 If you make an assignment (or provide a security interest) of receivables covered by this Agreement, then we may, at our option, elect to: (a) refuse to acknowledge such assignment unless accompanied by an authorization to both initiate debits or credits to the bank account of the assignee; (b) terminate this Agreement immediately; or (c) charge for any transfers that we are called upon to make manually to fulfill such an assignment at the rate of \$100 per transfer.

15.3 Subject to Payment Network Rules, and without providing notice to you or obtaining your consent, we may assign or transfer this Agreement and our rights, duties and obligations under this Agreement, and may delegate or subcontract our rights, duties and obligations, in whole or in part, to any Person. In addition, another Visa and Mastercard member may be substituted for Bank under whose sponsorship this Agreement is performed with respect to Visa and Mastercard transactions. Upon such substitution, such other Visa and Mastercard member shall be responsible for all obligations required of Bank, including full responsibility for its Card program and such other obligations as may be expressly required by applicable Payment Network Rules.

15.4 If this Agreement is assigned with our permission or by operation of law, the restriction against assignment shall continue to apply to the assignee, who will not be authorized to further assign this Agreement except as described in this Section.

16 Term; Cancellation; Events of Default

16.1 This Agreement shall become effective upon the later of the date this Agreement is approved by us or the date this Agreement has been accepted by Processor and Bank. Acceptance by Processor and Bank will occur upon the earlier of execution of this Agreement by Processor and Bank, or the commencement of the provision of the Services by Processor and Bank. You acknowledge that we maintain a list of business types that are unqualified for our Services. We reserve the right to immediately terminate your account if it has been inadvertently boarded.

16.2 The initial term of this Agreement is 3 years from the date of your approval by our Credit Department (the **Initial Term**). After the Initial Term, subject to Section 16.3, this Agreement shall automatically extend for additional period of 1 year each (each an **Extended Term**). The Initial Term and all Extended Terms are the Term of this Agreement.

16.3 A party may give written notice to the other party, not later than 30 days before the end of the Initial Term or the relevant Extended Term, to terminate this Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be. Should you fail to notify us in writing that you wish to terminate this Agreement under this Section 16.3, you agree that you will continue to be charged certain fees pursuant to this Agreement even if you are not using your account, and may be subject to an Early Termination Fee as described in Section 17. If you have an Equipment lease, termination of this Agreement does not terminate that Equipment lease.

16.4 We may terminate this Agreement or suspend any or all of the Services immediately and without notice in the following circumstances (each, a **Default**):

- (a) a material adverse change in your business, financial condition, or business prospects;
- (b) any assignment or transfer of voting control of you or your parent or sale of all or a substantial portion of your assets;
- (c) irregular Card sales by you, excessive Chargebacks, noncompliance with any applicable data security standards, as determined by us, or any Payment Network, or any other Person, or an actual or suspected data security breach, or any other circumstances which, in our sole discretion, may increase our exposure for your Chargebacks or otherwise present a financial or security risk to us;
- (d) you breach any of your representations, warranties or covenants in this Agreement or you default in any material respect in the performance or observance of this Agreement, or in any agreement with any of our respective Affiliates, including the establishment or maintenance of funds in a Reserve Account, or

- any failure to notify us of any change to the information in your business profile;
- (e) your actions come under investigation by any Payment Network resulting in the Payment Network directing us to terminate or suspend our Services or this Agreement with you; or
 - (f) you violate any applicable law or Payment Network Rule or we reasonably believe that termination of this Agreement or suspension of Services is necessary to comply with any law, including the rules and regulations promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury.
- 16.5 We may suspend or terminate this Agreement or our provision of one or more Services to you without penalty if: (a) the Service is generally discontinued; (b) our arrangement with the Payment Network or third party vendor in relation to the Service expires or terminates; (c) we are directed to end the Service to you by any Payment Network; (d) we are prevented from providing the Service by any law, regulation, requirement, ruling or notice issued in any form whatsoever by judicial or governmental authority; or (e) we are for any other reason no longer able to provide the Service.
- 16.6 We may also suspend Services to: (a) prevent damages to, or degradation of, our or a third party vendor's or network's system or network integrity (even if caused by a third party); (b) comply with any law, regulation, court order or other governmental request which requires immediate action; or (c) otherwise protect us or a third party vendor from potential legal liability. To the extent commercially reasonable, we shall give notice to you before suspending any Services in these circumstances. If not commercially reasonable to give prior notice, we shall give notice to you as soon as commercially practicable thereafter. Availability of Services may vary due to events beyond the control of us or our third party vendors. In the event of a suspension of a Service under this Section, we or the applicable third party vendor shall promptly restore the Services after the event giving rise to the suspension has been resolved.
- 16.7 Subject to Section 16.8, you can terminate this Agreement without the imposition of an early termination fee, if we notify you of an increase to your fees or add new fees, and you notify us that you are terminating this Agreement within 30 days of our notice. If you do not notify us in the required period, you are deemed to have accepted the fee changes.
- 16.8 Your right to terminate without the imposition of an early termination fee, under Section 16.7 does not apply to increases in rates or any other charges or new fees imposed on us by third parties (including the Payment Networks) which we pass on to you in accordance with Section 6.5, Section 6.12, or where we adjust your fees in accordance with Section 6.4. Any termination in these circumstances shall be considered a breach of this Agreement.
- 16.9 The expiration or termination of this Agreement shall not affect the obligations and rights of the parties pursuant to provisions of this Agreement, which by their nature are intended to survive, including Sections 6, 8, 10, 12, 14, 18, 20, 28, and 29. After expiration or termination of this Agreement, or your subscription to a particular Service for any reason, (a) your right and license to access and use the Software and documentation associated with the Service shall immediately cease and, within 5 days after such event, you shall either return to us or destroy all Software and documentation provided to you by us and shall so certify to us in writing; and (b) you shall continue to bear total responsibility for all transactions you have submitted to us and all Chargebacks, fees, Payment Network fines imposed on us as a result of your acts or omissions, credits and adjustments resulting from Card transactions processed pursuant to this Agreement, and all other amounts then due or which may become due under this Agreement. On termination due to a Default, all amounts owing to us shall be immediately due and payable.
- 16.10 If you file for protection under the U.S. Bankruptcy Code, or any other laws relating to bankruptcy, insolvency, assignment for the benefit of creditors or similar laws, and you continue to use our Services, it is your responsibility to open new accounts to distinguish pre and post filing obligations. You acknowledge that as long as you utilize the accounts you established prior to such filing, we will not be able to systematically segregate your post-filing transactions or prevent set-off of the pre-existing obligations. In that event, you will be responsible for submitting an accounting record supporting any adjustments that you may claim.
- 16.11 The Payment Networks maintain merchant lists such as the Member Alert To Control High-risk Merchants (**MATCH**) who have had their merchant agreements or card acceptance rights terminated for cause.

If this Agreement is terminated for cause, you (a) agree that we may report your business name, and the names and other information regarding your principals, to the Payment Networks for inclusion on such list(s); and (b) waive and hold us harmless from and against any and all claims which you may have as a result of such reporting.

17 Early Termination

- 17.1 If you cancel or terminate this Agreement before the Initial Term or otherwise stop processing your transactions with us, you agree to pay us an early termination fee equal to the average monthly fees paid by you while this Agreement was in effect, (excluding all Payment Network Charges) multiplied by the number of months remaining in the term of the Agreement, as allowable under applicable laws.
- 17.2 The early termination fee is an aggregate fee that will cover all of your locations/outlets affected by the cancellation/termination.

18 Reserve; Security Interest

- 18.1 You agree that in addition to any other rights we have under this Agreement, we may establish a Reserve consisting of cash or other assets that we will hold to satisfy your obligations, or potential obligations, under this Agreement or any other agreement with us or our Affiliates.
- 18.2 The amount of the Reserve shall be set by us in our sole discretion based upon your processing history and the potential risk of loss to us, as we may determine.
- 18.3 The Reserve shall be fully funded upon 3 days' notice to you, or immediately in instances of suspected fraud or a Default.
- 18.4 The Reserve may be funded by all or any combination of: (a) one or more debits to your Settlement Account, or any other accounts held by Bank or any of its Affiliates, at any financial institution maintained in your name or in the name of any of your principals, or any of your guarantors, or if any of same are authorized signers on such account; (b) any payments otherwise due to you from us or our Affiliates; or (c) any other collateral that you agree to provide and we agree to accept in our mutual discretion.
- 18.5 If this Agreement is terminated by any party, an immediate Reserve may be established without notice in the manner provided above. In these circumstances, the Reserve will be held by us for 10 months after termination of this Agreement, or for such longer period as is consistent with resolution of all liability from your Card acceptance including Chargebacks, fines, fees, or obligations of any other kind.
- 18.6 Any funds we hold in Reserve represent general payment obligations to you which do not become due until all potential contingent liabilities arising from your Card transactions have expired or lapsed. We may set-off any obligations that you owe to us before returning the balance of the Reserve. Unless specifically required by law, you shall not be entitled to interest on any funds held by us in the Reserve, and we shall be entitled to accrued interest in such funds.
- 18.7 Notwithstanding Section 18.6, you agree that we have a security interest in all funds or other assets that we hold in Reserve, and to provide us with any documentation we may request to perfect our security interest in the Reserve.
- 18.8 If any funds we hold in Reserve are not sufficient to cover the Chargebacks, adjustments, fees, and other charges and amounts due from you, or if the funds in Reserve have been released, you agree to immediately pay us such sums upon request.

19 Account Information

- 19.1 You are solely responsible for: (a) ensuring the accuracy of all information and data regarding your business that you provide to us or our service providers in connection with the Services, including any menus loaded onto a Device; (b) verifying that all information and data loaded onto a Device by us, or our service providers at your request, are accurate prior to your business use of such Device; and (c) immediately notifying us should any information you have provided to us become inaccurate or misleading. We and our service providers disclaim any and all liability arising out of any inaccuracies with respect to such information or data.
- 19.2 Upon request, you will provide us and our Affiliates quarterly financial statements within 45 days of the end of each fiscal quarter and annual audited financial statements within 90 days of the end of each fiscal year. Any financial statements provided must be prepared in accordance with generally accepted accounting principles. You will also provide other information concerning your business and your compliance with the terms and provisions of this Agreement as we may reasonably request.

- 19.3 You authorize us and our Affiliates to obtain from third parties financial and credit information relating to you in connection with our determination whether to accept this Agreement and our continuing evaluation of your financial and credit status. We may also access and use information which you have provided to us for any other reason.
- 19.4 Upon request, you shall provide to us and our Affiliates or our representatives or regulators (as well as those of the Payment Networks) reasonable access to your facilities and records for the purpose of performing any inspection (including of Equipment) and copying of books and records deemed appropriate. You shall pay the costs incurred by us or our Affiliates for such inspection, including costs incurred for airfare and hotel accommodation.
- 19.5 You authorize us to share information provided by you in your Application or otherwise with other relevant organizations, including those involved in the provision of the Services.
- 20 Audit Rights**
- 20.1 Upon notice to you, we may audit your usage, records and security, your customer's payment processing information, and the Services to ensure that (a) you are using the Services in full compliance with this Agreement; (b) all applicable fees have been paid; and (c) you are in full compliance with all applicable laws, regulations and rules (including Payment Network Rules). Any such audit shall be conducted during regular business hours at your offices and shall not interfere unreasonably with your business.
- 20.2 You shall cooperate fully with any investigation or audit we or any Payment Network may undertake in relation to data security and you authorize us to share the details of any questionnaire or compliance report with the Payment Networks.
- 21 Software Updates and Maintenance**
- 21.1 We may perform maintenance on Software or Services which may result in service interruptions, delays, or errors. We will not be liable for any such interruptions, delays, errors, or bugs. You agree that we may contact you in order to assist you with the Software or Services and obtain information needed to identify and fix any errors.
- 21.2 We may, at our discretion, release enhancements, improvements, or other updates to any Software. If we notify you of any such update, you shall integrate and install such update into your systems within 30 days of your receipt of such notice. You acknowledge that failure to install any updates in a timely fashion may impair the functionality of the Software or Services. We shall have no liability for your failure to properly install the most current version of any Software or any update, and we shall have no obligation to provide support or services for any outdated versions.
- 21.3 You acknowledge and understand that certain Software can automatically install, download, and/or deploy updated and/or new components, which may include a new version of the Software itself. You shall not, in any event or in any manner, impede the update process. You agree to assume full responsibility and indemnify us for all damages and losses, of any nature, for all adverse results or third party claims arising from your impeding the update process.
- 21.4 We and our Wireless Vendor(s) reserve the right to make changes in the configuration of Wireless Services, Wireless Networks, wireless Equipment, Wireless Software, rules of operation, accessibility periods, identification procedures, type and location of Equipment, allocation and quantity of resources utilized, programming languages, administrative and operational algorithms, and designation of the control center serving you at the particular address.
- 21.5 The default version and functionality of Clover Software applications that are accessible at the time you acquire a Clover Device may vary.
- 22 Accessing Services via Wireless Service, the Internet or Third Parties**
- 22.1 You may access certain of our Services through a Device using a wired (Ethernet) or wireless (Wi-Fi or cellular) connection to the internet. You are solely responsible for the payment of any fees that may be imposed by your internet/data provider. Your use of any Services accessed wirelessly or through the internet is subject to: (a) the terms of any agreements you have with your internet/data provider; and (b) availability, transmission range, and uptime of the Services and any wireless Equipment.
- 22.2 You agree that we shall not be liable to you for any claims, damages, losses, obligations, costs or expenses or other liability arising directly or indirectly from or otherwise concerning (a) any termination, suspension, delay or disruption of Service (including billing for a Service) by the internet, any common carrier or any third party service provider; (b) any failure, disruption or malfunction of any of the Services, the internet, or any communications network, facility, or Equipment beyond our or a third party's reasonable control, whether or not attributable to one or more common carriers; (c) your failed attempts to access any Services or to complete transactions via any of the Services; or (d) any failure to transmit, obtain or collect data or for human, machine, or software errors or faulty or erroneous input by you.
- 22.3 We may alter which Devices and browsers are approved as compatible with particular Services in our discretion.
- 22.4 If a Service relies on online connectivity to provide up-to-date data, you assume all risk, responsibility and liability associated with any transaction that you choose to conduct while the Service is offline.
- 23 Service Integration**
- 23.1 Unless otherwise agreed in writing, you have the sole responsibility to select and employ any competent programming agent(s) to accomplish any programming required to make your systems function correctly with our platforms (Integration). You shall be responsible for all technical support for your systems and Integration related issues. You agree that you will use commercially reasonable efforts to complete any Integration as soon as possible. You will be responsible for all of your own development and implementation costs associated with such Integration.
- 23.2 You acknowledge that unless and until you complete any Integration, no Services which require such Integration shall need be provided by us to you pursuant to this Agreement.
- 23.3 Upon your request to us, and upon payment of any applicable fees, we may provide you with set-up services to assist with any Integration.
- 24 Security**
- 24.1 You are solely responsible for establishing and maintaining Payment Network Rule compliant security policies and procedures to prevent unauthorized access to and use of Cardholder Information or any other data, including by implementing: (a) all steps required to comply with the PCI DSS, including ensuring all third parties and software use by you in connection with your payment processing are compliant with PCI DSS; (b) appropriate controls to limit access to, and render unreadable prior to discarding, all Cardholder Information and other data; (c) firewalls, passwords and other appropriate security features to protect against unauthorized access to your terminals, systems, the Services and any Software by your employees, contractors, customers, or by any other Person (including instituting appropriate controls to prevent employees or others from submitting credits that do not reflect bona fide returns or reimbursements of earlier transactions); and (d) any other reasonable protective techniques suggested by us. You are required to provide information to us regarding your PCI-DSS compliance when requested, including but not limited to an annual questionnaire that we will make available to you.
- 24.2 If you become aware of any loss, theft or unauthorized use of any data and/or any suspected breach of your systems or any suspicious transactions or fraudulent activity or if any other Data Security Event occurs, you shall (a) immediately notify us (and, as required under the Payment Network Rules, each Payment Network); (b) cooperate fully with any investigation into such matter by us or any Payment Network; (c) investigate the matter and perform all remedial actions reasonably specified by us; (d) not, without our prior written consent, take any action, or fail to take any action, which prejudices our rights under this Agreement; (e) not admit any liability, assume any financial obligation, pay any money, or incur any expense in connection with any Data Security Event without our prior written consent. If you do so, it will be at your own expense; and (f) grant us and our vendors the right to access and perform a scan of the IP addresses identified within your profile (and you agree and authorize payment for the additional scan). We reserve the right to deny you access to the Services, in whole or in part, if we believe that any loss, theft or unauthorized use of any data or access information has occurred.
- 24.3 You are responsible for all electronic communications sent to us or to any third party. When we receive communications from you we will assume you sent it to us.
- 24.4 You will not obtain ownership rights in any Cardholder Information. You must not use, disclose, store, sell or disseminate any Cardholder Information except for purposes of authorizing, completing and

settling Card transactions and resolving any Chargebacks, retrieval requests, or similar issues involving Card transaction.

