

**SERVICE AGREEMENT
CITY OF FRESNO, CALIFORNIA**

THIS AGREEMENT (Agreement) is made and entered into, effective on July 1, 2024, by and between the CITY OF FRESNO, a California municipal corporation (City), and SKIDATA, a Delaware corporation (Service Provider).

RECITALS

WHEREAS, City desires to obtain upgrades to point of sale equipment and Software as a Service (SaaS) services for the Parking and Revenue Control System (PARCS) at Fresno Yosemite International Airport (FAT) (Project); and

WHEREAS, Service Provider is engaged in the business of furnishing such services as a manufacturing, supporting, servicing, and maintaining parking technology systems and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, Service Provider acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107; and

WHEREAS, this Agreement will be administered for City by its Director of Aviation (Administrator) or designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. Service Provider shall perform to the satisfaction of City the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.
2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above (Effective Date) and shall continue in full force and effect through June 30, 2029, subject to any earlier termination in accordance with this Agreement. The services of Service Provider as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.
3. Compensation.

- a. Service Provider's sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement and shall not exceed \$190,397 paid on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit A**. Such fee includes all expenses incurred by Service Provider in performance of the services.
- b. Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of City business within thirty (30) days of the invoice date. City shall not be obligated to reimburse any expense for which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.
- c. The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to Service Provider's compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. Service Provider shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

4. Termination, Remedies, and Force Majeure.

- a. This Agreement shall terminate without any liability of City to Service Provider upon the earlier of : (i) Service Provider's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against Service Provider; (ii) thirty (30) calendar days' prior written notice with or without cause by City to Service Provider; (iii) City's non-appropriation of funds sufficient to meet its obligations hereunder during any City fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.
- b. This Agreement shall terminate without any liability of Service Provider to City upon City (i) defaulting on its payment obligations related to the Scope of Services; (ii) being under investigation for actual or alleged financial, ethical, or illegal acts related to the Scope of Services; or (iii) has otherwise breached its obligations hereunder; Service Provider shall serve thirty (30) calendar days' prior written notice stating one of these causes as the reason for termination to City.
- c. Immediately upon any termination or expiration of this Agreement, Service Provider shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to City any and all unearned payments and all properties and materials in the possession of Service Provider that are owned by City. Subject to the terms

of this Agreement, Service Provider shall be paid compensation for services satisfactorily performed, and equipment or products ordered, prior to the effective date of termination. Service Provider shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

- d. In the event of termination due to failure of Service Provider to satisfactorily perform in accordance with the terms of this Agreement, City may withhold an amount that would otherwise be payable as an offset to, but not in excess of, the value of the service as paid by the City. In no event shall any payment by City pursuant to this Agreement constitute a waiver by City of any breach of this Agreement, which may then exist on the part of Service Provider, nor shall such payment impair or prejudice any remedy available to City with respect to the breach.
- e. Upon any breach of this Agreement by Service Provider, Service Provider shall have thirty (30) days from written notice of the claimed breach in which to commence curing said breach, after which City may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; and/or (ii) proceed by appropriate court action to enforce the terms of the Agreement. If it is determined that City improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.
- f. Service Provider shall provide City with adequate written assurances of future performance, upon Administrator's request, in the event Service Provider fails to comply with any terms or conditions of this Agreement.
- g. Service Provider shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of Service Provider and without its fault or negligence such as, acts of God or the public enemy, acts of City in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Service Provider shall notify Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership Documents.

- a. Any reports, information, or other data prepared or assembled by Service Provider pursuant to this Agreement shall not be made available to any individual or organization by Service Provider without the prior written approval of the Administrator, or by City without prior written approval from

Service Provider, with the exception of California Public Records Act requests. During the term of this Agreement, and thereafter, City or Service Provider shall not, without the prior written consent of the other Party, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of City or Service Provider, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in City.

- b. Any and all writings and documents prepared or provided by Service Provider pursuant to this Agreement are the property of City at the time of preparation and shall be turned over to City upon expiration or termination of the Agreement. Service Provider shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.
 - c. If Service Provider should subcontract all or any portion of the services to be performed under this Agreement, Service Provider shall cause each subcontractor to also comply with the requirements of this Section 5.
 - d. This Section 5 shall survive expiration or termination of this Agreement.
6. Level of Skill. It is further mutually understood and agreed by and between the parties hereto that in as much as Service Provider represents to City that Service Provider and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said industry necessary to perform the services agreed to be done by it under this Agreement, City relies upon the skill of Service Provider and its subcontractors, if any, to do and perform such services in a skillful manner and Service Provider agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by City shall not operate as a release of Service Provider or any subcontractors from said industry and professional standards.
7. Indemnification. To the furthest extent allowed by law, Service Provider shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Service Provider or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees, litigation expenses and cost to enforce this agreement), arising or alleged to have arisen directly out of negligent performance of this Agreement. Service Provider's obligations under the preceding sentence shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or

caused by the willful misconduct, of City or any of its officers, officials, employees, agents, or volunteers.

Service Provider will have no indemnification obligations where:

- a. Solution was in accordance with City's or City's end-user's sole design or specifications,
- b. City or City's end-user alters the Solution,
- c. City or City's end-user combines the Solution with materials not supplied or approved by Service Provider and such claim would not have occurred absent such combination, or
- d. City or City's end-user continues to use the Solution after confirmed receipt of written notice from Service Provider to stop using the Solution.

In no case shall Service Provider be liable for any consequential, incidental, indirect, special, or exemplary damages (including, without limitation, lost profits, business, or goodwill) suffered or incurred by City.

A Party's indemnification obligations are conditioned upon the Indemnitee (a) notifying the indemnifying party ("Indemnitor") promptly of any threatened or pending Claim, provided that failure to provide such notice will only relieve the Indemnitor of its indemnification obligations to the extent its ability to defend or settle an applicable Claim is materially prejudiced by such failure to provide notice; (b) giving the Indemnitor, at the Indemnitor's expense, reasonable assistance and information requested by the Indemnitor in connection with the defense and/or settlement of the Claim; and (c) tendering to the Indemnitor sole control over the defense and settlement of the Claim. The Indemnitee's counsel or their appointed of-counsel of choice will have the right to participate in the defense of the Claim at the Indemnitee's own expense without set-off, reimbursement, or payment whatsoever from the Indemnitor. The Indemnitor will not, without the prior written consent of the Indemnitee, make any admission or prejudicial statement, settle, compromise, or consent to the entry of any judgment with respect to any pending or threatened Claim.

8. Insurance.

- a. Throughout the life of this Agreement, the Service Provider shall pay for and maintain in full force and effect all insurance as required in Exhibit B, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by the City's Risk Manager or designee at any time and in its sole discretion. The

required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to the City, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

- b. If at any time during the life of the Agreement or any extension, the Service Provider or any of its subcontractors/sub-Service Providers fail to maintain any required insurance, all services and work under this Agreement shall be discontinued immediately, and all payments due, or that become due, to the Service Provider shall be withheld until insurance is in compliance with the requirements. Any failure to maintain the required insurance shall be sufficient cause for the City to terminate this Agreement. No action taken by the City pursuant to this section shall in any way relieve the Service Provider of its responsibilities under this Agreement. The phrase “fail to maintain any required insurance” shall include, without limitation, notification received by the City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.
- c. The fact that insurance is obtained by the Service Provider shall not be deemed to release or diminish the liability of the Service Provider, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify the City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Service Provider. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the Service Provider, its principals, officers, agents, employees, persons under the supervision of the Service Provider, vendors, suppliers, invitees, Service Providers, sub-Service Providers, subcontractors, or anyone employed directly or indirectly by any of them.

9. Conflict of Interest and Non-Solicitation.

- a. Prior to City’s execution of this Agreement, Service Provider shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, Service Provider shall have the obligation and duty to immediately notify City in writing of any change to the information provided by Service Provider in such statement.
- b. Service Provider shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state, and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political

Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et.seq.). At any time, upon written request of City, Service Provider shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, Service Provider and the respective subcontractor(s) are in full compliance with all laws and regulations. Service Provider shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, Service Provider shall immediately notify City of these facts in writing.

- c. Service Provider's duties and services under this Agreement shall not include preparing or assisting the City with any portion of the City's preparation of a request for proposals, request for qualifications, security certification or attestation, or any other solicitation regarding a subsequent or additional contract with the City. The City entering this Agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this Project. Consultant's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Consultant shall cooperate with the City to ensure that all bidders for a subsequent contract on any subsequent phase of this Project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Consultant pursuant to this Agreement.
- d. In performing the work or services to be provided hereunder, Service Provider shall not employ or retain the services of any person while such person either is employed by City or is a member of any City council, commission, board, committee, or similar City body. This requirement maybe waived in writing by the City Manager, if no actual or potential conflict is involved.
- e. Service Provider represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit, or procure this Agreement or any rights/benefits hereunder.
- f. Service Provider and any of its subcontractors shall have no interest, director indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, Service Provider shall remain responsible for complying with Section 9(a), above.

g. If Service Provider should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, Service Provider shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

h. This Section 9 shall survive expiration or termination of this Agreement.

