

MAYOR
Brian West

CITY COUNCIL
Monty Parks Mayor pro tem
Bill Garbett
Spec Hosti
Tony Ploughe
Nick Sears
Kathryn Williams



INTERIM CITY MANAGER
Michelle Owens

CLERK OF COUNCIL
Jan LeViner

CITY ATTORNEY
Edward M. Hughes
Tracy O'Connell

CITY OF TYBEE ISLAND

AGENDA

REGULAR MEETING OF TYBEE ISLAND CITY COUNCIL

July 25, 2024 at 6:30 PM

Please silence all cell phones during Council Meetings

Opening Ceremonies

- Call to Order
- Invocation: Rev. Sue Jackson, Trinity Methodist Church
- Pledge of Allegiance

Executive Session: Discuss litigation, personnel and real estate

Possible vote on litigation, personnel and real estate discussed in executive session

Announcements

Recognitions and Proclamations

1. Jaime Spear: Employee of the Quarter Reece Cooke

Consideration of Items for Consent Agenda

Consideration of the approval of the minutes of the meetings of the Tybee Island City Council

2. Minutes, City Council Meeting, July 7, 2024

City Manager Discussion and Action Items

Citizens to be Heard: Please limit comments to 4 minutes.

3. Susan Estroff: Sound Barrier Mat for Gas Golf Carts

Consideration of Boards, Commissions and Committee Appointments

4. Holly Grell-Lawe: HPC Update

If there is anyone wishing to speak to anything on the agenda other than the Public Hearings, please approached the podium. Please limit your comments to 4 minutes.

Consideration of Approval of Consent Agenda

P.O. Box 2749 – 403 Butler Avenue, Tybee Island, Georgia 31328-2749
(866) 786-4573 – FAX (866) 786-5737
www.cityoftybee.org



Consideration of Bids, Contracts, Agreements and Expenditures

5. Agreement as to Terms of Appointment for City Manager, City of Tybee Island
6. Windcave Agreement for Payment Processing
7. Fourth Amendment to Water Tower Attachment Option and Lease Agreement

Council, Officials and City Attorney Considerations and Comments

Executive Session

Discuss litigation, personnel and real estate

Possible vote on litigation, personnel and real estate discussed in executive session

Adjournment

Individuals with disabilities who require certain accommodations in order to allow them to observe and/or participate in this meeting, or who have questions regarding the accessibility of the meeting or the facilities are required to contact Jan LeViner at 912.472.5080 promptly to allow the City to make reasonable accommodations for those persons.

***PLEASE NOTE:** Citizens wishing to speak on items listed on the agenda, other than public hearings, should do so during the citizens to be heard section. Citizens wishing to place items on the council meeting agenda must submit an agenda request form to the City Clerk's office by Thursday at 5:00PM prior to the next scheduled meeting. Agenda request forms are available outside the Clerk's office at City Hall and at www.cityoftybee.org.



THE VISION OF THE CITY OF TYBEE ISLAND

"is to make Tybee Island the premier beach community in which to live, work, and play."



THE MISSION OF THE CITY OF TYBEE ISLAND

"is to provide a safe, secure and sustainable environment by delivering superior services through responsible planning, preservation of our natural and historic resources, and partnership with our community to ensure economic opportunity, a vibrant quality of life, and a thriving future."

File Attachments for Item:

2. Minutes, City Council Meeting, July 7, 2024

Mayor West called the meeting to order at 6:30PM, July 11, 2024. Those in attendance were, Nick Sears, Monty Parks, Spec Hosti, Kathryn Williams, Tony Ploughe and Bill Garbett. Also attending were Michelle Owens, Interim City Manager; Bubba Hughes, City Attorney, Tracy O'Connell, City Attorney; and Jan LeViner, Clerk of Council.

Opening Ceremonies

Call to Order

Invocation: Jan LeViner

Pledge of Allegiance

Consideration of Items for Consent Agenda

- Special Meeting, June 26, 2024 (10:00AM)
- Special Meeting: June 26, 2024 (3:00PM)
- Special Meeting: June 27, 2024, Second Reading of the proposed Millage Rate
- Minutes, Regular Meeting: June 27, 2024 (As Amended)
- Tybee Island Maritime Academy - Tybee Island Police MOU
- Coastal Region Metropolitan Planning Organization - MOU

If there is anyone wishing to speak to anything on the agenda other than the Public Hearings, please approach the podium. Please limit your comments to 4 minutes

Ben Goggins approached Mayor and Council to speak to the Non-profit Grant Funding in regard to the MLK organization. Mayor West thanked Mr. Goggins.

Dawn Shay approached Mayor and Council. Ms. Shay asked Mayor and Council to treat all non-profit organizations fairly and allocated monies fairly as well. Mayor West thanked Ms. Shay.

Spec Hosti made a motion to approve the consent agenda. **Kathryn Williams** seconded. Vote was unanimous to approve, 6-0.

Public Hearings

Appeal of Actions Sec 7-100 regarding denial of tree permit, Applicant Harry Drummond, 2 Carpenter Road. **Ms. Owens** stated this is 2 Carpenter Road and it is a single-family home in the Fort Screven Historic District. The applicant is requesting to remove a palm tree that is located on city property that's near his driveway. The palm trees are on the City's significant tree list and it's protected by the ordinance. Ms. Owens continued, the application was denied by Staff and the Planning Commission also denied, 5-1. This tree is one that is being reviewed as part of the Land Development Code and that tree may potentially come off the Significant Tree List but it is on there right now. The applicant has asked to remove it because he feels it blocks his driveway, and it makes it difficult for them to back out of their driveway. Brent Levy, City Arborist, visited the

property and reported at the Planning Commission meeting he did not feel like it was in the way. Also, there was discussion about the potential of moving the tree and the arborist has ruled if that tree were to be moved, it is of a variety that would more than likely survive. Mr. Drummond approached Mayor and Council. Mr. Drummond stated he and his wife moved to Tybee Island about a year ago and the tree has been a problem for them. He further explained the difficulty they have backing out of the garage and explained he has concerns if a storm comes that the tree will fall on the power lines. Mayor West thanked Mr. Drummond. Mr. Ploughe stated he listened to Mr. Drummond at the Planning Commission Meeting and the City has the authority to move the tree to the other side of the driveway. Mr. Drummond stated he is willing to do that and another option would be for him to plant another tree somewhere on his property. Mr. Garbett stated moving the tree is not unreasonable and stated there are limitations on how wide a driveway could be in a 25' property line. He continued, the house has been there since 1986 and the pine is still standing. He then recommended Mayor and Council table. **Mayor West** stated the petitioner can either wait to see if the Code is altered so this type of tree may come off the list or you can come back with a request to move the tree, not to cut it down. **Nick Sears** made a motion to deny. **Bill Garbett** seconded. **DISCUSSION:** Ms. Williams stated she believes that a palm tree should not be on the Significant Tree List as it is a "woody herb" and not a tree. Ms. Owens recommended Mr. Drummond reach out to the Planning and Zoning Office and speak to Lisa Schaaf. Voting in favor to deny were Nick Sears, Monty Parks, Kathryn Williams, Tony Ploughe and Bill Garbett. Voting against was Spec Hosti. Motion to deny approved, 5-1.

Consideration of Bids, Contracts, Agreements and Expenditures

2024-2025 Non-profit Grant Funding Request and Recommendation. Monty Parks stated he would like to read a proposal for funding of the non-profits, line by line item. He continued: Tybee Clean Beach, \$10,000; Tybee Arts Association, \$10,000; Tybee Island Farmers Market, \$135.00; Tybee Post Theater, \$10,000; Tybee Beautification Association, \$5,500; Friends of Cockspur Lighthouse, \$10,000; Fresh Air Home, \$4,800; Manomet, \$7,500; Historical Society, \$10,000; American Legion, \$10,000; Irish Heritage Committee, \$3,500; Mariene Science Center, \$10,000; Tybee Island Festival Association, \$10,000; Tybee MLK \$10,000; TIMA, \$25,000; and Marine Rescue Squadron, \$3,000. This comes to \$139,435 with \$765.00 remaining. Ms. Williams asked if that was a motion. Mr. Parks confirmed. **Monty Parks** made a motion to approve the amended proposal. **Bill Garbett** seconded. **DISCUSSION:** Mr. Plough stated he was happy with what Staff proposed as recommendations in the packet before them tonight and thought those were reasonable. He also appreciated that effort of the Staff. Mr. Hosti stated he agreed with Staff recommendations and just to let the audience know that the \$40,000 that was supposed to go to TIMA was reduced. Voting in favor were Nick Sears, Monty Parks, Kathryn Williams, and Bill Garbett. Voting against were Spec Hosti and Tony Ploughe. Vote to approve as amended, 4-2.

Research Services Agreement: GA Southern University Research and Service Foundation and City of Tybee Island. Mitchell Owens stated this is the Resident Sentiment Study as opposed to the Economic Study that was previously discussed. After the Tourism Study there was a desire to hear what residents felt about tourism in the

community. What is before you tonight is the contract for the Study which we will try to figure out resident's sentiments towards tourism. There is another Study that will be coming to you which is an Economic Study. Ms. Owens stated she has spoken with Georgia Southern about the Study and it will be forthcoming. Once the contract is approved by Mayor and Council it will go back to Georgia Southern. They will begin to develop the questions that will be on a part of the survey. Mr. Sears stated this is not what he intended as it is a broader and he does not believe the Economic Research Department of Georgia Southern is the entity that should be doing this. He does not believe Mayor and Council need to know what residents of other cities think about tourism. He also feels we need to move back a little and to rethink, which would probably save the City a great deal of money. Ms. Owens stated for some context, this was the Study that originally was to be done by a different company that was much more expensive. Mayor and Council had the conversation at a workshop to go back to Georgia Southern as they did such a good job on the Tourism Study and now to have them do the Residents Sentiment Study. The intent when they speak about reaching out to other cities is to see the types of questions that are asked and used to probe resident's experiences and try to understand their perspective. Not necessarily that we want their experiences but we want to know what kinds of questions have worked the best to get information that will be useful for the Study. Ms. Owens continued, Georgia Southern did the Tourism Study in 2023 and they did find one prior to that many years ago which understands the seasons in the market and conditions on Tybee. She thinks that part was nixed due to the fact on how it was being paid for as Visit Tybee was paying for half of it. She feels there were concerns about that group paying for part of a study that was going to be looking at residents and might be a predisposition for skewed results. But we are paying for the entire study, so I don't think that that concern is still valid at this point. Georgia Southern did a great job with a Tourism Study and she feels they could do a just a good job with the Residents Sediment Study. Council at some point had asked to be able to submit suggestions for the questionnaire and she asked they send her questions so she can get those to Georgia Southern. Ms. Williams asked if they involved sociologists on their team or just economists? Ms. Owens stated no, they will involve whoever is needed. Bill McKay usually leads the team but he is not the only one working on it so it will not just be an economist's perspective. Ms. Owens reminded everyone this is the City's study, and we can change as needed. Mr. Garbett stated a year ago he would be in favor of this but right now circumstance have changed, and he does not see the need for this like he did earlier. He feels there is a more productive ways to spend \$35,000. Right now, there were some things in the survey that he could nitpick such as why they are going to ask other communities how they feel about their public safety, trash collection and other utilities. He thanked Ms. Owens for the effort. Ms. Owens stated this is something the community asked the Staff to do as a companion to the Tourism Study. Mayor West stated there is opposition as you feel this is more of an economic orientation than a sociology orientation. Mr. Sears stated he feels the survey is more economically oriented and he would like to come back with suggestions about how to make it fit. He would like to step back and refocus on the Study and make it simpler. Mayor West stated it is important that professionals help design the Study

correctly as if it is not done correctly it could make your study invalid. Mr. Garbett stated with the Business School doing a Consumer Sentiment Survey, they probably have marketing departments who specialize in consumer sentiment. Ms. Williams asked if it would be appropriate to table or postpone this so Council could review the questions more thoroughly then get our feedback to Ms. Owens. Ms. O'Connell asked Ms. Williams for clarification in tabling this Study. She asked if this would this be so the Council can review questions. Ms. Williams responded no; it would be to review what Council would want to submit to Georgia Southern. Ms. Owens stated they have not developed the questions and if Mayor and Council approve tonight, it can be approved with the condition the Council will have sufficient time to craft questions and also be a part of what the questionnaire will look like. Mr. Sears shared his concerns as to why Mayor and Council are doing the Study as he does not feel this would be helpful to Tybee. Ms. Williams stated with the first Study that was done there were funding issues and it did not happen. After going through the budget process this year, it has made her rethink the value of conducting a Study right now and would like to wait to see the revenue stream. Ms. Owens stated the money is in the budget and the quote came in lower than two years ago and the price in line with studies of this nature. Mr. Garbett stated he preferred to table the Study and have Ms. Owens talk to the University and ask if they cut the price significantly for a more specific Resident Sentiment Study and not utilities and how they feel about public safety. He continued, the survey has not been prepared and that would be the bulk of the work. Ms. Owens stated factoring in issues like public safety and utilities are relevant as you would want to know the impact the tourism is having on garbage collection for instance. Mr. Ploughe stated it sounds to him like the group still wants to be involved in the scope and making scope changes. **Bill Garbett** made a motion to table. **Nick Sears** seconded. **DISCUSSION:** Mr. Hosti expressed his concerns that the City is questioning the ability of the College to do the Study. Voting in favor were Nick Sears, Monty Parks, Kathryn Williams, Tony Ploughe and Bill Garbett. Voting against was Spec Hosti. Motion to approve, 5-1.

Monty Parks made a motion to adjourn to Executive Session to discuss litigation, real estate and personnel. **Kathryn Williams** seconded. Vote was unanimous to approve, 6-0.

Monty Parks made a motion to return to regular session. **Spec Hosti** seconded. Vote was unanimous to approve., 6-0.

Spec Hosti made a motion to adjourn. **Bill Garbett** seconded. Vote was unanimous to approve, 6-0.

Meeting was adjourned at 7:55PM.

Janet LeViner, MMC
Clerk of Council

File Attachments for Item:

5. Agreement as to Terms of Appointment for City Manager, City of Tybee Island

STATE OF GEORGIA)
)
COUNTY OF CHATHAM)

**AGREEMENT AS TO TERMS OF APPOINTMENT FOR CITY MANAGER
FOR THE CITY OF TYBEE ISLAND, GEORGIA**

This Agreement made and entered into the _____ day of _____, 2024, by and between the City of Tybee Island, Georgia (hereinafter “the City”); and Bret Bell (hereinafter “the City Manager” or “Bell”).

WHEREAS, by Charter of the City of Tybee Island, Georgia, the position of City Manager was created; and

WHEREAS, the Mayor and Council of the City conducted a diligent search for a person to fill the position of City Manager and now desire to appoint and have appointed Bret Bell as City Manager, and Bell desires to accept and has accepted such appointment;

NOW, THEREFORE, in consideration of the mutual covenants and conditions flowing to each party, the parties do agree as follows:

Section 1. Appointment of City Manager and Duties

1.1 By execution of this agreement, the City affirms its appointment of Bell by and through the Mayor and Council and Bell acceptance of such an appointment in the capacity as City Manager as that position is defined in the charter for the City of Tybee Island. Such appointment shall continue unless terminated as set forth herein.

Section 2. Termination

2.1 Either party may terminate the Agreement and Bell’s appointment at any time after the execution of the Agreement upon 90 days written notice to the other party.

2.2 Should a majority of the entire Council (four members) vote to terminate the services of Bell “without cause,” then within ten (10) business days following such vote, the Council shall cause Bell to be paid any accrued and unpaid salary and benefits earned, including personal time off, holiday time and insurance prior to the date of termination based on a forty (40) hour work week. Within forty-five (45) calendar days following the vote to terminate Bell’s employment, the Council shall cause Bell to be paid a lump sum severance pay equal to six (6) months of his base salary as liquidated damages and full and complete payment and satisfaction of any claims of Bell of whatsoever nature arising out of this Agreement or otherwise. As consideration for such payment, Bell shall, prior to receipt thereof, execute and deliver to the City a general release of the City and its Council members and its officers, agents, and employees for all acts and actions (whether accrued or subsequently accruing) from the beginning of time until the date of release, said release to be prepared by the City Attorney.

2.3 In the event Bell is terminated for “just cause,” the City shall have no obligation to pay the amounts outlined above in this Agreement. For purposes of this Agreement, “just cause” is defined and limited for purposes of this Agreement to any of the following:

- a. Malfeasance in performance of the City Manager’s duties and responsibilities.
- b. Conviction of or a plea of guilty or no contest to a felony crime, whether or not adjudication is withheld.
- c. Gross dereliction of duties.
- d. Violation of any substantive City policy, rule, or regulation, which would subject any other City employee to termination.
- e. The commission of any fraudulent act against the interest of the City.

- f. The commission of any act which involves moral turpitude, or which causes the City disrepute.
- g. Violation of the International City/County Management Association Code of Ethics.
- h. Willful misuse, conversion or misappropriation by Bell without authority of public property or public funds entrusted to him.
- i. Any other act of a similar nature of the same or greater seriousness.

2.4 In the event of termination by Bell by written notice to the City, no severance or other benefits will be owed and, if the City elects to accept less than 90 days' notice, Bell will cease receiving compensation upon ceasing active work for the City, but will be compensated for all accrued unpaid compensation and benefits.

2.5 If at any time during the existence hereof, Bell resigns following a suggestion, whether formal or informal, by the Mayor and Council that he resign, then, in that event, Bell may, at his option, be deemed to be terminated without cause at the date of such suggestion within the context of the liquidated damages provision provided herein.

2.6 If Bell dies prior to the termination of the Agreement, the Agreement shall then terminate and the City shall pay to Bell's estate as soon as possible all salary or expense reimbursement accrued through the date of his death. The City shall not be under any obligation to pay any other amounts of any kind to his estate or heirs and shall not be obligated for the payment of the amounts hereinbefore designated as liquidated damages.

Section 3 – Term of Agreement

3.1 This Agreement shall commence on the 3rd day of September, 2024 and continue to December 31, 2024 and shall automatically renew for one year periods thereafter unless either

party notifies the other party of non-renewal 90 days prior to the expiration hereof; provided, however, that this Agreement may be terminated earlier as provided by Section 2 of this Agreement. Non-renewal by the City of this Agreement on its anniversary date will be treated the same as a termination without cause and the City shall pay to Bell the same liquidated damages that would be paid due to Section 2 and Bell shall execute the release described in Section 2.

Section 4. Notices

4.1 All notices required or permitted to be given under the Agreement, shall be given by personal service upon or certified mail, return receipt requested effective upon the date of personal service or on the date of mailing, to the other parties at the following addresses or to such other addresses as either may designate in writing to the other:

If to the City:

Mayor, City of Tybee Island
Post Office Box 2749
Tybee Island, Georgia 31328

If to Bell: (Address to be Provided)

Section 5. Performance of Duties

5.1 Bell shall diligently and conscientiously devote his time and attention and his best efforts to discharge his duties as City Manager. Other office or employment for enumeration while so employed will only be permissible after coordination with the Mayor and Council and an agreement pertaining thereto is reached.

5.2 Bell shall perform such duties and responsibilities as outlined in the Charter of the City and any job description which may be provided to him as either may from time to time be

amended, as well as perform such other duties as may reasonably be required of him by the Mayor and Council.

