

WINDCAVE AGREEMENT FOR CITY OF COLUMBIA, MISSOURI

THIS AGREEMENT is entered into on the date of the last signatory noted below (the "Effective Date"), between the City of Columbia, Missouri, a municipal corporation (hereinafter "Customer") and Windcave Inc., a corporation organized in the State of California and with authority to transact business within the State of Missouri (hereinafter "PX").

Customer and PX are each individually referred to herein as a "Party" and collectively as the "Parties".

PARTIES

WINDCAVE INC. (PX)

Contact Details for Notices:

Physical Address: 8939 S. Sepulveda Blvd, Suite 520, Los Angeles, CA 90045

Postal Address: P.O. Box 45498, Los Angeles, CA 90045-0498

Email: contracts@paymentexpress.com

Phone: +1 310 670 7299

Fax: +1 310 670 7298

PX CustID: 74446

City of Columbia, Missouri (Customer)

Contact Details for Notices:

Physical Address: 701 E. Broadway, Columbia, MO 65205

Postal Address: P.O. Box 6015, Columbia, MO 65205

Email: leah.christian@como.gov

Phone: 573-874-7281

Fax: 573-874-7132

AGREEMENT

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows.

1. PX is a provider of real time payment processing solutions in the USA. PX has agreed to supply solutions to Customer in accordance with the terms and conditions set out in this Agreement.
2. This Agreement is structured in two parts, namely Part A (Specific Terms) and Part B (General Terms). Part A contains the specific terms relevant to each supply of solutions to Customer and may include one or more Schedules. Part B sets out PX's general terms and conditions which will apply to all supplies of solutions.
3. It is intended that further supplies of solutions may be made and will be governed by this Agreement by way of the parties signing an amendment to this Agreement. The attached schedules are a part of this Agreement

IN WITNESS WHEREOF, the Parties have hereunto executed this Agreement in triplicate the day and the year of the last signatory noted below.

EXECUTION

SIGNED for and on behalf of WINDCAVE INC. by:


Signature

Brian Lundin / Gen Counsel
Name/Title

10-15-2019
Date

Date

SIGNED for and on behalf of City of Columbia, Missouri by:


John Glascock, Interim City Manager


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Date

ATTEST:

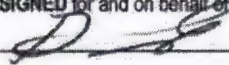

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor 

PART A - SPECIFIC TERMS

SCHEDULE 1 - SERVICES ACCESS ARRANGEMENT

1. SERVICES ACCESS ARRANGEMENT	
(a)	Payment Express: PX grants to Customer a non-exclusive, non-transferable licence to use Payment Express for the Term solely for the purposes of the Permitted Use. Customer must not sub-license, transfer, assign, rent or sell Payment Express or the right to use Payment Express.
2. TERM	
(a)	Commencement Date: the Effective Date. Such Commencement Date may be postponed in writing, at PX's sole discretion, until the date PX receives a copy of this Agreement countersigned by Customer.
(b)	Initial Term: Twenty-four (24) months beginning on the Commencement Date, unless earlier terminated under Part B, clause 12.
(c)	Renewal Term: Twenty Four (24) consecutive months, unless earlier terminated under Part B, clause 12, subject to automatic renewal pursuant to Part B, clause 2 if neither party gives three month's advance notice of nonrenewal.
3. FEES	
(a)	Establishment Fee: One hundred dollars (\$100.00)
(b)	Minimum Monthly Fee: Three hundred fifty dollars (\$350.00) per calendar month. Includes 5,000 (five thousand) Transactions per calendar month. Additional Transactions in each calendar month charged at the rate of six cents (\$0.06) per Transaction.
(c)	Additional Fees: Additional users to the Payment Manager can be set up, but will incur a one-time fee of thirty dollars (\$30.00) . If PX needs to configure or change additional electronic merchant numbers on the Payment Express Host, there is a fee of one hundred dollars (\$100.00) per merchant account. Customer will be charged a five dollar (\$5.00) SAP fee per calendar month charge per connected card reader for SCR200 and IPP350 devices.
(d)	Price Adjustment: PX shall have the right to vary the Fees enumerated in Part A of this Agreement during the Renewal Term of this Agreement by providing Customer at least 30 calendar days' written notice before or during the Renewal Term. If PX exercises its right to modify the Fees, Customer shall thereafter have the right to terminate this Agreement with thirty (30) days' written notice to PX within sixty (60) days of PX's written notice that it is modifying the Fees.
4. PAYMENT TERMS	
(a)	Credit, Debit, or Automated Clearing House ("ACH"): Customer will pay PX the Fees by credit card, debit card, or ACH on the dates specified below.
(b)	Date for Payment of Establishment Fee: Customer will pay PX the Establishment Fee immediately when PX makes the Payment Express Software available to Customer.
(c)	Date for Payment of Monthly Fees and Additional Fees: Customer will pay PX the Monthly Fees and Additional Fees Fees within 30 days of the date of PX's invoice for those Fees.
5. SUPPORT SERVICES	
(a)	Online Help and General Support: PX will provide the Support Services to Customer as set out in Part B.
6. EXECUTION	
The parties acknowledge and agree that this Schedule is governed by this Agreement between the parties containing PX's General Terms and Conditions.	
SIGNED for and on behalf of WINDCAVE INC. by:	SIGNED for and on behalf of City of Columbia, Missouri by:
	_____
Signature	John Glascock, Interim City Manager
Brian Lundin / General Counsel	_____
Name/Title	Date
10-15-2019	_____
Date	ATTEST:
	By: _____
	Sheela Amin, City Clerk
	APPROVED AS TO FORM:
	By: _____
	Nancy Thompson, City Counselor 

