

SERVICE PROVIDER AGREEMENT

This SERVICE PROVIDER AGREEMENT (“**Agreement**”) is entered into this ____ day of _____ 20____ (“**Effective Date**”), by and between the CITY OF ALAMEDA, a municipal corporation (“the **City**”), and ENVISIONWARE, a corporation, whose address is 3820 Mansell Road, Suite 350, Alpharetta, GA 30022 (“**Provider**”), in reference to the following facts and circumstances:

RECITALS

A. The City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.

B. The City is in need of the following services: An Automated Materials Handling system to streamline and automate the check-in process and is a turnkey solution that connects securely and seamlessly to the Library network, does not interfere with existing software or equipment, and works with the current RFID system. City staff issued an RFQ on October 31, 2023 and after a submittal period of four weeks received three timely submitted proposals. Staff reviewed the proposals, interviewed qualified firms and selected the service provider that best meets the City’s needs.

C. Provider is specially trained, experienced and competent to perform the special services which will be required by this Agreement.

D. Whereas, the City Council authorized the City Manager to execute this agreement on _____.

E. The City and Provider desire to enter into an agreement for the installation of an Automated Materials Handler at the Alameda Free Main Library, upon the terms and conditions herein.

AGREEMENT

NOW, THEREFORE, in consideration of the forgoing, which are incorporated herein by reference, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Provider agree as follows:

1. TERM:

The term of this Agreement shall commence on the ____ day of _____ 2024 and shall terminate on the ____ day of _____ 2029, unless terminated earlier as set forth herein.

The parties may agree to extend the term of this Agreement on a year-by-year basis, for up to five additional years. Any extension shall be documented in a signed amendment. In the event that the parties agree to extend the Agreement, all provisions of the Agreement shall remain unchanged with the exception that the compensation shall be adjusted by the Consumer Price Index for the San Francisco Bay area as reported by the U.S. Department of Labor, Bureau of Labor Statistics for the previous calendar year.

2. SERVICES TO BE PERFORMED:

Provider agrees to do all necessary work at its own cost and expense, to furnish all labor, tools, equipment, materials, except as otherwise specified, and to do all necessary work included in Exhibit A as requested. Provider acknowledges that the work plan included in Exhibit A is tentative and does not commit the City to request Provider to perform all tasks included therein.

3. COMPENSATION TO PROVIDER:

a. Upon agreement, Provider shall submit to the City an invoice for 50% of total amount of work for the materials and installation. The remaining balance from will be paid upon completion. After the first year, Provider will provide an invoice for the annual maintenance cost. Compensation for the five-year contract shall not exceed \$320,724.42. Pricing and accounting of charges are to be according to the fee schedule as set forth in this Section 3.

Compensation for work done under this Agreement, shall not exceed as follows:

FY 24-25 total compensation shall not exceed \$234,554.08
FY 25-26 total compensation shall not exceed \$19,992.54
FY 26-27 total compensation shall not exceed \$20,992.17
FY 27-28 total compensation shall not exceed \$22,041.77
FY 28-29 total compensation shall not exceed \$23,143.86
Total five-year compensation shall not exceed **\$320,724.42**

Use of contingency shall be for items of work outside the original scope and requires prior written authorization by the City.

4. TIME FOR PERFORMANCE:

Each party shall use commercially reasonable efforts to perform its obligations under this agreement within the timeframes specified in the statement of work.

5. STANDARD OF CARE:

Provider agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals or service providers, as applicable, in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel who are not employed by the City.

6. INDEPENDENT PARTIES:

Provider hereby declares that Provider is engaged as an independent business and Provider agrees to perform the services as an independent contractor. The manner and means of conducting the services and tasks are under the control of Provider except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Provider's services. None of the benefits provided by the City to its employees, including but not limited to unemployment insurance, workers' compensation plans, vacation and sick leave, are available from the City to Provider, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship.

from any compensation due to Provider. Payments of the above items, if required, are the responsibility of Provider.

7. IMMIGRATION REFORM AND CONTROL ACT (IRCA):

Provider assumes any and all responsibility for verifying the identity and employment authorization of all of its employees performing work hereunder, pursuant to all applicable IRCA or other federal, or state rules and regulations. Provider shall indemnify, defend, and hold the City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Provider.

8. NON-DISCRIMINATION:

Consistent with the City's policy and state and federal law that harassment and discrimination are unacceptable conduct, Provider and its employees, contractors, and agents shall not harass or discriminate against any job applicant, City employee, or any other person on the basis of any kind of any statutorily (federal, state or local) protected class, including but not limited to: race, religious creed, color, national origin, ancestry, disability (both mental and physical) including HIV and AIDS, medical condition (e.g. cancer), genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, pregnancy, political affiliation, military and veteran status or legitimate union activities. Provider agrees that any violation of this provision shall constitute a material breach of this Agreement.

9. HOLD HARMLESS:

a. To the fullest extent permitted by law, Provider shall indemnify, defend (with counsel acceptable to the City) and hold harmless the City, its City Council, boards, commissions, officials, employees, agents and volunteers ("Indemnitees") from and against any and all loss, damages, liability, obligations, claims, suits, judgments, costs and expenses whatsoever relating to third-party claims, including reasonable attorney's fees and costs of litigation ("Claims"), arising from the direct acts or negligence of the Provider. If the Claims filed against Indemnitees allege negligence, recklessness or willful misconduct on the part of Provider, Provider shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence, recklessness or willful misconduct is not found on the part of Provider. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

b. As to Claims for professional liability only, Provider's obligation to defend Indemnitees (as set forth above) is limited as provided in California Civil Code Section 2782.8.

c. City hereby agrees that Provider's total liability to City for any and all liabilities, claims or damages arising out of or relating to this Agreement, regardless of cause or the legal theory asserted except for gross negligence, willful misconduct, fraud, breach of confidentiality, data security, or data privacy obligations, shall not, in the aggregate, exceed one (1) time the purchase price for any software or hardware. City hereby agrees that Provider's total liability to City for any and all liabilities, claims, or damages arising out of or relating to gross negligence, willful misconduct, fraud, breach of confidentiality, data security, or data privacy obligations shall not, in the aggregate, exceed one (1) million U.S. Dollars. The parties acknowledge and agree to the foregoing liability risk allocation. Any claim by City against Provider relating to this

Agreement must be made in writing and presented to contractor within six (6) months after the date on which this Agreement expires or is otherwise terminated.

In no event shall either party be liable to the other for any punitive, exemplary, special, indirect, incidental or consequential damages, including, but not limited to, lost profits, lost business opportunities, loss of use or equipment down time, and loss of or corruption of data, arising out of or relating to this Agreement, regardless of the legal theory under which such damages are sought, and even if the parties have been advised of the possibility of such damages or loss, and notwithstanding any failure of essential purpose of any limited remedy.

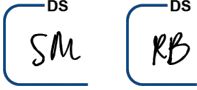
d. Provider's obligation to indemnify, defend and hold harmless Indemnities shall expressly survive the expiration or early termination of this Agreement.

10. INSURANCE:

a. On or before the commencement of the terms of this Agreement, Provider shall furnish the City's Risk Manager with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with Sections 10.b. (1) through (5). The Certificate Holder should be The City of Alameda, 2263 Santa Clara, Ave., Alameda, CA 94501. Such certificates, which do not limit Provider's indemnification, shall also contain substantially the following statement:

"Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the City of Alameda. Attention: Risk Manager."

Provider shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company licensed to offer insurance business in the State of California with a current A.M. Best's rating of no less than A:VII or Standard & Poor's Rating (if rated) of at least BBB unless otherwise acceptable to the City. Provider shall deliver updated insurance certificates to the City at the address described in Section 17.f. prior to the expiration of the existing insurance certificate for the duration of the term of Agreement. Endorsements naming the City, its City Council, boards, commissions, officials, employees, agents, and volunteers as additional insured shall be submitted with the insurance certificates.


Provider Initials

b. COVERAGE REQUIREMENTS:

Provider shall maintain insurance coverage and limits at least as broad as:

(1) Workers' Compensation:

Statutory coverage as required by the State of California, as well as a Waiver of Subrogation (Rights of Recovery) endorsement.

(2) Liability:

Commercial general liability coverage in the following minimum limits:

Bodily Injury:	\$1,000,000 each occurrence \$2,000,000 aggregate - all other
Property Damage:	\$1,000,000 each occurrence \$2,000,000 aggregate

If submitted, combined single limit policy with per occurrence limits in the amounts of \$2,000,000 and aggregate limits in the amounts of \$4,000,000 will be considered equivalent to the required minimum limits shown above. Provider shall also submit declarations and policy endorsements pages. Additional Insured Endorsement naming the City, its City Council, boards, commissions, officials, employees, agents, and volunteers is required. The Additional Insured Endorsement shall include primary and non-contributory coverage at least as broad as the CG 2010.

(3) Automotive:

Comprehensive automobile liability coverage (any auto) in the following minimum limits:

Bodily injury:	\$1,000,000 each occurrence
Property Damage:	\$1,000,000 each occurrence

or

Combined Single Limit:	\$2,000,000 each occurrence
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Additional Insured Endorsement naming the City, its City Council, boards, commissions, officials, employees, agents, and volunteers is required.

(4) Professional Liability:

Professional liability insurance which includes coverage appropriate for the professional acts, errors and omissions of Provider's profession and work hereunder, including, but not limited to, technology professional liability errors and omissions if the services being provided are technology-based, in the following minimum limits:

\$2,000,000 each claim

Technology professional liability errors and omissions shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the City in the care, custody, or control of Provider. If not covered under Provider's liability policy, such "property" coverage of the City may be endorsed onto

Provider's Cyber Liability Policy as covered property as follows: cyber liability coverage in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the City that will be in the care, custody, or control of Provider.

(5) Cyber Liability:

Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by Provider in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations with the following minimum limits:

\$2,000,000 per occurrence or claim.

As to commercial general liability and automobile liability insurance, such insurance will provide that it constitutes primary insurance with respect to claims insured by such policy, and, except with respect to limits, that insurance applies separately to each insured against whom claim is made or suit is brought. Such insurance is not additional to or contributing with any other insurance carried by or for the benefit of the City.

c. SUBROGATION WAIVER:

Provider hereby agrees to waive rights of subrogation that any insurer of Provider may acquire from Provider by virtue of the payment of any loss. Provider agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Provider, its employees, agents and subcontractors.

d. FAILURE TO SECURE:

If Provider at any time during the term hereof should fail to secure or maintain the foregoing insurance, the City shall be permitted to obtain such insurance in Provider's name or as an agent of Provider and shall be compensated by Provider for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

e. ADDITIONAL INSURED:

The City, its City Council, boards, commissions, officials, employees, agents, and volunteers shall be named as additional insured(s) under all insurance coverages, except workers' compensation and professional liability insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

Additional Insured coverage under Provider's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance. Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured(s).

f. SUFFICIENCY OF INSURANCE:

The insurance limits required by the City are not represented as being sufficient to protect Provider. Provider is advised to consult Provider's insurance broker to determine adequate coverage for Provider. The coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of the coverage carried by or available to Provider; whichever is greater.

g. EXCESS OR UMBRELLA LIABILITY:

If any Excess or Umbrella Liability policies are used to meet the limits of liability required by this Agreement, then said policies shall be true "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this Agreement, including but not limited to, the additional insured, SIR, and primary insurance requirements stated therein. No insurance policies maintained by the indemnified parties or Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until all the primary and excess liability policies carried by or available to the Provider are exhausted.

11. CONFLICT OF INTEREST:

Provider warrants that it is not a conflict of interest for Provider to perform the services required by this Agreement. Provider may be required to fill out a conflict of interest form if the services provided under this Agreement require Provider to make certain governmental decisions or serve in a staff capacity as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

12. PROHIBITION AGAINST TRANSFERS:

a. Provider shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of the City Manager. Provider shall submit a written request for consent to transfer to the City Manager at least thirty (30) days in advance of the desired transfer. The City Manager or their designee may consent or reject such request in their sole and absolute discretion. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money against the City under this Agreement may be assigned by Provider to a bank, trust company or other financial institution without prior written consent.

b. The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock, membership interest, partnership interest, or the equivalent, which shall result in changing the control of Provider, shall be construed as an assignment of this Agreement. Control means fifty percent or more of the voting power of Provider.