25 Supply of Equipment

- 25.1 We will sell to you, and you will buy from us equipment identified in Equipment Documents as being sold to you (individually and collectively, the **Purchased Equipment**). We will rent to you and you agree to accept and rent from us Equipment identified in Equipment Documents as being rented to you (individually and collectively, the **Rental Equipment**).
- 25.2 Any Equipment sold or rented to you is being sold or rented to you solely for business use and not for household or personal use.
- 25.3 Warranties, if any, for the Equipment or any related Software will be contained within the packaging and originate from the applicable third party provider or manufacturer (**Vendor**) not us.
- 25.4 ***You acknowledge that any Equipment and/or Software you purchase or rent from us may not be compatible with another processor's systems. We do not have any obligation to make such Software and/or Equipment compatible with any other processing systems. If you elect to use another processing service provider on termination of this Agreement, you acknowledge that you may not be able to use the Equipment and/or Software rented or purchased under this Agreement.***
- 25.5 We will provide you supplies as requested by you. You shall pay the purchase price for such supplies, plus shipping and handling charges, including all applicable tax, prior to delivery of the supplies or upon invoice, as specified by us, or at our option, such amounts will be collected by us by debits or deductions pursuant to this Agreement.
- 25.6 We will deliver the Equipment to the site you designate. You are deemed to have accepted each piece of Equipment at the earlier of: (a) your actual acceptance after installation; (b) delivery to you if your site is not prepared and ready for installation; or (c) for Equipment that we have not agreed to install for you, 7 days after shipment of each such piece of Equipment. The rental period for each piece of Rental Equipment starts on the date the Equipment is deemed accepted and terminates at the scheduled termination date in the Equipment Documents.
- 25.7 You will prepare the installation site(s) for the Equipment, including the power supply circuits and phone lines, in conformance with the manufacturer's and our specifications and will make the site(s) available to us by the confirmed shipping date. Any alterations required for installation of Equipment will be done at your expense.
- 25.8 You shall cause the Equipment to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us or the manufacturer. You shall not use the Equipment, or permit the Equipment to be used, in any manner or for any purpose for which the Equipment is not designed or reasonably suited.
- 25.9 You may not relocate, remove, disconnect, modify or in any way alter any Equipment without our prior consent.
- 25.10 You are responsible for safeguarding Equipment from (and shall immediately notify us of any) loss, damage, unauthorized use, misuse or theft.
- 25.11 You shall keep the Rental Equipment adequately insured against loss by fire, theft and all other hazards (**Comprehensive Coverage**). The loss, destruction, theft of or damage to the Rental Equipment does not relieve you of your obligation to pay the full purchase price or rent payable under this Agreement.
- 25.12 If Equipment is defective, you must immediately call the POS Help Desk. If necessary, we will assist you in obtaining replacement Equipment. If you fail to return any defective Equipment, you may be responsible for its replacement value and for any legal and/or collection costs incurred by the Equipment owner in connection with recovering Equipment.
- 25.13 Rented Equipment may not be subleased at any time and you must keep all Equipment free of any claims, liens and legal processes initiated by creditors.
- 25.14 Promptly upon termination of all applicable rental periods, or promptly following any action by us following a Default, you shall deliver possession of all Rental Equipment (including all attachments and parts) to us at your cost in the same operating order, repair, condition and appearance that the Rental Equipment had at the time of its delivery to you, except for reasonable wear and tear. For each item of Rental Equipment not so returned 14 calendar days after (a) termination of the applicable rental period, or (b) any action by us

following a Default, you agree to pay us the greater of \$250, or the fair market value of such item of Equipment if it were in the condition described above, as determined by us.

- 25.15 Except for Purchased Equipment that has been paid for in full, the Equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stencils to the Equipment indicating our ownership.
- 25.16 You shall return Equipment in accordance with the procedure set out in the Your Payments Acceptance Guide. Rental fees may be continued until Equipment is returned.
- 25.17 You hereby grant to us a security interest in (a) all Purchased Equipment and the related Software to secure payment of the purchase price; and (b) all Rental Equipment and the related Software to secure payment of the monthly payments and authorize us to file financing statements with respect to the Equipment and the Software in accordance with the Uniform Commercial Code, signed only by us or signed by us as your attorney-in-fact.
- 25.18 You agree that in order to access any Wireless Services, you must use wireless POS Terminals and accessories approved for use with the Wireless Services by us in our sole discretion (**Wireless Equipment**).
- 25.19 You agree to obtain any and all licenses, permits, or other authorizations required by the Federal Communications Commission (**FCC**) or any other regulatory authority, if any, for the lawful operation of any Wireless Equipment used by you. You shall promptly provide us with all such information as we may reasonably request with respect to matters relating to the rules and regulations of the FCC.

26 Clover Care

- 26.1 If you purchase Clover Care, **Included Equipment** means equipment listed in the Equipment Details section of this Agreement. Clover Care replaces, at no additional charge to you, Included Equipment that has failed during the Clover Care Term due to manufacturer defects in materials or workmanship, normal wear and tear from use in your business, and accidental damage from handling. Merchants with Included Equipment located in New York: see below for material limitations on Clover Care protection.
- 26.2 Clover Care protection begins when we ship you the Included Equipment and continues for three years from that date, (the **Clover Care Term**). Clover Care protection extends to replacement devices for the remainder of the original unit's Clover Care Term.
- (a) During the Clover Care Term, Clover Care protection is limited to 3 replacements per device listed in this Agreement.
- (b) We reserve the right to replace Included Equipment with refurbished units. You acknowledge that Clover Care protection extends only to the functionality of devices, and not to cosmetic appearance or other non-functional matters.
- (c) If the model of unit to be replaced is no longer in inventory, we reserve the right to replace that unit with a model of the same or better functionality. Under no circumstances will we pay or credit you with cash in lieu of a replaced unit.
- 26.3 For assistance with a failed unit, contact Customer Service. If we confirm that the unit is eligible for replacement, we will ship you a replacement unit at no additional cost. We reserve the right to replace each failed unit of your Included Equipment with refurbished equipment. You may elect to purchase a new unit at our then-current rates if you do not want a refurbished unit, but we will not apply any credit to the purchase price of a new unit.
- 26.4 You must return each failed unit and its related accessories to us within 45 days after receiving the replacement unit. The package containing the replacement unit will include a prepaid shipping label for returning the failed unit. You must ship the failed unit (including any related unit accessories) in the same container we used to ship you the replacement unit. If you do not return a failed unit (or any related accessories) to us within 45 days, we will charge you our then-current rate for that unit or accessory.
- 26.5 Exclusions. Clover Care does not:
- (a) Replace or otherwise protect Included Equipment in cases of loss, theft, intentional damage, or damage to units incurred incidentally to fire or flood damage to your business premises. Clover Care is void if you breach this Agreement or your merchant processing agreement. Clover Care is not insurance nor a substitute for insurance; or

- (b) Apply to defects or damage resulting from software, interfaces, or supplies we do not provide; loss or damage in transit between your locations; your or your vendors' or users' improper site preparation; or failure to follow written instructions on proper use of the Included Equipment.
 - (c) Merchants with Included Equipment located in New York: see Section 26.7 for material additional exclusions.
- 26.6 We may charge you our then-current rate for any returned unit that: (1) the Agreement excludes from Clover Care, (2) has an expired Clover Care Term, (3) does not match the serial number of a unit for which you purchased Clover Care, or (4) results in a no-problem found claim (an **NPF Claim**). An NPF Claim will result if a factory technician could not reproduce your reported defect in the returned unit or the returned unit performs to specifications within the factory's automated quality assurance testing program.
- 26.7 New York Merchants. For Included Equipment located in New York, Clover Care protection does not include damage arising from normal wear and tear (except as arising from product defect) or accidental damage from handling.
- (a) Subject to the conditions and exclusions set forth in this Agreement, Clover Care replaces, at no additional charge to you, Included Equipment that has failed due to manufacturer defects in materials or workmanship.
 - (b) In addition to the exclusions above, Clover Care does not replace or otherwise protect Included Equipment arising from causes other than manufacturer defects in material or workmanship, including without limitation: damage resulting from smashed or cracked units or screens; extraneous materials in the interior of the unit; contact with liquids; missing unit covers; melted or burnt units; cosmetic damage; your or your vendors' or users' improper or inadequate maintenance; or other visible damage. Clover Care is void if you breach this Agreement. Clover Care is not insurance nor a substitute for insurance.
 - (c) You acknowledge that the Fees charged by us are not reduced for Included Equipment located in New York, even though there are lesser protections provided and broader exclusions.

27 Compliance of Laws

- 27.1 You shall comply fully with the requirements of all applicable federal, state, and local laws and regulations related to your use of Software, Equipment, and each Service, and provision and use of any Cardholder Information, customer information and other POS data in connection with the Services. You shall not use the Services for illegal purposes.
- 27.2 You are solely responsible for obtaining all required permits and monitoring legal developments applicable to the Services and the operation of your business, interpreting applicable laws and regulations, determining the requirements for compliance with all applicable laws and regulations, and maintaining an on-going compliance program.
- 27.3 ***Notwithstanding the capability of certain Services to collect and store customer information and to allow your customers to elect to receive marketing materials from you, some states may limit your use of such information once collected, even if the customer has provided his consent, and/or your disclosure of such information to third parties. You acknowledge and agree that (a) your use of any customer information obtained in connection with the Services may be subject to local, state, and/or federal laws, rules, and regulations, (b) you are solely responsible for knowing such laws, rules, and regulations, and (c) you will at all times strictly comply with all such laws, rules, and regulations.***

28 Indemnification

- 28.1 You agree to indemnify and hold us, our Affiliates, agents, and third party service providers harmless from and against all losses, liabilities, damages and expenses arising from: (a) any breach or misrepresentation by you under this Agreement; (b) your or your employees' or your agents' negligence or willful misconduct, in connection with Card transactions or otherwise arising from your provision of goods and services to Cardholders; (c) your use of the Services, including any Software or Equipment provided under this Agreement; (d) any third party indemnifications we are obligated to make as a result of your actions (including indemnification of any Payment Network or Issuer); (e) your use of any Cardholder Information or other customer information obtained in connection with

your use of the Services; (f) the content or delivery of any marketing messages that you send or cause to be sent to any customer; or (g) any other persons authorized or unauthorized access and/or use of any Service, Software, or Equipment, whether or not using your unique username, password, or other security features.

- 28.2 Subject to the limitations set forth in Section 10.3, we agree to indemnify and hold you harmless from and against all losses, liabilities, damages and expenses directly resulting from any breach or misrepresentation by us under this Agreement or directly arising out of our or our employees' gross negligence or willful misconduct in connection with this Agreement; provided that this indemnity obligation shall only apply to Bank in relation to the Services provided by it hereunder.