10. Recycling Program. In the event Service Provider maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, Service Provider at its sole cost and expense shall:

a. Immediately establish and maintain a viable and ongoing recycling program, approved by City's Solid Waste Management Division, for each office and facility. Literature describing City recycling programs is available from City's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.

b. Immediately contact City's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.

c. Cooperate with and demonstrate to the satisfaction of City's Solid Waste Management Division the establishment of the recycling program in paragraph (a) above and the ongoing maintenance thereof.

11. General Terms.

a. Except as otherwise provided by law, all notices expressly required of City within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Administrator or designee.

b. Records of Service Provider's expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to City or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of Service Provider directly pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to City until such action is resolved, or until the end of said time period whichever shall later occur. If Service Provider should subcontract all or any portion of the services to be performed under this Agreement, Service Provider shall cause each subcontractor to also comply with the

requirements of this paragraph. This Section 11(b) shall survive expiration or termination of this Agreement.

- c. Prior to execution of this Agreement by City, Service Provider shall have provided evidence to City that Service Provider is licensed to perform the services called for by this Agreement (or that no license is required). If Service Provider should subcontract all or any portion of the work or services to be performed under this Agreement, Service Provider shall require each subcontractor to provide evidence to City that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, Service Provider shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, Service Provider agrees as follows:

- a. Service Provider will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.
- b. Service Provider will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Service Provider shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to Service Provider's employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Service Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this

nondiscrimination clause.

- c. Service Provider will, in all solicitations or advertisements for employees placed by or on behalf of Service Provider in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.
- d. Service Provider will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of Service Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. If Service Provider should subcontract all or any portion of the services to be performed under this Agreement, Service Provider shall cause each subcontractor to also comply with the requirements of this Section 12.

13. Independent Contractor.

- a. In the furnishing of the services provided for herein, Service Provider is acting solely as an independent contractor. Neither Service Provider, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venturer, partner, or associate of City for any purpose. City shall have no right to control or supervise or direct the manner or method by which Service Provider shall perform its work and functions. However, City shall retain the right to administer this Agreement so as to verify that Service Provider is performing its obligations in accordance with the terms and conditions thereof.
- b. This Agreement does not evidence a partnership or joint venture between Service Provider and City. Service Provider shall have no authority to bind City absent City's express written consent. Except to the extent otherwise provided in this Agreement, Service Provider shall bear its own costs and expenses in pursuit thereof.
- c. Because of its status as an independent contractor, Service Provider and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to City employees. Service Provider shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, Service

Provider shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of Service Provider's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co- employee rights or other theory. It is acknowledged that during the term of this Agreement, Service Provider may be providing services to others unrelated to City or to this Agreement.

14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.
15. Binding. Subject to Section 16, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.
16. Assignment.
 - a. This Agreement is personal to Service Provider and there shall be no assignment by Service Provider of its rights or obligations under this Agreement without the prior written approval of the City Manager or designee. Any attempted assignment by Service Provider, its successors or assigns, shall be null and void unless approved in writing by the City Manager or designee.
 - b. Service Provider hereby agrees not to assign the payment of any monies due Service Provider from City under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). City retains the right to pay any and all monies due Service Provider directly to Service Provider.
17. Compliance With Law. In providing the services required under this Agreement, each Party shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in

force and as they may be enacted, issued, or amended during the term of this Agreement.

18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
19. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.
20. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.
21. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.
22. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.
23. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.
24. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.
25. Precedence of Documents. In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or attachment. Furthermore, any terms or conditions contained within any exhibit or attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of

this Agreement, shall be null and void.

26. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
27. No Third Party Beneficiaries. The rights, interests, duties, and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.
28. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and Service Provider.
29. The City Manager, or designee, is hereby authorized and directed to execute and implement this Agreement. The previous sentence is not intended to delegate any authority to the City Manager to administer the Agreement, any delegation of authority must be expressly included in the Agreement.

[SIGNATURES FOLLOW ON THE NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
A California municipal corporation

By: _____
Henry Thompson, A.A.E., IAP
Director of Aviation

APPROVED AS TO FORM:
ANDREW JANZ

City Attorney
Signed by:
By: Brandon Collet 8/7/2024
1CFC5444CAA64DB...
Brandon M. Collet Date
Assistant City Attorney

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Deputy Date

Addresses:
CITY:
City of Fresno Airports Department
Attn: Properties Division
4995 E. Clinton Way
Fresno, CA 93727
Phone: (559) 621-4500
E-mail: FYIProperties@fresno.gov

SKIDATA,
A Delaware corporation

DocuSigned by:
By: David Luken
SKIDATA, INC
195F85F230114B2...
Name: David Luken

Title: CEO SKIDATA
(If corporation or LLC., Board Chair,
Pres. Or Vice Pres.)

DocuSigned by:
By: Laurent Kaeslin
7C09CDE9905A4FA...
Name: Laurent Kaeslin

Title: Director
(If corporation or LLC., CFO, Treasurer,
Secretary, or Assistant Secretary)

SERVICE PROVIDER:
SKIDATA, Inc.
Attn: David Luken, CEO
5090 N 40th St., Ste. 450
Phoenix, AZ 85018
Phone: 1-833-754-3282
Email: David.Luken@SKIDATA.com

- Attachments:
1. Exhibit A – Scope of Services
 2. Exhibit B – Insurance Requirements
 3. Exhibit C – Conflict of Interest Disclosure Form

EXHIBIT A

SCOPE OF SERVICES

Service Agreement between City of Fresno and SKIDATA, INC.
Point of Sale Equipment Upgrades and Software as a Service (SaaS)

Year 1: \$67,965

Year 2: \$30,608

Year 3: \$30,608

Year 4: \$30,608

Year 5: \$30,608

Agreement Total: \$190,397

See attached scope:



SKIDATA PROPOSAL

ISSUE DATE: 07/24/2024
VALID UNTIL: 08/23/2024

PROJECT INFORMATION			
PROJECT NAME:	FRESNO YOSEMITE INTER. AIRPORT - SAAS & EMV/NFC UPGRADE 2024	SKIDATA CONTACT:	NATHAN KEIL
ACCOUNT NAME:	FRESNO YOSEMITE INTER. AIRPORT	PHONE NUMBER:	(720) 697-4757
PROPOSAL #:	278701	E-MAIL ADDRESS:	NATHAN.KEIL@SKIDATA.COM



PROJECT LOCATION	BILL TO INFORMATION
FRESNO YOSEMITE INTER. AIRPORT 5155 E CLINTON WAY FRESNO, CALIFORNIA 93727 PHONE: (559) 252-0052	FRESNO YOSEMITE INTER. AIRPORT 5175 E CLINTON WAY FRESNO, CALIFORNIA 93727 PHONE: (559) 252-0052

SOLUTION SUMMARY

INVESTMENT SUMMARY			
EQUIPMENT:	\$ 22,899	EQUIPMENT WARRANTY TERM:	12 MONTHS
SOFTWARE:	\$ 489	PROJECT DATES	
LABOR:	\$ 10,876	YOUR DESIRED GO-LIVE	*06/07/2024
FREIGHT:	\$ 1,300		
FREIGHT SURCHARGE:	\$ 325	PROJECT DATES	
ESTIMATED SALES TAX:	\$ 1,826	PREVAILING WAGE	NO
ESTIMATED LABOR TAX:	\$ 0	TAX EXEMPT	NO
ESTIMATED FREIGHT TAX:	\$ 130		
ANNUAL LICENSING FEES INCLUDED:	\$ 25,920		
SUB-CONTRACTED TOTAL:	\$ 0		
WAGE OR INSURANCE PREMIUMS:	\$ 0		
PROJECT SERVICES:	\$ 4,200		
TOTAL SYSTEM INVESTMENT:	\$ 67,965		

PAYMENT SCHEDULES OF VALUES			
#	PAYMENT DESCRIPTION	%	\$ AMOUNT
1	DEPOSIT CHECK - RETURN WITH SIGNED AGREEMENT TO ACTIVATE THE PROJECT	50%	\$ 33,982
2	ARRIVAL - EQUIPMENT AND SOFTWARE INVOICED ONCE RECEIVED AT SKIDATA	30%	\$ 20,389
3	SUBSTANTIAL COMPLETION - UPON GO-LIVE, AN INVOICE WILL BE ISSUED	15%	\$ 10,195
4	FINAL RETENTION - AT PROJECT CLOSE-OUT, A FINAL INVOICE WILL BE ISSUED	5%	\$ 3,398