13. APPROVAL OF SUB-PROVIDERS:

a. Only those persons and/or businesses whose names and resumés are attached to this Agreement shall be used in the performance of this Agreement. However, if after the start of this Agreement, Provider wishes to use sub-providers, at no additional costs to the City, then Provider shall submit a written request for consent to add sub-providers including the names of the sub-providers and the reasons for the request to the City Manager at least five (5) days in advance. The City Manager may consent or reject such requests in their sole and absolute discretion.

b. Each sub-provider shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance (as applicable) in reasonable conformity to the insurance carried by Provider.

c. In addition, any tasks or services performed by sub-providers shall be subject to each provision of this Agreement. Provider shall include the following language in their agreement with any sub-provider: "Sub-providers hired by Provider agree to be bound to Provider and the City in the same manner and to the same extent as Provider is bound to the City."

d. The requirements in this Section 13 shall not apply to persons who are merely providing materials, supplies, data or information that Provider then analyzes and incorporates into its work product.

14. PERMITS AND LICENSES:

Provider, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses, including a City business license that may be required in connection with the performance of the services and tasks hereunder.

15. REPORTS:

a. No report, information or other data given to or prepared or assembled by Provider pursuant to this Agreement shall be made available to any individual or organization by Provider without prior approval of the City Manager or their designee.

b. Provider shall, at such time and in such form as City Manager or their designee may require, furnish reports concerning the status of services and tasks required under this Agreement.

16. RECORDS:

a. Provider shall maintain complete and accurate records with respect to the services, tasks, work, documents and data in sufficient detail to permit an evaluation of Provider's performance under the Agreement, as well as maintain books and records related to sales, costs, expenses, receipts and other such information required by the City that relate to the performance of the services and tasks under this Agreement (collectively the "**Records**").

b. All Records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Provider shall provide free access to the Records to the representatives of the City or its designees during regular business hours upon commercially reasonable prior notice. The City has the right to examine and audit the Records, and to make copies or transcripts therefrom as necessary, and to allow inspection of all proceedings and activities related to this Agreement. Such Records, together with supporting documents, shall

be kept separate from other documents and records and shall be maintained by Provider for a period of three (3) years after receipt of final payment.

c. If supplemental examination or audit of the Records is necessary due to concerns raised by the City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of this Agreement or failure to act in good faith, then Provider shall reimburse the City for all reasonable costs and expenses associated with the supplemental examination or audit.

17. NOTICES:

a. All notices shall be in writing and delivered: (i) by hand; or (ii) sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service; or (iii) sent by overnight or same day courier service at the party's respective address listed in this Section.

b. Each notice shall be deemed to have been received on the earlier to occur of: (x) actual delivery or the date on which delivery is refused; or (y) three (3) days after notice is deposited in the U.S. mail or with a courier service in the manner described above (Sundays and City holidays excepted).

c. Either party may, at any time, change its notice address (other than to a post office box address) by giving the other party three (3) days prior written notice of the new address.

d. All notices, demands, requests, or approvals from Provider to the City shall be addressed to the City at:

City of Alameda
Library
1550 Oak St.
Alameda, CA 94501
ATTENTION: Library Director, Marlon Romero
Ph: (510) 747-7730

e. All notices, demands, requests, or approvals from the City to Provider shall be addressed to Provider at:

Envisionware
Contracts Department
3820 Mansell Road Suite 350
Alpharetta, GA 30022
ATTENTION: Contracts Administrator
Ph: (800) 216-8370

With an electronic copy to contracts@envisionware.com

f. All updated insurance certificates from Provider to the City shall be addressed to the City at:

City of Alameda
City Attorney's Office
2263 Santa Clara Ave., Room 280
Alameda, CA 94501
ATTENTION: Risk Manager
Ph: (510) 747-4750

18. SAFETY:

a. Provider will be solely and completely responsible for conditions of all vehicles owned or operated by Provider, including the safety of all persons and property during performance of the services and tasks under this Agreement. This requirement will apply continuously and not be limited to normal working hours. In addition, Provider will comply with all safety provisions in conformance with U.S. Department of Labor Occupational Safety and Health Act, any equivalent state law, and all other applicable federal, state, county and local laws, ordinances, codes, and any regulations that may be detailed in other parts of the Agreement. Where any of these are in conflict, the more stringent requirements will be followed. Provider's failure to thoroughly familiarize itself with the aforementioned safety provisions will not relieve it from compliance with the obligations and penalties set forth herein.

b. Provider will immediately notify the City within 24 hours of any incident of death, serious personal injury or substantial property damage that occurs in connection with the performance of this Agreement. Provider will promptly submit to the City a written report of all incidents that occur in connection with this Agreement. This report must include the following information: (i) name and address of injured or deceased person(s); (ii) name and address of Provider's employee(s) involved in the incident; (iii) name and address of Provider's liability insurance carrier; (iv) a detailed description of the incident; and (v) a police report.

19. TERMINATION:

a. In the event Provider fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Provider shall be deemed in default in the performance of this Agreement. If such default is not cured within ten (10) business days after receipt by Provider from the City of written notice of default, specifying the nature of such default and the steps necessary to cure such default, the City may thereafter immediately terminate the Agreement forthwith by giving to Provider written notice thereof.

b. The foregoing notwithstanding, the City shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving thirty (30) days' prior written notice to Provider as provided herein.

c. Upon termination of this Agreement either for cause or for convenience, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination. The obligation of the parties under this Section 19.c. shall survive the expiration or early termination of this Agreement.

20. ATTORNEYS' FEES:

In the event of any litigation, including administrative proceedings, relating to this Agreement, including but not limited to any action or suit by any party, assignee or beneficiary against any other party, beneficiary or assignee, to enforce, interpret or seek relief from any provision or obligation arising out of this Agreement, the parties and litigants shall bear their own attorney's fees and costs. No party or litigant shall be entitled to recover any attorneys' fees or costs from any other party or litigant, regardless of which party or litigant might prevail.

21. HEALTH AND SAFETY REQUIREMENTS.

Provider acknowledges that the City shall have the right to impose, at the City's sole discretion, requirements that it deems are necessary to protect the health and safety of the City employees, residents, and visitors. Provider agrees to comply with all such requirements, including, but not limited to, mandatory vaccinations, the use of personal protective equipment (e.g. masks), physical distancing, and health screenings. Provider also agrees to make available to the City, at the City's request, records to demonstrate Provider's compliance with this Section.

22. COMPLIANCE WITH ALL APPLICABLE LAWS:

During the term of this Agreement, Provider shall keep fully informed of all existing and future state and federal laws and all municipal ordinances and regulations of the City of Alameda which affect the manner in which the services or tasks are to be performed by Provider, as well as all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Provider shall comply with all applicable laws, state and federal and all ordinances, rules and regulations enacted or issued by the City.

23. CONFLICT OF LAW:

This Agreement shall be interpreted under, and enforced by the laws of the State of California without regard to any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

24. WAIVER:

A waiver by the City of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

25. INTEGRATED CONTRACT:

Subject to the language of Section 30, the Recitals and exhibits are a material part of this Agreement and are expressly incorporated herein. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both the City and Provider.

26. CAPTIONS:

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

27. COUNTERPARTS:

This Agreement may be executed in any number of counterparts (including by fax, PDF, DocuSign, or other electronic means), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

28. SIGNATORY:

By signing this Agreement, signatory warrants and represents that they executed this Agreement in their authorized capacity and that by their signature on this Agreement, they or the entity upon behalf of which they acted, executed this Agreement.

29. CONTROLLING AGREEMENT:

In the event of a conflict between the terms and conditions of this Agreement (as amended, supplemented, restated or otherwise modified from time to time) and any other terms and conditions wherever contained, including, without limitation, terms and conditions included within exhibits, the terms and conditions of this Agreement shall control and be primary.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have each caused this Agreement to be duly executed on its behalf as of the Effective Date.

ENVISIONWARE
a Georgia corporation

DocuSigned by:

Ricky Bacchus

06688B36686C482...

Ricky Bacchus
President

CITY OF ALAMEDA
a municipal corporation

Jennifer Ott
City Manager

DocuSigned by:

Seann Maheson

24C86906C24D4E3...

Seann Maheson
Chief Financial Officer

RECOMMENDED FOR APPROVAL

DocuSigned by:

Michael Eitner

1F31299A49714BC...

Michael Eitner
Library Director

APPROVED AS TO FORM:
City Attorney

DocuSigned by:

Montague Hung

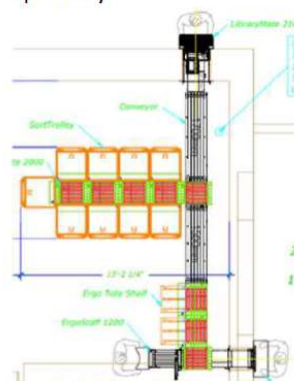
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Montague Hung
Assistant City Attorney