PART B – GENERAL TERMS & CONDITIONS

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

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

Acquirer means a bank or any financial institution or a card issuer of financial or non-financial transactions which receives and transmits Transactions via Payment Express; **Agreement** means this Agreement, including the Application Form, each of Part A and its Schedule(s) and Part B, and any amendments that may be signed by the parties, as each may be amended in writing from time to time;

Application Form means Customer's online Payment Express application form submitted to PX via the PX Website. Where no separate Part A is entered into, the Application Form will constitute Part A of this Agreement for the purposes of this Part B; **Business Day** means any day of the week except Saturday, Sunday or a day on which banks are authorized or required to be closed in California;

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

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

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

- (a) relating directly or indirectly to research or development by, accounting for, or the marketing of, the business of that party or its suppliers or customers;
- (b) disclosed by that party to the other party on the express basis that such information is confidential; or
- (c) which might reasonably be expected by the other party to be confidential in nature;
- (d) Under no circumstances shall Confidential Information include any information or records that are considered open records under the Missouri Sunshine Law.

Customer means the customer specified in this Agreement and where applicable includes its employees within the scope of their employment, contractors and agents.

Default Interest Rate means interest at the rate of two percent (2%) above the base lending rate charged by PX's bankers to PX from time to time;

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

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

Emergency Support Services means telephone support that PX may provide (but is not obligated to provide unless it agrees to do so in a separate written agreement) for emergency breakdowns resulting in repeated failures in the transmission of Transactions and is available twenty-four (24) hours a day, seven (7) days a week by calling 310 670 7299 outside of Support Hours. If applicable, PX will use reasonable efforts to respond to any emergency phone call within thirty (30) minutes of receiving the support request;

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

Goods means the Goods and/or Devices (if any) recorded in Part A in a future amendment to this Agreement;

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

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

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

Payment Express Supported Transactions means transactions from Customers:

- (a) accepting payment for goods and services by means of credit card, debit card, prepaid card, gift card or any other means of payment which PX agrees to support through Payment Express from time to time;

(b) accepting loyalty cards, rewards cards, points cards, discount cards or club cards; or

(c) providing services in relation to the sale and use of any of the cards referred to in paragraphs (a) and (b) above including the issue of such cards and the crediting or debiting of value to such cards;

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

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

Permitted Use means the transmission to, and receipt from, an Acquirer of data relating to Payment Express Supported Transactions and expressly excludes, without limitation, use for the processing of transactions of, or for the benefit of, any person other than Customer;

PX means Windcave Inc., a California corporation with offices in Los Angeles, California;

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

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

Security Standards means each of:

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

Software means the software and other related PX products which:

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

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

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

Support Services means and includes:

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

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

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

Transaction means a message pair consisting of a message relating to a Payment Express Supported Transaction transmitted by Customer to an Acquirer through Payment Express and a response to that message from the Acquirer to Customer through Payment Express.

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

- (a) the singular includes the plural and vice versa;
- (b) clause and other headings are for ease of reference only and will not affect this Agreement's interpretation;
- (c) the term **Includes** or **Including** (or any similar expression) is deemed to be followed by the words without limitation;
- (d) references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (e) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (f) all monetary amounts are stated exclusive of applicable taxes if any and in US dollars; and
- (g) in the event of any inconsistency between the terms of any of the following, they will have precedence in the descending order of priority set out below:
 - (i) Part A – Specific Terms and Schedules;
 - (ii) Part B – General Terms and Conditions;
 - (iii) The Application Form.

