

## **AUTOMATED TELLER MACHINE LICENSE AGREEMENT**

STATE OF TEXAS           §  
                                     §  
COUNTY OF BEXAR       §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“CITY”) acting by and through its Director of Finance or said Director’s designee (“Director”), pursuant to Ordinance No. \_\_\_\_\_ passed and approved on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and **US ATM Network, Inc.**, by and through its President (“LICENSEE”). CITY and LICENSEE may be referred to herein collectively as the “Parties”.

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

### **ARTICLE I** **DEFINITIONS**

As used in this Agreement, the following terms shall have meanings as set out below:

- 1.1 “Airport” means the San Antonio International Airport.
- 1.2 “Alamodome” means Alamodome, as it now exists or as it may change from time to time.
- 1.3 “Alternate Transactions” means Automated Teller Machine transactions which generate revenues, other than transaction fees or surcharges, including by not limited to any advertising revenues, generated through the ATM equipment, other than that advertising Licensee’s business and services.
- 1.4 “Automated Teller Machine (ATM)” means any removable equipment used to dispense currency from customers’ bank accounts and used to perform other remote banking functions.
- 1.5 “CITY” is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.6 “City Council” is the City of San Antonio City Council.

- 1.7 “Director” is defined in the preamble of this Agreement and shall mean the CITY’s Finance Department Director / Deputy Chief Financial Officer or designee, unless otherwise specified.
- 1.8 “Day” means calendar day and business day.
- 1.9 “LICENSEE” is defined in the preamble of this Agreement and includes its successors.
- 1.10 “License Fee” is a share of revenue generated from Surcharge Fees, Foreign Transaction Fees, Gross Interchange Service Fees, and Alternate Transactions due and payable by LICENSEE to CITY.
- 1.11 “Licensed Premises” or “Premises” means those premises made available to LICENSEE under this Agreement.
- 1.12 “Local Government Record” as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.
- 1.13 “Mobile ATM” means a portable ATM, installed in or upon a vehicle or trailer, deployed by LICENSEE outside of the Licensed Premises on a temporary basis for events. Mobile ATMs are not included in this Agreement.
- 1.14 “Permanent ATM” means an ATM which is placed and installed in a Location for the duration of the Term of this Agreement.
- 1.15 “Premises” or “Licensed Premises” means those premises made available to LICENSEE under this Agreement.
- 1.16 “Temporary ATM” means a portable ATM deployed by Licensee inside of the Licensed Premises basis for events. Temporary ATMs are not included in this Agreement.
- 1.17 “Transaction” means a cash withdrawal, cash advance, funds transfer, or balance inquiry, but does not included any declined transactions.

## **ARTICLE IIA**

### **TERM**

- 2A.1 Initial Term. This contract shall begin upon the effective date of the ordinance awarding the contract or April 1, 2023, whichever is later. Unless sooner terminated in accordance with the provisions of this Agreement, the contract shall terminate on March 31, 2026.

- 2A.2 Renewal Terms. At CITY's option, this Agreement may be renewed under the same terms and conditions for up to two (2), additional one (1) year periods. Renewals shall be in writing and signed by Director, without further action by the San Antonio City Council

**ARTICLE IIB**  
**PREMISES, GRANT, PLACEMENT**

- 2B.1 Premises. The Premises, as detailed in **Exhibit B**, are the initial twenty-five (25) ATM locations, which locations may be reconfigured, added, or deleted during the term of this Agreement. The ATM locations may be changed at the direction of the respective City Department Director upon thirty (30) days' written notice to LICENSEE.
- 2B.2 Grant of License. For and in consideration of the fees, covenants and promises herein contained to be kept, performed and observed by LICENSEE, CITY does hereby grant to LICENSEE and LICENSEE does hereby accept from CITY a license to install and operate ATMs at the Licensed Premises as follows:
- 2B.2.1 The exclusive right to install and operate twenty-five (25) Permanent ATMs at the Locations inside or on the Licensed Premises; and
- 2B.2.2 LICENSEE acknowledges and agrees that in the event it has exclusive rights under Subsection 2B.2.1 and subsequently ceases, or is no longer able to provide ATM services under this Subsection during the Initial Term or any Renewal Term, the exclusive rights of LICENSEE with respect to the applicable ATM services shall automatically convert to a non-exclusive basis for the remainder of the term and CITY shall have the right, without breach of this Agreement, to provide said ATM services in another manner, including obtaining the ATM services from another financial institution or business.
- 2B.3 Placement. The ATMs shall be placed at the Licensed Premises with the exact Locations to be approved by both the respective Department Director and LICENSEE.
- 2B.4 Conditions of Grant. The CITY has the right to make any modifications to CITY property, such as the Airport, the Alamodome and other CITY facilities. LICENSEE acknowledges that the CITY may change the shape, size, location and number of locations generally shown on **Exhibit B** and may eliminate or add any location to any portion of the Premises at any time without LICENSEE's consent. The CITY shall the right to locate, install, maintain, use, repair and replace pipes, utility lines, conduits, ducts, flues, refrigerant lines drains, sprinkler mains and valves, wires and wiring and structural elements leading through the Premises, serving the Premises, or serving other parts of CITY property. LICENSEE, upon approval by the respective Department Director or designee, shall have the right to install those utility lines which exclusively serve the Premises in the area between LICENSEE's finished ceiling and the roof above at LICENSEE's sole cost. In the event the CITY elects to enlarge or alter any CITY property, the CITY may include the

additional area in the definition of such CITY property for purposes hereof. If possible, CITY will provide a ten (10) day notice.

2B.5 Holding Over.

2B5.1 Any holding over after expiration of the Term with the consent of Director shall be construed to be a tenancy from month-to-month pursuant to the terms hereof regarding Transaction Fees and License Fees required to be paid by LICENSEE and shall be on the same terms and conditions as herein specified, so far as applicable.

2B5.2 Without CITY's waiver of any rights, any holding over without the CITY's consent shall be construed to be a tenancy from month to month pursuant to the terms hereof at one hundred fifty percent (150%) of the Transaction Fees and License Fees payable to the CITY and shall be on the same terms and conditions as herein specified, so far as applicable.