Exhibit A

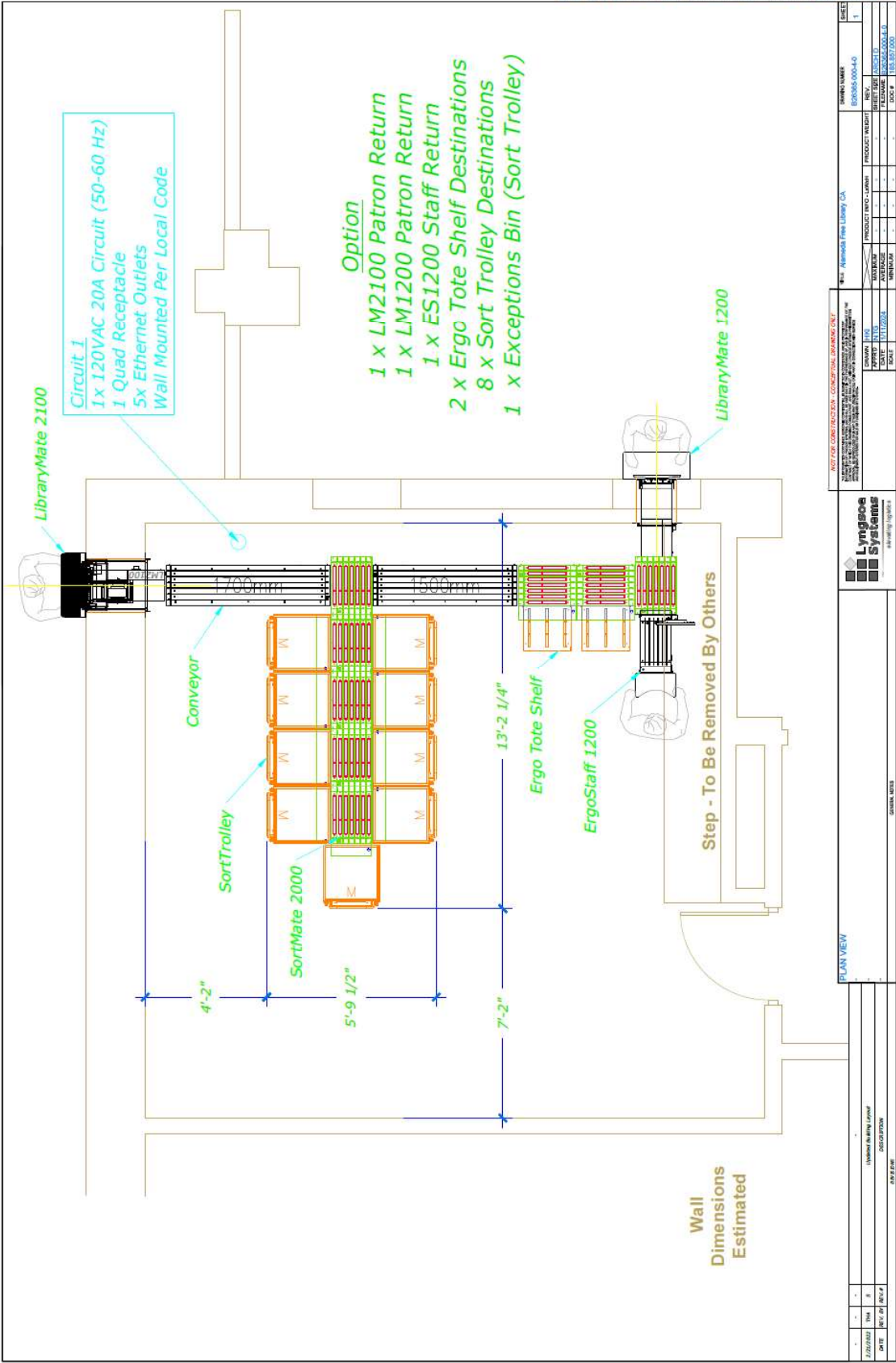


Sorter Price – Option 4

Alameda Free Library Main Branch Pricing Option 4 – (11-Destinations)		Price
Item# SOI-AMH 2K 1723 Alameda Main-4 Sortation System – Interior System (11-destinations) Lyngsoe Dwg: B26365-000-4-0 Sortation System - Qty (1) Library Mate™ LM2100 Exterior check in station (RFID) with touchscreen interface and patron shelf - Qty (1) Library Mate™ LM1200 Interior check in station (RFID) with touchscreen interface, patron shelf, and patron receipt printer - Qty (1) Ergo Staff™ ES1200 Staff induction check in station (RFID) with touchscreen interface, height adjustable work surface, backdating - Qty (1) Hold Slip Printer - Qty (1) Sort Mate™ SM2000 High-Speed Sorter with 11-destinations (8) Sort Trolley™ destinations with chute full capability (2) Ergo Tote Shelf destinations (1) Sort Trolley™ destination exceptions bin - Lyngsoe Sort Controller - Conveyance - System Delivery and Set up - Shipping - Parts Warranty (Standard 12 month) - Hotline (24/7) (Standard 12 month) - Spare Parts (on-site kit) - Qty (9) Sort Trolleys™ 		
Total USD		\$211,561.25
Tax @ 10.75%		\$22,742.83
Project Management Fee		\$250.00
Total USD		\$234,554.08

Annual Maintenance:

Year 1	Included
Year 2	\$19,992.54
Year 3	\$20,992.17
Year 4	\$22,041.77
Year 5	\$23,143.86



ENVISIONWARE®
Enriching Public Library Service Inside and Out
EnvisionWare, Inc.
3820 Mansell Road, Suite 350, Alpharetta, GA 30022
Toll Free 800.216.8370 International+1 678.382.6500

Quotation
US-84541
1/16/2024

Bill To
Marlon Romero
Alameda Free Library
1550 Oak Street
Alameda CA 94501
United States

TOTAL

\$234,554.08
Quote Expires: 6/28/2024

Federal EIN	Currency	Terms	Sales Rep
58-2424595	US Dollar	* 50 % Dep Bal - 30 Services-Accept	Cashmark, Sue
Quotation Title		Memo	
AMH - Option 4 - Lyngsoe Dwg: B26365-000-4-0			

Qty	Item / Description	Ship To	Unit Price	Amount
1	SOI-AMH 2K 1723 Alameda Main-4 AMH Gen2000 RFID Interior Sortation System (11-destinations) -Lyngsoe Dwg: B26365-000-4-0 -Alameda Main-4 -Sortation System -Qty (1) Library Mate™ LM2100 Exterior check in station (RFID) with touchscreen interface and patron shelf -Qty (1) Library Mate™ LM1200 Interior check in station (RFID) with touchscreen interface, patron shelf, and patron receipt printer -Qty (1) Ergo Staff™ ES1200 Staff induction check in station (RFID) with touchscreen interface, height adjustable work surface, backdating -Qty (1) Hold Slip Printer -Qty (1) Sort Mate™ SM2000 High-Speed Sorter with 11-destinations -(8) Sort Trolley™ destinations with chute full capability -(2) Ergo Tote Shelf destinations -(1) Sort Trolley™ destination exceptions bin -Lyngsoe Sort Controller -Conveyance -System Delivery and Set up -Shipping -Parts Warranty (Standard 12 month) -Hotline (24/7) (Standard 12 month) -Spare Parts (on-site kit) -Qty (9) Sort Trolleys™		\$211,561.25	\$211,561.25
1	AMH-2K PS AMH Gen2000 Project Management		\$250.00	\$250.00

ENVISIONWARE®
Enriching Public Library Service Inside and Out
EnvisionWare, Inc.
3820 Mansell Road, Suite 350, Alpharetta, GA 30022
Toll Free 800.216.8370 International+1 678.382.6500

Quotation

US-84541

1/16/2024

Freight charges are estimated; actual charges will be billed.

Send your purchase order or email confirmation to:
EMAIL : orders@envisionware.com | **FAX :** +1 678.382.6501

Subtotal	\$211,811.25
Discount	
Freight	\$0.00
Tax	\$22,742.83
PST-CA	

Use of EnvisionWare, Inc. Products is subject to the terms and conditions in the end user license agreement found at: <http://system.envisionware.com/terms>. By signing this quote or issuing a purchase order, you indicate your approval of EnvisionWare's terms and conditions.

Signature: _____ Date: _____

Total	\$234,554.08
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Exhibit B

ENVISIONWARE, INC.

END USER LICENSE AGREEMENT AND LIMITED WARRANTY (“EULA”)

IMPORTANT: PLEASE READ THE TERMS AND CONDITIONS OF THIS EULA CAREFULLY BEFORE USING THE SOFTWARE. ENVISIONWARE, INC. (“ENVISIONWARE”) IS WILLING TO LICENSE THE SOFTWARE TO YOU AS THE INDIVIDUAL, THE ORGANIZATION, OR THE LEGAL ENTITY THAT WILL BE UTILIZING THE SOFTWARE (REFERRED TO AS “YOU” OR “YOUR”) ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS OF THIS EULA.

UPON AND AS OF THE DATE ENVISIONWARE SENDS AN EMAIL TO YOU (THE “EFFECTIVE DATE”) ISSUING CREDENTIALS TO LOG INTO ENVISIONWARE’S WEBSITE FROM WHERE THE SOFTWARE MAY BE DOWNLOADED, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS EULA.

IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS EULA, DO NOT ATTEMPT TO DOWNLOAD OR INSTALL THE SOFTWARE, OR, IF INSTALLED, MAKE NO FURTHER USE OF THE SOFTWARE, AND NOTIFY IN WRITING ENVISIONWARE OR THE RESELLER FROM WHOM IT WAS ACQUIRED WITHIN THIRTY (30) DAYS OF PURCHASE, AND THE PURCHASE PRICE WILL BE REFUNDED.

1. License: The software and documentation (collectively the “Software”) are owned by and are the property of EnvisionWare or its licensors and are protected by copyright and other intellectual property laws. Some licensors may be express or intended beneficiaries of this EULA. Subject to all of the terms and conditions of this Agreement, EnvisionWare grants you a limited, non-exclusive, worldwide, non-transferable, non-sublicensable license to use the Software for which you have been issued a Product Key by EnvisionWare or an authorized distributor or reseller, but only in accordance with

(i) the documentation, (ii) the restrictions contained herein and any restrictions on the applicable invoice, and (iii) the number of authorized users. Portions of some Software modules are licensed from Artifex Software, Inc. Portions of some modules may contain MySQL connector (under the GNU GPL v2 license at <http://www.gnu.org/licenses/gpl-2.0.html>). Portions of some modules may contain the MS access driver, licensed from Microsoft Corporation. Portions of some modules may be licensed under the Microsoft Reciprocal License (MS-RL) <http://opensource.org/licenses/ms-rl>. Portions of some Software modules are licensed under the Apache License, Version 2.0; you may not use these files except in compliance with the Apache License. The Apache License is available at <http://www.apache.org/licenses/LICENSE-2.0>. Unless required by applicable law or agreed to in writing, software distributed under the Apache License is distributed on an “AS IS” BASIS, WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, either express or implied. See the Apache License for the specific language governing permissions and limitations under the Apache License. Portions of some Software modules are licensed under the MIT Expat License. This EULA also incorporates the terms of the Verifone Pass Through Terms of Use and Windcave End User License Agreement attached hereto, as applicable to your purchase. This EULA also governs any future releases, revisions, or enhancements to the Software that EnvisionWare may furnish to you. Your rights and obligations with respect to the use of this

Software are as follows:

A. You may:

- i. use the Software on the quantity and type of computers indicated on EnvisionWare invoice. You may make that number of copies of the Software licensed to you by EnvisionWare.
- ii. make one copy of the Software for archival purposes, or copy the Software onto the hard disk of your computer and retain the original for archival purposes;
- iii. use the Software on a network, provided that you have a licensed copy of the Software for each computer that can access the Software over that network; and,
- iv. make printed copies of electronic documentation for your internal use.

B. You may not:

- i. transfer, assign, convey, sublicense, rent or lease the Software (or any portion thereof) to another person or entity or unlicensed division, subsidiary, or affiliate (or to anyone other than the entity named as licensee as appearing on the software splash screen), other than to a successor agency, and any transfer in violation hereof shall be of no power or effect;
- ii. distribute, sell, sublicense, rent, lease or use the Software (or any portion thereof) for time sharing, hosting, service provider or like purposes, except as expressly permitted under this Agreement;
- iii. reverse engineer, decompile, disassemble, modify, translate, make any attempt to discover, modify or use the source code, underlying ideas, algorithms, file formats or programming interfaces of the Software by any means whatsoever (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions), or create derivative works from the Software (any such modifications shall automatically be owned by EnvisionWare upon creation);
- iv. utilize any equipment, device, software, or other means designed to circumvent or remove any form of product key or copy protection used by EnvisionWare in connection with the Software, or use the Software together with any authorization code, product key, serial number, or other copy protection device not supplied by EnvisionWare or through an authorized distributor or reseller;
- v. use the Software to develop or facilitate development of a product which is competitive with any EnvisionWare product offerings;
- vi. post or otherwise publish electronic documentation of the Software for access outside the licensed organization;
- vii. use a previous version or copy of the Software after you have installed a replacement set or an upgraded version and, upon upgrading the Software, all copies of the prior version must be uninstalled or rendered unusable;
- viii. use a later version of the Software than is provided in the email with the login credentials except as provided under the Software Product Warranty, unless you have purchased maintenance and update service or have otherwise separately acquired the right to use such later version;

- ix. remove any product identification, proprietary, copyright or other notices contained in the Software;
- x. provide any product key or login information to a third party; or
- xi. use the Software or product keys in any manner not expressly authorized by this EULA.

2. Thirty Day Money Back Guarantee: If you are the original licensee of the Software and are dissatisfied with it for any reason, and if at any time during the thirty (30) day period following the Effective Date you email EnvisionWare confirming your complete removal and deletion of the complete product and provide a signed statement to EnvisionWare attesting to removal of all software components, then EnvisionWare will provide a full refund, subject to the provisions of the Hardware Return Policy below. Notwithstanding the foregoing sentence, in the event sufficient funds for the performance of this Agreement are not appropriated by you in any fiscal year covered by this Agreement, you may terminate this Agreement by providing thirty (30) days' prior written notice, provided that you shall pay all amounts owed up to the effective date of such termination and EnvisionWare shall be reimbursed any resulting unamortized, reasonably incurred, nonrecurring costs. EnvisionWare will not be reimbursed any costs amortized beyond the initial term of the Agreement.

3. Hardware Return Policy: Custom printed RFID tags, manufactured, built-to-order or custom-configured Hardware as designated on a Quotation, such as but not limited to, kiosks or sorters, may not be returned or canceled for any reason. Custom items include any item listed in an EnvisionWare quotation, product description or order form as being a custom item, or any item which is modified by EnvisionWare after installation. Standard Hardware products may be accepted for return within ninety (90) days of the date of invoice subject to advance, written approval expressed in the form of an EnvisionWare Return Merchandise Authorization ("RMA"). EnvisionWare, at its sole discretion, may grant the right to return standard Hardware products during this return period. Any such returns are subject to a 20% restocking fee unless EnvisionWare determines that the cause of the return is a result of an error on the part of EnvisionWare, in which case EnvisionWare may waive all or part of the restocking fee. No Hardware product will be accepted for return for ANY reason without a Return Merchandise Authorization issued by EnvisionWare. The RMA number must be clearly displayed on any packaging shipped to EnvisionWare. Products returned without an RMA number on the package will be refused. Any return for any reason, whether for an authorized RMA or for warranty support must be shipped to EnvisionWare freight prepaid. Equipment serviced under warranty will be returned freight prepaid.

