

**EXHIBIT**  
**"A"**

**CITY OF ROUND ROCK AGREEMENT FOR  
PURCHASE OF RECREATION MANAGEMENT SOFTWARE SERVICES  
WITH  
REC TRAC LLC  
DBA "VERMONT SYSTEMS"**

**THE STATE OF TEXAS** §  
**CITY OF ROUND ROCK** § **KNOW ALL BY THESE PRESENTS:**  
**COUNTY OF WILLIAMSON** §  
**COUNTY OF TRAVIS** §

THAT THIS AGREEMENT for the purchase of recreation management software (referred to herein as the "Agreement"), is made and entered into on this the \_\_\_\_ day of the month of \_\_\_\_\_, 2022 by and between the CITY OF ROUND ROCK, a Texas home-rule municipality, whose offices are located at 221 East Main Street, Round Rock, Texas 78664-5299 (referred to herein as the "City"), and REC TRAC LLC dba "VERMONT SYSTEMS", whose offices are located at 12 Market Place, Essex Junction, Vermont 05452 (referred to herein as "Services Provider").

**RECITALS:**

**WHEREAS**, City desires to purchase recreation management software; and

**WHEREAS**, City issued a Request for Proposal (RFP No. 22-008) in December 2021 for said services; and

**WHEREAS**, based on the Services Provider's proposal submitted in response to RFP No. 22-008, City desires to award said services to Services Provider as set forth herein; and

**WHEREAS**, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the parties as follows:

**1.01 DEFINITIONS**

A. **Agreement** means the binding legal contract between City and Services Provider whereby City is obligated to buy specified services and Services Provider is obligated to provide said services. The Agreement includes the City's RFP No. 22-008 dated December 2021 and the

Service Provider's Proposal and Best and Final Offer dated May 20, 2022, both documents attached as Exhibit "A" and incorporated herein by reference for all purposes.

B. **City** means the City of Round Rock, Williamson and Travis Counties, Texas.

C. **Effective Date** means the date upon which the binding signatures of both parties to this Agreement are affixed.

D. **Force Majeure** means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind from the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, restraint of the government and the people, civil disturbances, explosions, or other causes not reasonably within the control of the party claiming such inability.

E. **Goods** mean the specified supplies, materials, commodities, or equipment.

F. **Services** mean work performed to meet a demand or effort by Services Provider to comply with promised delivery dates, specifications, and technical assistance specified.

## **2.01 EFFECTIVE DATE AND TERM**

A. This Agreement shall be effective on the date this Agreement has been signed by each party hereto and shall remain in full force and effect unless and until it expires by operation of the term indicated herein or is terminated or extended as provided herein.

B. The term of this Agreement shall be for sixty (60) months commencing on the effective date of the Agreement.

C. City reserves the right to review the relationship with Services Provider at any time and may elect to terminate this Agreement as set forth in Section 16.01.

## **3.01 CONTRACT DOCUMENTS AND EXHIBITS**

The exhibits set forth below, together with this Agreement, comprise the total Agreement. The following exhibits are attached hereto and incorporated herein by reference for all purposes:

Exhibit "A" – RFP No. 22-008 and Best and Final Offer dated May 20, 2022

Exhibit "B" – PayTrac Payment Processing Addendum

Exhibit "C" – PayTrac Payment Processing Terms and Conditions

Exhibit "D" – PayTrac Sub Merchant Account Application (SMAA)

Exhibit "E" – Triparty WorldPay Services Agreement

Exhibit "F" – VS Software Support SLA

Exhibit "G" – Hosting Services Addendum

Exhibit "H" – VS Hosting Services SLA – Standard Level  
Exhibit "I" – Certificate of Insurance

In the event any of the exhibits conflict with the terms and conditions set forth in pages one (1) through eleven (11) of this Agreement, the terms and conditions set form in pages one (1) through eleven (11) shall control.

#### **4.01 SCOPE OF WORK**

Services Provider shall satisfactorily provide all services described under the attached Exhibit "A." Services Provider's undertakings shall be limited to performing services for the City and/or advising City concerning those matters on which Services Provider has been specifically engaged. Services Provider shall perform its services in accordance with this Agreement, in accordance with the appended exhibit, in accordance with due care, and in accordance with prevailing industry standards for comparable services.

#### **5.01 CONTRACT AMOUNT**

A. In consideration for the goods and related services set forth in Exhibit "A," City agrees to pay Services Provider in the following manner as set forth in Exhibit "A," Attachment E – Cost Proposal:

- |                             |   |
|-----------------------------|---|
| 1) Implementation Fees:     | \$22,775.00 (includes all negotiated data migration services and training fees) |
| 2) Hardware Fees:           | \$10,922.00   |
| 3) Annual Maintenance Fees: | \$34,884.00 per year totaling   |
| 4) Credit Card Fees:        | Estimated at \$70,460.00 per year   |

B. The total costs payable to Services Provider for the term of the Agreement shall not exceed **Five Hundred Sixty Thousand Four Hundred Seventeen and No/100 (\$560,417.00)**.

C. Services Providers prices shall remain firm throughout the initial twelve (12) months of the term of the Agreement. A price increase to the Agreement may be considered on the anniversary date of the Agreement each year and shall be equal to the consumer price index for that year, but at no time can the increase be greater than five percent (5%) for any single line item. Request for price increases shall be made in accordance with Part III, Supplemental Terms and Conditions, Section 6 of the Request for Proposal (No. 22-008) attached hereto as Exhibit "A."

#### **6.01 INVOICES**

All invoices shall include, at a minimum, the following information:

- A. Name and address of Services Provider;
- B. Purchase Order Number;
- C. Description and quantity of items received or services provided; and
- D. Delivery or performance dates.

#### **7.01 NON-APPROPRIATION AND FISCAL FUNDING**

This Agreement is a commitment of City's current revenues only. It is understood and agreed that City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of City does not appropriate funds sufficient to purchase the services as determined by City's budget for the fiscal year in question. City may affect such termination by giving Services Provider a written notice of termination at the end of its then current fiscal year.

#### **8.01 PROMPT PAYMENT POLICY**

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, payment to Services Provider will be made within thirty (30) days of the day on which City receives the performance, supplies, materials, equipment, and/or deliverables, or within thirty (30) days of the day on which the performance of services was complete, or within thirty (30) days of the day on which City receives a correct invoice for the performance and/or deliverables or services, whichever is later. Services Provider may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b); however, this Policy does not apply to payments made by City in the event:

- A. There is a bona fide dispute between City and Services Provider, a contractor, subcontractor or supplier about the goods delivered or the service performed that cause the payment to be late; or
- B. The terms of a federal contract, grant, regulation, or statute prevent City from making a timely payment with federal funds; or
- C. There is a bona fide dispute between Services Provider and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late; or
- D. Invoices are not mailed to City in strict accordance with instructions, if any, on the purchase order or the Agreement or other such contractual agreement.

**9.01 GRATUITIES AND BRIBES**

City may, by written notice to Services Provider, cancel this Agreement without liability to Services Provider if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Services Provider or its agents or representatives to any City officer, employee or elected representative with respect to the performance of this Agreement. In addition, Services Provider may be subject to penalties stated in Title 8 of the Texas Penal Code.

**10.01 TAXES**

City is exempt from Federal Excise and State Sales Tax; therefore, tax shall not be included in Services Provider’s charges.

**11.01 ORDERS PLACED WITH ALTERNATE SERVICES PROVIDERS**

If Services Provider cannot provide the goods as specified, City reserves the right and option to obtain the products from another supplier or suppliers

**12.01 CITY’S REPRESENTATIVE**

City hereby designates the following representative authorized to act in its behalf with regard to this Agreement:

David Buzzell  
Assistant PARD Director  
301 West Bagdad Avenue, Suite 250  
Round Rock, Texas 78664  
(512) 218-5540  
[dbuzzell@roundrocktexas.gov](mailto:dbuzzell@roundrocktexas.gov)

**13.01 INSURANCE**

Services Provider shall meet all City of Round Rock Insurance Requirements as set forth at in the attached Certificate of Insurance (Exhibit “I”).

**14.01 RIGHT TO ASSURANCE**

Whenever either party to this Agreement, in good faith, has reason to question the other party’s intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure as an anticipatory repudiation of this Agreement.

## **15.01 DEFAULT**

If Services Provider abandons or defaults under this Agreement and is a cause of City purchasing the specified goods elsewhere, Services Provider agrees that it may be charged the difference in cost, if any, and that it will not be considered in the re-advertisement of the service and that it may not be considered in future bids for the same type of work unless the scope of work is significantly changed.

Services Provider shall be declared in default of this Agreement if it does any of the following:

- A. Fails to fully, timely and faithfully perform any of its material obligations under this Agreement;
- B. Fails to provide adequate assurance of performance under the "Right to Assurance" section herein; or
- C. Becomes insolvent or seeks relief under the bankruptcy laws of the United States.

## **16.01 TERMINATION AND SUSPENSION**

A. Parties have the right to terminate for cause (a) upon thirty (30) days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period; (b) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors; or (c) if the other party dissolves or ceases to do business in the ordinary course. In the event Services Provider terminates the Agreement for cause under this subsection (A), City shall be liable for any fees covering the remainder of the twelve-month period. For illustrative purposes, if Services Provider terminates the Agreement for cause in the 18<sup>th</sup> month of the Agreement, City shall be liable for any fees due through the twenty-fourth month of the Agreement.

B. Parties have the right to terminate this Agreement for convenience and without cause after the initial twelve month period of the term of the Agreement upon thirty (30) days written notice to the other party.

C. In the event City terminates under subsections (A) or (B) of this section, the following shall apply: Upon City's delivery of the referenced notice to Services Provider, Services Provider shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after such notice of termination, Services Provider shall submit a statement showing in detail the goods and/or services satisfactorily performed under this Agreement to the date of termination. City shall then pay Services Provider that portion of the charges, if undisputed. The parties agree that Services Provider is not entitled to compensation for services it would have performed under the remaining term of the Agreement except as provided herein.

## 17.01 INDEMNITIES

A. Services Provider's Indemnity Obligations. Subject to the indemnification conditions described in the "Indemnification Conditions" section below, Services Provider shall defend, indemnify and hold the City harmless, at Service Provider's expense, against any third party claim made against the City during the term of this Agreement, to the extent the claim alleges that (a) Services Provider's system or services directly infringe on the third party's patent, copyright or trademark; or (b) Services Provider has misappropriated the third party's trade secret ("Infringement Claim"). Services Provider shall pay any damages finally awarded by a court of competent jurisdiction (or settlement amounts agreed to by Services Provider in writing). In the defense or settlement of any Infringement Claim, Services Provider may at its sole option and expense: (i) procure for City a license to continue using Service Provider's system or services, or the allegedly infringing component or feature thereof, under the terms of this Agreement; (ii) replace or modify the allegedly infringing system or services, or the allegedly infringing component or feature thereof, to avoid the infringement; or (iii) where (i) or (ii) are not reasonable or commercially feasible, terminate your license and access to the system and/or services (or its infringing part) and issue you a refund for any prepaid fees related to the loss of such services. Notwithstanding the foregoing, Services Provider shall have no liability for any infringement claim that arises from any: (A) use of the Services Provider's system or services in violation of the Agreement; (B) modification of Services Provider's system or services by the City or any third party acting on the City's behalf; or (C) third party products, services, hardware, software or other materials, or combination of these with Services Provider's system or services, if the system or services would not be infringing without this combination.

B. City Indemnity Obligations. Subject to the indemnification conditions described in the "Indemnification Conditions" section below, City shall defend, indemnify and hold Services Provider and its team harmless for any claim, including reasonable attorneys' fees, to the fullest extent permitted by law, that results, directly or indirectly, from: (a) the City's customer data; (b) the City's breach of the Agreement, including and without limitation, the City's violation of the "License Restrictions" described below; (c) the City's infringement on the intellectual property rights of a third party; or (d) any other indemnifiable event as provided in this Agreement.

C. Indemnification Conditions. The indemnifying party, whether City or Services Provider, shall have no liability for any claim that arises from any failure of the indemnified party to : (a) notify the indemnifying party in writing of the claim promptly upon the earlier of learning or receiving notice of it., to the extent that the indemnified party is prejudiced by this failure; (b) provide the indemnifying party with reasonable assistance requested by the indemnifying party for the defense or settlement (as applicable) of the claim; (c) provide the indemnifying party with the exclusive right to control and the authority to settle the claim; or (d) refrain from making admissions or statements about the claim without the indemnifying party's prior written consent.

D. Sole and Exclusive Remedy. The remedies in this "Indemnities" section are, in addition to any termination or suspension remedies expressly set forth in this Agreement, the indemnified party's sole and exclusive remedies and the indemnifying party's sole liability

regarding the subject matter giving rise to any claim, including any claims regarding confidentiality obligations involving customer data and customer content that may arise from an incident resulting in a data breach.

E. License Restriction. Except to the extent expressly permitted by this Agreement, City agrees, as a condition of the license, that City is restricted from and must not:

- (a) use services (i) in violation of applicable law or regulations (including where applicable ADA, COPPA, CAN-SPAM, TCPA, of the Do-Not-Call Implementation Act), or in connection with such unlawful material (such as material that violates any obscenity, defamation, harassment, privacy, publicity, or intellectual property laws); or (ii) in a manner that would cause a material risk to the security or operation of the system or to any of Service Provider's other customers;
- (b) copy, distribute, republish, download, display, sell, rent, lease, host or sub-license the services;
- (c) intentionally try to bypass a security mechanism of the system, or intentionally transmit material which contains viruses, Trojan horses, worms or some other harmful computer program;
- (d) attempt to interact with the operating system or networks underlying the system or modify, create derivative works of, adapt, translate, reverse-engineer, decompile, or otherwise attempt to discover the underlying technology of the system, the source code, data representations, or underlying algorithms, processes and methods;
- (e) remove, obscure, or alter any proprietary notices associated with the system or services;
- (f) use of any software components, modules or other services that may be delivered with the services but which are not licensed to the City and identified in this Agreement;
- (g) send unsolicited advertising, marketing or promotional materials, whether by email or text, without the recipient's legally-valid consent; or
- (h) violate this Agreement.

Services Provider reserves the right to immediately suspend or discontinue services, or the City's access to the system, where Services Provider has reason believe the City is acting in violation of this section.



## **18.01 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES**

A. Services Provider, its agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

B. In accordance with Chapter 2271, Texas Government Code, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel and will not boycott Israel during the term of this contract. The signatory executing this Agreement on behalf of Services Provider verifies Services Provider does not boycott Israel and will not boycott Israel during the term of this Agreement.

C. In accordance with 2274, Texas Government Code, a governmental entity may not enter into a contract with a company with at least ten (10) full-time employees for a value of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) unless the contract has provision in the contract verifying that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The signatory executing this Agreement on behalf of Services Provider verifies Services Provider does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

D. In accordance with 2274, Texas Government Code, a governmental entity may not enter into a contract with a company with at least ten (10) full-time employees for a value of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) unless the contract has provision in the contract verifying that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of this Agreement. The signatory executing this Agreement on behalf of Services Provider verifies Services Provider does not boycott energy companies, and it will not boycott energy companies during the term of this Agreement.

## **19.01 ASSIGNMENT AND DELEGATION**

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without prior written authorization of the other party.

## **20.01 NOTICES**

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

1. When delivered personally to the recipient's address as stated in this Agreement;  
or

2. Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

**Notice to Services Provider:**

RecTrac LLC  
12 Market Place  
Essex Junction, Vermont 05452

**Notice to City:**

City Manager		Stephan L. Sheets, City Attorney
221 East Main Street	AND TO:	309 East Main Street
Round Rock, TX 78664		Round Rock, TX 78664

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and Services Provider.

**21.01 APPLICABLE LAW; ENFORCEMENT AND VENUE**

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

**22.01 EXCLUSIVE AGREEMENT**

This document, and all appended documents, constitutes the entire Agreement between Services Provider and City. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing, duly authorized by action of the City Manager or City Council.

**23.01 DISPUTE RESOLUTION**

City and Services Provider hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

**24.01 SEVERABILITY**

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement

shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

## **25.01 MISCELLANEOUS PROVISIONS**

**Standard of Care.** Services Provider represents that it employs trained, experienced and competent persons to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed in a manner according to generally accepted industry practices.

**Time is of the Essence.** Services Provider understands and agrees that time is of the essence and that any failure of Services Provider to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement. Services Provider shall be fully responsible for its delays or for failures to use best efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Services Provider's failure to perform in these circumstances, City may pursue any remedy available without waiver of any of City's additional legal rights or remedies.

**Force Majeure.** Neither City nor Services Provider shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely given and all reasonable efforts undertaken to mitigate its effects.

**Multiple Counterparts.** This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.


[Signatures on the following page.]

IN WITNESS WHEREOF, City and Services Provider have executed this Agreement on the dates indicated.

**City of Round Rock, Texas**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

**RecTrac LLC dba "Vermont Systems"**

By:   
Printed Name: Patrick Hayden  
Title: President  
Date Signed: 08/08/2022

**Attest:**

By: \_\_\_\_\_  
Meagan Spinks, City Clerk

**For City, Approved as to Form:**

By: \_\_\_\_\_  
Stephan L. Sheets, City Attorney

Exhibit "A"



**City of Round Rock, Texas**  
**Purchasing Division**  
221 East Main Street  
Round Rock, Texas 78664-5299  
[www.roundrocktexas.gov](http://www.roundrocktexas.gov)

**REQUEST FOR PROPOSAL (RFP)**

**RECREATION MANAGEMENT SOFTWARE**

**SOLICITATION NUMBER 22-008**

**DECEMBER 2021**

## Exhibit "A"

### RECREATION MANAGEMENT SOFTWARE PART I GENERAL REQUIREMENTS

1. **PURPOSE:** The City of Round Rock, herein after “the City” seeks proposals from firms experienced in supplying, implementing, and supporting a complete, cloud-based recreation management software solution for the City’s Parks and Recreation Department (PARC). The proposed solutions should include on-going maintenance, support, training, and any associated hardware (payment processors, card scanners, etc.) excluding computers needed to operate the software.
  
2. **BACKGROUND:** The Parks and Recreation Department currently operates three (3) in-person registration locations: PARC Main Office, Clay Madsen Recreation Center (CMRC), Allen R. Baca Center (BACA), an online registration site, and temporary remote registration sites set up for events. PARC has two program seasons: 1) Fall/Winter/Spring, which opens for registration the first Tuesday in August and 2) Summer, which opens for registration the first Tuesday in March. The first day of summer program registration is generally when the department sees its largest one-day registration and revenue totals.
  
3. **SOLICITATION PACKET:** This solicitation packet is comprised of the following:

Description	Index
Part I – General Requirements	Page(s) 2-5
Part II – Definitions, Standard Terms and Conditions and Insurance Requirements	Page 6
Part III – Supplemental Terms and Conditions	Page(s) 7-9
Part IV – Scope of Work	Page(s) 10-14
Part V – Proposal Preparation Instructions and Evaluation Factors	Page(s) 15-18
Attachment A – Proposal Submittal Form and Execution	Page 19
Attachment B – Reference Sheet	Page 20
Attachment C – Subcontractor Information Form	Page 21
Attachment D – Mandatory and Desired Software and Module Checklist	Page 22-26
Attachment E – Cost Proposal Sheet	Separate Attachment

4. **AUTHORIZED PURCHASING CONTACTS:** For questions or clarification of specifications, you may contact:

**Adam Gagnon**  
 Purchaser  
 Purchasing Division  
 City of Round Rock  
 Phone: 512-218-5456  
 E-mail: [agagnon@roundrocktexas.gov](mailto:agagnon@roundrocktexas.gov)

**Allen Reich**  
 Purchaser  
 Purchasing Division  
 City of Round Rock  
 Phone: 512-218-6682  
 E-mail: [areich@roundrocktexas.gov](mailto:areich@roundrocktexas.gov)

**Exhibit "A"**

The individuals listed above are the only authorized City contacts for this solicitation. The authorized purchasing contacts may be contacted by e-mail for clarification for this solicitation including specifications. No other City employee or representative may be contacted about this solicitation prior to contract approval. No authority is intended or implied that specifications may be amended, or alterations accepted prior to solicitation opening without written approval of the City of Round Rock through the Purchasing Department.

**5. SCHEDULE OF EVENTS:** It is the City's intention to follow the solicitation timeline below.

EVENT	DATE
Solicitation released	December 9, 2021
Deadline for submission of questions	December 28, 2021 @ 5:00 PM, CST
City responses to questions or addendums	Approx. January 4, 2021 @ 5:00 PM, CST
<b>Deadline for submission of responses</b>	<b>January 20, 2022 @ 3:00 PM, CST</b>

All questions regarding the solicitation shall be submitted in writing by 5:00 PM, CST on the due date noted above. A copy of all the questions submitted and the City's response to the questions shall be posted on the City's webpage in the form of an addendum at:  
<https://www.roundrocktexas.gov/city-businesses/solicitations/>

Questions shall be submitted in writing to the "Authorized Purchasing Contact". The City reserves the right to modify these dates. Notice of date change will be posted to the City's website:  
<https://www.roundrocktexas.gov/city-businesses/solicitations/>

**6. SOLICITATION UPDATES:** Respondents shall be responsible for monitoring the City's website at <https://www.roundrocktexas.gov/city-businesses/solicitations/> for any updates pertaining to the solicitation described herein. Various updates may include addendums, cancellations, notifications, and any other pertinent information necessary for the submission of a correct and accurate response. The City will not be held responsible for any further communication beyond updating the website.