2B.6 City's Superior Interest. LICENSEE acknowledges that the license granted under this Agreement is limited in nature, being a personal license only, and that CITY does not purport to convey any real property interest in the property over, under or upon the Locations on which LICENSEE's ATMs and any improvements are located. CITY reserves the right to enter the Locations at any time for the minimum time necessary to prevent an accrual of any rights in any person other than such rights established prior to and pursuant to the license granted under this Agreement and also for the purpose of asserting CITY's superior fee interest and the exercise of CITY's superior rights. In addition, CITY reserves the right to enter the Locations, including the secured portion of the Locations, at any time for any purpose, including but not limited to, asserting such interest and rights, inspecting the Locations or verifying that fire, safety, and sanitation regulations and other provisions contained herein are being adhered to by LICENSEE; however, CITY's representative must be accompanied by authorized LICENSEE's personnel, except for emergencies. If CITY notifies LICENSEE of a pending inspection and LICENSEE fails to respond within twenty-four (24) hours after notice, except for weekends or holidays, whereupon seventy-two (72) hours apply after notice, then CITY may inspect without authorized LICENSEE's personnel. Nothing contained herein shall give the CITY any rights or access to the cash vaults located in each ATM.

2B.7 Right of Entry. Upon evidence of LICENSEE having obtained the insurance required herein and subject to LICENSEE's agreement to be bound in writing by the Indemnity provisions hereof, CITY grants to LICENSEE a right of ingress and egress to the Locations for the sole purpose of installing the ATMs and constructing the ATM equipment and improvements referenced in this Article IIB, *Premises, Grant, Locations*, and operating and maintaining said ATMs.

2B.8 Repositioning. Repositioning shall mean any relocation of a Permanent ATM within the Licensed Premises.

2B.8.1 Action Taken / Requested by City. The Parties understand and agree that, upon ninety (90) days prior written notice to Licensee, CITY may require the repositioning of the LICENSEE's Permanent ATMs at any time and for any reason during the Term of this Agreement, both as defined hereafter, at LICENSEE's sole cost and expense, provided however, that LICENSEE shall have the right to terminate this Agreement either to all ATMs or as to specific ATMs subject to the repositioning request, effective at the end of said ninety (90) days, with written notice to CITY within sixty (60) days after the mailing date of CITY's notice, should any one or more of the proposed repositioned site(s) not be acceptable to LICENSEE and further provided that such repositioning shall not be requested more than two (2) times during the Initial Term or any Renewal Term hereof.

2B.8.2 Action Taken / Requested by Licensee. Further, LICENSEE may request a repositioning of the Permanent ATMs, upon (90) days prior written notice to CITY, at any time during the Initial Term or Renewal Term. Any repositioning of a Permanent ATM requested by LICENSEE during either term of this Agreement shall require the prior written approval by the respective Department Director. Any repositioning requested by LICENSEE shall be at LICENSEE's sole cost and expense. CITY shall consider:

- If repositioning is approved, will it be in the best interests of both Parties and the public;
- What will be the economic impact of the Parties, if repositioning is approved;
- What is the economic feasibility justifying such repositioning (e.g., has LICENSEE factually demonstrated to CITY, within LICENSEE's ability that substantial loss in transactional volume will occur if repositioning is not approved; and
- Other factors provided by LICENSEE which warranted such request.

2B.8.3 Regardless of which party makes the request, LICENSEE shall be responsible for the cost of repositioning a Permanent ATM within the Licensed Premises and any related expenses, noted above, plus repairing any damage caused by such repositioning.

## 2B.9 Criminal Background Checks / Criminal Justice Information Services (CJIS).

2B.9.1 LICENSEE is responsible for assessing risk and maintaining effective background check policy and procedures for all employees, staff and subcontractors responsible for performing services under this contract. LICENSEE shall retain all employee records, including any criminal background checks, for the retention period stated in Article VI, Records Retention.

2B.9.2 LICENSEE is responsible for any costs incurred in conducting criminal background checks.

2B.9.3 Criminal Justice Information Services (CJIS). LICENSEE will be providing services under this contract for facilities with access to CJIS. Persons with any of the criminal histories shown below are not allowed unescorted access to CJIS Facilities. Since CITY staff may not be available to provide escorted access, LICENSEE's employees providing services to CJIS facilities must pass this criminal background check to provide services in these locations.

- a) Felony conviction – permanent disqualifier
- b) Felony deferred adjudication – permanent disqualifier
- c) Class A misdemeanor conviction – permanent disqualifier
- d) Class A misdemeanor deferred adjudication – permanent disqualifier
- e) Class B misdemeanor conviction – disqualifier for ten (10) years
- f) Class B misdemeanor deferred adjudication – disqualifier for ten (10) years
- g) Open arrest for any criminal offense (felony or misdemeanor) – disqualifier until disposition
- h) Family violence conviction – permanent disqualifier

2B.9.4 CJIS Facilities. CJIS Facilities within this contract are: Frank Wing Building (Municipal Courts), Public Safety Headquarters (PSHQ), SAPD Property & Evidence Facility and San Antonio International Airport.

2B.9.5 Security Addendum for Criminal Justice Information Services (CJIS). LICENSEE will be required to provide services to CITY departments that perform criminal justice services. Criminal Justice Agencies, such as the San Antonio Police Department, are required to comply with the security requirements managed by the Federal Bureau of Investigations (FBI) and state agencies, such as the Texas Department of Public Safety. The Federal Criminal Justice Information Services Security Policy applies to every individual, LICENSEE, private entity, noncriminal justice agency representative, or member of a criminal justice entity with access to, or who operate in support of, criminal justice services and information. Agency shall comply with the Policy and shall execute the CJIS Security Addendum attached to this agreement. LICENSEE's employees or agents who are subject to the Policy will be required to sign a Contractor Employee Certification and be finger printed. All costs associated with compliance of the CJIS Policy shall be borne by the LICENSEE. LICENSEE shall comply with any changes made to the security requirements by law. Refer to **Exhibit C – CJIS Addendum**.