PROPOSAL STATEMENT OF WORK

CURRENT VERSION - 14

WORKSTATIONS - 1 WORKSTATION, 3 MANUAL PAY STATION, 3 REMOTE DESKTOPS, 5 PROCESS PC

POF - 2 SKIOSK LITE

SKIDATA SOLUTIONS SUBSCRIPTION SAAS SOFTWARE MODEL:

- PARKING.LOGIC – SKIDATA SUBSCRIPTION SOLUTION (SAAS) PER LANE MONTHLY FEE WHICH COVERS THE FOLLOWING:
- UNLOCKING OF MOST OF SKIDATA SOFTWARE MODULES AND OPERATING LICENSES (EV CHARGING NOT INCLUDED)
- QUARTERLY SKIDATA AND WINDOWS SOFTWARE UPDATES
- SKIDATA AND WINDOWS SOFTWARE UPGRADES AS RELEASED
- SWEB SERVICES: (AVAILABLE UPON REQUEST)
 - SWEB E-TICKETING
 - SENDING OF AN ELECTRONIC TICKET TO GUESTS
 - QR CODES CAN BE USED FOR ACCESS CREDENTIALS FOR MONTHLY PARKERS
 - REQUIRES SCANNER ON ENTRY AND EXIT, IF NOT INSTALLED

SOFTWARE

- SAAS PER LANE - 18 LANES
- SWEB VALIDATE,
 - WEB BASED VALIDATION
- SWEB CONTROL BASIC
 - WEB BASED ACCESS TO SYSTEM TO MANAGE REMOTELY
- SWEB MOBILE PAY
 - CUSTOMERS PAY WITH THEIR MOBILE DEVICE, NO APP REQUIRED
 - NOT COMPATIBLE WITH CHASER TICKET OR THERMAL VALIDATIONS
 - [HTTPS://WWW.YOUTUBE.COM/WATCH?V=Mn1SAszBFEQ](https://www.youtube.com/watch?v=Mn1SAszBFEQ)

EMV UPGRADE

- 7 - 3C EMV/NFC TERMINALS FOR POWER.GATE
 - 7 - MOUNTING PLATES
- 2 - 3C EMV/NFC TERMINALS FOR SKIOSK LITE
 - 2 - MOUNTING PLATES
- 3 - ATTENDED 3C EMV TERMINALS

HARDWARE

- 3 NEW CASHIER BOOTH PCs WITH TOUCHSCREEN MONITORS












SITE LOCATION SUMMARY															
#	LOCATIONS	INVESTMENT	ENTRY BARRIER	EXIT BARRIER	POWER \ LITE ENTRY	ACCESS ENTRY	POWER EXIT	ACCESS EXIT	LPR CAMERA	EXIT CASHIER	CASH POF	CREDIT CARD POF	LED SIGNS	SPACE SENSORS	SERVER / WORKSTATION
1	SAAS UPGRADE	\$ 30,608	0	0	0	0	0	0	0	0	0	0	0	0	0
2	SCOPE OF WORK	\$ 0	0	0	0	0	0	0	0	0	0	0	0	0	0
3	EMV UPGRADE	\$ 26,118	0	0	0	0	0	0	0	0	0	0	0	0	0
4	CASHIER STATIONS	\$ 7,039	0	0	0	0	0	0	0	0	0	0	0	0	3
SITE LOCATION TOTAL		63,765	0	0	0	0	0	0	0	0	0	0	0	0	3
PROJECT SERVICES		\$ 4,200													




SCOPE OF WORK & RESPONSIBILITIES		
#	LABOR & PROFESSIONAL SERVICES	SCOPE RESPONSIBILITY
1	FINAL SYSTEM TESTING AND CHECKOUT.	SKIDATA
2	SKIDATA ANNUAL UPGRADE INCLUDES PARKING.LOGIC SOFTWARE VERSION UPGRADE EACH YEAR. EXCLUDES WINDOWS UPGRADES, PLATE TECH LPR SOFTWARE UPGRADES, ANY HARDWARE NEEDS AND LABOR	SKIDATA
3	SKIDATA'S UPGRADE SAAS REQUIRES 5 YEAR COMMITMENT.	SKIDATA
4	SKIDATA SAAS MODEL INCLUDES: SKIDATA SOFTWARE UPDATES; SOFTWARE UPGRADES AS RELEASED; MICROSOFT LICENSE UPGRADES AS NEEDED; ANTI-VIRUS FOR DAU;	SKIDATA
5	CUSTOMER TO SET-UP AN E-COMMERCE MERCHANT ACCOUNT WITH PLANET PAYMENT. PLANET FEES WILL APPLY FOR EACH SUCCESSFUL TRANSACTION. ALL FEES WILL BE BETWEEN PLANT PAYMENT AND CUSTOMER DIRECTLY	CUSTOMER
6	SWEB MOBILE PAY ALLOWS FOR CUSTOMERS TO PAY VIA PERSONAL MOBILE DEVICE. VALIDATIONS ACCEPTED FOR USE ARE SWEB VALIDATE VALIDATED TICKETS. THERMAL AND CHASER TICKETS VALIDATION DO NOT WORK.	CLARIFICATIONS
7	LIMITED CUSTOMIZATIONS OF LAYOUTS AVAILABLE FOR SWEB E-TICKET & MOBILE PAY. CUSTOMER TO SUPPLY PROPER ARTWORK PER SKIDATA SPECS AT TIME OF IMPLEMENTATION. CHANGES AFTER IMPLEMENTATION AT ADD'L FEE	CLARIFICATIONS
8	SKIDATA SOFTWARE SUBSCRIPTION SOLUTION INCLUDES, IF REQUESTED, SWEB CONTROL BASIC. SWEB CONTROL PREMIUM IS AVAILABLE FOR AN ADDITIONAL FEE AND NOT INCLUDED UNLESS OTHERWISE INDICATED	CLARIFICATIONS
9	SKIDATA'S SWEB SERVICES ARE INTEGRATED WITH SKIDATA'S PARKING.LOGIC SOFTWARE. SITE'S PARKING.LOGIC MUST BE ON A SUPPORTED VERSION FOR PROPER SUPPORT, MAINTENANCE & FUNCTIONALITY OF THE SWEB SERVICES	CLARIFICATIONS
10	NO LIQUIDATED DAMAGES	EXCLUSIONS
11	NO BONDS	EXCLUSIONS
12	NO PREVAILING WAGE REQUIREMENTS	EXCLUSIONS
13	NO UNION LABOR	EXCLUSIONS
14	WORK PERFORMED OUTSIDE OF STANDARD BUSINESS HOURS IS EXCLUDED. OVERTIME WORK WILL RESULT IN A CHANGE ORDER.	EXCLUSIONS





LOCATION: SAAS UPGRADE				
SYSTEM COMPONENTS				
#	BUNDLE NAME	UNIT PRICE	QTY	EXTENDED PRICE
1	 <p>SWEB MOBILE PAY USERS SCAN THE QR CODE ON THE SHORT-TERM PARKING TICKET AND CAN PAY FOR IT DIRECTLY WITH THEIR SMARTPHONE - NO APP, NO REGISTRATION. - AN AGREEMENT FOR CREDIT CARD PROCESSING WITH PLANET OR WINDCAVE IS REQUIRED.</p>	\$ 0.00	1	\$ 0
2	 <p>MICROSOFT OS LICENSES - V16 MICROSOFT WINDOWS OPERATING SYSTEMS LICENSES NEEDED FOR SKIDATA</p>	\$ 0.00	1	\$ 0
3	 <p>MICROSOFT OS LICENSES - V16 MICROSOFT WINDOWS OPERATING SYSTEMS LICENSES NEEDED FOR SKIDATA</p>	\$ 0.00	2	\$ 0
4	 <p>SWEB.VALIDATE DIGITAL SALES AND ADMINISTRATION OF PARKING VALIDATIONS VIA BROWSER, MOBILE APP OR VALIDATION KIOSK DEVICES AT YOUR BUSINESS PARTNERS (HARDWARE NOT INCLUDED UNLESS OTHERWISE DOCUMENTED).</p>	\$ 0.00	1	\$ 0
5	 <p>PARKING.LOGIC - FACILITY UPGRADE SAAS FOR EXISTING INSTALLATIONS. SOFTWARE SUBSCRIPTION SERVICE WHICH INCLUDES QUARTERLY SOFTWARE UPDATES AND ANNUAL UPGRADES. 5 YEAR COMMITMENT REQUIRED</p>	\$ 0.00	1	\$ 0
6	 <p>MICROSOFT SQL LICENSES - V16 MICROSOFT SQL DATABASE LICENSES NEEDED FOR SKIDATA</p>	\$ 0.00	1	\$ 0
7	 <p>SWEB.CONTROL THE CENTRALIZED AND AUTOMATED MONITORING AND CONTROL SOLUTION TO MANAGE ALL YOUR PARKING SITES AND 3RD PARTY DEVICES FROM EVERYWHERE AND AT ALL TIMES!</p>	\$ 0.00	1	\$ 0