**7. RESPONSE DUE DATE:** Signed and sealed responses are due at or before 3:00 PM, on the due date noted in PART I, Section 5 – Schedule of Events. Mail or hand deliver sealed responses to:

**City of Round Rock  
 Attn: Adam Gagnon  
 Purchasing Division  
 221 E. Main Street  
 Round Rock, Texas 78664-5299**

- A. Sealed responses shall be clearly marked on the outside of packaging with the RFP Solicitation title, number, due date and "DO NOT OPEN".
- B. Facsimile or electronically transmitted responses are not acceptable.
- C. Responses cannot be altered or amended after opening.
- D. No response can be withdrawn after opening without written approval from the City for an acceptable reason.
- E. The City will not be bound by any oral statement or offer made contrary to the written proposal.
- F. Samples and/or copies shall be provided at the Respondent's expense and shall become the property of the City.
- G. Receipt of all addenda to this RFP must be acknowledged, signed, and included with the proposal response.
- H. Late Proposal(s) will not be considered under any circumstances and will be returned unopened if a return address is provided.

## Exhibit "A"

8. **RESPONDENT REQUIREMENTS:** The City of Round Rock makes no warranty that this checklist is a full comprehensive listing of every requirement specified in the solicitation. This list is only a tool to assist participating Respondents in compiling their final responses. Respondents are encouraged to carefully read the entire solicitation.
- A. Respondent shall submit one (1) evident signed "Original" and one (1) identical electronic copy of the RFP response on a flash drive. An electronic signature on the "original" solicitation response is acceptable but any resulting contract shall be signed in ink. The submittal is required to include all addendums and requested attachments. The RFP response along with samples and/or copies shall be provided at the Respondent's expense and shall become the property of the City.
  - B. This request for proposal (RFP) does not commit the City to contract for any supply or service. Respondents are advised that the City will not pay for any administrative costs incurred in response of preparation to this RFP; all costs associated with responding to this RFP will be solely at the interested parties' expense. Not responding to this RFP does not preclude participation in any future RFP/RFQ/IFB.
  - C. **For your RFP submittal to be considered responsive, the attachments identified below shall be submitted with your proposal.**
    - **Addendums:** Addendums may be posted to this solicitation. Respondents are required to submit signed addendums with their sealed response. The Respondent shall be responsible for monitoring the City's website at <https://www.roundrocktexas.gov/city-businesses/solicitations/> for any updates pertaining to the solicitation.
    - **Attachment A: PROPOSAL SUBMITTAL FORM AND EXECUTION:** Failure to complete, sign, and return the proposal submittal form and execution with your offer by the deadline will result in the disqualification of your proposal.
    - **Attachment B: REFERENCE SHEET:** Provide the name, address, telephone number and E-MAIL of at least three (3) valid Municipal, Government agencies or firms of comparable size that have utilized services that are similar in type and capacity within the last two (2) years. City of Round Rock references are not applicable. References may be checked prior to award. If references cannot be confirmed or if any negative responses are received it may result in the disqualification of submittal.
    - **Attachment C: SUBCONTRACTOR INFORMATION FORM:** Provide a signed copy of the Subcontractor Information Form.
    - **Attachment D: MANDATORY AND DESIRED SOFTWARE AND MODULE CHECKLIST:** Fill out and return the attached checklist to the City with your response.
    - **Attachment E: COST PROPOSAL SHEET:** Complete and return the attached proposal to the City with your response.
9. **CONFIDENTIALITY OF CONTENT:** As stated in Section 16 of City of Round Rock Purchasing Definitions, Standard Terms and Conditions, all documents submitted in response to a solicitation shall be subject to the Texas Public Information Act. Following an award, responses are subject to release as public information unless the response or specific parts of the response can be shown to be exempt from the Texas Public Information Act. Pricing is not considered to be confidential under any circumstances.
- A. Information in a submittal that is legally protected as a trade secret or otherwise confidential must be clearly indicated with stamped, bold red letters stating "CONFIDENTIAL" on that section of the document. The City will not be responsible for any public disclosure of confidential information if it is not clearly marked as such.
  - B. If a request is made under the Texas Public Information Act to inspect information designated as confidential, the Respondent shall, upon request from the City, furnish sufficient written reasons and information as to why the information should be protected from disclosure. The matter will then be presented to the Attorney General of Texas for final determination.



## Exhibit "A"

10. **SUSPENSION OR DEBARMENT CERTIFICATION:** The provisions of the Code of Federal Regulations 2 CFR part 180 suspension and debarment may apply to this agreement. The City of Round Rock is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from doing business with the Federal Government, State of Texas, or the City of Round Rock.
  
11. **CERTIFICATE OF INTERESTED PARTIES:** Section 2252.908 of the Texas Government Code requires the successful offeror to complete a Form 1295 "Certificate of Interested Parties" that is signed for a contract award requiring council authorization. The "Certificate of Interested Parties" form must be completed on the Texas Ethics Commission website, printed, signed, and submitted to the City by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury prior to final contract execution. Link to Texas Ethics Commission Webpage: [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)
  
12. **EX PARTE COMMUNICATION:** Please note that to insure the proper and fair evaluation of a bid, the City of Round Rock prohibits ex parte communication (e.g., unsolicited) initiated by the Bidder to the City Official, Employee, City Consultant, or Evaluation Team member evaluating or considering the bids prior to the time a bid decision has been made. Communication between Bidder and the City will be initiated by the appropriate City Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the bid. Ex parte communication may be grounds for disqualifying the offending Bidder from consideration or award of the bid then in evaluation, or any future bid.

## Exhibit "A"

### PART II DEFINITIONS, STANDARD TERMS AND CONDITIONS, AND INSURANCE REQUIREMENTS

1. **DEFINITIONS, STANDARD TERMS AND CONDITIONS:** By submitting a response to this solicitation, the Respondent agrees that the City's Definitions and Standard Terms and Conditions, in effect at the time of release of the solicitation, shall govern unless specifically provided otherwise in a separate agreement or on the face of a purchase order. In addition, the Supplemental Terms and Conditions listed in Section III, shall also be enforced as part of the contract, and can be obtained from the City's website at: <https://www.roundrocktexas.gov/city-departments/purchasing/>
2. **INSURANCE:** The Respondent shall meet or exceed all insurance requirements set forth in Standard Insurance Requirements. The City's Standard Insurance Requirements document can be viewed and downloaded from the City's website at: <https://www.roundrocktexas.gov/city-departments/purchasing/>. In addition to these requirements the City also requires the following coverage:
3. **PROFESSIONAL LIABILITY FOR SOFTWARE CONTRACTS:** The Contractor shall provide coverage, at a minimum limit of \$2,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission, or breach of security (including but not limited to any confidential or private information) arising out of the performance of professional services under this Agreement. The required coverage shall extend to technology licensed and/or purchased, including any Software licensed or Hardware purchased under this Contract.

## Exhibit "A"

### PART III SUPPLEMENTAL TERMS AND CONDITIONS

1. **AGREEMENT TERM:** The terms of the awarded agreement shall include but not be limited to the following:
  - A. The term of the Agreement shall begin from date of award and shall remain in full force for sixty (60) months.
  - B. Upon expiration of the contract term, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period as is reasonably necessary to re-solicit and/or complete the project up to 120 days.
2. **RESPONDENT QUALIFICATIONS:** The City has established the following minimum qualifications. Respondents who do not meet the minimum qualifications will not be considered for award. The Respondent shall:
  - A. Be firms, corporations, individuals, or partnerships normally engaged in providing cloud-based recreation management software solutions as specified herein and have adequate organization, facilities, equipment, financial capability, and personnel to ensure prompt and efficient service to the City.
  - B. In order to confirm financial stability, the City may choose to review audited financial statements at any time throughout the RFP evaluation process. Upon request, the Respondent shall provide two years audited financial statements, including any notes or supplemental schedules within 2 business days of the original request.
  - C. The Respondent shall include in the proposal a list of all litigation the company or its principals have been involved in within the last three (3) years.
3. **SUBCONTRACTORS:** If Subcontractors will be used the Respondent is required to complete and submit with their proposal response Attachment C- Subcontractor Information Form. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractors own acts and omissions. The Contractor shall:
  - A. Require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications, and terms of the Contract.
  - B. Require that all Subcontractors obtain and maintain, throughout the term of their agreement, primary insurance in the type and amounts specified for the Vendor, with the City being named as an additional insured; and
  - C. Require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
  - D. Awarded Contractor is required to submit a list of all subcontractors for approval by the City prior to use of any subcontractors throughout the term of the contract.
4. **WORKFORCE:** Successful Respondent shall:
  - A. Ensure Respondent's employees perform the services in a timely, professional, and efficient manner.
  - B. Employ all personnel for work in accordance with the requirements set forth by the United States Department of Labor. The City reserves the right to verify citizenship or right to work in the United States.
5. **PRICING:** The Respondent shall determine and submit a fixed cost for the work and shall include all incidental costs, labor, overhead charges, travel, payroll expenses, freight, equipment acquisition and maintenance, demurrage, fuel surcharges, delivery charges, costs associated with obtaining permits, insurance, bonds, and risk management. No separate line-item charges shall be permitted for either response or invoice purposes.

## Exhibit "A"

6. **PRICE INCREASE:** Contract prices for cloud-based recreation management software shall remain firm throughout the initial twelve (12) month term of the contract. A price increase to the agreement may be considered on the anniversary date of the Contract each year and shall be equal to the consumer price index for that year, but at no time can the increase be greater than 5% for any single line item.
- A. **Consumer Price Index (CPI):** Price adjustments will be made in accordance with the percentage change in the U.S. Department of Labor Consumer Price Index (CPI-U) for all Urban Consumers. The price adjustment rate will be determined by comparing the percentage difference between the CPI in effect for the base year six-month average (January through June OR July through December); and each (January through June OR July through December six month average) thereafter. The percentage difference between those two CPI issues will be the price adjustment rate. No retroactive contract price adjustments will be allowed. The Consumer Price Index (CPI) is found at the Bureau of Labor Statistics, Consumer Price Index website: <http://www.bls.gov/cpi>
- B. **Procedure to Request Increase:**
- i. Mail the written price increase request with the rate detail comparison and comprehensive calculation and any supporting documentation to the designated City Contract Specialist a minimum of 45 days prior to the annual Contract anniversary date. The detailed written calculation will be verified and confirmed. All written requests for increases must include the City of Round Rock contract number, solicitation reference information and contact information for the authorized representative requesting the increase. Price increase requests shall be sent by mail to:
- City of Round Rock  
Purchasing Department  
Attn: Contract Specialist  
221 E Main Street  
Round Rock, TX 79664-5299**
- ii. Upon receipt of the request, the City reserves the right to accept the escalation and make changes to the purchase order within 30 days of the request, negotiate with the vendor, or cancel the agreement or purchase order if an agreement cannot be reached on the value of the increase.
7. **ACCEPTANCE/INSPECTION:** Acceptance/Inspection should not take more than five (5) working days. The awarded respondent will be notified within the time frame if the services delivered are not in full compliance with the specifications. In the event the services are not performed to the satisfaction of the City the vendor shall agree to reperform services to specification at no additional cost to the City. If any agreement or purchase order is cancelled for non-acceptance, the needed services may be purchased elsewhere
8. **PERFORMANCE REVIEW:** The City reserves the right to review the awarded Contractor's performance anytime during the contract term.
9. **POINT OF CONTACT / DESIGNATED REPRESENTATIVE:**
- A. **Contractor's point of contact:** In order to maintain consistent standards of quality work performed across the City, the City shall be provided with a designated and identified point of contact upon award of the contract to include contact information. The City's designated representative shall be notified by the Respondent immediately should the point of contact change.
- B. The City's Designated Representative shall be:
- David Buzzell  
Assistant Director  
Parks and Recreation  
Phone: 512-341-3345  
E-mail: [dbuzzell@roundrocktexas.gov](mailto:dbuzzell@roundrocktexas.gov)**

**10. INTERLOCAL PURCHASING AGREEMENTS:**

- A. The City has entered into Interlocal Agreements with other Governmental agencies pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same price and terms and conditions to other eligible agencies that have an interlocal agreement with the City.
- B. The City does not accept any responsibility or liability for the purchases by other government agencies through an interlocal cooperative agreement.

## Exhibit "A"

### PART IV SCOPE OF WORK

1. **INTRODUCTION:** The City of Round Rock is a city north of Austin with a population of approximately 120,000 people. The Parks and Recreation Department (PARD) is a nationally award-winning department with almost 2,300 acres of parklands, 24 miles of trail, 42 athletic fields, 2 recreation centers, 3 municipal pools/water parks and 20+ rental facilities/pavilions. On average, over 1.1 million people utilize PARD's recreation centers and participate in recreation programs annually. Additionally, PARD hosts between 155 and 190 events per year at its parks and recreation facilities.
2. **PURPOSE:** The purpose of this contract is to acquire a complete, cloud-based recreation management software solution for the City's Parks and Recreation Department that meets or exceeds the characteristics and requirements listed below. The City is aiming for a June 2022 launch.
3. **BACKGROUND:** The City of Round Rock operates on a fiscal year of October 1 – September 30 and utilizes Tyler Technologies Munis/ Enterprise ERP for its financial software. PARD has two program seasons:
  - A. Fall/Winter/Spring, which opens for registration the first Tuesday in August.
  - B. Summer, which opens for registration the first Tuesday in March. The first day of summer program registration is generally when the department sees its largest one-day registration and revenue totals.

The following information provides a snapshot of PARD's current recreation management software usage:

- Approximately 100 employee users, with varying permission levels
- Over 27,000 accounts in our database with over 98,000 customers
- Average over 40,000 program registrations annually (35% online, 65% in-person) totaling \$1.25 million in revenue
- Peak day registration is approximately 350 registrations in a single day
- Average over 35,000 memberships sold annually
- Average over 1,500 rental agreements processed annually
- Approximately 750 PARD teams. This does not include private leagues that rent facilities.
- Approximately 4000-5000 players.

Pre-COVID statistics (fiscal year 2019):

- 2138 programs and classes were offered.
- The City received 39,696 program registrations.
- The City had 1559 rental agreements for the locations listed in PART IV, 4D.
- The Parks and Recreation Department's revenue for FY 2019/2020 was \$3.5 million.

Projected 2021/2022 statistics:

- 38,000-40,000 total registrations.
- 1,500-1,600 rental agreements.
- 28,000 memberships for 2021 and 35,000 memberships for 2022.
- Fiscal year 2020/2021 revenue of \$2.75 million and \$3.25 million for 2021/2022.
- 3000 POS transactions.

Membership Types:

- The Allen R. Baca Center offers 6 membership types each with Yearly, Monthly or Day Use rate.
- The Clay Madsen Recreation Center offers 6 membership types each with a Yearly, Quarterly, Monthly option. The City also offers flat daily visitor rates at this location.

4. **LOCATIONS:** The Parks and Recreation Department currently operates three (3) in-person registration locations:

## Exhibit "A"

- A. PARD Main Office  
301 W. Bagdad Avenue Suite 250  
Round Rock, Texas 78664
- B. Clay Madsen Recreation Center (CMRC)  
1600 Gattis School Road  
Round Rock, Texas 78664
- C. Allen R. Baca Senior Center (BACA)  
301 W. Bagdad Avenue Building 2  
Round Rock, Texas 78664
- D. The Parks and Recreation Department also manages 2 recreation facilities each with multiple rooms that are scheduled/reserved, 2 rental venues, 13 rental pavilions, 2 plazas, 1 amphitheater, 52 sports fields/courts and numerous (~35) park areas that are scheduled/reserved.
- E. The City utilizes an online registration site and temporary remote registration sites set up for events.
- F. Normal business hours are 5:00am – 11:00pm 7 days a week, 365 days a year(excluding City-observed holidays)

### 5. **SOFTWARE AND CONTRACTOR REQUIREMENTS:**

- A. **Mandatory Recreation Management Software Solution Requirements:**
  - i. Off site, secure cloud-based solution that can handle the average and peak registration volumes outlined above in PART IV, Section 3.
  - ii. Ability to accommodate SSO (Single Sign On or Same Sign On) using Azure AD.
  - iii. Provide to the City 24-hour, 7 days a week access to and ownership of all information contained within the system.
  - iv. 24-hour, 7 days a week access and use of the software solution.
  - v. 24-hour, 7 days a week technical support for "system down" situations.
  - vi. Defined and customizable employee-user permission levels to control access within the software.
  - vii. Intuitive employee-user interface with a dashboard that is easy to use.
  - viii. Customer online registration and facility reservation interface that is easy to use.
  - ix. Mobility and compatibility across mobile devices and operating systems.
  - x. Account Management module/solution must:
    - a. Allow clients to be associated with multiple accounts without duplicating records.
    - b. Have the ability to merge accounts if duplicate accounts occur.
    - c. Provide password protected and secure customer/member access to their account for online transactions.
    - d. Ability for customers to access a self-service password reset that does not require City intervention.
    - e. Have the ability to identify and classify accounts as personal accounts and business accounts.
    - f. Include process management that requires a customer account be linked to all program/event registrations and facility bookings prior to processing any registration or booking.
  - xi. Financial transactions and reporting module/solution must:
    - a. Operate in a "cash equals revenue" accounting environment.
    - b. Provide comprehensive and flexible reporting tools that accurately reflect a cash equals revenue accounting environment. These should be pre-built system reports that are integrated into the solution and do not require the City to use a third-party application to generate custom reports.

## Exhibit "A"

- c. Have the ability to allocate revenues captured in software to multiple General Ledger accounts to match operational setup of PARD.
  - d. Take NO possession of City monies, nor have access to or control over such monies.
  - e. The City's preference would be to use the City's current merchant services provider, Chase Paymentech, but this is not mandatory.
  - f. Comply with Payment Card Industry (PCI) data security standards as specified by the PCI Data Security Standards Council's most recent version of the Payment Card Industry Data Security Standard (PCI DSS) found at: [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org)
  - g. Have the ability to setup and charge payment plans to customer accounts.
  - h. Have the ability to setup and apply scholarships and subsidies to customer accounts.
  - i. Refund same monies when contract changes occur. Ability to refund to credit card, printed check, and account credits as required.
  - j. Have the ability to add multiple items, registrations, or rentals to the "shopping cart" to be processed as one payment for all items.
  - k. Track and provide clear reporting of financial transactions associated to each of 4+ registration locations (PARD Main Office, CMRC, BACA, Online).
  - l. Have the ability to email customer receipts after a payment is processed.
  - m. Ability to produce and export daily report of revenue in .csv or .xlsx format. This must include general ledger and cash collected.
- xii. Program and event registration module/solution must:
- a. Allow flexibility and customization of program classifications (ex: - Senior Programs, Youth Programs, Adaptive and Inclusive Programs, etc.) and program types (Camps, Leagues, Enrichment, etc.) to match the operational setup of PARD.
  - b. Allow flexibility in permission settings of which programs can be registered online or in-person only.
- xiii. Membership registration and management module/solution must:
- a. Allow flexibility and customization of membership types (Family, Adult, Senior, Combo, etc.) and terms (Daily, Monthly, Quarterly, Annual, etc.) to match the operational setup of PARD.
  - b. Allow auto-pay functionality for re-occurring monthly memberships.
  - c. Provide comprehensive and flexible membership reports for tracking and analysis of membership data.
  - d. Utilize membership scans for facility check-ins along with digital door counters at each facility.
- xiv. Facility reservation/booking module/solution must:
- a. Allow flexibility and customization of rental facility classifications (ex: - Pavilions, Plazas, Indoor Venue, Athletic Fields, etc.) and rental facility types (Tournament, League, Special Event, Administrative Booking, etc.) to match the operational setup of PARD.
  - b. Allow employee-user permission settings of which facilities can be rented online or in-person only.
  - c. Provide comprehensive and flexible facility booking reports and invoicing tools. These should be pre-built system reports that are integrated into the solution and do not require the City to use a third-party application to generate custom reports.
  - d. Allow multiple rental rates per facility/location (ex.- 4-hr rate and 12-hr rate).
  - e. Allow rental rates to be changed during reservation process with appropriate permission level.
  - f. Allow for changes and modifications to existing rentals prior to completion of contract.
- xv. Point of Sale module/solution must:
- a. Allow flexibility and customization of point-of-sale classifications (Aquatics, Fitness, Events, etc.) and items (drinks, t-shirts, towels, etc.) to match the operational setup of PARD.



## Exhibit "A"

- b. Allow flexibility in permission settings of which point-of-sale classifications/items can be sold without being attached to a customer account.
- xvi. Reporting module/solution must:
  - a. Be a robust set of pre-built system reports that are integrated into the solution and do not require the City to use a third-party application to generate reports.
  - b. Have the flexibility to create custom reports within the system rather than use a third-party application to generate reports.
  - c. Allow export in .csv or .xlsx formats.
- xvii. Online registration website must use PARD's existing web address (roundrockrecreation.com), the solution must either integrate into the City's website format or be created and hosted by the Respondent's solution.

### **B. Desired Recreation Management Software Solutions Requirements:**

- i. Facility Reservation/Booking module/solution that would:
  - a. Allow displaying online of facility availability for specific facility types or locations while limiting viewing of other unrelated facilities.
  - b. Allow customers to book specific facility types or locations online while limiting online booking to other facilities.
  - c. Allow for online viewing and completion of forms/application.
  - d. Allow for e-signature of forms, applications, and rental agreements.
  - e. Allow for custom, employee user-defined facility availability calendars using pre-defined filters.
- ii. Program and Event Registration that would:
  - a. Allow for custom, employee user-defined program types, classes, locations, etc. using pre-defined filter.
- iii. Membership Registration and Management module/solution that would:
  - a. Allow for integration with door management system for member use of defined facilities during specified time frames.
  - b. Ability to change both the start date & end date on individual memberships, as well as the ability to do bulk extensions for facility closure.
- iv. League Registration and Management module/solution that would:
  - a. Allow flexibility and customization of league classifications (Adult, Youth, etc.), league types (Volleyball, Basketball, Softball, etc.) and league seasons (Fall, Summer I, Summer II, etc.) to match the operational setup of PARD.
  - b. Management of team rosters and standing.
  - c. Auto-Scheduling and management of league schedules with integration of scheduling parameters (ex.- Team A can only play on Tuesday nights).
  - d. Auto-Scheduling of game officials/referees with integration of scheduling parameters of official.
- v. Ticketing module/solution for the water park and special events that would:
  - a. Provide flexibility to setup event/facility ticket sale capacities and track ticket sales through a pre-built, system report.
  - b. Generate an online or printable ticket with a unique barcode or QR code that could be scanned at the venue using a smart phone or table.
- vi. Integration with existing PARD software systems:
  - a. Integration with Musco Control Link platform is desired.
  - b. Integration with Microsoft BI/Power Automate is desired.
  - c. Integration with Tyler Tech's Munis/ Enterprise ERP financials.
  - d. Integration with door management systems. The City does not have a current system for this in place but is looking for one in the future.