29 Arbitration; Waiver of Jury Trial; Choice of Law

- 29.1 This arbitration provision shall be broadly interpreted. If you have a Dispute with us that cannot be resolved informally, you or we may elect to arbitrate that Dispute in accordance with the terms of this arbitration provision rather than litigate the Dispute in court. In arbitration, there is no judge or jury, and there is less discovery and appellate review than in court.
- 29.2 Notwithstanding Section 29.1, you and we agree that the following will not be subject to arbitration: (a) disputes relating to the scope, validity, or enforceability of this arbitration provision; (b) any claim filed by you or us in which the amount in controversy is properly within the jurisdiction of a small claims court; and (c) any dispute related to the validity of any party's intellectual property rights.
- 29.3 If you or we elect to resolve your Dispute through arbitration pursuant to this arbitration provision, the party initiating the arbitration proceeding shall open a case with the American Arbitration Association - Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043, 877-495-4185, www.adr.org.
- 29.4 Because the Services provided to you under this Agreement concern interstate commerce, the Federal Arbitration Act (**FAA**) will govern this arbitration provision, including the issue of whether the Dispute is subject to arbitration. Any arbitration will be governed by the Commercial Arbitration Rules of the American Arbitration Association (**AAA**). If there is a conflict between this arbitration provision and the AAA Rules, this arbitration provision shall govern. If the AAA will not administer a proceeding under this arbitration provision as written, it cannot serve as the arbitration organization to resolve your Dispute. If this situation arises, the parties shall agree on a substitute arbitration organization. If the parties are unable to agree, the parties shall mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will administer a proceeding under this arbitration provision as written. If there is a conflict between this arbitration provision and the rest of this Agreement, this arbitration provision shall govern.
- 29.5 A single arbitrator will resolve the Dispute. The arbitrator will honor claims of privilege recognized by law and will take reasonable steps to protect your information and other confidential or proprietary information. If the claim alleged in the Dispute is for \$10,000 or less, and the Dispute is not excluded based on Section 29.2 above, you may choose whether the arbitration will be conducted solely based on documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing under the rules of the selected arbitration organization. The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party. An award rendered by the arbitrator may be entered in any court having jurisdiction over the parties for purposes of enforcement.
- 29.6 If an award granted by the arbitrator exceeds \$50,000, either party can appeal that award to a three-arbitrator panel administered by the same arbitration organization by a written notice of appeal filed within 30 days from the date of entry of the written arbitration award. The arbitration organization will then notify the other party that the award has been appealed. The members of the three-arbitrator panel will be selected according to the AAA's Commercial Arbitration Rules. The three- arbitrator panel will issue its decision within 120 days of the date of the appealing party's notice of appeal. The decision of the three-arbitrator panel shall be final and binding, except for any appellate right which exists under the FAA.
- 29.7 ***All parties to an arbitration must be individually named. There shall be no right or authority for any claims to be arbitrated or litigated on a class action, joint, or consolidated basis or on a basis involving claims brought in a purported representative capacity on behalf of the general public (such as a private attorney general), other clients, or other persons.***

- 29.8 The arbitrator may award injunctive or similar relief only in favor of the individually named party and only to the extent necessary to provide relief warranted by that individual party's claim. The arbitrator may not award injunctive relief applicable to any class or similarly situated individual or groups.
- 29.9 The arbitration will take place in New York, NY.
- 29.10 We will reimburse you for filing fees and arbitrator's costs and expenses you notify to us after bringing the claim at the time the demand or claim is filed with the AAA, as noted in the AAA's Commercial Arbitration Rules and Mediation Procedures (Amended and Effective May 1, 2018). You are responsible for all additional costs that you incur in the arbitration, including, but not limited to, fees for attorneys or expert witnesses. If the arbitration is resolved in our favor, you shall reimburse us for the filing fees and costs paid up to the extent awardable in a judicial proceeding. If the arbitration is resolved in your favor, you will not be required to reimburse us for any of the fees and costs paid by us. Notwithstanding anything to the contrary in this arbitration provision, we will pay all fees and costs that we are required by law to pay.
- 29.11 ***If you do not wish to arbitrate disputes, you must notify us in writing within 30 days of the date that you first receive this Agreement by writing your name, address and account number as well as a clear statement that you do not wish to resolve disputes through arbitration and sending that notice either (a) by e-mail to arbitrationoptout@fiserv.com; or (b) by mailing to Arbitration Opt Out Notice, 4000 N.W. 120th Avenue, MS/CON-CMM, Coral Springs, FL 33065 (these addresses are only for submitting the notice described in this section). Your decision to opt out of arbitration will have no adverse effect on your relationship with us or the Services provided by us.***
- 29.12 If any part of Section 29.7 is found to be illegal or unenforceable, the entire arbitration provision will be unenforceable, and the Dispute will be decided by a court. If any other clause in this arbitration provision is found to be illegal or unenforceable, that clause will be severed from this arbitration provision, and the remainder of this arbitration provision will be given full force and effect.
- 29.13 Our Agreement will be governed by and construed in accordance with the laws of the State of New York (without regard to its choice of law provisions).
- 29.14 We have substantial facilities in the State of New York, and many of the Services provided under this Agreement are provided from these facilities. The exclusive venue for any actions or claims arising under or related to this Agreement will be in the appropriate state or federal court located in New York, New York.
- 29.15 ***You and we have agreed to waive the right to trial by jury.***
- ### 30 Notices
- 30.1 All notices and other communications required or permitted under this Agreement (other than those involving normal operational matters relating to the processing of Card transactions) shall be in writing and sent:
- (a) if to you, to your email address or postal address appearing on the Application, or, will otherwise be made in accordance with Section 30.3;
 - (b) if to Processor, to its address appearing on the confirmation page, with a copy to Attention: General Counsel's Office, 4000 N.W. 120th Avenue, MS/CON-CMM, Coral Springs, FL 33065 or legalpapers@fiserv.com; and
 - (c) if to Bank, to the address appearing on the confirmation page.
- 30.2 Notices shall be effective when actually received or, if sent by courier, when delivered. Notices sent to your last known e-mail address or postal address, as indicated in our records, shall constitute effective notice to you under this Agreement.
- In addition, you agree that: (a) where required or requested, your electronic signature (via click-through or other method) on agreements and documents has the same effect as if you signed them in ink; (b) we can send you all communications, billing statements, amendments, notices, and other disclosures or information in connection with this Agreement (**Disclosures**), including but not limited to any Payment Network notices to you electronically: (1) via e-mail, (2) by access to a web site that we designate in an e-mail notice we send to you at the time the information is available, or (3) to the extent permissible by law, by access to a website that we will generally designate in advance for such purpose; (d) if you want a paper copy, you can print a copy of the Disclosures or download the information for your records; and (e) this consent applies to all future Disclosures sent to you in connection with this Agreement. You agree that electronic Disclosures have the same meaning and effect as if we provided paper Disclosures to you.
- 30.3 Notices of Disputes, Credit Card and Debit Card requests for information, and notices relating to Chargebacks will be made available to you exclusively on a web portal that we will make available to you for your use.
- 30.4 You must give us 30 days prior notice of any change to your address. Failure to provide us with a valid address may result in the termination of this Agreement.
- 30.5 Notwithstanding the above, all bankruptcy, credit reporting or collection related notices must be sent to the following address: General Counsel's Office, 4000 N.W. 120th Avenue, MS/CON-CMM, Coral Springs, FL, Attn: Bankruptcy and Collection Notifications.
- 30.6 All notices must include your name(s) and merchant number(s).
- ### 31 Communications
- 31.1 You agree that we, our Affiliates, and our third party service providers and/or agents, may use, in addition to any live agent calls, an automatic telephone dialing system, an artificial or pre-recorded voice, or both, to contact you at the telephone number(s) you have provided, and/or may leave a detailed voice message if you are unable to be reached, even if the number provided is a cellular or wireless number, or if you have previously registered on a Do Not Call list or requested not to be contacted for solicitation purposes.
- 31.2 You consent to receiving Disclosures via commercial electronic messages, including email messages, SMS and text messages, and telephone calls, from us, our Affiliates, and our third party service providers and/or agents.
- ### 32 Whole Agreement; Waiver; Severability
- 32.1 This Agreement constitutes the entire Agreement between the parties with respect to its subject matter, and supersedes any previous agreements and understandings.
- 32.2 A party's waiver of a breach of any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.
- 32.3 Except with respect to Section 29, the parties intend every provision of this Agreement to be severable, and, if any part of this Agreement is not enforceable, the remaining provisions shall remain valid and enforceable.
- ### 33 Amendment
- 33.1 We may modify this Agreement (including changing the fees or adding new fees) by 20 days written notice to you. Subject to Section 33.2, you may choose not to accept the change by terminating this Agreement by written notice within 30 days of our notice.
- 33.2 Notwithstanding Section 33.1, we may at any time modify this Agreement in accordance with Section 6.5 or to reflect changes in applicable law, the Payment Network Rules or security procedures, and your right of termination shall not arise in such circumstances.
- ### 34 Third Party Beneficiaries
- 34.1 Our Affiliates and any Persons we use in providing the Services are third party beneficiaries of this Agreement and each of them may enforce its provisions as if they are a party to it. The rights of the parties to rescind or agree to any variations, waiver or settlement under this Agreement are not subject to the consent of any Person.
- 34.2 Except as expressly provided in this Agreement, a person who is not a party to this Agreement shall have no rights or remedies under this Agreement.
- ### 35 6050W of the Internal Revenue Code
- 35.1 Under Section 6050W of the Internal Revenue Code, you will receive a Form 1099-K reporting the gross dollar amount of card transactions processed through your Merchant Account with us in each year.
- 35.2 Amounts reportable under Section 6050W are subject to backup withholding requirements. We will be required to perform backup withholding by deducting and withholding income tax from reportable transactions if (a) you fail to provide your taxpayer identification number (TIN) to us, or (b) if the IRS notifies us that the TIN (when matched with the name) provided by you is incorrect. Accordingly, to avoid backup withholding, it is very important that you provide us with the correct name and TIN that you use when filing your tax return that includes the transactions for your business.

36 Export Compliance

- 36.1 You agree not to export or re-export any Software, Equipment, or any underlying information except in full compliance with all applicable laws and regulations.
- 36.2 None of the Software, Equipment, or any underlying information may be downloaded or otherwise exported or re-exported (a) to any country to which the United States has embargoed goods (or any national or resident thereof); (b) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Department's Table of Deny Orders; or (c) in any manner not in full compliance with the requirements of the United States Bureau of Industry and Security and all applicable Export Administration Regulations. You warrant that you are not located in, under the control of, or a national or resident of, any such country or on any such list.
- 36.3 If you have rightfully obtained Software, Equipment, or any underlying information outside of the United States, you agree not to re-export the same except as permitted by the laws and regulations of the United States and the laws and regulations of the jurisdiction in which you obtained it.

37 No Investment Advice

- 37.1 We do not provide any business, investment or financial advice, and are not advocating any business decision or the sale or purchase of any real property, stocks, bonds, or securities.
- 37.2 We expressly state, and you hereby acknowledge, that any information services are provided solely for informational purposes and are not to be used as a substitute for independent financial investment advice nor are they intended to be relied upon by any person or entity, including you or your customers for the purposes of investment or other financial decisions.

38 Clover Security Plus

- 38.1 Clover Security Plus consists of a POS security monitor, the TransArmor Data Protection Service, and tools that you can use to help you meet your PCI DSS compliance obligations. Each of those services is described in more detail below. Clover Security Plus is provided to you by Processor and not by Bank.
- 38.2 The POS security monitor offers you monitoring, scanning, and anti-virus software for your POS computer systems.
- 38.3 The TransArmor Data Protection Service encrypts Cardholder Information at the point of transaction and replaces it with a unique identifier (a **token**) that is returned with the Authorization response. You must use the token you receive with the authorization response instead of the card number for all other activities associated with the transaction, including settlement, retrieval, Chargeback, or adjustment processing as well as transaction reviews. If you fully deploy and use the TransArmor Data Protection Service, the token returned to you with the Authorization response cannot be used to initiate a financial sale transaction by an unauthorized person outside your POS systems or the systems where you store your Transaction Data. The TransArmor Data Protection Service can only be used with a POS Device, gateway, or service that we have certified as being eligible for the TransArmor Data Protection Service. The TransArmor Data Protection Service is provided to you by Processor and not by Bank.

We also give you access to tools that you can use to help you meet your PCI DSS compliance obligations. Although you must also comply with all laws and Payment Network Rules relating to data security, including the PCI DSS, you are not required to use our tools to do so. Our tools consist of an on-line PCI DSS SAQ and on-line scans for up to 5 POS devices. By completing the SAQ, you are confirming that you follow certain data security protocols. If the Payment Network Rules require you to submit to quarterly or other periodic PCI-approved vulnerability scans (for example, if you accept internet transactions), the on-line scans we make available to you will enable you to meet that requirement. If, within 60 days from the date this Agreement is submitted to us with your signature and on an annual basis after that, you choose to (a) complete the SAQ or (using PCI-approved methods) provide us with other written evidence of your PCI DSS compliance, (b) obtain any PCI-approved scans required by the Payment Network Rules, and (c) remediate vulnerabilities identified by the scans in ways that enable you to comply with the Payment Network Rules and applicable standards (including the PCI DSS), then you will avoid paying the monthly Non-Receipt of PCI Validation fee. If you materially change the systems you use to accept payments, you will need to promptly complete a new SAQ, or (using PCI-approved methods) promptly provide us with other written

evidence of your PCI DSS compliance, in order to avoid paying the monthly Non-Receipt of PCI Validation fee.

- 38.4 We will provide you with the Liability Waiver described in this Section 38.5 if none of the exclusions below apply. If you have a Data Incident, for each MID you have with us, we will waive (a) up to \$25,000 of liability for PCI Upgrade Costs, and (b) up to \$100,000 of liability for other Data Incident Expenses. These limits are subject to a \$500,000 cap for all Data Incident Expenses. These limitations apply during each 12-month period from January 1 through December 31, regardless of the number of Data Incidents you may experience. The Liability Waiver applies only while you are using and paying for Clover Security Plus. The Liability Waiver will not apply to any of the following: (a) any Data Incident that began before you started using Clover Security Plus or that is reported to us after you stopped using Clover Security Plus; (b) any fines or assessments against you that are not the direct result of a Data Incident; (c) any repeated Data Incidents, unless between the repeated events a qualified security assessor certified you as PCI-compliant; (d) any routine or recurring expenses for security assessments, regulatory examinations, or compliance activities; (e) any Data Incident that occurs during any period of time that (1) a Payment Network has categorized you as a Level 1 or Level 2 merchant, or (2) you have processed more than 6 million transactions during the 12-month period before the Data Incident; (f) any expenses (other than Data Incident Expenses) incurred to bring you into compliance with the PCI DSS or a similar security standard; or (g) any Data Incident Expenses that arise out of an uncontrollable event or any intentional, reckless, or grossly negligent misconduct on your part.
- 38.5 Use of Clover Security Plus does not (a) guarantee compliance with any laws, Payment Network Rules, or applicable standards (including the PCI DSS), (b) affect your obligation to comply with laws, Payment Network Rules, and applicable standards (including the PCI DSS), or (c) guarantee protection against a Data Incident. We make no promise that use of Clover Security Plus will detect every vulnerability on your system, or that our vulnerability assessments, suggested solutions, or advice are error-free or complete. You agree that we are not responsible or liable for the accuracy or completeness of any information provided by us. Your use of Clover Security Plus involves inherent risks, including system performance, availability, and data corruption. You have sole responsibility to backup and/or otherwise protect your data, systems, and service.
- 38.6 You must comply with all rules or procedures relating to Clover Security Plus (or any component of Clover Security Plus) that we give you from time to time. You must also implement all updates to Clover Security Plus within a reasonable period after you receive them. You are solely responsible for backing up and/or otherwise protecting your data, systems, and service.

39 Advantage Deposit

- 39.1 Advantage Deposit means a Credit ACH Entry or Debit ACH Entry (each, an **Entry**) that has the same proposed settlement date to your Settlement Account as the banking day on which you submitted your payment transactions to us for processing and settlement according to the Processing Window (as defined below). To be eligible, your Entry must be for an aggregate amount equal to or less than \$1,000,000.00 (or the then-current maximum amount provided for a same day Entry under the Nacha Rules) (the **Advantage Deposit Amount**). The Advantage Deposit Amount is subject to change without notice to you. If your Entry exceeds the then-current Advantage Deposit Amount, your Entry is ineligible for Advantage Deposit and will be funded the next business day. In order for your settlement funds to be otherwise eligible for the Advantage Deposit Service, you must complete the transmission of your daily batch to us on or before the close of the Processing Window for your platform. The **Processing Window** closes at 1:00 a.m. EST on Compass Front End, and at 2:00 a.m. EST on North/Buypass Front End.
- 39.2 We may terminate Advantage Deposit at any time, if Bank for any reason stops providing Advantage Deposit, if our agreement with Bank terminates, or for any other reason upon 30 days' written notice to you. When Advantage Deposit is terminated or expires, Advantage Deposit will no longer be available and your settlement transactions will revert to ordinary funding timelines.
- 39.3 You will pay us for each Credit ACH Entry. When enrolling in Advantage Deposit, we will net fund your processing activity (i.e., deposits, Chargebacks, Chargeback reversals, etc.). You may choose to have each of these categories funded separately, which may increase the number of Credit ACH Entries.