LOCATION: EMV UPGRADE				
SYSTEM COMPONENTS				
#	BUNDLE NAME	UNIT PRICE	QTY	EXTENDED PRICE
8	 <p>PLANET P2PE EMV CREDIT CARD & NFC COMBO UNATTENDED TERMINAL W/O OL BUNDLE 2022 PLANET P2PE EMV & NFC UNATTENDED TERMINAL KIT</p>	\$1,539.69	9	\$ 13,857
9	 <p>PLANET P2PE EMV CREDIT CARD ATTENDED TERMINAL W/O OL BUNDLE KIT 2024</p>	\$1,014.39	3	\$ 3,043








10		EMV & NFC COMBO TERMINAL MOUNTING PLATE - WINDCAVE OR PLANET - SKIOSK LITE MOUNTING PLATE FOR SKIOSK LITE - WINDCAVE COMBO TERMINAL (SCR200-VM) AND 3C COMBO TERMINAL (VALINA)	\$ 256.92	2	\$ 514
11		EMV & NFC COMBO TERMINAL MOUNTING PLATE - PLANET - POWER.GATE #1 MOUNTING PLATE FOR POWER.GATE - PLANET COMBO (VALINA) TERMINAL	\$ 100.00	7	\$ 700

LOCATION: CASHIER STATIONS
SYSTEM COMPONENTS

#	BUNDLE NAME	UNIT PRICE	QTY	EXTENDED PRICE
12	 WORKSTATION PC - SHI BUNDLE HP ENGAGE FLEX PRO-C CORE I5 8500 3.0 GHZ - 6 CORES - 256GB SSD - 16GB RAM; NO MONITOR, KEYBOARD, MOUSE	\$1,364.29	3	\$ 4,093
13	 VIEWSONIC TD2223 - LED MONITOR - TOUCHSCREEN - 22" TD2223 IS A 22" IR TOUCH DISPLAY DESIGNED FOR INTUITIVE MULTI-TOUCH USE. EQUIPPED W/ VGA, HDMI, DVI & USB CONNECTIVITY. DETECTS UP TO 10 POINTS OF CONTACT & BE USED BY STYLUS, FINGERS & GLOVED HANDS	\$ 393.64	3	\$ 1,181

PROJECT SERVICES

#	PROJECT SERVICE NAME	TOTAL PRICE
1	 COMMISSIONING	\$ 2,700
2	 ADDITIONAL INSTALLATION	\$ 0
3	 PROJECT MANAGEMENT	\$ 1,500
4	 TRAINING	\$ 0
5	 CUSTOM SOLUTION	\$ 0



RECURRING ITEMS INCLUDED IN FIRST YEAR				
SUBSEQUENT YEAR FEES TO BEING 12 MONTHS FROM BENEFICIAL USE OF SYSTEM BY CUSTOMER				
#	SERVICE	UNIT PRICE	QTY	ANNUAL TOTAL PRICE
1	MOBILITY SUITE BUSINESS SAAS ANNUAL FEE PER LANE - V14/15 MOBILITY SUITE FEE COVERS THE INITIAL SETUP OF CLOUD-BASED SERVICES & LOCAL SOFTWARE. ONGOING ANTIVIRUS SERVICE & MAINTENANCE UPDATES, AS WELL AS UPGRADES VIA AUTOMATED SOFTWARE MAINTENANCE SERVICE	\$1,440.00	18	\$ 25,920
2	SAAS - PROTECT.CARE ANTI-VIRUS - DAU SKIDATA ANTI-VIRUS SOLUTION	\$ 0.00	1	\$ 0



This Proposal is subject to the Terms and Conditions attached to this Proposal and is effective on the last date of signature (“Effective Date”). If this Proposal is not signed within thirty (30) calendar days from the date on the cover page, all pricing, service terms, project dates are subject to change and/or rescoping.

AGREED

SIGNATURE:	_____	SIGNATURE:	_____
PRINTED NAME:	_____	PRINTED NAME:	_____
TITLE:	_____	TITLE:	_____
ORGANIZATION:	_____	ORGANIZATION:	SKIDATA, INC
DATE SIGNED:	_____	DATE SIGNED:	_____



CUSTOMER ACCOUNT INFORMATION FORM



Name of Parking Facility: _____

Bill To:

Legal Entity Name: _____

Street Address: _____

City: _____ State: _____ Zip: _____ - _____

Bus. Phone: _____ Cell Phone: _____

A/P Contact: _____

A/P Phone: _____ E-mail: _____

Are you a Municipal, State, or Federal Government-Owned Corporation? Yes No

Are you Tax Exempt? Yes No | If Yes, please provide Certificate of Exemption.

Business Entity Type: _____ (Please select all that apply)

Owner Property Manager Car Park Operator

General Contractor Other: _____

Preferred Contact Method: Business Phone Cell Phone Mail E-mail

Preferred Invoice Delivery Method: Mail E-mail

Ship To: (If Same as Billing Address)

Location Name: _____

Street Address: _____

City: _____ State: _____ Zip: _____ - _____

Shipping Contact: _____

Shipping Phone: _____ E-mail: _____

If the Parking Facility's location is different than the Shipping Address, please provide the Facility Location:

Facility Location: (If Same as Shipping Address)

Location Name: _____

Street Address: _____

City: _____ State: _____ Zip: _____ - _____

Please Note: All fields are required. We will not be able to process your contract with incomplete information.

X _____
Customer Representative Date Title

Please Return Completed Form to:
ar.us@skidata.com

For Questions, Please Contact:
John Allen Stokes II | Contract Administrator
US.AR.Contracts@skidata.com | 818.538.2144

Terms and Conditions

These terms can be found at <https://www.skidata.com/en-us/gtc>

0. Scope. These Terms and Conditions (“**Terms**”) apply to the hardware and embedded software in the hardware (“**Product**”) listed in the attached Proposal and the installation of the Product (“**Services**”) between SKIDATA, Inc., (or “**Seller**”) and Counterparty (“**Customer**”), each a “**Party**”, collectively the “**Parties**”.

1. Solution Subscription (if applicable). In addition to these Terms, for reoccurring subscriptions to the embedded software, Customer is bound by the Solution Subscription Conditions listed at <https://www.skidata.com/en-us/gtc> the entirety of which is incorporated by reference in full.

2. Prices and Payment. Customer shall pay Seller for the Products and Services by paying all invoiced amounts in U.S. dollars, without set-off for any payment from Seller not due under these Terms, within thirty (30) days from the invoice date. Customer shall pay an administrative late charge (“**Late Charge**”) of twenty-five (\$25.00) USD for each monthly invoice that includes a past due balance. In addition to the Late Charge, for each calendar month, or fraction thereof, that payment is late, Customer shall pay a late payment charge computed at the rate of 1.5% per month on the overdue balance, or the maximum rate permitted by law, whichever is less, for the period commencing on the due date until past due amounts are paid in full. If at any time Seller reasonably determines that Customer’s financial condition or payment history does not justify continuation of Seller’s performance, Seller shall be entitled to require full or partial payment in advance or otherwise restructure payments, request additional forms of security, suspend its performance, or terminate these Terms. All reoccurring fees payable hereunder will be subject to upward adjustment on January 1st of the year succeeding the Effective Date by an amount proportionate to inflation for the preceding twelve (12) month period. The adjustment shall be based on the percentage change in the index known as the Consumer Price Index (CPI) for All Urban Consumers, U.S. city average, all expenditures except food and energy, as published by the United States Bureau of Labor Statistics.

3. Taxes and Duties. Seller is responsible for all corporate taxes measured by net income due to performance of or payment for work under these Terms (“**Seller Taxes**”). Customer is responsible for all taxes, duties, fees, or other charges of any nature (including, but not limited to, consumption, gross receipts, import, property, sales, stamp, turnover, use, or value-added taxes, and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto, imposed by any governmental authority on Customer or Seller or its subSellers) in relation to these Terms or the performance of or payment for work under these Terms other than Seller Taxes (“**Customer Taxes**”). The prices in this Proposal may not include the amount of any Customer Taxes. If Customer deducts or withholds Customer Taxes, Customer shall pay additional amounts so that Seller receives the full price under these Terms without reduction for Customer Taxes. Customer shall provide to Seller, within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes.

4. Deliveries; Title Transfer; Risk of Loss; Storage.

4.1 For shipments that do not involve export, including shipments from one European Union (“**EU**”) country to another EU country, Seller shall deliver Products to Customer FCA Seller’s facility or warehouse (Incoterms 2020). Partial deliveries are permitted. Seller may deliver Products in advance of the delivery schedule. Delivery times are approximate and are dependent upon prompt receipt by Seller of all information necessary to proceed with the work without interruption. If Products delivered do not correspond in quantity, type or price to those itemized in the shipping invoice or documentation, Customer will notify Seller within ten calendar days after receipt. For shipments that do not involve export, title to Products will pass to Customer upon delivery in accordance with Section 4.2. For export shipments from a Seller facility or warehouse outside the U.S., title shall pass to Customer upon delivery in accordance with Section 4.2. Notwithstanding the foregoing, Seller grants only a license to the end-user of the Product, and does not pass title, for any software provided by Seller under these Terms.