## Exhibit "A"

- vii. Customer relationship management module/solution that would:
  - a. Fully integrated with solution account management module/solution that is flexible and customizable based on a variety of filters (age, class type, program, facility membership, etc.)
  - b. Ability to track success or "open rate" of email marketing collateral.
  - c. Flexibility to be used for program/membership marketing and on-demand customer communication (ex- last-minute cancellation of a class).
  - d. Ability to create and distribute online surveys to program participants.
- viii. Personal trainer module/solution that would:
  - a. Allow PARD personal trainers to enter their availability for viewing by the customers.
  - b. Allow for customers to view trainer schedules and book a session with the trainer within defined parameters.
- ix. Day camp and child watch module/solution that would:
  - a. Allow for automated parent/guardian check-in and check-out process of registered camp or child watch program participants.
  - b. Allow for online viewing and completion of forms and waivers.
  - c. Allow for e-signature of forms and waivers.
  - d. Limit registration until defined forms and waivers were completed and signed by customer.
- x. Reports and analytics dashboard module/solution that would:
  - a. Allow for scheduled reports to be run and emailed to defined employees.
  - b. Pre-built, system dashboard that would display information to defined employees based on filter criteria.
  - c. Online knowledge base of helpful guides, best practices and articles on software use available to employees.
- xi. Open Application Programming Interface (API).
- xii. 24-hour, 7 days a week technical support including:
  - a. Published Service-Level Agreement (SLA) response times.
  - b. Publish tiered response times based on business hours.
  - c. Ability to schedule software outages outside of business hours, unless otherwise preapproved.

### C. Required Tasks associated with solution implementation:

- i. Review and analyze PARD's business operations prior to the formal implementation of the solution.
- ii. Review PARD's data from current recreation management software. Work with PARD, Finance, and Information Technology (IT) to define the scope of data to be scrubbed and transferred to the Contractor's software.
- iii. Development of a Project Implementation Plan (PIP) with established core team meetings and milestone dates.
- iv. Train PARD, Finance, and IT employees on the complete use of the Contractor's software solution.

### 6. CITY RESPONSIBILITIES: The City will-

- A. Provide network connectivity to the internet.
- B. Assist with testing.
- C. Require a copy of all documentation.
- D. Provide workstations or endpoints to connect to hosted environment.
- E. Be available for city network connectivity troubleshooting.

## Exhibit "A"

### PART V PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS

1. **PROPOSAL ACCEPTANCE PERIOD:** All proposals are valid for a period of one hundred and twenty (120) calendar days subsequent to the RFP closing date unless a longer acceptance period is offered in the proposal.
2. **PROPRIETARY INFORMATION:** All material submitted to the City becomes public property and is subject to the Texas Open Records Act upon receipt. If a Proposer does not desire proprietary information in the proposal to be disclosed, each page must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.
3. **PROPOSAL PREPARATION COSTS:** All costs directly or indirectly related to preparation of a response to the RFP, or any oral presentation required to supplement and/or clarify a proposal which may be required by the City shall be the sole responsibility of the Proposer.
4. **PROPOSAL RESPONSE:** Responses shall be clear and concise and shall include at a minimum: title page, transmittal letter, index or table of contents, dividers for each section and all required attachments. One page shall be interpreted as one side of a double-spaced, printed, 8 1/2" X 11" sheet of paper. It is recommended that responses be submitted in a professional, bound format that best contains all required documentation for submission.
5. **PROPOSAL FORMAT:** Prefacing the proposal, the Proposer shall provide an Executive Summary of three (3) pages or less, which gives in brief, concise terms, a summation of the proposal. The proposal itself shall include a title page, index or table of contents, dividers for each section and all required attachments and addendums to be organized in the following format by Tab and informational sequence:
  - A. **Tab 1 – Business Organization:** State full name and address of your organization and identify parent company if you are a subsidiary. Specify the branch office or other subordinate element which will perform, or assist in performing, work herein. Indicate whether you operate as a partnership, corporation, or individual. Include the State in which incorporated or licensed to operate.
  - B. **Tab 2 – Technical Solution:** Describe your technical solution for accomplishing required work. Include such time-related displays, graphs, and charts as necessary to show tasks, sub-tasks, milestones, and decision points related to the Scope of Work and your plan for accomplishment. Provide all details as required in the Scope of Work and any additional information you deem necessary to evaluate your proposal. Specifically indicate:
    - i. A description of your work program by tasks. Detail the steps you will take in proceeding from pre-implementation to full implementation and describe or provide visuals of the estimated timeline.
      - a. Include the average amount of time it has taken to set up previous clients with your company's software system.
      - b. Include the contact information of the personnel assigned to implement this system.
    - ii. The training City personnel will have access to and when that aspect will be covered in the implementation timeline. Describe if training is conducted in-person, is web-based, via training modules, etc.
    - iii. The plan for how your company will address any issues, technical or otherwise, from your subcontractors or the Company itself.
      - a. Describe access to technical support the City can expect to be provided with.
      - b. Describe what measures the Contractor has in place to ensure deliverables by any subcontractors.
  - C. **Tab 3 – Functional Requirements:** Describe software functionality, layout, and confirm your company's ability, understanding, and approach to meeting each of the mandatory and desired requirements as found in Part IV Scope of Work. Specifically indicate:

## Exhibit "A"

- i. Describe in detail how minimum requirements are met and implemented across modules. Include Information regarding live versus manual imports, frequency, etc. Include any deviations from mandatory requirements and how those concerns will be addressed.
  - ii. The degree to which your company will meet mandatory requirements, and which desired software capabilities your company can provide (please describe any we did not list that your company offers).
  - iii. The points at which written, deliverable reports will be provided.
- D. Tab 4 – Project Management Structure: Provide a general explanation and chart which specifies project leadership and reporting responsibilities; and interface the team with City project management and team personnel. If use of subcontractors is proposed, identify their placement in the primary management structure, and provide internal management description for each subcontractor.
- E. Tab 5 – Prior Experience: Describe only relevant municipal, corporate, and individual experience for personnel who will be actively engaged in the project. Specifically indicate Parks and Recreation experience and number of years supporting Parks and Recreation software. Do not include corporate experience unless personnel assigned to this project actively participated. Do not include experience prior to 2012. Supply the project title, year, and reference name, title, present address, and phone number of principal persons for whom prior projects were accomplished.
- F. Tab 6 – Personnel: Include names, qualifications, company tenure, and resumes of all personnel who will be assigned to the account. State the primary work assigned to each person and the percentage of time each person will devote to this work. Identify key persons by name and title.
- G. Tab 7 – Authorized Negotiator: Include the name, email address, and telephone number of the person(s) in your organization authorized to negotiate Contract terms and render binding decisions on Contract matters.
- H. Tab 8 – Attachments and Addendum: including Attachment A – Proposal Submittal Form, Execution, Attachment B – Reference Sheet, Attachment C – Subcontractor Information Form and signed addendums (if applicable), Attachment D – Mandatory and Desired Software and Module Checklist.
- I. Tab 9 – Cost Proposal: Attachment E – Cost Proposal Sheet is required from each Proposer. Estimated annual figures are provided at the top of the spreadsheet.
  - i. Annual Subscription Fee: Input your annual subscription fee (Per year including year 1). This should include all ongoing and recurring software costs including license, maintenance, hosting fees, etc.
  - ii. Transaction Fee: Input your % transaction fee per transaction. An estimated cost will be calculated using the figures at the top of the spreadsheet.
  - iii. Credit Card Processing Fee: Input a percentage fee and/or flat fee. If your company does not offer this service, please enter \$60,000 in Cell C15.
  - iv. Electronic Check Processing Fee: Input your % fee per transaction. An estimated cost will be calculated using the figures at the top of the spreadsheet.
  - v. Total Annual Cost: This number represents all recurring software fees, transaction fees, and processing fees.
  - vi. One-Time Implementation Fee: This should include **ALL REQUIRED** one-time fees to implement and launch the software. Do not include year 1 software fees if they are recurring. Those should be included in the Annual Subscription Fee.
  - vii. Total Cost Proposal: This is the estimated 5-year cost to the city. This includes the one-time implementation cost and 5 years of recurring service.
  - viii. Additional One-Time, Recurring, and Optional Fees: Please list out all other fees on a separate sheet and include with your proposal. These fees will not be included in the cost proposal scoring but will become part of the contract.
- J. Tab 10- Exceptions: Be advised that exceptions to any portion of the Solicitation may jeopardize acceptance of the Proposal by the City. Exceptions to this solicitation if any, shall be submitted on a separate sheet labeled "Exceptions" with the Respondent's proposal.

## Exhibit "A"

**6. EVALUATION CRITERIA:** The intent of the City is to award to one Respondent in accordance with the evaluation criteria below. The purpose of this evaluation criteria is to determine which proposal best meets the requirements and provides the best overall value to the City.

- | A. Evaluation Criteria:   | Weights:      |
|---|---------------|
| • Technical Solution (Tab 2)                                      | 30 pts        |
| • Functional Requirements (Tab 3)                                 | 30 pts        |
| • Individual and Company Experience and Qualifications (Tabs 5&6) | 20 pts        |
| • <u>Cost Proposal (Tab 9)</u>                                    | <u>20 pts</u> |
| Maximum Weight:   | 100 pts       |
- B. An evaluation committee will be established to evaluate the proposal. The committee will include employees of the City and may include other impartial individuals who are not City employees. The evaluation committee will determine if discussions and/or Best and Final Offers (BAFO) are necessary. Award of a contract may be made without discussions or BAFO, if in the best interest of the City. The evaluation committee may determine that discussions are necessary to clarify or verify a written proposal response. The City may, at its discretion, elect to have respondents provide oral presentations of their proposal or a demonstration of their software. The City reserves the right to adjust scoring dependent upon software demonstrations. A request for a BAFO is at the sole discretion of the City and will be requested in writing. The evaluation committee will evaluate the finalists and make a recommendation for award.
- C. The City reserves the right to reject any or all proposals submitted, or to award to the respondent who in the City's opinion, offers the best value to the City. The City also reserves the right to cancel the RFP process and pursue alternate methods for providing the requirements.
- D. The City reserves the right to conduct studies and other investigations as necessary to evaluate any proposal.
- E. The City reserves the right to waive any minor technicality, irregularities, or informalities noted in the submission process. Submission of proposal confers no legal rights upon any Respondent.
- F. The City reserves the right to request further documentation or information and to discuss proposal response with any Respondent in order to answer questions or to clarify any aspects of the proposal.
- G. The City may develop a "short list" of qualified proposal and may determine that the Respondent(s) should submit a Best and Final Offer (BAFO). Each "short listed" Respondent will be given a reasonable opportunity for discussion and revision of their proposal.

**7. AGREEMENT NEGOTIATIONS AND AWARD PROCESS:**

- A. A proposal presented in response to this RFP is subject to negotiation concerning any issues deemed relevant by the City. The City reserves the right to negotiate any issue with any party. Any unsolicited communication by the Respondent to a City official, undesignated employee, or an evaluation team member evaluating or considering the offers may be grounds for disqualifying the offending Offeror from consideration of award.
- B. Submission of proposal indicates the Respondent's acceptance of the evaluation process and recognition that the City may make subjective judgments in evaluating the proposal to determine the best value for the City.
- C. If negotiations are successful, the City and Respondent may enter into an agreement.
- D. If negotiations are unsuccessful, the City may formally end negotiations with that Respondent. The City may then:
- Select the next most highly qualified Respondent and attempt to negotiate an agreement at fair and reasonable terms, conditions, and cost with that Respondent.
  - The City shall continue this process until an agreement is entered into or all negotiations are terminated.
- E. The City also reserves the right to reject any or all submittals, or to accept any submittal deemed most advantageous, or to waive any irregularities or informalities in the submittal received.

## Exhibit "A"

- F. An independent signed authorized contract will be sent to the successful Respondent. Execution of a City of Round Rock contract is required prior to starting work and processing any payments to the awarded Respondent.
8. **POST AWARD MEETING:** The City and the Respondent may schedule a post award meeting to discuss, but not be limited to the following:
- A. Provide City contact(s) information for implementation of the Agreement.
  - B. Identify specific milestones, goals, and strategies to meet objectives.

City of Round Rock  
 Recreation Management Software  
 RFP No. 22-008  
 Class/Item: 208-68 / 208-80  
 December 2021

**ATTACHMENT B  
 REFERENCE SHEET**

**PLEASE COMPLETE AND RETURN THIS FORM WITH THE SOLICITATION RESPONSE**

**SOLICITATION NUMBER:** 22-008  
**RESPONDENT'S NAME:** RecTrac LLC, dba Vermont Systems **DATE:** 01/14/2022

Provide the name, address, telephone number and E-MAIL of at least three (3) valid Municipal, Government agencies or firms of comparable size that have utilized services that are similar in type and capacity within the last two (2) years. City of Round Rock references are not applicable. References may be checked prior to award. If references cannot be confirmed or if any negative responses are received it may result in the disqualification of submittal.

1. **Company's Name** City of Austin, TX  
**Name of Contact** Melissa Bartling  
**Title of Contact** Gallery and Customer Service Manager  
**E-Mail Address** melissa.bartling@austintexas.gov  
**Present Address** 200 S. Lamar Blvd  
**City, State, Zip Code** Austin, Texas 78704  
**Telephone Number** ( 512 ) 974-1642 **Fax Number:** (     )
  
2. **Company's Name** City of Raleigh, NC  
**Name of Contact** Jeff Dawson  
**Title of Contact** Technology and Analytics Manager  
**E-Mail Address** jeffrey.dawson@raleighnc.gov  
**Present Address** PO Box 590  
**City, State, Zip Code** Raleigh, NC 27602  
**Telephone Number** ( 954 ) 457-1409 **Fax Number:** (     )
  
3. **Company's Name** City of Hallendale Beach, FL  
**Name of Contact** Cathy Schanz  
**Title of Contact** Director of Parks and Recreation  
**E-Mail Address** cschanz@hallendalebeachfl.gov  
**Present Address** 400 South Federal Highway  
**City, State, Zip Code** Hallandale Beach, FL 33009  
**Telephone Number** ( 954 ) 457-1409 **Fax Number:** (     )

**FAILURE TO PROVIDE THE REQUIRED INFORMATION WITH THE SOLICITATION RESPONSE MAY AUTOMATICALLY DISQUALIFY THE RESPONSE FROM CONSIDERATION FOR AWARD.**

City of Round Rock  
Recreation Management Software  
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**ATTACHMENT C  
SUBCONTRACTOR INFORMATION FORM  
COMPLETE AND RETURN THIS FORM WITH THE SOLICITATION RESPONSE**

SOLICITATION NUMBER: RFP 22-008  
RESPONDENT'S NAME: RecTrac LLC, dba Vermont Systems DATE: 01/14/2022

- **CIRCLE ONE - NO, I WILL NOT USE SUBCONTRACTORS ON THIS CONTRACT**  **NO**
- **YES, I INTEND TO USE SUBCONTRACTORS ON THIS CONTRACT**  **YES**  
*If yes complete the information below*

1. Subcontractor Name \_\_\_\_\_  
 Name of Contact \_\_\_\_\_  
 E-Mail Address \_\_\_\_\_  
 Address \_\_\_\_\_  
 City, State, Zip Code \_\_\_\_\_  
 Telephone Number (     ) \_\_\_\_\_ Fax Number: (     ) \_\_\_\_\_  
 Describe work to be performed \_\_\_\_\_  
 Percentage of contract work to be performed \_\_\_\_\_ %

2. Subcontractor Name \_\_\_\_\_  
 Name of Contact \_\_\_\_\_  
 Title of Contact \_\_\_\_\_  
 E-Mail Address \_\_\_\_\_  
 Address \_\_\_\_\_  
 City, State, Zip Code \_\_\_\_\_  
 Telephone Number (     ) \_\_\_\_\_ Fax Number: (     ) \_\_\_\_\_  
 Describe work to be performed \_\_\_\_\_  
 Percentage of contract work to be performed \_\_\_\_\_ %

- *Add additional pages as needed*



City of Round Rock  
 Recreation Management Software  
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 Class/Item: 208-68 / 208-80  
 December 2021

**ATTACHMENT D  
 MANDATORY AND DESIRED SOFTWARE AND MODULE CHECKLIST**

<b>MANDATORY SOFTWARE REQUIREMENTS:</b>			
<b>General:</b>	<b>YES</b>	<b>NO</b>	<b>Comments</b>
Off site, secure cloud-based solution that can handle the average and peak registration volumes outlined above in PART IV, Section 3	X		
Ability to accommodate SSO (Single Sign On or Same Sign On) using Azure AD	X		
Provide to the City 24-hour, 7 days a week access to and ownership of all information contained within the system	X		
24-hour, 7 days a week access and use of the software solution	X		
24-hour, 7 days a week technical support including: Published SLA response times, Publish tiered response times based on business hours, Ability to schedule software outages outside of business hours, unless otherwise preapproved	X		
Defined and customizable employee-user permission levels to control access within the software	X		
Intuitive employee-user interface with a dashboard that is easy to use	X		
Customer online registration and facility reservation interface that is easy to use	X		
Mobility and compatibility across mobile devices and operating systems	X		
Open Application Programming Interface (API) and ability to integrate with third-party software systems	X		
Online registration website must use PARD's existing web address (roundrockrecreation.com), the solution must either integrate into the City's website format or be created and hosted by the Respondent's solution	X		
<b>Account Management module/solution:</b>			
Allow clients to be associated with multiple accounts without duplicating records	X		
Merge accounts if duplicate accounts occur	X		
Provide password protected and secure customer/member access to their account for online transactions	X		
Have the ability to identify and classify accounts as personal accounts and business accounts	X		
Include process management that requires a customer account be linked to all program/event registrations and facility bookings prior to processing any registration or booking	X		
<b>Financial transactions and reporting module/solution:</b>			
Operate in a cash equals revenue accounting environment	X		
Provide comprehensive and flexible reporting tools that accurately reflect a cash equals revenue accounting environment. These should be pre-built system reports that are integrated into the solution and do not require the City to use a third-party application to generate custom reports	X		
Have the ability to allocate revenues captured in software to multiple General Ledger accounts to match operational setup of PARD	X		

# Exhibit "A"



City of Round Rock  
 Recreation Management Software  
 RFP No. 22-006  
 Class/Item: 208-68 / 208-80  
 December 2021

<b>Point of Sale module/solution:</b>	<b>YES</b>	<b>NO</b>	<b>Comments</b>
Allow flexibility and customization of point-of-sale classifications (Aquatics, Fitness, Events, etc) and items (drinks, t-shirts, towels, etc.) to match the operational setup of PARD	X		
Allow flexibility in permission settings of which point-of-sale classifications/items can be sold without being attached to a customer account	X		
<b>Reporting module/solution:</b>	<b>YES</b>	<b>NO</b>	<b>Comments</b>
Be a robust set of pre-built system reports that are integrated into the solution and do not require the City to use a third-party application to generate reports	X		
Have the flexibility to create custom reports within the system rather than use a third-party application to generate reports	X		

# Exhibit "A"



City of Round Rock  
 Recreation Management Software  
 RFP No. 22-006  
 Class/Item: 208-68 / 208-80  
 December 2021

<b>DESIRED SOFTWARE REQUIREMENTS:</b>			
<b>General:</b>	<b>YES</b>	<b>NO</b>	<b>Comments</b>
Open Application Programming Interface (API)	X		
<b>Facility Reservation/Booking module/solution:</b>	<b>YES</b>	<b>NO</b>	<b>Comments</b>
Allow displaying online of facility availability for specific facility types or locations while limiting viewing of other unrelated facilities	X		
Allow customers to book specific facility types or locations online while limiting online booking to other facilities	X		
Allow for online viewing and completion of forms/application	X		
Allow for e-signature of forms, applications, and rental agreements	X		
Allow for custom, employee user-defined facility availability calendars using pre-defined filters	X		
<b>Program and Event Registration:</b>	<b>YES</b>	<b>NO</b>	<b>Comments</b>
Allow for custom, employee user-defined program types, classes, locations, etc. using pre-defined filter	X		
<b>Membership Registration and Management module/solution:</b>	<b>YES</b>	<b>NO</b>	<b>Comments</b>
Allow for integration with door management system for member use of defined facilities after normal operating hour	X		
Ability to change both the start date & end date on individual memberships, as well as the ability to do bulk extensions for facility closure	X		
<b>League Registration and Management module/solution:</b>	<b>YES</b>	<b>NO</b>	<b>Comments</b>
Allow flexibility and customization of league classifications (Adult, Youth, etc.), league types (Volleyball, Basketball, Softball, etc.) and league seasons (Fall, Summer I, Summer II, etc.) to match the operational setup of PARD	X		
Management of team rosters and standing	X		
Auto-Scheduling and management of league schedules with integration of scheduling parameters (ex.- Team A can only play on Tuesday nights).	X		
Auto-Scheduling of game officials/referees with integration of scheduling parameters of official	X		
<b>Ticketing module/solution for the water park and special events:</b>	<b>YES</b>	<b>NO</b>	<b>Comments</b>
Provide flexibility to setup event/facility ticket sale capacities and track ticket sales through a pre-built, system report	X		
Generate an online or printable ticket with a unique barcode that could be scanned at the venue using a smart phone or table	X		
<b>Integration with existing PARD software systems:</b>	<b>YES</b>	<b>NO</b>	<b>Comments</b>
Integration with Musco Control Link platform	X		
Integration with Microsoft BI/Power Automate		X	
<b>Customer relationship management module/solution:</b>	<b>YES</b>	<b>NO</b>	<b>Comments</b>
Fully integrated with solution account management module/solution that is flexible and customizable based on a variety of filters (age, class type, program, facility membership, etc.)	X		