40 Commercial Card Interchange Service.

- 40.1 You agree that your merchant account may utilize the Commercial Card Interchange Service (CCIS).
- 40.2 Visa and Mastercard apply different interchange rates to commercial card transactions based on the level of transaction detail you provide in your settlement files. Including the sales tax amount for your commercial card transactions can help you qualify for lower interchange rates (although other qualification factors also apply). If you are not collecting the sales tax amount yourself and transmitting it in your settlement file, CCIS will calculate and transmit the sales tax amount for those commercial card transactions that will qualify for lower interchange rates.
- 40.3 This service does not affect (1) the total amount of any submitted transaction, or (2) your sales tax collection or reporting obligations under any tax laws or regulations that apply to you or your business. Our fee for CCIS is the percentage listed on your Merchant Processing Application of the resulting interchange savings for Visa and Mastercard transactions, as applicable.
- 40.4 If a transaction is fully or partially exempt, you should enter the tax amount (even if that amount is \$0.00) as CCIS applies your local tax rate to the full amount of transactions when the prompt is bypassed.

41 Interpretation; Definitions

- 41.1 The headings contained in this Agreement are for convenience of reference only and shall not in any way affect the meaning or construction of any provision of this Agreement. References in this Agreement to include, including, or in particular shall not be given a restrictive meaning and shall be interpreted without limitation. Reference to any legislation is to such legislation as amended or supplemented in the future.

- 41.2 Certain terms used in this Agreement are defined below:

Affiliate: a Person that, directly or indirectly, (i) owns or controls a party to this Agreement or (ii) is under common ownership or control with a party to this Agreement.

Anticipated Interchange and Program Pricing Level: your initial anticipated Payment Network interchange and program pricing rates.

Application: the application for Services executed by you.

Authorization: approval by, or on behalf of, the Issuer to validate a transaction. An Authorization indicates only that the Issuer has confirmed there is sufficient availability of funds on the Cardholder's account at the time the Authorization is requested.

Authorization and Capture: the communication of instructions from your POS or other systems to our computer systems, whether the communications are for authorization requests or any other capture of information.

Card: see either Credit Card or Debit Card.

Cardholder: the Person whose name is embossed on a Card and any authorized user of such Card, also referred to as a Card Member by American Express.

Cardholder Information: the data contained on a Card, or otherwise provided to you, that is required by the Payment Network or us in order to process, approve and/or settle a Card transaction, including the names, addresses and Card account numbers of Cardholders.

Card Replacement Costs: the costs you are obligated to pay to comply with the written demand of a Payment Network to reproduce and distribute cards arising from a Data Incident.

Chargeback: a Card transaction (or disputed portion) that is returned to us by the Issuer. You are responsible for payment to us for all Chargebacks.

Clover: Clover Network, LLC

Clover Service: any services that Clover provides to you.

Credit Card: a card bearing a valid Mark of Visa, Mastercard, Discover Network, PayPal or American Express (or any other Payment Network specified by us in writing) and authorizing the Cardholder to buy goods or services on credit.

Data Compromise: the exposure of card information that compromises the security, confidentiality, or integrity of personally identifiable information.

Data Incident: actions, omissions, unauthorized access, intrusions, or security breaches resulting in a Security Failure and ensuing Data Compromise, as identified in a Payment Network's formal notice. Regardless of the number of unauthorized accesses, security breaches, or Data Compromise events, all activities resulting from (1) common intruders or a conspiracy of intruders, (2) unauthorized software installations, or (3) continuous or repeated actions, or exposure to the same general harmful

condition, will be considered a single Data Incident. A Data Compromise stemming from either: (i) multiple intrusions into your computer system enabled by a worm, key logger, or the like, or (ii) the repeated use of a stolen or compromised password or access code, will also be deemed to arise out of a single Data Incident.

Data Incident Expenses: (a) any of your obligations to us for liability imposed by Payment Networks arising from a Data Incident, including, PCI Upgrade Costs and Card Replacement Costs; and (b) the costs of a security assessment conducted by a qualified security assessor approved by a Payment Network or PCI to determine the cause and extent of a Data Incident.

Data Incident Expenses do not include (1) any cost for Mitigation Services or to notify consumers about a Data Incident; (2) interchange fees, Chargeback expenses or the amount of any transaction returned to you, the Bank or us; or (3) any other damage, legal expenses, punitive or exemplary damages, legal or regulatory fines or penalties.

Debit Card: a card bearing a valid Mark of Visa, Mastercard, Discover Network or American Express or any debit network that is used to access funds in a Cardholder's bank account or a prepaid account.

Device: a tablet, smartphone, or other mobile or fixed form factor identified by us as compatible with and capable of accessing and/or supporting a particular Service.

Discount Rate: a percentage rate or amount charged to a merchant for processing its qualifying daily Credit Card and Non-PIN Debit transactions, as set forth in the Application.

Dispute: any dispute, claim, or controversy related to or arising under any aspect of your relationship with us, whether directly with Processor and/or Bank, or indirectly with any other Person or entity related to the relationship, and arising at any time during, before, or after that relationship.

Equipment: equipment rented to or purchased by you under this Agreement and any Equipment Documents.

Equipment Documents: documents setting out additional terms on which Equipment is rented to or purchased by you under this Agreement.

Foreign Currency: a currency other than the Local Currency and supported by us for a particular service.

General Terms: these general terms and conditions on which the Services are provided, including any amendments or modifications.

GeP Service: the merchant pricing of goods and services in a Foreign Currency and the activity undertaken by us and/or a GeP Service Provider to authorize, process, and settle GeP Transactions.

GeP Transaction: a card not present transaction between you and a Cardholder using a Card type approved by us, in which you present the price for the product or service in a Foreign Currency in a card not present environment and the Cardholder authorizes (a) the price in a Foreign Currency to be submitted to a Payment Network for settlement, and (b) that the Cardholder's account will be charged for the price in the Foreign Currency.

Issuer: the financial institution or Payment Network that has issued a Card to a Person.

Local Currency: the currency associated with your place of domicile and approved by us.

Marks: names, logos, emblems, brands, service marks, trademarks, trade names, tag lines, or other proprietary designations.

Merchant Account: an account set up for you that requires a card processor, bank, merchant ID, terminal ID, merchant account number, or otherwise named unique merchant number. Multiple physical or virtual storefronts that process transactions under the same unique merchant number shall be deemed as one Merchant Account.

Merchant Identification Number (MID): numeric identifier for each merchant location, outlet, or line of business to us for accounting and billing purposes.

Mitigation Service: a service provided to a Cardholder whose information is the subject of a Data Incident, where the primary purpose of the service is to mitigate the effects of the Data Incident, including identity theft education and assistance and credit monitoring.

Non-PIN Debit: a transaction using a Debit Card that is processed without the use of a PIN.

Non-Qualified Fee: the difference between the interchange or program pricing associated with the Anticipated Interchange and Program Pricing Level and the interchange or program pricing associated with the more costly interchange or program pricing level at which the transaction actually processed.

Non-Qualified Surcharge: a surcharge applied to any transaction that fails to qualify for the Anticipated Interchange and Program Pricing Level and is therefore downgraded to a more costly interchange or program pricing level. The Non-Qualified Surcharge (the amount of which is set out on the Fee Schedule) is in addition to the Non-Qualified Fee, which is also your responsibility.

Payment Network: any entity formed to administer and promote Cards, including Mastercard Worldwide (**Mastercard**), Visa U.S.A., Inc. (**Visa**), DFS Services LLC (**Discover Network**), PayPal, Inc. (**PayPal**), American Express Travel Related Services Company, Inc. (**American Express**) and any applicable debit networks.

Payment Network Rules: the rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Payment Network and related authorities, including those of the PCI Security Standards Council, LLC and the National Automated Clearing House Association (including, with respect to EBTs, the Quest Operating Rules).

PCI: Payment Card Industry.

PCI DSS: Payment Card Industry Data Security Standard, as amended from time to time.

PCI Upgrade Costs: the costs you agree to incur to upgrade payment acceptance and processing hardware and software to enable you to accept and process cards in a manner compliant with the PCI DSS.

Person: an individual, corporation, partnership, sole proprietorship, trust, association or any other legally recognized entity or organization, other than you or us.

PIN: a Personal Identification Number entered by the Cardholder to submit a PIN Debit transaction.

PIN Debit: a transaction using a Debit Card where a Cardholder enters a PIN via a PIN Pad.

Reserve: funds that are otherwise payable to you which we hold to secure your obligations under this Agreement, pursuant to Section 18 of this Agreement. The Reserve may also refer to other collateral that you may provide to us to secure such obligations.

Reserve Account: our records and accounting of such funds or other collateral.

Security Failure: (a) a failure of your computer systems' security to prevent computer data infiltration, (b) theft of your hardware or firmware on which data is stored or processed, (c) theft of your passwords or access codes, or (d) physical loss of your information.

Servicers: Bank and Processor collectively. The words "we," "us" and "our" refer to Servicers, unless otherwise indicated.

Services: the activities undertaken by us to authorize, process, and settle Card transactions undertaken by Cardholders at your location(s), and all other services provided by us under this Agreement.

Settlement Account: an account or account(s) at a financial institution designated by you as the account to be debited and credited by us for Card transactions, fees, Chargebacks and other amounts due under this Agreement or in connection with this Agreement.

Software: all software, computer programs, related documentation, technology, know-how and processes embodied in the Equipment (i.e. firmware) or otherwise provided to you under this Agreement. For the avoidance of doubt, the term Software shall not include any third party software available as part of a Third Party Service or which may be obtained by you separately from the Services (e.g. any applications downloaded by you through an application marketplace).

Third Party Services: services, products, promotions or applications provided by someone other than us.

Transaction Data: data collected as part of performing Services for you.

Transaction Rate: the then-current Foreign Currency exchange rate used by the Payment Networks or their designee to convert the net funding amount into the Local Currency.

Wireless Networks: certain cellular telephone and data networks to which we have access through Wireless Vendors.

Wireless Services: wireless data communication services that use radio base stations and switching offered by Wireless Networks in order to allow you to capture and transmit to us certain wireless Card Authorization transactions or to transmit other communications to our system.

Wireless Software: wireless software (including any documentation relating to or describing the wireless software) downloaded by you or your designee from our systems onto the wireless equipment.

Wireless Vendors: one or more third party vendors selected by us in our sole discretion through whom we have acquired the right to resell Wireless Services.

You, Your: the merchant signing this Agreement.

Your Payments Acceptance Guide: the information prepared by us, containing operational procedures, instructions and other rules and requirements relating to Card transactions.

Amendment to Merchant Processing Application and Agreement

This Amendment to Merchant Processing Application and Agreement (this "Amendment") is entered into as of _____, 2023 (the "Effective Date") by and between _____ ("Customer") and First Data Merchant Services LLC ("FDMS") and amends that certain Merchant Processing Application and Agreement dated _____, 2023 between Customer and FDMS (the "MPA").

FDMS AND CUSTOMER AGREE:

1. **Definitions.** Capitalized terms that are not defined in this Amendment have the meanings given in the MPA.
2. **Amendment of Section (8) Agreement Approval.** Section 8 of the MPA is deleted in its entirety and replaced as follows:

On behalf of the entity on whose behalf I am signing, (A) I authorize First Data Merchant Services LLC (Processor), the applicable Card Organizations, and its and their Affiliates, third party subcontractors and/or agents: (i) to use, disclose, and exchange amongst them, the information in the Agreement and information about _____ ("Customer"), (including by requesting business, bank references, and other information as necessary from time to time), for administrative purposes, verification purposes, purposes under the Merchant Processing Application and Agreement ("MPA"), if approved, and any other uses permitted by law; and (ii) to receive any and all business, credit or financial information from all references, including banks, which are hereby released to provide that information; and (B) Customer certifies that:

(i) the federal taxpayer identification number and corresponding filing name provided herein are correct; (ii) the statements made and agreed to in this MPA, to which I have not made any alterations or stricken out any language, are true, complete and accurate, and may be relied upon as current unless changed or updated per the Notice provisions of Agreement; (iii) Customer has received and read a copy of the (a) MPA (consisting of Section 1 – 8), (b) General Terms and Conditions, (c) Confirmation Page, and (d) Interchange Rate Schedule, Customer understands that the Interchange Qualification Matrix and American Express Program Pricing Guide and Your Payments Acceptance Guide are available at www.businesstrack.com and the signature below is for the entire contents of the listed documents; (v) I have authority to bind the entity on whose behalf I am signed below; Customer acknowledges and agrees that it will not use its merchant account and/or the Services for illegal transactions, for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5351 et seq, as may be amended from time to time or for processing and acceptance of transactions in certain jurisdictions pursuant to 31 CFR Part 500 et seq. and other laws enforced by the Office of Foreign Asset Control (OFAC).

3. **Deletion of Section 9.** Section (9) Personal Guaranty is deleted in its entirety.
4. **Counterparts.** This Amendment may be executed in any number of counterparts, each of which is deemed an original and all of which constitute one and the same instrument. Facsimile, electronic or other copies of the executed Amendment are effective.
5. **Full Force and Effect.** The MPA, as amended by this Amendment, remains in full force and effect. In the event of a conflict between the terms of the MPA and this Amendment, this Amendment will control with respect to the subject matter.

The parties hereto have caused this Amendment to be executed by their duly authorized officers.

FIRST DATA MERCHANT SERVICES LLC

By: _____
Name:
Title:
Date:

By: _____
Name:
Title:
Date:

Amendment to Merchant Processing Agreement

1 Your Business Information

Merchant Identification #(s) _____

Your Legal Name: _____

First/Last Contact Name: _____

Title: _____

Business Phone: _____

2 What this Amendment Does

2.1 This Amendment amends the General Terms and Conditions to your merchant processing agreement by:

(1) Deleting Section 6.12 in its entirety.

(2) Adding the following sentences to the end of Section 10.1:

We will indemnify, defend and hold you harmless from any and all liabilities and damages, including reasonable attorney fees, from intellectual property infringement claims of any kind. Nothing herein shall be deemed to reduce, amend, or nullify warranties provided to the you by us in related agreements.

(3) Deleting Section 10.2 in its entirety and replacing it with the following:

10.2 In no event shall we or our Affiliates or any of our or their respective directors, officers, employees, agents or subcontractors, be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, in excess of the amount of insurance coverage you require us to carry.

(4) Deleting Section 10.3 in its entirety.

(5) Adding the following Section 12.4 to the end of Section 12 (Confidentiality):

12.4 We acknowledge that you may be subject to public records laws for the State in which you are located and any non-exempt public records, which may include our confidential information, are subject to inspection and copying upon request by the public. If a Public Records request is made for our confidential information, you will provide us 10 days' prior notice of your intent to disclose the records so that we

Amendment to Merchant Processing Agreement

may seek a protective order or take other court action. If no such action is filed, you may disclose the records.