4. Limited Warranty; Disclaimer:

A. Software Product Warranty: EnvisionWare warrants that the Software as distributed operate in substantial conformity with the documentation (the "Software Product Warranty") for a period of one (1) year from the delivery of the Software to you (the "Software Warranty Period"). This is the sole warranty EnvisionWare provides for all Software supplied by EnvisionWare, unless specifically stated otherwise in EnvisionWare's quotation. EnvisionWare does not warrant that your use of the Software will be uninterrupted or error-free. EnvisionWare's sole liability (and your sole remedy) in the event of a breach of this Product Warranty will be that EnvisionWare will, in EnvisionWare's sole discretion,

(A) use commercially reasonable efforts to provide you with an error correction or a work-around which corrects the reported non-conformity or (B) if EnvisionWare determines such remedies to be impracticable within a reasonable period of time, refund the money you paid for the Software being returned. EnvisionWare does not warrant that the Software will meet your requirements or that operation of the Software will be uninterrupted or that the Software will be error-free. EnvisionWare provides Software product support through the reseller from whom you purchased the Software or directly from EnvisionWare for a period of twelve (12) months from date of delivery of the Software.

B. Hardware Product Warranty: EnvisionWare warrants that EnvisionWare-branded hardware as distributed will be free from material defects (the “Hardware Product Warranty”) for a period of one (1) year from the date of delivery of the EnvisionWare-brand hardware to you (the “Hardware Warranty Period”). Other Hardware components supplied to you by EnvisionWare that are not manufactured or branded by EnvisionWare are covered by the warranties provided by the product manufacturer. EnvisionWare shall have no obligation with respect to a warranty claim unless notified of such claim within the applicable Software or Hardware Warranty Period. The term “delivery” in this Section 4 means, with respect to Software, the date of invoice, and, with respect to Hardware, “delivery” means the date that the Hardware is delivered to your facility.

C. Exclusions: The above warranties shall not apply: (i) to the extent of issues or problems if the Software or Hardware is used with hardware or software not specified in the documentation; (ii) if any modifications are made to the Software or Hardware by you or any third party; (iii) to defects in the Software or Hardware that are due to accident, abuse or improper use by you or your contractors; or (iv) to any evaluation version or other Software or Hardware provided on a no-charge or evaluation basis. Any replacement Software or Hardware will be warranted for the remainder of the original applicable Software Warranty Period or Hardware Warranty Period.

D. Professional Services Warranty. For any Professional Services provided pursuant to Section 13 below, EnvisionWare warrants that the services will be performed in a workmanlike manner, and that if any Professional Services are not so performed and if you notify EnvisionWare in writing within thirty (30) days after the provision of the particular Professional Service that the services are not performed properly, EnvisionWare will re-perform such services at no charge to you (the “Professional Services Warranty”). Your sole and exclusive remedy of any breach of this Professional Services Warranty is for EnvisionWare to re-perform such services.

E. THE ABOVE SOFTWARE PRODUCT WARRANTY AND HARDWARE PRODUCT WARRANTY ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, ALL OF WHICH ARE SPECIFICALLY DISCLAIMED. THE SOFTWARE PRODUCT WARRANTY AND THE HARDWARE PRODUCT WARRANTY GIVE YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHER RIGHTS, WHICH VARY FROM STATE TO STATE AND COUNTRY TO COUNTRY.

F. EnvisionWare uses virus protection scanning software to scan the Software prior to

installation and to the best of EnvisionWare's knowledge as of the installation date, the Software, when installed, does not contain or otherwise introduce any computer virus or any harmful or destructive code which could damage or harm your computers; however, EnvisionWare cannot guarantee that benign or harmful viruses or other malware will not enter your computers or systems.

5. Personal Information:

A. In the event that your (or your users') use of the Software currently or in the future involves the transmitting, uploading, downloading, storage, management, manipulation or other use of personal information (as defined by the Gramm-Leach-Bliley Act, Payment Card Industry Security Standards Council or other applicable standards or rules relating to electronic transaction processing and personal information, such information referred to herein as "Personal Information"), you agree to the following provisions:

- i. You shall maintain as confidential any Personal Information.
- ii. You covenant that you have, as of the Installation Date become and currently are PCI and HIPAA (as applicable) compliant and shall maintain compliance and/or certification under the PCI (Payment Card Industry), PCI-DSS, HIPAA and other relevant and applicable standards relating to electronic transaction processing and personal healthcare information existing as of the Effective Date and as promulgated thereafter.
- iii. If you are de-certified, have your compliance proof expire or are threatened with de-certification, you shall notify EnvisionWare in writing within ten (10) days of such de-certification or threat thereof.

B. EnvisionWare shall use commercially reasonable technical, organizational, and administrative data security measures designed to maintain the security and confidentiality of your Personal Information entered into the Software, but EnvisionWare is not liable for the confidentiality of any Personal Information in the event of unauthorized access, theft or use of such Personal Information, either by you, your users, or by third parties who access such Personal Information through your systems or unauthorized use of your login credentials, other than to the extent due to the negligence of EnvisionWare or its representatives, agents, or contractors, in breach of EnvisionWare's obligations under this Agreement.

C. EnvisionWare acknowledges that you may be required to periodically demonstrate to third parties your compliance and that of your applicable vendors with the PCI-DSS standards (Payment Card Industry Data Security Standard) of all the system components used to process, store or transmit "PCI cardholder data" (as that term is defined by PCI-DSS), and any other component that resides on the same network segment that those system components, hereafter known as "System Components in Scope." Some of those system components and/or processes have been outsourced to EnvisionWare's service providers (e.g., Verifone, Windcave, Chase E-xact, SecurePay, or the like) ("Service Providers"). Those portions of the system hardware and software developed by EnvisionWare are out of scope for PCI compliance since no PCI cardholder data passes through any EnvisionWare-developed component. Accordingly, EnvisionWare is not required to be PCI compliant. All System Components in Scope are provided by Service Providers.

Service Providers will achieve and maintain PCI DSS compliance against the current version of PCI DSS published on the PCI SSC (PCI Security Standards Council) website. EnvisionWare's

Service Providers with System Components in Scope have represented to EnvisionWare that they are compliant. As evidence of compliance, Service Providers will provide, when requested, a current attestation of compliance ("AOC") signed by a PCI QSA (Qualified Security Assessor). AOCs are available for download from EnvisionWare's Customer Center on EnvisionWare's website at <http://support.envisionware.com>. Service Providers have represented to EnvisionWare that they will create and maintain reasonably detailed, complete and accurate documentation describing the systems, processes, network segments, security controls, and dataflow used to receive, transmit, store and secure Customer's PCI cardholder data. Such documentation will conform to the most current version of PCI DSS. Service Providers have represented to EnvisionWare that they will, upon written request by you, make such documentation and the individuals responsible for implementing, maintaining and monitoring those system components and processes available to: a) QSAs, forensic investigators, consultants or attorneys retained by you to facilitate audit and review of your PCI-DSS compliance and b) your IT Audit Staff.

EnvisionWare maintains protective coverage for PCI breach protection in the United States in the amount of \$100,000.00 per breach incident (not per individual affected), which will cover the costs of responding to a breach or a suspected breach caused by the eCommerce system.

D. The obligations of the parties under this Section 5 shall survive any expiration or termination of this EULA.

6. Data:

A. CUSTOMER DATA. In connection with the Software and any related hardware or services provided by EnvisionWare, EnvisionWare may collect and maintain data and information provided by you, your patrons and users (collectively, "Customer Data"). As between EnvisionWare and you, all Customer Data shall be and remain owned by you and be your property. EnvisionWare shall maintain the aspects of all Customer Data that identify an individual as confidential. All third parties authorized by EnvisionWare which may have access to the Customer Data shall be under obligations of confidentiality to maintain the Customer Data as confidential.

B. USE OF CUSTOMER DATA. EnvisionWare shall have the right to use Customer Data in connection with EnvisionWare's business, provided that such data shall be Anonymized or aggregated such that Personal Information has been de-identified so that one could not link anonymized information back to a specific individual ("Anonymized Data"). "Anonymize" means to either (1) irreversibly process Personal Information in such a way that the data can no longer be attributed to a specific individual, or (2) to process such information in such a way that the data can no longer be attributed to a specific individual without the use of additional information, and where such additional information is kept separate and under adequate security to prevent unauthorized re-identification of a specific individual. All such Anonymized Data shall be the sole property of EnvisionWare. EnvisionWare may use, disseminate, share, or transfer the Anonymized Data or any portion thereof in any way EnvisionWare chooses.

C. ENVISIONWARE DATA. EnvisionWare may also collect data and information in connection with the service that EnvisionWare provides generally (but not including Customer Data) through its services ("EnvisionWare Data"). You acknowledge and consent that the Software may communicate (e.g., via an outbound or inbound call using SSL) with

EnvisionWare's servers (which may be hosted by a third-party service provider) and support personnel, or vice versa, to communicate diagnostic, event logs, support, licensing, compliance, and other information (which is included in the definition of EnvisionWare Data). Some communication may be done automatically by the Software without your needing to be involved, other communication may be at your initiation (e.g., uploading logs) or initiated by EnvisionWare. All such EnvisionWare Data shall be the sole property of EnvisionWare.

7. Confidential Information: Each party agrees that all code, inventions, know-how, business, technical and financial information it obtains ("Receiving Party") from the disclosing party ("Disclosing Party") constitute the confidential property of the Disclosing Party ("Confidential Information"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any software, documentation or technical information provided by EnvisionWare (or its agents), performance information relating to the Software, and the terms of this Agreement shall be deemed Confidential Information of EnvisionWare without any marking or further designation except as such disclosure is required by FOIA requirements. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Receiving Party who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law. The obligations under this Section 7 shall, with respect to Confidential Information, continue for a period of two (2) years after disclosure and, with respect to any information considered by and treated as a trade secret by the Disclosing Party, continue until the trade secret status has been lost.

8. Indemnification:

A. Infringement. Subject to your compliance with the terms of this EULA, EnvisionWare shall indemnify and hold harmless you and your officers, directors, employees and agents from and against all third party actions, suits, proceedings, claims, losses, liabilities, damages, and expenses (including attorneys' and experts' fees and sums reasonably expended in investigation and settlement of litigation, pending or threatened), to the extent such claim alleges that the Software (in each case as provided by EnvisionWare) infringes any copyright, U.S. patent right, trade secret right, or other intellectual property right provided, however, that you must comply with the following terms: EnvisionWare must have received from you: (i) prompt written notice of such claim (but in any event notice in sufficient time for EnvisionWare to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of such claim; and (iii) all reasonable

necessary cooperation by you. In the event that the Software is, or in EnvisionWare's sole opinion is likely to be, enjoined or subject to a claim due to the type of infringement described in this Section 8, EnvisionWare, at its option and expense, may (a) replace the Software with functionally equivalent non-infringing Software or (b) obtain a license for your continued use of the Software, or, if the foregoing alternatives are not reasonably available to EnvisionWare (c) terminate this EULA and refund a pro rata amount, as determined by EnvisionWare, of the purchase price of the Software and Hardware. Notwithstanding the above, EnvisionWare shall have no liability for any infringement claim which: (i) pertains to any Software that has been altered or modified without EnvisionWare's prior written approval; (ii) is based on use of the Software in conjunction with any item not provided by EnvisionWare, unless such use is shown to constitute the infringement when not used in conjunction with the item not provided by EnvisionWare; (iii) pertains to any unauthorized use of the Software; (iv) pertains to an unsupported release of the Software; or, (v) pertains to any Open Source Software or other third party code provided with the Software. THIS SECTION 8 SETS FORTH ENVISIONWARE'S SOLE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

B. EnvisionWare shall indemnify, defend and hold you harmless from any losses (including, but not limited to, damage awards, reasonable attorneys' fees and costs, cost of notification, remediation, and penalties) you incur due to any third party claim or action directly resulting from any Data Breach of your (or your patrons') Personal Information to the extent that such losses are due to the direct act or omission of EnvisionWare or its representatives, agents, or contractors. This Section 8B shall apply only for so long as you are under a written annual support agreement with EnvisionWare (for which you have fully paid) for the Software and applies only to the Software covered by such support agreement. Furthermore, if you allow such support agreement to expire and subsequently purchase a support agreement, the obligations under Section 8B shall not apply to any third party claims arising from or during the period for which no support agreement was active.