# Exhibit "A"



City of Round Rock  
 Recreation Management Software  
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Ability to track success or "open rate" of email marketing collateral		x	
Flexibility to be used for program/membership marketing and on-demand customer communication (ex- last-minute cancellation of a class)	x		
Ability to create and distribute online surveys to program participants	x		Online evaluations are available via the customer portal

<b>Personal trainer module/solution:</b>	<b>YES</b>	<b>NO</b>	<b>Comments</b>
Allow PARD personal trainers to enter their availability for viewing by the customers	x		This would be an administration task.
Allow for customers to view trainer schedules and book a session with the trainer within defined parameters	x		
<b>Day camp and child watch module/solution that would:</b>			
Allow for automated parent/guardian check-in and check-out process of registered camp or child watch program participants	x		
Allow for online viewing and completion of forms and waivers	x		
Allow for e-signature of forms and waivers	x		
Limit registration until defined forms and waivers were completed and signed by customer	x		
<b>Reports and analytics dashboard module/solution:</b>			
Allow for scheduled reports to be run and emailed to defined employees	x		
Pre-built, system dashboard that would display information to defined employees based on filter criteria	x		
Knowledge Base of helpful guides, best practices and articles on software use available to employees	x		

**Attachment E - Cost Proposal  
RFP 22-008 Recreation Management Software**

**COST PROPOSAL EVALUATION**

CORR PARD HISTORICAL TRANSACTION INFORMATION

<b>Total Number of Transactions Annually</b>	90,000
<b>Total Value of Transactions Annually</b>	\$3,635,000
<b>Total Number of Credit Card Transactions Annually</b>	25,500
<b>Total Value of Credit Card Transactions Annually</b>	\$3,040,000
<b>Total Value of Check Transactions Annually</b>	\$400,000

BAFO

COST PROPOSAL INFORMATION	RecTrac LLC dba Vermont Systems	
	% of Payable Transaction Rate	Total Annual Cost
<b>Annual Subscription Fee</b> <i>(including license, maintenance, hosting fees)</i>		\$34,884
<b>Transaction Fee</b> <i>(based on transactions data annually above)</i>	0.00%	N/A
<b>Credit Card Processing Fee</b> <i>(based on value of annual transaction and/or # of transactions. If your company charges both a % based fee plus a flat fee enter both.)</i>	2.15%	\$65,360
	\$0.20	\$5,100
<b>Credit Card Processing Opt-Out</b> <i>(if your company doesn't provide this enter the City's cost of \$60k/yr in Cell C16. You may also enter this number if the City's cost would be less than your fees based on the transaction numbers above.)</i>		\$0
<b>Electronic Check Processing Fee</b> <i>(based on transactions data annually above)</i>	0.00%	\$0
<b>TOTAL ANNUAL COST</b>		\$105,344
<b>One-Time Implementation Fee</b> <i>(including all data migration and training fees)</i>		\$19,600
<b>TOTAL COST PROPOSAL (For 5 Years)</b>		<b>\$546,320</b>

Please note that credit card fees can be passed to the customer.

We can provide a customized quote with additional data, and also have service fees that can further reduce your processing costs.

Depending on which eCheck method you select (manual or auto), the manual option has a zero cost (minus possible setup/config fees) and the Auto is \$1 per transaction

**NOTE:** If one of these costs are either not-applicable or included in some other cost. Please fill in "N/A" or "Included" in that field.

**Prepared For:** Round Rock Parks & Recreation  
Round Rock, TX

**Prepared By:** Joshua Karson (Senior Sales Manager)

**Contact Name:** Adam Gagnon, Purchaser

**Email:** JoshuaK@VermontSystems.com

**Contact Email:** agagnon@roundrocktexas.gov

**Toll Free:** 877-883-8757

**Contact Phone:**

**Direct Phone:** 802-276-5604

**Explanation of Quote:** Vermont Systems RFP Pricing-RoundRockTX-Update 5/16

**Notes:**

Services (recurring)	Qty	Unit Price	Monthly	Discount	Price
<b>VSI Cloud</b>					
VSI Cloud Hosting Standard Service - Silver, First 5 Users Monthly †(215)	1	\$675.00	\$500.00	\$175.00	\$6,000.00
VSI Cloud Hosting Standard Service - Silver, Add'l Users Monthly †(216)	25	\$40.00	\$875.00	\$125.00	\$10,500.00
<b>PayTrac</b>					
PayTrac Payments - Per Transaction Flat Fee †(225)	0	\$0.20	\$0.00		\$0.00
PayTrac Payments - 2.15% Per Transaction †(226)	0	\$0.00	\$0.00		\$0.00
<b>Software Subscription</b>					
RecTrac/WebTrac Workgroup Base Software (26-39 concurrent users) †(187)	1	\$500.00	\$330.00	\$170.00	\$3,960.00
Activity Registrations †(188)	1	\$130.00	\$100.00	\$30.00	\$1,200.00
Facility Reservations †(189)	1	\$130.00	\$100.00	\$30.00	\$1,200.00
POS/Inventory/Tickets †(190)	1	\$130.00	\$100.00	\$30.00	\$1,200.00
Pass Management †(192)	1	\$130.00	\$100.00	\$30.00	\$1,200.00
League Scheduling †(198)	1	\$130.00	\$100.00	\$30.00	\$1,200.00
Personal Trainer Scheduling †(200)	1	\$130.00	\$100.00	\$30.00	\$1,200.00
Mobile RecTrac †(204)	1	\$130.00	\$100.00	\$30.00	\$1,200.00
WebTrac Splash Page †(206)	1	\$25.00	\$25.00		\$300.00
Access Control 2 Plus Door/Turnstile/Gate	1	\$10.00	\$10.00		\$120.00
Access Control 1st Door/Turnstile/Gate	1	\$50.00	\$50.00		\$600.00
RecTrac SSO (6-39 concurrent users) †(210)	1	\$30.00	\$30.00		\$360.00
Each Add'l Concurrent User over 2 †(213)	28	\$10.00	\$252.00	\$28.00	\$3,024.00
General Ledger Interface †(221)	1	\$30.00	\$30.00		\$360.00
PayTrac Payments - Monthly Services per Merchant †(224)	3	\$25.00	\$75.00		\$900.00
<b>Software Subscription Component Configuration:</b>					
MUSCO Light Interface	1	\$30.00	\$30.00		\$360.00
<b>SaaS configuration items included:</b>					
Mobile WebTrac †(203)	1	\$0.00	\$0.00		\$0.00
				<b>Tax:</b>	<b>\$0.00</b>
				<b>Total:</b>	<b>\$34,884.00</b>

Services (non-recurring)	Qty	Unit Price	Price
--------------------------	-----	------------	-------

<b>Vermont Systems Scheduled Service Cancellation Policy</b>			
Cancellation Fee Policy - See Footnotes †(222)	1	\$0.00	\$0.00

Hardware & Supplies	Qty	Unit Price	Price
---------------------	-----	------------	-------

<b>Cash Drawers</b>			
Star CD3-1616BK55-S2 Cash Drawer Dumb, 16"x16", Blk, 5B/5C, Cable 1 included	7	\$198.00	\$1,386.00





# VERMONT SYSTEMS

Exhibit "A"

05/20/2022

Quote Number: QUO-11741-K4W4V5

Software Pricing is valid for 120 Days  
Hardware Pricing is Subject to Change

### Access Control Scanners

qScan Indoor/Outdoor Bar Code Scanner Relay †(229)	2	\$95.00	\$190.00
qScan Power Over Ethernet (POE)	2	\$135.00	\$270.00
qSCAN Outdoor Bar Code Scanner, TCP/IP †(231)	2	\$1,395.00	\$2,790.00

### Receipt Printers

Star TSP143LAN Thermal Printer,PS,Grey, †(233)	7	\$385.00	\$2,695.00
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### Bar Code Scanners

Honeywell MK7580G 1D/2D Genesis Imager, USB Cable † (234)	7	\$435.00	\$3,045.00
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### Payment Card Readers

Ingenico Lane 3000 Credit Card Terminal, Ethernet (no signature) †(236)	0	\$655.00	\$0.00
Ingenico Link 2500 Companion Wireless Card Reader † (237)	0	\$456.00	\$0.00

### Supplies

Thermal Receipt Paper, 1 Ply, 3.125", 50 Rolls/Case †(232)	0	\$110.00	\$0.00
--	---	----------	--------

<b>Shipping (FOB Origin):</b>	<b>\$546.00</b>
<b>Tax:</b>	<b>\$0.00</b>
<b>Total:</b>	<b>\$10,922.00</b>

Training & Expenses	Qty	Unit	Unit Price	Price
Travel Time	1.0	Day	\$400.00	\$400.00
Daily Expenses - Estimated	5.0	Day	\$280.00	\$1,400.00
Meals Per Diem	5.0	EA	\$50.00	\$250.00
Airfare - Estimated	1.0	EA	\$1,200.00	\$1,200.00
3.1 Discovery Time - Remote (estimated)	8.0	Hour	\$125.00	\$1,000.00
On-Site Go Live Assistance	3.0	Day	\$900.00	\$2,700.00
RecTrac SSO Setup Time	4.0	Hour	\$150.00	\$600.00
Setup/Training Time - Remote (Dedicated Day)	4.0	Day	\$900.00	\$3,600.00
Setup/Training Time - Remote (estimated)	64.0	Hour	\$150.00	\$9,600.00
WebTrac Setup & Configuration (estimated)	5.0	Hour	\$125.00	\$625.00
Post Go Live Training	8.0	Hour	\$175.00	\$1,400.00
<b>Tax:</b>				<b>\$0.00</b>
<b>Total:</b>				<b>\$22,775.00</b>

### TOTALS:

Product Group	\$655.00
Services (recurring) (prorated year 1)	\$34,884.00
Hardware & Supplies	\$10,922.00
Training & Expenses	\$22,775.00
<b>Total:</b>	<b>\$69,236.00</b>

For planning purposes, the annual recurring cost will be: \$34,884.00





† Footnotes:

187 The RecTrac/WebTrac Workgroup Base Level Application Software is required for all installations with 26-39 concurrent users. Each application module is priced separately based on the individual functional requirements needed. The base includes 2 Concurrent User Licenses, Systems Management, Report Writer, Incident Reporting, Dashboard, Global Sales, Household Management, Document Center, Audit Log, POS Lite (Donations, Gift Cards), Touch Processing, ID Integration, Advanced Rule & Fee Configuration, Webspeed Agents, Mobile WebTrac, and the Progress Enterprise RDBMS. VS Premium Support Services are included. Other add-ons will be priced separately.

This rate represents a minimum one-year subscription commitment. See contract agreement for specific terms.

188 ACTIVITY REGISTRATIONS NOTES:

- > Track all program enrollments
- > Manage rosters, waitlists, and waivers
- > Track class attendance and billing
- > Instructor payment processing
- > Custom brochure exports

This rate represents a minimum one-year subscription commitment. See contract agreement for specific terms.

189 FACILITY RESERVATIONS NOTES:

- > Manage all your facility schedules
- > Track overlapping facilities
- > Grid-based visual booking tool
- > Check availability of facilities
- > Integrated with activities, leagues and trainers

This rate represents a minimum one-year subscription commitment. See contract agreement for specific terms.

190 POS/INVENTORY/TICKETS NOTES:

- > Module includes both RecTrac & WebTrac options
- > Touchscreen-based inventory sales
- > Complete POS inventory control
- > Manage tickets, gift cards and service items
- > UPC barcode integration
- > Full range of certified POS hardware available for purchase

This rate represents a minimum one-year subscription commitment. See contract agreement for specific terms.

192 PASS MANAGEMENT:

- > Standard Pass Management software enables (optional) capture of photo image during registration and display of photo during Visit Check-In.
- > Create custom ID cards or us pre-printed key fobs
- > Track attendance and demographics
- > Track guest and daily entry fees
- > Capture and display member photos
- > Automated renewal emails/notifications

This rate represents a minimum one-year subscription commitment. See contract agreement for specific terms.

198 LEAGUE SCHEDULING NOTES:

- > Manage league play, teams, and players
- > Record scores and track standings
- > Manage single and double elimination tournaments
- > Roster draft options for team creation

This rate represents a minimum one-year subscription commitment. See contract agreement for specific terms.







200 PERSONAL TRAINER SCHEDULING NOTES:

- > Manage trainer schedules
- > Qualification availability search
- > Reserve facility with trainer bookings

This rate represents a minimum one-year subscription commitment. See contract agreement for specific terms.

203 Mobile WebTrac provides patron access to select functions on a smart phone mobile browser. Since Mobile RecTrac is browser based, it is device/OS independent. Functions such as booking a tee time, enrolling in a class, viewing a calendar of events, making a payment, and displaying their pass barcode are a few of the operations that patrons will be able to access on their phone. All patron related functions that are developed for Mobile WebTrac will be available under this one license fee. In other words, Mobile WebTrac encompasses all of the functions that have been developed across all WebTrac module.

This rate is based on a one year subscription commitment.

204 Mobile RecTrac provides access to select staff functions using a smart phone mobile browser. The Mobile RecTrac browser is device/operating system independent. Functions such as Visit Check-In, League Scores Postings, Roster Print, Tee Sheets, and Household Inquiries are a few of the functions that are available to the staff using a smart phone. All current and future Mobile RecTrac staff related functions developed for all RecTrac modules by VSI are included in this one-time license fee, providing that the annual maintenance and support fees are paid.

This rate is based on a 36

month intital subscription commitment.

206 Examples of the most popular template designs can be viewed on the VS website. [www.vermontsystems.com](http://www.vermontsystems.com)

210 Uses Shibboleth SSO authentication.

213 The base software license fee includes the first two concurrent users. Additional users can be added at any time. Each user has access to all licensed software modules, as authorized in the user-defined menu system.

This rate is based on a one year subscription commitment.

215 The base Hosting Services Fee does NOT include the Vermont Systems application software and Progress software annual maintenance fees.

Prior to selecting the hosting option, we require customer to test/verify connectivity from all locations to ensure satisfactory performance. Please contact Vermont Systems Sales for additional information and scheduling, 877-883-8757 - Option #2 or email at: [sales@vermontsystems.com](mailto:sales@vermontsystems.com).

Please refer to Vermont Systems legal page for Privacy Policy information: <https://www.vermontsystems.com/legal>

216 The Additional User Hosting Services Fee does NOT include the Vermont Systems application software and Progress software annual maintenance fees.

Prior to selecting the hosting option, we require customer to test/verify connectivity from all locations to ensure satisfactory performance. Please contact Vermont Systems Sales for additional information and scheduling, 877-883-8757 - Option #2 or email at: [sales@vermontsystems.com](mailto:sales@vermontsystems.com).

221 The General Ledger Interface will create a file consisting of postings made to any GL account with activity in RecTrac for a specified date range. The file format will be in a format that your financial software requires. To determine the file layout and content, we provide a questionnaire to be completed and submitted along with your order. Upon receipt we will contact you to discuss the requirements in relation to the interface. Once requirements are reviewed and approved, the VS Trainer will assist & configure the VS application for the GL interface. The Trainer will show the Customer how to generate the batch export file.

At this point, it is the Customer's responsibility to contact the financial software vendor to arrange for assistance to import the daily batch file for automatic posting to the general ledger system. The VS trainer is not responsible for importing the batch files into any third-party application software or for contacting the vendor.

IMPORTANT: The RecTrac General Ledger Interface is not and cannot be a cash-receipts interface.

222 Scheduled Service Cancellation Fees:

10% of the price per scheduled block of time/minimum \$175.00

How to avoid Cancellation Fees:

- Hourly Services – Customer is required to provide notice at least 3 business days prior to the scheduled training.
- Multi Day or On-Site Services – Customer is required to provide notice at least 3 weeks prior to the scheduled training.



- 224 Software Subscription Fee: \$25.00 per month, per merchant account
- 225 Credit Card Processing transaction fees: \$.20 per transaction flat fee
- 226 Credit Card Processing transaction fees - PayTrac Payments - 2.15% Per Transaction
- 229 The Relay is configured with both the Indoor and Outdoor qSCAN readers.
- 231 The qSCAN requires RecTrac version 10.3T or higher. The Access Control qSCAN Outdoor Bar Code Reader is configured with TCP, 12VDC/500ma Power, AC Adapter, Weatherized, Outdoor Rating IP65, Temperature -40dC to 85dC, 2 LED Indicators, Dimensions 6.4'L x 4.4'W x 2'H, Mounting Front Side Flange, 3' Cable DB9 RS232 or RJ45 or Wiegand, Black Polycarbonate Material, Bar Code Read Range 3' - 18' (depending on bar code size), Also requires qSCAN Relay & POE (Power Over Ethernet) Form C 500ma Max, if using PoE power. Also available is the optional qSCAN LCD Display 2 x 16 Readable Direct Sunlight.

A qSCAN bar code reader is required for each access point and requires a 4 week lead time, as units are custom built for each order. The qSCAN LCD green light illuminates when a bar code card is correctly read and has a valid ID. If invalid, the Red light is illuminated. The qSCAN is weatherized for outdoor use. To ensure immediate service for near 100% uptime, we suggest ordering at least one spare qSCAN to use in case your unit requires depot warranty service.

Adult signature is required, with a delivery confirmation by UPS.

- 232 Thermal Receipt Paper, 1 Ply, 50 Roll/Case for Star, Epson, & Ithaca receipt printers.
- 233 Star Micronics, TSP143III LAN Thermal, Printer, 1-Ply, 2-Color, Auto Cutter, Ethernet, Internal Power Supply and Cable included.
- 234 Honeywell MK7580G-2 Genesis Bar Code Imager USB Kit, 1D/2D, PDF17, Gray, Type A 3M Cable (9.5' - Cbl-500-300-S00)), Power Supply, EasyID Software option, and VSI Custom Configuration. USB keyboard emulation is standard with optional Serial or Parallel emulation. Standard keyboard emulation used to connect reader to dedicated computer. This scanner can be used for RecTrac Background Visit Check-in by configuring it for Serial Emulation using the same USB cable. This enables the computer to be used for other functions, while it is also being used to scan visitor ID cards.
- 236 Please visit the POS Portal to purchase this device as VS doesn't sell directly:  
<https://partner.posportal.com/vermontsys/vermont/credit-card-readers.html>

Purchase includes power supply & ethernet cable

- 237 Mobile Card Reader device option. Please visit the POS Portal to purchase this device as VS doesn't sell directly:  
<https://partner.posportal.com/vermontsys/vermont/credit-card-readers.html>





**ADDENDUM  
CITY OF ROUND ROCK, TEXAS**

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Solicitation: RFP 22-008

Addendum No: 1

Date of Addendum: 12/15/21

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This addendum is to incorporate the following changes to the above referenced solicitation:

- I. **Additional Information:** Please note the City has updated their terms and conditions located at <https://www.roundrocktexas.gov/city-departments/purchasing/>. Hyperlinks were updated and Section 15 has two new requirements under 15.3 and 15.4 that are required by the Texas State Legislature.
- II. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

APPROVED BY:

  
\_\_\_\_\_  
Adam Gagnon, Purchaser  
Purchasing Office, 512-218-5456

12/15/21

By the signature affixed below this addendum is hereby incorporated into and made a part of the above referenced solicitation.

ACKNOWLEDGED BY:

Joshua Karson  
\_\_\_\_\_  
Name

  
\_\_\_\_\_  
Authorized Signature

1/14/2022  
\_\_\_\_\_  
Date

**RETURN ONE SIGNED COPY OF THIS ADDENDUM TO THE PURCHASING OFFICE WITH YOUR SEALED PROPOSAL. FAILURE TO DO SO MAY AUTOMATICALLY DISQUALIFY YOUR RESPONSE FROM CONSIDERATION FOR AWARD.**

## TAB 10 – Exceptions

**Part IV Subset #5 Software and Contractor Requirements** we meet and exceed all of the requirements in this section with the exception of those items listed below:

B

i.

e. There are many options for availability calendar viewing with pre-defined filters, although these are not 'custom' although they can be customized using the predefined outputs and filters.

iv.

d. Referees are scheduled to games by their qualifications only.

v.

b. For scanning tickets or memberships with a Mobile Phone the separate purchase of the Koamtac KDC 470Ci SmartSled is required. This is a 2D imager Bluetooth scanner that is adaptable to numerous Apple iOS (iPhone, iPod Touch, iPad), Android, and Windows mobile devices. When used with Mobile RecTrac, the KOAMTAC KDC 470Ci SmartSled allows for mobile check-in processes including, Pass Visit Processing and Access Tickets. The Koamtac device is flexible and easy to use. A single unit can be attached to and paired with mobile devices of varying size, thus allowing a single unit to be used at different locations with different mobile devices, provided your events are not taking place simultaneously. If interested, purchase one unit directly from Koamtac for testing purposes, then purchase additional units as needed if the initial tests work well.

vi.

b. We currently do not integrate with Microsoft's BI/Power Automate.

d. We have a built-in door management system which is priced out in our Cost Proposal. Please note that we have our own hardware, but all electrical work and installing of door locking mechanisms/turnstiles/gates are the responsibility of the City or a City selected vendor.

vii.

b. We do not track success or "open rate" of email. We are only tracking that an email was sent.

d. Our system can create a section within the online portal, WebTrac, for customers to fill out a post-class evaluation with an unlimited number of questions with a variety of answer type options available.

viii.

a. Personal Trainers are not able to enter availability into the system. Trainer schedules of availability are manually created.