2. Term

- 2.1 **Initial Term:** This Agreement commences on the Commencement Date and will continue for the Initial Term, unless earlier terminated under Part B, clause 12.
- 2.2 **Renewal:** Upon expiry of the Initial Term, this Agreement will automatically continue for further periods of the number of consecutive months recorded in Part A in one or more Schedules (each such further period being a **Renewal Term**) on the same terms and conditions unless either party gives the other party not less than three (3) months' notice in writing prior to the expiry of the Initial Term or the then current Renewal Term that it does not wish this Agreement to continue beyond the Initial Term or that Renewal Term as the case may be.
3. **Payment**
- 3.1 **Fees:** Customer will pay PX the Fees without setoff or deduction within thirty (30) days of the date of PX's invoice for those Fees.
- 3.2 **Taxes:** Customer is responsible for all applicable taxes, duties and levies on the rental, loan or purchase or sale of goods and services (other than PX's income tax) assessed in connection with its use of Payment Express and the provision of services under this Agreement. To the extent that any Fees paid by Customer under this Agreement exclude any taxes or duties payable in respect of the Goods or Services provided under this Agreement in the jurisdiction where the payment is either made or received, where any such taxes or duties are payable by PX, Customer agrees to pay to PX the amount of such taxes or duties in addition to any Fees owed under this Agreement. Notwithstanding the foregoing, you may have obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed. In that case, you will have the right to provide to PX with evidence of any such exemption information, in which case PX will use reasonable efforts to provide such invoicing documents as may enable you to obtain a refund or credit for the amount so paid from any relevant revenue authority if such a refund or credit is available.
- 3.3 **Default Interest for Late Payment:** Subject to Part B, clause 3.4(c)(ii), Customer must pay PX interest at the Default Interest Rate on any overdue amounts under this Agreement, calculated daily from the due date until the actual date of payment.
- 3.4 **Disputed Invoices:** Where Customer has reasonable grounds to dispute any portion of any amount invoiced by PX to Customer under this Agreement (**disputed portion**):
- Customer will notify PX of such dispute and the grounds for such dispute within five (5) Business Days of receiving the invoice;
 - any undisputed portion of the invoice will remain payable on the due date for payment;
 - provided that Customer has complied with clause 3.4(a), Customer will not be required to pay:
 - the disputed portion until the parties' dispute has been resolved by agreement between the parties or in accordance with Part B, clause 19.2; or
 - any interest under clause 3.3 on the disputed portion unless the dispute is resolved with the effect that Customer is required to pay all (or part) of the disputed portion, in which case Customer will pay the interest on the disputed portion (or that part of that disputed portion) in accordance with clause 3.3. Interest will be payable from the date that payment would have been due under clause 3.1 but for the dispute until the date that disputed portion is paid to PX in full.
- 3.5 **Termination and Suspension:** If Customer does not timely pay Fees due and owing pursuant to this Agreement, PX may terminate this Agreement under Part B, Clause 12.2. Alternatively, PX may temporarily suspend the provision of Payment Express to Customer. Customer agrees that PX will have no liability for such termination or suspension.
4. **Mutual Responsibilities**
- Each party represents and agrees:
- 4.1 **Power and Authority:** that it has full power and authority necessary to validly enter into and perform all its obligations under this Agreement; and
- 4.2 **Requirements:** to comply with the other party's reasonable security, confidentiality and operational requirements of which it has been given reasonable notice.
5. **Customer Responsibilities**
- Customer represents and agrees that it:
- 5.1 **Suitability:** has made, and will continue to make, its own assessment of the suitability, adequacy, compatibility and appropriateness of Payment Express for its purposes;
- 5.2 **Comply with Instructions:** will comply with PX's restrictions, instructions and Documentation in relation to the use of Payment Express, including those set out in this Agreement;
- 5.3 **Use by Others:** will ensure that only authorized persons use Payment Express and that Payment Express is used only for the Permitted Use and as expressly authorized under this Agreement;
- 5.4 **Responsibility for Use:** will accept all responsibility for the reliance on and use of Payment Express by Customer and its employees, contractors and agents;
- 5.5 **Obtain Equipment etc.:** will obtain and maintain all equipment, software and services needed to enable it to receive and use Payment Express;