4.2 Risk of loss shall pass to Customer upon delivery pursuant to this Section, except that for export shipments from the U.S., risk of loss shall transfer to Customer upon title passage. If any Products to be delivered under these Terms or if any Customer equipment repaired at Seller’s facilities cannot be shipped to or received by Customer when ready due to any cause attributable to Customer or its other Sellers, Seller may ship the Products and equipment to a storage facility, including storage at the place of manufacture or repair, or to an agreed freight forwarder. If Seller places Products or equipment into storage, the following apply: (i) title and risk of loss immediately pass to Customer, if they have not already

passed, and delivery shall be deemed to have occurred; (ii) any amounts otherwise payable to Seller upon delivery or shipment shall be due; (iii) all expenses and charges incurred by Seller related to the storage shall be payable by Customer upon submission of Seller's invoices; and (iv) when conditions permit and upon payment of all amounts due, Seller shall make Products and repaired equipment available to Customer for delivery.

4.3 If repair Services are to be performed on Customer's equipment at Seller's facility, Customer shall be responsible for, and shall retain risk of loss of, such equipment at all times, except that Seller shall be responsible for damage to the equipment while at Seller's facility to the extent such damage is caused by Seller's negligence.

5. Product Warranty, Remedies and Disclaimers.

5.1 Product is warrantied for twelve (12) months from the date of delivery to Customer (the "**Original Warranty**"). All warranties are transferable to Customer's end-user. Customer will report any defects in writing to Seller with a detailed description of the defect immediately but no later than fourteen (14) calendar days after delivery, otherwise all claims resulting from the defect are waived and delivery is deemed accepted. Seller is entitled to inspect and remedy claimed defects at Customer's premises. Customer or Customer's end-user will provide Seller with the necessary resources and assistants free of charge. If the inspection reveals that there is no claim under warranty, Customer shall cover all costs incurred in accordance with Seller's price list valid at the time of the inspection. For warranty-repaired Product, the warranty shall be the remainder of the Original Warranty or ninety (90) days, whichever is greater in duration.

5.2 At Seller's option, Seller will repair, replace, or refund for defective Product. Customer will ship defective Product to Seller's designated location at Customer's expense. Replaced parts become the property of Seller. This Section 5 provides the exclusive remedies for all claims based on failure of or defect in Products, regardless of when the failure or defect arises, and whether a claim, however described, is based on contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise. The warranties provided in this Section 5 are exclusive and are in lieu of all other warranties, conditions and guarantees whether written, oral, implied or statutory. EXCEPT FOR THE FOREGOING, NO IMPLIED OR STATUTORY WARRANTY, OR WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES.

5.3 The warranty is void if Customer or Customer's end-user: (a) does not observe conditions for assembly, commissioning or use of the Product; (b) allows third parties not authorized by Seller's written consent to carry out repairs, changes, maintenance, or other servicing of the Product; (c) uses the Product with components not certified by Seller; (d) uses equipment (including but not limited to networks, supply lines, cabling) that does not function properly or supplies insufficient power to the Product; (e) does not carry out required site preparation or maintenance in a timely fashion; (f) is in default with these Terms with particular respect to payment; (g) incurs damage to the Product as a result of accidents, power surge, or electromagnetic field; or (h) if defects or damages are attributable to third-party components, internet/network disruptions, software viruses, inclement weather, chemical influences, an act of force majeure as detailed in section 13, vandalism, or any other acts or omissions of Customer or third parties.

6. Software License, Warranty, Remedies and Disclaimers.

6.1 Customer or Customer's end-user is granted a non-exclusive, non-transferable, non-sublicensable, limited right to use the software unlimited in time. Even if software is made available to the Customer or Customer's end-user on a CD or any other physical data carrier, Seller shall remain the Customer of the software and all trademarks, copyrights, patents, trade secrets and other Intellectual Property Rights (as defined in section 10) relating thereto. The source code shall not be part of these Terms.

6.2 Software updates, service packs, hot fixes, and patches (collectively, "**Updates**") may be provided to the Customer, as such are available to comply with the applicable laws, regulations and/or compatibility requirements, including but not limited to security-related and operational standards developed by ISO or the PCI Security Standards Council, LLC. In addition, software upgrades including new releases or versions of software (collectively, "**Upgrades**") may be provided to the Customer, as such are available. The Customer acknowledges that, according to the respective release planning, older versions of software may no longer be supported after the expiry of a certain period. Seller is not required to provide Updates and/or Upgrades. Costs for installation of Updates and Upgrades shall be borne by the Customer or Customer's end-user and are not included in the license fee, unless the Customer has entered into a Solution Subscription Agreement with Seller. Updates and Upgrades may alter the system requirements and it may be necessary to install the respective predecessor Updates/Upgrades, third-party

components and additional or altered hardware. Respective costs shall be borne by the Customer and are not included in the license fee. Nothing in these Terms require Customer to install Updates or Upgrades but Seller recommends their immediate installation. In case of non-installation of offered Updates or Upgrades, this could possibly endanger the security and operability of software and related systems and even infringe third-party licenses or laws; all consequences of non-installation are at the sole risk of the Customer. Warranty claims regarding systems related to the software will automatically become void. The Customer acknowledges and agrees that Seller is not liable for damages resulting from the non-installation of Updates and Upgrades.

6.3 The Customer is solely responsible for performing a backup of files and data before installing any Updates and Upgrades. Therefore, Seller is not liable for lost files, information or data and related damages. Seller and persons authorized by Seller are entitled to execute an audit by examining the systems, computers, books, records, and accounting records of the Customer during normal business hours as far as they are connected to software provided under these Terms. To the extent the Customer is allowed to exchange hardware, the Customer undertakes to fully and irretrievably remove software from the exchanged equipment and provide evidence for such removal.

6.4 Without the written consent of Seller the Customer must not himself or allow any third party to: (a) reverse engineer, decompile, disassemble or otherwise reduce the software to any human perceivable form; (b) modify, adapt, translate or create derivative works based upon the software, the written materials accompanying the software, or any part thereof; (c) combine the software with any kind of open-source- software; (d) remove or manipulate copyright notices and other signs on the software copies; (e) use or permit the software to be used to perform services for third-parties; or (f) make or use any copies of the software, even if the software has been merged or included with other software, or any accompanying materials for any purpose other than as provided in these Conditions. If the Customer creates a back-up copy in accordance with these Conditions, the Customer shall include all copyright notices and/or proprietary notices that are affixed to or appearing in the original copy.

6.5 The use of the software may require third party components and/or other system requirements to work properly. The corresponding requirements are described in the documentation for the respective product. These third-party components may be supplemented or modified by Seller at its sole discretion. Customer is responsible for obtaining, installing, maintaining, and operating any third-party components. For third-party components, additional terms and conditions may apply, and use of third-party components is at the risk of the Customer. Seller is not liable for damages or losses caused by third party components, and all costs and fees for third party components shall be borne by the Customer.

6.6 Software, either stand-alone or embedded in the Product, is provided by Seller "as-is" and "with all faults." Seller makes no representations or warranties of any kind concerning the safety, suitability, inaccuracies, typographical errors, or other harmful components of this Software. The only warranty that applies is that the software has the functionalities and characteristics described in the product description provided that the system requirements are fulfilled. The warranty period shall be six (6) months and begins at the time of delivery. It is technically impossible to produce software that is absolutely free of any defect. The Customer knows and accepts this risk. Minor defects not impairing essential functions of the software therefore do not have to be corrected under the warranty. Seller fulfils its warranty obligation within a reasonable period of time in its sole discretion either by rectification or a substitute delivery of the defective software or by granting a price reduction which is Customer's sole and exclusive remedy and Seller's only liability with respect to defective software. For warranty repairs at the Customer's or Customer's end-user's premises, the Customer will make available free of charge to Seller resources and employees as required by Seller. Defects which are not within the responsibility of Seller are excluded from warranty and especially applies to defects from materials or software provided by the Customer. The warranty shall lapse if the Customer or any third-party effects any changes to the software that are not authorized by Seller in writing. The Customer shall only be entitled to make warranty claims after full payment of the agreed price. In addition, any warranty shall be excluded in case of damage caused by third party acts, atmospheric discharge, instable networks and chemical influences or force majeure. SELLER DISCLAIMS ANY WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE SOFTWARE AND ACCOMPANYING DOCUMENTATION, IF ANY, PROVIDED HEREUNDER IS PROVIDED "AS IS".