## PAYTRAC PAYMENT SERVICES ADDENDUM

This PayTrac Payment Services Addendum ("Addendum") between RecTrac, LLC d/b/a Vermont Systems ("VS") and City of Round Rock, TX ("Customer") is intended to revise the Services Agreement, inclusive of all relevant attachments, schedules, exhibits and/or Addenda (collectively, "Agreement") previously or simultaneously executed between the Parties by adding to the Agreement the terms and conditions listed below.

- 1 **TERM.** The term of this Addendum will commence on the date executed by the Customer and will run coterminus with the Agreement.
- 2 **PAYMENT SERVICES.** Customer is adding VS PayTrac Payment Services to the suite of products and services it is receiving from VS (as reflected in the Order Schedule) at the rates described in the attached Schedule A. VS will provide Customer with Payment Services pursuant to a separately executed Sub-Merchant Agreement, inclusive of Customer's Sub-Merchant Application and Agreement ("SMAA") and VS's PayTrac Payment Service Terms & Conditions, each of which shall be incorporated by reference into the Agreement.
- 3 **SOFTWARE UPDATES.** To maintain the highest level of security for payment processing, the Customer agrees to operate on the most recent release of the software within 30 days of its general release. Extended delays to update the software may impact the ability to safely process transactions and VS reserves the right to disable processing until the software is updated.
- 4 **MISCELLANEOUS.** Except as expressly revised in this Addendum, the Agreement will remain in full force and effect. If there is any conflict of inconsistencies between this Addendum and the Agreement, this Addendum will control. VS's acceptance may be evidenced by its fulfillment of the Agreement which this Addendum revises.

**AGREED TO AND ACCEPTED BY:**

City of Round Rock, TX

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Date

Title:

Exhibit "C"



**SCHEDULE A:  
PAYTRAC PAYMENT SERVICE RATES & FEES\***

TRANSACTION PARTIES		FUNDING**
Customer / Sub-Merchant:	City of Round Rock, TX	Funds received by 7:00pm ET will be deposited in Customer's designated account within three (3) business days
Payment Facilitator:	RecTrac, LLC d/b/a Vermont Systems	
Payment Processor:	WorldPay, LLC	
Sponsor Bank:	Fifth Third Bank	
<p>* Customer acknowledges and accepts that VS will collect its fees and charges for Payment Service directly from the EFT/ACH draft associated with the business location.</p> <p>** VS is not responsible for funding delays due to weekends, federal holidays or Force Majeure events or incidents. *** Daily settlement cut-off times are <del>7:30pm ET</del> <b>Midnight local time</b> for E-commerce and <b>Midnight local time</b> 9:00pm ET for Card Present MIDS.</p>		

**FLAT RATE MODEL**

CREDIT CARD PROCESSING FEES			
Mastercard Visa Discover	Per electronic authorization	\$	0.20
	Per electronic authorization reversal (void)	\$	0.20
	Per sale transaction	\$	0.20
	Per refund transaction	\$	0.20
	Per credit card decline	\$	0.20
	Credit card account updater fee If & when available and option selected/elected	\$	1.00
	Per chargeback request or return processed	\$	25.00
	Mastercard-Visa-Discover acquired gross purchase sale %		2.15
American Express	Per AMEX sale transaction (AMEX Direct)	\$	NA
	Per AMEX refund transaction (AMEX Direct)	\$	NA
	Credit card account updater fee If & when available and option selected/elected	\$	NA
	Per chargeback request or return processed	\$	NA
	Per AMEX acquired settled transaction (Opt Blue)*	\$	NA
	AMEX acquired gross purchase sale % (Opt Blue)		NA

## Exhibit "C"



* VS shall be permitted to switch its primary merchant account to Opt Blue without Sub-Merchant approval or pre-authorization.			
<b>ACH PROCESSING FEES (if and when available &amp; option selected/elected)</b>			
ACH / e-Check Processing	ACH fee per sale transaction	\$	1.00
	ACH fee per refund transaction	\$	1.00
	ACH return fee per item	\$	1.00
	ACH account updater fee	\$	1.00
	ACH notification of change	\$	1.00
	ACH auto redeposit	\$	1.00
<b>INSTANCE-BASED FEES</b>			
Funding Fees	Per fiscal day overdraft fee	\$	110.00
	Per wired funds transfer	\$	15.00
	Per ACH credit / debit per funds transfer	\$	0.10
<b>OTHER FEES</b>			
	PCI Non-compliance Fee (Monthly rate) per MID, to be assessed if the Customer is found to be PCI non-compliant, not to exceed \$75.00 total.	\$	25.00
<b>NOTES</b>			

**SERVICE FEE MODEL (if City decided to use Service fees)**

<b>CREDIT CARD PROCESSING FEES</b>			
Mastercard Visa	Credit card account updater fee If & when available and option selected/elected	\$	1.00
	Per chargeback request or return processed	\$	25.00
Discover	Mastercard-Visa-Discover acquired gross purchase sale %		3.00 %

Customer  
INITIALS: \_\_\_\_\_

## Exhibit "C"

# PAYTRAC PAYMENT SERVICE TERMS AND CONDITIONS

- 1. SUB-MERCHANT AGREEMENT.** These PayTrac Payment Service Terms and Conditions govern the terms and conditions under which we, as a payment facilitator, will agree to provide you, as a sub-merchant, with certain payment-related services. For purposes of this Sub-Merchant Agreement, the sub-merchant identified in the Sub-Merchant Application and Agreement ("**SMAA**") will be identified as "**you**," "**your**," or "**Sub-Merchant**." These Payment Terms and Conditions, together with your completed and approved SMAA, will form a binding "Sub-Merchant Agreement" between you and the payment facilitator identified in the SMAA ("**we**," "**us**," "**our**," or "**Payment Facilitator**"). If you are receiving Payment Services (defined below) from us, then your Sub-Merchant Agreement will become part of your overall Agreement with us, which Agreement includes, in addition to the Sub-Merchant Agreement, our Terms of Service, Privacy Policy and other referenced exhibits, schedules or addenda. Terms not defined herein shall have the meanings as set forth in Section 1 of the Terms of Service.
- 2. PAYMENT SERVICES.** Provided you satisfy the underwriting criteria for receipt of Payment Services and remain in compliance with the Agreement, we will agree to provide you with the payment services as described in the Agreement (collectively, "**Payment Services**"). In exchange for Payment Services, you agree to pay us the rates, fees and other charges described in the Agreement (collectively, "**Fees**"). Besides us, there are other third parties involved in the facilitation and processing of Payment Services; these third parties include banks (i.e., acquiring bank, sponsor bank), the major card networks/associations such as Visa, Mastercard, Discover and American Express (collectively, "**Card Brands**" unless referred to individually by name), and our designated payment processor ("**Processor**"). Each of these parties serve an important function in the facilitation, processing and settling of transactions associated with your business. By designating us as your agent for payment facilitation services, and remaining in compliance with the terms of the Agreement (including payment of all of our Fees), you will receive the right to accept payments from customers, clients and/or members (collectively, "**End Users**") through validly issued bankcards ("**cards**") associated with the Card Brands, and/or, if approved, through automated clearing house transactions ("**ACH**") regulated by the National Automated Clearing House Association ("**NACHA**"). We will only provide you with Payment Services for transactions run on active, non-defaulted End User agreements properly delivered to us through the appropriate system in accordance with the Agreement's terms and conditions including, without limitation, this Sub-Merchant Agreement.
- 3. APPLICATION PROCESS; UNDERWRITING; APPROVAL FOR PAYMENT SERVICES.** Completion of the SMAA and submission through our standard underwriting process shall be a pre-requisite and pre-condition to your receipt of Payment Services. If you fail to meet our then-current underwriting requirements, or the then-current underwriting requirements of our Processor (as applicable), you shall not be allowed to receive Payment Services. Federal regulations such as the USA Patriot Act or FinCEN require financial institutions (i.e., banks) to verify the identity of persons seeking to open a depository account. Our Processor, in turn, requires that we submit certain information about each sub-merchant through underwriting prior to such sub-merchant's receipt of payment services. Information that we may request includes, but is not limited to, basic sub-merchant information such as entity name, business address, tax number, date of formation, years in business; transaction information, processing volumes, payment types accepted, address of business locations where payments may be accepted; and information about who owns and controls the sub-merchant. It shall be your sole responsibility to provide us with all required information, to ensure the accuracy and completeness of the information provided, to provide us with timely and accurate updates if your information changes, and to make the required acknowledgements and authorizations related to Payment Services as described in the Sub-Merchant Agreement. We (and our Processor, as applicable) will base underwriting decision on the information provided. If, after approval, we discover that certain information provided in the SMAA was false, incomplete, misleading or inaccurate, as determined by us or our Processor, we reserve the right to suspend or terminate Payment Services immediately at our discretion. If you pass underwriting and your application is approved, then your SMAA will automatically convert to a Sub-Merchant Agreement which incorporates these Payment Terms & Conditions (and other documents forming the Agreement) by reference. Underwriting approval and conversion of your application to a Sub-Merchant Agreement may occur without notice to you. Your failure to notify us of changes to your business may be considered a material breach of the Sub-Merchant Agreement. You expressly authorize us to make business and/or personal credit inquiries (including, without limitation, credit report inquiries into your directors, officers and principals), identity-verification inquiries, transaction-verification inquiries (including, without limitation, contacting End Users to verify transactions), and any other inquiry or background check that we consider reasonably necessary as related to our provision of the Payment Services. You further agree to provide us with any information or documentation requested by the Processor, the Card Brands and/or the bank(s).
- 4. DESIGNATION AS LIMITED PAYMENTS AGENT.** By entering into this Sub-Merchant Agreement, you are appointing us as your limited payments agent for the sole purpose of receiving, holding and settling payments made to you for your goods and services as validly entered in and through our system or platform. We will settle payments that are actually received by us to you, less any amounts owed to us, including fees and other obligations, and subject to the terms and conditions of the Agreement, including without limitation, this Sub-Merchant Agreement. You agree that a payment received by us on your behalf satisfies an End User's (i.e., a payor's) obligation to make payment to you, regardless of whether we actually settle the payment to you. If we do not settle the payment to you, you will only have recourse against us and not the End User, as payment is deemed made by an End User to you upon constructive or actual receipt of funds by us. We will process transactions in accordance with your written instructions, the agreement(s) in place with us or End Users, and applicable law, rules or regulations.



## Exhibit "C"

5. **DESIGNATED ACCOUNT.** You will be required to open and maintain a business bank account with a U.S.-chartered bank (your "**Designated Account**," or, if you have more than one account, your "**Designated Accounts**"). Each sub-merchant entity must have its own Designated Account and the name on the Designated Account must match the sub-merchant's legal entity name or registered doing-business-as name. All remits or other deposits to you as associated with Payment Services will be made into your Designated Account(s).
6. **PROHIBITED ACTIVITIES.** In receiving Payment Services, you shall not, through yourself or a third party: (a) submit any transaction to us that was previously charged back and subsequently returned to you, irrespective of cardholder approval; (b) knowingly submit any transaction that is illegal or that you should have known was illegal (you acknowledge that such transaction must be legal in both your and the cardholder's jurisdiction); (c) submit a transaction that you know, or should have known, is either fraudulent or not authorized by the cardholder; (d) require a cardholder to complete a postcard or similar device that includes the cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed, nor request a Card Verification Value 2 ("**CVV2**") for a card-present transaction, nor retain or store any portion of the magnetic-stripe data subsequent to the authorization of a sales transaction, nor any other data prohibited by the Card Brands operating regulations or this Sub-Merchant Agreement, including CVV2; (e) add a surcharge to transactions except as expressly permitted by, and in full compliance with, the Card Brands operating regulations; (f) charge a minimum or maximum amount for a transaction unless expressly authorized by, and in full compliance with, the Card Brands operating regulations; (g) disburse funds in the form of cash unless you are participating in full compliance with a program supported by a Card Brand for such cash disbursements and in full compliance with the Card Brand's operating regulations; (h) submit a transaction that does not result from an act between you and a cardholder; (i) accept a card issued by a U.S. issuer to collect or refinance an existing debt, unless expressly authorized by, and in full compliance with, Card Brand operating regulations; (j) request or use a card account number for any purpose other than as payment for your goods or services; (k) add any tax to transactions, unless applicable law expressly requires that you are permitted to impose a tax (in such event, any tax amount, if allowed, must be included in the transaction amount and not collected separately); (l) process transactions for, receive payments on behalf of, or redirect payments to a third party (unless required by law); (m) copy, modify, adapt, translate, reverse engineer, decompile, or disassemble, in any way, any portion of the Payment Services; (n) interfere with or violate any other of our services or End User's right to privacy or other rights, or harvest or collect personally identifiable information about End Users without their express consent, including using any robot, spider, site search or retrieval application, or other manual or automatic device or process to retrieve, index, or data-mine; (o) defame, abuse, harass, stalk, threaten, or otherwise violate the legal rights of others; (p) transmit or otherwise make available in connection with the Payment Services any virus, worm, trojan horse, time bomb, web bug, spyware, or any other computer code, file, or program that may or is intended to damage or hijack the operation of any hardware, software, or telecommunications equipment, or any other actually or potentially harmful, disruptive, or invasive code or component; (q) interfere with or disrupt the operation of the Payment Services, or the servers or networks that host the Payment Services or make them available, or violate any requirements, procedures, policies, or regulations of such servers or networks; (r) sell, license, or exploit for any commercial purposes any use of or access to the Payment Services other than as permitted by us; (s) forward any data generated from the Payment Services without our prior written consent; (t) sublicense any or all of the Payment Services to any third party; and/or (u) transfer or assign your account password or credentials, even temporarily, to a third party. We reserve the right to monitor you and your End User's use of the Payment Services to ensure compliance with the Agreement including, without limitation, this Sub-Merchant Agreement and applicable law. If we determine that you are not in compliance with the Sub-Merchant Agreement, we reserve the right to take appropriate remedial action including, without limitation, suspending or terminating Payment Services, or suspending or terminating your access to the system or platform. In receiving Payment Services, you further acknowledge, represent and warrant that you will not make Payment Services available to (i) any person who appears of the U.S. Department of Treasury Office of Foreign Assets Control Specially Designated Nationals list; (ii) any person who is less than 18 years of age; (iii) any person or entity who has been previously terminated for cause by us, or any of our affiliates; and (iv) who is not domiciled in the U.S.
7. **SUB-MERCHANT REPRESENTATIONS.** You represent and warrant that (a) you are at least 18 years of age; (b) if an individual account, you are a sole proprietorship validly existing in the United States, Canada, or its territories, and if an entity, that the entity was validly formed, registered and is in good standing in at least one of the fifty United States, Canada, or its territories; (c) you have never been placed on the MasterCard MATCH system or the Combined Terminated Merchant File, and if so, you have disclosed this to us; and (d) all transactions are bona fide and no transaction involves the use of a Card for any purpose other than the purchase of goods or services from you.
8. **END USERS.** We are not a party to any contract or business relationship that you may have with End Users, and we shall have no obligations or liability under any such agreement or business relationship. You are solely responsible for your own products and services, and for the content and legality of your own contracting documents with End Users ("**End User Agreements**"). Notwithstanding the foregoing, to the extent we determine that the language in your End User Agreement is inadequate to protect our interests or authorize Payment Services (and, specifically, the billing of End User accounts for your products and/or services), we may require you to include a payment authorization provision acceptable to us in your End User Agreement. If you fail to include such a provision in your End User Agreements, we may consider this a material breach of the Sub-Merchant Agreement and/or suspend Payment Services (permanently or temporarily) based on your non-compliance. We make no representations or guarantees with respect to End User fund availability, that a transaction is or will be authorized or processed, or that a transaction will not later result in a chargeback or reversal. If we are providing you with "fully-managed"

## Exhibit "C"

Payment Services, then, in addition to your other authorizations, you expressly authorize us to contact your End Users at the telephone number listed in their End User Agreement, or at the End User's contact information available in the system or platform, about any matter pertaining to billing or payment on the End User's account including, without limitation, communications about past due balances that may be owed. It shall be your sole responsibility to obtain End User consent for such communications in writing, making clear that these communications may take place by phone, email, text or voicemail message using pre-recorded voice messages or an automatic telephone dialing system. You agree to defend, indemnify and hold us harmless for any liability related to or arising from our interactions with your End Users including, without limitation, our communications with your End Users about matters related to Payment Services.

9. **REGULATORY STATUS.** In providing Payment Services to you, we are your designated agent for certain payment facilitation services, as integrated with our proprietary technologies, but always acting at your direction in accordance with the contracts that have been entered into including, without limitation, the Sub-Merchant Agreement. We are not a bank, money transmitter or other money services business. The Payment Services that we offer and the payment transactions that we help to facilitate involve the use of our own proprietary technologies and the efforts of third parties such as banks, the Card Brands, and our Processor.
10. **TERM; TERMINATION OF PAYMENT SERVICES.** The term of this Sub-Merchant Agreement will run concurrently with the Term as described in your Agreement. As applicable, if we have entered into a Master Vendor Agreement with your franchisor, then the term of this Sub-Merchant Agreement will run concurrently with the Term as described in the Master Vendor Agreement. We shall have the right to terminate this Sub-Merchant Agreement at any time for any reason, or for no reason, and shall have no liability to you for any such termination. Upon termination, you shall immediately cease using the Payment Services. We shall have the right to delete your Designated Account information upon termination of the Sub-Merchant Agreement, but we shall also have the right, at our choosing, to retain copies of such information for up to five (5) years at our cost. This Sub-Merchant Agreement shall terminate immediately if a bank, the Card Brands or our Processor require us to terminate the Sub-Merchant Agreement. Upon termination of Payment Services for any reason, you shall remain liable for any and all outstanding Fees owed.
11. **TAXES.** It is your sole responsibility to determine what, if any, taxes apply to the sale of your products and services, or the payments you receive in connection with your use of our Payment Services ("Taxes"). It is solely your responsibility to assess, collect, report, or remit the correct tax to the proper taxing authority. We are not obligated to, nor will we determine whether Taxes apply, or calculate, collect, report, or remit any Taxes to any tax authority arising from any transaction. You acknowledge that we will satisfy all IRS reporting requirements as required by law, including providing the IRS with an information return on your card transactions and third-party network transactions. We will also comply with any lawful orders, garnishments or tax levies associated with your account. This provision shall be read in conjunction with, and not in conflict of, any tax-related provision in the Terms of Service.
12. **CARD BRAND RULES.** If you accept cards issued by any of the major Card Brands, then in addition to these Payment Terms and Conditions, you will also be obligated to comply with Card Brand rules and regulations, the terms of which are incorporated by reference herein. The operating regulations for each of the major Card Brands can be accessed at the links below:
  - **VISA:** [usa.visa.com/merchants/operations/op\\_regulations.html](https://usa.visa.com/merchants/operations/op_regulations.html)
  - **Mastercard:** <https://www.mastercard.us/en-us/business/overview/support/rules.html>
  - **American Express:** [www.americanexpress.com/merchanttopguide](https://www.americanexpress.com/merchanttopguide)
  - **Discover:** <https://www.discovernetwork.com/en-us/faq>
  - For transactions involving ACH, a copy of the NACHA operating rules and guidelines are available at [www.achrulesonline.org](https://www.achrulesonline.org).

Nothing in this Sub-Merchant Agreement shall be read or construed to interfere with or lessen the right of the Processor, the bank(s), or the Card Brands to terminate this Sub-Merchant Agreement; and, if this occurs, such termination shall not be considered a material breach of the Agreement by us. In the event of a conflict between this Sub-Merchant Agreement and the Card Brand's operating regulations, the Card Brand operating regulations will control. With respect to the Card Brand operating regulations, you acknowledge and agree that: (a) you will be responsible for the actions of your employees and agents; (b) you will comply with all applicable laws and regulations and all applicable parts of the operating regulations, including those parts regarding the ownership and use of Card Brand marks; (c) you will notify us, as your payment facilitator, of any third-party that will have access to Cardholder Data; (d) you will comply with, and will contractually require your suppliers and agents to comply with, the provisions of the Cardholder Information Security Program (CISP) and PCI DSS, or other security program as required by a Card Brand and demonstrate compliance with these security obligations; and (e) Card Brands may conduct, or direct another party to conduct, an audit of you at any time, and you must comply in all material respects with such audit until its completion.

13. **AMERICAN EXPRESS OPT-BLUE PROGRAM.** The following provision only applies if you are participating in the American

## Exhibit "C"

Express Opt-Blue Program, as controlled by the American Express OptBlue Program operating regulations. As a participant in the American Express Opt-Blue Program: (a) you must comply with, and accept American Express cards in accordance with the terms of this Sub-Merchant Agreement and the American Express Merchant Operating Guide, as such terms may be amended from time to time; (b) you acknowledge that the American Express Merchant Operating Guide is incorporated by reference into this Sub-Merchant Agreement and is available online [here](#); (c) you expressly authorize us to submit transactions to, and receive settlement from, American Express on your behalf; (d) you expressly consent to our collection and disclosure of transaction data, Sub-Merchant Data, and other information about you to American Express, and to American Express using such information to perform its responsibilities in connection with the American Express Program, promote the American Express network, perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communication purposes within the parameters of the program agreement, and important transactional or relationship communications from American Express.