9. Limitation of Liability: SOME STATES AND COUNTRIES, INCLUDING MEMBER COUNTRIES OF THE EUROPEAN ECONOMIC AREA, DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE LIMITATION OR EXCLUSION BELOW MAY NOT APPLY TO YOU. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL ENVISIONWARE OR ITS LICENSORS BE LIABLE TO YOU FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS (OTHER THAN THOSE CONTAINED IN THE SOFTWARE), INTERRUPTION OF BUSINESS OR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY OR SIMILAR DAMAGES, INCLUDING ANY LOST PROFITS ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE OR HARDWARE, EVEN IF ENVISIONWARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO CASE SHALL ENVISIONWARE'S OR ITS LICENSORS' TOTAL LIABILITY (A) FOR ANY SOFTWARE AND HARDWARE PRODUCTS COVERED UNDER THIS EULA, EXCEED ONE (1) TIMES THE PURCHASE PRICE FOR THE SOFTWARE AND HARDWARE OR (B) FOR ANY PROFESSIONAL SERVICES, EXCEED THE FEES PAID BY YOU FOR THE PROFESSIONAL SERVICES DURING THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE EVENT WHICH DIRECTLY CAUSED THE DAMAGES ALLEGED.

The disclaimers and limitations set forth above in this Section 9 will apply regardless of whether you accept the Software or Hardware or Professional Services. The parties agree that the limitations specified in this Section 9 will survive any expiration or termination of this EULA and apply even if any limited remedy specified in this EULA is found to have failed of its essential purpose.

10. U.S. Government Restricted Rights: RESTRICTED RIGHTS LEGEND. All EnvisionWare Software and documentation are commercial in nature. The Software and documentation are "Commercial Items", as that term is defined in 48 C.F.R. section 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are defined in 48 C.F.R. section 252.227-7014(a)(5) and 48 C.F.R. section 252.227-7014(a)(1), and used in 48 C.F.R. section 12.212 and 48 C.F.R. section 227.7202, as applicable. Consistent with 48 C.F.R. section 12.212, 48 C.F.R. section 252.227-7015, 48 C.F.R. section 27.7202 through 227.7202-4, 48 C.F.R. section 52.227-14, and other relevant sections of the Code of Federal Regulations, as applicable. EnvisionWare's computer Software and software documentation are licensed to United States Government end users with only those rights as granted to all other end users, according to the terms and conditions contained in this EULA. The manufacturer is EnvisionWare, Inc., 3820 Mansell Road., Suite 350, Alpharetta, GA 30022 USA.

11. Export Compliance: You acknowledge that the Software is subject to export restrictions by the United States government and import restrictions by certain foreign governments. You shall not, and shall not allow any third-party hired or under contract by you, to, remove or export from the United States or allow the export or re-export of any part of the Software or any direct product thereof: (i) into (or to a national or resident of) any embargoed or terrorist-supporting country; (ii) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (iii) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (iv) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority.

12. Third-Party Code: The Software may contain or be provided with components subject to the terms and conditions of "open source" or freeware software licenses ("Open-Source Software"). Licenses for open source are identified in Section

1. To the extent required by the license that accompanies the Open-Source Software, the terms of such license will apply in lieu of the terms of this EULA with respect to such Open Source Software, including, without limitation, any provisions governing access to source code, modification or reverse engineering.

13. Professional Services: Upon request and agreement between the parties, EnvisionWare may provide consulting, training, installation, development, customization, report creation or other services ("Professional Services"). You may order Professional Services under a Statement of Work ("SOW") describing the work to be performed, fees and any applicable

milestones, dependencies and other technical specifications or related information. Each SOW must be signed by both parties before EnvisionWare shall commence work under such SOW. If the parties do not execute a separate SOW, the Services shall be provided as stated on the invoice. You will reimburse EnvisionWare for reasonable travel and lodging expenses as incurred. EnvisionWare shall be deemed the sole owner of any work product created and deliverables (including any documentation, code, Software, training materials or other work product) (collectively referred to as the "Deliverables") delivered pursuant to the Professional Services, whether created solely by EnvisionWare or jointly with you or your contractors. Subject to your full payment of any and all fees pursuant to the applicable SOW, EnvisionWare grants to you the limited, nontransferable right to use any Deliverables delivered as part of the Professional Services solely in connection with your permitted use of the Software, subject to all the same terms and conditions as apply to your Software license (including the restrictions set forth in Section 1B), and subject to any additional terms and conditions provided with the Deliverables. EnvisionWare provides the Professional Services Warranty as stated in Section 4D above.

14. General: This EULA is the entire agreement between you and EnvisionWare relating to the license and use of the Software and Hardware, and relating to the Professional Services. This EULA supersedes all prior EnvisionWare end user license agreements for the Software and for any Professional Services. EnvisionWare may terminate this EULA upon your breach of any term contained herein. Upon termination, you shall cease use of, uninstall or render inoperable, and delete destroy all copies of the Software. The disclaimers of warranties and damages and limitations on liability shall survive termination. No provision of any purchase order or other business form employed by you will supersede the terms and conditions of this EULA, and any such document relating to this EULA shall be for administrative purposes only and shall have no legal effect. The parties to this EULA are independent contractors with respect to one another. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent. This document may not be changed. In the event of any conflict with local law, the sole method for changes to EULA language are the incorporation of overriding text in an Agreement or a separate EULA Amendment.

15. Governing Law; Jurisdiction and Venue: This Agreement shall be governed by the laws of the State of Georgia and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act, as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction.

16. Software Escrow: At your request, EnvisionWare is willing to set up and maintain the Software with EnvisionWare's independent U.S. escrow agent and make ongoing escrow deposits for significant updates. You would be responsible for additional fees for this service. Please contact EnvisionWare to for more information and pricing.

17. Insurance: EnvisionWare will, upon your request, provide you with a certificate of insurance showing that it carries or has in force each of the following types of insurance: general liability--\$1,000,000 per occurrence and \$1,000,000 general aggregate; professional liability--\$1,000,000 per occurrence or claim and \$1,000,000 aggregate; and cyber (aka electronic e/o)--\$1,000,000 per occurrence or claim and \$1,000,000 aggregate. If

EnvisionWare does on-site+++ installation or training, it will carry workers' compensation insurance that provides statutorily required workers' compensation coverage and employers' liability insurance with limits of \$500,000 per accident, \$500,000 disease - each employee, \$500,000 disease - policy limit. EnvisionWare's insurance is primary. EnvisionWare is responsible for the payment of any deductibles or self-insured retentions. You will receive thirty (30) days' notice of cancellation.

18. Purchase in Australia: If you purchase Software, Hardware, or services from EnvisionWare Pty Ltd or its partners, the laws of South Australia, Australia govern all warranty and service claims. EnvisionWare Pty Ltd is authorized to convey and effect all of the rights expressed in this EULA for its direct and indirect customers.

19. Contact Us: Should you have any questions concerning this EULA, or if you desire to contact EnvisionWare for any reason, please email info@envisionware.com or write to: EnvisionWare, Inc., 3820 Mansell Road., Suite 350, Alpharetta, GA 30022 USA, unless you purchase from an Asia Pacific country in which case, please write EnvisionWare Pty Ltd, 258 Payneham Road, Payneham, SA 5070 Australia. Revised Jan 2022 © 2002-2022 EnvisionWare, Inc. All Rights Reserved.

PASS THROUGH EULAs FOR PCI-RELATED PRODUCTS

The Verifone EULA applies to customers located in the United States that use EnvisionWare Products supporting credit card payment. The Windcave EULA is applicable to customers that use EnvisionWare Products supporting credit card payment located in Australia, Canada, Ireland, New Zealand and other countries where Windcave terminal and web services are applicable using Windcave gateways and/or terminals. EnvisionWare has no ability to modify these EULAs that are provided by Verifone and Windcave respectively.

VERIFONE PAYMENT GATEWAY TERMS OF USE

Solely for the purposes of the following Verifone Terms of Use, the following terms shall have their associated meanings. "Agreement" means the Verifone Terms of Use. "BPP" means Verifone's Buyer Protection Program. "Covered Territory" means your location(s). "Customer Agreement" means the EULA. "Payment Gateway" means Verifone's transaction gateway portal which provides transaction routing, online reporting and other tools made available by the portal. "Point Solution" and "Rental Devices" mean the Point Solution hardware and Software manufactured or provided by Verifone and offered by EnvisionWare under the EULA. "Reseller" means EnvisionWare. "Software" means the software accompanying the Point Solutions Rental Devices. "Verifone" means VeriFone, Inc.

VERIFONE PASS THROUGH TERMS OF USE

1. The following are Verifone's Pass Through Terms of Use for its Point Solution Rental Device hardware and Software.
2. Each Verifone payment device used with the Point Solution is subject to an initial service term of 36 months (the "Initial Service Term"). Subject to the terms of the Customer Agreement, with respect to a particular Verifone payment device, Verifone shall provide the

Point Solution to customer for a service term commencing (A) for Rental Devices (or any other payment devices shipped directly by Verifone), on the date such devices are shipped by Verifone, or (B) for any other payment devices, on the date on which such device is activated on the Payment Gateway, and in any case ending on the earliest of (1) the date on which Reseller removes such device from the Payment Gateway, (2) upon Verifone's ceasing to provide the Point Solution for a payment device, which Verifone shall have the right to do on thirty days' notice to customer following the Initial Service Term for such device, and (3) termination of customer's right to use the Point Solution by Reseller due to breach by customer of the Customer Agreement (the "Service Term"). In addition, in the event Verifone's separate agreement with Reseller terminates or Verifone ceases to offer the Point Solution to its customers generally, Verifone reserves the right to terminate the Service Terms for any or all Verifone payment devices. Upon the termination of the Service Term for a particular Verifone payment device, customer shall cease using the Point Solution for such payment device. In the event that a customer desires to end the Service Term for a payment device, the customer must request that Reseller remove the applicable device from the Payment Gateway on its behalf; Verifone will not be responsible for removing a payment device from the Payment Gateway provided that, notwithstanding customer's earlier request, the Service Term will end on the day Reseller actually removes the device from the Payment Gateway.

3. Subject to the terms of this Agreement and customer's payment of the applicable fees, Verifone hereby grants to customer a limited, non-exclusive, non-transferable, non-sub-licensable right and license, in the Covered Territory during the Service Term for each payment device, to access and use the Point Solution subscribed to hereunder solely for customer's internal business purposes. Notwithstanding the foregoing, Reseller will be responsible for managing and monitoring customer's payment devices on customer's behalf, including with respect to the installation of payment applications and key loading, and customer will not be able to directly manage or monitor its payment devices via the Payment Gateway portal. Verifone may modify the Point Solution from time to time in its reasonable discretion, provided that such modifications shall not materially diminish the functionality thereof. If Reseller fails to pay Verifone for services rendered in accordance with its agreement with Verifone, Verifone reserves the right to withhold customer's access to the Point Solution until such fees are paid in full, and Verifone shall not have any liability to customer for any amounts paid to Reseller and not received by Verifone for such services.

4. Customer shall have no right to market, distribute, sell, assign, pledge, sublicense, lease, deliver or otherwise transfer the Point Solution, or any component thereof, including without limitation the Software, to any third party. Customer shall not reverse engineer, decompile, disassemble, translate, modify, alter or create any derivative works based upon the Software, or determine or attempt to determine any source code, algorithms, methods or techniques embodied in the Software, without the prior express written consent of Verifone. Customer shall not remove from the Rental Devices or the Software, or alter, any of trademarks, trade names, logos, patent or copyright notices, or other notices or markings, or add any other notices or markings to the Rental Devices or the Software, without the prior express written consent of Verifone.