5.3 Bell shall at all times discharge his duties and consultation with the Mayor and Council, keeping them informed of his actions and decisions within the scope of his authority. He shall be responsible to the Mayor and Council for the proper and efficient administration of all affairs of the City except as may otherwise be provided by law.

Section 6. Compensation

6.1 Bell's compensation shall be as provided herein.

Commencing the 3rd day of September, 2024, the City shall pay to Bell as compensation for his services the sum of \$165,000.00 annually, herein referred to as "annual base salary" subject to withholding for appropriate items such as federal and state income taxes and FICA.

6.2 At least annually, the Mayor and Council shall consider a merit increase in addition to any other increases that may be considered and whether to award such an increase and the amount thereof is to be solely within the discretion of the Mayor and Council. Interim reviews may be conducted at any time at the discretion of the Mayor and Council.

6.3 The annual gross compensation shall be paid in equal periodic installments with such frequency as other City employees are normally paid.

Section 7. Automobile Allowance

7.1. In addition to all other compensation provided herein and in recognition of the fact that Bell's duties require that he shall have use of his personal automobile in connection with his employment, the City shall pay a \$600.00 monthly car allowance for Bell to be used to purchase, lease, or own , operate and maintain a vehicle. Bell shall be responsible for paying for liability, property damage and comprehensive insurance coverage upon such vehicle and shall

further be responsible for all expenses attendant to the purchase, operation, maintenance, repair and regular replacement of said vehicle. This car allowance is in lieu of any mileage reimbursement for any travel related to his employment.

Section 8. Benefits

8.1. In addition to all other compensation provided herein, the City shall budget, pay and provide to Bell:

- a. any and all benefits which are provided to full-time City employees as a whole;
- b. family care under the City's health plan will be provided to Bell's family;
- c. credited 10 days annual leave and 10 days sick leave as of the first day of employment and thereafter Bell will accrue annual leave at the same rate as employees with ten years of service and sick leave at the rate as may be provided to City employees. If extensive hours are worked, additional compensated time off will be allowed during the year as approved by the Mayor;
- d. coverage under liability insurance provided by the City;
- e. term life insurance naming Bret as insured in an amount equal to \$25,000.00;
- f. hospital, medical and dental insurance coverage provided to full-time City employees as a whole;
- g. professional dues and subscriptions for Bell's participation in organizations necessary and desirable for professional growth and for the good of the City;

- h. travel subsistence and related expenses (except mileage) for Bell associated with official travel, meetings and conferences to continue the professional development of Bell and/or to pursue necessary official functions for the City;
- i. certain expenses reasonably incurred by Bell in furtherance of his duties as City Manager. The City agrees to reimburse or to pay said general expenses and the finance director is hereby authorized to disburse such monies upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits;
- j. regular opportunities for professional training and advancement in order to enhance Bell's contributions to the citizens of the City;
- k. enrollment in the City's Defined Benefit Pension Plan and the City is responsible for contributions as provided for City employees as a whole; and
- l. a cellphone for City business.

Section 9. Equipment and Records

9.1 All equipment supplied by the City and all records and files of Bell shall be the property of the City and shall remain such property during the course of the Agreement and upon termination.

Section 10. Indemnification

10.1 The City shall defend, save harmless and indemnify Bell against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of his duties. The City shall pay the amount of any settlement or judgment rendered thereon. Notwithstanding the

foregoing, no indemnity obligation shall apply to or cover any intentional or willful tort or willful and wanton negligence or any act committed while operating a vehicle under the influence of alcohol, controlled substances or dangerous drugs (other than those for which a valid prescription exist) each of said terms being as defined by Georgia law.

Section 11. Entire Agreement, Modification, Binding Agreement

11.1 The text herein shall constitute the entire agreement between the parties. This Agreement may not be amended or modified in any manner except in writing signed and agreed to by each party. The Agreement shall be binding upon and inure to the benefit of Bell, his heirs at law and executors.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seal the day and year first above written.

City of Tybee Island, Georgia

Brian West, Mayor

Attest: _____
Jan LeViner, Clerk

REVIEWED AND ACCEPTED BY:

Bret Bell, City Manager

Witness: _____

APPROVED AS TO FORM:

Edward M. Hughes, Attorney for
City of Tybee Island, Georgia

File Attachments for Item:

6. Windcave Agreement for Payment Processing

WINDCAVE AGREEMENT FOR City of Tybee Island

DATED this 1st day of August 2024

PARTIES

WINDCAVE INC. (Windcave)

Contact Details for Notices:

Physical Address: 1601 N. 7th St., Suite 420, Phoenix, AZ 85006

Postal Address: 1601 N. 7th St., Suite 420, Phoenix, AZ 85006

Email: contracts@windcave.com

Phone: +1 310 670 7299

Fax: +1 310 670 7298

CustID: [119604]

City of Tybee Island (Customer)

Contact Details for Notices: Lynn Davis

Physical Address: PO Box 2749 Tybee Island, GA 31328

Postal Address: PO Box 2749 Tybee Island, GA 31328

Email: parking@cityoftybee.com

Phone:

AGREEMENT

1. Windcave is a provider of real time payment processing solutions in the USA. Windcave has agreed to supply solutions to Customer in accordance with the terms and conditions set out in this Agreement.
2. This Agreement is structured in two parts, namely Part A (Specific Terms) and Part B (General Terms). Part A contains the specific terms relevant to each supply of solutions to Customer and may include one or more Schedules. Part B sets out Windcave's general terms and conditions which will apply to all supplies of solutions.
3. It is intended that further supplies of solutions may be made and will be governed by this Agreement by way of the parties signing a further Part A Schedule for each supply. The attached schedules are a part of this Agreement. All purchase orders between the parties are subject to this Agreement's terms.
4. Windcave grants to Customer a non-exclusive, non-transferable licence to use the Windcave Solution for the Term solely for the purposes of the Permitted Use. Customer must not sub-license, transfer, assign, rent or sell the Windcave Solution or the right to use the Windcave Solution.

EXECUTION

SIGNED for and on behalf of **WINDCAVE INC.** by:

Signature

Name/Title

Date

SIGNED for and on behalf of **City of Tybee Island** by:

Signature

Name/Title (Director / Authorized Signatory)

Date

City Attorney

PART A – SPECIFIC TERMS

SCHEDULE 1 – SERVICES ACCESS ARRANGEMENT

1. SERVICES ACCESS ARRANGEMENT	
(a) Windcave: Windcave grants to Customer a non-exclusive, non-transferable licence to use the Windcave Solution for the Term solely for the purposes of the Permitted Use. Customer must not sub-license, transfer, assign, rent or sell the Windcave Solution or the right to use the Windcave Solution.	
2. TERM	
(a) Commencement Date: August 1 2024, Such Commencement Date may be postponed in writing, at Windcave's sole discretion, until the date Windcave receives a copy of the Agreement countersigned by Customer.	
(b) Initial Term: 12 months beginning on the Commencement Date, unless earlier terminated under Part B, clause 12.	
(c) Renewal Term: 12 months, unless earlier terminated under Part B, clause 12, subject to automatic renewal pursuant to Part B, clause 2 if neither party gives three month's advance notice of nonrenewal.	
3. FEES	
(a) Establishment Fee: \$100	
(b) Monthly Fee: Transactions in each calendar month charged at the rate of \$0.05 per Transaction.	
(c) Additional Fees: Additional users to the Payment Manager can be set up, but will incur a one-time fee of \$30.00 . If Windcave needs to configure or change additional electronic merchant numbers on the Windcave Host, there is a fee of \$100.00 per merchant account. Customer will be charged a \$5.00 SAP fee per calendar month charge per connected card reader for unattended and attended card reader devices.	
(d) Price Adjustment: Windcave shall have the right to vary the Fees enumerated in Part A of this Agreement during the Renewal Term of this Agreement by providing Customer at least 30 calendar days' written notice before or during the Renewal Term. If Windcave exercises its right to modify the Fees, Customer shall thereafter have the right to terminate the Agreement with 30 days' written notice to Windcave within 60 days of Windcave's written notice that it is modifying the Fees.	
4. PAYMENT TERMS	
(a) Direct Debit or Automatic Credit Card Payments: Customer will pay Windcave the Fees by Direct Debit or Automatic Credit Card on the dates specified below.	
(b) Due Date for Payment of Set Up Fees: Customer will pay Windcave the Establishment Fee immediately when Windcave makes the Windcave Solution available to customer.	
(c) Due Date for Payment of Monthly Fees and Additional Fees: Customer will pay Windcave the Monthly Fees and Additional Fees within 30 days of the date of Windcave's invoice for those Fees	
5. SUPPORT SERVICES	
(a) Online Help and General Support: Windcave will provide the Support Services to Customer as set out in Part B.	
6. SPECIAL CONDITIONS	
7. EXECUTION	
The parties acknowledge and agree that this Schedule is governed by the Agreement between the parties containing Windcave's General Terms and Conditions.	
SIGNED for and on behalf of WINDCAVE INC. by:	SIGNED for and on behalf of City of Tybee Island by:
_____	_____
Signature	Signature
_____	_____
Name/Title	Name/Title (Director / Authorized Signatory)
_____	_____
Date	Date

	City Attorney

PART B – GENERAL TERMS & CONDITIONS

1. Definitions and Interpretation (Not all defined terms are applicable to all goods and services provided under the Agreement)

1.1 Definitions: In this Agreement, unless the context indicates otherwise:

Acquirer means a bank or any financial institution or a card issuer of financial or non-financial transactions which receives and transmits Transactions via the Windcave Solution;

Agreement means this Agreement, including the Application Form, each of Part A and its Schedule(s) and Part B, and any attachments that may be agreed between the parties, as each may be amended in writing from time to time;

Application Form means Customer's online the Windcave Solution application form submitted to Windcave via the Windcave Website. Where no separate Part A is entered into, the Application Form will constitute Part A of this Agreement for the purposes of this Part B;

Business Day means any day of the week except Saturday, Sunday or a day on which banks are authorized or required to be closed in Arizona;

Chargeback means the procedure by which a sales record or other indicia of a card transaction (or disputed portion thereof) is denied or returned to Acquirer or the card issuer after it was entered into the appropriate settlement network for payment, in accordance with the rules of Visa, MasterCard or a similar card association ("Rules"), for failing to comply with the Rules, including, without limitation by reason of cardholder disputes, the liability for which is Customer's responsibility and Customer agrees to pay.

Commencement Date means the commencement date recorded in Part A in one or more Schedules; Such Commencement Date may be postponed in writing, at Windcave's sole discretion, until the date Windcave receives a copy of the Agreement countersigned by Customer.

Confidential Information means, in relation to either party, any information:

- (a) relating to the terms of this Agreement;
- (b) relating directly or indirectly to research or development by, accounting for, or the marketing of, the business of that party or its suppliers or customers;
- (c) disclosed by that party to the other party on the express basis that such information is confidential; or
- (d) which might reasonably be expected by the other party to be confidential in nature;

Customer means the customer specified in this Agreement and where applicable includes its employees, contractors and agents.

Default Interest Rate means interest at the rate of 2% above the base lending rate charged by Windcave's bankers to Windcave from time to time;

Delivery takes place when the Customer receives the Goods from Windcave, or, in the case of returns, when the Goods arrive at Windcave's premises;

Documentation means any user, training or system manuals for the Windcave Solution (whether in printed or electronic form) which describes and provides guidance on the use of the Windcave Solution (or any aspect of the Windcave Solution);

Emergency Support Services means telephone support that Windcave may provide (but is not obligated to provide unless it agrees to do so in a separate written agreement) for emergency breakdowns resulting in repeated failures in the transmission of Transactions and is available 24 hours a day, seven days a week by calling 310 670 7299 outside of Support Hours. If applicable, Windcave will use reasonable efforts to respond to any emergency phone call within 30 minutes of receiving the support request;

Fees means and includes each of the fees detailed in the Schedule(s) contained in Part A;

Goods means the Goods and/or Devices (if any) recorded in Part A in one or more Schedules;

Intellectual Property means registered and unregistered trade marks (including logos and trade files), domain names, copyright, patents, petty patents, utility models, registered and unregistered designs, circuit layouts, rights in computer software, databases and lists, Confidential Information, software (whether in object code or source code), and all other rights anywhere in the world resulting from intellectual activity;

Payline Manager means Payline Portal which Customer is able to access by logging onto the Windcave Website with an assigned username and password;

PCI Standards means the Payment Card Industry standards, requirements and guidelines issued by the Payment Card Industry Data Security Council from time to time including the Payment Card Industry Data Security Standard PIN Entry Device requirements and guidelines, and the Payment Application Data Security Standard;

Permitted Use means the transmission to, and receipt from, an Acquirer of data relating to Windcave Supported Transactions and expressly excludes, without

limitation, use for the processing of transactions of, or for the benefit of, any person other than Customer;

Security Standards means each of:

- (a) any data protection or data security standards issued by an Acquirer which receives and accepts Windcave Supported Transactions from Customer; and
- (b) the PCI Standards;

Software means the software and other related Windcave products which:

- (a) form part of the Windcave Solution; and
- (b) is owned or licensed by or developed by, or on behalf of, Windcave and supplied to Customer, including all upgrades, updates, alterations and modifications and other changes to such software by or on behalf of Windcave from time to time, but excluding any third party software and firmware forming part of, or supplied with, the Windcave Solution;

Special Conditions means the special conditions (if any) recorded in Part A in one or more Schedules;

Support Hours means the period from 8am to 9pm (PST) on any Business Day and 9am to 5pm (PST) on non-Business Days;

Support Services means and includes:

- (a) Online Help: from time to time Windcave may display Frequently Asked Questions and Answers on the Windcave Website;
- (b) General Support: enquiries may be sent to: support@windcave.com or made by telephone to 310 670 7299. Windcave will respond to such enquiries during Support Hours;

Term means the Initial Term recorded in Part A in one or more Schedules and includes any Renewal Terms as recorded in Part A in one or more Schedules and defined in clause 2(b);

Tokenized Data means data for which Windcave has substituted a sensitive data element with a non-sensitive equivalent that has no extrinsic or exploitable meaning or value; and

Transaction means a message pair consisting of a message relating to a Windcave Supported Transaction transmitted by Customer to an Acquirer through the Windcave Solution and a response to that message from the Acquirer to Customer through the Windcave Solution;

Windcave means Windcave Inc., a California corporation with offices in Phoenix, Arizona;

Windcave Host means the host server known as Windcave Host to which Customer may be connected using the Software and which is in turn linked to an Acquirer to enable Windcave Supported Transactions to be processed in real time;

Windcave Logo means the Windcave logo supplied (in electronic format) by Windcave to Customer (as may be updated from time to time by Windcave);

Windcave Solution means the solution provided by Windcave for the transmission of data relating to Windcave Supported Transactions between a Customer and an Acquirer, incorporating the Software and including access (via the internet) to the Windcave Host and the Support Services;

Windcave Supported Transactions means transactions from Customers:

- (a) accepting payment for goods and services by means of credit card, debit card, prepaid card, gift card or any other means of payment which Windcave agrees to support through the Windcave Solution from time to time;
- (b) accepting loyalty cards, rewards cards, points cards, discount cards or club cards; or
- (c) providing services in relation to the sale and use of any of the cards referred to in paragraphs (a) and (b) above including the issue of such cards and the crediting or debiting of value to such cards;

Windcave Website means the website maintained by Windcave and accessible by Customer for viewing Transactions, data entry, refunding, report generating and other features related to Transactions;

1.2 Interpretation: In this Agreement, unless the context indicates otherwise:

- (a) the singular includes the plural and vice versa;
- (b) clause and other headings are for ease of reference only and will not affect this Agreement's interpretation;
- (c) the term **includes** or **including** (or any similar expression) is deemed to be followed by the words without limitation;
- (d) references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (e) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

- (f) all monetary amounts are stated exclusive of applicable taxes if any and in US dollars; and
- (g) in the event of any inconsistency between the terms of any of the following, they will have precedence in the descending order of priority set out below:
- (i) Part A – Specific Terms and Schedules;
 - (ii) Part B – General Terms and Conditions;
 - (iii) The Application Form.

2. Term

- 2.1 **Initial Term:** This Agreement commences on the Commencement Date and will continue for the Initial Term, unless earlier terminated under Part B, clause 12.
- 2.2 **Renewal:** Upon expiry of the Initial Term, this Agreement will automatically continue for further periods of the number of consecutive months recorded in Part A in one or more Schedules (each such further period being a **Renewal Term**) on the same terms and conditions unless either party gives the other party not less than 3 months' notice in writing prior to the expiry of the Initial Term or the then current Renewal Term that it does not wish this Agreement to continue beyond the Initial Term or that Renewal Term as the case may be. After the Renewal Term, this Agreement may continue on a month to month basis until either party terminates the Agreement by giving one month's written notice to the other party, or a new agreement is entered into by both parties with the effect that this Agreement is terminated, whichever is the later.

3. Payment

- 3.1 **Fees:** Customer will pay Windcave the Fees without setoff or deduction within 30 days of the date of Windcave's invoice for those Fees.
- 3.2 **Taxes:** Unless exempted by law, Customer is responsible for all applicable taxes, duties and levies on the rental, loan or purchase or sale of goods and services (other than Windcave's income tax) assessed in connection with its use of the Windcave Solution and the provision of services under this Agreement.
- 3.3 **Default Interest for Late Payment:** Subject to Part B, clause 3.4(c)(ii), Customer must pay Windcave interest at the Default Interest Rate on any overdue amounts under this Agreement, calculated daily from the due date until the actual date of payment.
- 3.4 **Disputed Invoices:** Where Customer has reasonable grounds to dispute any portion of any amount invoiced by Windcave to Customer under this Agreement (**disputed portion**):
- (a) Customer will notify Windcave of such dispute and the grounds for such dispute within 5 Business Days of receiving the invoice;
 - (b) any undisputed portion of the invoice will remain payable on the due date for payment;
 - (c) provided that Customer has complied with clause 3.4(a), Customer will not be required to pay:
 - (i) the disputed portion until the parties' dispute has been resolved by agreement between the parties or in accordance with Part B, clause 19.2; or
 - (ii) any interest under clause 3.3 on the disputed portion unless the dispute is resolved with the effect that Customer is required to pay all (or part) of the disputed portion, in which case Customer will pay the interest on the disputed portion (or that part of that disputed portion) in accordance with clause 3.3. Interest will be payable from the date that payment would have been due under clause 3.1 but for the dispute until the date that disputed portion is paid to Windcave in full.
- 3.5 **Termination and Suspension:** If Customer does not timely pay Fees due and owing pursuant to this Agreement, Windcave may terminate this Agreement under Part B, Clause 12.2. Alternatively, Windcave may temporarily suspend the provision of the Windcave Solution to Customer. Customer agrees that Windcave will have no liability for such termination or suspension.

4. Mutual Responsibilities

Each party represents and agrees:

- 4.1 **Power and Authority:** that it has full power and authority necessary to validly enter into and perform all its obligations under this Agreement; and
- 4.2 **Requirements:** to comply with the other party's reasonable security, confidentiality and operational requirements of which it has been given reasonable notice.