7. Installation Services, Warranties, Remedies and Disclaimers.

7.1 Customer is solely responsible for any necessary permits from public authorities or other third parties required

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before Seller provides any Services. Seller is under no obligation to perform any Services until such permits are in place.

7.2 Seller warrants that for any installation services (Services), those Services will be performed in a (i) workmanlike and professional manner consistent with generally accepted industry standards, and (ii) conform to the written specifications of the agreed upon written specifications for six (6) months from completion. Customer's sole and exclusive remedy and Seller's entire liability with respect to the Services warranty in this Section 7 will be, at Seller's option, to either (a) use its reasonable commercial efforts to re-perform any non-conforming Services not in substantial compliance with this warranty or (b) refund amounts paid by Customer related to the portion of the Services not in substantial compliance. In each situation (a) or (b), Customer must notify Seller in writing within thirty (30) calendar days after performance of the applicable Services. Any warranty provided by Seller under this Section is void if an event outside the control of Seller impacts the Services or the Services are in anyway changed, unless Seller pre-approves in writing of the changes. SELLER MAKES NO OTHER, AND EXPRESSLY DISCLAIMS ALL OTHER, REPRESENTATIONS, WARRANTIES, CONDITIONS OR COVENANTS, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION, ANY STATUTORY, EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR OTHERWISE.

8. Limitation of Liability. EXCLUDING CLAIMS FOR PERSONAL INJURY OR DEATH AND A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THESE TERMS, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF REVENUE OR INCOME, LOSS OF OR USE OF DATA, OPERATIONAL EFFICIENCY, LOSS OF CUSTOMERS OR INFORMATION, ARISING UNDER THESE TERMS REGARDLESS OF THE FORM OF ACTION OR THEORY OF RELIEF, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCLUDING CLAIMS FOR PERSONAL INJURY OR DEATH AND A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THESE TERMS, ANY LIABILITY FOR DIRECT DAMAGES ARISING UNDER THESE TERMS, REGARDLESS OF THE FORM OF ACTION OR THEORY OF RELIEF, IS LIMITED TO THE PURCHASE PRICE OF THE PRODUCT OR IN THE CASE OF A SERVICES, THE TOTAL AMOUNT PAID OR TO BE PAID FOR THE SERVICES THAT GIVES RISE TO THE CLAIM UNDER THESE TERMS.

9. Intellectual Property Infringement.

9.1 Seller will indemnify, defend and hold harmless Customer, its officers, directors, employees, agents, affiliates, and end-users from and against any third-party claims ("**Claim(s)**") that any Seller manufactured Product provided to Customer under these Terms infringes any patent, copyright, trademark or trade secret provided that Customer (a) promptly notifies Seller in writing of the Claim, (b) makes no admission of liability and does not take any position adverse to Seller, (c) gives Seller sole authority to control the defense and settlement of the Claim, and (d) provides Seller full disclosure and reasonable assistance as required to defend the Claim. In the event the Product may in Seller's reasonable opinion to be infringing, Seller at its option and own expense may do the following: (i) secure for Customer the right to continue the use of the alleged infringing item, (ii) replace the alleged infringing item with a substantially equivalent non-infringing item, or (iii) modify the alleged infringing item to be non-infringing. In the event Seller is unable to perform the options previously listed (i) through (iii), Customer will then return the deliverable to Seller and Seller will refund Customer the amount paid for such item. THIS INFRINGEMENT SECTION IS SELLER'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO CUSTOMER'S INABILITY TO USE THE DELIVERABLE OR ANY PORTION OF THE PRODUCT DUE TO ANY INFRINGEMENT OR CLAIM OF INFRINGEMENT.

9.2 Seller will have no indemnification obligations where: (a) any Product was in accordance with Customer's or Customer's end-user's sole design or specifications, (b) Customer or Customer's end-user alters the Product, (c) Customer or Customer's end-user combines the Product with materials not supplied or approved by Seller and such infringement would not have occurred absent such combination, or (d) Customer or Customer's end-user continues to use the Product after receiving written notice from Seller to stop using the Product. In no case shall Seller be liable for any damages arising out of Customer's negligent, reckless, or willful conduct.

10. Seller's Intellectual Property.

10.1 Seller and/or its licensors are exclusively entitled to all rights to the Product derived from patent rights, trademark rights, design protection, copyrights or other Intellectual Property Rights or otherwise from the creation of the Product as well as related documents, specifications, samples, models, drawings, printing plates, photographs, and other material shall remain the Intellectual Property of Seller, including any improvements or alterations made to the Products or Services during Seller's performance under these Terms.

10.2 "**Intellectual Property**" shall mean any and all information developed by the Seller in relation to the Product,

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ancillary services, or otherwise and shall include trademarks, copyrights, service marks, trade names, logos, domain names, designs, emblems, insignia, fascia, slogans, videos, applications, know-how, information, patents, trade secrets, Proprietary Information (as defined in section 16), standards, specifications, techniques, teaching methods, schemes and materials, management methods, standard operational procedures, drawings, architectural plans and layouts, equipment standards, training manuals, user manuals, books and catalogues, handbooks, curricula, advertising and marketing material including leaflets, brochures, posters, stickers and flyers, and other material(s) and/or creation(s) irrespective of the medium and format (including inter-alia through a web platform), whether or not registered or capable of registration and all other proprietary rights whatsoever, whether owned by or available to the Seller now or in future, anywhere in the world.

10.3 **“Intellectual Property Rights”** shall mean and include (i) all possible rights, benefits, title or interest in or to the Intellectual Property, anywhere in the world, (whether registered or not and including all applications for the same and any extensions and renewals thereof) including all rights provided by international treaties and conventions, rights of distribution, reproduction and all other exploitation rights, (ii) any goodwill in relation to or in connection with the same, (iii) any licenses, permissions and grants in connection therewith; (iv) applications for any of the foregoing and the right to apply for them in any part of the world, (v) the right to obtain and hold appropriate registrations for any of the foregoing, (vi) causes of action in the past, present or future, related thereto including the rights to damages and profits, due or accrued, arising out of past, present or future infringements or violations thereof and the right to sue for and recover the same.

10.4 Seller retains all right, title and interest in any pre-existing intellectual property which may be used in performing the Services, including any modifications or improvements made during the performance of the Services (Seller Property). To the extent Consultant Property is embodied in any deliverable, Consultant grants Customer a worldwide, non-exclusive, royalty-free, perpetual, non-sublicensable, license to use Consultant Property for Customer’s general business purpose solely with respect to such deliverable.

11. Data Protection; Consumer Privacy Laws; Remote Access Support.

11.1 To the extent Seller has access to Customer’s data or devices, Seller may collect, forward, and use Customer’s data for i) fulfilment of these Terms, ii) improvement of Product and Services, and iii) billing or general Customer service purposes. Seller may transfer such data to affiliated companies or third parties commissioned to process data for Seller insofar as it is related to perform or make improvements to Products and Services. Seller will attempt to refrain from disclosing personal information to third parties.

11.2 In order to troubleshoot and diagnose any potential issues with the Product and Services, Customer agrees to allow Seller remote access to Customer’s devices including Customer’s network(s), computers, or servers. If Customer’s site is accessible to Seller via BeyondTrust (Bomgar), Seller will connect and triage Customer’s reported issue remotely.

12. **Term; Termination.** These Terms are effective until all Product is delivered, the Services are complete, or (if applicable) Customer has agreed to the Software as a Service subscription service and the term noted therein, whichever is later. Either Party may terminate these Terms if the other Party breaches any material terms or conditions of these Terms and the breach remains un-cured for thirty (30) calendar days after receipt of written notice of the breach. In addition to the foregoing, Seller may terminate these Terms with advanced written notice of ten (10) calendar days, if the other Party becomes insolvent, enters bankruptcy, reorganization, or other similar proceedings, admits in writing its inability to pay debts, or attempts or makes an assignment for the benefit of creditors.

13. **Force Majeure.** Except for the obligation to pay, neither Party is liable for failure to fulfill its obligations under these Terms due to causes beyond its reasonable control, including but not limited to: (1) war, warlike operations, armed aggression, insurrection, riots; (2) fires, floods, explosions, earthquakes, inclement weather; (3) any acts of a Government, governmental priorities, allocation regulations or orders; (4) acts of God or of the public enemy; (5) failure of or delays in transportation; (6) epidemics, quarantine restrictions, or other similar circumstances; (7) inability to procure materials or parts including unavailability of Original Equipment Manufacturer (“OEM”) parts; and (8) labor troubles causing cessation, slowdown, work stoppage or interruption of work. Seller shall not be liable for failure to fulfill its obligations under these Terms for delays of any type that are caused, in whole or part, by Customer or Customer’s end-user. In the event of such a delay, Seller may invoice Customer for all completed Services. Furthermore, if Customer causes a delay, Seller may stop Services, which may result in a greater day-for-day delay in the completion of Services.