2B.9.6 LICENSEE shall ensure LICENSEE's employees make an appearance at the ID Unit at SAPD Headquarters at 315 S. Santa Rosa, San Antonio, Texas to fill out and submit a Fingerprint Application Form to initiate a background check. LICENSEE shall ensure LICENSEE's employees pass a criminal background check and complete CJIS Level 1 Training prior to starting work at CJIS Facilities under this contract.

2B.9.7 LICENSEE shall immediately remove any employee, staff or subcontractor that does not meet these requirements from performing services under this contract.

### **ARTICLE III**

### **SCOPE OF SERVICES**

- 3.1 LICENSEE agrees to provide the services described in this Article III entitled Scope of Services in exchange for the fees described in Article IV. Fees and Payment Terms.

#### **MINIMUM EQUIPMENT, SERVICE AND OPERATIONAL REQUIREMENTS**

- 3.2 ATM Equipment and Services.

- 3.2.1 All ATMs.

- 3.2.1.1 All ATMs shall be freestanding, self-contained units.
- 3.2.1.2 All ATMs shall be aesthetically appealing, functional, durable and resistant to damage, vandalism and graffiti. ATMs and proposed enclosures shall be subject to the approval of the respective Department Director prior to installation.
- 3.2.1.3 All ATMs shall have color LCD screens at a minimum.
- 3.2.1.4 All ATMs must have a card swipe or dip card interface as opposed to a card insert.
- 3.2.1.5 All ATMs shall utilize a standard 110 volt (120 VAC, 15 amp) electrical outlet LICENSEE agrees that electric connections shall be provided and distributed through the CITY's electric system. CITY will provide, at no charge, all necessary electric connections, as well as electric service.
- 3.2.1.6 All ATMs shall preferably be equipped with wireless data communication systems to conduct all ATM operations, or alternately utilize a standard telephone line. LICENSEE acknowledges and agrees that dial-up connectivity is not allowed. If ATMs are not wireless, LICENSEE agrees that telephone connections shall be provided and distributed through the CITY's telephone system. CITY will provide, at no additional charge, all necessary telephone connections, as well as local and toll-free service. LICENSEE shall invoice LICENSEE monthly for all such charges at rates established by the CITY. LICENSEE shall remit payment for long-distance charges within ten (10) days of receipt of CITY's invoice.
- 3.2.1.7 All ATMs shall be programmed, have accessibility options, process all transactions, and provide all information, including instructions, fees, and directions, in both English and Spanish, and Braille.
- 3.2.1.8 All ATMs shall be capable of processing transactions utilizing various credit, debit and ATM cards and shall access the following networks: Cirrus, PULSE and PLUS, as well as VISA MasterCard, Discover and American Express debit card networks.
- 3.2.1.9 All ATMs shall process cash withdrawals/advances from checking and savings accounts and credit cards, transfers from/to checking/savings accounts (member transactions only), balance inquiries from

checking/savings accounts, and other transactions permitted by governing network regulations. ATMs shall not process deposits. Processing of all other transactions shall require advance approval in writing by Director.

- 3.2.1.10 All ATMs shall conduct all transactions in United States Currency and use twenty-dollar (\$20) bills as a primary denomination for withdrawals.
- 3.2.1.11 All ATMs shall be capable of providing cash withdrawals and advances up to three hundred dollars (\$300.00) per transaction.
- 3.2.1.12 All ATMs shall print a receipt for each transaction. LICENSEE shall be responsible for all consumable costs associated with ATM operations, including but not limited to paper, ink/toner, etc.
- 3.2.1.13 All ATMs shall provide a list all ATM transaction fees, including to whom the fees and charges apply.
- 3.2.1.14 All ATMs shall display all written instructions necessary to operate the ATMs.
- 3.2.1.15 All ATMs shall bear in a plainly visible location the LICENSEE's name, unique ATM identification, ATM location, and toll-free number for customers to call for inquiries, maintenance issues, customer service issues, and complaints. The toll-free number must be staffed twenty-four (24) hours per day, seven (7) days a week.
- 3.2.1.16 All ATMs shall be equipped with an anti-theft/vandalism alarm system that is capable of notifying LICENSEE should an ATM be burglarized.
- 3.2.1.17 All ATMs shall have system management capabilities for predicting, assisting and reporting maintenance, and alert when cash replenishments are needed. LICENSEE must be aware of events and verify that ATMs are adequately operational and stocked immediately prior to and throughout the duration of events.
- 3.2.1.18 All ATMs shall be equipped with a functional electronic journal capable of storing various types of operational information.
- 3.2.1.19 All ATMs shall comply with all Americans with Disabilities Act (ADA) regulations, including but not limited to those regulations specific to ATMs.

### 3.2.2 Permanent ATMs.

- 3.2.2.1 Permanent ATM equipment shall be new or manufactured within the last three (3) years. Refurbished Permanent ATM equipment that is older than three (3) years shall not be considered nor accepted.
- 3.2.2.2 Permanent ATM floor dimensions shall not exceed thirty-six inches (36") by thirty-six inches (36") square.
- 3.2.2.3 Permanent ATMs shall be accessible only from the front of the machines for customer services, as well as for maintenance and repair.
- 3.2.2.4 Permanent ATMs shall display a map illustrating the locations of all Permanent ATMs in the event a Permanent ATM is malfunctioning or being serviced. The maps shall be affixed to the ATMs, not the screens.