- (6) Deleting Section 15.1 in its entirety and replacing it with the following:

15.1 Any transfer or assignment of this Agreement by you, without our prior written consent (such consent not to be unreasonably withheld by us), by operation of law or otherwise, is voidable by us.
- (7) In Section 15.3, deleting the first sentence and replacing it with the following:

We may not assign or transfer this Agreement to any other Person without your prior written consent (such consent not to be unreasonably withheld by you).
- (8) In Section 16.1, replacing the phrase "approved by us or the date this Agreement is accepted by the Processor and Bank" with "executed by the appropriate official for you."
- (9) In Section 16.2, replacing "3 years" with "5 years".
- (10) In Section 19.2, replacing "generally accepted accounting principles" with "Government Accounting Standards Board principles".
- (11) In Section 19.4, deleting "Affiliates" and inserting "only in the event fraud, substantial misrepresentation, or other criminal activity is discovered." to the end of the last sentence.
- (12) Deleting Section 25.3 in its entirety.
- (13) Deleting Section 26.7 in its entirety.
- (14) In Section 28.1, deleting the phrase "agree to indemnify and hold us, our Affiliates, agents, and third-party service providers harmless from and against" and replacing it with the phrase "are fully responsible for".
- (15) In Section 28.2, deleting the phrase "Subject to the limitations set forth in Section 10.3," and adding the word "negligence" after "employees".
- (16) Deleting Section 29 in its entirety and replacing it with the following:

29 Choice of Law; Venue

29.1 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State in which you are located (without regards to its choice of law provisions).

Amendment to Merchant Processing Agreement

29.2 Venue. The exclusive venue for any actions or claims arising under or related to this Agreement shall be in the appropriate state or federal court located in the State in which you are located.

2.2 Nothing in this Amendment or these General Terms will abrogate the defense of sovereign or governmental immunity if otherwise available to you.

3 Effective Date

This Amendment becomes effective as of the effective date of your merchant processing agreement.

4 Amendment Approval

By signing below, you acknowledge that:

- You have read and understand this Amendment;
- You agree to comply with this Amendment; and
- You understand that if you sign this Amendment using an electronic signature process, the resulting signature has the same legal effect as if you had signed it by hand.

The individual signing below represents that s/he is authorized to sign this Amendment on behalf of the entity identified in Section 1.

Merchant

By:

Signature

Name:

Print or Type

Title:

Date:

First Data Merchant Services LLC

By:

Signature

Name:

Print or Type

Title:

First Data Merchant Services
4000 Coral Ridge Drive
Coral Springs, FL 33065
877-257-2094



Subscription Agreement

Merchant ID _____ Sales Rep. Name _____ Sales ID _____

Merchant Information

Corporate Business Name		DBA Name					
Business Address	City	County	State	ZIP Code	Business Phone Number		
Business Type	Corporation	Partnership	Proprietorship	Non-Profit	LLC	Tax ID#	Years in Business
Billing (If different than above)	City	State	ZIP Code				
Bank Name	Routing Number	Account Number	(Provide copy of Void Check)				

Description of Equipment

Equipment Type	Quantity	Unit price w/o tax	Equipment Type	Quantity	Unit price w/o tax
_____	-	\$	_____	-	\$
_____	-	\$	_____	-	\$
_____	-	\$	_____	-	\$
_____	-	\$	_____	-	\$

Schedule of Payments

Subscription Term: _____ mos.	Annual Tax Handling Fee:
Total Monthly Subscription Charge: _____ \$ <small>(w/o taxes, late fees or other charges that may apply)</small>	AL, AR, CA, CT, GA, IN, KY, LA, MS, MO, NE, NV, NM, NC, OK, OR, RI, SC, TN, TX, VT, VA, WA, WV, WI and WY \$ 30.20
Total Cost To Subscription: _____ \$ <small>(without tax)</small>	All other states \$ 10.20
Option to purchase: If you wish to buyout the equipment, please contact 877-257-2094 to obtain the cost.	Approx. Date of First ACH Payment: _____
	Approx. Amount of First ACH Payment: _____ \$

The Subscription Agreement ("Agreement" or "Subscription Agreement") is being entered into by and between First Data Merchant Services LLC ("FDMS") and the subscriber identified in the signature panel of the Agreement. In this Agreement, the words "we," "our" and "us" refer to First Data Merchant Services LLC and its successors and assigns and the words "you" and "your" refer to the Subscriber and its permitted successors and assigns. This Subscription may be a factor in the pricing you are receiving for processing services provided by our affiliates.

1. Effective Date, Term and Interim Rent.

a) This Agreement becomes effective on the date we deliver any piece of Equipment to you (the "Delivery Date"). This Agreement remains in effect until all of your obligations and all of our obligations under it have been satisfied. We will deliver the Equipment to the site designated by you.

b) Term: The term of this Agreement ("Term" or "Subscription Term") begins on a date designated by us after receipt of all required documentation and acceptance by us represented by our delivery of Equipment to you (the "Commencement Date") and continues for sixty (60) months (the "Subscription Term").

c) You agree the Agreement is a non-cancelable commitment by you to subscribe for the equipment identified herein for the entire term indicated above. You agree to pay all amounts due during the Subscription Term and confirm upon execution the Subscription Term is specifically defined as written above.

d) You agree to pay an Interim Subscription Payment in the amount one-thirtieth (1/30th) of the monthly subscription charge for each day from and including the Delivery Date until the date preceding the Commencement Date.

2. Authorization. Subscriber hereby authorizes us or our designees, successors or assigns (hereinafter "FDMS") to withdraw any amounts including any and all sales taxes now due or hereinafter imposed, owed by Subscriber in conjunction with this Agreement by initiating debit entries to Subscriber's account at the bank named above (hereinafter "Bank"), or such other bank as the Subscriber may from time-to-time use. In the event of default of Subscriber's obligation hereunder, Subscriber authorizes debit of its account for any amounts due and owing under this Agreement, subject to Paragraph 3. Further, Subscriber authorizes Bank to accept and to charge any debit entries initiated by FDMS to Subscriber's account. In the event that FDMS withdraws funds erroneously from Subscriber's account, Subscriber authorizes FDMS to credit Subscriber's account for an amount not to exceed the original amount of the debit. This authorization is to remain in full force and effect until FDMS and Bank have received written notice from Subscriber of its termination in such time and in such manner as to afford FDMS and Bank a reasonable opportunity to act.

3. Default; Remedies.

a) If any debit of your bank account initiated by us is rejected when due, or if you otherwise fail to pay us any amounts due hereunder when due, or if you default in any material respect in the performance or observance of any obligation or a default hereunder. Without limiting the foregoing, any default by you under a Merchant Processing Agreement ("MPA") may be treated as a default under this Agreement. Such a default would include a default resulting from early termination of the MPA, if applicable. For fees that may be applicable upon payment default, please see paragraph 10.

b) Upon the occurrence of any default, we will notify you that you are in default, and you will have five (5) business days to cure such default ("Cure Period"). If the default is not cured during the Cure Period, we may at our option, either (i) terminate this Agreement and our future obligations under this Agreement, repossess the Equipment and proceed in any lawful manner against you for collection of all charges that have accrued and are due and payable, or (ii) accelerate the remaining monthly payments then outstanding on the Subscription Term, and require the return of all Equipment. If Equipment is not returned, the accelerated amount shall include the then fair market value of the Equipment (as determined in good faith by us). The parties agree to work together in good faith towards the resolution of any default during the Cure Period. If the default is due to Subscriber's failure to timely provide funding to the account to be debited for the monthly subscription charge described in Paragraph 10, upon written notice of such default from FDMS the Subscriber shall have five (5) business days to fund the account. This acceleration of payments is not a penalty but liquidated damages for our loss of the

bargain. Upon any such termination for default, we may proceed in any lawful manner to obtain satisfaction of the amounts owed to us and, if applicable, our recovery of the Equipment, including entering onto your premises to recover the Equipment. In addition, you shall also be responsible for our costs of collection, court costs and reasonable attorneys' fees, as well as applicable shipping, repair and refurbishing costs of recovered Equipment. You agree that we shall be entitled to recover any amounts due to us under this Agreement by charging your bank account or any other funds of yours that come into our possession or control, or within the possession or control of our affiliates without notifying you prior to doing so.

4. Return or Purchase of Equipment at End of Subscription Period. Upon the completion of your Subscription Term the Agreement shall continue on a month-to-month basis. There is no obligation to continue the subscription after the Subscription Term ends. At the end of your Subscription Term, you will have the option to: (a) return the Equipment to us; (b) purchase the Equipment from us for the lesser of fair market value at the time (as determined in good faith by us), or an amount equal to ten-percent (10%) of the total subscription payments under this Subscription Agreement with respect to each item of Equipment; or (c) as noted, rent the Equipment on a month-to-month basis at the existing monthly and this Agreement will continue on a month-to-month basis at the existing monthly subscription payment. After the end of the Subscription Term, if you do not want to continue to rent the Equipment on a month-to-month basis, then you will be obligated to provide FDMS with notice of that choice prior to the end of the Subscription Term and advise whether you will return the Equipment to FDMS or purchase the Equipment, which price FDMS shall provide to you upon receipt acknowledge that FDMS may not have time to suspend billing due for the next month's subscription charge. If we terminate this Agreement pursuant to paragraph 3 due to a default by you, then you shall immediately return the Equipment to us at the address set forth in paragraph 11, no later than the tenth Business Day after termination, or remit to us the fair market value of the Equipment which amount we shall provide after good faith determination. We may collect any amounts due to us under this paragraph 4, by debiting your Settlement Account, and to the extent we are unable to obtain full satisfaction in this manner, you agree to pay the amounts owed to us promptly upon our request.

Subscription Acceptance

Undersigned agrees to all terms and conditions, as may be amended in writing by the parties, contained in this FDMS Subscription Agreement. **This agreement is a non-cancelable commitment by you for the full subscription term indicated herein.** By executing the below, Subscriber confirms that the Subscription Term is filled in above. Any attempt by you to terminate this commitment prior to the end of the Subscription Term, entitles First Data Merchant Services LLC to all rights and remedies set forth in paragraph 3, including acceleration of the remaining payments due, which shall be calculated as 95 percent of the product of (1) your monthly payment and (2) the number of months then outstanding on the Subscription Term. By signing below, you are agreeing to the terms and conditions in this agreement and acknowledging FDMS' acceptance of this agreement. If you sign using an electronic signature process, that signature reflects on your agreement to be bound by the terms and conditions in this agreement.

Subscriber:

<div>X</div> <div>Signature</div>	<div></div> <div>Title</div>	<div></div> <div>Print Name</div>	<div></div> <div>Date</div>
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First Data Merchant Services LLC:

<div>X</div> <div>Signature</div>	<div></div> <div>Title</div>	<div></div> <div>Print Name</div>	<div></div> <div>Date</div>
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5. Limitation on Liability. Except as set forth in Paragraph 8 below, we are not liable for any loss, damage or expense of any kind or nature caused directly or indirectly by the Equipment, including any damage or injury to persons or property caused by the Equipment. We are not liable for the use or maintenance of the Equipment or any repairs or service to it, or by any interruption of service or loss of use of the Equipment or resulting loss of business. Our liability arising out of or in any way connected with this Agreement shall not exceed the aggregate subscription amount paid to us for the first Subscription Term of this Agreement. In no event shall we be liable for any indirect, incidental, special or consequential damages. The remedies available to you under this Agreement are your sole and exclusive remedies. The limitation on liability herein shall not apply to the coverage limits afforded by the insurance policies required to be provided by FDMS.

6. Governing Law; Dispute Resolution; Miscellaneous. This Agreement shall be governed by and will be construed in accordance with the laws of the State of Nebraska. The exclusive venue for any actions or claims arising under or related to this Agreement shall be the appropriate state or federal court located in Lancaster County, Nebraska. If any part of this Agreement is not enforceable, the remaining provisions will remain valid and enforceable.

7. Equipment and Software.

- a) We agree to provide you and you agree to subscribe for the equipment identified on the first page of this agreement or such other comparable equipment we provide you (the "Equipment"), according to the terms and conditions of this Agreement. Such Equipment may include Clover®-branded devices used in connection with the Clover devices ("Clover Devices") or other equipment or peripherals compatible with Clover Devices (for example, receipt printers or cash drawers).
- b) For the avoidance of doubt, each Clover Device includes (i) operating software and (ii) the then-current, Clover standard object code version of software resident on or accessible through a Clover Device at the time we provide you with the Clover Device ("Clover Software"), but Clover Software does not include any software that may be obtained by you separately from using the Clover Device (for example, from the Clover App Market).
- c) We are providing the Equipment to you "as is" and make no representations or warranties of any kind as to the suitability of the Equipment for any particular purpose.
- d) You acknowledge that the equipment you subscribe for under this Agreement may not be compatible with another processor's systems and that we do not have any obligation to make such equipment compatible in the event that you elect to use another service provider upon termination of your merchant processing agreement, you acknowledge that you may not be able to use the equipment subscribed for under this agreement with said service provider.

- e) In addition to the Clover Software, with respect to Clover Virtual Terminal, Clover Dashboard, and other services and software accessed through your Clover Account (the "Clover Services"), you agree to the terms of use that apply to the Clover Services, as those terms may be presented on-device during activation or set-up, or an "in-application" basis, or by link to or directly on Clover's then-current website (currently, clover.com/terms), as updated from time to time ("Clover Terms"). After agreeing to the Clover Terms, you will receive credentials from us or our affiliates to open a Clover Account. You must agree to the Clover Terms, and may be required to "click to agree" to certain updated Clover Terms or applications in order to continue accessing the Clover Account or using the applicable Clover Services.
- f) You may use the Clover Account to connect to a specific webpage for you ("Clover Dashboard"). Through the Clover Dashboard, you may access certain software applications we (or our affiliates) provide as a part of the Clover Services.
- g) You and your authorized users can access the Clover Dashboard through most internet browsers. The applications that make up the Clover Services may reside on the Clover Dashboard, or you may download the enrolled and authorized applications during or after initial set-up. The applications (and their functionality) that make up the Clover Services may vary from time to time.
- h) You shall at all times comply with any operating procedures, requirements, or guidelines regarding your use of the Clover Services, including but not limited to the Clover Privacy Policy (clover.com/privacy-policy) and the Clover App Market Terms of Use (clover.com/app-market-terms), that are posted on the Clover website or otherwise provided or made available to you. Each Clover Service or application may have additional terms that you must agree to prior to use.
- i) The fees for the Clover Services are included in the subscription charge. However, upon the conclusion of the Subscription Term, if you continue to use the Clover Services and if you have elected to purchase the equipment, you shall pay the then-applicable fees and charges for the Clover Services, which are reflected in the Clover App Market or Clover Dashboard as applicable. You agree that Developers of applications in the Clover App Market charge fees separate from the Clover Services. You are responsible for paying all fees for Clover App Market applications to the developers.