The Party invoking Force Majeure, whether on its own behalf or regarding the ability of the other Party to perform its obligations
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under the Agreement, shall send prompt written notice to the other Party stating the grounds therefor, the date of its or the other Party's inability to perform, and the date of termination of the Agreement. The invoking Party shall thereafter be excused from future performance unless the other Party objects to the asserted Force Majeure in a signed writing to the Party so claiming within ten (10) calendar days of its receipt of said notice. Any deposit or pre-payment made for Services to be performed under the Agreement shall be refunded within ten (10) calendar days of receipt of the notice, prorated for Services satisfactorily performed prior to receipt of the notice, unless a timely challenge is made under this provision. The right to claim Force Majeure under this provision is not exclusive and it may be asserted with, before, or after the assertion of other grounds for termination or cancellation of the Agreement. In the event the Parties cannot resolve the issue of proper assertion of the Force Majeure provision, the Parties may exercise any rights under this Agreement or otherwise available under the law.

14. Governing Law and Dispute Resolution. These Terms are governed by the laws of the State of California, without regard to its choice of law provisions. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply to these Terms.

15. Consumables. "Consumables" include but are not limited to tickets, keycards, gate booms, inks, fabrics, chemicals, filters, bulbs, thermal print heads, batteries, data carriers, wristbands, or generally, any product requiring replacement after use over a non-specific period of time.

15.1 Pricing; Orders. Pricing for Consumables are sold at Seller list price. All purchase orders submitted by Customer will be of no effect unless and to the extent that they are accepted by Seller in its sole discretion and provided they refer expressly to and are subordinate to these Terms. Orders for Consumables may be subject to minimum order values and quantities.

15.2 Printing Documentation. All typesets, printing plates, lithographs, photographically produced films and plates, stamping dye molds, and other means produced by Seller and provided for the production process shall remain the property of Seller. This shall also apply to any means of production provided by a third party on behalf of Seller.

15.3 Quality.

15.3.1 Seller assumes warranty in accordance with these Terms that the delivered Consumable(s) can be processed on Seller compatible equipment in accordance with the relevant product specifications. Warranty is excluded if equipment used is not Seller's or Seller compatible. Due to conditions of production and materials, the color may deviate among the items contained in one delivery or among the items of different deliveries. Press proofs and sample tickets are thus only roughly binding for the indication of the actual colors. Tickets made of plastics are largely inherently stable, break- and tear-proof in ambient temperatures between -4°F (-20°C) and 122°F (50°C).

15.3.2 All details given in 15.3.1 shall apply to a statistic reliability of ninety-five (95%) percent. Seller shall not be liable for any consequences of improper storage of Consumables by Customer and recommends storage in original packaging, at a temperature between 41°F (5°C) and 77°F (25°C), and a maximum relative humidity of sixty (60%) percent.

15.4 Delivery. Delivery shall be at the Customer's risk and expense to the address stated for delivery in the order confirmation. If the Customer did not state an address for delivery, the invoice address shall be the address for delivery. The Customer must accept excess deliveries or short deliveries of up to ten (10%) percent of the ordered Consumable(s). Seller reserves the right to effect partial deliveries of Consumables in case of production limitations. Seller shall not be liable for any printing or design errors which the Customer released with the approved proofs, nor may the Customer change any orders accepted as a Customer-specific custom production order after order confirmation from Seller.

15.5 Warranty.

15.5.1 Seller assumes warranty for the execution of the order in accordance with its specifications for a period of six (6) months after the date of delivery. Such warranty shall be fulfilled by rectification or new delivery of the goods. In case of purely optical defects not affecting the functionality or in case of quantitative defects, Seller shall be entitled, at its discretion, to rectify such defect by granting a reasonable price discount. These shall be Customer's sole remedy for warranty claims as it pertains to Consumables and further claims are excluded.

15.5.2 Customer must notify Seller in writing of any defective Consumable within seven (7) days of receipt, enclosing a sample of the item complained about and a detailed description of the defect. Complaints about any printing errors or delivery quantity are to be reported in writing within twenty (21) days after receiving the Consumable. The Customer must keep the goods in respect of which it sent a notification of defect until settlement of the issue and the Customer must hand over such goods to Seller upon request. Any claim for new delivery shall only arise concurrently and only to the extent the defective goods are re- turned. Replaced

goods shall become the property of Seller.

15.5.3 Seller shall not assume any liability for defects unless the Customer accounts are current and paid to date. Any replacement deliveries shall be bound by these same Terms. The Customer must accept delayed deliveries unless the transaction included a written agreement for delivery by a fixed date.

15.6 Liability.

15.6.1 AS IT PERTAINS TO CONSUMABLES, EXCLUDING CLAIMS FOR PERSONAL INJURY, DEATH, CONTRACTUALLY AGREED UPON AMOUNTS DUE HEREUNDER, AND INDEMNIFICATION OBLIGATIONS UNDER THESE TERMS, Seller WILL NOT BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF REVENUE OR INCOME, LOSS OF OR USE OF DATA, OPERATIONAL EFFICIENCY, LOSS OF CUSTOMERS OR INFORMATION, ARISING UNDER THESE TERMS REGARDLESS OF THE FORM OF ACTION OR THEORY OF RELIEF, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHERMORE, ANY LIABILITY FOR DIRECT DAMAGES ARISING UNDER THESE TERMS, REGARDLESS OF THE FORM OF ACTION OR THEORY OF RELIEF, IS LIMITED TO THE PURCHASE PRICE OF THE CONSUMABLE GIVING RISE TO THE CLAIM.

15.6.2 Seller shall not be liable for any criminal or other illegal acts committed by third parties, such as acts of piracy, the copying, reproduction, modification, or other manipulation of Consumables, for parts or components of Consumables, such as for example chips, which are produced by third parties and manufactured into Consumables provided that usage of such parts or components is commonly accepted on the market, or for tickets, keycards, or data carriers being produced or sold by third parties.

15.7 Copyright & Right of Reproduction.

15.7.1 To the extent Seller is the Customer of any copyrights to drafts, versions, ordered printing products or any parts thereof, the Customer - upon payment and acceptance of the delivery - shall only acquire the right to distribute the delivered products in accordance with the Copyright Act. Any other rights, in particular the right of reproduction, shall remain with Seller. Seller also has the exclusive right to use produced copying means (setting, films, etc.) and printing products to produce items for copying.

15.7.2 If the Customer provides lithographs, print layouts, writings or fonts of any kind, the Customer must, before placing the order with Seller and at its own risk and expense, ensure that Seller may legally use these items for production, copying and distribution purposes in agreement with the copyright holders, if any, and the Customer shall expressly authorize Seller to execute the order and assures Seller that there is no need to contact copyright holders, if any. The Customer expressly indemnifies and holds Seller harmless in respect of any claims or proceedings. Seller will immediately inform the Customer of any claims made against Seller by any third party with respect to copyright, and in case the matter is taken to court, Seller will serve a third-party notice on the Customer. If the Customer fails to join the proceedings as Seller's joined defendant upon such third-party notice, Seller shall be entitled to recognize the claimant's claim and to demand compensation from the Customer irrespective of whether such recognized claim was legitimate or not.

15.7.3 Except as otherwise provided by law, Consumables may only be used for the business purposes envisioned under these Terms and not for resale. Seller reserves the right to refuse Customer's orders for Consumables if it reasonably believes the Customer is reselling Consumables. Any credible evidence of the resale of Consumables by Customer shall be deemed to be a material breach of these Terms.

16. Miscellaneous.

16.1 Confidentiality.

16.1.1 Parties may provide information or data that it considers private, proprietary, competition-sensitive or confidential in order to satisfy the requirements of these Terms. A party disclosing Proprietary Information is a "**Disclosing Party**," while a party receiving Proprietary Information is a "**Receiving Party**."