In addition, you acknowledge and agree that: (i) you may opt-out from receiving future commercial marketing communications from American Express; (ii) you may be converted from the American Express Program to a direct card acceptance relationship with American Express if and when you become a high CV merchant in accordance with Section 10.5, "High CV Merchant Conversions," and upon conversion, you will be bound by American Express' then-current Card Acceptance Agreement and American Express will set pricing and other fees payable by you for card acceptance; (iii) American Express may use information obtained in the SMAA at the time of setup to screen, communicate and/or monitor you in connection with card marketing and administrative purposes; (iv) you shall not assign to any third party any payments due to you under your respective End User Agreement, and further agree that all indebtedness arising from charges will be for bona fide sales of goods and services (or both) at your establishments and free of liens, claims, and encumbrances other than ordinary sales taxes, provided, however, that you may sell and assign future transaction receivables to us, our affiliated entities and/or any other cash advance funding sources who partner with us or our affiliated entities without consent of American Express; (v) American Express is a third-party beneficiary to this Sub-Agreement and retains all rights, but not obligations, in the Sub-Merchant Agreement that will fully provide American Express with the ability to enforce the terms of the Payment Facilitator's Sub-Merchant Agreement against you; (vi) you may opt out of accepting cards at any time without directly or indirectly affecting your rights to accept other payment products; (vii) we may terminate your right to accept cards if you breach any of the provisions in this Section or the American Express Merchant Operating Guide; (viii) we have the right to immediately terminate the Sub-Merchant Agreement for cause, for fraudulent or other activity, or upon American Express' request; (ix) your refund policies for purchases on a card must be at least as favorable as your refund policy for purchases on any other payment products, and you further agree that the refund policy be disclosed to cardmembers at the time of purchase and in compliance with applicable law; (x) you are prohibited against billing or collecting from any cardmember for any purchase or payment on the card unless chargeback has been exercised, you have fully paid for such charge, and you otherwise have the right to do so; (xi) you must comply with applicable laws, rules and regulations relating to the conduct of your business, including the DSR and PCI DSS, each as described in Chapter 15, "Data Security;" (xii) you will report all instances of a data Incident immediately to us after discovery of the incident; (xiii) you will cease all use of, and remove American Express' licensed marks from your website and wherever else they are displayed upon termination of this Sub-Merchant Agreement or your participation in the Program; (xiv) you will ensure data quality and agree that transaction data and customer information will be processed promptly, accurately and completely, and will comply with the American Express technical specifications; and (xv) you are solely responsible for being aware of and adhering to privacy and data protection laws and will provide specific and adequate disclosures to cardmembers on the collection, use, and processing of personal data.

14. **PCI DSS.** We have implemented certain technical and procedural safeguards to keep Cardholder Data safe and will continue to comply with Payment Card Industry Data Security Standards ("PCI DSS") as a Level 1 service provider to the extent we store, process or transmit Cardholder Data on your behalf. As a sub-merchant, you also have certain PCI DSS obligations to help keep Cardholder Data safe. Please visit this [link](#) to learn more about what you can and should do to protect payment transactions at your place of business. We reserve the right to suspend Payment Services for as long as we deem reasonably necessary to investigate suspicious or unusual activity associated with your account, and we shall have no liability to you for any losses that may be attributable to the period of suspension. Similarly, if you know or have reason to believe there has been a security intrusion that has or may result in unauthorized access to Cardholder Data, you must notify us immediately.
15. **PROCESSING LIMITS.** We reserve the right to assign a maximum dollar amount ("**Processing Limit**") per sales ticket and an aggregate maximum dollar amount of card and ACH transactions per calendar month to your account. If we assign a Processing Limit, we will communicate it to you in writing.
16. **MERCHANT SERVICES AGREEMENT WITH PROCESSOR.** In the event you process more than \$1,000,000 in Visa transactions and/or \$1,000,000 in MasterCard transactions (or such other amount as provided by the Card Brand's operating regulations) in any twelve month period ("**Benchmark Amount**"), then in addition to this Sub-Merchant Agreement with us, you may also be required to enter into a "Merchant Services Agreement for Sub-Merchants" with our Processor, the terms of which will be independently enforceable by our Processor.
17. **NEGATIVE ACCRUALS.** We reserve the right to collect a "**Negative Accrual Fee**" if your account goes negative during any given remit cycle. For clarity, we will only assess the Negative Accrual Fee once during a remit cycle period regardless of the number of times your account actually goes negative during that period. A "**Negative Accrual**" occurs where the total liabilities

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associated with your account exceed the total available funds in the account during a given remit cycle.

18. **ADVANCES.** An advance is any disbursement of funds prior to the regularly scheduled remit date. Any requests for an advance will be considered on a case-by-case basis although, as a general policy, we will not honor advance requests. Any advance request must be sent to us in writing. If an advance is granted, you agree to pay a "Remit Advance Fee" for each advance provided.
19. **RECONCILIATIONS; ERROR REPORTING.** You are responsible for reconciling your transaction history or remit reports with your actual transactions and you agree to notify us of any errors or discrepancies (each an "Error"). We will investigate reported Errors and attempt to promptly rectify them. In the event you are owed money as a result of an Error, we will transfer funds to your Designated Account at the next scheduled remit or pay-out cycle. Errors not reported to us within 60 days from when they first appear on your transaction history or remit report will be deemed waived.
20. **SALES TRANSMITTALS.** You will retain a copy of the sales transmittal for the completed transaction for 25 months or such longer period as the Card Brand operation regulations may require. Within three business days of our request, you will produce copies of sales transmittals and other transaction evidence.
21. **RECURRING TRANSACTIONS.** You will be required to obtain an End User's prior written consent for recurring transactions. In obtaining such consent, End Users should be made aware of the product or service they are purchasing, the frequency of charges, the length of the contract's term, and clear notice about how to properly cancel the recurring charges.
22. **ACH PROCESSING.** To enable you to make and accept ACH payments, you authorize us to originate credit or debit records for the purpose of a funds transfer into the ACH network ("Entries"). We will use reasonable efforts to originate Entries on your behalf in accordance with the Sub-Merchant Agreement. You must only submit Entries for bona fide transactions with your End Users made in the ordinary course of business. All disputes between you and any of your End Users relating to any ACH transaction must be resolved between you and them. If we receive any notice of an ACH dispute or NACHA inquiry, we will forward such notice directly to you. We bear no financial responsibility for any disputed transaction. If we respond to a dispute or transaction inquiry on your behalf, you consent to pay our additional fees associated with these services.
23. **REFUNDS; RETURNS.** You agree to process returns of and provide refunds and adjustments for products and/or services in accordance with your End User Agreements. In managing refunds and returns, you agree to: (a) maintain a fair return, cancellation or adjustment policy; (b) disclose your return or cancellation policy to End Users at the time of purchase; (c) not give cash refunds to an End User in connection with a card sale unless required by law; and (d) not accept cash or any other item of value for preparing a card sale refund. Your refund policies should be the same for all payment methods and should specifically include a requirement for prompt payment of refunds in order to mitigate chargeback risk.
24. **CHARGEBACK LIABILITY.** For any transaction that results in a chargeback, we may withhold the chargeback amount in a reserve account. You grant us authorization to recover the amount of any chargeback and any associated fees, fines, or penalties listed in the Agreement, your End User Agreements, or assessed by a Card Brand or Processor. If you have pending chargebacks, we may delay payouts as necessary. Further, if we reasonably believe that a chargeback is likely with respect to any transaction, we may withhold the amount of the potential chargeback from remits otherwise due to you until such time that (a) the chargeback is assessed due to an End User (cardholder) complaint, in which case we will retain the funds; (b) the period of time under applicable law or regulation by which the End User (cardholder) may dispute that the transaction has expired; or (c) we determine that a chargeback on the transaction will not occur. If we are unable to recover funds related to a chargeback for which you are liable, you agree to pay us the full amount of the chargeback immediately upon demand. You agree to pay all costs and expenses, including attorneys' fees and other legal expenses, incurred by us for the collection of all amounts unpaid by you.
25. ~~**RESERVED SECURITY INTEREST.** Where deemed necessary or appropriate by us or our sponsor bank, we (or our sponsor bank) shall create a reserve account ("Reserve") in order to protect us or the sponsor bank from actual or potential liabilities under this Sub-Merchant Agreement. The Reserve will be in an amount determined by us in our sole and absolute discretion to cover anticipated chargebacks, returns, unshipped product and/or unfulfilled services or credit risk based on your processing history. The Reserve may be raised, reduced or removed at any time by us (or at the direction of our sponsor bank). Where the Reserve is not adequately funded, you shall pay all amounts requested by us for the Reserve within one business day of a request for such amounts and we may build the Reserve by offsets from Remits, transaction settlements or by debiting by ACH any of your Designated Accounts with available funds. You hereby grant us a security interest in and lien on any and all funds held in any Reserve, and also authorizes us to make any withdrawals or debits from the Reserve, without prior notice to you, to collect amounts that you owe us under this Sub-Merchant Agreement, including without limitation, for any reversals of deposits or transfers. You will execute any additional documentation required for us to perfect our security interest in any funds in the Reserve. This security interest survives for as long as we hold funds in Reserve; however, it does not apply to any funds for which the grant of a security interest would be prohibited by law. You irrevocably assign to us all rights and legal interests to any interest or other earnings that accrue or are attributable to the Reserve.~~
26. **RECOUPMENT OF FEES.** Where Fees are owing by you to us under the Agreement, we shall have the right to immediately, without prior consent or notice, offset or debit such amounts from funds: (a) deposited by you into your Designated Account(s);

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(ii) due to you as remits; (c) held in the Reserve; or (d) available in your other payment instrument registered with our sponsor bank (if any). Your failure to pay all Fees owed to us on demand will be a breach of this Sub-Merchant Agreement. You will be liable for our costs associated with collection in addition to the amount owed, including without limitation attorneys' fees and expenses, collection agency fees, and interest at the lesser of one-and-one-half percent (1.5%) per month or the highest rate permitted by applicable law. In our discretion, we may make appropriate reports to credit reporting agencies and law enforcement authorities and cooperate with them in any resulting investigation or prosecution. You hereby expressly agree that all communication in relation to delinquent sub-merchant accounts may be made by us or by a third party acting on our behalf, including but not limited to a collections company.

- 27. INTELLECTUAL PROPERTY.** We reserve all rights not expressly granted to you in the Agreement, including without limitation, this Sub-Merchant Agreement. We own the title, copyright and other worldwide intellectual property rights in the Payment Services and all technology, components, systems, and hardware associated therewith. This Sub-Merchant Agreement does not grant you any rights to our trademarks or service marks, nor may you remove, obscure, or alter any of our trademarks or service marks included in the Payment Services. All comments and suggestions of or concerning the Payment Services provided to you shall be our property and you shall not have any rights therein.
- 28. INDEMNIFICATION SPECIFIC TO PAYMENT SERVICES.** You shall indemnify, defend and hold us and all third parties that assist in providing the Payment Services (including the bank(s), the Card Brands and our Processor), as well as our/their employees, directors, and agents harmless from and against any and all claims, costs, losses, damages, judgments, tax assessments, penalties, interest, and expenses (including without limitation reasonable attorneys' fees) arising out of any claim, action, audit, investigation, inquiry, or other proceeding instituted by a third party person or entity that arises out of or relates to: (a) any actual or alleged breach of your representations, warranties, or obligations set forth in the Sub-Merchant Agreement; (b) your wrongful or improper use of the Payment Services; (c) any transaction submitted by you through the Payment Services (including without limitation the accuracy of any product information or service that you provide or any claim or dispute arising out of products or services offered or sold by you); (d) your violation of any third-party right, including without limitation any right of privacy, publicity rights or intellectual property rights; (e) your violation of any applicable law; or (f) any other party's access and/or use of the Payment Services with your access credentials.
- 29. NO WARRANTIES.** THE PAYMENT SERVICES ARE PROVIDED ON AN AS IS AND AS AVAILABLE BASIS. USE OF THE PAYMENT SERVICES IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PAYMENT SERVICES ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.
- 30. LIMITATION ON LIABILITY.** WE SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF SALES, GOODWILL, PROFITS OR REVENUES. OUR LIABILITY UNDER THIS SUB-MERCHANT AGREEMENT FOR ANY CLAIM SHALL NOT EXCEED \$5,000. WE SHALL NOT BE LIABLE FOR ANY DAMAGES CAUSED DIRECTLY OR INDIRECTLY BY: (A) YOUR ACT OR OMISSION, OR THE ACT OR OMISSION OF ONE OF YOUR AFFILIATES OR END USERS; (B) YOUR USE OF OR INABILITY TO USE THE PAYMENT SERVICES; (C) DELAYS OR DISRUPTIONS IN THE PAYMENT SERVICES; (D) VIRUSES OR OTHER MALICIOUS SOFTWARE OBTAINED BY ACCESSING THE PAYMENT SERVICES; (E) BUGS, ERRORS, OR INACCURACIES OF ANY KIND IN THE PAYMENT SERVICES; (F) ACT OR OMISSIONS OF THIRD PARTIES; (G) A SUSPENSION OR OTHER ACTION TAKEN IN ACCORDANCE WITH THE TERMS OF THIS SUB-MERCHANT AGREEMENT; (H) OUR NEED TO MODIFY PRACTICES, CONTENT, OR BEHAVIOR, OR YOUR DIMINISHED ABILITY TO DO BUSINESS AS A RESULT OF CHANGES TO THIS SUB-MERCHANT AGREEMENT OR OUR POLICIES OR PAYMENT SERVICES MADE IN ACCORDANCE WITH THIS SUB-MERCHANT AGREEMENT OR APPLICABLE LAW; (I) ANY BREACH BY YOU OF THIS SUB-MERCHANT AGREEMENT; (J) INCORRECT OR INCOMPLETE TRANSACTION INFORMATION; OR (K) OUR ELECTION TO SUSPEND PROVIDING PAYMENT SERVICES ON THE BASIS OF OUR LEGAL, COMPLIANCE, OR RISK POLICIES.
- 31. TIME LIMIT TO INITIATE A DISPUTE.** Unless otherwise required by law, an action or proceeding by you relating to any dispute or claim by you under this Sub-Merchant Agreement must commence within one year after the cause of action accrues, failing which you forego any rights in respect thereof.
- 32. CONFIDENTIALITY.** Unless otherwise required by law, you shall, and shall cause your affiliates to, hold in strict confidence at all times following the date hereof all of our, our bank's or our Processor's Confidential Information, and neither you nor any of your affiliates shall use such Confidential Information for any purpose other than for the performance of your duties and obligations hereunder. If you breach, or threaten to breach, any of the provisions of this section, in addition to any other rights we may have, including a claim for damages, we shall have the right to have the provisions of this section specifically enforced, and your breach or threatened breach enjoined, by any court of competent jurisdiction, without presentment of a bond (such requirement being expressly waived by you), it being agreed that any breach or threatened breach of this section would cause irreparable harm to us in that money damages would not provide an adequate remedy.
- 33. PERSONAL GUARANTY.** If an individual executes this Sub-Merchant Agreement on your behalf as a guarantor, then such individual personally guarantees performance by you hereunder, shall be deemed to be a guarantor for all purposes, and shall

## Exhibit "C"

be joint and severally liable with you for all of your liabilities under the Sub-Merchant Agreement.

- 34. INDEPENDENT CONTRACTOR.** The relationships of the parties to this Sub-Merchant Agreement shall be solely that of independent contractors, and nothing contained herein shall be construed otherwise. Nothing in this Sub-Merchant Agreement or in the business or dealings between the parties shall be construed to make them joint ventures or partners with each other. Neither party shall do anything to suggest to third parties that the relationship between the parties is anything other than that of independent contractors.
- 35. ASSIGNMENT.** You may not assign or otherwise transfer any or all of your rights or obligations under the Sub-Merchant Agreement without our prior written consent, and any assignment without such prior written consent will be null and void. We may assign any of our rights or obligations hereunder to a third party without written notice to you.
- 36. OTHER AGREEMENT TERMS; CONFLICT.** Upon SMAA acceptance, this Sub-Merchant Agreement shall be considered incorporated by reference into your overall Agreement with us. To the extent any provision of this Sub-Merchant Agreement directly conflicts with any other provision of the Agreement, then the Sub-Merchant Agreement's terms shall be deemed to control.
- 37. COST REVIEW & POTENTIAL ADJUSTMENT.** We will conduct a quarterly review of the overall card processing costs. The first review will begin six (6) months after the initial implementation. If there is a **substantial** material increase in card processing costs, we reserve the right to increase fees associated with Payment Services **with advanced written notice**.

## SUB-MERCHANT APPLICATION AND AGREEMENT (SMAA)

SECTION 1: SUB-MERCHANT INFORMATION							
Business / Sub-Merchant (provide legal entity name)			Doing Business As (if applicable)				
Date of Formation		Approx. Years in Business	Business Address				
Tax ID (FEIN)		Website (URL)		Business Phone			
Primary Contact Name (for general communications)			Primary Contact Phone		Primary Contact Email		
Business Type <small>(Select One)</small>	PUBLIC <input type="checkbox"/>	INDIVIDUAL <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Individual	CORPORATION <input type="checkbox"/> S-Corp. <input type="checkbox"/> C-Corp. <input type="checkbox"/> LLC	PARTNERSHIP <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership	OTHER <input type="checkbox"/> Non-Profit (501C) <input type="checkbox"/> Government <input type="checkbox"/> Other:		
	PRIVATE <input type="checkbox"/>						
Has this business processed credit cards before?		Has this business ever been terminated from accepting credit cards from any network?		Will this business be running a presale prior to opening?		What payment methods will the business accept?	
<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA		<input type="checkbox"/> Debit <input type="checkbox"/> Credit <input type="checkbox"/> ACH	
Briefly describe the nature of the services provided by this business?				What types of payment would this business like to accept?			
				<input type="checkbox"/> In-Person <input type="checkbox"/> Online <input type="checkbox"/> Telephone <input type="checkbox"/> Mail-In <input type="checkbox"/> Recurring Billing			
SECTION 2: TRANSACTION INFORMATION <small>(all financial assumptions approximated in USD)</small>							
Annual Card Volume (\$)	Avg Ticket (Card) (\$)	Max Ticket (Card) (\$)	Annual ACH Volume (\$)	Avg Ticket (ACH) (\$)	Max. Ticket (ACH) (\$)		
Total Annual Sales – All Transactions (\$)							
SECTION 3: LOCATION INFORMATION <small>(use additional pages if necessary)</small>							
	Location/Business Name	Business Address	Same as Sec 1 address:	Business Phone			
1			<input type="checkbox"/>				
2			<input type="checkbox"/>				
3			<input type="checkbox"/>				
4			<input type="checkbox"/>				
5			<input type="checkbox"/>				
6			<input type="checkbox"/>				
SECTION 4: MERCHANT ID INFORMATION <small>(use additional pages if necessary)</small>							
	Merchant ID Account Name (will appear on statement)	Associated Location or Address	Annual Card Revenue				
1		Location #:					
2		Location #:					
3		Location #:					
4		Location #:					
5		Location #:					
6		Location #:					

## Exhibit "D"

### SECTION 5: OWNER INFORMATION

**Why Do We Need This Information?** We require certain information about your ownership for compliance with federal Know-Your-Customer (or "KYC") regulations promulgated by the Financial Crimes Enforcement Network Bureau of the U.S. Department of Treasury. KYC regulations seek to prevent financial crimes and the funding of terrorism, among other things. The information sought below is required by KYC regulations. Information about Beneficial Owners must be provided for any person or entity with a 25% or more ownership interest in the Sub-Merchant unless the Sub-Merchant is a Government Entity. Beneficial Owners may be natural persons (with Social Security Numbers) or they may be another legal entity (with a federal tax ID number). In addition to Beneficial Owner information, **at least one (1) "Control Owner" must be provided.** A Control Owner is not required to have an ownership interest in the Sub-Merchant (although they often do), and the Control Owner must be a natural person with significant responsibility to control, manage or direct the activities of the Sub-Merchant's business. Control Owners often have the title of CEO, CFO, COO, Managing Member, General Partner, President or Treasurer.

#### CONTROL OWNER (must be a natural person; SSN and Driver's License information not required for government entity; \* denotes required fields for all applicants)

Full Legal Name *		Social Security Number	Date of Birth *
Address (Home or Business) *		Title	
Driver's License State	Driver's License Number	Phone (Home or Business) *	Email *

#### BENEFICIAL OWNER(S) (may be a natural person or legal entity; SSN and/or FEIN required; Beneficial Owner(s) information not required for government entity)

##### BENEFICIAL OWNER 1

Full Legal Name (Owner 1)		SSN or FEIN	Date of Birth / Date of Incorporation	
Address (Home or Business)		Email		
Driver's License State	Driver's License Number	Phone	Ownership Interest	%

##### BENEFICIAL OWNER 2

Full Legal Name (Owner 2)		SSN or FEIN	Date of Birth / Date of Incorporation	
Address (Home or Business)		Email		
Driver's License State	Driver's License Number	Phone	Ownership Interest	%

### SECTION 6: BANKING INFORMATION (copy of a voided check or a bank letter with full account details listed will be required)

Bank Name	Account Name	Routing Number	Account Number
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**ACKNOWLEDGEMENT:** By signing below, Sub-Merchant expressly acknowledges that: (1) the individual signing this Sub-Merchant Agreement has the proper legal authority to bind the Sub-Merchant; (2) the Sub-Merchant's Application for payment services may be rejected in underwriting but, once accepted, will constitute a legally binding Sub-Merchant Agreement with the Payment Facilitator identified below; (3) all information provided herein is true and accurate to the best of Sub-Merchant's knowledge; (4) the Payment Service Terms and Conditions, and any other documents referenced as being part of the agreement, shall become part of this Sub-Merchant Agreement; (5) the Payment Facilitator's provision of payment services under the Sub-Merchant Agreement shall be expressly conditioned on Sub-Merchant's payment of all fees and other charges, and its compliance with VS's Terms of Service and Privacy Policy, as may be revised from time to time; and (6) the authority granted herein shall be in the nature of a Power of Attorney, which shall be deemed created, is irrevocable and coupled with an interest.