5. Customer acknowledges that the Point Solution (including any related documentation) and any intellectual property rights relating to or residing therein (including any patents, copyrights, trade secrets, trademarks, trade names or mask work rights), including the

proprietary electronics, software and technical information of Verifone therein, are proprietary products of Verifone and that ownership of such shall remain with and inure to Verifone. Except for the license rights set forth in this clause 5, customer shall have no right, title or interest therein.

6. Customer grants VeriFone a limited, non-exclusive and irrevocable license during and after the term of this Agreement to follow customer's activity inside of the Point Solution components and to use, share, and disseminate data from customer's activity (including its transactions) on an aggregate and anonymous basis only (such data, "Derived Data"), including for purposes of data analytics and optimizing or otherwise enhancing its products and services. VeriFone will comply with all applicable laws with respect to any use, sharing and dissemination of Derived Data. This clause 6 shall survive any expiration or termination of this Agreement.

7. VERIFONE DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE POINT SOLUTION, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. VERIFONE DOES NOT WARRANT THAT THE POINT SOLUTION, OR ANY COMPONENT THEREOF, WILL MEET THE REQUIREMENTS OF CUSTOMER OR THAT THE OPERATION OF THE POINT SOLUTION, OR ANY COMPONENT THEREOF, WILL BE UNINTERRUPTED OR ENTIRELY ERROR FREE. CUSTOMER ACKNOWLEDGES THAT UNDER NO CIRCUMSTANCES DOES VERIFONE REPRESENT OR WARRANT THAT ALL ERRORS IN ANY SOFTWARE CAN BE REMEDIED. NO ADVICE OR INFORMATION OBTAINED BY CUSTOMER FROM VERIFONE OR FROM ANY OTHER THIRD PARTY ABOUT THE POINT SOLUTION SHALL CREATE ANY WARRANTY.

8. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE CUSTOMER AGREEMENT: EXCEPT TO THE EXTENT PROHIBITED BY LAW:

(A) VERIFONE SHALL HAVE NO LIABILITY TO CUSTOMER OR ANY THIRD PARTY FOR SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF BUSINESS, LOSS OF PROFITS OR REVENUE, GOODWILL OR SAVINGS, DOWNTIME, OR DAMAGE TO, LOSS OF OR REPLACEMENT OF DATA OR TRANSACTIONS, COST OF PROCUREMENT OF SUBSTITUTE SERVICES) RELATING IN ANY MANNER TO THE POINT SOLUTION (WHETHER ARISING FROM CLAIMS BASED IN WARRANTY, CONTRACT, TORT OR OTHERWISE), EVEN IF VERIFONE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGE;

(B) IN ANY CASE, VERIFONE'S ENTIRE LIABILITY RELATING IN ANY MANNER TO THIS AGREEMENT OR THE POINT SOLUTION, REGARDLESS OF THE FORM OR NATURE OF THE CLAIM, SHALL BE LIMITED IN THE AGGREGATE TO THE FEES ACTUALLY RECEIVED BY VERIFONE FROM RESELLER FOR CUSTOMER FOR THE POINT SOLUTION UNDER THE CUSTOMER AGREEMENT DURING THE SIX (6) MONTHS PRIOR TO THE CLAIM ARISING; AND (C) VERIFONE SHALL NOT BE LIABLE FOR ANY CLAIMS OF THIRD PARTIES RELATING TO THE POINT

SOLUTION. THE LIMITATIONS ON VERIFONE'S LIABILITY SET FORTH IN CLAUSES "(B)" AND "(C)" OF THIS SECTION SHALL NOT APPLY TO LIABILITY FOR DEATH, PERSONAL INJURY OF A PHYSICAL NATURE OR DAMAGE TO TANGIBLE PROPERTY CAUSED BY VERIFONE'S NEGLIGENCE OR INTENTIONAL MISCONDUCT. THE LIMITATIONS CONTAINED IN CLAUSE 7 ABOVE AND THIS CLAUSE 8 ARE A FUNDAMENTAL PART OF THE BASIS OF VERIFONE'S BARGAIN HEREUNDER, AND VERIFONE WOULD NOT PROVIDE THE POINT SOLUTION TO CUSTOMER ABSENT SUCH LIMITATIONS

9. Customer shall comply with all applicable laws, rules, and regulations in connection with this Agreement, including, but not limited to, export control laws and anti-corruption and anti-bribery laws, rules, and regulations. Customer agrees that if Verifone reasonably believes that customer is in breach of this clause 9, that alone shall be sufficient grounds for further action by Verifone, including, without limitation, cancellation of any orders or denial of future business, without any liability or obligation to customer. In addition, customer hereby indemnifies Verifone and its affiliates, directors, officers and employees for all costs, expenses, damages, claims, charges, penalties, fines and other losses that arise in connection with any breach by customer or customer subsidiaries, owners, officers, directors, employees, partners, subcontractors, agents and representatives of the terms and conditions contained in this clause 9.

10. VERIFONE SHALL BE A THIRD-PARTY BENEFICIARY OF THIS AGREEMENT, WITH THE RIGHT TO ENFORCE THE TERMS HEREOF AGAINST CUSTOMER WITH RESPECT TO THE POINT SOLUTION.

11. In the case of any customer agreements that include Rental Devices:

A. Verifone Property. The Rental Devices shall remain the property of Verifone. Customer shall have no right, title or interest therein except as a lessee under this Agreement. Customer shall keep all Rental Devices free and clear from all liens, including any direct or indirect charge, encumbrance, lien, security interest, legal process or claim against the Rental Devices. Customer may not assign, hypothecate, sublet, sell, transfer, permit the sale of or part with possession of all or any of the Rental Devices or interest in the Customer Agreement, without Verifone's prior written consent. If customer fails to pay any undisputed fees when due, and fails to cure such failure within ten (10) business days of written notice thereof, Verifone may, at any time thereafter enter, with or without legal process, any premises where any Rental Device may be, and repossess and remove such Rental Device. Customer hereby waives any claim of trespass or right of action for damages by reason of such entry and repossession. In addition, customer shall pay to Verifone any actual additional expenses incurred by Verifone in collection efforts.

B. Upgrades. Customer may, commencing on the one year anniversary of the start of the Service Term for a Rental Device, upgrade to a different Rental Device (in which event customer may be subject to an increase in fees based on the new Rental Device subscription fee). For such upgrades, customer shall be required to commit to a new Initial Service Term for such Rental Device and shall be required to return the old Rental Device in accordance with clause (d) below.

C. Loss and Damage. Subject to Verifone's obligation to provide the Services, customer assumes and shall bear the entire risk of loss or damage to the Rental Devices from any use

whatsoever from the date of delivery of the Rental Devices to the customer site, until such Rental Devices are returned to Verifone. No loss or damage shall relieve customer from the obligation to make payments hereunder or to comply with any other obligation under the Customer Agreement. In the event of a loss of a Rental Device (but not damage), customer shall immediately notify Reseller thereof. With respect to any lost Rental Device, customer shall be obligated to pay Reseller the Non-Return Fee applicable to such Rental Device. Subject to Verifone's receipt of such Non-Return Fee from Reseller, Verifone shall ship customer a new or refurbished replacement Rental Device. At all times payments for the Point Solution for such Rental Device shall continue in effect.

D. Return at End of Service Term. At the end of the Service Term for a Rental Device, customer shall return such Rental Device to Reseller or Verifone, as directed by Reseller. When returning a Rental Device to Verifone a Material Return Authorization number is required. If a Rental Device is not returned to Verifone within thirty (30) days of the end of its Service Term, customer shall be obligated to pay Reseller the Non-Return Fee for such Rental Device. If, upon return of the Rental Device, Verifone determines that the Rental Device requires repair that is not covered by the BPP or Repair Services (e.g., "Out of Scope" or "Limitations"), customer shall be required to pay Reseller for such services at Verifone's standard fees.

WINDCAVE, INC. END USER LICENSE AGREEMENT (EULA)

Windcave was formerly known as Payment Express (PX).

This WINDCAVE END USER LICENSE AGREEMENT (this “Agreement”) is made as of the Effective Date (the date Customer signs this Agreement), by and between WINDCAVE INC., a California corporation (“PX”), and the party set forth on the signature page hereto (“Customer”).

1. Definitions and Interpretation

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 Windcave;

“**Agreement**” means this Agreement, and any attachments that may be agreed between the parties, as each may be amended in writing from time to time;

“**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 California;

“**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 Bank 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.

“**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 on the first page of this Agreement and where applicable includes its employees, contractors and agents.

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

“**Goods**” means electronic devices produced by PX or sold by PX to Customer, Reseller, or a third party;

“**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;

“**Windcave**” means the Windcave solution provided by PX 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;

“Windcave Host “ means the PX 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 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 PX agrees to support through Windcave 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;

“Payment Manager “ means Windcave Merchant Portal which Customer is able to access by logging onto the PX 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;

“Reseller “ means the party with whom Customer has entered into an agreement for the purchase of a license to Windcave;

“Reseller Agreement “ means the agreement between the Customer and the Reseller;

“PX “ means Windcave Inc., a corporation duly formed in California with offices in Los Angeles, California.

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

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

“Software “ means the software and other related PX products which:

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

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

“Tokenized Data “ means data for which PX has substituted a sensitive data element with a non-sensitive equivalent that has no extrinsic or exploitable meaning or value.

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; and
- f) in the event of any inconsistency between the terms this Agreement and the terms of the Reseller Agreement, the terms of this Agreement will control.

2. Term

2.1 Term: This Agreement commences on the Effective Date and will continue until terminated under Clause 9 (the **“Term”**).

3. Customer Responsibilities

Customer represents and agrees that it:

3.1 Power and Authority: that it has full power and authority necessary to validly enter into and perform all its obligations under this Agreement

3.2 Requirements: to comply with the other party's reasonable security, confidentiality and operational requirements of which it has been given reasonable notice

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

3.4 Comply with Instructions: will comply with PX's restrictions, instructions and Documentation in relation to the use of Windcave, including those set out in this Agreement;

3.5 Use by Others: will ensure that only authorized persons use Windcave and that Windcave is used only for the Permitted Use and as expressly authorized under this Agreement;

3.6 Responsibility for Use: will accept all responsibility for the reliance on and use of Windcave by Customer and its employees, contractors and agents;

3.7 Obtain Equipment Etc.: will obtain and maintain all equipment, software and services needed to enable it to receive and use Windcave;

3.8 Accurate Customer Information: warrants that all information provided by Customer to PX in the Application Form is accurate and correct, and that Customer will notify PX in writing if such information changes or ceases to be accurate in any way;

3.9 Provide Sufficient Information: will ensure that sufficient information is given to PX

to enable PX to comply with its obligations under this Agreement and that such information is timely, complete and accurate;

3.10 Personal Information: acknowledges that any personal information concerning Customer or its personnel which is provided to PX by or on behalf of Customer may be:

- a) used by PX for the purpose of providing Windcave, the Support Services and any other services to Customer; and
- b) disclosed by PX to its affiliates and other services providers to enable PX to provide Windcave, the Support Services and any other services to Customer;

3.11 Notify of Third Party Infringement: will immediately notify PX upon becoming aware of any third party infringing PX's Intellectual Property rights in any manner;

3.12 Responsible for Connecting to Windcave Host: is responsible for all charges and costs associated with connecting to the Windcave Host to operate Windcave. PX will provide Customer with reasonable technical information and Software necessary to enable Customer to connect to the Windcave Host; and

3.13 Comply with Law Generally: will comply with all relevant laws in its use of Windcave and carrying out its obligations under this Agreement.

3.14 Requisite Review of Payline Portal: will review Customer's Payline portal, established by PX, with due care on a daily basis for transaction errors. If an error is discovered by Customer, Customer will notify PX in writing within three (3) Business Days of the date such error occurs; provided that PX will have no liability or obligations of any kind with respect to errors that are not reported to PX within such three (3) Business Day period. In addition, Customer shall be required to review with due care its bank settlement files on a daily basis to ensure deposits occur without error. If an error is discovered by Customer in the course of such review, Customer will notify PX in writing within three (3) Business Days of the date of such error occurring; provided that PX will have no liability or obligations of any kind with respect to errors that are not reported to PX within such three (3) Business Day period. PX's liability under this Section 3.14 (Requisite Review of Payline Portal) of the Agreement is governed by, and fully subject to, the terms of Section 9 of this Agreement.