16.1.2 "**Proprietary Information**", as used herein, shall mean any and all information, written, oral, electronically transmitted, graphic or in other form, that is provided and exchanged in consideration of current or future business opportunities, whether or not stamped or otherwise designated as confidential, and whether or not proprietary, conceptual or reduced to specific practices (which information shall include but not be limited to that relating to programs, marketing plans, finances, pricing, operations, personnel, products, processes, machines, compositions, inventions and discoveries). In addition, any prices or customized conditions of these Terms shall be considered Proprietary Information. Information shall not be deemed Proprietary Information, and receiving party shall have no obligation with respect to any such information, which:

- 16.1.2.1 is or becomes publicly known through no wrongful act of the receiving party; or
 - 16.1.2.2 is rightfully received by the receiving party from a third party without restriction and without breach of these Terms; or
 - 16.1.2.3 is disclosed by the disclosing party to the third party without a similar restriction on the rights of such third party; or
 - 16.1.2.4 is approved for release by written authorization of the disclosing party; or
 - 16.1.2.5 is disclosed, in any event, after the expiration of ten (10) years from the date when such Proprietary Information was delivered.
- 16.1.3 Use of Proprietary Information by receiving party shall be limited to the purposes contemplated by these Terms. Receiving party shall protect the Proprietary Information received under these Terms with the same degree of care as it takes to preserve and safeguard its own proprietary information provided such degree of care is reasonably calculated to prevent such inadvertent disclosure.
- 16.1.4 Receiving party agrees that if receiving party uses the Proprietary Information contrary to the terms of this Section, disclosing party, in addition to all other remedies available to it, shall have the right to equitable relief, restraining or enjoining receiving party from using any Proprietary Information in violation of the terms and conditions of this section and to recover from receiving party reasonable costs in enforcing this section, including reasonable attorneys' fees.
- 16.1.5 Neither the execution and delivery of these Terms nor the delivery of any Proprietary Information hereunder shall be construed as granting either expressly or by implication, estoppel, or otherwise, any rights in or license to the Confidential or Proprietary Information not explicitly set forth herein.
- 16.1.6 Notwithstanding the foregoing, Proprietary Information may be disclosed upon the written consent of disclosing party, or pursuant to valid legal orders or governmental regulations or in connection with an action or proceeding brought to enforce or interpret these Terms.
- 16.1.7 Notwithstanding the foregoing, Customer and Seller agree that they will prepare mutually acceptable communications in relation to the execution of these Terms and/or the launch of the Seller services, to be released at a mutually agreed date. Both parties agree to provide a quote from a senior executive and description of the solution in written or video form as agreed. Customer grants to Seller and its affiliates a non-exclusive, worldwide, royalty-free right and license to use Customer's company and/or service names and logos to identify Customer as a Seller Customer.
- 16.2 Entire Agreement. These Terms constitute the entire understanding between the parties regarding the purchase of Products or Services from Seller and supersedes and replaces any previous communications, representations or Terms, written or oral.
- 16.3 Conflicting Terms. These Terms takes precedence over any terms and conditions in a purchase order or other ordering document from Customer. The sale or order of any Product or Services is expressly conditioned on Customer's assent to the terms of these Terms. Any other additional or inconsistent terms or conditions in a purchase order or course of dealings between the Parties or usage of trade are expressly disclaimed and rejected.
- 16.4 Assignment. Except for those transferable warranties, neither Party may assign these Terms or any of its rights or obligations without the prior written consent of the other Party, unless a Party is subject to a change in Customership of more than fifty percent of its voting rights or any controlling interest in which case, advanced written notice is required to the other Party. These Terms bind and benefit the Parties and their respective successors and assigns. Subject to the restrictions in assignment contained in these Terms, these Terms will be binding on and inure to the benefit of the parties and their successors and assigns.
- 16.5 Amendment. No provision of these Terms may be waived, amended, or modified by either party except by a written amendment signed by both Customer and Seller.
- 16.6 Waiver. Any delay or failure by either party to exercise any right or remedy will not constitute a waiver of that party to enforce its rights.
- 16.7 Survivability. The terms and conditions of these Terms which by sense and content are intended to survive, including payment, warranties and disclaimers, confidentiality, indemnification, and limitation of liability, shall survive the expiration or termination of these Terms. If any part of these Terms are found by a court of competent jurisdiction



to be invalid, illegal or unenforceable, all other parts will remain in effect.

16.8 Contra Proferentem. Each Party acknowledges that it has been represented by counsel under these Terms. Accordingly, any rule of applicable law or any legal decision that would require interpretation of any claimed ambiguities in these Terms against the drafting party has no application and is expressly waived.

16.9 Interpretation. Headings in these Terms are for reference purposes only and are not to be interpreted as being part of these Terms.

16.10 Subcontracting. Seller has the right to subcontract any other Services to any subSeller that has the requisite skill and expertise to complete the work. In such situations, Seller will pass through to Customer all available warranties and use commercially reasonable efforts to assist Customer in administering any warranty claim. If Customer requires Customer's choice of subSeller, Customer will: (1) contract directly with them; (2) verify provision of adequate insurances of the types and values Seller requires, and (3) indemnify Seller from and against any claim or allegation that arises from Customer's subSeller's performance of services or presence in Seller's facility.

16.11 Attorney's Fees. In the event of any litigation, arbitration or any judicial proceeding arising as a result of the breach of these Terms, the party prevailing in such litigation or judicial proceeding shall be entitled to collect the costs and expenses of bringing or defending such litigation or proceeding, including reasonable attorneys' fees, from the party or parties not prevailing.

16.12 Counterparts. These Terms may be executed in one or more counterparts, each of which will be considered an original but altogether constitute the same instrument. Acceptance of these Terms may be made in electronic form showing the signatures of both parties. The Parties agree that electronic signatures may be used and will be legally valid, effective, and enforceable.

Exhibit B

INSURANCE REQUIREMENTS Service Agreement between City of Fresno (City) and SKIDATA (Service Provider)

Point of Sale Equipment Upgrades and Software as a Service (SaaS)

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for “bodily injury,” “property damage” and “personal and advertising injury” with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under “Minimum Limits of Insurance.”
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.
4. Cyber Liability (Privacy and Data breach) insurance appropriate to SERVICE PROVIDER’S profession. Coverage shall be sufficiently broad to respond to duties and obligations as is undertaken by SERVICE PROVIDER in this agreement and shall include but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of 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 penalties and credit monitoring expenses with limits sufficient to respond to these obligations.

MINIMUM LIMITS OF INSURANCE

SERVICE PROVIDER, or any party the SERVICE PROVIDER subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance

limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. COMMERCIAL GENERAL LIABILITY:

- (i) \$1,000,000 per occurrence for bodily injury and property damage;
- (ii) \$1,000,000 per occurrence for personal and advertising injury;
- (iii) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. COMMERCIAL AUTOMOBILE LIABILITY:

\$1,000,000 per accident for bodily injury and property damage.

3. WORKERS' COMPENSATION INSURANCE as required by the State of California with statutory limits.

4. EMPLOYER'S LIABILITY:

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

5. CYBER LIABILITY insurance with limits of not less than:

- (i) \$2,000,000 per claim/occurrence; and,
- (ii) \$4,000,000 policy aggregate

UMBRELLA OR EXCESS INSURANCE

In the event SERVICE PROVIDER purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary

and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

SERVICE PROVIDER shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and SERVICE PROVIDER shall also be responsible for payment of any self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. Additional Insured status under the General Liability policy shall be broad as that contained in ISO Form CG 20 10 04 13 or CG 20 26 04 13.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, SERVICE PROVIDER'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of SERVICE PROVIDER'S insurance and shall not contribute with it. SERVICE PROVIDER shall establish primary and non-contributory status under the General Liability policy by use of ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non contributory status as broad as that contained in ISO Form CG 20 01 04 13.

All policies of insurance shall contain, or be endorsed to contain, the following provision: SERVICE PROVIDER and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. SERVICE PROVIDER is also responsible for providing written notice to

the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, SERVICE PROVIDER shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, SERVICE PROVIDER shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

The Cyber Liability insurance shall cover claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information (including credit monitoring costs), alteration of electronic information, extortion and network security. Such coverage is required for claims involving any professional services for which SERVICE PROVIDER is engaged with the City for such length of time as necessary to cover any and all claims

If the Cyber Liability insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by SERVICE PROVIDER.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by SERVICE PROVIDER, SERVICE PROVIDER must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to CITY for review.
5. These requirements shall survive expiration or termination of the Agreement.

Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

The fact that insurance is obtained by SERVICE PROVIDER shall not be deemed to release or diminish the liability of SERVICE PROVIDER, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as

a limitation upon the amount of indemnification to be provided by SERVICE PROVIDER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of SERVICE PROVIDER, its principals, officers, agents, employees, persons under the supervision of SERVICE PROVIDER, vendors, suppliers, invitees, consultants, subcontractors, or anyone employed directly or indirectly by any of them.

VERIFICATION OF COVERAGE

SERVICE PROVIDER shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, SERVICE PROVIDER shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

SUBCONTRACTORS


If SERVICE PROVIDER subcontracts any or all of the services to be performed under this Agreement, SERVICE PROVIDER shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, SERVICE PROVIDER will be solely responsible for ensuring that it's subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

EXHIBIT C
DISCLOSURE OF CONFLICT OF INTEREST

Point of Sale Equipment Upgrades and Software as a Service (SaaS)

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are you or any of your principals, managers, or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are you or any of your principals, managers, or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: N/A

DocuSigned by: _____

DAVID LUKEN
 Chief Executive Officer
 SKIDATA, INC.
 195F85F230114B2...
 Signature

8/6/2024
 Date
 David Luken
 Name
 SKIDATA
 Company
 5090 N 40th st
 Address
 Phoenix, AZ 85018
 City, State, Zip

Additional page(s) attached.