- 5.6 **Accurate Customer Information:** warrants that all information provided by Customer to PX in the Application Form is accurate and correct, and that Customer will notify PX in writing if such information changes or ceases to be accurate in any way;
- 5.7 **Provide Sufficient Information:** will ensure that sufficient information is given to PX to enable PX to comply with its obligations under this Agreement and that such information is timely, complete and accurate;
- 5.8 **Personal Information:** acknowledges that any personal information concerning Customer or its personnel which is provided to PX by or on behalf of Customer may be:
 - used by PX for the purpose of providing Payment Express, the Support Services and any other services to Customer as set forth in the Agreement; and
 - disclosed by PX to its affiliates and other services providers to enable PX to provide Payment Express, the Support Services and any other services as set forth in the Agreement to Customer;
- 5.9 **Notify of Third Party Infringement:** will immediately notify PX upon becoming aware of any third party infringing PX's Intellectual Property rights in any manner;
- 5.10 **Responsible for Connecting to Payment Express Host:** is responsible for all charges and costs associated with connecting to the Payment Express Host to operate Payment Express. PX will provide Customer with reasonable technical information and Software necessary to enable Customer to connect to the Payment Express Host;
- 5.11 **Requisite Review of Payline Portal:** Customer shall be required, on a daily basis, to review with due care Customer's payline portal, established by PX, to review Transactions for errors. If an error is discovered by Customer, Customer must notify PX in writing within five (5) Business Days of the date an error occurs; provided, that PX will have no liability or obligations of any kind with respect to errors that are not reported to PX within such five (5) Business Day period. In addition, Customer shall be required to, on a daily basis review with due care bank settlement files to ensure deposits occur without error. If an error is discovered by Customer, Customer must notify PX in writing within five (5) Business Days of the date an error occurs; provided, that PX will have no liability or obligations of any kind with respect to errors that are not reported to PX within such five (5) Business Day period. PX's liability under this Section 5.11 (Requisite Review of Payline Portal) of this Agreement is governed by, and fully subject to, the terms of Section 10 of this Agreement.
- 5.12 **Comply with Law Generally:** will comply with all relevant laws in its use of Payment Express and carrying out its obligations under this Agreement.
- 5.13 **Improperly Deposited Funds:** will return funds that PX deposits in Customer's bank account(s) that do not rightfully belong to Customer ("Improperly Deposited Funds") without offset or delay. Customer will return all uncontested Improperly Deposited Funds to PX within five (5) calendar days of a written request to do so by PX. If Customer fails to comply with the terms of this Section, PX may immediately suspend services to Customer until Customer returns the Improperly Deposited Funds. Customer will be liable to PX for the Improperly Deposited Funds, and costs incurred by PX in recovering the Improperly Deposited Funds.
- 5.14 **Return of Old Goods:** For Goods that Customer ceases using for the Permitted Use ("Unused Goods"), Customer will return such Unused Goods to PX within thirty (30) calendar days. Unused Goods include, but are not limited to, Goods Customer has ceased using due to the Goods becoming obsolete, Goods that no longer operate, and Goods that are replaced per the warranty set forth in Part B, clause 7.3 of this Agreement. Customer will pay all shipping fees and costs associated with returning the Unused Goods to PX. Alternatively, instead of returning Unused Goods to PX, Customer may provide PX a secure destruction certificate evidencing that the Unused Goods were destroyed in compliance with the Security Standards within the same thirty (30) calendar day period.
6. **PX's General Responsibilities**
- PX agrees that it will:
- 6.1 **Care and skill:** perform its obligations under this Agreement with ordinary care, skill and diligence;
- 6.2 **Good Faith:** comply with all relevant laws and co-operate with Customer (and Customer's service providers) in connection with Payment Express;
- 6.3 **No Requirement to Decrypt Tokenized Data:** be under no obligation to decrypt and transmit Tokenized Data to Customer or any third party.
7. **PX Warranties**
- 7.1 **Security Standards:** PX confirms that PX will throughout the term of this Agreement comply with the requirements of the Security Standards.
- 7.2 **Limitations on Warranties:** To the fullest extent permitted by law, except as expressly set out in this Agreement, PX disclaims and excludes all warranties,