3.15 Improperly Deposited Funds: will return funds that PX 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 PX within five (5) calendar days of a written request to do so by PX. If Customer fails to comply with the terms of this Section, PX may immediately suspend services to Customer until Customer returns the Improperly Deposited Funds. Customer will be liable to PX for the Improperly Deposited Funds, and all costs (including legal costs on an attorney-client basis) incurred by PX in recovering the Improperly Deposited Funds.

3.16 Return of Old Goods: For Goods that Customer ceases using for the Permitted Use ("Unused Goods"), Customer will return such Unused Goods to PX 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 warranty. Customer will pay all shipping fees and costs associated with returning the

Unused Goods to PX. Alternatively, instead of returning Unused Goods to PX, Customer may provide PX a secure destruction certificate evidencing that the Unused Goods were destroyed in compliance with the Security Standards within the same 30 calendar day period.

4. Disclaimer of Warranties

4.1 Limitations on Warranties: To the fullest extent permitted by law, except as expressly set out in this Agreement, PX 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. PX does not warrant that:

- a) Windcave, the Software or the Documentation will meet Customer's requirements; or
- b) Windcave, the Software and the Documentation will be uninterrupted or error free, or that all errors will be corrected.

Customer understands and acknowledges that an authorization obtained through Windcave 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 Bank, processor or PX that a transaction is or will be deemed valid and not subject to dispute, debit or chargeback.

4.2 No Requirement to Decrypt Tokenized Data: PX will at no time be obligated to decrypt and transmit Tokenized Data to Customer or any third party.

5. Intellectual Property

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

- a) Windcave, the Software, the Documentation or any part thereof; or
- b) any Developed Works; to Customer under this Agreement and Customer will not dispute PX's (or PX's licensors or suppliers) ownership of the property referred to in this clause 5.

6. Indemnity

Customer shall indemnify PX (and at PX's sole discretion, defend PX) at all times against any liability, loss, damage or cost (including attorney's fees) suffered or incurred by PX and all actions, proceedings, claims or demands made against PX as a result of any negligent act or omission or any breach of this Agreement by Customer, its personnel or agents.

7. Liability

7.1 Remedy: Subject to clauses 7.2 and 7.3, Customer's sole and exclusive remedy for breach of any warranty or of any of PX's obligations under this Agreement is (at PX's

option) the supply or re- supply of Windcave, the Goods, the Software, or the Documentation or the refund or waiver of Fees for the relevant part of Windcave the Goods, the Software, or the Documentation which is the subject matter of, or directly related to, the breach.

7.2 Limitation: In no event will PX's total liability to Customer under this Agreement for any reason exceed the amount of \$1,000.

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

- a) **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;**
- b) **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).**

8. Commercial Purpose

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

9. Termination

9.1 PX Termination Upon Notice: PX may terminate this Agreement without liability or obligation to Customer of any kind upon written notice to Customer if the Reseller Agreement expires or is terminated by Customer and/or Reseller for any reason.

9.2 PX Termination for Cause: PX may terminate this Agreement without liability or obligation to Customer of any kind at any time and with immediate effect by written notice to Customer:

- a) if Customer breaches any of its obligations under this Agreement; or
- b) if Customer fails to pay any amounts due to Reseller pursuant to the Reseller Agreement; or
- c) goes into voluntary or involuntary bankruptcy or liquidation or has a receiver appointed.

9.3 Customer Termination: Customer may terminate this Agreement if PX breaches any of its obligations under this Agreement and fails to cure such breach within 10 Business Days after receipt of written notice of such breach.

9.4 Consequences: 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 clauses 3-7, 10, 13, and 14, together with those clauses which are incidental to, and required in order to give effect to, those clauses). Upon termination of this Agreement, Customer must immediately cease use of Windcave, the Software and the Documentation.

10. Confidentiality

10.1 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:
 - i) required by law;
 - ii) 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;
 - iii) 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;
 - iv) that the information is developed independently by the receiving party without reliance on any of the Confidential Information of the other party;
 - v) authorized in writing by the other party; or
 - vi) 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).

10.2 PX's Intellectual Property: Customer acknowledges and agrees that the computer programs, computer software, specifications, data, images, designs, codes, and configurations contained in or utilized by the equipment and PX's network are proprietary and confidential to PX 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, PX network or Software. Without limiting the effect of clause 10.1, Customer will treat information about PX's Intellectual Property as Confidential Information of PX.

11. Force Majeure

11.1 Customer acknowledges that PX 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 PX shall not be liable for, and to hold PX 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.

11.2 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

11.3 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 11.3 will not apply in respect of Customer's obligation to pay any charges or Fees payable under this Agreement.

12. License

12.1 Grant of License: PX grants to Customer a limited, non-exclusive, non-transferable, non-assignable, revocable license to use Windcave, the Software and the Documentation for the Term of this Agreement solely for the Permitted Use. Any other use or dealings with Windcave, the Software or the Documentation without the prior written consent of PX 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 Windcave, the Software or the Documentation or the right to use Windcave, the Software or the Documentation.

12.2 PX Warranty: PX warrants that PX has the right and authority to grant to Customer the license set out in clause 12.1, in accordance with the terms of this Agreement.

13. Terms of Use

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

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

13.3 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.

13.4 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 Windcave, the Software or the Documentation by any means or in any form without PX's prior written consent.

13.5 Permitted Use: Customer may not:

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

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

13.6 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.

13.7 No Third Party Use: Except as expressly provided for in this Agreement, the Customer must not provide, or otherwise make available, Windcave, the Software or the Documentation or any component thereof in any form to any person (a "Third Party") without the prior written consent of PX. If PX grants such consent, Customer must ensure that the Third Party complies with the provisions of clauses 5, 10, 12, and 13 (so far as those provisions relate to Customer) as if the Third Party were a party to this Agreement. Customer will be liable to PX for all acts or omissions of any Third Party in contravention of the provisions of clauses 5, 10, 12, and 13.

General

13.8 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.

13.9 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 Los Angeles, California. 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 14.2 above are pending and for 15 calendar days thereafter. The parties will take such action, if any, required to effectuate such tolling.

13.10 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.

13.11 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.

13.12 Assignment: PX 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 PX's prior written consent.

13.13 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.

13.14 Governing Law and Jurisdiction: This Agreement is governed by the laws of California. Subject to the terms of clause 14.2, the parties submit to the jurisdiction of the courts of the State of California in respect of all matters relating to this Agreement.

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

13.16 Subcontracting: PX may appoint subcontractors to perform any of its obligations under this Agreement.

13.17 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.

- d) By facsimile – when sent to the correct facsimile number (with written transmission confirmation).

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 14.10.

13.18 In the event of any conflict or inconsistency between this Agreement and the terms of a purchase order made by Customer to PX or a reseller of PX goods or services, this Agreement shall govern and control.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
06/20/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh Canada Limited 120 Bremner Blvd., Suite 800 Attn: Canada.Certrequest@marsh.com Toronto, ON, M5J 0A8 CN102165922-sndrd-GAWUP-23-24 Volari	CONTACT NAME: _____	FAX (A/C, No): _____	
	PHONE (A/C, No, Ext): _____	E-MAIL ADDRESS: _____	
INSURED EnvisionWare, Inc. 3820 Mansell Rd., Suite 350 Alpharetta, GA 30022	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Federal Insurance Company		20281
	INSURER B: Great Northern Insurance Company		20303
	INSURER C: ACE American Insurance Company		22667
	INSURER D: _____		
	INSURER E: _____		
INSURER F: _____			

COVERAGES **CERTIFICATE NUMBER:** HOU-004102656-03 **REVISION NUMBER:** 9

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER: _____			9950-48-39	09/27/2023	09/27/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 25,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000 \$
B	AUTOMOBILE LIABILITY ☒ ANY AUTO ☒ OWNED AUTOS ONLY ☒ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			7360-03-97	09/27/2023	09/27/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	UMBRELLA LIAB ☒ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$			9365-24-30	09/27/2023	09/27/2024	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ N	N/A	71764342	09/27/2023	09/27/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Professional Liability Tech E&O & Cyber			D01813225	09/27/2023	09/27/2024	Limit SIR - \$5M \$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The City, its City Council, boards, commissions, officials, employees, agents, and volunteers included as additional insured (except workers compensation, Professional Liability and Errors & Omissions) where required by written contract. The General Liability insurance is primary and non-contributory over any existing insurance and limited to liability arising out of the operations of the named insured subject to policy terms and conditions. Waiver of subrogation is applicable where required by written contract and subject to policy terms and conditions with respect to General Liability and Worker's Compensation

CERTIFICATE HOLDER

CANCELLATION

The City of Alameda
2263 Santa Clara, Ave
Alameda, CA 94501

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh USA LLC

Marsh USA LLC

Liability Insurance**Endorsement**

Policy Period SEPTEMBER 27, 2023 TO SEPTEMBER 27, 2024
Effective Date SEPTEMBER 27, 2023
Policy Number 9950-48-39 EUC
Insured CONSTELLATION SOFTWARE, INC.

Name of Company FEDERAL INSURANCE COMPANY
Date Issued SEPTEMBER 28, 2023

This Endorsement applies to the following forms:

GENERAL LIABILITY

Under Conditions, Transfer Or Waiver Of Rights Of Recovery Against Others, the following provision is added:

Conditions**Transfer Or Waiver Of
Rights Of Recovery
Against Others**

However, we waive any right of recovery we may have against the designated person or organization shown below because of payments we make for injury or damage arising out of your ongoing operations or done under a contract with that person or organization and included in the products-completed operations hazard. This waiver applies to the designated person or organization.

Designated Person Or Organization

PERSONS OR ORGANIZATIONS THAT YOU ARE
OBLIGATED, PURSUANT TO A CONTRACT OR
AGREEMENT, TO PROVIDE WITH SUCH WAIVER
AS IS AFFORDED BY THIS ENDORSEMENT.

-
CITY OF MODESTO,
ITS OFFICERS, OFFICIALS, AGENTS, EMPLOYEES AND VOLUNTEERS
P.O. BOX 642
MODESTO, CA 95353

-
BASSETT UNIFIED SCHOOL DISTRICT
ITS BOARD, OFFICERS, AGENTS, EMPLOYEES AND VOLUNTEERS
904 N. WILLOW AVENUE
LA PUENTE, CA 91746

-
COBB COUNTY
ITS OFFICERS, OFFICIALS, EMPLOYEES, AGENTS AND VOLUNTEERS

Liability Endorsement
(continued)

100 CHEROKEE STREET, SUITE 520
MARIETTA, GA 30090-7000

-
HFTC:
HOUSING TRUST FUND CORPORATION, ATIMA
25 BEAVER STREET
NEW YORK, NY 10004

-
DHCR:
NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL
(DCHR)
HAMPTON PLAZA
38-40 STATE STREET
ALBANY, NY 12207

-
LOS ANGELES COUNTY DEVELOPMENT AUTHORITY
700 W. MAIN ST.
ALHAMBRA, CA 91801

-
DEPT. OF WATER & POWER
RISK MANAGEMENT SECTION, RM 465
111 N HOPE ST
LOS ANGELES, CA 90012

--
ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. JACKSON STREET,
STE A,
PHOENIX, AZ 85007

--
CITY OF SUNNYVALE 456 W
OLIVE AVE SUNNYVALE, CA 94086
EASTERN MUNICIPAL WATER DISTRICT
P.O. BOX 8300, PERRIS, CA 92572-8300

All other terms and conditions remain unchanged.

Authorized Representative



Endorsement

Policy Period SEPTEMBER 27, 2023 TO SEPTEMBER 27, 2024
Effective Date SEPTEMBER 27, 2023
Policy Number 9950-48-39 EUC
Insured CONSTELLATION SOFTWARE, INC.
Name of Company FEDERAL INSURANCE COMPANY
Date Issued SEPTEMBER 28, 2023

This Endorsement applies to the following forms:

GENERAL LIABILITY

Under Who Is An Insured, the following provision is added.