5. Customer Responsibilities

Customer represents and agrees that it:

- 5.1 **Suitability:** has made, and will continue to make, its own assessment of the suitability, adequacy, compatibility and appropriateness of the Windcave Solution for its purposes;

- 5.2 **Comply with Instructions:** will comply with Windcave's restrictions, instructions and Documentation in relation to the use of the Windcave Solution, including those set out in this Agreement;
- 5.3 **Use by Others:** will ensure that only authorized persons use the Windcave Solution and that the Windcave Solution is used only for the Permitted Use and as expressly authorized under this Agreement;
- 5.4 **Responsibility for Use:** will accept all responsibility for the reliance on and use of the Windcave Solution by Customer and its employees, contractors and agents;
- 5.5 **Obtain Equipment etc.:** will obtain and maintain all equipment, software and services needed to enable it to receive and use the Windcave Solution;
- 5.6 **Accurate Customer Information:** warrants that all information provided by Customer to Windcave in the Application Form is accurate and correct, and that Customer will notify Windcave in writing if such information changes or ceases to be accurate in any way;
- 5.7 **Provide Sufficient Information:** will ensure that sufficient information is given to Windcave to enable Windcave to comply with its obligations under this Agreement and that such information is timely, complete and accurate;
- 5.8 **Personal Information:** acknowledges that any personal information concerning Customer or its personnel which is provided to Windcave by or on behalf of Customer may be:
- (a) used by Windcave for the purpose of providing the Windcave Solution, the Support Services and any other services to Customer; and
 - (b) disclosed by Windcave to its affiliates and other services providers to enable Windcave to provide the Windcave Solution, the Support Services and any other services to Customer;
- 5.9 **Notify of Third Party Infringement:** will immediately notify Windcave upon becoming aware of any third party infringing Windcave's Intellectual Property rights in any manner;
- 5.10 **Responsible for Connecting to Windcave Host:** is responsible for all charges and costs associated with connecting to the Windcave Host to operate the Windcave Solution. Windcave will provide Customer with reasonable technical information and Software necessary to enable Customer to connect to the Windcave Host;
- 5.11 **Requisite Review of Payline Portal:** Customer shall be required, on a daily basis, to review with due care Customer's payline portal, established by Windcave, to review Transactions for errors. If an error is discovered by Customer, Customer must notify Windcave in writing within seven (7) Business Days of the date an error occurs; provided, that Windcave will have no liability or obligations of any kind with respect to errors that are not reported to Windcave within such seven (7) Business Day period. In addition, Customer shall be required to, on a daily basis review with due care bank settlement files to ensure deposits occur without error. If an error is discovered by Customer, Customer must notify Windcave in writing within seven (7) Business Days of the date an error occurs; provided, that Windcave will have no liability or obligations of any kind with respect to errors that are not reported to Windcave within such seven (7) Business Day period. Windcave's liability under this Section 5.11 (Requisite Review of Payline Portal) of the Agreement is governed by, and fully subject to, the terms of Section 10 of this Agreement.
- 5.12 **Comply with Law Generally:** will comply with all relevant laws in its use of the Windcave Solution and carrying out its obligations under this Agreement.
- 5.13 **Improperly Deposited Funds:** will return funds that Windcave deposits in Customer's bank account(s) that do not rightfully belong to Customer ("Improperly Deposited Funds") without offset or delay. Customer will return all Improperly Deposited Funds to Windcave within five (5) calendar days of a written request to do so by Windcave. If Customer fails to comply with the terms of this Section, Windcave may immediately suspend services to Customer until Customer returns the Improperly Deposited Funds. Customer will be liable to Windcave for the Improperly Deposited Funds, and costs incurred by Windcave in recovering the Improperly Deposited Funds.
- 5.14 **Return of Old Goods:** For Goods that Customer ceases using for the Permitted Use ("Unused Goods"), Customer will return such Unused Goods to Windcave within 30 calendar days. Unused Goods include, but are not limited to, Goods Customer has ceased using due to the Goods becoming obsolete, Goods that no longer operate, and Goods that are replaced per the warranty set forth in Part B, clause 7.3 of this Agreement. Customer will pay all shipping and restocking fees and costs associated with returning the Unused Goods to Windcave. Alternatively, instead of returning Unused Goods to Windcave, Customer may provide Windcave a secure destruction certificate evidencing that the Unused Goods were destroyed in compliance with the Security Standards within the same 30 calendar day period.

6. Windcave's General Responsibilities

Windcave agrees that it will:

- 6.1 **Good Faith:** comply with all relevant laws and co-operate with Customer (and Customer's service providers) in connection with the Windcave Solution;
- 6.2 **No Requirement to Decrypt Tokenized Data:** be under no obligation to decrypt and transmit Tokenized Data to Customer or any third party.

7. Windcave Warranties

7.1 **Security Standards:** Windcave confirms that Windcave will throughout the term of this Agreement comply with the requirements of the Security Standards.

7.2 **Limitations on Warranties:** To the fullest extent permitted by law, except as expressly set out in this Agreement, Windcave disclaims and excludes all warranties, conditions, terms, representations or undertakings, whether express, implied, statutory or otherwise, including any condition or warranty of merchantability or fitness for a particular purpose. Windcave does not warrant that:

- the Windcave Solution, the Goods, the Software or the Documentation will meet Customer's requirements; or
- the Windcave Solution the Goods, the Software and the Documentation will be uninterrupted or error free, or that all errors will be corrected; or
- that the Goods will be free of defects in design, materials or workmanship or will comply with any applicable equipment manufacturer's or software developer's specifications.

Customer understands and acknowledges that an authorization obtained through the Windcave Solution only confirms the availability of the cardholder's credit at the time of the authorization. It does not warrant that the person presenting the card is the rightful cardholder, nor is it an unconditional promise, guarantee or representation by Acquirer, processor or Windcave that a transaction is or will be deemed valid and not subject to dispute, debit or chargeback.

7.3 **Supply Warranty:** Windcave warrants that the Goods to be delivered under this Agreement will be free from defects in workmanship (labour and parts included, but transport excluded) during a warranty period commencing on the Commencement Date and concluding twelve (12) calendar months later ("Original Warranty Period). As to repaired or exchanged Goods, during the Original Warranty Period here above mentioned, the warranty period on the exchanged or repaired Goods shall expire at the conclusion of the Original Warranty Period. With respect to Windcave's supply warranty:

- Any defective Goods, under warranty, shall be replaced or repaired, free of charge, at Windcave's discretion (to the exclusion of compensation for any other damage), and the work shall be carried out at Windcave or its partner's or subcontractor's premises. Customer will pay the costs of transport of the Goods (including insurance) to Windcave.
- Windcave has the choice to repair the Goods with spare parts or new parts. The defective elements, repaired, will become the property of Windcave.
- The time when the Goods are repaired or unavailable during the warranty period will not give rise to an extension of the warranty period as set forth in this Section, subject to legal mandatory provisions.
- Customer must return warranted Goods that are replaced subject to this warranty back to Windcave within 30 calendar days of replacement Goods being shipped to Customer. Customer shall pay the shipping and restocking fees to return the old, warranted Goods back to Windcave.

7.4 **Exclusions to Supply Warranty:** Windcave will have no liability under the Supply Warranty described in Section 7.3 in respect of:

- Defects, breakdowns, or malfunctions due to failure to properly follow the installation process and instructions for use or an external cause to the Goods (including, but not limited to, shock, lightning fire, vandalism, malicious action, contacts with various liquids or vermin or water damage of any nature, and inappropriate electric voltage); or modifications to the Goods made without the written approval of Windcave; or a lack of every day maintenance (as described in the Documentation); or a lack of supervision or care; or improper storage or poor environmental conditions, particularly those related to temperature and hygrometry effects of variations of electric voltage from the electric network; or from the earth or repair work; or maintenance of the Goods by persons not authorized by Windcave;
- Damage due to insufficient or bad packaging of the Goods when returned to Windcave;
- Wear and tear from normal use of the Goods and accessories;
- Communication problems related to an unsuitable environment, including problems accessing the Internet, transmission faults, local network faults, and modification of the parameters of the relevant cellular network after sale of the Goods;

- Supply of new versions of Software. If, for example, Windcave produces new Software that is not necessary to fulfil its obligations under this Agreement, Windcave is not required to make such Software available to Customer;
- Malfunction due to the use of products or accessories that are non-compatible with the Goods;
- Goods returned to Windcave without Windcave's prior consent or that Windcave has not had an opportunity to troubleshoot;
- Defects, breakdowns, or malfunctions due to **obstructing material** being placed on or into the Goods. Examples of obstructing material include, but is not limited to, paper, plastic, and metal objects.

8. Intellectual Property

All Intellectual Property rights in the Windcave Solution, the Goods, the Software, the Documentation and any work or thing developed or created by or on behalf of Windcave under or in connection with this Agreement (such work or thing being **Developed Works**), are exclusively owned by Windcave (or Windcave's licensors or suppliers). Customer acknowledges that there is no transfer of title, Intellectual Property rights or ownership of:

- the Windcave Solution, the Goods, the Software, the Documentation or any part thereof; or
- any Developed Works; to Customer under this Agreement and Customer will not dispute Windcave's (or Windcave's licensors or suppliers) ownership of the property referred to in this clause 8.

9. Indemnity

(Deleted)

10. Liability

To the fullest extent permitted by applicable law:

10.1 **Remedy:** Subject to clauses 10.2 and 10.3, Customer's sole and exclusive remedy for breach of any warranty or of any of Windcave's obligations under this Agreement is (at Windcave's option) the supply or re-supply of the Windcave Solution, the Goods, the Software, or the Documentation or the refund or waiver of Fees for the relevant part of the Windcave Solution, the Goods, the Software, or the Documentation which is the subject matter of, or directly related to, the breach.

10.2 **Limitation:** In no event will Windcave's total liability to Customer under this Agreement for any one or more defaults as described in clause 10.1 exceed the amount paid by Customer to Windcave under this Agreement in the 3 months following execution of this Agreement.

10.3 **Exclusion:** In no event will Windcave be liable to Customer whether in contract, tort (including negligence) or otherwise in respect of any:

- punitive, incidental, indirect or consequential damages, damages for loss of profits, business interruption, loss of data, loss of goodwill, arising out of, or in connection with, this Agreement, in each case even if such party has been advised of the possibility of such damages;
- loss, damage, cost or expense suffered or incurred by Customer, to the extent this results from any act or omission by Customer; or
- any event described in Part B, clause 14 (Force Majeure).

11. Commercial Purpose

It is expressly acknowledged and agreed by Customer that the Windcave Solution, the Goods, the Software and the Documentation are supplied to Customer for business and commercial purposes.

12. Termination

12.1 Termination Upon Notice:

- Windcave may terminate this Agreement at any time on not less than 3 months' prior written notice to Customer.
- Customer may terminate this Agreement at any time on not less than 3 months' prior written notice to Windcave.

12.2 **Termination for Cause:** Either party (the **First Party**) may terminate this Agreement at any time and with immediate effect by written notice to the other party (**Second Party**) if the Second Party:

- is in material breach of any of its obligations under this Agreement, and has failed to remedy the breach within 10 Business Days of receiving written notice from the First Party to remedy the breach; or
- goes into voluntary or involuntary bankruptcy or liquidation or has a receiver appointed; or
- is unable to pay its debts as they fall due.

12.3 **Breach of License Terms:** Without limiting clause 12.2, any use of the Windcave Solution, the Goods, the Software, or the Documentation by Customer for any purpose other than the Permitted Use, or any breach by Customer of the provisions of Part B, clause 16 will be deemed to be a material breach of this Agreement which is not reasonably capable of remedy.

12.4 Consequences:

- (a) Amounts owing at termination: If this Agreement is terminated by Windcave for cause prior to the expiry of the Term, Customer must pay the unpaid balance of the Fees due under this Agreement as well as third party debt collection costs incurred by Windcave in enforcing the Agreement (if any) as of the time of the breach.
- (b) Expiry or termination of this Agreement will not affect the rights or obligations of the parties which have accrued prior to or accrue on termination or which by their nature are intended to survive termination (including Part B, clauses 3, 5, 7, 8, 9, 10, this 12.4, 13, 16, 17 and 19, together with those clauses which are incidental to, and required in order to give effect to, those clauses).

13. Confidentiality

13.1 Confidential Information: Each party will maintain as confidential at all times, and will not at any time, directly or indirectly:

- (a) disclose or permit to be disclosed to any person;
 - (b) use for itself or to the detriment of the other party;
- any Confidential Information of the other party except as, and then only to the extent:
1. required by law;
 2. that the information is already or becomes public knowledge, otherwise than as a result of a breach, by the receiving party, of any provision of this Agreement;
 3. that the information is disclosed to the receiving party, without restriction, by a third party and without any breach of confidentiality by the third party;
 4. that the information is developed independently by the receiving party without reliance on any of the Confidential Information of the other party;
 5. authorized in writing by the other party; or
 6. reasonably required by this Agreement (and, without limiting the effect of this clause, a party may disclose Confidential Information of the other party only to those of its officers, employees or professional advisers on a "need to know" basis, as is reasonably required for the implementation of this Agreement).

13.2 Windcave's Intellectual Property: Customer acknowledges and agrees that the computer programs, computer software, specifications, databases, images, designs, codes, and configurations, ("Software") contained in or utilized by the Equipment and Windcave's network are proprietary and confidential to Windcave and protected under United States copyright law. Customer shall not copy, modify, adopt, translate, merge, reverse engineer, decompile, or disassemble, the equipment or Software, or create any derivative works based on the Equipment, Windcave network or Software. Without limiting the effect of clause 13.1, Customer will treat information about Windcave's Intellectual Property as the Confidential Information of Windcave.

14. Force Majeure

14.1 Customer acknowledges that Windcave relies on third-party providers in the delivery of its services, including, but not limited to, wireless data network providers, cellular radio service provided by third parties that is available only when within the operating range of cellular systems, and cellular service is subject to transmissions limitations and dropped or interrupted transmissions. Cellular service may be temporarily refused, limited, interrupted, or curtailed because of government regulations or orders, atmospheric and/or topographical conditions, and cellular system modifications, repairs, and upgrades. Customer agrees that Windcave shall not be liable for, and to hold Windcave harmless for any losses, damages, or business interruptions sustained as a result of interruptions caused by its wireless data network providers or any other third-party provider.

14.2 Neither party (the "Affected Party") shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by

- (a) fire, flood, elements of nature or other acts of God;
- (b) any outbreak or escalation of hostilities, war, riots or civil disorders in any country;
- (c) any act or omission of the other party or any government authority;
- (d) any labor disputes (whether or not employees' demands are reasonable or within the party's power to satisfy); or
- (e) the nonperformance by a third party for any similar cause beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications or other equipment such as described in clause 14.1.

14.3 In any such event, the Affected Party shall be excused from any further performance and observance of the obligations so affected only for as long as

such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable, provided that:

- (a) Notice: whenever the Affected Party becomes aware that such a result has occurred or is likely to occur, the Affected Party will, as soon as practicable, notify the other party by written notice accordingly;
- (b) Continued Performance: each party will continue to use commercially reasonable efforts to perform its obligations as required under this Agreement; and
- (c) No Deemed Acceptance of Extra Costs: neither party will be deemed to have accepted any liability to pay or share any extra costs which may be incurred by the other party in complying with this clause or otherwise resulting from such act, omission or failure; and
- (d) Charges: this clause 14 will not apply in respect of Customer's obligation to pay any charges or Fees payable under this Agreement.

15. License

15.1 Grant of License: Windcave grants to Customer a non-exclusive, non-transferable license to use the Windcave Solution, the Goods, the Software and the Documentation for the Term of this Agreement solely for the Permitted Use. Any other use or dealings with the Windcave Solution, the Goods, the Software or the Documentation without the prior written consent of Windcave will be a material breach of this Agreement. Except to the extent specifically authorized under this Agreement, Customer must not sub-license, transfer, assign, rent or sell any of the Windcave Solution, the Goods, the Software or the Documentation or the right to use the Windcave Solution, the Goods, the Software or the Documentation.

15.2 Windcave Warranty: Windcave warrants that Windcave has the right and authority to grant to Customer the license set out at clause 15.1, in accordance with the terms of this Agreement.

16. Terms of Use

16.1 Adequacy: Customer must satisfy itself as to the adequacy, appropriateness and compatibility of the Windcave Solution and/or the Goods for its requirements. Without limiting the foregoing, Customer acknowledges that it has not relied on any statements or representations on the part of Windcave as to performance or functionality, verbal or otherwise, except as expressly recorded in this Agreement.

16.2 Windcave Logo: If Customer uses a capture method for credit or debit card processing using a system which is not hosted by Windcave, Customer agrees to display the Windcave Logo in a readily visible position on the user interface of Customer's system where the credit or debit card data is captured. The Windcave Logo must not be altered or used for any other purpose without the prior written consent of Windcave.

16.3 Compliance: If Customer is not compliant with one or more of the Security Standards, Customer must not capture or store any credit or debit card number or expiry date locally on Customer's or a non-compliant third party's system.

16.4 No Right to Copy, Alter or Modify: Customer may make a reasonable number of copies of the Software for backup and disaster recovery purposes only. Except for such back-up copies, Customer must not, and must not permit any other person to, copy, reproduce, translate, adapt, vary, repair or modify all or any part of the Windcave Solution, the Goods, the Software or the Documentation by any means or in any form without Windcave's prior written consent.

16.5 Permitted Use: Customer may not:

- (a) use the Windcave Solution, the Goods, the Software or the Documentation for any purpose other than the Permitted Use; or
- (b) use the Software independently of the other components of the Windcave Solution unless Windcave has given prior written consent to do so.

If this Agreement is terminated, Customer's right to use the Windcave Solution, the Software and the Documentation will automatically terminate and Customer must immediately remove all copies of the Software from its system(s) and return the Windcave Solution, the Goods, the Software and the Documentation to Windcave

16.6 Reverse Engineering: Customer must not, and must not permit any other person to, reverse assemble or decompile the whole or any part of the Software.

16.7 No Third Party Use: Except as expressly provided for in this Agreement, the Customer must not provide, or otherwise make available, the Windcave Solution the Goods, the Software or the Documentation or any component thereof in any form to any person (a "Third Party") without the prior written consent of Windcave. If Windcave grants such consent, Customer must ensure that the Third Party complies with the provisions of clauses 8, 13, 15 and 16 (so far as those provisions relate to Customer) as if the Third Party

were a party to this Agreement. Customer will be liable to Windcave for all acts or omissions of any Third Party in contravention of the provisions of clauses 8, 13, 15 and 16.

- 16.8 Installation:** Customer will be responsible for, and all bear all costs associated with, the installation, operation, maintenance and support of the Goods.
- 16.9 Windcave Testing Prior to Launch:** Prior to any permitted use of Windcave products and/or Software by Customer or any third party, Windcave shall be entitled to test all Windcave products and Software that Customer purchases, rents, or intends to use for at least seven (7) Business Days ("Pre-launch Testing"). Such Pre-launch Testing shall also entitle Windcave to at least three (3) Business Day to test transaction processing and settlement.
- 16.10 Labels:** Customer will not remove or deface any labels affixed by Windcave to the Goods. Customer will not affix any label to the Goods.