8. Warranties.

- a) All warranties express or implied, made to you or any other person, except as set forth herein, are hereby disclaimed including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular use, quiet enjoyment of infringement.
- b) You warrant that you will only use the Equipment for commercial purposes and will not use the Equipment for any household or personal purposes.
- c) Equipment is warranted by FDMS against material defects for the Subscription Term. This warranty does not include damage to the Equipment resulting from accident or misuse or any other breach of the Agreement. If the Equipment should become defective within the warranty period, we will replace it free of charge (except that appropriate shipping charges may apply).

9. Reserved.

10. Payment of Amounts Due, Administrative and Collection Fees.

- a) The schedule of fees is listed below:

Schedule of Fees			
Default Fees	Amount	Administrative Fees	Amount
NSF Fee	\$10	Upgrade Fee	\$50
Collection Fee	\$25	Assumption Fee	\$150
Late Fee	\$10	Agreement Copy Fee	\$7
Collection Invoicing Fee	\$7		
Improper Return Fee	\$100		

- b) The monthly subscription charge is due and payable on the same day of each successive month thereafter of the Subscription Term for each piece of Equipment. You agree to pay all assessed costs for delivery and installation of Equipment.
- c) In addition to the monthly subscription charge, you shall pay, or reimburse us for, amounts equal to any taxes or assessments on or arising out of this Agreement or the Equipment, and related supplies or any services, use or activities hereunder, including without limitation, state and local sales, use, property, privilege and excise tax, exclusive, however, of taxes based on our net income. Reimbursement of property tax calculation is based on an average tax rate.
- d) Your subscription payments will be due despite dissatisfaction for any reason with the Equipment or related processing services.
- e) Whenever any payment is not made by you in full when due, you shall pay us a late fee of \$10 for each month during which it remains unpaid but in no event more than the maximum permitted by law. You shall also pay to us a NSF fee of \$10 for any debit we attempt to make against your bank account that is for any reason rejected, but in no event more than the maximum amount permitted by law.
- f) In the event your account is placed into collections for past due subscription amounts, you agree that we can recover a collection expense fee of \$25 for each aggregate payment requiring a collection effort, but in no event more than the maximum amount permitted by law.
- g) *See paragraph 11(g) for details regarding this fee.

11. Use and Return of Equipment; Insurance.

- a) You shall cause the Equipment to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us or the manufacturer. You shall maintain the Equipment in good operating condition and protect it from deterioration, normal wear and tear excepted.
- b) You shall not permit any physical alteration or modification of the Equipment, or change the installation site of the Equipment, without our prior written consent.
- c) You shall not create, incur, assume or allow any consensually or judicially imposed liens or encumbrances on, or part with possession of, or sublease the Equipment without our prior written consent.
- d) You shall comply with all governmental laws, rules and regulations relating to the use of the Equipment. You are also responsible for obtaining all permits required to operate the Equipment at your facility.
- e) We or our representatives may, at any time, enter your premises for purposes of inspecting, examining or repairing the Equipment.
- f) The equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stencils to the Equipment evidencing our ownership.

g) You agree that all Equipment returns shall be to First Data Hardware Services, 1169 Canton Road, Marietta, GA., 30066, be done in a manner that can be tracked, and shall have Subscription number referenced on the return packaging, and be at your cost. You understand and agree that your failure to return the Equipment in the manner noted in the preceding sentence will delay our receipt of the return and possibly result in you being charged \$100. If returned Equipment shows excessive wear and tear or is not in good operating condition (in each case, as determined by us in our reasonable discretion), you will be charged our cost to restore such Equipment to normal or good operating condition, as applicable.

h) You shall keep the Equipment adequately insured against loss by fire, theft and all other hazards.

i) You shall provide proof of insurance as evidenced by a certificate naming First Data Merchant Services, LLC as a loss payee under your insurance policy. The loss, destruction, theft, or damage of or to the Equipment shall not relieve you from your obligation to pay the full purchase price or total monthly subscription charges hereunder.

12. Site Preparation. You will prepare the installation site(s) for the Equipment, including but not limited to the power supply circuits and phones lines, in conformance with the manufacturer's and our specifications and will make the sites(s) available to us by the confirmed shipping date.

13. Title to Equipment. We at all times retain title to the Equipment unless we agree otherwise in writing. You agree to execute and deliver to us any statement or instrument that we may request to confirm or evidence our ownership of the Equipment, and you irrevocably appoint us as your attorney-in-fact to execute and file the same in your name and on your behalf. If a court determines that the transaction contemplated by this Agreement is not governed by Article 2A of the Uniform Commercial Code, then we shall be deemed to have a first lien security interest on the Equipment as of the date of this Agreement, and you will execute such documentation as we may request to evidence such security interest.

14. Software License. We retain all ownership and copyright interest in and to all computer software, related documentation, technology, know-how and processes embodied in or provided in connection with the Equipment ("FDMS Software") other than computer software, related documentation, technology, know-how and processes owned or licensed by the manufacturer of the Equipment ("Manufacturer Software"). Manufacturer Software together with the FDMS Software is collectively referred to as "Software". You shall have only a nonexclusive license to use the Software in your operation of the Equipment. Notwithstanding the foregoing, ownership and copyright right interest in and to the Clover Software and your license to use the Clover Software and the Clover Services is described in and governed by the terms of your MPA or in separate agreement(s) (including those identified in Sections 7(e), (h) and (i)). FDMS agrees to indemnify, defend, and hold the subscriber harmless from any and all claims for infringement of any intellectual property rights relating to any and all FDMS software.

15. Indemnification. You shall indemnify and hold us harmless from and against any and all losses, liabilities, damages and expenses, (including attorneys' fees) resulting from (a) the operation, use, condition, liens against, or return of the Equipment or (b) any breach by you of any of your obligations hereunder, except to the extent any losses, liabilities, damages or expenses result from our negligence, gross negligence, willful misconduct, or intentional actions.

16. Assignment. You may not assign or transfer this Agreement, by operation of law or otherwise, without our prior written consent. For purposes of this Agreement, any transfer of voting control of you or your parent shall be considered an assignment or transfer hereof. We may assign or transfer this Agreement and our rights and obligations hereunder, in whole or in part, to any third party without the necessity of obtaining your consent.

17. Notices. All notices must be in writing, if to you at your address appearing on the cover page of this Agreement and if to us at 4000 Coral Ridge Drive, Coral Springs, Florida, 33065, Attn: Equipment Subscription Department, and shall be deemed to have been given (i) if sent by mail or courier when actually received or, in the case of courier, when delivered, and (ii) if sent by facsimile machine, when the courier confirmation copy is actually received. Notice given in any other manner shall be effective when actually received, if to you at the address appearing on the cover page of this Agreement or by any electronic means, including but not limited to the email address you have provided on the cover page of the Agreement. Notices sent to the Merchant's last known address, as indicated in our records, shall constitute effective notice to the Merchant under this Agreement. Customer Service toll-free number 877-257-2094.

18. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter, supersedes any previous agreements and understandings and can be changed only by a written agreement signed by all parties. This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Agreement.

TERMS & CONDITIONS

SECTION ONE – SOFTWARE AND SERVICES

1.1. Services. Subject to this Terms & Conditions (**Terms**) and in each applicable quote (**Quote**, and together with these Terms, the **Agreement**), First Data Merchant Services LLC doing business as Clover Sport (**Clover Sport**) shall provide the services identified in the Quote signed by Client (**Services**) and deliver any deliverables set forth in the Quote (**Deliverables**). The parties may enter into additional Quotes from time-to-time, each of which will be subject to these Terms. All Quotes accepted by Clover Sport are controlled and governed by these Terms. If there is a conflict between these Terms and the Quote, these Terms shall take precedence. Each Quote must be executed by the Client.

1.2. Limited License. Subject to the terms and conditions of this Agreement, Clover Sport hereby grants to Client during the Term a limited, worldwide, revocable, non-exclusive, non-sublicensable, and non-transferable license, under intellectual property rights owned or licensed by Clover Sport, to use the point of sale software (**Software**) set forth on a Quote solely in connection with certain third party hardware provided by Clover Sport or its distributors (**Hardware**) (the Software and Hardware collectively, the **Payment System**) up to the maximum licensed capacity (the **License**). The Payment System does not include any third party integrations.

- a. The License extends only to (1) Client's and its Affiliates' employees and contractors, but only to the extent that such employees and contractors use the Payment System in accordance with the terms of this Agreement and for the sole purpose of collecting payments and processing orders on behalf of Client, and for no other purpose whatsoever; and (2) Client's use of: (i) the Payment System solely to perform the functions specified herein, and in compliance therewith and (ii) the Software (in object code form) in connection with the Hardware at the Client locations specified on the applicable Quote (each a Site). Client is responsible for any breach of this Agreement by such users. Affiliate means with respect to an entity, any other entity that is controlled by, under common control with or controls such entity, where "control" means ownership of at least a majority interest of the voting interests in an entity.
- b. While exercising the License, Client shall abide by the confidentiality requirements of Section 6 (Confidentiality), applicable documentation and Applicable Laws (defined in Section 1.04(a)).

1.3. Restrictions. Except as expressly provided to the contrary in this Agreement, Client and its Affiliates shall not, shall not attempt, and shall not cause or knowingly permit any non-party, to:

- a. reproduce, disassemble, decompile, decrypt, extract, reverse engineer, prepare a derivative work based upon, distribute, or time-share the Payment System, or otherwise apply any procedure or process to the Payment System in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the Payment System or any algorithm, process, procedure or other information contained in the Payment System; or
- b. rent, lease, assign, sublicense, transfer, modify, alter, or time-share the Payment System, or permit the Payment System or Deliverables to be used for or in connection with any facility management or service bureau purposes, services or arrangement, or otherwise used for processing data or other information on behalf of any third party.

1.4. Compliance with Laws; Credit Card Data.

- a. Each party shall comply with all applicable international, national, state, regional and local laws and regulations (Applicable Laws) in performing its duties under this Agreement. Each party is responsible for its own compliance with Applicable Laws.
- b. Clover Sport transmits, through a PCI compliant gateway that meets or exceeds the current version of PCI DSS Cloud Computing Guidelines, all credit and debit transactions to Client's or its representatives' or Affiliates' specified merchant account. Clover Sport will use commercially reasonable efforts to achieve compliance with newer versions of such PCI guidelines issued from time to time within a reasonable time period after their release.
- c. Clover Sport shall not store any Client or Client customer credit card data on its resident cloud-based data sources.
- d. Clover Sport shall maintain applicable PCI DSS requirements as a

service provider to the extent that Clover Sport processes and transmits cardholder data on behalf of Client or to the extent that the Client could impact the security of the cardholder data environment.

SECTION TWO – SUPPORT SERVICES

2.1. Clover Sport Product Support Guidelines are available at <https://support.Clover Sportmobile.com> or such URL as Clover Sport may designate. Clover Sport may modify the Clover Sport Product Support Guidelines from time to time, but any such modifications will not materially change the nature of, or materially diminish the features or functionality of, the Software provided to the Client under the Agreement. Clover Sport will publish the most current version of the Clover Sport Product Support Guidelines at <https://support.Clover Sportmobile.com> or such URL as Clover Sport may designate.

2.2. Clover Sport will use commercially reasonable efforts to provide bug-fixes and corrections to the Software to correct malfunctions and defects following telephonic notification from Client, according to the Clover Sport Product Support Guidelines, if such malfunction or defect prevents the Software from performing substantially in accordance with applicable documentation. Any updates, bug-fixes or corrections will be deemed to be "Software" under this Agreement.

2.3. If included in a Quote, Clover Sport will provide on-site implementation and/or support services. Client may request additional on-site assistance or support at Clover Sport's then current daily rate. Any such on-site service must be pre-approved in writing under the standard Clover Sport quoting process.

SECTION THREE – RESPONSIBILITIES; ASSUMPTIONS

3.1. Payment System.

- a. Availability. During the Term, Clover Sport shall provide the Software. The parties acknowledge that the Payment System relies upon computer network-based services that may be subject to outages and delays. Clover Sport shall use its commercially reasonable efforts to diligently and promptly remedy any and all material interruptions within the Payment System. This does not include remedy of connection or performance related issues caused by or related to any client owned or operated network configuration, hardware, or internet connection. If Client is unable to use the Payment System, Client will report disruption to the Clover Sport support center in a timely manner. Clover Sport does not warrant that Client's use of the Payment System will be error-free or uninterrupted.
- b. Remedies. Clover Sport will use commercially reasonable efforts to maintain an availability percentage for the Software of 99.8% during a 12-month period, beginning on the first day of the Term. Calculation of availability excludes 1) downtime for scheduled maintenance, 2) failure of Client to maintain merchant account(s), 3) outages caused by a force majeure event or 4) times when the Payment System is in Offline Mode. Availability will be determined by Clover Sport in its reasonable discretion. For clarity, Clover Sport is not responsible for, and the availability commitment does not apply to unavailability for failure of the Payment System that arises from or relates to a failure of the Assumptions set forth in Section 3.03 (Assumptions), the Client obligations set forth in Section 3.04 (Client Obligations), failure or unavailability due solely to the Hardware or failure of third party elements of the overall payment infrastructure, e.g. internet connectivity, bank site availability, etc. (Third-Party Interruptions). If the Software does not achieve the above uptime percentage, Client will be entitled to pro-rated credit for the period of time the disruption occurred based on the then current Software Subscription Fees. Such credit will be issued against the next fee invoice.
- c. The fee credits set forth above represent Client's sole and exclusive remedy, and Clover Sport's sole liability, for any downtime Client may experience with respect to the Payment System.

3.2. Hardware Terms.

- a. Hardware Delivery. Clover Sport will deliver the Hardware indicated in a Quote to the Site.
- b. Hardware Title and Risk of Loss. All Hardware provided hereunder will be shipped FCA Clover Sport's designated shipping point (Incoterms

2010); provided that, for the avoidance of doubt, Clover Sport may select the third-party carrier. Title to Hardware passes to Client at the shipping point. Hardware will ship from the distributor to Client directly or from Clover Sport to Client.

3.3. Assumptions. The parties acknowledge and agree that Clover Sport' performance of the Services are contingent on the following assumptions (Assumptions), and that any changes to the Assumptions below may affect Clover Sport' ability to deliver the Services or to meet project timeline estimates: (a) Client and Clover Sport will mutually agree the project timeline and meeting dates within 30 days of the effective date on the applicable Quote; (b) Client will comply with such schedule and provide any information in accordance with the project schedule; (c) Client will cooperate with Clover Sport; and (d) the Services do not include the development of any specific custom code by Clover Sport.