- 3.3 Licensee's ATM Liaison. LICENSEE shall designate and maintain a qualified and experienced representative to manage LICENSEE's ATMs and who will serve as liaison between LICENSEE and CITY with full authority to make all necessary decisions for LICENSEE as may be required under the terms of this Agreement, including the management of the ATMs and compliance with the Agreement. On or before the effective date of this Agreement, LICENSEE shall have provided to CITY contact information for LICENSEE's liaison to include name, title, business address, direct telephone number, mobile telephone number, and email address.
- 3.4 Licensee's ATM Operations Center. LICENSEE shall establish and maintain an ATM operations center with 24-hour phone support capabilities and shall provide CITY contact information, including phone number of email address(es). The ATM operations center shall have LICENSEE's full authority to respond to and rectify any and all issues related to the operation of the ATMs, including repair within 48 hours and cash replenishment within 24 hours regardless of the day of the week. LICENSEE shall update this information throughout the term of the Agreement, not later than two (2) business days from the date of any change.
- 3.5 Licensee's Customer Service. LICENSEE shall establish and maintain a toll-free customer service phone number, available twenty-four hours a day, seven days a week, for inquiries, maintenance issues, customer service issues, and complaints.
- 3.6 Security. LICENSEE is solely responsible for security of currency and all associated supplies. If LICENSEE requires the use of manned security for any of its ATMs, LICENSEE shall utilize off-duty San Antonio Police Department (SAPD) officers coordinated directly by LICENSEE through the SAPD Off-Duty Employment Unit. LICENSEE is solely responsible for the cost and expense of security. LICENSEE acknowledges and agrees that no security other than the required off-duty police officers specified above shall be utilized at any time.
- 3.7 Performance Guarantee. LICENSEE shall deliver to CITY and shall keep in force throughout the term of this Agreement either an irrevocable standby letter or credit in favor of CITY drawn upon a bank satisfactory to CITY or a surety bond payable to CITY. If a letter of credit is delivered it shall be in the form and content approved by CITY. If a bond shall be delivered, it shall be issued by a sound indemnity company authorized to do business in Texas. The amount of the irrevocable letter of credit or surety bond to be delivered by LICENSEE to the Director on or before the Commencement Date of the Agreement and shall be no less than Sixty-Five Thousand Dollars (\$65,000.00) for the first Term of the Contract and may be annually renewable. Notwithstanding the forgoing, LICENSEE may tender to the Director a cashiers' check in lieu of letter of credit or surety bond in the amount of the required performance guarantee. CITY shall retain said performance guarantee for the benefit of CITY throughout the Term of this Agreement as security for the faithful performance by LICENSEE of all terms, covenants, and conditions of this Agreement. Performance guarantee(s), to include any annual renewals over the course of the contract, shall remain in full force and effect without lapse between renewals, for a period not less than One Hundred and Eighty (180) days subsequent to the expiration of this Agreement, or any subsequent extension(s) thereto. LICENSEE is required to provide any annual renewal within ten (10) business days of the expiration of the

previous guarantee. If LICENSEE defaults with respect to any provision of this Agreement, including, but not limited to, the provisions relating to the payments of License Fee, CITY may use, apply or retain all or any part of the performance guarantee for the payment of any License Fee or any other sum in default, or for the payment of any loss or damage which CITY may suffer by reason of LICENSEE's default, or to compensate CITY for any other amount which CITY may spend or become obligated to spend by reason of LICENSEE's default. In no event, except as specifically hereinafter provided, shall CITY be obliged to apply the same to License Fee or other charges in arrears or to damages for LICENSEE's failure to perform said covenants, conditions and agreements; however, CITY may so apply the performance guarantee, at its option. CITY's right to bring a special proceeding to recover or otherwise to obtain possession of the Premises before or after CITY's declaration of the termination of this Agreement for non-payment of License Fee or for any other reason shall not in any event be affected by reason of the fact that CITY holds the performance guarantee. In the event that CITY regains possession of the Premises, whether by special proceeding, reentry or otherwise, because of LICENSEE's default or failure to carry out the covenants, conditions and agreements of this Agreement, CITY may apply such performance guarantee to all damages suffered through the date of said repossession and may retain the performance guarantee to apply to such damages as may be suffered or shall accrue thereafter by reason of LICENSEE's default or breach. In the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against LICENSEE, or its successors or assigns, or any guarantor of LICENSEE hereunder, such performance guarantee shall be deemed to be applied first to the payment of any License Fee and/or other charges due CITY for all periods prior to the institution of such proceedings, and the balance, if any, of such performance guarantee may be retained by CITY in partial liquidation of CITY's damages. The performance guarantee shall not constitute a trust fund. In the event CITY applies the performance guarantee in whole or in part, LICENSEE shall within ten (10) days after written demand by CITY, deposit sufficient funds by delivering an amendment to the existing irrevocable standby letter of credit or surety bond or delivering a new irrevocable standby letter of credit or surety bond to maintain the performance guarantee in the initial amount. Failure of LICENSEE to supply such additional funds shall entitle CITY to avail itself of the remedies provided in this Agreement for nonpayment of License Fee by LICENSEE. If LICENSEE fully and faithfully performs every provision of this Agreement to be performed by it, the performance guarantee or any balance thereof, less any sums then due CITY from LICENSEE under this Agreement, shall be returned to LICENSEE (or, at CITY's option to the last assignee of LICENSEE's interest thereunder) within one hundred twenty (120) days following the later of the expiration of the Term of this Agreement, the earlier termination thereof of LICENSEE's vacating and surrendering possession of the Premises to CITY.

**ARTICLE IV**  
**FEES AND PAYMENT TERMS**

4.1 Transaction Fees.

- 4.1.1 ATM transaction or surcharge fees assessed for ATMs provided under this Agreement may not exceed charges assessed at LICENSEE's ATMs that are currently located within the incorporated limits of the City of San Antonio, its Extra-Territorial Jurisdiction (ETJ), and Bexar County.
- 4.1.2 LICENSEE shall charge no less than \$3.25 for permanent locations for any type of withdrawal transaction for Year 1.
- 4.1.3 Credit Card Fees are \$0.49 per transaction for Year 1.
- 4.1.4 Currency Conversion Fees are 0.5% of the withdrawal for Year 1.
- 4.1.5 Gross Interchange, defined as the Interchange that LICENSEE is paid and all percentage splits paid to CITY will be a percentage of the fees actually received by LICENSEE. No minimum guarantee shall be paid and the fees and surcharges shall never decrease.
- 4.1.6 Customers shall be given an opportunity to cancel the transaction upon being notified of the ATM transaction fees. Customers who cancel the transactions shall not be charged any fees.
- 4.1.7 All fees and surcharges shall be adjusted upward by the Prime Rate plus one (1). This will be calculated by multiplying the current surcharge by the current Prime Rate plus one (1) and rounding up to the nearest \$0.10. For example, at the end of Year 1 the Prime Rate is 6%. The new surcharge will be  $\$3.25 \times 1.07 = \$3.48$  rounded up to \$3.50.