17. Rental/Loan of Goods

Where Customer agrees to rent or borrow Goods from Windcave, the following terms and conditions apply:

- (a) **Ownership:** Legal and beneficial ownership of, and title to, the Windcave Solution, the Goods, the Software and the Documentation remains at all times with Windcave;
- (b) **Risk:** Customer will bear the risk of, and be responsible for, all loss (including theft) of or damage to, the Goods from the time that they are first delivered to Customer until the time that they are delivered back to Windcave;
- (c) **Maintain Goods:** Customer must take reasonable steps to avoid exposure of the Goods to excessive heat, dust and moisture, liquids and electrical and physical shock;
- (d) **License Terms:** Customer must comply with all manufacturer's license terms applicable to the Goods (as supplied with the Goods or otherwise notified by Windcave to Customer from time to time);
- (e) **Theft, Seizure, Loss, Damage, Repairs:** If for any reason the Goods are stolen, seized, lost, damaged or require repairs, Customer must immediately advise Windcave of the theft, seizure, loss, damage or repairs required. Customer must pay all costs and comply with Windcave's directions in connection with replacing or recovering the Goods, repairing any damage or the replacing of any parts (fair wear and tear excepted). Customer must continue to pay the Fees while the Goods are being replaced or repaired or, in the event of theft, seizure or loss, while the Goods are missing. Windcave will not be liable for any loss or damage in relation to the unavailability of the Goods;
- (f) **No Dealing or Modifying or Security Interests:** Customer must not sell, lend, lease, transfer, modify or otherwise deal with the Goods without first obtaining Windcave's written consent. Customer must not create, or allow to be created, a security interest over the Goods;
- (g) **Inspection:** Customer must allow Windcave to inspect the Goods at any time during normal business hours, provided that Windcave first gives Customer not less than 2 Business Days notice;
- (h) **Return of Goods:** When this Agreement ends (either by completion of the Term or by way of termination), Customer will, at Customer's expense, return the Goods, in good working order and undamaged condition (fair wear and tear excepted) to Windcave's place of business. If the Customer fails to return the Goods within 14 Business Days of the end of the Agreement, Customer will pay Windcave the fair value of the Goods as at the completion of the Term;
- (i) **Repossession:** If Customer does not return the Goods when required hereunder, Windcave may (subject to compliance with applicable law) enter any premises where Windcave reasonably believes that the Goods may be located and Customer will provide all reasonable authority and assistance to enable recovery of those Goods by Windcave. Customer will be liable to Windcave for costs incurred by Windcave in recovering the Goods; and
- (j) **Further supply:** The rental of Goods by Windcave to Customer does not guarantee Customer that Windcave will supply Goods beyond the Initial Term.

18. Windcave Support Services

- 18.1 Support:** Windcave will provide the Support Services to Customer.
- 18.2 Emergency Support Services and Other Services:** Windcave may make available the Emergency Support Services. If Customer requires Emergency Support Services and/or services additional to the Support Services Windcave may, if it agrees to provide those services to Customer, charge Customer for those services on a time and materials basis and on such other terms and conditions as may be agreed between the parties.
- 18.3 Alterations to Software:** Windcave may, at its sole discretion, alter, upgrade, update or change the Windcave Solution at any time during the Term of this

Agreement. Customer acknowledges and agrees that, if Customer fails to promptly install all updates to any software forming part of the Windcave Solution supplied by Windcave in connection with this Agreement, Customer may be unable to process Transactions and that:

- (a) Windcave will not be liable to Customer under this Agreement in respect of such inability; and
- (b) Windcave will be released from any obligation to supply the Support Services during any period which Customer has failed to install any such update.

18.4 Windcave Website: Customer acknowledges and agrees that Windcave may, at its sole discretion, determine what information, data, features and functionality is made available to Customer via the Windcave Website. Customer agrees to comply with any terms that Windcave may specify in relation to Customer's use of the Windcave Website. In the event of any inconsistency between the terms and conditions of this Agreement and those on the Windcave Website, the terms and conditions of this Agreement will apply to the extent of that inconsistency. Windcave will supply user names and passwords to enable authorized users of Customer to access the Windcave Website. Customer must keep such user names and passwords secure and made known only to authorized users and will be responsible for all use of the Windcave Website through use of Customer's user names and passwords. If Customer breaches any term of this Agreement or the terms of use of the Windcave Website, Windcave may disable Customer's user names and passwords.

18.5 Refunds: Customer authorizes Windcave to process repayment transactions to its patrons, who have previously made payment using the Windcave solution, on a one-to-one matching basis ("Refund Transactions"). Customer shall be solely responsible for auditing Refund Transactions and determining that a one-to-one match is made between a transaction and its matching Refund Transaction. Customer accepts all liability for Refund Transactions. Windcave shall not be liable for any losses or damages incurred as a result of a Refund Transaction.

18.6 Offline Mode: Customer authorizes Windcave to enable processing of credit cards offline in the event of an internet failure ("Offline Mode"). In addition, Customer authorizes Windcave to enact service in Offline Mode until internet service is restored for a maximum of 4 hours per event. Transactions in Offline Mode are capped at \$50 dollars maximum per transaction per card and a maximum of 500 transactions processed per device per Offline Mode event. Transactions in Offline Mode are also capped at \$1,000 per device per Offline Mode event. Customer and Windcave agree and acknowledge that Windcave is not liable for unsuccessful transactions that are a result of Offline Mode transaction processing. Customer is responsible with acquiring approval from its banking partner for operation of Offline Mode. Windcave is not liable if the terms of this Clause or the operation of Offline Mode causes Customer's account to be downgraded, shut down, disrupted, or otherwise adversely impacted in any way.

19. General

19.1 Entire Agreement: This Agreement including all schedules hereto records the entire arrangement between the parties relating to all matters dealt with in this Agreement and supersedes all previous arrangements, whether written, oral or both, relating to such matters.

19.2 Disputes: The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within 15 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within 30 days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place. If the parties fail to negotiate a resolution to a dispute within a reasonable time (not exceeding 20 Business Days from formal notice of the dispute being given by one party to the other), either party may require that the dispute be submitted to mediation through JAMS, such mediation to take place in Chatham County, Georgia. A mediator shall be selected by mutual agreement or through procedures provided by JAMS. In such case:

- (a) the mediator will not be acting as an expert or as an arbitrator;
- (b) the mediator will determine the procedure and timetable for the mediation; and

(c) the parties will share equally the cost of the mediation.

All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

Neither party may issue any legal proceedings (other than for urgent interlocutory relief) relating to any dispute, unless that party has first taken all reasonable steps to comply with the dispute resolution process above. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this clause 19.2 above are pending and for 15 calendar days thereafter. The parties will take such action, if any, required to effectuate such tolling.

- 19.3 Waiver:** No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by either party shall in any way limit or waive the right of such party to subsequently enforce and compel strict compliance with the provisions of this Agreement.
- 19.4 Severance:** Any provision in this Agreement which is or becomes unenforceable, illegal or invalid for any reason shall be severed and shall not affect the enforceability, legality, validity or application of any other provision which shall remain in full force and effect.
- 19.5 Assignment:** Windcave may assign all or any of its rights and obligations under this Agreement to any person without Customer's consent. Customer may not transfer or assign any of its liabilities or rights under this Agreement to any other person without Windcave's prior written consent (such consent not to be unreasonably withheld, provided Windcave is satisfied as to the suitability of the assignee and Customer pays to Windcave its reasonable costs incurred in connection with the assignment).
- 19.6 Amendment:** Except as expressly provided for in this Agreement, no amendment to this Agreement will be valid unless recorded in writing and signed by a duly authorized senior representative of each party.
- 19.7 Governing Law, "Georgia Code and Jurisdiction:** This Agreement is governed by the laws of Georgia. Subject to the terms of clause 19.2, the parties submit to the jurisdiction of the courts of the State of Georgia in respect of all matters relating to this Agreement.

Notwithstanding anything contrary to this clause 19.7, this Agreement shall be subject to Georgia Code Title 36. Local Government § 36-60-13.

19.8 Remedies: The rights, powers and remedies provided in this Agreement are not exclusive of any rights, powers or remedies provided by law.

19.9 Subcontracting: Windcave may appoint subcontractors to perform any of its obligations under this Agreement.

19.10 Counterparts and Copies: This Agreement may be signed in any number of counterpart copies which, read together, will constitute one and the same document. Any facsimile copy of this agreement or copy of this agreement sent via email in PDF format (including any facsimile copy or copy sent via email in PDF format, of any document evidencing either party's signature of this agreement) may be relied upon by the other party as if it were an original copy. This Agreement may be entered into on the basis of an exchange of such facsimile or PDF copies.

19.11 Notices: Any notice or other communication to be given under this Agreement must be in writing and must be served by one of the following means and in respect of each is deemed to have been served as described:

- (a) By personal delivery – when received by the party.
- (b) By post by registered or ordinary mail – on the second working day following the date of posting in the United States mail to the addressee's registered office.
- (c) By email – when acknowledged by the party orally or by return email or otherwise in writing.

The addresses for the parties for Notices shall be as set out on Page 1 of this Agreement or such other address as either party specifies by notice in writing to the other given in accordance with this clause 19.11.

19.12 Conflicts: In the event of any conflict or inconsistency between this Agreement and the terms of a purchase order made by Customer to Windcave, this Agreement shall govern and control.

19.13 Merchant name or logo: Windcave agrees not to use Merchant's name or logo in any of its marketing or promotional activities in the absence of a specific authorization following Windcave's making such promotional or marketing activities known and available to Merchant. Merchant shall have 10 days following the receipt of such information or material within which to approve or disapprove the use of its name or logo and the failure to Merchant to respond that such promotional or marketing is permissible, it shall be deemed a rejection and the use shall not be permitted.

19.14 Merchant insurance: For any insurance requirement under this Agreement in relation to Merchant, Merchant may satisfy such requirement and its obligations by having coverage with the Georgia Interlocal Risk Management Program.



Windcave

Merchant Application and Agreement

Merchant Application

Merchant Information					
Legal Name:					
Merchant Trading Name:					
Location Address: <small>(No P.O. Box)</small>	Address	City	State	Zip Code	
Postal Address:	Address	City	State	Zip Code	
Email Address:			Phone Number:		
Website:			EIN/TIN Number:		
Type of Business:	<input type="checkbox"/> Corporation	<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Individual/ Sole Proprietor		
	<input type="checkbox"/> 501(c)(3) Non-Profit	<input type="checkbox"/> Partnership	<input type="checkbox"/> Government		
	<input type="checkbox"/> Publicly Traded	If publicly traded, what is your ticker symbol? _____			
Description of Services:					
Nature of Business:	<input type="checkbox"/> Administrative	<input type="checkbox"/> Arts and Recreation	<input type="checkbox"/> Construction	<input type="checkbox"/> Education	<input type="checkbox"/> Financial Services
	<input type="checkbox"/> Food Services	<input type="checkbox"/> Health Care	<input type="checkbox"/> Hospitality/Lodging	<input type="checkbox"/> Manufacturing	<input type="checkbox"/> Media
	<input type="checkbox"/> Parking/Car Wash	<input type="checkbox"/> Retail	<input type="checkbox"/> Technical Services	<input type="checkbox"/> Utility Services	<input type="checkbox"/> Wholesale
Have you ever had legal action taken against you by any federal or local regulatory agency?		<input type="checkbox"/> No	<input type="checkbox"/> Yes, Please Explain _____		
Have you ever been fined or had services suspended by a card network?		<input type="checkbox"/> No	<input type="checkbox"/> Yes, Please Explain _____		
Transaction Details					
Transaction Volume:	Average Ticket: \$	High Ticket: \$	Total Monthly Card Volume:	\$	
Do you schedule/hold/ sponsor future-dated events?		<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Method of Card Acceptance (Total 100%):	Swipe, Contactless, or Inserted:	%	Mo/To (Hand Keyed):	%	
	E-commerce:	%	Subscription or Recurring:	%	
Which POS or Shopping Cart are you currently using?					
If your total "Swipe, Contactless, or Inserted" method of Card Acceptance is less than 100%, please complete the questionnaire below.					
What percentage of sales are to:	Business Consumers:	%	Who processes the order?	<input type="checkbox"/> Merchant	<input type="checkbox"/> Fulfillment Center
	Individual Customers:	%		<input type="checkbox"/> Other _____	
Do you own the product/inventory?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Is the product stored at your business location?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
			If no, where is it stored? _____		
Who enters credit card information into the processing system?	<input type="checkbox"/> Merchant	<input type="checkbox"/> Consumer	Who ships the product?	<input type="checkbox"/> Merchant	<input type="checkbox"/> Fulfillment Center
	<input type="checkbox"/> Fulfillment Center	<input type="checkbox"/> Other		If fulfillment center, please provide name and address: _____	
			How long until the product ships after charge authorization?	_____ Days	
Principal/Beneficial Owners (25% or greater ownership)					
Principal Owner #1					
First Name:			Last Name:		
Home Phone:			Email Address:		
SSN:			Date of Birth:		
Home Address:	Address	City	State	Zip Code	
Principal Owner #2					
First Name:			Last Name:		
Home Phone:			Email Address:		
SSN:			Date of Birth:		
Home Address:	Address	City	State	Zip Code	
Principal Owner #3					
First Name:			Last Name:		
Home Phone:			Email Address:		
SSN:			Date of Birth:		
Home Address:	Address	City	State	Zip Code	
Principal Owner #4					
First Name:			Last Name:		
Home Phone:			Email Address:		
SSN:			Date of Birth:		
Home Address:	Address	City	State	Zip Code	

Item #6.



Controlling Position				
First Name:		Last Name:		Title:
Home Phone:		Email Address:		Percent Ownership
SSN:		Date of Birth:		DL #/State:
Home Address:	Address	City	State	Zip

Rates and Fees

Payment network interchange, card scheme fees, and online debit network cost will be charged in addition to:

Card Fees		Other Fees	
	Credit:	Debit:	
			Chargeback Fee –Per Occurrence
Interchange Discount Rate			Retrieval Request Fee –Per Occurrence
Blended Discount Rate			Authorization Fee
			Batch Fee –Per Occurrence
			Statement Fee –Monthly
			PCI-DSS Fee –Monthly

You, as Merchant, have the option of accepting MasterCard credit and debit cards, Visa credit and debit cards, and Discover Network cards. If Merchant does not specifically indicate otherwise, the Merchant Application will be processed to accept ALL MasterCard, Discover Network, and Visa card types

Elected Visa, Discover Network, or MasterCard Card types NOT to accept:

MERCHANT APPLICATION AND AGREEMENT ACCEPTANCE

Capitalized terms not defined in this section have the meanings set forth in the Terms and Conditions. By executing this Merchant Application ("Merchant Application"), on behalf of the merchant described above ("Merchant"), the undersigned authorized individual represents, warrants, acknowledges, and agrees that:

- i. all information supplied by Merchant to Windcave and Synovus Financial Corporation ("Bank") and contained in this Merchant Application is true, correct and complete as of the date of this Merchant Application;
- ii. if Merchant is a corporation, limited liability company, or partnership, the individual(s) executing this Merchant Application have the requisite legal power and authority to complete and submit this Merchant Application on behalf of Merchant and to make and provide the acknowledgements, authorizations and agreements set forth herein on behalf of Merchant and individually and to bind Merchant to the terms of this Merchant Application, the Guaranty and the attached Terms and Conditions, as may be amended from time to time (collectively, the "Agreement");
- iii. the information contained in this Merchant Application is provided for the purpose of obtaining, or maintaining, a merchant account for Merchant with the Bank and Bank and Windcave will rely on the information provided herein in its approval process and in setting the applicable discount rate, approved average ticket, and approved monthly Card volume;
- iv. Bank is authorized to investigate, either through its own agents or through credit bureaus/agencies, the credit of Merchant and each person listed on this Merchant Application;
- v. Bank will determine all rates, fees and charges and notify Merchant of the approved fees and by Merchant's submission and acceptance of Merchant's first settled transaction, Merchant agrees to pay such fees in accordance with the terms of the Agreement;
- vi. the Agreement will not take effect until Merchant has been approved by Bank and a merchant identification number has been issued to Merchant. Merchant acknowledges that Windcave and Bank will conduct due diligence on Merchant before determining eligibility to receive services from Provider, and both Windcave and Bank may request further due diligence on Merchant at any time during the Term of the Agreement; and
- vii. Merchant and the undersigned have received, read and understood the Agreement, and Merchant agrees to be bound by the terms of the Agreement. Merchant acknowledges that this Agreement is being submitted to Bank, as the member bank of the Card Networks, and Windcave is also a party to this Agreement.

Merchant acknowledges that Windcave will rely on the representations and warranties set forth in this Agreement and unless otherwise specified or prohibited by the Network Rules or Law, Windcave will have certain rights under this Merchant Application and Agreement.

BANK ACCOUNT INFORMATION: Checking Account Savings Account Bank Name: _____

Attach voided check for the Account where funds are to be deposited

Transit # (ABA Routing): _____ Account # (DDA): _____ Contact: _____

Phone #: _____

*By providing the above referenced information, you are authorizing Bank to initiate ACH debit and credit transactions to said account



Bank Disclosure: Member bank information: Synovus Financial Corporation, 1111 Bay Avenue, Columbus, GA 31901 Phone: 888-796-6887

Important bank responsibilities:

1. Synovus Financial Corporation is the only entity approved to extend acceptance of Visa and MasterCard products under this Agreement directly to a Merchant
2. Synovus Financial Corporation is responsible for educating merchants on pertinent Visa and MasterCard Network Rules with which Merchants must comply
3. Synovus Financial Corporation, not Windcave, must hold, administer, and control all reserve funds derived from settlement
4. Synovus Financial Corporation, not Windcave, must hold and administer funds for Merchant.
5. Synovus Financial Corporation must be a party to the Agreement

Important Merchant Responsibilities:

1. Complying with Cardholder data security and storage requirements
2. Maintaining fraud and chargebacks below established thresholds
3. Reviewing and understanding the Agreement
4. Complying with the Network Rules

The responsibilities listed above do not supersede terms of the Agreement and are provided to ensure Merchant understands some important obligations of each party that Synovus Financial Corporation, as the member bank, is the ultimate authority should Merchant have any problems.