3.4. Client Obligations.

- a. Access. Client shall provide Clover Sport with full access physically within the Site and to Client's network necessary to permit Clover Sport to perform its obligations under this Agreement. This includes but is not limited to necessary network configuration information for payment system connectivity.
- b. Permits. Client shall obtain and maintain all necessary permits and consents required for Clover Sport to lawfully perform the Services and access the Site and relevant technology systems.
- c. Physical and Network Equipment Requirements. Where applicable, Client will provide one power outlet within 4 feet of the POS terminal and one ethernet port within 6 feet of the located device. Client is responsible for procuring any additional equipment needed to satisfy these requirements. Such equipment may include, but is not limited to, switches, perimeter devices, power strips, extension cords and/or ethernet cables.
- d. Network. Client shall provide full and dedicated network and internet connectivity for use by the Payment System and for all Clover Sport hardware meeting at least minimum guidelines provided to Client by Clover Sport. All network infrastructure and configuration shall be completed by Client prior to commencement of any onsite implementation efforts by Clover Sport resources. In the event of infrastructure and or configuration noncompliance, Client may be charged an additional fee.
- e. Compliance with Export Controls. Client agrees not to export or re-export any Clover Sport Intellectual Property in violation of any applicable export control restrictions, laws or regulations. Unless all required permits and/or approvals have been obtained, Client shall not cause, approve or otherwise facilitate others such as agents, subsequent purchasers, customers or any other third parties to export or re-export any Clover Sport Intellectual Property.
- f. Information. Client will provide to Clover Sport the information relevant to complete contracted venue configuration.
- g. Merchant Account. Client will maintain a merchant account and, if applicable, a gateway account in good standing and is responsible for all fees associated with processing.
- h. Effect of Client Failure or Delay. Clover Sport is not responsible or liable for any delay or failure of performance caused in whole or in part by Client's delay in performing, or failure to perform, any of its obligations under this Agreement (each a Client Failure). Client may be charged a fee as a result of a Client Failure, as more fully described in Section 4 (Fees; Payment Terms).

SECTION FOUR – FEES; PAYMENT TERMS

4.01. Fees. Client shall pay Clover Sport the fees associated with the License, Services and Hardware (the Software Subscription Fees, Services Fees, and Hardware Fees, respectively) set forth in the applicable Quote.

4.2. Invoice Schedule.

- a. Hardware Fees and Services Fees. Unless otherwise stated in a Quote, Hardware Fees and Services Fees will be invoiced upon execution of the applicable Quote. Hardware will not be shipped to Client until such payment has been received by Clover Sport.
- b. Software Subscription Fees. Unless otherwise stated in a Quote, the Software Subscription Fee for the first year of the Term will be invoiced 30 days prior to the date in which the first live transaction is expected to take place (Launch Date). Clover Sport will invoice Client annually thereafter, at least 30 days prior to the anniversary of the Launch Date.

The Software Subscription Fee for the first year of the Term is set out in the Quote and may escalate by no more than 5% for each year after the first year of the Term.

4.3. Payment Terms. Invoices are due and payable within 30 days from issuance. Clover Sport may issue an invoice without a corresponding purchase order from Client. If payment is not made within 10 calendar days after its due date, and without limiting its other remedies in law or in equity, Clover Sport may charge Client a late fee on the unpaid balance of 1.5% per month, or if lower, the highest rate allowed under applicable law.

4.4. Taxes. Fees included in the Quote do not include any applicable taxes, duties and other similar charges. Such items, where applicable, will be included in on the invoice.

4.5. Services Fees for Client Failure. If Clover Sport requires additional onsite time to complete services due to Client Failure, such as failure to complete any network infrastructure, configuration, or connectivity prior to onsite arrival as directed by the Clover Sport implementations team, the parties will agree in writing the applicable Services Fees for such additional onsite time.

4.6. Installation Cancellation Policy. Clover Sport requires a 14-calendar day notice for any cancellations or changes to ensure no additional fees are incurred. If changes are made within less than 14 days before the scheduled install, a change fee will be billed to Client's account and rescheduling will be honored based on the technician's availability. If a reschedule or cancellation is required within less than 24 hours before the technician's scheduled arrival time, a new Quote must be signed for additional travel fees and service costs.

4.7. Suspension; Termination for Non-Payment. In addition to any other rights of Clover Sport, Clover Sport reserves the right to suspend or terminate this Agreement or Client's access to and use of the Payment System if Client's account becomes delinquent. If Client's use of the Payment System is suspended due to nonpayment, but not terminated, Client agrees to pay the applicable Software Subscription Fees for the balance of the full Term before the Payment System will be restored.

SECTION FIVE – TERM AND TERMINATION

5.1. Term.

- a. Unless otherwise set forth in the applicable Quote, each subscription to access and use the Software (Subscription) will initially commence on the Launch Date and continue for the period set forth on the Quote (Initial Subscription Term). Subscriptions in place at the end of the Initial Subscription Term will automatically renew for successive one-year terms (each, a Subscription Renewal Term; together with the Initial Subscription Term, the Term), unless a party provides written notice to the other of its intent not to renew a Subscription at least 60 days prior to the end of the current Term.
- b. If Client desires to add Licenses prior to the end of the then current Term, Clover Sport will pro-rate the fees charged for such Licenses for the number of months left in any such Term, and thereafter the Term for such Licenses will renew at the same time as the other Licenses for such Subscription. Any License added shall have a Term not less than one year plus the pro-rated Term.

5.2. Material Breach. The parties have the right to terminate the Agreement at any time if the other party breaches any of the material provisions of the Agreement and (if curable) fails to cure such breach within 30 days of its receipt of written notice thereof from the non-breaching party. Client's breach of Section 1.02 (Limited License) and 1.03 (Restrictions) will be deemed a material breach of this Agreement.

5.3. Effect of Termination. Upon any termination of the Agreement, Client will have no right to access or use the Payment System and must immediately permanently delete, or otherwise destroy the Software stored or otherwise in its possession, custody or control, and, if applicable, allow Clover Sport or its nominees to access the applicable hardware and systems to remove the Software. If Clover Sport terminates the Agreement pursuant to Section 5.02 (Material Breach), Clover Sport may accelerate Client's unpaid fee obligations under this Agreement so that all such obligations become immediately due and payable. These remedies are in addition to any other rights and remedies available to the parties.

SECTION SIX - CONFIDENTIALITY

6.1. Confidential Information. The parties acknowledge that in their performance of their duties hereunder either party may communicate to the other (or its designees) certain confidential and proprietary information (collectively, the **Confidential Information**) all of which are confidential and proprietary to, and trade secrets of, the disclosing party. For the avoidance of doubt, information concerning the Payment System and the know-how, technology, software, services, techniques, or business, strategic or marketing plans related thereto are Clover Sport's Confidential Information.

6.2. Restrictions on Use and Disclosure. As a condition to the receipt of the Confidential Information from the disclosing party, the receiving party shall (a) not disclose in any manner, directly or indirectly, to any third party any portion of the disclosing party's Confidential Information; (b) not use the disclosing party's Confidential Information in any fashion except to perform its duties hereunder or with the disclosing party's express prior written consent; (c) disclose the disclosing party's Confidential Information, in whole or in part, only to employees and agents who need to have access thereto for the receiving party's internal business purposes; (d) take reasonable steps to inform its employees and agents are informed of and obligated to comply with the confidentiality restrictions at least as stringent as those contained in this Agreement; and (e) exercise at least the same degree of care in safeguarding the Confidential Information as it would with its own confidential information, and in no event shall apply less than a reasonable standard of care to prevent disclosure.

6.3. Transaction Information. The Payment System is designed to submit payment, transaction and credit card information (**Transaction Information**) to Client's, its Affiliates and their respective contractors and customers to merchant banks and payment processors. Accordingly, notwithstanding anything to the contrary in this Section 6 or any separate nondisclosure agreement, Clover Sport may submit Transaction Information to merchant banks and payment processors in compliance with Section 1.04 (Compliance with Laws; Credit Card Data).

6.4. Exclusions. The term "Confidential Information" does not include information that: (a) is public knowledge at the time of disclosure by the disclosing party; (b) becomes public knowledge or known to the receiving party after disclosure by the disclosing party other than by breach of the receiving party's obligations under this section or by breach of a third party's confidentiality obligations; (c) was known by the receiving party prior to disclosure by the disclosing party other than by breach of a third party's confidentiality obligations; or (d) is independently developed by the receiving party.

6.5. Clover Sport acknowledges that Client may be subject to public records laws for the State in which Client is located and any non-exempt public records, which may include Clover Sport's confidential information, are subject to inspection and copying upon request by the public. If a public records request is made for Clover Sport's confidential information, Client will provide Clover Sport at least 10 days' prior notice of Client's intent to disclose the records so that Clover Sport may seek a protective order or take other court action. If no such action is filed, Client may disclose the records.

SECTION SEVEN – INFRINGEMENT CLAIMS

7.1. Clover Sport shall, at its expense, defend Client against any third party claim or action specifically alleging the Software infringes a United States patent, copyright, trademark, or other proprietary right of such third party (Infringement Claim) and shall pay all amounts payable by Client that are specifically attributable to the Infringement Claim under any final, non-appealable judgment, verdict, or court order entered by a court of competent jurisdiction or monetary settlement agreed in writing by Clover Sport in respect of any Infringement Claim, provided that Client: (i) promptly notifies Clover Sport in writing of such Infringement Claim within 10 days of such Infringement Claim arising; (ii) promptly grants Clover Sport the sole right to control the defense and disposition of such Infringement Claim, where such control includes the right to choose legal counsel and negotiate any settlement that does not result in non-monetary obligations to Client other than termination of use of the Software under 7.02(B)(ii) below; and (iii) provides Clover Sport with reasonable and prompt cooperation and assistance in the defense and disposition of such Infringement Claim.

7.2. In resolution of an Infringement Claim, Clover Sport, at its sole option and expense, may: (i) either (A) procure for Client the right to continue to use the Software, or (B) provide a replacement or modification for the applicable Software so as to avoid infringement; or (ii) if neither option under (i) above is reasonably practical in Clover Sport's sole opinion, Clover

Sport may, upon written notice to Client, stop providing the applicable Software and terminate the applicable Statement of Work (or part thereof) and Client's use of the Software, and references to such Software (and any fees in connection therewith) shall automatically be removed from this Agreement. Solely with respect to such termination and prepaid, one-time Software Subscription Fees for a terminated Software, Clover Sport shall pay to Client a pro rata refund of the prepaid, one-time Software Subscription Fees paid by Client for the infringing Software or portion thereof, depreciated on a five-year straight-line basis commencing on the effective date of the Quote for such Software.

7.3. Notwithstanding the foregoing, Clover Sport shall have no liability for any Infringement Claim (or any other claim or action) to the extent based upon or arising from: (i) use of any part of the Software in combination with materials or software not provided by Clover Sport (except as expressly specified in this Agreement); (ii) modifications to the Software made by Client or any third party; (iii) use of other than the current release or version of the Software if infringement would have been avoided by use of such current release; (iv) use of any part of the Software other than for its intended use and otherwise in accordance with the applicable documentation and the terms of this Agreement; (v) Deliverables created or provided based on Clover Sport's adherence to Client's specifications or instructions, or Clover Sport's use of any materials provided by Client in connection with the Software, to the extent the alleged infringement arose from such Client-provided specifications, instructions and/or materials; or (vi) any third party Products or materials provided by Clover Sport except to the extent the third party Products or materials are embedded in the Software.

7.4. THE OBLIGATIONS SET FORTH IN THIS SECTION 7 ARE CLOVER SPORT'S ENTIRE LIABILITY AND CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT CLAIM AND CLIENT HEREBY EXPRESSLY WAIVES ANY OTHER LIABILITY ON THE PART OF CLOVER SPORT ARISING THEREFROM.

SECTION EIGHT - INDEMNIFICATION

8.1. Client Indemnification. Client is fully responsible for losses, liabilities, damages, and expenses (including reasonable attorney's fees) awarded in connection with any third-party claim, suit or proceeding (Claim) (or agreed upon in settlement thereof) resulting or arising out of (i) Client's failure to comply with the terms of this Agreement; (ii) Client's or its employees' or agents' negligent act or omission in connection with this Agreement, (iii) Client's misrepresentation under this Agreement; (iv) taxes, duties or similar fees (other than taxes on Clover Sport income) arising out of this Agreement or use of the Payment System (including processing transactions through the Payment System); or (v) personal injury, illness or death of any individual arising at the Client site(s) except to the extent caused by the intentional or negligent, gross negligence, or intentional misconduct of Clover Sport.

8.2. Clover Sport Indemnification. Clover Sport shall indemnify and hold harmless the Client and its elected officials, directors, officers, agents, and employees from and against all claims, demands, suits, actions, payments, liabilities, judgments and expenses, including attorney's fees, arising out of or resulting from the acts or omissions of their elected officials, officers, agents, or employees in the performance of this Agreement, that results in any claim for damage whatsoever to the other party, including without limitation, any bodily injury, sickness, disease, death or any injury to or destruction of tangible property, including any loss of use resulting therefrom, and that are caused in whole or in part by the negligence, gross negligence, or intentional acts of Clover Sport, its employees or anyone directly or indirectly employed by the party, or anyone for whose acts any of them may be liable. Nothing in this Agreement shall require Clover Sport to indemnify or hold harmless the Client from liability for the intentional or negligent, gross negligence, or intentional misconduct of the Client, its elected officials, officers, or employees. The Client does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. This section survives any termination of this Agreement.

8.3. Indemnification Procedure. When Client is required to indemnify Clover Sport under this Section 8, Clover Sport will (i) provide the Client prompt written notice of any actual or threatened Claim; (ii) give Client authority to proceed as contemplated herein; (ii) give Client proper and full information and assistance to settle and defend any such claim, suit or proceeding; (iii) not enter into any settlement of such claim, suit or proceeding without the prior written approval of the Client; (iv) give sole control of any such defense, action or settlement negotiations to the Client.

SECTION NINE – WARRANTIES; DISCLAIMERS

9.1. Representation and Warranties. Each party represents and warrants to the other that it has the full power and authority to execute, deliver and perform this Agreement and grant the rights granted herein.

9.2. Pass-Through Warranties. To the extent Clover Sport is permitted to pass through to Client under Clover Sport's agreements with the applicable third parties, Clover Sport shall pass through to Client for Client's benefit, and Client shall have the benefit of, any third party warranties, service agreements and infringement indemnities (if any) available to end users of the third party Software and/or Hardware components that comprise part of the Payment System (**Third Party Components**); provided, however, that Client's sole remedy for breach of any such warranty, indemnification, service agreement, or other rights shall be against the third party offering such rights and not against Clover Sport. In the event a warranty of a Third Party Component is not assignable, Clover Sport will act on behalf of Client and use commercially reasonable efforts to secure for Client the benefits provided by the applicable warranty.

9.3. Disclaimers. EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 9.02 (Pass-Through Warranties), THE PAYMENT SYSTEM AND THE SERVICES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER. CLOVER SPORT DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, TO CLIENT AS TO ANY MATTER WHATSOEVER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CLOVER SPORT OR ITS EMPLOYEES OR REPRESENTATIVES CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF CLOVER SPORT'S OBLIGATIONS. CLOVER SPORT DOES NOT WARRANT THAT THE PAYMENT SYSTEM WILL BE ERROR-FREE OR OPERATE WITHOUT INTERRUPTIONS OR DOWNTIME.