4.2 License Fees. LICENSEE shall pay to CITY a License Fee of:

**Twenty-Five Percent (25%)** of all Transaction Fees on Permanent ATMs; and

**Twenty-Five Percent (25%)** of all gross revenue collected from Alternate Transactions, generated by each ATM for each month of the term of this Agreement and all renewals hereof.

4.3 Miscellaneous Charges. The following charges shall be collectively referred to as "Miscellaneous Charges":

- 4.3.1 Employee Parking. The CITY, while providing parking facilities at the San Antonio International Airport to LICENSEE's employees or subcontractors in common with employees of other LICENSEEs/concessionaries and user of the Airport, retains the right to institute a reasonable charge for the privilege of using these parking facilities. Such charges shall be evidenced by an invoice from CITY and shall be promptly paid to CITY, with notation of invoice number on payment, at such intervals as shall be demanded by CITY from time to time.
- 4.3.2 Identification Security Badges. All persons employed at the Airport, including LICENSEE's employees or subcontractors, are required to obtain identification security badges from CITY and CITY reserves the right to institute a reasonable charge for the issuance and replacement of these identification security badges. LICENSEE shall pay such charges at the time incurred.
- 4.4 Payment in Arrears. LICENSEE shall pay CITY the License Fee, if any, due to CITY for the immediately preceding month, on the twentieth (20<sup>th</sup>) day of each month throughout the term of this Agreement and all renewals hereof, beginning with the second month following the effective date of this Agreement.
- 4.5 Reports and Payments. All payments shall be made payable to the City of San Antonio. With each monthly remittance of the License Fee, LICENSEE shall provide monthly transaction reports, which shall include statistical terminal data, delineating services used for each ATM during the previous month. Reports shall be in a form and content approved by the CITY. The monthly report shall include, at a minimum a summary of ATM activity that shows the total transactions processed per ATM, cash dispensed, all Transaction Fees charged for transactions, and the License Fees payable to CITY. License Fees and reports shall be sent to the following, unless otherwise notified in writing by CITY.
- City of San Antonio, Finance Department  
PO Box 839966  
San Antonio, TX 78283-3966
- 4.6 Delinquency. Without waiving any other right of action available to City in the event of default in the timely payment of the License Fees due by LICENSEE to CITY pursuant to this Agreement, LICENSEE agrees to pay to CITY interest thereon at the rate of eighteen percent (18%) per annum from the date such item was due and payable until paid, unless such rate is declared usurious under applicable Texas law, whereupon LICENSEE agree to pay the highest rate of interest allowed by such law. Such interest shall not accrue with respect to disputed items being contested in good faith by LICENSEE.
- 4.7 Responsibility for Taxes, Fees or License Charges. The License Fees paid to City shall not include any taxes, fees or other license charges that may be levied, assessed or charged by any governmental entity. LICENSEE agrees to pay such taxes, fees or other license charges directly to the appropriate taxing authority.

- 4.8 No fees or expenses of LICENSEE shall be charged by LICENSEE nor be payable by CITY.
- 4.9 Independent CPA. If so requested by CITY, LICENSEE shall employ an independent Certified Public Accountant, which may be the same auditor that performs ordinary and customary auditing functions for LICENSEE, who shall furnish an annual written audit to the CITY stating that in his or her opinion the License Fees paid by Licensee to City during the preceding year pursuant to this Agreement were made in accordance with the applicable terms of this Agreement. The Audit shall be completed and delivered to City within one-hundred twenty (120) days after the last day of the preceding calendar year.
- 4.10 Prior Review. Prior to the commencement of operations hereunder, CITY may require that an independent Certified Public Accountant, whose fees are paid for by LICENSEE, review the revenue control system(s) to be utilized by LICENSEE, in conformance with the American Institute of Certified Accounts Statement of Auditing Standards, Inc., Statement on Auditing Standards. At the end of each twelve 12 (120) months of operation during the term of this Agreement, CITY may require that said independent Certified Public Accountant and/or CITY conduct all necessary tests for compliance with the revenue control system. Copies of all reports from the independent Certified Public Accountant shall be provided to CITY by LICENSEE. CITY may also require LICENSEE to provide copies of internal control reports used by LICENSEE.

## **ARTICLE V**

### **OWNERSHIP OF DOCUMENTS**

- 5.1 In accordance with Texas law, LICENSEE acknowledges and agrees that all Local Government Records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such Local Government Records produced by or on the behalf of LICENSEE pursuant to this Agreement shall be the subject of any copyright or proprietary claim by LICENSEE.
- 5.2 LICENSEE acknowledges and agrees that all Local Government Records, as described herein, produced in the course of the work required by this contract will belong to and be the property of CITY. LICENSEE will turn over to CITY all such records. LICENSEE shall not, under any circumstances, release any records created during the course of performance of this contract to any entity without CITY's written permission, unless required to do so by a Court of competent jurisdiction.
- 5.3 In accordance herewith, LICENSEE agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