**AUTHORIZATION:** Sub-Merchant expressly authorizes the Payment Facilitator identified below to take the following actions: (1) to establish a primary merchant account with a payment processor of the Payment Facilitator's choosing; (2) to access Customer Data, including but not limited to Cardholder Data, for the purposes of providing the payment services contemplated by the Agreement; (3) to execute documents on Sub-Merchant's behalf, or to take any other action which the Payment Facilitator deems reasonably necessary to provide its payment services to Sub-Merchant as described herein; (4) to access Sub-Merchant's designated account(s) for purposes of received and accepting payments on settled transactions, together with any adjustments made on Sub-Merchant's behalf; (5) to collect any Fees or other charges owed to Payment Facilitator, or any of Payment Facilitator's affiliates or subsidiaries, directly from the Sub-Merchant's EFT/ACH draft; (6) to set up a reserve account where Payment Facilitator considers it reasonably necessary to protect its legitimate business interests; (7) to withhold the remittance of any funds in accordance with lawful orders, garnishments and/or tax levies; (8) to recoup, retrieve or collect from any source of available funds, including but not limited to the Sub-Merchant's EFT/ACH draft, any Payment Facilitator expenditures related to Sub-Merchant's eCheck returns, chargebacks, negative accruals or overdrawn accounts; and (9) to transfer billed amounts to an account held by Payment Facilitator to facilitate the settling of transactions run at the Sub-Merchant's place or places of business.

#### SUBMITTED AND AGREED TO BY: Sub-Merchant

#### ACCEPTED BY: Payment Facilitator

<b>X</b>	<b>X</b>
Name	Name
Date	Date



## Exhibit "E"

### MERCHANT SERVICES AGREEMENT FOR SUB-MERCHANTS

This MERCHANT SERVICES AGREEMENT FOR SUB-MERCHANTS ("Agreement") is made among WORLDPAY, LLC, having its principal office at 8500 Governors Hill Drive, Symmes Township, OH 45249-1384 and its designated Member Bank (collectively "Acquirer") and \_\_\_\_\_ ("Sub-merchant") in connection with the agreement between Sub-merchant and \_\_\_\_\_ ("Provider"). Acquirer will provide Sub-merchant with certain payment processing services ("Services") in accordance with the terms of this Agreement. In consideration of Sub-merchant's receipt of credit or debit card funded payments, and participation in programs affiliated with MasterCard International Inc. ("MasterCard"), VISA U.S.A. Inc. ("VISA"), Discover ("Discover"), and certain similar entities (collectively, "Associations"), Sub-merchant is required to comply with the Operating Regulations (defined below) as they pertain to applicable credit and debit card payments. In addition, if Sub-merchant meets certain requirements under the Operating Regulations or an Association or the Operating Regulations otherwise require, Sub-merchant may be required to enter into a direct relationship with an entity that is a member of the Associations. By executing this Agreement, Sub-merchant has fulfilled such requirement. However, Acquirer understands that Sub-merchant may have contracted with Provider to obtain certain processing services and that Provider may have agreed to be responsible to Sub-merchant for all or part of Sub-merchant's obligations contained herein.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises contained herein, the parties agree as follows:

1. **Certain Sub-merchant Responsibilities.** Sub-merchant agrees to comply, and to cause third parties acting as Sub-merchant's agent ("Agents") to comply, with the Association's and other payment network's by-laws, operating regulations and/or all other rules, policies and procedures, including but not limited to the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations or payment networks (collectively "Operating Regulations"). Sub-merchant may review the VISA, MasterCard, and Discover websites for a copy of the Visa, MasterCard and Discover regulations. The websites are: <https://usa.visa.com/support/small-business/regulations-fees.html> and <http://www.mastercard.com/us/merchant/> and <http://www.discovernetwork.com/merchants/>. Sub-merchant also agrees to comply with all applicable state, federal, and local laws, rules, and regulations ("Laws"). Without limiting the foregoing, Sub-merchant agrees that it will fully comply with any and all anti-money laundering laws and regulations, including but not limited to the Bank Secrecy Act, the US Treasury's Office of Foreign Assets Control (OFAC) and the Federal Trade Commission. For purposes of this section, Agents include, but are not limited to, Sub-merchant's software providers and/or equipment providers.

If appropriately indicated in Sub-merchant's agreement with Provider, Sub-merchant may be a limited-acceptance merchant, which means that Sub-merchant has elected to accept only certain Visa and MasterCard card types (i.e., consumer credit, consumer debit, and commercial cards) and must display appropriate signage to indicate the same. Acquirer has no obligation other than those expressly provided under the Operating Regulations and applicable law as they may relate to limited acceptance. Sub-merchant, and not Acquirer, will be solely responsible for the implementation of its decision for limited acceptance, including but not limited to policing the card type(s) accepted at the point of sale.

Sub-merchant shall only complete sales transactions produced as the direct result of bona fide sales made by Sub-merchant to cardholders, and is expressly prohibited from presenting sales transactions which are produced as a result of sales made by any person or entity other than Sub-merchant, or for any purposes related to any illegal or prohibited activity, including but not limited to money-laundering or financing of terrorist activities.

Sub-merchant may set a minimum transaction amount to accept a card that provides access to a credit account, under the following conditions: i) the minimum transaction amount does not differentiate between card issuers; ii) the minimum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand; and iii) the minimum transaction amount does not exceed ten dollars (or any higher amount established by the Federal Reserve). Sub-merchant may set a maximum transaction amount to accept a card that provides access to a credit account, under the following conditions: Sub-merchant is a i) department, agency or instrumentality of the U.S. government; ii) corporation owned or controlled by the U.S. government; or iii) Sub-merchant whose primary business is reflected by one of the following MCCs: 8220, 8244, 8249 –Schools, Trade or Vocational; and the maximum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand.

2. **Sub-merchant Prohibitions.** Sub-merchant must not i) require a cardholder to complete a postcard or similar device that includes the cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed, ii) add any tax to transactions, unless applicable law expressly requires that a Sub-merchant impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately), iii) request or use an account number for any purpose other than as payment for its goods or services, iv) disburse funds in the form of travelers checks if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from Sub-merchant, v) disburse funds in the form of cash unless Sub-merchant is dispensing funds in the form of travelers checks, TravelMoney cards, or foreign currency (in such case, the transaction amount is limited to the value of the travelers checks, TravelMoney cards, or foreign currency, plus any commission or fee charged by the Sub-merchant), or Sub-merchant is participating in a cash back service, vi) submit any transaction receipt for a transaction that was previously charged back to the Acquirer and subsequently returned to Sub-merchant, irrespective of cardholder approval, vii) accept a Visa consumer credit card or commercial Visa product issued by a U.S. issuer to collect or refinance an existing debt, viii) accept a card to collect or refinance an existing debt that has been deemed uncollectable, or ix) submit a transaction that represents collection of a dishonored check. Sub-merchant further agrees that, under no circumstance, will Sub-merchant store cardholder data in violation of the Laws or the Operating Regulations including but not limited to the storage of track-2 data. Neither Sub-merchant nor its Agent shall retain or store magnetic-stripe data subsequent to the authorization of a sales transaction.

## Exhibit "E"

3. **Settlement.** Upon receipt of Sub-merchant's sales data for card transactions, Acquirer will process Sub-merchant's sales data to facilitate the funds transfer between the various Associations and Sub-merchant. After Acquirer receives credit for such sales data, subject to the terms set forth herein, Acquirer will fund Sub-merchant, either directly to the Sub-merchant-Owned Designated Account or through Provider to an account designated by Provider ("Provider Designated Account"), at Acquirer's discretion, for such card transactions. Sub-merchant agrees that the deposit of funds to the Provider Designated Account shall discharge Acquirer of its settlement obligation to Sub-merchant, and that any dispute regarding the receipt or amount of settlement shall be between Provider and Sub-merchant. Acquirer will debit the Provider Designated Account for funds owed to Acquirer as a result of the Services provided hereunder, provided that Acquirer may also debit Sub-merchant's designated demand deposit account ("Sub-merchant-Owned Designated Account") upon receipt of such account information from Sub-merchant or Provider, or if Acquirer deposits settlement funds into the Sub-merchant-Owned Designated Account. Further, if a cardholder disputes a transaction, if a transaction is charged back for any reason, or if Acquirer reasonably believes a transaction is unauthorized or otherwise unacceptable, the amount of such transaction may be charged back and debited from Sub-merchant or Provider.

4. **Term and Termination.** This Agreement shall be binding upon Sub-merchant upon Sub-merchant's execution. The term of this Agreement shall begin, and the terms of the Agreement shall be deemed accepted and binding upon Acquirer, on the date Acquirer accepts this Agreement by issuing a merchant identification number, and shall be coterminous with Provider's agreement with Sub-merchant.

Notwithstanding the foregoing, Acquirer may immediately cease providing Services and/or terminate this Agreement without notice if (i) Sub-merchant or Provider fails to pay any amount to Acquirer when due, (ii) in Acquirer's opinion, provision of a service to Sub-merchant or Provider may be a violation of the Operating Regulations or any Laws, (iii) Acquirer believes that Sub-merchant has violated or is likely to violate the Operating Regulations or the Laws, (iv) Acquire determines Sub-merchant poses a financial or regulatory risk to Acquirer or an Association, (v) Acquirer's agreement with Provider terminates, (vi) any Association deregisters Provider, (vii) Acquirer ceases to be a member of the Associations or fails to have the required licenses, or (viii) Acquirer is required to do so by any of the Associations.

5. **Limits of Liability.** Sub-merchant agrees to provide Acquirer, via a communication with Provider, with written notice of any alleged breach by Acquirer of this Agreement, which notice will specifically detail such alleged breach, within thirty (30) days of the date on which the alleged breach first occurred. Failure to so provide notice shall be deemed an acceptance by Sub-merchant and a waiver of any and all rights to dispute such breach.

EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS AGREEMENT, ACQUIRER DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Sub-merchant's sole and exclusive remedy for any and all claims against Acquirer arising out of or in any way related to the transactions contemplated herein shall be termination of this Agreement. In the event that Sub-merchant has any claim arising in connection with the Services, rights, and/or obligations defined in this Agreement, Sub-merchant shall proceed against Provider and not against Acquirer, unless otherwise specifically set forth in the Operating Regulations. In no event shall Acquirer have any liability to Sub-merchant with respect to this Agreement or the Services. Sub-merchant acknowledges Acquirer is only providing this Agreement to assist in Provider's processing relationship with Sub-merchant, that Acquirer is not liable for any action or failure to act by Provider, and that Acquirer shall have no liability whatsoever in connection with any products or services provided to Sub-merchant by Provider. If Provider is unable to provide its services to Sub-merchant in connection with this Agreement and Acquirer elects to provide those services directly, Sub-merchant acknowledges and agrees that the provisions of this Agreement will no longer apply and the terms of Acquirer's then current Bank Card Merchant Agreement, which would be provided to Sub-merchant, will govern Acquirer's relationship with Sub-merchant. If Provider subsequently provides its services to Sub-merchant in connection with this Agreement, Acquirer will cease to provide such services after receipt of notice from Provider and this Agreement will govern Acquirer's relationship with Sub-merchant.

6. **Miscellaneous.** This Agreement is entered into, governed by, and construed pursuant to the laws of the State of Ohio without regard to conflicts of law provisions. This Agreement may not be assigned by Sub-merchant without the prior written consent of Acquirer. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees and assignees. This Agreement is for the benefit of, and may be enforced only by, Acquirer and Sub-merchant and is not for the benefit of, and may not be enforced by, any other party. Acquirer may amend this Agreement upon notice to Sub-merchant in accordance with Acquirer's standard operating procedure. If any provision of this Agreement is determined to be illegal or invalid, such illegality or invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if such provision is not contained in the Agreement "Member Bank" as used in this Agreement shall mean a member of VISA, MasterCard and/or Discover, as applicable, that provides sponsorship services in connection with this Agreement. As of the commencement of this Agreement, Member Bank shall be Fifth Third Bank, an Ohio Banking Corporation, located in Cincinnati, OH 45263. The Member Bank is a party to this Agreement. The Member Bank may be changed, and its rights and obligations assigned to another party by Acquirer at any time without notice to Sub-merchant.

IN WITNESS WHEREOF, this Agreement has been executed by Sub-merchant's authorized officer as of the date set forth below.

SUB-MERCHANT: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_



## SERVICE LEVEL AGREEMENT (SUPPORT)

Terms not specifically described in this Service Level Agreement for Support ("Support SLA") shall have the meanings as set forth in Section 1 of the Terms of Service or elsewhere in the Agreement.

- 1 **ELIGIBILITY.** This Support SLA shall apply only to Customers receiving VS's Support Desk, including "live" support channels by phone or chat. To be eligible for the Support SLA, Customers must be current in their payment of Fees to VS and must remain compliant with the terms and conditions of the Agreement.
- 2 **CASE PRIORITIES.** To provide high quality support and to effectively assign resources to incoming cases, the following four types of case priorities have been identified:

<b>Priority 1</b>	Critical	Critical business impact occurs on a production system preventing business operations. End Users and Patrons are prevented from working within the Software with no workarounds. Examples include: Software crashes or is goes off-line; functionality critical to business operation not available; data breach or loss of Customer Data.
<b>Priority 2</b>	Major	Significant business impact occurs on a production system severely impacting business operation. End Users and Patrons are impacted by the issue but may still be able to work in a limited capacity within the Software. Examples include significant performance degradation; functionalities important to business operation not available; loss of Software functionality has an escalating impact on business operations.
<b>Priority 3</b>	Medium	Minor business impact occurs on a production system that causes a partial or non-critical loss of functionality in the Software. A limited number of End Users and/or Patrons are affected.
<b>Priority 4</b>	Low	Issues occurring on a non-production system in the Software. Examples include: a question, comment or enhancement.

## Exhibit "F"



**3 RESPONSE TIMES.** VS will respond and escalate support issues in accordance with the table below. All days referenced below are calendar days, not business days.

	<b>Priority 1 (within)</b>	<b>Priority 2 (within)</b>	<b>Priority 3 (within)</b>	<b>Priority 4 (within)</b>
<b>Initial Response</b>	<b>1 hour</b>	<b>4 hours</b>	<b>5 days</b>	<b>-</b>
<b>Correction Identified /Pursued</b>	<b>24 hours</b>	<b>7 days</b>	<b>As agreed between parties</b>	<b>-</b>
<b>If Issue Remains Unresolved</b>				
<b>Escalation Stage 1 – to Support Managers</b>	<b>12 hours</b>	<b>7 days</b>	<b>-</b>	<b>-</b>
<b>(Status Report Intervals)</b>	<b>(Every 4 hours)</b>	<b>(Daily)</b>		
<b>Escalation Stage 2 – to Directors</b>	<b>24 hours</b>	<b>7 days</b>		
<b>(Status Report Intervals)</b>	<b>(Every 4 hours)</b>	<b>(Daily)</b>		
<b>Escalation Stage 3 – to President</b>	<b>72 hours</b>	<b>10 days</b>	<b>-</b>	<b>-</b>
<b>(Status Report Intervals)</b>	<b>(Every 4 hours)</b>	<b>(Daily)</b>		

**4 CUSTOMER REPORTING CHANNELS; PROCESS.** Support Desk Customers experiencing support issues must report customer support concerns through VS's established support channels, including:

- Customer support line available at (877) 883-8757
- Chat support available through the support portal on the Site
- For after-hours support, VS pager number at 802-490-1911

All issues or questions reported to support are tracked with a support case that contains at a minimum the Customer account name, contact person, software product and version, module and/or menu selection, detailed description of the issue, and any other pertinent information. Case

## Exhibit "F"



statuses are viewable on the VS support portal. Each case is stored in a queue and the first available support representative will be assigned to the next case issue based on priority.

While reviewing the case issue, the assigned support person will contact the Customer, if additional information is needed. The VS support person will either resolve the issue or advise Customer regarding the status and the course of action being taken to resolve it. All correspondence and actions associated with a case are tracked in the support database. If the issue needs to be escalated to a development resource, Customer will be informed. While issues escalated to development will be scheduled for resolution, they may not be resolved immediately depending on the nature and complexity of the issue. Customer may view the development status at any time.

## Exhibit "G"



# HOSTING SERVICES ADDENDUM

This Hosting Services Addendum ("Addendum") between RecTrac, LLC d/b/a Vermont Systems ("VS," "us," "we," or "our") and City of Round Rock, TX ("Customer," "you," or "your") is intended to revise the Services Agreement, inclusive of all relevant attachments, schedules, exhibits and/or Addenda (collectively, "Agreement") previously or simultaneously executed between the Parties by adding to the Agreement the terms and conditions listed below. Terms not defined herein shall have the meanings provided in the Agreement for Recreation Management Software Terms of Service.

- 1. TERM.** The term of this Addendum will commence on the date executed by the Customer and will run coterminous with the Agreement.
- 2. HOSTING SERVICES.** Customer is adding VS's Hosting Services to the suite of products and services that it is receiving from VS, as reflected in the updated Order Schedule/Pricing Quote (see Exhibit A of Agreement).
- 3. HOSTING OBLIGATIONS.** Hosting of Customer Data on VS-controlled servers and systems does not come standard with all Agreements; Customers must specifically contract for hosting services and pay all associated Hosting Fees. **IF A CUSTOMER DOES NOT SELECT VS'S HOSTING SERVICES, AND INSTEAD CHOOSES TO HOST CUSTOMER DATA ON ITS OWN SYSTEMS AND SERVICES, THEN WE MAKE NO WARRANTIES AND DISCLAIM ALL LIABILITY ASSOCIATED WITH SUCH CUSTOMER DATA OR CUSTOMER'S OWN HOSTING ACTIVITIES, INCLUDING (BUT NOT LIMITED TO) INCIDENTS RESULTING IN DATA BREACH, MISAPPROPRIATION OF CUSTOMER DATA, VIOLATIONS OF PRIVACY RIGHTS, AND/OR ANY OTHER SITUATION RESULTING IN DAMAGES OR MONETARY LOSS ARISING OUT OF OR RELATING TO THE HOSTING OR STORAGE OF CUSTOMER DATA.** If Customer chooses us for hosting services, and we actually store Customer Data on a VS-controlled system or service, then, in addition to those terms and conditions described in our Privacy Policy, and provided Customer remains current in its payment of Hosting Fees and otherwise compliant with the Agreement, then we make the following limited representations and warranties with respect to our hosting services: we will, at all times during the Term of the Agreement: (a) maintain a comprehensive data security program which includes reasonable and appropriate technical, organizational and security measures against the destruction, loss, unauthorized access or alteration of Customer Data (including Patron Data, as applicable) which measures will be no less rigorous than the accepted security standards for similarly situated companies in the industry; and (b) provide our hosting services in a good and workmanlike manner; and (c) offer hosting services which, to the best of our knowledge, comply with applicable local, state or federal laws. The limited representations and warranties described herein shall be subject to any other limitations of liability described by the Agreement.
- 4. CUSTOMER DATA GENERALLY.** You represent and warrant that you own or have appropriate rights to all of your Customer Data. You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or rights to use of all Customer Data (including Patron Data, as applicable). Except as specifically provided for in the Agreement, we shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any of your Customer Data.
- 5. RETURN OF CUSTOMER DATA.** If we are providing you with hosting services, then you shall have access to your Customer Data (including Patron Data, as applicable) for the duration of the Term, subject to the terms and conditions of the Agreement. Upon termination of the Agreement, or where you properly cancel hosting services during the Term, your access to any VS-hosted Customer Data will end immediately on the same day in which you cancel or terminate the Agreement; provided, however, that you may request continued access to your Customer Data for a period not to exceed 30 days (unless we specifically agree otherwise) and subject to additional fees for the limited purpose of transferring your Customer Data to your own systems or servers. Upon termination of the Agreement, or cancellation of your hosting services with us, we may, but shall not be required to, store or hold your

## Exhibit "G"

Customer Data on our servers at our cost and expense, or immediately destroy your Customer Data unless prohibited by applicable law. Notwithstanding the foregoing, we reserve the right to maintain a copy of any other record, book, file and other data, as specified in the Agreement and in such detail as shall properly substantiate claims for payment, for a minimum of one (1) year beginning on the first day after the Agreement is properly terminated, or for such longer period as may be necessary for the resolution of any dispute, negotiation, audit, or other inquiry involving the Agreement.