<p>MERCHANT:</p> <p>Merchant Signature: _____</p> <p>Print Name: _____ Date: _____</p> <p>City Attorney: _____</p> <p>City Attorney Name: _____</p>	<p>WINDCAVE:</p> <p>By: _____</p> <p>Print Name: _____ Date: _____</p>
<p>BANK:</p> <p>By: _____ Date: _____</p> <p>Name and Title _____</p>	



MERCHANT SERVICES TERMS

As provided by the Merchant Application, Merchant, Windcave Inc. ("Windcave") and Synovus Financial Corporation ("Bank") have agreed to be bound by these terms and conditions. Bank and Windcave are collectively referred to herein as the "Provider" and, subject to the requirements of the Network Rules, Windcave and Bank allocate the duties and obligations allocated to Provider as they deem appropriate in their sole discretion and may jointly or individually assert or exercise the rights or remedies provided to Provider hereunder. Further to the foregoing, notwithstanding the foregoing or any other provision hereof, Merchant understands and agrees (A) that Bank does not sponsor Windcave into the American Express or Diners Club/Carte Blanche or JCB Network, is not providing or agreeing to provide Merchant any services hereunder with respect to American Express or Diners Club/Carte Blanche or JCB Network Card transactions, does not determine or approve or agree upon any fees, charges, pricing, or any other terms and conditions, relating to American Express or Diners Club/Carte Blanche or JCB Network Card transactions, and has no responsibility or liability to Merchant for American Express or Diners Club/Carte Blanche or JCB Network Card transactions; and (B) that Merchant Bank does not provide or agree to provide Merchant any services hereunder or have any responsibility or liability to Merchant with respect to any PIN-based debit or stored value or electronic benefit transfer transactions (except only to the extent, if any, required under Visa's or MasterCard's or Discover's or PayPal's (In-Store Checkout) Operating Rules or under any mandatory provisions of applicable law), or any other Card type transactions (other than Visa and MasterCard and Discover and PayPal (In-Store Checkout) credit and non-PIN based debit/stored value Card transactions), or any other services specified in the Application as covered in whole or in part by this Agreement but as not being provided by Bank; and (C) that to the extent applicable to American Express or Diners Club/Carte Blanche or JCB Network Cards or transactions, or to any of the other types of Cards, transactions or services referred to above or in the Application as not being provided by Bank, any reference herein or in any of the other documents constituting part of the "Agreement" (as defined below) to the terms "Provider" or "Bank" (except only to the extent the reference constitutes a complete disclaimer of responsibility or liability on the part of the Provider or Bank, or constitutes an obligation on the part of Merchant to indemnify, defend or hold harmless the Provider or Bank from or against any responsibility or liability) means Windcave only.

Bank, Windcave and Merchant agree as follows:

ARTICLE I – DEFINITIONS

In addition to terms otherwise defined in this Agreement, capitalized terms shall have the meaning ascribed to them in this Article I.

- 1.01** "Account" means a commercial checking or demand deposit account maintained by Merchant for the crediting of collected funds and the debiting of fees and charges under this Agreement.
- 1.02** "ACH" means the Automated Clearing House paperless entry system controlled by the Federal Reserve Board.
- 1.03** "Agreement" means the Merchant Application, the Guaranty and these Terms and Conditions, and any supplementary documents referenced herein, and schedules, exhibits and amendments to the foregoing.
- 1.04** "American Express" means the Cards bearing the Marks of, and Card Network operated by, American Express Travel Related Services Company, Inc. or its affiliates.
- 1.05** "Authorization" means a computerized function or a direct phone call to a designated number to examine individual Transactions to obtain approval from the Card Issuer to charge the Card for the amount of the sale in accordance with the terms of this Agreement and the Network Rules.
- 1.06** "Bank" has the meaning set forth on the Merchant Application.
- 1.07** "Card" means (i) a valid credit card or debit card in the form issued under license from a Card Network. ("Bank Card"); or (ii) any other valid credit card or debit card or other payment device approved by Bank and accepted by Merchant.
- 1.08** "Card Issuer" means the financial institution or company which has provided a Card to a Cardholder.
- 1.09** "Card Network" means Visa U.S.A., Inc., MasterCard International, Inc., American Express Travel Related Services Company, Inc., DFS Services LLC (the owner of Discover) and their affiliates, or any other payment networks approved by Bank and Windcave that provide Cards accepted by Merchant.
- 1.10** "Card Not Present" or "CNP" means transactions where the Cardholder and the Card are not present when processing a transaction.
- 1.11** "Cardholder" (sometimes referred to as "Card Member" in certain Card Network materials) shall mean any person authorized to use the Cards or the accounts established in connection with the Cards.
- 1.12** "Cardholder Information" means any non-public, sensitive information about a Cardholder or related to a Card, including, but not limited to, any combination of Cardholder name plus the Cardholder's social security number, driver's license or other identification number, or credit or debit card number, or other bank account number.
- 1.13** "Chargeback" means the procedure by which a Transaction (or disputed portion thereof) is returned to Provider by a Card Issuer for any reason, including, but not limited to, cases where such item does not comply with the applicable Network Rules.
- 1.14** "Credit Voucher" means a document executed by a Merchant evidencing any refund or price adjustment relating to Cards to be credited to a Cardholder account.
- 1.15** "Discover Card" means a Card bearing the Discover Marks and accepted as part of the DFS Services Network.
- 1.16** "Guarantor" has the meaning set forth on the Merchant Application.
- 1.17** "Guaranty" has the meaning set forth on the Merchant Application.
- 1.18** "Merchant Application" has the meaning set forth on the Merchant Application.
- 1.19** "Network Rules" means the rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Card Networks and related authorities, including without limitation, those of the PCI Security Standards Council, LLC and the National Automated Clearing House Association (including, with respect to EBT, the Quest Operating Rules and with respect to PIN debit cards, the rules, regulations, policies

and procedures of the applicable debit network).

- 1.20 "Offline" means the electronic equivalent of an imprint obtained by swiping a Card through a terminal and electronically capturing Card data and printing a Transaction Record.
- 1.21 "Provider" as provided by the introductory paragraph to these Terms and Conditions, means Windcave and Bank together.
- 1.22 "Transaction" means any sale of products or services, or credit for such, from a Merchant for which the Cardholder makes payment through the use of any Card and which is presented to Provider for collection.
- 1.23 "Transaction Record" means evidence of a purchase, rental or lease of goods or services by a Cardholder from, and other payments to, Merchant using a Card, including preauthorized orders and Recurring Transactions (unless the context requires otherwise), regardless of whether the form of such evidence is in paper or electronic form or otherwise.
- 1.24 "Voice Authorization" means a direct phone call to a designated number to obtain credit approval on a Transaction from the Card Issuer, whether by voice or voice-activated systems via interactive voice response, or IVR.
- 1.25 "Windcave" means Windcave Inc., an entity incorporated in California.

ARTICLE II - CARD ACCEPTANCE

- 2.01 **Honoring Cards.** Merchant will accept all valid Cards when properly presented by Cardholders in payment for goods or services, pursuant to this Agreement and subject to applicable Network Rules requiring Merchant to elect whether it will accept credit only, debit only or both debit and credit cards. Merchant's election is set forth in the Merchant Application. Except to the extent explicitly provided by the Network Rules, Merchant may not establish minimum or maximum amounts for Card sales as a condition for accepting any Card. Merchant may, subject to applicable Law and the Network Rules, (i) impose a surcharge, under certain conditions and with proper disclosure to a Cardholder who elects to use a Card in lieu of payment by cash, check or other method of payment, or (ii) offer cash discounts to Cardholders making payment by cash or check. Merchant shall not engage in any acceptance practice that discriminates against or discourages the use of a Card Network's Cards in favor of any other Card Network's Cards, or favor any particular Card Issuer over any other Card Issuers. Note, many states prohibit or limit cases where Merchant may surcharge a Cardholder or offer cash discounts and the Card Networks impose restrictions on surcharging and cash discounting. Therefore, Provider strongly recommends that Merchant carefully consider and comply with all applicable Law and the Network Rules before Merchant begins to surcharge Cardholders or offer any cash discount. Merchant may not engage in a Transaction (other than a mail, internet, telephone order, or preauthorized sale to the extent permitted under this Agreement) if (i) the person seeking to charge the purchase to his or her Card account does not present the Card to permit Merchant to compare the signature on the Card to the signature on the Transaction Record; or (ii) the Merchant does not obtain an Offline or otherwise use the physical Card to complete the Transaction.
- 2.02 **Advertising.** Subject to the Network Rules, Merchant will prominently display the promotional materials provided by Provider in its place(s) of business. Merchant's use of promotional materials and use of any trade name, trademark, service mark or logo type (collectively, the "Marks") associated with a Card is limited to informing the public that the Card will be accepted at Merchant's place(s) of business. During the term of this Agreement, Merchant may use promotional materials and Marks pursuant to and in strict compliance with the terms of this Agreement and the Network Rules. Upon notification by any Card Network or Provider, or upon termination of this Agreement, Merchant shall discontinue the use of such Card Network's Marks and return any inventory or promotional materials to Provider. Merchant may not use any promotional materials or Marks associated with the Card Network in any way which suggests or implies that a Card Network endorses any goods or services other than Card payment services. Merchant's website, if any, must prominently display the name of the Merchant and the name that will appear on the Cardholder statement.
- 2.03 **Card Acceptance.** When accepting a Card, Merchant will follow the steps and guidelines set forth in the Network Rules or otherwise provided by Provider from time to time for accepting Cards and in particular, will: (a) determine in good faith and to the best of its ability that the Card is valid on its face; (b) obtain Authorization from the Card Issuer to charge the Cardholder's account; (c) comply with the additional terms set forth in this Agreement with respect to Telephone Orders, Mail Orders, Internet, Preauthorized Orders and Installment Orders and with respect to any Card Not Present Transactions; (d) document the approved Transaction in accordance with this Agreement and the Network Rules; and (e) deliver a true and completed copy of the Transaction Record to the Cardholder at the time the goods are delivered or services performed or, if the Transaction Record is prepared by a point-of-sale terminal, at the time of the sale. Except to the extent otherwise provided for in this Agreement, each Transaction Record must contain the following information: (i) Merchant's legal name and/or registered trade name, Merchant's location, and the Merchant's merchant identification number designated by the Provider; (ii) the truncated version of the Card number as provided in the Network Rules; (iii) a brief description of the goods or services involved in the Transaction; (iv) the selling price, together with applicable taxes, other charges or gratuities, and the total amount of the Transaction; (v) signature of the Cardholder or authorized user as described in this Agreement, date of the Transaction and the Transaction approval number; (vi) any additional requirements of the Card Networks that may be applicable to specific merchant or transaction types, as amended from time to time; and (vii) such additional information which may from time to time be required by Provider, the Card Networks, or Card Issuers. Merchant will not transmit a Transaction Record to Provider until such time as: (i) the Transaction is completed; (ii) the goods or services have been shipped or provided, except as set forth in this Agreement and the Network Rules; or (iii) a Cardholder consent is obtained for a Recurring Transaction in accordance with terms of this Agreement and the Network Rules.
- 2.04 **Authorization.** Merchant will obtain an Authorization for all Transactions using a means approved by Provider. If Merchant cannot, for any reason, obtain an electronic Authorization through the use of a terminal, Merchant will request a Voice Authorization from Provider's designated authorization center and will legibly print the authorization number on the Transaction Record. Merchant will not obtain or attempt to obtain Authorization from Provider's authorization center unless Merchant intends to submit to Provider a Transaction for the authorized amount if Authorization for the Transaction is given. Merchant may not divide a single Transaction between two or more Transaction Records on a single Card to avoid Authorization limits that may be set by the Card Issuer. Merchant acknowledges that an Authorization provides only that the Cardholder account has sufficient credit available to cover the amount of the current sale and that an Authorization is not a guarantee that the Transaction will not be subject to dispute or Chargeback and does not

warranty the Cardholder's identity. Merchant may not attempt to obtain an authorization by successively decreasing the sale amount. Provider may refuse to process any Transaction Record presented by Merchant: (a) unless a proper authorization number or approval code has been recorded on the Transaction Record; (b) if Provider determines that the Transaction Record is or is likely to become uncollectible from the Cardholder to which the Transaction would otherwise be charged; or (c) if Provider has reason to believe that the Transaction Record was prepared in violation of any provision of this Agreement or the Network Rules. Merchant will use, and may not circumvent, fraud identification tools requested by Provider, including address verification system processing and CVV2 processing, and acknowledges that the use of these tools may prevent Merchant from accepting certain Cards as payment. Merchant acknowledges that its use of fraud identification tools may not prevent fraudulent Card usage, and agrees that any fraudulent Transaction may ultimately result in a Chargeback, for which Merchant retains full liability under this Agreement.

- 2.05** Retention and Retrieval of Cards. Merchant will use its best efforts, by reasonable and peaceful means, to retain or recover a Card when receiving such instructions when making a request for Authorization or if Merchant has reasonable grounds to believe the Card is counterfeit, fraudulent or stolen. Merchant's obligations under this section do not authorize a breach of the peace or any injury to persons or property, and Merchant will hold Provider harmless from any claim arising from any injury to person or property or other breach of the peace in connection with the retention or recovery of a Card.
- 2.06** Multiple Transaction Records; Partial Consideration. Merchant may not prepare more than one Transaction Record for a single sale or for a single item, but will include all goods and services purchased in a single Transaction in the total amount on a single Transaction Record except under the following circumstances: (a) for purchases in separate departments of a multiple department store; (b) for partial payment, installment payment, delayed delivery or an advance deposit; or (c) for delayed or amended charges governed by Network Rules for travel and entertainment merchants and related Transactions.
- 2.07** Telephone Orders, Mail Orders, Internet, Preauthorized Orders and Installment Orders. Unless Merchant has been approved by Provider to accept mail, internet or telephone orders, Merchant warrants that it is a walk-in trade business, located in a retail business place where the public moves in and out freely in order to purchase merchandise or obtain services. If Merchant is not approved by Provider for Card Not Present Transactions and Provider determines Merchant has accepted unapproved Card Transactions which are placed by telephone, generated through telephone solicitation, mail order, internet sales or other means that does not create a Transaction Record that bears the Cardholder's signature, this Agreement may be immediately terminated by Provider and the value of all Transaction Records collected from the first day of processing may be charged back to Merchant and all funds therefrom held as provided in Article IV of this Agreement. Unless approved by Provider, this Agreement does not contemplate regular acceptance of Cards for sales accepted by mail, internet or telephone nor through preauthorized orders. Regardless of whether Merchant has been approved by Provider for Card Not Present Transactions, Merchant assumes all responsibility for identification of the Cardholder and the validity of the Card information for Card Not Present Transactions. Merchant agrees to identify separately any high-risk transactions Merchant submits. The high-risk transactions include, but are not limited to, any under Merchant Category Code 5967 – Direct Marketing – Inbound Telemarketing Merchants.
- 2.08** Lodging and Vehicle Rental Transactions. For lodging and vehicle rental Transactions, Merchant must estimate and obtain Authorization for the amount of the Transaction based upon the Cardholder's intended length of stay or rental. Additional Authorization must be obtained and recorded for charges actually incurred in excess of the estimated amount. Regardless of the terms and conditions of any written preauthorization form, the Transaction Record amount for any lodging or vehicle rental Transaction must include only that portion of the sale, including any applicable taxes, evidencing a bona fide rental of real or personal property by Merchant to the Cardholder and may not include any consequential charges. Nothing contained herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization form through means other than a Transaction.
- 2.09** Returns and Adjustments; Credit Vouchers. Merchant's policy for the exchange or return of goods sold and the adjustment for services rendered will be established and posted in accordance with the Network Rules of the applicable Card Networks. Merchant will disclose, if applicable, to a Cardholder before a Transaction is made, that if merchandise is returned: (a) no refund, or less than a full refund, will be given; (b) returned merchandise will only be exchanged for similar merchandise of comparable value; (c) only a credit toward purchases will be given; or (d) special conditions or circumstances apply to the sale (e.g., late delivery, delivery charges, or other non-credit terms). If Merchant does not make these disclosures, a full refund in the form of a credit to the Cardholder's Card account must be given. Disclosures must be made on all copies of Transaction Records or invoices in letters approximately 1/4" high in close proximity to the space provided for the Cardholder's signature or on an invoice issued at the time of the sale or on an invoice being presented for the Cardholder's signature. Any change in Merchant's return or cancellation policy must be submitted in writing to Provider not less than fourteen (14) days prior to the change. Provider may refuse to process any Transaction Record made subject to a revised return or cancellation policy of which Provider has not been notified as required herein.
- 2.10** Cash Payments. Merchant may not receive any payments from a Cardholder for charges included in any Transaction resulting from the use of any Card nor receive any payment from a Cardholder to prepare and present a Transaction for the purpose of effecting a deposit to the Cardholder's account.
- 2.11** Cash Advances; Scrip Purchase. Unless otherwise approved in advance by Provider, Merchant may not deposit any Transaction for the purpose of obtaining or providing a cash advance either on Merchant's Card or the Card of any other party and may not accept any Card at a scrip terminal, and either action will be grounds for Provider's immediate termination of this Agreement.
- 2.12** Duplicate Transactions. Merchant may not deposit duplicate Transactions. Provider may debit Merchant for any adjustments for duplicate Transactions and Merchant is liable for any Chargebacks resulting therefrom.
- 2.13** Deposit of Fraudulent Transactions. Merchant may not accept or deposit any fraudulent or unauthorized Transactions and may not under any circumstances present for processing or credit, directly or indirectly, a Transaction which originated with any other merchant or any other source other

than Transactions arising from bona fide purchases from Merchant for the goods and services for which Merchant has been approved under this Agreement. If Merchant deposits any such fraudulent or unauthorized Transaction, Provider may: (a) immediately terminate this Agreement; (b) withhold funds and demand an escrow as provided in this Agreement; or (c) report Merchant to the applicable Card Network. Merchant's employees' and agents' actions are chargeable to Merchant under this Agreement.

2.14 **Collection of Pre-Existing Debt.** Merchant may not prepare and present to Provider any Transaction representing the refinancing of an existing Cardholder obligation, including, but not limited to, obligations: (a) previously owed to Merchant; (b) arising from the dishonor of a Cardholder's personal check or relating to a Chargeback; or (c) representing the collection of any other pre-existing indebtedness, including collection of delinquent accounts on behalf of third parties.

2.15 **Data Security/Personal Cardholder Information.** Except as otherwise provided by the Network Rules, Merchant may not, as a condition of sale, impose a requirement on Cardholders to provide any personal information as a condition for honoring Cards unless such information is required to provide delivery of goods or services or Merchant has reason to believe the identity of the person presenting the Card may be different than that of the Cardholder. Merchant will not, under any circumstances, release, sell or otherwise disclose any Cardholder Information to any person other than Provider or the applicable Card Network, except as expressly authorized in writing by the Cardholder, or as required by Law or the Network Rules.

(a) **Safeguards.** Merchant will maintain appropriate administrative, technical and physical safeguards for all Cardholder Information. These safeguards will (i) ensure the confidentiality of Cardholder Information; (ii) protect against any anticipated threats or hazards to the security or integrity of Cardholder Information; (iii) protect against unauthorized access to or use of Cardholder Information that could result in substantial harm or inconvenience to any Cardholder; and (iv) properly dispose of all Cardholder Information to ensure no unauthorized access to Cardholder Information. Merchant will maintain all such safeguards applicable to Merchant in accordance with applicable Law and the Network Rules.

(b) **Compliance with Card Network Rules.** Merchant represents, warrants and covenants that it is and will remain throughout the Term of this Agreement in compliance with (i) Network Rules related to data security, data integrity and the safeguarding of Cardholder Information, including the Payment Card Industry Data Security Standard ("PCI"), Discover Information Security Compliance ("DISC"), MasterCard's Site Data Protection Program ("SDP"), the American Express Data Security Requirements ("DSR"), and Visa's Customer Information Security Program ("CISP"), in effect and as may be amended, supplemented or replaced from time to time, and (ii) any data security guidelines or operating guide that Provider may provide to Merchant, as the same may be amended, supplemented or replaced from time to time. Merchant will cause all of its service providers, subcontractors and agents to comply with PCI, SDP, DISC, DSR and CISP requirements and any data security guidelines or operating guide provided by Provider at all times. Merchant will report any non-compliance immediately to Provider. To accomplish the foregoing, Merchant will encrypt all debit, credit or stored value card numbers whether in storage, transport or backup and will not store data security codes on its systems, network or software.