## **ARTICLE VI**

### **RECORDS RETENTION**

- 6.1 LICENSEE and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as “documents”), and shall make such materials available to the CITY at their respective offices, at all reasonable times and as often as CITY may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by CITY and any of its authorized representatives.
- 6.2 LICENSEE shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as “retention period”) from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, LICENSEE shall retain the records until the resolution of such litigation or other such questions. LICENSEE acknowledges and agrees that CITY shall have access to any and all such documents at any and all times, as deemed necessary by CITY, during said retention period. CITY may, at its election, require LICENSEE to return the documents to CITY at LICENSEE’s expense prior to or at the conclusion of the retention period. In such event, LICENSEE may retain a copy of the documents at its sole cost and expense.
- 6.3 LICENSEE shall notify CITY, immediately, in the event LICENSEE receives any requests for information from a third party, which pertain to the documentation and records referenced herein. LICENSEE understands and agrees that CITY will process and handle all such requests.
- 6.4 S.B. 943 – Disclosure Requirements for Certain Government Contracts. For contracts (1) with a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the CITY, or (2) that result in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the CITY in a given fiscal year, LICENSEE acknowledges that the requirements of the Texas Public Information Act, Government Code, Chapter 552, Subchapter J, pertaining to the preservation and disclosure of Contracting Information maintained by the CITY or sent between the CITY and a vendor, contractor, potential vendor, or potential contractor, may apply to this contract. LICENSEE agrees that the contract can be terminated if LICENSEE knowingly or intentionally fails to comply with a requirement of that subchapter.
- 6.5 LICENSEE warrants and certifies, that it, has not knowingly or intentionally failed to comply with this subchapter in a previous contract. CITY hereby relies on LICENSEE’s certification, and if found to be false, CITY may terminate this Agreement for material breach.

## **ARTICLE VII**

### **TERMINATION**

- 7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.
- 7.2 Termination Without Cause. This Agreement may be terminated by CITY without cause upon 30 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.
- 7.3 Termination for Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, CITY may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:
- 7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting;
  - 7.3.2 Neglect or failure by LICENSEE to perform or observe any of the terms, conditions, covenants or guarantees of this Contract or of any amendment between CITY and LICENSEE;
  - 7.3.3 Failure by LICENSEE to correct any deficiency therein within the time allotted, as specified in a written notice from CITY to LICENSEE sent pursuant to Article VIII, Notice; or
  - 7.3.4 Any material breach of the terms of this Agreement, as determined solely by CITY.
- 7.4 Defaults With Opportunity for Cure. Should LICENSEE default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. CITY shall deliver written notice of said default specifying such matter(s) in default. LICENSEE shall have 30 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If LICENSEE fails to cure the default within such 30-day cure period, CITY shall have the right, without further notice, to terminate this Agreement in whole or in part as CITY deems appropriate, and to contract with another contractor to complete the work required in this Agreement. CITY shall also have the right to offset the cost of said new Agreement with a new contractor against LICENSEE's future or unpaid invoice(s), subject to the duty on the part of CITY to mitigate its losses to the extent required by law.
- 7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA;
  - 7.4.2 Bankruptcy or selling substantially all of company's assets;
  - 7.4.3 Failing to perform or failing to comply with any covenant herein required; or
  - 7.4.4 Performing unsatisfactorily.
- 7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

- 7.6 Regardless of how this Agreement is terminated, LICENSEE shall effect an orderly transfer to CITY or to such person(s) or firm(s) as the CITY may designate, at no additional cost to CITY, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by LICENSEE, or provided to LICENSEE, hereunder, regardless of storage medium, if so requested by CITY, or shall otherwise be retained by LICENSEE in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by CITY and shall be completed at LICENSEE's sole cost and expense. Payment of compensation due or to become due to LICENSEE is conditioned upon delivery of all such documents, if requested by CITY.
- 7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, LICENSEE shall submit to CITY its claims, in detail, for the monies owed by CITY for services performed under this Agreement through the effective date of termination. Failure by LICENSEE to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of CITY and constitute a **Waiver** by LICENSEE of any and all right or claims to collect moneys that LICENSEE may rightfully be otherwise entitled to for services performed pursuant to this Agreement.
- 7.8 Upon the effective date of expiration or termination of this Agreement, LICENSEE shall cease all operations of work being performed by LICENSEE or any of its subcontractors pursuant to this Agreement.
- 7.9 Termination not sole remedy. In no event shall CITY's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of CITY's remedies, nor shall such termination limit, in any way, at law or at equity, CITY's right to seek damages from or otherwise pursue LICENSEE for any default hereunder or other action.

## **ARTICLE VIII**

### **NOTICE**

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for CITY, to:

City of San Antonio  
Attn: Troy Elliott, Deputy Chief Financial Officer

If intended for LICENSEE, to:

US ATM Network, Inc.  
1229 Green Meadow Rd.



P.O. Box 839966  
San Antonio, Texas 78283-3966

Carbondale, CO 81623

With Copy to:

City of San Antonio  
Attn: Melanie Keeton, Assistant Finance Director  
P.O. Box 839966  
San Antonio, Texas 78283-3966

**ARTICLE IX**  
**AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)**  
**PROGRAM REQUIREMENTS**

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE CLAUSE

- 9.1 It is the policy of the City of San Antonio that Airport Concession Disadvantaged Business enterprises (ACDBEs), as defined under 49 CFR Part 23, shall have “equality of opportunity” to participate in the awarding of federally-assisted Aviation Department contracts and related subcontracts, to include sub-tier subcontracts. This policy supports the position of the U.S. Department of Transportation (DOT) in creating a level playing field and removing barriers by ensuring nondiscrimination in the award and administration of contracts financed in whole or in part with federal funds under this contract. Therefore, on all DOT-assisted projects the ACDBE program requirements of 49 CFR Part 23 applies to the contract.
- 9.2 LICENSEE agrees to employ good-faith efforts (as defined in the Aviation Department’s ACDBE Program) to carry out this policy through award of subcontracts to disadvantaged business enterprises to the fullest extent consistent with the sufficient performance of the Aviation Department Contract, and/or the utilization of ACDBE suppliers where feasible.
- 9.3 LICENSEE specifically agrees to comply with all applicable provisions of the Aviation Department’s ACDBE Program. The ACDBE Program may be obtained through the Airport’s ACDBE Liaison Officer at (210) 207-3592 or by contacting the City’s Aviation Department.
- 9.4 No concession specific goal (**0%**) has been applied to this Concession. The Aviation Department strongly encourages the utilization of ACDBE and Small Businesses if an opportunity arises from this concession. Any ACDBE attainment will count towards the San Antonio Airport System’s Race Neutral ACDBE attainment.
- 9.5 LICENSEE shall maintain records, as specified in the audit and records section of the contract, showing: (i) all subcontract/supplier awards, specifically awards to ACDBE

firms; (ii) specific efforts to identify and award such contracts to ACDBEs; and (iii) submit when requested, copies of executed contracts to establish actual ACDBE participation.