conditions, terms, representations or undertakings, whether express, implied, statutory or otherwise, including any condition or warranty of merchantability or fitness for a particular purpose. including any condition or warranty of merchantability or fitness for a particular purpose. PX does not warrant that:

- (a) Payment Express, the Goods, the Software or the Documentation will meet Customer's requirements; or Payment Express, the Goods, the Software or the Documentation will meet Customer's requirements;
- (b) Payment Express the Goods, the Software and the Documentation will be uninterrupted or error free, or that all errors will be corrected; or
- (c) that the Goods will be free of defects in design, materials or workmanship or will comply with any applicable equipment manufacturer's or software developer's specifications.
- (d) that the Goods will be free of defects in design, materials or workmanship or will comply with any applicable equipment manufacturer's or software developer's specifications.

7.3 Customer understands and acknowledges that an authorization obtained through Payment Express only confirms the availability of the cardholder's credit at the time of the authorization. It does not warrant that the person presenting the card is the rightful cardholder, nor is it an unconditional promise, guarantee or representation by Acquirer, processor or PX that a transaction is or will be deemed valid and not subject to dispute, debit or chargeback. **Supply Warranty:** PX warrants that the Goods to be delivered under this Agreement will be free from defects in workmanship (labour and parts included, but transport excluded) during a warranty period commencing on the Commencement Date and concluding twelve (12) calendar months later ("Original Warranty Period). As to repaired or exchanged Goods, during the Original Warranty Period here above mentioned, the warranty period on the exchanged or repaired Goods shall expire at the conclusion of the Original Warranty Period. With respect to PX's supply warranty:

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

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

- (a) Defects, breakdowns, or malfunctions due to failure to properly follow the installation process and instructions for use or an external cause to the Goods (including, but not limited to, shock, lightning fire, vandalism, malicious action, contacts with various liquids or vermin or water damage of any nature, and inappropriate electric voltage); or modifications to the Goods made without the written approval of PX; or a lack of every day maintenance (as described in the Documentation); or a lack of supervision or care; or improper storage or poor environmental conditions, particularly those related to temperature and hygrometry effects of variations of electric voltage from the electric network; or from the earth or repair work; or maintenance of the Goods by persons not authorized by PX;
- (b) Damage due to insufficient or bad packaging of the Goods when returned to PX;
- (c) Wear and tear from normal use of the Goods and accessories;
- (d) Communication problems related to an unsuitable environment, including problems accessing the Internet, transmission faults, local network faults, and modification of the parameters of the relevant cellular network after sale of the Goods;
- (e) Supply of new versions of Software. If, for example, PX produces new Software that is not necessary to fulfil its obligations under this Agreement, PX is not required to make such Software available to Customer;
- (f) Malfunction due to the use of products or accessories that are non-compatible with the Goods;
- (g) Goods returned to PX without PX's prior consent or that PX has not had an opportunity to troubleshoot;
- (h) Defects, breakdowns, or malfunctions due to **obstructing material** being placed on or into the Goods. Examples of obstructing material include, but is not limited to, paper, plastic, and metal objects.

8. Intellectual Property

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

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

9. Reserved.

10. Liability

To the fullest extent permitted by applicable law:

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

10.2 Limitation: In no event will PX's total liability to Customer under this Agreement for any one or more defaults as described in clause 10.1 exceed the amount paid by Customer to PX under this Agreement in the 9 months following execution of this Agreement.

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

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

11. Commercial Purpose

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

12. Termination

12.1 Termination Upon Notice:

- (a) PX may terminate this Agreement at any time on not less than three (3) months' prior written notice to Customer.
- (b) Customer may terminate this Agreement at any time on not less than three (3) months' prior written notice to PX, provided:
 1. During the Initial Term, Customer will be liable for the Fees for the remainder of the Term, which, notwithstanding clause 3.1, shall be payable immediately on giving such notice;
 2. During any Renewal Term, Customer will be liable for the Fees for the remainder of the Term, which, notwithstanding clause 3.1, shall be payable immediately on giving such notice.

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

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

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

12.4 Consequences:

- (a) Amounts owing at termination: If this Agreement is terminated by PX for cause prior to the expiry of the Term, Customer must pay the unpaid balance of the Fees due under this Agreement and the cost of PX's reasonable expenses resulting from Customer's breach of this Agreement.
- (b) Expiry or termination of this Agreement will not affect the rights or obligations of the parties which have accrued prior to or accrue on termination or which by their nature are intended to survive termination (including Part B, clauses 3, 5, 7, 8, 10, this 12.4, 13, 16, 17 and 19, together with those clauses which are incidental to, and required in order to give effect to, those clauses).

13. Confidentiality

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

- (a) disclose or permit to be disclosed to any person;
 - (b) use for itself or to the detriment of the other party;
- any Confidential Information of the other party except as, and then only to the extent:
1. required by law including, but not limited to, an open records request pursuant to the Missouri Sunshine Law;
 2. that the information is already or becomes public knowledge, otherwise than as a result of a breach, by the receiving party, of any provision of this Agreement;
 3. that the information is disclosed to the receiving party, without restriction, by a third party and without any breach of confidentiality by the third party;
 4. that the information is developed independently by the receiving party without reliance on any of the Confidential Information of the other party;
 5. authorized in writing by the other party; or
 6. reasonably required by this Agreement (and, without limiting the effect of this clause, a party may disclose Confidential Information of the other party only to those of its officers, employees or professional advisers on a "need to know" basis, as is reasonably required for the implementation of this Agreement).