Who Is An Insured**Additional Insured -
Scheduled Person
Or Organization**

Persons or organizations shown in the Schedule are **insureds**; but they are **insureds** only if you are obligated pursuant to a contract or agreement to provide them with such insurance as is afforded by this policy.

However, the person or organization is an **insured** only:

- if and then only to the extent the person or organization is described in the Schedule;
- to the extent such contract or agreement requires the person or organization to be afforded status as an **insured**;
- for activities that did not occur, in whole or in part, before the execution of the contract or agreement; and
- with respect to damages, loss, cost or expense for injury or damage to which this insurance applies.

No person or organization is an **insured** under this provision:

- that is more specifically identified under any other provision of the Who Is An Insured section (regardless of any limitation applicable thereto).
 - with respect to any assumption of liability (of another person or organization) by them in a contract or agreement. This limitation does not apply to the liability for damages, loss, cost or expense for injury or damage, to which this insurance applies, that the person or organization would have in the absence of such contract or agreement.
-

Liability Endorsement (continued)

Under Conditions, the following provision is added to the condition titled Other Insurance.

Conditions

Other Insurance – Primary, Noncontributory Insurance – Scheduled Person Or Organization

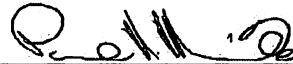
If you are obligated, pursuant to a contract or agreement, to provide the person or organization shown in the Schedule with primary insurance such as is afforded by this policy, then in such case this insurance is primary and we will not seek contribution from insurance available to such person or organization.

Schedule

Persons or organizations that you are obligated, pursuant to a contract or agreement, to provide with such insurance as is afforded by this policy.

All other terms and conditions remain unchanged.

Authorized Representative



COMMERCIAL AUTOMOBILE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**NOTICE OF CANCELLATION
(OTHER THAN NONPAYMENT OF PREMIUM)
SCHEDULED PERSON(S) OR ORGANIZATION(S)**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM
GARAGE COVERAGE FORM
TRUCKERS COVERAGE FORM
MOTOR CARRIER COVERAGE FORM**

With respect to the coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

SCHEDULE

Name of Person(s) or Organization(s):

"IF YOU ARE OBLIGATED, PURSUANT TO A WRITTEN CONTRACT OR AGREEMENT, TO PROVIDE PERSON(S) OR ORGANIZATION(S) WITH NOTICE OF CANCELLATION, THEN WE WILL NOTIFY SUCH PERSON(S) OR ORGANIZATION(S) PROVIDED THAT WITHIN 15 DAYS OF THE DATE WE SEND NOTICE OF CANCELLATION TO THE FIRST NAMED INSURED, THE FIRST NAMED INSURED OR THE PRODUCER OF RECORD PROVIDES US WITH A SPREADSHEET CONTAINING THE NAME, MAILING ADDRESS AND, IF AVAILABLE, E-MAIL ADDRESS OF THE PERSON(S) OR ORGANIZATION(S) ."

Address:

Under Common Policy Conditions the following condition is added:

**NOTICE OF CANCELLATION (OTHER THAN NONPAYMENT OF PREMIUM)
SCHEDULED PERSON(S) OR ORGANIZATION(S)**

When we cancel this policy for any reason other than nonpayment of premium, we will notify the person(s) or organization(s) described in the SCHEDULE at least 30 days in advance of the cancellation date.

Any failure by us to notify such person(s) or organization(s) will not:

- **Impose any liability or obligation of any kind upon us; or**
- **Invalidate such cancellation.**

Workers' Compensation and Employers' Liability Policy

Named Insured CONSTELLATION SOFTWARE, INC. 5265 ROCKWELL DRIVE NE CEDAR RAPIDS IA 52402	Endorsement Number
	Policy Number Symbol: RWC Number: (24)7176-43-42
Policy Period 09-27-2023 TO 09-27-2024	Effective Date of Endorsement 09-27-2023
Issued By (Name of Insurance Company) ACE AMERICAN INSURANCE COMPANY	
Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy. This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.	

**EARLIER NOTICE OF CANCELLATION
OR NONRENEWAL PROVIDED BY US**

A. Under Condition D. Cancellation of Part Six, the time period is amended as follows:

We may cancel this policy by mailing or delivering to you written notice of cancellation at least:

1. 10 days before the effective date of cancellation if we cancel for non-payment of premium; or
2. 90 days before the effective date of cancellation if we cancel for any other reason.

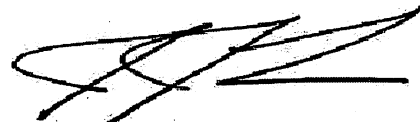
B. Under Part Six - Conditions of the policy, the following is added:

Notice of Nonrenewal

When we do not renew this policy, we will mail or deliver to you written notice of the nonrenewal at Least 90 days before the expiration date. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.

State Exceptions

California Not Applicable



Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**DESIGNATED INSURED FOR
COVERED AUTOS LIABILITY COVERAGE**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Name Of Person(s) Or Organization(s):

PERSONS OR ORGANIZATIONS THAT YOU ARE OBLIGATED, PURSUANT TO A CONTRACT OR AGREEMENT BETWEEN YOU AND SUCH PERSON OR ORGANIZATION, TO PROVIDE WITH SUCH INSURANCE AS IS AFFORDED BY THIS POLICY. HOWEVER, NO SUCH PERSON OR ORGANIZATION IS AN INSURED UNDER THIS PROVISION WHO IS MORE SPECIFICALLY DESCRIBED UNDER ANY OTHER PROVISION OF THE "WHO IS AN INSURED" SECTION OF THIS POLICY

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph A.1. of Section II - Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph D.2. of Section I - Covered Autos Coverages of the Auto Dealers Coverage Form.

Policy Conditions**Endorsement**

Policy Period SEPTEMBER 27, 2023 TO SEPTEMBER 27, 2024
Effective Date SEPTEMBER 27, 2023
Policy Number 9950-48-39 EUC
Insured CONSTELLATION SOFTWARE, INC.

Name of Company FEDERAL INSURANCE COMPANY
Date Issued SEPTEMBER 28, 2023

This Endorsement applies to the following forms:

COMMON POLICY CONDITIONS

Conditions

Under Conditions, the following condition is added.

**Notice Of Cancellation
To Scheduled Persons
Or Organizations When
We Cancel**

When we cancel this policy for any reason, other than non-payment of premium, we will notify person(s) or organization(s) shown in the Schedule at least 30 days in advance of the cancellation date.

Any failure by us to notify such person(s) or organization(s) will not:

- impose any liability or obligation of any kind upon us; or
 - invalidate such cancellation.
-

Schedule

Person(s) or Organization(s): DEPT. OF WATER & POWER
RISK MANAGEMENT SECTION, RM. 465

Address: 111 N. HOPE ST.
LOS ANGELES, CA 90012

Person(s) or Organization(s): CITY OF CARROLLTON

Person(s) or Organization(s): CITY OF ANN ARBOR
C/O: MYCOI

Address: 1075 BROAD RIPPLE AVE, SUITE 313
INDIANAPOLIS, IN 46220

Conditions
(continued)

Person(s) or Organization(s): HFIC:
HOUSING TRUST FUND CORPORATION, ATIMA

Address: 25 BEAVER STREET
NEW YORK, NY 10004

Person(s) or Organization(s): DHCR:
NEW YORK STATE DIVISION OF HOUSING AND

Address: COMMUNITY RENEWAL (DCHR)
HAMPTON PLAZA
38-40 STATE STREET
ALBANY, NY 12207

Person(s) or Organization(s): SIXTH STREET SPECIALTY LENDING, INC. AS
ADMINISTRATIVE
AGENT, AND ITS SUCCESSORS AND ASSIGNS

Address: 888 SEVENTH STREET, 35TH FLOOR
NEW YORK, NY 10106

Person(s) or Organization(s): THE CITY OF SANTA CLARA
C/O INSURANCE DATA SERVICES INSURANCE COMPLIANCE

Address: PO BOX 100085
DULUTH, GA 30096

Person(s) or Organization(s): HAMILTON COUNTY BOARD OF COMMISSIONERS
C/O: MYCOI

Address: 1075 BROAD RIPPLE AVE,
STE 313
INDIANAPOLIS, IN 46220

Person(s) or Organization(s): JACKSON ENERGY AUTHORITY
250 NORTH HIGHLAND AVE

Address: JACKSON, TN 38301

Person(s) or Organization(s): BANK OF MONTREAL

Address: 100 KING STREET WEST, 18TH FLOOR
TORONTO, ON M5X 1A1
CANADA

Person(s) or Organization(s): TOWN OF GREENWICH
DIRECTOR OF PURCHASING & ADMINISTRATIVE SERVICES

Address: 101 FIELD POINT ROAD
GREENWICH, CT 06830

Policy Conditions**Endorsement**

Effective Date SEPTEMBER 27, 2023

Policy Number 9950-48-39 EUC

Person(s) or Organization(s): RGR TA PROCUREMENT DEPARTMENT
1372 EAST MAIN STREET

Address: ROCHESTER, NY 14609

Person(s) or Organization(s): THE PORT AUTHORITY OF NY & NJ
ATTN: PROCUREMENT DEPARTMENT

Address: ONE MADISON AVENUE, 7TH FLOOR
NEW YORK, NY 10010

Person(s) or Organization(s): VALLEJO CITY UNIFIED SCHOOL DISTRICT

Address: 665 WALNUT AVENUE
VALLEJO, CA 94592

Person(s) or Organization(s): WELLS FARGO BANK, NATIONAL ASSOCIATION,
AS AGENT AND ITS SUCCESSORS AND/OR ASSIGNS

Address: 1525 WEST W.T. HARRIS BLVD.
CHARLOTTE, NC 28262

If you are obligated, pursuant to a written contract or agreement, to provide person(s) or organization(s) with notice of cancellation, then we will notify such person(s) or organization(s) provided that within 15 days of the date we send notice of cancellation to the first named insured, the first named insured or producer of record provides us with a spreadsheet containing the name, mailing address and, if available, e-mail address of the person(s) or organization(s).

All other terms and conditions remain unchanged.

Authorized Representative



Workers' Compensation and Employers' Liability Policy

Named Insured CONSTELLATION SOFTWARE, INC. 5285 ROCKWELL DRIVE NE CEDAR RAPIDS IA 52402	Endorsement Number
	Policy Number Symbol: RWC Number: (24)7176-43-42
Policy Period 09-27-2023 TO 09-27-2024	Effective Date of Endorsement 09-27-2023
Issued By (Name of Insurance Company) ACE AMERICAN INSURANCE COMPANY	
Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy. This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.	

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

Schedule

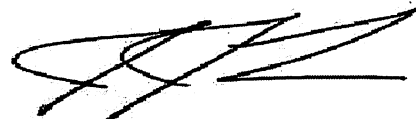
ANY PERSON OR ORGANIZATION AGAINST WHOM YOU HAVE AGREED TO WAIVE YOUR RIGHT OF RECOVERY IN A WRITTEN CONTRACT, PROVIDED SUCH CONTRACT WAS EXECUTED PRIOR TO THE DATE OF LOSS.

For the states of CA, UT, TX, refer to state specific endorsements.

This endorsement is not applicable in KY, NH, and NJ.

The endorsement does not apply to policies in Missouri where the employer is in the construction group of code classifications. According to Section 287.150(6) of the Missouri statutes, a contractual provision purporting to waive subrogation rights against public policy and void where one party to the contract is an employer in the construction group of code classifications.

For Kansas, use of this endorsement is limited by the Kansas Fairness in Private Construction Contract Act(K.S.A.. 16-1801 through 16-1807 and any amendments thereto) and the Kansas Fairness in Public Construction Contract Act(K.S.A 16-1901 through 16-1908 and any amendments thereto). According to the Acts a provision in a contract for private or public construction purporting to waive subrogation rights for losses or claims covered or paid by liability or workers compensation insurance shall be against public policy and shall be void and unenforceable except that, subject to the Acts, a contract may require waiver of subrogation for losses or claims paid by a consolidated or wrap-up insurance program.



Authorized Agent