- 9.6 LICENSEE agrees to submit periodic reports of subcontract and/or supplier awards to ACDBE firms in such form and manner and at such times as the Aviation Department shall prescribe and shall provide access to books, records, and accounts to authorized officials of the City, Aviation Department, state, and/or federal agencies for the purpose of verifying ACDBE participation and good-faith efforts to carry out the ACDBE Policy and Program. All Aviation Department LICENSEEs may be subject to a post-contract ACDBE audit. Audit determination(s) may be considered and have a bearing in the evaluation of a LICENSEE's good-faith efforts on future airport contracts.
- 9.7 The City and Aviation Department encourage LICENSEE to utilize currently approved and certified ACDBE firms on the contract for ACDBE credit purposes. The Aviation Department accepts ACDBE certification from any one of the six (6) certifying agencies under the Texas Unified Certification Program (TUCP) – Texas Department of Transportation (TxDOT), North Central Texas Regional Certification Agency (NCTRCA), South Central Texas Regional Certification Agency (SCTRCA), City of Houston, City of Austin and the Corpus Christi Regional Transportation Authority.
- 9.8 The following ACDBE-related contractual clause shall be applicable and is specifically included as part of this Agreement. LICENSEE shall also include this clause in each subcontract LICENSEE signs with a subcontractor.
- “The concessionaire or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 23 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate”.
- 9.9 Failure or refusal by a LICENSEE to comply with the ACDBE provisions herein or any applicable provisions of the ACDBE Program, either during the solicitation process or at any time during the term of this Agreement, may constitute a material breach of contract, whereupon this Agreement, at the option of the Finance Department, may be cancelled, terminated, or suspended in whole or in part, and LICENSEE may be debarred from further contracts with the City of San Antonio..

## **ARTICLE X**

### **INSURANCE**

- 10.1 Prior to the commencement of any work under this Agreement, LICENSEE must provide a completed Certificate(s) of Insurance to CITY's Finance Department. The certificate must be:
- 10.1.1 clearly labeled with the legal name of the event in the Description of Operations

block;

10.1.2 completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (CITY will not accept Memorandum of Insurance or Binders as proof of insurance); and

10.1.3 properly endorsed and have the agent's signature, and phone number.

- 10.2 Certificates may be mailed or sent via email, directly from the insurer's authorized representative. CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by CITY'S Finance Department. No officer or employee, other than CITY'S Risk Manager, shall have authority to waive this requirement.
- 10.3 If the City does not receive copies of insurance endorsement, then by executing this Agreement, LICENSEE certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for this Agreement.
- 10.4 The City's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
- 10.5 LICENSEE shall obtain and maintain in full force and effect for the duration of this Agreement, at LICENSEE'S sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If the LICENSEE claims to be self-insured, they must provide a copy of their declaration page so the CITY can review their deductibles:

<b><i>INSURANCE TYPE</i></b>	<b><i>LIMITS</i></b>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability *e. Independent Contractors *f. Damage to property rented by you	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.  *f. \$300,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.

5. Professional Liability (Claims-made Coverage)	<p>\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.</p> <p>Coverage must be maintained and in effect for no less than two years subsequent to the completion of the professional service.</p>
*6. Cyber Liability	<p>\$1,000,000 per claim</p> <p>\$1,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.</p>
*If Applicable	

10.6 LICENSEE must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of LICENSEE and provide a certificate of insurance and endorsement that names LICENSEE and CITY as additional insureds. LICENSEE shall provide CITY with subcontractor certificates and endorsements before the subcontractor starts work.

10.7 If a loss results in litigation, then the CITY is entitled, upon request and without expense to the City, to receive copies of the policies, declaration page and all endorsements. LICENSEE must comply with such requests within 10 days by submitting the requested insurance documents to the CITY at the following address:

City of San Antonio  
Attn: Finance Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

10.7 LICENSEE's insurance policies must contain or be endorsed to contain the following provisions:

- Name CITY and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with CITY. The endorsement requirement is not applicable for workers' compensation and professional liability policies;
- Endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy. CITY's insurance is not applicable in the event of a claim;
- Contractor shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of CITY; and

- Provide advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 10.8 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, LICENSEE shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend LICENSEE's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 10.9 In addition to any other remedies CITY may have upon LICENSEE's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, CITY may order LICENSEE to stop work and/or withhold any payment(s) which become due to LICENSEE under this Agreement until LICENSEE demonstrates compliance with requirements.
- 10.10 Nothing contained in this Agreement shall be construed as limiting the extent to which LICENSEE may be held responsible for payments of damages to persons or property resulting from LICENSEE's or its subcontractors' performance of the work covered under this Agreement.
- 10.11 LICENSEE's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by City for liability arising out of operations under this Agreement.
- 10.12 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.
- 10.13 LICENSEE and any subcontractor(s) are responsible for all damage to their own equipment and/or property result from their own negligence.

## **ARTICLE XI**

### **INDEMNIFICATION**

- 11.1 **LICENSEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to LICENSEE'S activities under this Agreement, including any acts or omissions of LICENSEE, any agent, officer, director, representative, employee,**

consultant or subcontractor of LICENSEE, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT LICENSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.** In addition, LICENSEE agrees to indemnify, defend, and hold the CITY harmless from any claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied.

- 11.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. LICENSEE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or LICENSEE known to LICENSEE related to or arising out of LICENSEE's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at LICENSEE's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LICENSEE of any of its obligations under this paragraph.
- 11.3 Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by LICENSEE in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. LICENSEE shall retain CITY approved defense counsel within seven (7) business days of CITY's written notice that CITY is invoking its right to indemnification under this Agreement. If LICENSEE fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and LICENSEE shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 11.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of LICENSEE, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for LICENSEE or any subcontractor under worker's compensation or other employee benefit acts.