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

13.3 Nothing in this Agreement shall be construed to supersede, conflict with or otherwise defeat any provision of the Missouri Revised Statutes Chapter 610 Governmental Bodies and Records (Missouri Sunshine Law).

14. Force Majeure and Cellular Service Interruptions

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

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

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

14.3 In any such event, the Affected Party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable, provided that:

- (a) Notice: whenever the Affected Party becomes aware that such a result has occurred or is likely to occur, the Affected Party will, as soon as practicable, notify the other party by written notice accordingly;
- (b) Continued Performance: each party will continue to use commercially reasonable efforts to perform its obligations as required under this Agreement; and

- (c) No Deemed Acceptance of Extra Costs: neither party will be deemed to have accepted any liability to pay or share any extra costs which may be incurred by the other party in complying with this clause or otherwise resulting from such act, omission or failure; and
- (d) Charges: this clause 14 will not apply in respect of Customer's obligation to pay any charges or Fees payable under this Agreement.

15. License

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

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

16. Terms of Use

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

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

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

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

16.5 Permitted Use: Customer may not:

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

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

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

16.7 No Third Party Use: Except as expressly provided for in this Agreement or as required by law, Customer must not provide, or otherwise make available, Payment Express the Goods, the Software or the Documentation or any component thereof in any form to any person (a "Third Party") without the prior written consent of PX. If PX grants such consent, Customer must ensure that the Third Party complies with the provisions of clauses 8, 13, 15 and 16 (so far as those provisions relate to Customer) as if the Third Party were a party to this Agreement. Customer will be liable to PX for all acts or omissions of any Third Party in contravention of the provisions of clauses 8, 13, 15 and 16.

16.8 Installation: Customer will be responsible for, and all bear all costs associated with, the installation, operation, maintenance and support of the Goods.

16.9 Testing Prior to Launch: Prior to any permitted use of PX products and/or Software by Customer or any third party, the Parties shall be entitled to test all PX products and Software that Customer purchases, rents, or intends to use for at least seven (7) Business Days ("Pre-launch Testing"). Such Pre-launch Testing shall also entitle the Parties to at least three (3) Business Days to test transaction processing and settlement.

16.10 Labels: Customer will not remove or deface any labels affixed by PX to the Goods. Customer will not affix any label to the Goods.

17. Rental/Loan of Goods

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

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

18. Payment Express Support Services

- 18.1 **Support:** PX will provide the Support Services to Customer.
- 18.2 **Emergency Support Services and Other Services:** PX may make available the Emergency Support Services. If Customer requires Emergency Support Services and/or services additional to the Support Services PX may, if it agrees to provide those services to Customer, charge Customer for those services on a time and materials basis and on such other terms and conditions as may be agreed between the parties.
- 18.3 **Alterations to Software:** PX may, at its sole discretion, alter, upgrade, update or change Payment Express at any time during the Term of this Agreement. Customer acknowledges and agrees that, if Customer fails to promptly install all updates to any software forming part of Payment Express supplied by PX in connection with this Agreement, Customer may be unable to process Transactions and that:
 - (a) PX will not be liable to Customer under this Agreement in respect of such inability; and
 - (b) PX will be released from any obligation to supply the Support Services during any period which Customer has failed to install any such update.
- 18.4 **PX Website:** Customer acknowledges and agrees that PX may, at its sole discretion, determine what information, data, features and functionality is made available to Customer via the PX Website. To the extent that Customer has received notice of PX's terms, including notice on the PX Website, Customer agrees to comply with any terms that PX may specify in relation to Customer's use of the PX Website. In the event of any inconsistency between the terms and conditions of this Agreement and those on the PX Website, the terms and conditions of this Agreement will apply to the extent of that inconsistency. PX will supply user names and passwords to enable authorized users of Customer to access the PX Website. Customer must keep such user names and passwords secure and made known only to authorized users and will be responsible for all use of the PX Website through use of Customer's user names and passwords. If

Customer breaches any term of this Agreement or the terms of use of the PX Website, PX may disable Customer's user names and passwords.