- 6. HARDWARE.** We shall have no obligation to provide you with the Hardware necessary to access our Services or use our Software. Any Hardware used must comply with our minimum system requirements. If we choose to provide you with Hardware, a description of such Hardware and pricing will be described in your Order Schedule. In the absence of specified pricing, we may provide you with Hardware at our then-current market rates. Full payment for Hardware and any related third-party software is due following delivery. The verification process must be completed so that all payments can be made within 30 days of delivery. Any VS-supplied Hardware will include warranties from the manufacturer or distributor, as applicable, for a specific period. We offer no warranties on Hardware.
- 7. PAYMENT TERMS.** You agree to pay us all Fees permitted by the Agreement. Fees for specific Services are described in the Order Schedule and may be set up to bill quarterly or annually, as we and you may decide. All Fees are based on Services provided, not on your actual usage. Except as permitted by the Agreement, all Fees paid are non-refundable. Payment is due within 30 days from the date you receive our invoice (the "Due Date"). If you do not pay our invoice by the Due Date, then we may charge you a late fee of \$100. All payments are due in U.S. dollars. Unpaid balances owed to us will accrue interest at the rate of 1.5% per month. Please report any errors that you see on an invoice immediately. If you do not dispute a charge within 30 days after receiving it, you will be considered to have accepted the charge. After the first 12 months of the Term, all Fees shall be subject to a cost of living and technology ("COLT") enhancement increase of no greater than five percent (5%). ~~VS reserves the right to apply the COLT enhancement to any Fees at the start of each Renewal Term, in its sole and absolute discretion.~~
- 8. BREACH FOR NON-PAYMENT OF FEES.** Payment not made within 30 days of the Due Date will result in an automatic breach of the Agreement and start the clock on a 20-day period in which to cure. If payment is still not received by the 51st day after the scheduled Due Date, we reserve the right to suspend Services until all outstanding Fees are paid. Continued non-payment of Fees more than 60 days after the Due Date will result in a default under the Agreement. In the event of default, all payments otherwise due to us under the Agreement will be accelerated and will be considered due and payable by you immediately, as of the date of default. We shall have no obligation to release any of your Customer Data until all outstanding Fees are paid in full.
- 9. CHANGING THE TERMS OF SERVICE.** We reserve the right to modify these Terms of Service by posting a revised Terms of Service on our website and sending you notice that they have changed to your email address on record. Modifications will not apply retroactively. You are responsible for reviewing and becoming familiar with any modifications. At times we may, but shall not be required to, ask you to review and to explicitly agree to or reject a revised version of the Terms of Service. In such cases, modifications will become effective at the time you sign your consent to the modified Terms of Service. In cases where we do not ask for your explicit consent to a modified version of the Terms of Service, but otherwise provide notice as set forth above, the modified version of the Terms of Service will become effective 14 days after we have posted the modified Terms of Service and provided you with notification. Your continued use of Services following that period constitutes your acceptance of the Terms of Service as modified. If you do not agree with the changes to the modified Terms of Service, you are required to notify us of such within the same 14-day period and we will have the sole right to decide whether to revert to the original Terms of Service or insist on the changed Terms of Service and permit you to terminate the Agreement without cause and without penalty.

## Exhibit "G"

- 10. CHANGING THE ORDER SCHEDULE.** You may add or remove Services during the Term at any time provided that we agree to such changes. We reserve the right to change our fees and/or introduce new charges at any time with at least 30 days prior notice to you, which notice may be provided by email. Regardless of whether our discussion with you about changes in Services occurred verbally or in writing, we will document any Service changes in an updated invoice which we will send to you for review. If you disagree with the Service change, as reflected in the invoice, please notify us immediately. If you pay the updated invoice, accept the benefits of any added Services, or fail to object to the updated invoice within 14 days after you receive it, we will consider you to have accepted the changes, which will be considered a valid modification of any Order Schedule then in place (which will, in turn, update the Agreement automatically).
- 11. REMOTE ACCESS AUTHORIZATION.** We will provide you with on-going support or updates for the proper functioning of our Services, including the Software, which we can only provide or make available through remote access to your technology systems. By using our Services, or accessing our Software, you expressly authorize us to access your technology systems remotely for the limited purpose of providing you with any support or updates relevant to our Services. You shall be solely liability for the cost, interoperability, proper functioning, and security of any remote access facilities or methods used by you, and we shall not be deemed to be in violation of our obligations to you, nor in breach of the Agreement, as the result of our inability to remotely access your technology systems. Our right of remote access as described herein shall be deemed a continuing right until such time as the Agreement terminates, for any reason. We agree to use commercially reasonable efforts to comply with any of your published security-related protocols when remotely accessing your technology systems.
- 12. PROFESSIONAL SERVICES.** We reserve the right to provide you with an estimate of fees for Professional Services based on the approximate number of hours we think will be reasonably required to complete an engagement, multiplied by a fixed hourly rate. If we underestimate the fees for Professional Services based on work actually performed, you will be responsible any cost overruns at the same hourly rate. We will invoice you separately for cost overruns. To help you track and plan for any cost overruns, we will track our actual Professional Service hours and, upon written request, provide you with a time report. Any specific details of an engagement for Professional Services should be described in a Statement of Work and signed by the parties. Any fees for Professional Services will be considered part of the Fees owed under the Agreement.
- 13. PROHIBITED USE.** You shall not use our Services in violation of the law, whether local, state or federal (including but not limited to the CAN-SPAM Act, the Telephone Consumer Protection Act, the Do-Not-Call Implementation Act, the Americans with Disabilities Act, or any consumer protection statute); to intentionally bypass a security mechanism in the System(s); to reverse-engineer the System(s), or any component thereof, regardless of the reason why; in a way that adversely impacts the availability, reliability or stability of the System(s), or any component thereof; to intentionally transmit material using the System(s) which contains viruses, Trojan horses, worms or some other harmful computer program; to send unsolicited advertising, marketing or promotional materials, whether by email or text, without the recipient's legally-valid consent; to commit fraud; to transmit material that infringes on the intellectual property right of others; to transmit material that is harassing, discriminatory, defamatory, vulgar, pornographic, or harmful to others; or in violation of this Agreement. Violation of this Prohibited Use policy may result in immediate suspension or discontinuation of Services, or legal action which could result in civil damages or criminal punishment.
- 14. OWNERSHIP RIGHTS.** (a) We reserve all title and interest to our Intellectual Property Rights. We alone own our Intellectual Property Rights, in addition to any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by you or any other party relating to our Services. In addition, we retain all rights, title and interest in and to our Software and any splash page designs that we may create and/or maintain on your behalf and license to you. The Vermont Systems™, VS™, PayTrac™ and VS Payments™ names and logos are registered trademarks of RecTrac, LLC, and no right or license is granted to use them without our express written permission. (b) With the exception of Patron Data (which remains the property of individual Patrons), you



## Exhibit "G"

reserve all rights, title and interest to your Customer Data. You own all rights, title and interest to Customer trademarks, service marks and other intellectual property. We reserve the right to withhold, remove and/or discard your Customer Data without notice for any breach, including without limitation, your non-payment of Fees.

**15. CUSTOM DEVELOPMENT.** While we welcome any suggestions or comments you might have about how we can improve our products and services, we do not custom develop our Services (including the Software) to suit the business needs of any particular client. We will consider all suggested improvements to the Services, and, as we determine, will incorporate any approved items to our development roadmap. If there is a feature or functionality that you would like to see added to our Services, and you would like the project completed on a certain timeline, you can make a custom development request and, based on our staffing and other considerations, we will scope the project and provide you with a written quote which you can accept or reject. Custom development work will be considered a separate engagement for Professional Services and will be billed outside of the Agreement. Custom development work shall not be considered work-for-hire. We will own and control any product outcome of the engagement and we reserve the right to incorporate any new feature or functionality into our larger product or service offerings.

**16. LIMITED WARRANTIES.** We represent and warrant that (a) we own the appropriate rights to license and/or sublicense our Services (including the Software); (b) the Services (including the Software) will conform with any then-available published specifications; (c) to the best of our knowledge, our Software is free of any viruses, Trojan horses, malware, spyware, ransomware or other harmful code; and (d) that there have been no violations of copyrights or patent rights in connection with the Services (including the Software) offered. We do not warrant that the Services (including the Software) will be entirely free from defect or error. EXCEPT AS SPECIFICALLY STATED HEREIN, THE SERVICES (INCLUDING THE SOFTWARE) ARE BEING PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND. EACH PARTY HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED. No advice or information, whether written or oral, obtained from us, or any member of our Team, will create any warranty not expressly made. If you are a California resident, you waive California Civil Code § 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

### **17. LIMITATIONS OF LIABILITY.**

**17.1 LIMITATIONS OF LIABILITY.** EXCEPT FOR EACH PARTY'S INDEMNITY OBLIGATIONS, OR FOR LIABILITY WHICH, BY LAW, CANNOT BE LIMITED (COLLECTIVELY, "EXCLUDED CLAIMS"), TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT:

**17.2** IN NO EVENT SHALL WE OR ANY MEMBER OF OUR TEAM BE LIABLE OR RESPONSIBLE TO YOU FOR LOST PROFITS, LOST SALES OR BUSINESS, LOST DATA (WHERE SUCH DATA IS LOST IN THE COURSE OF TRANSMISSION FROM YOUR SYSTEMS OR OVER THE INTERNET THROUGH NO FAULT OF OURS), BUSINESS INTERRUPTION, LOSS OF GOODWILL, COSTS OF COVER OR REPLACEMENT, OR FOR ANY OTHER TYPE OF INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGES, OR FOR ANY OTHER INDIRECT LOSS OR DAMAGES INCURRED BY YOU OR YOUR AFFILIATES IN CONNECTION WITH THIS AGREEMENT REGARDLESS OF WHETHER YOU OR YOUR AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES.

**17.3** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, OUR TOTAL AGGREGATE LIABILITY TO YOU, ANY AFFILIATE, OR ANY THIRD PARTY ARISING OUT OF THE AGREEMENT OR ANY OF OUR SERVICES (INCLUDING, WITHOUT LIMITATION, PAYMENT SERVICES, HOSTING SERVICES OR PROFESSIONAL SERVICES) SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT OF FEES PAID BY YOU IN THE PREVIOUS **SIX (6)** ~~THREE (3)~~ FULL MONTHS IMMEDIATELY PRECEDING THE OCCURRENCE GIVING RISE TO SUCH LIABILITY. THE LIABILITY CAP

## Exhibit "G"

DESCRIBED HEREIN WILL APPLY IN AGGREGATE TO ANY AND ALL CLAIMS BY YOU AND YOUR AFFILIATES AND SHALL NOT BE CUMULATIVE.

**17.4** YOU ACKNOWLEDGE AND AGREE THAT THE ESSENTIAL PURPOSE OF THIS SECTION IS TO ALLOCATE THE RISKS UNDER THE AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE FEES CHARGED, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF WE WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. THE PARTIES AGREE THAT THE LIABILITY LIMITS SET FORTH HEREIN ARE A MATERIAL BASIS OF THE BARGAIN AND ARE INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THE AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

**17.5** TIME LIMITATION. YOU FURTHER AGREE THAT ANY CLAIM WHICH YOU MAY HAVE AGAINST US MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM AROSE, OTHERWISE THE CLAIM SHALL BE PERMANENTLY BARRED.

**18. PRIVACY RIGHTS.** You are required to comply with our [Privacy Policy](#), which may be revised from time to time, and which are expressly incorporated into the Agreement.

### **19. NOTICES; GOVERNING LAW; JURISDICTION.**

**19.1 General.** Who you are contracting with under this Agreement, who you should direct notice to under this Agreement, what law will apply in any lawsuit arising out of this Agreement, and which court can adjudicate any such lawsuit to this Agreement are as follows:

Who you are contracting with:	RecTrac, LLC d/b/a Vermont Systems
Notices to be sent to:	12 Market Place Essex Junction, VT 05452 <a href="mailto:legal@vermontsystems.com">legal@vermontsystems.com</a>
Governing law is:	Texas
Courts having exclusive jurisdiction are:	State courts of Williamson County, Texas

**19.2 Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon (a) personal delivery; (b) the second business day after mailing; (c) the second business day after sending by confirmed facsimile; or (d) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Notices to you shall be addressed to the designated contact person identified in the Services Agreement at the email address or physical address listed.

**19.3 Agreement to Governing Law and Jurisdiction.** Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

**19.4 Waiver of Jury Trial.** Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

**20 MINIMUM SYSTEM REQUIREMENTS.** It is your responsibility to ensure your computer systems, internet connections, IT infrastructure, peripherals, systems, servers, mobile devices and/or workstations comply with the minimum system requirements necessary to receive our Services. We shall not be responsible for any internet speed or connectivity issues at your location, or other problems related to your technology equipment, including third party internet service or your IT infrastructure.

## Exhibit "G"

- 21 LEGAL ADVICE.** All Professional Services and other information provided to you in the normal course of our business relationship should be considered for informational purposes only and is not to be taken as legal advice. You are advised to speak with your own independent counsel about all matters of a legal nature.
- 22 ASSIGNMENT.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, we may assign this Agreement in its entirety without your consent, to our affiliates or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of our assets not involving one of your direct competitors. Subject to the foregoing, the Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 23 FORCE MAJEURE.** We shall not be in default under any provision of the Agreement or be liable for any delay, failure of performance or interruption in Services (including the Software) resulting, directly or indirectly, from causes beyond our reasonable control, including but not limited to any of the following: earthquake, lightning or other acts of God; fire or explosion; electrical faults; vandalism; cable cut; water; hurricanes; fire; flooding; severe weather conditions; actions of governmental or military authorities; national emergency; insurrection, riots or war; terrorism or civil disturbance; strikes, lock-outs, work stoppages or other labor difficulties; supplier failure; shortage; or telecommunication or other internet provider failure.
- 24 CONSENT TO DO BUSINESS ELECTRONICALLY.** By signing the Services Agreement, you consent to do business electronically, which means that you agree that all VS agreements and policies, including amendments thereto and documents referenced therein, as well as any notices, instructions, or any other communications regarding transactions and your agreements with VS may be presented, delivered, stored, retrieved, and transmitted electronically. You must keep us informed of any change in your electronic or mailing address or other contact information. Your electronic signature, including, without limitation clicking "Agree and Continue" or "I Accept" or an action of similar meaning or significance, shall be the legal equivalent of your manual signature. You may withdraw your consent to doing business electronically at any time by contacting us and withdrawing your consent. However, any communications or transactions between us before your withdrawal of such consent, will be valid and binding.
- 25 CONFLICTING PROVISIONS.** Except as expressly revised in this Addendum, the Agreement will remain in full force and effect. If there is any conflict of inconsistencies between this Addendum and the Agreement, this Addendum will control. VS's acceptance may be evidenced by its fulfillment of the Agreement which this Addendum revises. Except as otherwise described in this Section, no modification of this Agreement, including, but not limited to, subsequent terms included within your Purchase Orders, will be binding unless in writing and manually signed by an authorized representative of the parties.

## Exhibit "G"

### 26 GENERAL.

**26.1 Waiver; Cumulative Remedy.** No failure or delay by either party in exercising any rights under the Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided in the Agreement are in addition to, and not exclusive, of any other remedies of a party at law or in equity.

**26.2 Severability.** The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of the other provisions of the Agreement, which provisions will remain in full force and effect. If any provision of this Agreement shall be deemed unenforceable by reason of its extent, duration, scope or otherwise, then the parties contemplate that the court making such determination will alter such provisions so that it is enforced and will enforce it in its altered form for all purposes contemplated by the Agreement.

**26.3 Construction.** For purposes of the Agreement, wherever the context requires, the singular shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter gender, and vice versa; and "and" shall include "or," and vice versa. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of the Agreement.

**26.4 Entire Agreement.** The Agreement, as modified by this Addendum, make up the entire Agreement and supersede all prior agreements, representations, and understandings. All additional terms and/or Addenda will be considered incorporated into the Agreement when you agree to them. If there is an actual conflict or direct inconsistency between any of the attachments, schedules or exhibits referenced in the Services Agreement, then the following shall be the prioritization of documents that should be deemed to control and govern: first, any later-signed Addenda or Statement of Work (as applicable); then the Services Agreement; then the Service Level Agreement (as applicable); then the Terms of Service; then the Privacy Policy.

#### AGREED TO BY:

City of Round Rock, TX


\_\_\_\_\_  
Print Name:

Title:

\_\_\_\_\_  
Date

#### ACCEPTED BY:

**RecTrac, LLC d/b/a Vermont Systems**

  
\_\_\_\_\_  
By: Patrick Hayden  
Its: President

  
Date



## SERVICE LEVEL AGREEMENT (SOFTWARE)

Terms not specifically described in this **STANDARD** Service Level Agreement for Software ("Software SLA") shall have the meanings as set forth in Section 1 of the Terms of Service or elsewhere in the Agreement.

- 1 **ELIGIBILITY.** This Software SLA shall apply only to Customers receiving VS's Software as a "hosted" solution, meaning VS has contracted to host Customer Data on VS-controlled servers and/or systems. To be eligible for the Software SLA, Customers must be current in their payment of Fees to VS and must remain compliant with the terms and conditions of the Agreement.
- 2 **UPTIME COMMITMENT.** VS will use its best efforts to operate and maintain the Software in a professional manner with the objective of maintaining a 99.50% uptime commitment for Services considered "critical" to a Customer's daily business operation. Services considered critical are those which, if unavailable (as defined below), would have an immediate and negative impact on a core business function of the Customer such as its ability to take payments, retrieve Patron Data, or access the Software (a "Critical Service"). Uptime as described is applicable to production environments only. Demo and Testing environments are not included in the SLA calculations.
- 3 **SERVICE INTERRUPTION.** "Service Interruption" means that one or more Critical Services are unavailable to Customers as the result of a failure in VS-controlled equipment, services or personnel. "Unavailable" means that the Software is unable to transmit, receive, store or retrieve Customer Data, including, without limitation, Patron Data.
- 4 **VS RESPONSE PROTOCOL.** VS will commence efforts to resolve a Service Interruption within 60 minutes after VS first learns of the issue. If the root cause for the Service Interruption is solely within VS's power to control, VS will attempt to remedy the Service Interruption within three (3) hours. If, however, the root cause for the Service Interruption involves a third party, or a source outside of VS's direct control, VS will use commercially reasonable efforts to promptly notify such third parties and cooperate with them to resolve any Service Interruptions.
- 5 **CUSTOMER REMEDIES.** VS is agreeable to issuing out-of-service credits to a Customer's account where VS fails to maintain its 99.50% uptime commitment. VS will offer out-of-service credits in accordance with the tiered schedule below:

Uptime Availability (%)	Unavailability Per Calendar Month	Credit Percentage
98.0 to 99.49	3 hrs 39 min to 14 hrs 36 min	10%
95.0 to 97.99	14 hrs 40 min to 1 day 12 hrs 31 min	25%
90.0 to 94.99	1 day 12 hrs 35 min to 3 day 1 hr 2 min	50%
89.99 or below	3 days 1 hr 7 min	100%

## Exhibit "H"



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To be eligible for an out-of-service credit, Customer must open a support ticket at <https://support.vermontsystems.com> within thirty (30) days from a Service Interruption. VS will validate reported Service Interruptions through its third-party monitoring tool, Site24x7 (which validates Software availability across multiple locations within the U.S. tracking interruptions to service and their duration). The maximum out-of-service credit that Customer may receive for Unavailability of the Software in any calendar month shall not exceed to total Fees associated with one (1) month of Services (prorated accordingly for Customers billed annually). Any out-of-service credits shall be applied to the Customer's account as an offset against the next month's Fees. No out-of-service credits shall be redeemable for cash; any credits not used by the termination of the Agreement shall be forfeited and waived.

- 6 EXCLUSIONS.** Customer shall not be entitled to an out-of-service credit where a Service Interruption is caused by or associated with (a) a Customer's own acts or omissions; (b) a Force Majeure event (as defined by the Terms of Service); (c) excused downtime for maintenance or upgrades to the Software; (d) a Customer's violation of the Agreement, including (but not limited to) a violation of the Prohibited Use provision of the Terms of Service; and/or (e) a beta release, pilot program or trial service, as determined by VS.



Exhibit "I"

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/23/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

Table with 2 main columns: PRODUCER (Arthur J. Gallagher Risk Management Services, Inc.) and CONTACT INFORMATION (Susan D. Masters, CIC). Includes a sub-table for INSURER(S) AFFORDING COVERAGE with columns for INSURER and NAIC #.

COVERAGES CERTIFICATE NUMBER: 519633352 REVISION NUMBER:

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

Main table listing insurance coverages with columns: INSR LTR, TYPE OF INSURANCE, POLICY NUMBER, POLICY EFF, POLICY EXP, and LIMITS. Includes rows for Commercial General Liability, Automobile Liability, Umbrella Liability, and Workers Compensation.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Complete Named Insured: Clubessential Holdings LLC; CE Management Holdings, LLC; Clubessential, LLC; ClubReady, LLC; LEGP II Blocker(CR), Inc;

OH Employers Defense Liability(Stop Gap): Policy# 6079684571 11/15/2021-11/15/2022 \$1,000,000/\$1,000,000/\$1,000,000

CGL: CNA74872XX(01/15) CNA Technology Broadening Endorsement provides: See Attached...

CERTIFICATE HOLDER CANCELLATION

Table with 2 columns: CERTIFICATE HOLDER (City of Round Rock) and CANCELLATION (Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Includes a signature for the authorized representative).

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**ADDITIONAL REMARKS SCHEDULE**

AGENCY Arthur J. Gallagher Risk Management Services, Inc.		NAMED INSURED Clubessential Holdings, LLC and all of its subsidiaries 4600 McAuley Place Ste 350 Cincinnati OH 45242-4765	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE**

-Additional Insured by Contract, Agreement or Permit when required in a written contract with you;  
-Waiver of Subrogation when required in a written contract with you

PKG: CNA62665XX(10/15) CNA Paramount Technology Broadening Endorsement provides:  
-Employee Dishonesty including ERISA \$50,000 Ea Occ Limit/\$2,500 Deductible

As of 6/30/21-the only scheduled vehicle was deleted and previous Additional Insured/Waiver of Subrogation endorsements were replaced with CNA83700XX(10/2015) Extended Coverage-BA Plus-For Hired and Non-Owned Autos which provides the following:

-Additional Insureds Required by Written Contracts  
-Employee-Hired Autos  
-Waiver of Subrogation  
-Primary and Non-Contributory When Required By Contract

WC: WC000313(04/84) Blanket Waiver of Subrogation when required in a written contract with you where allowed by State law.  
WC: WC420304B(06/14) Texas Blanket Waiver of Subrogation when required in a written contract with you.

Umbrella is follow form regarding underlying: CGL BA WC

Prof/Cyber Retention: \$100,000; Retro Active 3/23/11  
Prof/Cyber: TCM-POL-001 (01/19) C&F TCM Technology E&O, Cyber and Multimedia Liability Insurance Policy coverage form:  
-pg 6 Automatic Additional Insured status when required by written contract with you;  
-pg 15 Automatic Waiver of Subrogation where required by written contract with you.

Third Party Crime Deductible: \$5,000

Excess Prof/Cyber: Underlying Limit \$5,000,000; Underlying Retention \$100,000; Retro Active 3/23/2020