(c) **Annual Certification.** Merchant will provide an annual certification to Provider if requested by Provider (in a form acceptable to Provider) certifying compliance with the data security provisions of this Agreement, including compliance with applicable Card Network requirements such as PCI, SDP, DSR and CISP. Merchant will provide annual certifications for Merchant's service providers, subcontractors and agents.

(d) **Information Use Limitations.** Merchant may not sell, disclose, or otherwise make Cardholder Information available, in whole or in part, in a manner not provided for in this Agreement, without Provider's prior written consent. Merchant may, however, disclose Cardholder Information to its service providers, subcontractors and agents who have a need to know such information to provide the services described in this Agreement, provided that those individuals or entities have assumed confidentiality obligations in accordance with this Agreement, or when such disclosure is required by legal process or applicable Law, and Merchant and its relevant service provider, subcontractor, or agent have entered into a written agreement containing Merchant's and such individual's or entity's agreement to the foregoing data security provisions, including compliance with the Network Rules.

(e) **Response to Unauthorized Access.** Merchant will notify Provider within twenty four (24) hours after it becomes aware of any actual or potential breach in security resulting in an unauthorized access to Cardholder Information. Merchant will provide any assistance that Provider, Card Issuer, regulators, governmental authority or any Card Network deems necessary to contain and control the incident to prevent further unauthorized access to or use of Cardholder Information. Such assistance may include, but not be limited to, preserving records and other evidence and compiling information to enable Provider and the issuing bank(s) or the Card Network to investigate the incident and provide assistance and cooperation to:

(a) file suspicious activity reports (as applicable); (b) notify their regulators (as applicable); and (c) notify the affected Cardholder (as required). Unless the unauthorized access was due to Provider's acts or omissions, Merchant will bear the cost of notifying affected Cardholder.

(f) **Miscellaneous.** Merchant may not make a claim against Provider or hold Provider liable for the acts or omissions of other merchants, service providers, Card Issuers, Card Network, financial institutions or others that do not have a written contractual relationship with Provider or over which Provider has no control. These provisions supplement, augment and are in addition to obligations of indemnification, audit, confidentiality and other similar provisions contained in this Agreement. This Section and each of its subsections will survive this Agreement's termination. Merchant may not store in any system or in any manner discretionary Card read data including without limitation CVV2 data, PIN data, address verification data or any other information prohibited by Network Rules. Merchant agrees that Provider may disclose to any Card Network information regarding Merchant and Merchant's Transactions to any Card Network, and that such Card Network may use such information to perform its responsibilities in connection with its duties as a Card Network, promote the Card Network, perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communications purposes within the parameters of Card Network Card acceptance, and transactional or relationship communications from a Card Network. A Card Network may use the information about Merchant obtained in this Agreement at the time of setup to screen and/or monitor Merchant in connection with the Card Network marketing and administrative purposes. Merchant agrees it may receive messages from a Card Network, including important information about Card Network products, services, and resources available to its business. These messages may be sent to the mailing address, phone

numbers, email addresses or fax numbers of Merchant. Merchant may be contacted at its wireless telephone number and the communications sent may include autodialed short message service (SMS or "text") messages or automated or prerecorded calls. Merchant agrees that it may be sent fax communications.

- 2.16** **Compliance with Laws and Network Rules.** Merchant will comply with and conduct its Card activities in accordance with all applicable local, state, and federal statutes, regulations, ordinances, rules and other binding law, as the same may be enacted or amended from time to time (collectively, "Laws") as well as all Network Rules. Merchant may not: (a) accept Cardholder payments for previous Card charges incurred at the Merchant location; (b) require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed; (c) add any tax to transactions, unless applicable Law expressly requires that Merchant be permitted to impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately); (d) enter into interchange any Transaction Record for a Transaction that was previously the subject of a Chargeback to Provider and subsequently returned to Merchant, irrespective of Cardholder approval (Merchant may pursue payment from the Cardholder outside the Card Network system); (e) request or use an account number for any purpose other than as payment for its goods or services; (f) disburse funds in the form of travelers cheques, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant; (g) disburse funds in the form of cash, unless: (i) Merchant is a lodging or cruise line merchant disbursing cash to a Cardholder, (ii) Merchant is dispensing funds in the form of travelers cheques, Cards, or foreign currency, or (iii) Merchant is participating in the Card Network cash back or Cash Over service; (h) accept a Card for manual cash disbursement; (i) accept a Card to collect or refinance existing debt that has been deemed uncollectible by Merchant providing the associated goods or services; (j) enter into a Transaction that represents collection of a dishonored check; or (k) accept a Card for an unlawful Internet gambling transaction. Merchant will pay all Card Network fines, fees, penalties and all other assessments or indebtedness levied by Card Network to Provider which are attributable, at Provider's discretion, to Merchant's Transaction processing or business. The Card Network may require that Bank limit Merchant's participation in the applicable Card Network and/or terminate this Agreement.
- 2.17** **Merchant's Business.** Merchant will notify Provider immediately if it intends to (a) transfer or sell any substantial part of its total assets, or liquidate; (b) change the basic nature of its business, including selling any products or services not related to its current business; (c) change ownership or transfer control of its business; (d) enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in Merchant or Merchant's business; (e) alter in any way Merchant's approved monthly volume, average, or maximum ticket; (f) changes its return policies or to another fulfillment house different from those identified in Merchant Application; or (g) changes to its Account. Merchant will notify Provider promptly in writing if it becomes subject to any voluntary or involuntary bankruptcy or insolvency petition or proceeding. Merchant's failure to provide notice as required above may be deemed a material breach and will be sufficient grounds for termination of the Agreement and for Provider's exercise of all its rights and remedies provided by this Agreement. If any change listed above occurs, Provider may immediately terminate this Agreement.
- 2.18** **Merchant's Representations and Warranties.** Merchant represents and warrants that: (a) all information contained in the Merchant Application or any other documents delivered to Provider in connection therewith is true and complete and properly reflects Merchant's business, financial condition and principals, partners, owners or officers (as applicable); (b) Merchant has power to execute, deliver and perform this Agreement, and this Agreement is duly authorized, and will not violate any provisions of Law, or conflict with any other agreement to which Merchant is subject; (c) Merchant holds all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so; and (d) there is no action, suit or proceeding at law or in equity now pending or, to Merchant's knowledge, threatened by or against or affecting Merchant which would substantially impair its right to carry on its business as now conducted or adversely affect its financial condition or operations.
- 2.19** **Merchant's Covenants.** Merchants covenants that: (a) each Transaction Record presented to Provider for collection is genuine and is not the result of any fraudulent activity, or a Transaction prohibited by a Card Network, or is not being deposited on behalf of any business other than Merchant as authorized by this Agreement; (b) each Transaction Record is the result of a bona fide purchase of goods or services from Merchant by the Cardholder in the total amount stated on the Transaction Record; (c) Merchant will perform all of its obligations to the Cardholder in connection with the Transaction evidenced thereby; (d) Merchant will comply with Provider's procedures for accepting Cards, and the Transaction itself will not involve any element of credit for any other purposes other than as set forth in this Agreement, and will not be subject to any defense, dispute, offset or counterclaim which may be raised by any Cardholder under the Network Rules, the Consumer Credit Protection Act (15 USC §1601) or other Law; and any Credit Voucher which Merchant issues represents a bona fide refund or adjustment on a Transaction by Merchant with respect to which a Transaction Record has been accepted by Provider.
- 2.20** **Third Parties.** Merchant may desire to use a third-party service provider to assist Merchant with its Transactions. Merchant shall not utilize any such third parties unless Merchant has disclosed such use to Provider previously in writing, and unless such third party is fully compliant with all Laws and Network Rules. Any third party used by Merchant must be registered with the Card Network prior to the performance of any contracted services on behalf of Merchant. Further, as between the parties to the Agreement, Merchant will be bound by the acts and omissions of any third-party service provider and Merchant will be responsible for compliance by such third-party service provider with all Laws and Network Rules. Merchant will indemnify and hold harmless Provider from and against any loss, cost, or expense incurred in connection with or by reason of Merchant's use of any third parties, including third-party service providers. Provider is not responsible for any third-party service provider used by Merchant, nor is Provider required to process any Transaction which Provider receives from Merchant or its service providers in any format not approved by Provider. Provider has no responsibility for, and shall have no liability to Merchant in connection with, any hardware, software or services Merchant receives subject to a direct agreement (including any sale, warranty or end-user license agreement) between Merchant and a third party.
- 2.21** **Recourse.** Merchant acknowledges that Windcave performs the services contemplated by this Agreement and Windcave is responsible to Merchant for any failure to perform such services in accordance with the terms of this Agreement. While Bank satisfies settlement files pursuant to instructions provided by Windcave, Bank is not responsible for independently verifying the accuracy of such settlement files. Accordingly, to the greatest extent

permitted by the Network Rules, Merchant's sole recourse for any failure by Provider under this Agreement is against Windcave (and not Bank).

- 2.22** Pre-Authorized Transactions. If Merchant agrees to accept a pre-authorized order, the Cardholder shall execute and deliver to Merchant a written request for such pre-authorization which will be retained by Merchant and made available upon request to Provider. Merchant will not deliver goods or perform services covered by a pre-authorization after receiving specific notification that the pre-authorization is cancelled or that the card covering the pre-authorization is not to be honored.
- 2.23** Pre-Authorization Health Care Transactions. If Merchant is a "Health Care Merchant" as indicated on the Merchant Application and accepts a pre-authorized health care Transaction(s) from a Cardholder, Merchant agrees to comply with any requirements in the Network Rules related to such Transactions.
- 2.24** Recurring Transactions. If Merchant agrees to accept a recurring transaction from a Cardholder for the purchase of goods or services which are delivered or performed periodically (a "Recurring Transaction"), the Cardholder shall complete and deliver to Merchant an order form containing a written request for such goods or services to be charged to the Cardholder's account, the frequency of the recurring charges and the duration of time for which such Cardholder's permission is granted. In the event a Recurring Transaction is renewed, the Cardholder shall complete and deliver to Merchant a subsequent order form for continuation of such goods or services to be charged to the Cardholder's account. A Recurring Transaction may not include partial payments made to Merchant for goods or services purchased in a single Transaction, nor may it be used for periodic payments of goods or services on which Merchant assesses additional finance charges. A copy of the order form must be retained for the duration of the recurring charges and provided in response to Provider's request. In addition, Merchant must record, retain, and promptly produce upon request the "ship to address" and address verification service code (where applicable) for each transaction. Merchant must not complete an initial or subsequent Recurring Transaction after receiving a cancellation notice from the Cardholder, the Card Issuer, Provider or other party or a response that the Card is not to be honored.
- 2.25** Limited Acceptance.

(a) If appropriately indicated on the Merchant Application, Merchant shall be a limited acceptance merchant, which means that Merchant has elected to accept only certain Visa and MasterCard Card types as indicated on the Merchant Application, or via later notification. The Visa or MasterCard credit acceptance option on the Merchant Application refers to Visa credit and business transactions, and is what MasterCard refers to as "Other Card" transactions. Notwithstanding anything to the contrary in the Merchant Application, Merchant can elect (i) to accept only Visa or MasterCard non-PIN based debit/stored value/electronic benefit transactions (sometimes referred to as "signature debit" transactions, whether or not an actual signature is required), (ii) to accept only Visa or MasterCard Credit transactions, or (iii) to accept all Visa or MasterCard credit and signature debit transactions; provided, however, that a Merchant who accepts any Visa or MasterCard Card types must accept all valid Visa or MasterCard Card types issued by a non-U.S. issuer. Merchant is not required to accept Cards of Card Networks other than Visa or MasterCard in order to accept Visa or MasterCard Cards (except that transactions using Diner's International Cards which also carry the MasterCard Mark must be accepted if Merchant accepts MasterCard Card transactions of the same type). Provider has no obligation other than those expressly provided under the Network Rules and applicable Law as they may relate to limited acceptance. Provider's obligations do not include policing card types at the point-of-sale. Merchant will be solely responsible for the implementation of its decision for limited acceptance including but not limited to policing the Card Network type(s) of transactions at the point-of-sale submitted for processing by Provider. Should Merchant submit a Transaction for processing for a card type it has indicated it does not wish to accept, Provider may process that Transaction and Merchant will pay the applicable fees, charges, and assessments associated with that Transaction. Merchant will comply with any applicable Laws and Network Rules and other applicable rules and regulations for the Card Network type processed.

(b) If Merchant has chosen to accept Discover Cards in the Merchant Application, Merchant must accept Discover Cards at all Merchant establishments, including in payment for purchases of goods and services, for charitable contributions and for Cash Over Transactions (subject to the terms of the Network Rules and other applicable rules and regulations), when properly presented for payment by a Cardholder. Subject to this section, Merchant must create a Transaction Record for each Discover Card Transaction and deliver at least one copy of the Transaction Record to the Cardholder. A Merchant may issue a Cash Over (subject to the terms of the Network Rules) in connection with a Discover Card Transaction. Merchant must deliver a single Authorization request for the aggregate total of the goods/services purchase amount and the Cash Over amount. In addition, the Transaction Record must include both the purchase amount and the Cash Over amount.

ARTICLE III - PRESENTMENT, PAYMENT, CHARGEBACK

- 3.01** Acceptance. Provider will accept from Merchant all Transaction Records deposited by Merchant under the terms of this Agreement and will present the same to the appropriate Card Issuers for collection against Cardholder accounts. Merchant must transmit Transaction Records and Credit Vouchers to Provider or its processing vendor on the same or next business day immediately following the day that such Transaction Records and Credit Vouchers have been originated. All presentment and assignment of Transaction Records, collection therefor and reassignment or rejection of such Transaction Records are subject to the terms of this Agreement and the Network Rules. Provider will only provisionally credit the value of collected Transaction Records to Merchant's Account and reserves the right to adjust amounts collected to reflect the value of Chargebacks (actual and anticipated), fees, penalties, late submission charges, reserve deposits, negative Transaction Record batch deposits and items for which Provider did not receive final payment.
- 3.02** Endorsement. By presenting Transaction Records to Provider for collection and payment, Merchant agrees to sell and assign all its right, title and interest in each Transaction Record completed in conformity with Provider's acceptance procedures. Merchant's presentment of Transaction Records to Provider constitutes an endorsement by Merchant to Provider of such Transaction Records. Provider may supply such endorsement on Merchant's behalf.

- 3.03 Prohibited Payments.** Provider may receive payment of any Transaction Record presented by Merchant and paid by Provider unless and until there is a Chargeback. Unless specifically authorized in writing by Provider, Merchant may not collect or attempt to collect any Transaction Record, including Chargebacks, and will hold in trust for Provider and promptly deliver in kind to Provider any payment Merchant receives, in whole or in part, of the amount of any accepted Transaction, together with the Cardholder's name and account number and any corresponding accompanying payment.
- 3.04 Chargebacks.** Merchant will accept responsibility for all Chargebacks related to Merchant's Transactions. Accordingly, Merchant will be liable to Provider in the amount of any Transaction disputed by the Cardholder or Card Issuer for any reason under the Network Rules. Merchant authorizes Provider to offset from funds due to Merchant or to debit the Account or, if applicable, the Reserve Account for the amount of all Chargebacks. Merchant agrees to fully cooperate with Provider in complying with the Network Rules regarding all Chargebacks. Merchant may not initiate a sale Transaction in an attempt to collect a Chargeback. Merchant will pay the current published fees for each Chargeback as listed on the Merchant Application and any other fines, fees, or assessments imposed by any Card Network or Card Issuer. Bank will make good faith, reasonable efforts to defend the position of Windcave and Merchant with respect to Chargebacks.
- 3.05 Reserve Account.** Notwithstanding anything to the contrary in this Agreement and in addition to any other legal rights or remedies available to Provider, Bank may establish (without notice to Merchant) and Merchant agrees to fund and/or allow Provider to fund from the Account or by way of offset of funds otherwise due to Merchant, a non-interest bearing Chargeback reserve account (the "Reserve Account") in an amount determined by Bank in its sole discretion. Such Reserve Account may be funded by all or any combination of the following, as determined by Bank: (i) one or more debits to Merchant's Account or any other accounts held by Bank or any of its affiliates in Merchant's name or on Merchant's behalf; (ii) one or more deductions or offsets to any payments otherwise due to Merchant; (iii) Merchant's delivery to Bank of a letter of credit; (iv) if Bank so agrees, Merchant's pledge to Bank of a freely transferable and negotiable certificate of deposit; or (v) Bank's demand of other security or increase of any discount rate, transaction fees or other fees. Any such letter of credit or certificate of deposit shall be issued by a financial institution reasonably acceptable to Bank. The Reserve Account may be established at any time or for any reason. Specific examples of reasons include: (a) Merchant engages in any Transaction processing that creates an overcharge to a Cardholder by duplicating Transactions; (b) any activity designed by Merchant to circumvent a "call center" message when attempting to process a Transaction; (c) Merchant breaches this Agreement, violates any representation, covenant or warranty herein, or violates any Network Rule or Law; (d) the Merchant Application is in any way inaccurate or becomes inaccurate subsequent to Provider's approval of the Merchant Application; (e) Merchant changes its type of business without Provider's prior written approval; (f) fraud, Merchant processes an unauthorized charge, or other action that violates Provider's applicable risk management standards or is likely to cause a loss; (g) Merchant has Chargebacks exceeding one percent (1%) of the total number of transactions completed by Merchant in any thirty (30) calendar day period; (h) excessive numbers of requests from Cardholders or Card Issuers to retrieve documentation; (i) Merchant's financial stability is in question or Merchant ceases doing business; or (j) Merchant terminates this Agreement. Once the Reserve Account is established, collected funds will be placed in the Reserve Account by Bank. Before releasing funds after this Agreement is terminated, Merchant will pay any equipment cancellation fees and any outstanding charges, losses or amounts, and Chargebacks for which Merchant has provided indemnification under this Agreement. Further, Bank may require Merchant to deposit additional amounts based upon Merchant's processing history and/or anticipated risk of loss to Bank into the Reserve Account. Once established, unless Bank determines otherwise at its sole discretion, the Reserve Account will remain in place for the later of (i) twelve (12) months, or (ii) such period thereafter during which Cardholder disputes may remain valid under the Network Rules. **The provisions of this Agreement relating to account debits and credits apply to the Reserve Account and survive this Agreement's termination until Bank terminates the Reserve Account. Any balance remaining after Chargeback rights have expired and all of Bank's other anticipated expenses, losses and damages have been paid will be disbursed to Merchant.**

ARTICLE IV - TERMINATION AND EFFECT OF TERMINATION

4.01 Term. This Agreement will be effective once Provider accepts it and, unless otherwise terminated, will continue for two (2) years (the "Initial Term") with automatic two (2) year renewal terms thereafter (each a "Renewal Term," and together with the Initial Term, the "Term") unless and until Merchant provides written notice of non-renewal to Provider not less than ninety (90) days before the end of the then-current Term.

4.02 Termination.

(a) **Without Cause.** Provider, or Bank separately, or Windcave separately may terminate this Agreement, without cause, upon thirty (30) days' advance written notice to Merchant.