- 18.5 **Refunds:** Customer authorizes PX to process repayment transactions to its patrons, who have previously made payment using PX solutions, on a one-to-one matching basis ("Refund Transactions"). Customer shall be solely responsible for auditing Refund Transactions and determining that a one-to-one match is made between a transaction and its matching Refund Transaction. Customer accepts all liability for Refund Transactions. PX shall not be liable for any losses or damages incurred as a result of a Refund Transaction.
- 18.6 **Offline Mode:** Customer authorizes PX to enable processing of credit cards offline in the event of an internet failure ("Offline Mode"). In addition, Customer authorizes PX to enact service in Offline Mode until internet service is restored for a maximum of 4 hours per event. Transactions in Offline Mode are capped at fifty dollars (\$50.00) dollars maximum per transaction per card and a maximum of 500 transactions processed per device per Offline Mode event. Transactions in Offline Mode are also capped at one thousand dollars (\$1,000.00) per device per Offline Mode event. Customer and PX agree and acknowledge that PX is not liable for unsuccessful transactions that are a result of Offline Mode transaction processing. Customer is responsible with acquiring approval from its banking partner for operation of Offline Mode. PX is not liable if the terms of this Clause or the operation of Offline Mode causes Customer's account to be downgraded, shut down, disrupted, or otherwise adversely impacted in any way.

19. General

- 19.1 **Entire Agreement:** This Agreement including all schedules hereto records the entire arrangement between the parties relating to all matters dealt with in this Agreement and supersedes all previous arrangements, whether written, oral or both, relating to such matters.
- 19.2 **Disputes:** The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within fifteen (15) days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within thirty (30) days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place. If the parties fail to negotiate a resolution to a dispute within a reasonable time (not exceeding twenty (20) Business Days from formal notice of the dispute being given by one party to the other), either party may require that the dispute be submitted to mediation through JAMS, such mediation to take place in Los Angeles, California. A mediator shall be selected by mutual agreement or through procedures provided by JAMS. In such case:
 - (a) the mediator will not be acting as an expert or as an arbitrator;
 - (b) the mediator will determine the procedure and timetable for the mediation; and
 - (c) the parties will share equally the cost of the mediation.
 All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation. Neither party may issue any legal proceedings (other than for urgent interlocutory relief) relating to any dispute, unless that party has first taken all reasonable steps to comply with the dispute resolution process above. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this clause 19.2 above are pending and for fifteen (15) calendar days thereafter. The parties will take such action, if any, required to effectuate such tolling.
- 19.3 **Waiver:** No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by either party shall in any way limit or waive the right of such party to subsequently enforce and compel strict compliance with the provisions of this Agreement.
- 19.4 **Severance:** Any provision in this Agreement which is or becomes unenforceable, illegal or invalid for any reason shall be severed and shall not affect the enforceability, legality, validity or application of any other provision which shall remain in full force and effect.
- 19.5 **Assignment:** PX may assign all or any of its rights and obligations under this Agreement to any person without the approval of Customer, to an entity which acquires all or substantially all of the equity or assets of Windcave Inc., or the applicable product or product line, or to any subsidiary, affiliate, or successor in a merger, acquisition or reorganization of Windcave Inc. or its affiliates with written

notice to Customer. Customer may not transfer or assign any of its liabilities or rights under this Agreement to any other person without PX's prior written consent (such consent not to be unreasonably withheld, provided PX is satisfied as to the suitability of the assignee and Customer pays to PX its reasonable costs incurred in connection with the assignment).

- 19.6 Amendment:** Except as expressly provided for in this Agreement, no amendment to this Agreement will be valid unless recorded in writing and signed by a duly authorized senior representative of each party.
- 19.7 Governing Law and Jurisdiction:** This Agreement is governed by the laws of California. Subject to the terms of clause 19.2, the parties submit to the jurisdiction of the courts of the State of California in respect of all matters relating to this Agreement.
- 19.8 Remedies:** The rights, powers and remedies provided in this Agreement are not exclusive of any rights, powers or remedies provided by law.
- 19.9 Subcontracting:** PX may appoint subcontractors to perform any of its obligations under this Agreement.
- 19.10 Reserved.**
- 19.11 Notices:** Any notice or other communication to be given under this Agreement must be in writing and must be served by one of the following means and in respect of each is deemed to have been served as described:
- (a) By personal delivery – when received by the party.
 - (b) By post by registered or ordinary mail – on the second working day following the date of posting in the United States mail to the addressee's registered office.
 - (c) By email – when acknowledged by the party orally or by return email or otherwise in writing.