SECTION TEN – LIMITATION OF LIABILITY

10.1. Damages Exclusion. EXCEPT FOR CLIENT'S OR ITS AFFILIATES' OR THEIR RESPECTIVE CONTRACTORS' FAILURE TO COMPLY WITH SECTION 1.02 (LIMITED LICENSE) OR 1.03 (RESTRICTIONS) OR INFRINGEMENT OF CLOVER SPORT'S INTELLECTUAL PROPERTY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER THIRD PARTY FOR ANY CONSEQUENTIAL OR INDIRECT DAMAGES OR FOR EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SERVICES OR THE PAYMENT SYSTEM, WHETHER SUCH DAMAGES ARE FORESEEABLE OR UNFORESEEABLE, AND WHETHER BASED ON BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT, OR OTHER CAUSE OF ACTION (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF DATA, GOODWILL, PROFITS, INVESTMENTS, USE OF MONEY, OR USE OF FACILITIES), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUCH EXCLUSIONS SHALL NOT APPLY TO THE EXTENT THAT APPLICABLE INSURANCE POLICIES COVER THE RISKS HEREIN.

10.2. Limitation of Liability. THE AGGREGATE LIABILITY OF CLOVER SPORT ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION OR THEORY OF RECOVERY, AND WHETHER BASED UPON BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT, OR OTHER CAUSE OF ACTION, EVEN IF CLOVER SPORT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, SHALL BE LIMITED TO APPLICABLE INSURANCE POLICY LIMITS AS REQUIRED OF FDMS AND IS INCORPORATED INTO THIS AGREEMENT, NOT TO EXCEED THE LIMITS SHOWN IN THE CERTIFICATE OF INSURANCE PROVIDED BY FDMS. FDMS SHALL MAINTAIN ALL REQUIRED INSURANCE FOR THE SUBSCRIPTION TERM.

SECTION ELEVEN- INTELLECTUAL PROPERTY

11.1. Publicity; Trademarks. Clover Sport may use Client's name and logo for marketing, advertising and promotional materials, subject to any usage guidelines provided by Client. Client agrees to serve as a client reference. In addition, upon the execution of this Agreement, the parties will work together to issue 2 press releases and/or other public announcements regarding the relationship created by this Agreement: the first within the first 30 days to announce the execution of this Agreement, and the second which includes a case study highlighting the key benefits to Client within 6 months of the go live date, the input for the latter which is created leveraging 2 years of historical transactions made available to Clover Sport. Client hereby consents to such press releases. Except as expressly

set forth herein, this Agreement grants no right or license to use Client's Trademarks to any extent except as licensed by a separate written agreement of the parties.

11.2. Ownership.

- a. Other than the express licenses granted by this Agreement, neither party grants a right or license to the other party, expressly, by implication, estoppel, or otherwise, to the Intellectual Property (as defined below) of the other party.
- b. As between the parties, Clover Sport retains all ownership rights, title, and interest in and to its own products and services (including the Software, Services, and Deliverables applicable documentation and all technology used to provide the Payment System and Services) and all rights to its Intellectual Property and in each case, all modifications, improvements, enhancements and derivative works of the same.
- c. Neither party may remove or destroy any proprietary, confidentiality, trademark, service mark, or copyright markings or notices placed upon or contained in any materials or documentation received from the other party whether in connection with this Agreement or otherwise.
- d. Intellectual Property means all of the following, and in each case all related intellectual property rights: (i) Trademarks and goodwill associated therewith; (ii) know-how, methodologies, interfaces, templates, techniques, utilities, tools, designs, concepts, patents, patentable inventions, computer programs, and software; (iii) databases;
- e. (iv) trade secrets and the right to limit the use or disclosure thereof; (v) copyrights in all works, including software programs; and (vi) domain names and other media identification associated with the party.
- f. The parties agree that any feedback or suggestions given hereunder is voluntary. Clover Sport is entitled to reproduce, license or otherwise distribute any such feedback without any obligations or restrictions of any kind, including any Intellectual Property Rights.

11.3. Licensed Data. Client hereby grants to Clover Sport a worldwide, irrevocable, perpetual, royalty-free license to use data that Clover Sport collects from the Payment System and Services solely to the extent necessary to perform the Services, but excluding any personally identifiable information (**Licensed Data**). Clover Sport may catalog, index, digitize, store, archive, reproduce, format, translate, publish and transmit the Licensed Data solely to the extent necessary to perform the Services. In addition, Clover Sport may catalog, index, digitize, store, archive, reproduce, format, and translate the Licensed Data, in an anonymized format, solely for internal purposes of (i) improving the Software, and (ii) creating and commercializing additional products and services (including recommendation engines and/or benchmarking products). No publication or dissemination of the Licensed Data to a third party is permitted, except (a) as necessary for Clover Sport to perform the Services, and/or (b) to permit a third party to perform services for Clover Sport related to improving the Software or creating and commercializing additional products and services for Clover Sport.

SECTION TWELVE – OFFLINE MODE

12.1. Definitions. **Declined Transactions** means Transactions that are not approved by applicable third-party institutions, e.g. because a patron payment method is invalid or has been declined. **Offline Mode** means a mode of operation in which the Transactions may be, at certain times, queued for processing through applicable third-party systems at a later time. **Transactions** means the transactions processed by the Payment System.

12.2. Offline Mode. Offline Mode is designed to allow for continued service for Client's patrons and/or concessionaires during times in which one or more third party elements of the overall payment infrastructure (e.g. internet connectivity, bank site availability, etc.) are unavailable (**Third Party Interruptions**). Client acknowledges that a natural consequence of Offline Mode is that certain Transactions initiated while the Payment System is operating in Offline Mode may result in Declined Transactions. Client represents that it has determined that the net benefits of operating in Offline Mode outweigh the potential losses attributable to the Declined Transactions. Notwithstanding anything to the contrary in this Agreement (by way of covenant, warranty, representation, specification, indemnity or otherwise), Client acknowledges and agrees that in consideration of Clover Sport making the Offline Mode available as part of the Payment System and Services, Client (a) authorizes Clover Sport to charge (or re-charge), on a delayed basis, patron's cards on Client's (and/or its concessionaires') behalf with respect to any and all Transactions initiated while the Payment System is operated in Offline Mode, (b) accepts sole responsibility

for any loss, damage, claim or liability associated with any Declined Transactions or use of the Offline Mode, and (c) is fully responsible for any such loss, damage, claim or liability (whether a direct Clover Sport loss, damage or liability, or a loss, damage or liability of, or related to, a claim made against Client or Clover Sport by any third party, including without limitation any patron or financial institution) arising out of or in connection therewith.

12.3. Disclaimer. CLOVER SPORT PROVIDES ACCESS TO THE OFFLINE MODE "AS IS" WITHOUT WARRANTIES OF ANY KIND, AND CLIENT'S USE THEREOF IS AT ITS OWN RISK. TO THE GREATEST EXTENT PERMITTED BY LAW, CLOVER SPORT EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED WITH RESPECT TO ANY OF THE FOREGOING. CLIENT EXPRESSLY ASSUMES THE RISK OF ITS USE OF THE OFFLINE MODE.

SECTION THIRTEEN - GENERAL PROVISIONS

13.1. Independent Contractors. The relationship of Clover Sport and Client is that of independent contractors. Neither party's employees, consultants, contractors, and agents are the employees, consultants, contractors, and agents of the other party and the parties nor are the parties partners or joint ventures and have no authority to bind each other by contract or otherwise to any obligation. The parties shall not make any representation or warranty, either expressly, implicitly, by appearance or otherwise, that is inconsistent with this provision.

13.2. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable for any reason, the remaining provisions continue in full force and effect, but shall be construed in a manner so as to effectuate the intent of this Agreement as a whole, notwithstanding such stricken provision or provisions.

13.3. Waiver. No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other party, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any different or subsequent breach.

13.4. Assignment. Except as provided in this provision, neither party may assign this Agreement in whole or in part without the prior written consent of the non-assigning party, which consent shall not be unreasonably withheld. Either party may assign this Agreement in its sole discretion without the written consent of the other party to any successor in interest pursuant to a change of control transaction (by way of sale of all or substantially all of such party's assets, merger, consolidation, sale of a controlling interest in voting stock or other similar transaction), provided the party to whom the Agreement is assigned assumes the obligations of the assigning party as set forth in this Agreement. Notwithstanding the foregoing and for purposes of clarity, Clover Sport may (a) assign this Agreement to an Affiliate without Client's consent and (b) subcontract to a third party all or a portion of the work or Services to be performed under this Agreement.

13.5. Amendments. This Agreement may not be amended except by an agreement in writing executed by the parties hereto.

13.6. Notices. All notices and other communications required or permitted under this Agreement shall be in writing and given by personal delivery, telecopy (confirmed by a mailed copy), overnight courier (e.g., UPS, etc.) or first class mail, postage prepaid, (and in the case of notice to First Data, email) sent to the addresses set forth below:

First Data: First Data Merchant Services LLC
Attn: Legal Department

4000 NW 120th Avenue, MS/CON – MER
Coral Springs, Florida 33065

With copies to:

First Data Merchant Services LLC
Attn: General Counsel
6855 Pacific Street
Omaha, Nebraska 68106
-and-
Via email: legalpapers@fiserv.com

Client: to the address indicated on the Quote

13.7. Counterparts/Signatures. This Agreement may be executed in a number of counterparts with the same effect as if all signatories had signed the same document. If so executed, the counterparts shall be deemed an original for all purposes and shall collectively constitute one agreement. The Agreement may be executed and delivered electronically and such electronic execution and delivery shall have the same force and effect as delivery of an original document with original signatures.

13.8. Entire Agreement; Binding Effect; No Third Party Beneficiaries. This Agreement, including all schedules, exhibits and attachments thereto, sets forth the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein, and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, partner, employee or representative of any party hereto. This Agreement is binding upon and inures only to the benefit of the parties hereto and their respective permitted successors and assigns. Nothing in this Agreement, express or implied, is intended to confer or be deemed to confer upon any persons or entities not parties to this Agreement, any rights or remedies under or by reason of this Agreement.

13.9. Jurisdiction; Venue; Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State in which Client is located (without regards to its choice of law provisions). The exclusive venue for any actions or claims arising under or related to this Agreement shall be in the appropriate state or federal court located in the State in which Client is located.

13.10. Attorney's Fees. Should suit be brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, including expert witness fees and fees on any appeal.

13.11. Force Majeure. With the exception of obligations to pay fees hereunder, neither party will be responsible for any failure to perform its obligations under this Agreement due to causes beyond its reasonable control, including but not limited to acts of God, war, riot, embargoes, pandemics or epidemics, acts of civil or military authorities, fire, floods or accidents.

13.12. Survival. Upon the termination of this Agreement, Section 4 (Fees; Payment Terms) (as to amounts owed as of termination), Section 6 (Confidentiality), Section 8 (Indemnification), Section 10 (Limitation of Liability), Section 11.03 (Licensed Data), and Section 13 (General Provisions) shall survive and any other section which is expressed or by their nature survive termination.

Attachment 2 – Cost Proposal (Lease Equipment)

Pricing for all hardware, software, installation services, and maintenance required must be provided below. Costs for hardware shall be for PBA to lease the equipment. Prices are inclusive of all expenses incurred, including shipping on hardware and travel for onsite implementation. Quantities for Hardware and Supplier are estimated. For all POS Hardware, please enter the annual lease expense for each row.

Description	QTY	UOM	Unit Price
POS Hardware - Fixed Terminals (Annual Lease Expense)			
Clover Station (or Equivalent) Duo With Starter Kit, Terminal (Mini) & printer	110	EA	\$619.56
Clover Station (or Equivalent) Duo With Starter Kit, Terminal (Mini), Printer & MK Cash Drawer	40	EA	\$637.20
Customer-Facing EMV/NFC Payment Terminal (enter n/a if included in the above)	150	EA	n/a
POS Hardware - Portables/Mobile Handhelds (Annual Lease Expense)			
Clover Flex LTE 3rd Gen (or Equivalent) With Starter Kit	45	EA	\$239.64
Customer-Facing EMV/NFC Payment Terminal (enter n/a if included in the above)	45	EA	n/a
POS Hardware – Suites (Annual Lease Expense)			
Clover Station (or Equivalent) Duo With Starter Kit, Terminal (Mini) & printer for Pantry's	3	EA	\$619.56
Customer-Facing EMV/NFC Payment Terminal (enter n/a if included in the above)	3	EA	n/a
EPSON Ethernet Printer - Impact	2	EA	\$362.25 (purchase)
Miscellaneous Hardware and Supplies			
USB Manager/ Server Card Creator	2	EA	\$53.55
Authorization Cards(Qty 100/pack)	3	EA	\$120.75
Master Cash Drawer Key	5	EA	\$11.55
Receipt Paper (Case of 50) - Thermal - Customer Receipt	3	EA	\$75.60
Receipt Paper (Case of 50) - Impact Paper	1	EA	\$66.14
Receipt Paper (Case of 72) - for Flex Printer	2	EA	\$45.15
Installation Services			
Lump sum installation cost inclusive of all travel expenses	1	EA	\$60,030
Software & Maintenance			
One Time & Annual Software Subscription & Annual Recurring Costs Include here all software subscription costs for terminals and modules to satisfy the required functionality: <ul style="list-style-type: none"> • POS/Tablet Software License Subscription • Premium / Custom Reporting Module • Perpetual Inventory & Standsheets/Cash Room Module • Suites Pre Ordering Software Module • Suites Customer Facing Online Pre-Order Portal Software Module • Contactless Commerce Dual-Mode Kiosk Software Module 			
Software (one-time) (enter n/a if not applicable)	1	EA	n/a

Year 1 Annual Software Subscription and Recurring	1	YR	\$97,800
Year 2 Annual Software Subscription and Recurring	1	YR	\$97,800
Year 3 Annual Software Subscription and Recurring	1	YR	\$97,800
Year 4 Annual Software Subscription and Recurring	1	YR	\$97,800
Year 5 Annual Software Subscription and Recurring	1	YR	\$97,800
Year 6 Annual Software Subscription and Recurring	1	YR	\$100,734
Year 7 Annual Software Subscription and Recurring	1	YR	\$100,734
Year 8 Annual Software Subscription and Recurring	1	YR	\$100,734
Year 9 Annual Software Subscription and Recurring	1	YR	\$100,734
Year 10 Annual Software Subscription and Recurring	1	YR	\$100,734
Description	QTY	UOM	Unit Price
Estimated Credit Card & Gateway Processing Fees based on 500K transactions and total credit card processing volume of \$1M broken down by the following sub-categories:			
Acquiring Fees – fees paid directly to the acquirer/credit card processor			\$42,250 \$.0825/trans + .001 * check total
Gateway Fees – fees paid to a credit card gateway provider (if required)			\$0.00
Interchange Fees – please confirm interchange fees are passed onto the merchant at cost			Confirmed Interchange is passthrough.