(b) **For Cause.** Provider may terminate this Agreement in its sole discretion, effective immediately, upon written or verbal notice, or by closing Merchant's point-of-sale terminal, if Provider reasonably determines that any of the following conditions exists: (i) Merchant has violated any provision of this Agreement or Provider is otherwise entitled to terminate this Agreement pursuant to any provision of this Agreement; (ii) there is a material adverse change in Merchant's financial condition; (iii) if any case or proceeding is commenced by or against Merchant, its affiliates or principals under any Law dealing with insolvency, bankruptcy, receivership or other debt relief; (iv) any information which Merchant provided to Provider, including in the Merchant Application, was false, incomplete or misleading when received; (v) at any time during the Term, Merchant has had a monthly ratio of Chargebacks to total Transactions exceeding Card Network requirements or one percent (1%), or Chargebacks exceed three percent (3%) of any monthly dollar amount of total Transactions; (vi) an overdraft in the Account exists for more than three (3) days; (vii) Merchant or any of Merchant's officers or employees has been involved in processing Transactions arising from fraudulent or otherwise unauthorized Transactions; (viii) Merchant is or will be unable or unwilling to perform its obligations under this Agreement or applicable Law; or the Network Rules (ix) Merchant has failed to timely pay Provider any amount due; (x) Merchant has failed to promptly perform or discharge any obligation under its Account or the Reserve Account; (xi) any of Merchant's representations or warranties made in

connection with this Agreement was not true or accurate when given; (xii) Merchant has defaulted on any agreement it has with Provider; (xiii) Provider is served with legal process seeking to attach or garnish any of Merchant's funds or property in Provider's possession, and Merchant does not satisfy or appeal the legal process within fifteen (15) days of such service; (xiv) any Network Rules are amended in any way so that the continued existence of this Agreement would cause Provider to be in breach of those rules; (xv) any guaranty supporting Merchant's obligations is revoked, withdrawn, terminated or altered in any way; (xvi) if any circumstances arise regarding Merchant or its business that create harm or loss of goodwill to any Card Network; (xvii) termination is necessary to prevent loss to Provider or Card Issuers; (xviii) Merchant's type of business indicated on the Merchant Application or as conducted by Merchant could endanger Bank's safety or soundness; (xix) Merchant's owner, officer, Guarantor, or corporate entity has a separate relationship with Bank and that relationship is terminated, (xx) Merchant appears on any Card Network's security reporting; or (xxi) Provider's security for repayment becomes impaired.

- 4.03** **Effect of Bankruptcy.** Any account or security held by Provider will not be subject to any preference, claim or stay by reason of bankruptcy or similar Law. The parties expressly agree that the acquisition of Transactions hereunder is a financial accommodation and if Merchant becomes a debtor in any bankruptcy or similar proceeding, this Agreement may not be assumed or enforced by any other person and Provider will be excused from performance hereunder.

ARTICLE V - MISCELLANEOUS

- 5.01** **Account Monitoring.** Merchant acknowledges that Provider will monitor Merchant's Transaction activity. In addition to Provider's right to fund a Reserve Account as set forth in Section 3.05, Provider may upon reasonable grounds suspend disbursement of Merchant's funds for any reasonable period of time required to investigate suspicious or unusual Transaction activity. Provider will make good faith efforts to notify Merchant promptly following such suspension. Provider is not liable to Merchant for any loss, either direct or indirect, which Merchant may attribute to any suspension of funds disbursement.
- 5.02** **Forms.** Merchant will use only the forms or modes of transmission of Transaction Records and Credit Vouchers that are provided or approved in advance by Provider, and Merchant may not use such forms other than in connection with Transactions.
- 5.03** **Indemnification.** To the extent provided for by law, Merchant will defend, indemnify and hold Provider and its officers, directors, members, shareholders, partners, employees, agents, subcontractors and representatives harmless from and against any and all fines, penalties, claims, damages, expenses, liabilities or fees of any nature whatsoever, including attorneys' fees and costs (collectively, "Damages"), asserted against or incurred by Provider arising out of, relating to or resulting from, either directly or indirectly: (a) a breach of the security of the system safeguarding Cardholder Information resulting in unauthorized access to Cardholder Information; (b) a breach of any representation, warranty or term of this Agreement, including, but not limited to, the data security provisions by Merchant, or any service provider, subcontractor or agent of Merchant; (c) the negligence, gross negligence or willful misconduct of Merchant in the performance of its obligations under this Agreement, including, but not limited to, the data security provisions; (d) any violation of applicable Law or Network Rules by Merchant; and (e) all third-party claims arising from the foregoing. Notwithstanding the preceding, Merchant is not liable to Provider if Damages are caused by, related to or arise out of Provider's gross negligence or willful misconduct, or Provider's breach of this Agreement. Merchant will promptly reimburse Provider for any assessments, fines, fees or penalties imposed by any Card Network in connection with this Agreement, including the data security provisions, and authorizes Bank to deduct any such sums from the Account, the Reserve Account or amount to otherwise be cleared and settled with Merchant.
- 5.04** **Records.** In addition to any records Merchant routinely furnishes to Provider under this Agreement, Merchant will preserve Transaction Records and Credit Vouchers and any written authorization of the Cardholder for the longer of the following: (a) two years after the Transaction is completed, (b) the period required by Law or the Network Rules, (c) if a dispute is pending, until such dispute is resolved.
- 5.05** **Requests for Copies.** Immediately after Merchant receives the request by Provider, Merchant will provide to Provider either the original or a legible copy

(in a size comparable to the actual Transaction Record) of the paper Transaction Record and any other documentary evidence available to Merchant that Provider reasonably requests to meet Provider's obligations under Law (including its obligations under the Fair Credit Billing Act) or otherwise to respond to questions concerning Cardholder accounts.

- 5.06** Exclusivity. Merchant agrees that, unless Merchant receives written permission to do so from Windcave, during the Term, Merchant will not enter into an agreement with any other entity that provides processing services similar to those provided by Provider and that Provider shall be Merchant's exclusive provider of all Card processing services as set forth in this Agreement.
- 5.07** Fees and Charges. Merchant will pay to Provider the fees and charges set forth on the Merchant Application including any additional charges applied to transactions that fail to meet Card Network requirements for the lowest interchange levels. The fees and charges will either be debited from the Account through ACH or withheld from daily payments to Merchant for such amounts and for any other fees, charges or adjustments incurred by Merchant and associated with processing services. Provider may change fees, including adding fees for additional services utilized by Merchant, upon thirty (30) days' written notice to Merchant. If Merchant disputes any charge or funding, Merchant must notify Windcave within 60 days of the date of the statement where the charge or funding appears.
- 5.08** Security Interest. This Agreement constitutes a security agreement under the Georgia Commercial Code. To secure payment of Merchant's obligations under this Agreement, Merchant grants to Provider a security interest in all now existing or hereafter acquired: (a) Transactions, Transaction Records, Credit Vouchers and other items submitted to Provider for processing by or for Merchant. If Provider reasonably determines that Merchant has breached any obligation under this Agreement, or that proceeds of Merchant's future Transactions are unlikely to cover anticipated Chargebacks, credits, fees and adjustments, as reasonably determined by Provider (whether because this Agreement has been terminated or for any other reason), Provider may setoff or otherwise exercise its security interest without notice or demand by immediately withdrawing from or freezing any account or otherwise exercising its rights under this Agreement or those rights available under the Network Rules, applicable Laws, including the Georgia Commercial Code, or in equity. In addition to the collateral pledged above, Provider may require Merchant to furnish such other and different security as Provider deems appropriate in its sole discretion to secure Merchant's obligations under this Agreement. Bank may fully or partially prohibit withdrawal by Merchant of funds from Merchant's Account with Bank or financial institutions other than Bank, pending Bank's determination from time to time to exercise its rights as a secured party against such accounts in partial or full payment of Merchant's obligations to Bank. Merchant will execute any documents and take any actions required to comply with and perfect any security interest under this paragraph, at Merchant's cost. Merchant represents and warrants that no other party has a security interest or lien in any of the collateral pledged above, and Merchant will obtain Bank's written consent before it grants a lien or security interest in that pledged collateral to any other person. Merchant shall not assign to any third party any payments due to it under this Agreement, and all indebtedness arising from Transactions will be for bona fide sales of goods and services (or both) at its business locations and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that Merchant may sell and assign future Transaction receivables to Provider, its affiliated entities and/or any other cash advance funding source that partners with Provider or its affiliated entities, without consent from any Card Network. Notwithstanding the foregoing, Provider prohibits Merchant from selling or assigning future Transaction receivables to any third party without Provider's prior written consent.
- 5.09** Modifications to Agreement. From time to time Provider may amend any provision or provisions of this Agreement, including, without limitation, those relating to the discount rate or to other fees and charges payable by Merchant by mailing or emailing written notice to Merchant of the amendment at least thirty (30) days prior to the effective date of the amendment, and the amendment will become effective unless Provider receives Merchant's written notice of termination of this Agreement before such effective date. If Merchant continues to submit Transaction Records to Provider or otherwise continues to process Transactions with Provider after such thirty (30) day period (even if notice of objection was provided to Provider), then Merchant shall be deemed to have accepted and agreed to such amendment. In addition, Merchant acknowledges and agrees that this Agreement is subject to amendment by Provider to conform to the Network Rules and Law and that amendments required due to changes in either the Network Rules, Law or judicial decision may become effective on such shorter period of time as Provider may specify if necessary to comply with the applicable Network Rule, Law or decision. As a matter of clarification, Merchant may not terminate this Agreement if Provider amends the Agreement as necessary to comply with applicable Network Rules, Law or a judicial decision.
- 5.10** Warranty Disclaimer. PROVIDER MAKES NO WARRANTIES REGARDING THE USE, OPERATION OR PERFORMANCE OR NON- PERFORMANCE OF SOFTWARE AND SYSTEMS UTILIZED FOR THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, AND PROVIDER EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 5.11** Limitation of Liability. Provider's liability with respect to any Transaction may not exceed the amount of the Transaction Record in connection with that Transaction less any applicable fees and charges. Merchant will be liable for all costs associated with Offline transactions, including but not limited to Chargeback costs. **In no event will Provider or its agents, officers, directors or employees be liable to Merchant for any indirect, incidental, exemplary, punitive, special or consequential damages whatsoever, including, but not limited to, lost profits.** Merchant waives all claims against Provider for any loss, claim, demand, penalty, action, delay, cost or expense (including reasonable attorneys' fees) of any kind unless Merchant provides written notice to Provider of the occurrence that gave rise to the alleged liability within thirty (30) days after Merchant knew or should have known of the occurrence. **To the extent provided for by law,** Merchant will indemnify and hold Provider harmless from any claim relating to any Transaction Record paid for by Provider as may be made by anyone by way of defense, dispute, offset, counterclaim or affirmative action, or for any damages of or losses that Provider may incur as a result of Merchant's

breach of this Agreement. Further, Merchant will reimburse Provider for all expenses and costs, including attorneys' fees, with regard thereto. Merchant acknowledges that the fees for the services provided to Merchant by Provider are very small in relation to the funds advanced to Merchant for Transactions and consequently Provider's willingness to provide these services is based on the liability limitations contained in this Agreement. Therefore, in addition to greater limitations on Provider's liability that may be provided elsewhere (including the per Transaction Record limitation above), any liability of Provider under this Agreement, whether to Merchant or any other party, whatever the basis of the liability, will not exceed, in the aggregate, an amount equal to the lesser of (a) the fees paid by Merchant to Provider during the last three (3) months, exclusive of fees and variable costs incurred by Provider to process Transactions, such as interchange costs, assessments and fees imposed by a third party or (b) **fifty thousand dollars (\$50,000)**.

- 5.12 Waiver.** Provider's failure by Provider to enforce one or more of the provisions of this Agreement will not constitute a waiver of the right to enforce the same or other provision in the future.
- 5.13 Written Notices.** All written notices and other written communications required or permitted under this Agreement will be deemed delivered immediately when hand-delivered or sent via facsimile or email and the sender obtains a fax or email confirmation receipt, and upon mailing when sent first class mail, postage prepaid, addressed as follows:
- (a) If to Bank: At the email or address provided at the top of the Merchant Application.
- (b) If to Windcave: At the email address, or address provided at the top of the Merchant Application.
- (b) If to Merchant: At the email address, or address provided as the billing address and to the contact listed on the Merchant Application.
- 5.14 Choice of Law; Jurisdiction; Waiver of Jury Trial.** Georgia law governs this Agreement. Any claim or cause of action arising out of this Agreement against Provider must be initiated and maintained exclusively in the state or federal courts located in Chatham County, Georgia. To the extent permitted by applicable Law, Merchant and Provider waive any right to trial by jury in any action or proceedings regarding any litigation related to this Agreement and each agree that any such actions or proceedings will be tried by a judge without a jury.
- Merchant has certain immunities, including sovereign immunity, under the laws of the State of Georgia. Except as provided for in 5.03, the parties agree and confirm that Merchant is not waiving any sovereign immunity, or any other immunity, it may have under any laws. By executing this Agreement, Merchant is not waiving its right to any immunity or defense applicable to it under the law.
- 5.15 Entire Agreement; Assignability.** This Agreement expresses the entire understanding of the parties with respect to the subject matter hereof. This Agreement may be assigned by Bank without Merchant's or Windcave's consent. This Agreement may not be assigned, directly or by operation of law by either Merchant or Windcave, without Bank's prior written consent. This Agreement will be binding upon and inure to the benefit of the parties' respective heirs, personal representatives, successors and assigns.
- 5.16 Deposit Account.** Merchant will at all times maintain an Account at a bank that is a member of the Federal Reserve ACH system and approved by Provider and will provide Provider with proper authorization to debit the Account. All credits for collected funds and debits for fees, payments and Chargebacks and other amounts for which Merchant is liable under the terms of this Agreement will be made to the Account. During the term of this Agreement and for a period of thirty 30 days after the termination of this Agreement, Merchant may not close or change the Account without prior written approval by Provider, which approval may not be unreasonably withheld. Merchant will be solely liable for all fees and costs associated with the Account and for all overdrafts. Merchant hereby grants to Provider a security interest in the Account to the extent of any and all fees, payments and Chargebacks and other amounts due which may arise under this Agreement, and Merchant will execute any document and obtain any consents or waivers from the bank at which the Account is maintained as requested by Provider to protect its security interests therein. Merchant will maintain sufficient funds in the Account to accommodate all Transactions contemplated by this Agreement and all other fees, charges, credits or other payments or amounts due under this Agreement.
- 5.17 Credit and Financial Inquiries; Additional Locations; Inspections.** Provider may make, at any time, any credit inquires which it may consider necessary to accept or review acceptance of this Agreement or investigate Merchant's deposit or Card acceptance activities subsequent to acceptance of this Agreement. Such inquiries may include, but are not limited to, a credit and/or criminal check of Merchant and business including its proprietor, partners, principals, owners or shareholders or officers. Upon Provider's request, Merchant will provide the written consent of any person for which an inquiry has been or is to be made if such person has not executed this Agreement and will provide any financial statements, income tax and business tax returns and other financial information as Provider may consider necessary to perform initial or periodic reviews of Merchant's financial stability and business practices. Merchant may accept Cards only at locations approved by Provider. Additional locations may be added, subject to Provider's prior consent. Provider or Merchant may remove locations by providing notice as provided herein. Merchant will permit Provider, at any time and from time to time, to inspect locations to confirm that Merchant has or is adhering to the terms of this Agreement and is maintaining the proper facilities, equipment, inventory, records and license or permits (where necessary) to conduct its business. However, nothing in this paragraph may be deemed to waive Merchant's obligation to comply in all respects with the terms of this Agreement or the Network Rules. Provider, its internal and external auditors, and its regulators may audit compliance with this Agreement, compliance with Laws and Network Rules, including, but not limited to, relating to Card acceptance and Transaction processing, data security provisions and Card Network compliance. Merchant will make available its records maintained and produced under this Agreement, and Merchant's facilities will be made accessible, upon notice during normal business hours for examination and audit and shall cooperate with such audits or examinations. Nothing in this section may be construed to require Merchant to give access to its facilities, personnel or records in a manner that unreasonably interferes with its business operations. Each party will bear its own expenses of any audit.
- 5.18 Marketing of Non-Card Services.** From time to time, Provider may offer to Merchant certain additional products and services which may or may not be related to the processing of credit card and debit card Transactions. If such offers are made, Merchant may decline the offers or be deemed to have accepted the offers and be liable for payment therefor. If any additional product or service is offered by Windcave independently of Bank, then Windcave (and not Bank) shall be responsible to deliver and perform such product and service and, accordingly, Merchant may not assert any claim against Bank as it relates to such additional product or service provided by Windcave. Likewise, if any additional product or service is offered by Bank independently of Windcave, then Bank (and not Windcave) shall be responsible to deliver and perform such product and service and, accordingly, Merchant may not assert

any claim against Windcave as it relates to such additional product or service provided by Bank.

- 5.19 Force Majeure.** The parties will be released from liability hereunder if they fail to perform any obligation where the failure occurs by reason of any act of God, fire, flood, storm, earthquake, tidal wave, communications failure, sabotage, war, military operation, terrorism, national emergency, mechanical or electronic breakdown, civil commotion or the order, requisition, request or recommendation of any governmental authority, or either party's compliance therewith, or governmental regulation, or priority, or any other similar cause beyond either party's reasonable control.
- 5.20 No Third-Party Beneficiary.** No other person or entity may be deemed to be a third-party beneficiary of this Agreement.
- 5.21 Severability; Conflict with Network Rules.** If any provision in this Agreement is for any reason held to be invalid or unenforceable, no other provision shall be effected thereby, and this Agreement shall be construed as if the invalid or unenforceable provision had never been a part of it. In the event of a conflict between this Agreement and the Network Rules, the Network Rules shall govern and control.
- 5.22 IRS Reporting Information.** Pursuant to Section 6050W of the Internal Revenue Code, merchant acquiring entities such as Bank and third-party settlement organizations are required to file an information return reflecting all payment card transactions and third-party network transactions occurring in a calendar year. This requirement applies to returns for all calendar years after December 31, 2010 and Merchant will receive a form 1099-K reporting Merchant's gross transaction amounts for each calendar year. In addition, amounts payable under Section 6050W are subject to backup withholding requirements. Merchant acquirers such as Bank, either itself or through third parties, are required to perform backup withholding by deducting and withholding income tax from reportable transactions if (a) the payee fails to provide the payee's taxpayer identification number (TIN) to the merchant acquirer; or (b) if the IRS notifies the merchant acquirer that the TIN (when matched with the name) provided by the payee is incorrect. Accordingly, to avoid backup withholding, it is very important that Merchant provides Bank with the correct name and TIN that Merchant uses when filing its income tax return that includes the transactions for Merchant's business. In addition to the fees set forth on the Merchant Application, if Merchant fails to comply with the obligations set forth in this section, Provider may charge Merchant additional amounts determined by Provider and may pass through any additional fines, costs or expenses incurred by Provider.
- 5.23 Confidentiality.** Merchant shall protect all information or other items proprietary to Provider that Merchant obtains knowledge of or access to as a result of Provider's provision of the services pursuant to this Agreement (collectively, "Provider Confidential Information") from unauthorized disclosure, publication, or dissemination with the same standard of care and discretion Merchant uses to protect similar confidential information of Merchant's own, but in no event less than reasonable care. Furthermore, Merchant shall not use, reproduce, distribute, disclose, or otherwise disseminate Provider Confidential Information, except in connection with the performance of Merchant's obligations under this Agreement. The Provider Confidential Information described in the previous sentence, shall include, but not be limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): scientific, technical, or business information, product makeup lists, ideas, concepts, designs, drawings, techniques, plans, calculations, system designs, formulae, algorithms, programs, software (source and object code), hardware, manuals, test procedures and results, identity and description of computerized records, identity and description of suppliers, customer lists, processes, procedures, trade secrets, "know-how," marketing techniques and material, marketing and development plans, price lists, pricing policies, and all other financial information. The obligations of non-disclosure provided hereunder shall continue during the Term and, (i) with respect to Provider Confidential Information that does not constitute a trade secret, for a period of three (3) years thereafter and, (ii) with respect to Provider Confidential Information that rises to the level of a trade secret under applicable Law, for such period of time thereafter as the Provider Confidential Information shall retain its status as a trade secret under applicable law, and no less than three (3) years thereafter.