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

- 19.12 Conflicts:** In the event of any conflict or inconsistency between this Agreement and the terms of a purchase order made by Customer to PX, this Agreement shall govern and control.
- 19.13 Nature of the Customer's Obligations.** All obligations of the Customer under this Agreement, which require the expenditure of funds, are conditional upon the availability of funds budgeted and appropriated for that purpose. Customer certifies that Customer has funds budgeted and appropriated for this purpose for the initial term in the amount of fifteen thousand dollars. Customer will notify PX if Customer will not have funds budgeted and appropriated to pay the fees set forth in this Agreement for any subsequent term.
- 19.14 General Laws.** The Parties shall comply with all applicable international, federal, state, and local laws, rules, regulations, and ordinances.
- 19.15 No Third-Party Beneficiary.** No provision of this Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or any other third party, so as to constitute any such Person a third-party beneficiary under this Agreement.
- 19.16 Employment of Unauthorized Aliens Prohibited.** PX agrees to comply with Missouri State Statute Section 285.530 in that PX shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri. As a condition of the award of this contract, PX shall, by sworn affidavit and the provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services in the State of Missouri. Once PX employs a person in the state of Missouri to perform work there, or physically sends an employee to perform work there, PX shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.
- 19.17 No Waiver of Immunities.** In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.
- 19.18 Insurance** PX shall maintain, on a primary basis and at its sole expense, at all times during the life of this Agreement the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as the Customer's review or acceptance of insurance maintained by PX is not intended to, and shall not in any manner limit or qualify the liabilities or obligations assumed by PX under this Agreement. Coverage to be provided as follows by a carrier with A.M. Best minimum rating of A- VIII.

evidence of monopolistic state coverage. Employers Liability with the following limits: \$500,000 for each accident; \$500,000 for each disease for each employee, and \$500,000 disease policy limit.

- b. Commercial General Liability. PX shall maintain Commercial General Liability at a limit of not less than \$1,000,000 Each Occurrence, \$2,000,000 Annual Aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.
 - c. Business Auto Liability. PX shall maintain Business Automobile Liability at a limit not less than \$1,000,000 Each Occurrence. Coverage shall include liability for Non-Owned & Hired automobiles. In the event PX does not own automobiles, PX agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.
 - d. PX may satisfy the minimum liability limits required for Commercial General Liability or Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum per occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for either Commercial General Liability or Business Auto Liability.
 - e. A certificate of insurance evidencing all coverage required is to be provided at least ten (10) days prior to the Effective Date of the Agreement between PX and Customer. PX is required to maintain coverages as stated and required to notify Customer of a Carrier Change or cancellation within ten (10) business days. Customer reserves the right to request a copy of the certificate of insurance.
 - f. The Parties hereto understand and agree that Customer is relying on, and does not waive or intend to waive by any provision of this Agreement, any monetary limitations or any other rights, immunities, and protections provided by the State of Missouri, as from time to time amended, or otherwise available to Customer, or its elected officials or employees.
 - g. Failure to maintain the required insurance in force may be cause for termination of this Agreement. In the event PX fails to maintain and keep in force the required insurance or to obtain coverage from its subcontractors, Customer shall have the right to cancel and terminate this Agreement without notice.
 - h. The insurance required by the provisions of this article is required in the public interest and Customer does not assume any liability for acts of the PX and/or their employees and/or their subcontractors in the performance of this Agreement.
- 19.19 Policy Compliance.** PX shall at all times comply with the terms of this Agreement, good financial industry and accounting practices, applicable laws, and PCI DSS.
- 19.20 Customer Data** and any information derived therefrom (collectively, hereinafter "City Data") shall be confidential and proprietary information belonging to either Customer or its customers or users of the Software. PX shall not sell or give away any such City Data. PX shall maintain the security of City Data and that of City of Columbia's customers and any user that is stored in or in any way connected with Software, services and applications. If either Party believes or suspects that security has been breached or City Data compromised whether it be from harmful code or otherwise, the Party shall notify the Other Party of the issue or possible security breach within forty-eight (48) hours.
- 19.21 NO HARMFUL CODE:** PX warrants that the Software Products do not contain Harmful Code. For purposes of this Agreement, "Harmful Code" is any code containing any program, routine, or device which is designed to delete, disable, deactivate, interfere with or otherwise harm any software, program, data, device, system or service, including without limitation, any time bomb, virus, drop dead device, malicious logic, worm, Trojan horse or trap or back door. "Harmful Code" shall also include any code containing any program, routine, or device which is designed to monitor consumers in the privacy of their home or during other private activities without their knowledge, including but not limited to the use programs to monitor the use of audio beacons emitted by television contained in software programs such as Silverpush or other comparable program or the use of video or photographic content without the consumers consent. PX shall include in contracts with any subcontractor a provision which prohibits the use of Harmful Code.

[SIGNATURE PAGE FOLLOWS]

- a. Workers' Compensation & Employers Liability. PX shall maintain Workers' Compensation in accordance with California State Statutes or provide

IN WITNESS WHEREOF, the parties have executed this Agreement on the day set forth below each of their signatures.


CITY OF COLUMBIA, MISSOURI

By: _____
John Glascock, Interim City Manager

ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor 

WINDCAVE INC.

By:  _____

Name: BRAD WOOD

Title: GENERAL COUNSEL

Date: 10-15-2019