The Terms below will only apply for American Express transactions that Windcave settles to Merchant's Account. The Terms Below Are Additional Terms Applicable Specifically to American Express Card Acceptance (capitalized terms below not defined elsewhere in the Agreement shall have the meanings assigned in the American Express Network Rules and American Express OptBlue Program Operating Regulations ("Operating Regulations")). With respect to participation in an American Express acceptance program, in the event of a conflict between the terms below and other terms of this Agreement, the terms below shall control with respect to American Express transactions only. Merchant shall be bound by American Express Network Rules, including the Merchant Operating Guide which explains the policies and procedures related to accepting American Express Cards: www.americanexpress.com/merchantopguide as may be amended from time to time. The Merchant Operating Guide is incorporated into this Agreement by reference.

- A5.24 Transaction Data.** Merchant authorizes Windcave and/or its affiliates to submit American Express Transactions to, and receive settlement on such Transactions from, American Express or Bank on behalf of Merchant.
- A5.25 Marketing Message Opt-Out.** Merchant may opt-out of receiving future commercial marketing communications from American Express by contacting Windcave. Note that Merchant may continue to receive marketing communications while American Express updates its records to reflect this choice. Opting out of commercial marketing communications will not preclude Merchant from receiving important transactional or relationship messages from American Express.
- A5.26 Conversion to American Express Direct Merchant.** Merchant acknowledges that it may be converted from American Express Card OptBlue program to a direct relationship with American Express if and when it becomes a High CV Merchant. A Merchant becomes a High CV Merchant due to (i) growth in Charge Volume after it signs to participate in the Program; (ii) Windcave signing a Merchant that does not meet the eligibility criteria in Section 2.2, "Qualification Requirements" of the Operating Regulations; or (iii) any other reason. If this occurs, upon such conversion, (i) Merchant will be bound by American Express' then-current Card Acceptance Agreement; and (ii) American Express will set pricing and other fees payable by Merchant for Card acceptance.
- A5.27 American Express as Third Party Beneficiary.** Notwithstanding anything in the Agreement to the contrary, American Express shall have third-party beneficiary rights, but not obligations, to the terms of this Agreement applicable to American Express Card acceptance to enforce such terms against Merchant.

accepting American Express Cards.

- A5.29** **Refund Policies.** Merchant's refund policies for American Express purchases must be at least as favorable as its refund policy for purchase on any other Card Network or any Other Payment Products, and the refund policy must be disclosed to Cardholders at the time of purchase and in compliance with Applicable Law. Merchant may not bill or attempt to collect from any Cardholder for any American Express Transaction unless a Chargeback has been exercised, Merchant has fully paid for such Chargeback, and it otherwise has the right to do so.
- A5.30** **Establishment Closing.** If Merchant closes any of its Establishments, Merchant must follow these guidelines: (i) notify Windcave immediately; (ii) policies must be conveyed to the Cardholder prior to completion of the Transaction and printed on the copy of a receipt or Transaction record the Cardholder signs; (iii) if not providing refunds or exchanges, post notices indicating that all sales are final (e.g., at the front doors, by the cash registers, on the Transaction record and on websites and catalogs); (iv) return and cancellation policies must be clearly disclosed at the time of sale; and (v) for Advance Payment Charges or Delayed Delivery Charges, Merchant must either deliver the goods or services for which Merchant has already charged the Cardholder or issue Credit for any portion of the Transaction for which Merchant has not delivered the goods or services.

File Attachments for Item:

7. Fourth Amendment to Water Tower Attachment Option and Lease Agreement

FOURTH AMENDMENT TO WATER TOWER ATTACHMENT OPTION AND LEASE AGREEMENT

THIS FOURTH AMENDMENT TO WATER TOWER ATTACHMENT OPTION AND LEASE AGREEMENT (“**Fourth Amendment**”), dated as of the latter of the signature dates below, is by and between The City of Tybee Island, having a mailing address of P.O. Box 2749, Tybee Island, GA 31328 (“**Landlord**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as successor in interest to BellSouth Personal Communications, Inc., a Delaware corporation, d/b/a Bell South Mobility DCS, having a mailing address of 1025 Lenox Park Blvd. NE, 3rd Floor, Atlanta, GA 30319 (“**Tenant**”).

WHEREAS, Landlord and Tenant entered into a Water Tower Attachment Option and Lease Agreement dated October 10, 1997, as amended by a certain First Amendment to Water Tower Attachment Option and Lease Agreement dated December 12, 2005, as amended by that certain Second Amendment to Water Tower Attachment Option and Lease Agreement dated May 29, 2014, as further amended by that certain Third Amendment to Water Tower Attachment Option and Lease Agreement dated April 13, 2018, whereby Landlord leased to Tenant certain Premises, therein described, that are a portion of the Property located at 111 Butler Avenue, Tybee Island, Georgia, 31328 (“**Agreement**”); and

WHEREAS, Landlord and Tenant desire to amend the Agreement to reflect that Tenant is authorized to add, modify, and replace certain equipment on the Leased Area as listed below and set forth in **Schedule II-B** attached hereto and incorporated by reference; and

WHEREAS, Landlord and Tenant desire to amend the Agreement to modify the notice section thereof; and

WHEREAS, Landlord and Tenant, in their mutual interest, wish to amend the Agreement as set forth below accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. **Equipment.** Landlord authorizes Tenant to add, modify, and replace certain equipment on the Leased Area as listed below and set forth in **Schedule II-B**. Schedule II-A shall be deleted in its entirety and replaced with Schedule II-B attached hereto and incorporated into the Agreement as if fully set out therein.
2. **One-Time Administrative Fee.** Tenant shall pay to Landlord a one-time payment in the amount of Five Hundred and 00/100 Dollars (\$500.00), payable within ninety (90) days of the Effective Date.

3. **Notices.** Section 17 of the Agreement, which was inadvertently deleted and replaced in the Second Amendment, is hereby reinstated to its original content. Section 19 of the Agreement is hereby deleted in its entirety and replaced with the following:

NOTICES. All notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows.

If to Tenant: New Cingular Wireless PCS, LLC
Attn: Tower Asset Group - Lease Administration
Re: Cell Site #: 410-013, Cell Site Name: Butler Avenue Water Tank,
Fixed Asset#: 10017258
1025 Lenox Park Blvd. NE, 3rd Floor
Atlanta, GA 30319

With copy to: New Cingular Wireless PCS, LLC
Attn: Legal Depart – Network Operations
Re: Cell Site #: 410-013, Cell Site Name: Butler Avenue Water Tank
Fixed Asset#: 10017258
208 S. Akard Street
Dallas, TX 75202-4206

A copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

If to Landlord: City Manager
City of Tybee Island
P.O. Box 2749
Tybee Island, Georgia 31328

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

4. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Agreement and this Fourth Amendment, the terms of this Fourth Amendment shall control. Except as expressly set forth in this Fourth Amendment, the Agreement otherwise is unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this Fourth Amendment.
5. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

[Signatures on next page]

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Fourth Amendment on the dates set forth below.

“LANDLORD”

Signed, sealed and delivered
in the presence of:

Name: _____
Unofficial Witness

Name: _____
Notary Public

My Commission Expires: _____

The City of Tybee Island

By: _____
Name: _____
Title: _____
Date: _____

[NOTARIAL SEAL]

“TENANT”

Signed, sealed and delivered
in the presence of:

Name: _____
Unofficial Witness

Name: _____
Notary Public

My Commission Expires: _____

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____
Name: Leonard W. Lindros III
Title: Area Manager of Network Engineering
Date: _____

[NOTARIAL SEAL]

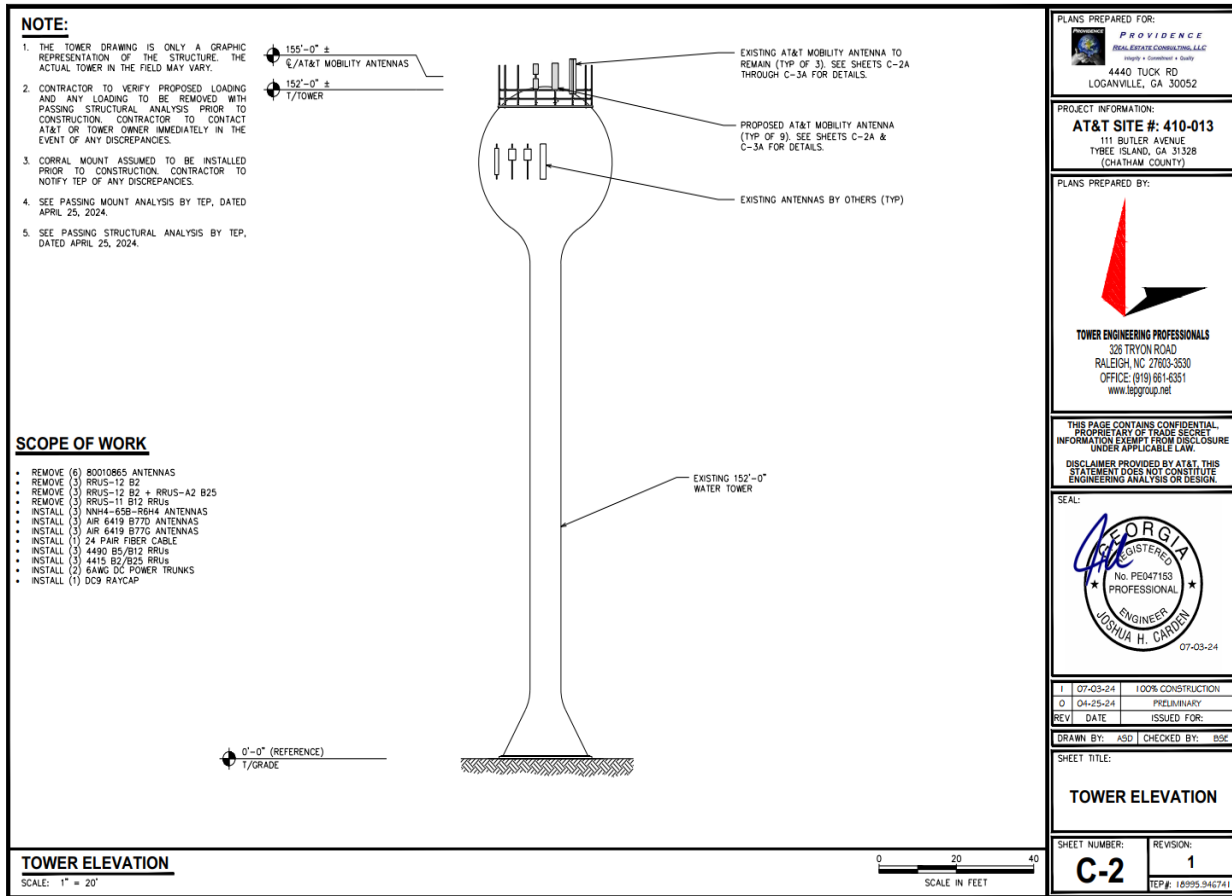
**EXHIBIT II-B
(Page 1 of 3)**

Tower Equipment to be located at the at the 155' RAD.

- (3) Commscope NNH4-65B-R6H4 panel Antennas**
- (3) Ericsson AIR6419 B77G panel antennas**
- (3) Ericsson AIR6419 B77D panel antennas**
- (3) Commscope SBJAH4-1D65C-DL panel antennas**
- (3) Ericsson RRUS-11**
- (3) Ericsson 4490 B5/B12**
- (3) Ericsson 4415 B25**
- (6) Ericsson RRUS-32**
- (3) Ericsson B14 4478**
- (3) Raycap DC6-48-60-18-8F**
- (6) Raycap DC2-48-60-0-9E**
- (1) Raycap DC9-48-60-24-8C-EV**
- (12) 1-5/8" Coax**
- (4) 7/8" Power Cables**
- (2) 1" Power Cables**
- (2) 3/8" Fiber Cables**
- (1) .39" Fiber Cable**
- (1) 3/8" RET Cable**

EXHIBIT II-B (Page 2 of 3)

See attached exhibit comprised of 2 pages, dated 7-3-2024, prepared by Tower Engineering Professionals.



PLANS PREPARED FOR:

 4440 TUCK RD
 LOGANVILLE, GA 30052

PROJECT INFORMATION:
AT&T SITE #: 410-013
 111 BUTLER AVENUE
 TYBEE ISLAND, GA 31328
 (CHATHAM COUNTY)

PLANS PREPARED BY:

TOWER ENGINEERING PROFESSIONALS
 326 TRYON ROAD
 RALEIGH, NC 27603-3530
 OFFICE: (919) 661-6351
 www.tepgroup.net

THIS PAGE CONTAINS CONFIDENTIAL, PROPRIETARY OF TRADE SECRET INFORMATION EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW.

DISCLAIMER PROVIDED BY AT&T. THIS STATEMENT DOES NOT CONSTITUTE ENGINEERING ANALYSIS OR DESIGN.

SEAL:

I	07-03-24	100% CONSTRUCTION
O	04-25-24	PRELIMINARY
REV	DATE	ISSUED FOR:

DRAWN BY: ASD | CHECKED BY: BSE

SHEET TITLE:
TOWER ELEVATION

SHEET NUMBER: C-2	REVISION: 1
TEP # 16295-942741	

EXHIBIT II-B (Page 3 of 3)

See attached exhibit comprised of 2 pages, dated 7-3-2024, prepared by Tower Engineering Professionals.

EXISTING ANTENNA PLAN

EXISTING AT&T MOBILITY ANTENNA TO BE REMOVED (TYP OF 6). SEE SHEET C-3 FOR EXISTING SCHEDULE.

EXISTING AT&T MOBILITY RRUS-32 B66A TO BE RELOCATED (TYP OF 3).

EXISTING AT&T MOBILITY ANTENNA TO BE RELOCATED (TYP OF 3). SEE SHEET C-3 FOR EXISTING SCHEDULE.

EXISTING AT&T MOBILITY RRUS-11 B12 TO BE REMOVED (TYP OF 3).

EXISTING ANTENNA BY OTHERS (TYP).

EXISTING AT&T MOBILITY DC6-48-60-18-8C RAYCAP TO REMAIN (TYP OF 3).

EXISTING AT&T MOBILITY RRUS-12 B2 TO BE REMOVED (TYP OF 3).

EXISTING AT&T MOBILITY DC2-48-60-0-9E RAYCAP TO REMAIN (TYP OF 6).

EXISTING AT&T MOBILITY RRUS-32 B30 TO BE RELOCATED (TYP OF 3).

EXISTING AT&T MOBILITY 4478 B14 RRH TO BE RELOCATED (TYP OF 3).

EXISTING AT&T MOBILITY RRUS-12 B2+ RRUS-A2 TO BE REMOVED (TYP OF 3).

FINAL PROPOSED LOADING

- (3) SRJAH4-IDSC-DL ANTENNAS
- (3) NNH4-65B-RH4 ANTENNAS
- (3) AIR 6419 B7D ANTENNAS
- (3) AIR 6419 B7C ANTENNAS
- (3) 4415 B25 RRUS
- (3) 4490 B5/B2A RRUS
- (3) RRUS-32 B30 RRUS
- (3) 4478 B14 RRUS
- (3) RRUS-32 B66A
- (3) DC6 RAYCAPS
- (6) DC2 RAYCAPS
- (10) 1-5/8" COAX CABLES
- (3) FIBER TRUNKS
- (3) 8 AWG DC POWER TRUNKS
- (2) 8 AWG DC POWER TRUNKS
- (1) DC9 RAYCAP

PROPOSED AT&T MOBILITY ANTENNA (TYP OF 9). SEE SHEET C-3A FOR PROPOSED SCHEDULE.

PROPOSED HSS39x39x3/4" (4500) STANDOFF. (TYP. OF 5 PER CORRAL POST). SEE SHEET C-6 FOR DETAILS. (POST 4, 5, 10, 14, 15)

PROPOSED AT&T MOBILITY 4490 B5/B12 RRU (TYP OF 3)

EXISTING AT&T MOBILITY RRUS-32 B66A (TYP OF 3)

PROPOSED PIPE TO PIPE CLAMP SET BY SITEPROT (P/N: DCP/2K) OR APPROVED EQUIVALENT

NOTES:

1. SEE PASSING MOUNT ANALYSIS BY TEP, DATED APRIL 25, 2024.
2. SEE PASSING STRUCTURAL ANALYSIS BY TEP, DATED APRIL 25, 2024.
3. C BAND SPACING REQUIREMENTS:
 - C BAND ANTENNA TO BE INSTALLED AT BASE OF MOUNT PIPE.
 - DDD BAND ANTENNA TO BE INSTALLED AT TOP OF MOUNT PIPE.
 - 16" MIN VERTICAL SEPARATION (EDGE-TO-EDGE) BETWEEN C BAND AND DDD BAND ANTENNAS (TYP. ALL SECTORS)

EXISTING ANTENNA PLAN

SCALE: 1/8" = 1'-0"

SCALE IN FEET

PROPOSED ANTENNA PLAN

SCALE: 1/8" = 1'-0"

SCALE IN FEET

PLANS PREPARED FOR:

 4440 TUCK RD
 LOGANVILLE, GA 30052

PROJECT INFORMATION:
AT&T SITE # 410-013
 111 BUTLER AVENUE
 TYBEE ISLAND, GA 31328
 (CHATHAM COUNTY)

PLANS PREPARED BY:

TOWER ENGINEERING PROFESSIONALS
 335 TRYON ROAD
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THIS PAGE CONTAINS CONFIDENTIAL, PROPRIETARY OR TRADE SECRET INFORMATION EXCEPT WHERE SHOWN OTHERWISE UNDER APPLICABLE LAW.

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SEAL:

 JOSHUA H. CARRION
 07-03-24

1	07-03-24	100% CONSTRUCTION
0	04-25-24	PRELIMINARY
REV	DATE	ISSUED FOR:
DRAWN BY: ASD		CHECKED BY: BSE

SHEET TITLE:
ANTENNA PLANS

SHEET NUMBER: **C-2A** REVISION: **1**
TEP# 18895-9-41741