## **ARTICLE XII**

### **ASSIGNMENT AND SUBCONTRACTING**

- 12.1 LICENSEE shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this

Agreement shall be the employees or subcontractors of LICENSEE. LICENSEE, its employees or its subcontractors shall perform all necessary work.

- 12.2 It is CITY's understanding and this Agreement is made in reliance thereon, that LICENSEE intends to use the following subcontractors in the performance of this Agreement: US Bank Cash Management and Partners In Tech. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director in writing.
- 12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the CITY, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of LICENSEE. CITY shall in no event be obligated to any third party, including any subcontractor of LICENSEE, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the Director.
- 12.4 Except as otherwise stated herein, LICENSEE may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of Director. As a condition of such consent, if such consent is granted, LICENSEE shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor LICENSEE, assignee, transferee or subcontractor.
- 12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should LICENSEE assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, CITY may, at its option, cancel this Agreement and all rights, titles and interest of LICENSEE shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to CITY under this Agreement. The violation of this provision by LICENSEE shall in no event release LICENSEE from any obligation under the terms of this Agreement, nor shall it relieve or release LICENSEE from the payment of any damages to CITY, which CITY sustains as a result of such violation.

**ARTICLE XIII**  
**INDEPENDENT CONTRACTOR**

LICENSEE covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of CITY; that LICENSEE shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of “respondeat superior” shall not apply as between CITY and LICENSEE, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between CITY and LICENSEE. The parties hereto understand and agree that the CITY shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the LICENSEE under this Agreement and that the LICENSEE has no authority to bind the CITY.

**ARTICLE XIV**  
**RESERVED**

**ARTICLE XV**  
**CONFLICT OF INTEREST**

- 15.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a CITY officer or employee, as those terms are defined in Sections 2-42 and 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the CITY. An officer or employee has a “prohibited financial interest” in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:
- a CITY officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
  - an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
  - an entity in which any individual or entity listed above is (i) a subcontractor on a CITY contract, (ii) a partner or (iii) a parent or subsidiary entity.
- 15.2 Pursuant to the subsection above, LICENSEE warrants and certifies, and this Contract is made in reliance thereon, that by contracting with the CITY, LICENSEE does not cause a CITY employee or officer to have a prohibited financial interest in the Agreement. LICENSEE further warrants and certifies that it has tendered to the CITY a Contracts Disclosure Statement in compliance with the CITY’s Ethics Code.



## **ARTICLE XVI** **AMENDMENTS**

- 16.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both CITY and LICENSEE. Director shall have authority to execute amendments on behalf of the CITY without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.
- 16.2 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Contract and that any such changes shall be automatically incorporated into this Contract without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

## **ARTICLE XVII** **FAA FEDERAL CONTRACT PROVISIONS**

- 17.1 Certification Regarding Debarment. By signing this Agreement, LICENSEE certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.
- 17.2 Certification of Lower Tier Contractors Regarding Debarment. LICENSEE, by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”, must confirm each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally-assisted project. LICENSEE will accomplish this by:

17.2.1 Checking the System for Award Management at website: <http://www.sam.gov>.

17.2.2 Collecting a certification statement similar to the “Certification Regarding Debarment” above; and

17.2.3 Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

- 17.3 Disadvantaged Business Enterprise (DBE). The requirements of 49 CFR part 26 apply to this contract. It is the policy of the CITY to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. CITY encourages participation by all firms qualifying under this contract regardless of business size or ownership.

All contracts and subcontracts incorporate by reference the provisions of 29 CFR part 201, et seq, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The LICENSEE has full responsibility to monitor compliance to the referenced statute or regulation. LICENSEE must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

17.4 Certification Regarding Lobbying. LICENSEE certifies by signing this Agreement, to the best of his or her knowledge and belief, that:

17.4.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of LICENSEE, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

17.4.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

17.4.3 The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**ARTICLE XVIII**  
**COMPLIANCE**

- 18.1 LICENSEE shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.
- 18.2 Non-Discrimination. As a party to this contract, LICENSEE understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X. of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

**ARTICLE XIX**  
**INTELLECTUAL PROPERTY**

- 19.1 LICENSEE shall pay all royalties and licensing fees necessary for performing its obligations under this Agreement. LICENSEE shall hold the CITY harmless and indemnify the CITY from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, trademarks, trade secrets, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if LICENSEE has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the CITY.
- 19.2 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware or any other intellectual property infringe upon any United States or International patent, copyright or trademark, LICENSEE will immediately:
- Either:
- 19.2.1 Obtain, at LICENSEE's sole expense, the necessary license(s) or rights that would allow the CITY to continue using the programs, hardware, both the programs and hardware or any other intellectual property as the case may be; or
- 19.2.2 Alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated; and
- 19.2.3 Reimburse the CITY for any expenses incurred by the CITY to implement emergency backup measures if the CITY is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.
- 19.3 LICENSEE further agrees to:
- 19.3.1 Assume the defense of any claim, suit, or proceeding brought against the CITY for infringement of any United States patent, copyright, trademark or any other intellectual property rights arising from the use and/or sale of the equipment or software under this Agreement;

19.3.2 Assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses; and

19.3.3 Indemnify the CITY against any monetary damages and/or costs awarded in such suit;

Provided that:

19.3.4 LICENSEE is given sole and exclusive control of all negotiations relative to the settlement thereof, but that LICENSEE agrees to consult with the City Attorney of the CITY during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the CITY;

19.3.5 The Software or the equipment is used by the CITY in the form, state, or condition as delivered by LICENSEE or as modified without the permission of LICENSEE, so long as such modification is not the source of the infringement claim;

19.3.6 The liability claimed shall not have arisen out of the CITY's negligent act or omission; and

19.3.7 The CITY promptly provide LICENSEE with written notice within 15 days following the formal assertion of any claim with respect to which the CITY asserts that LICENSEE assumes responsibility under this section.

## **ARTICLE XX**

### **NONWAIVER OF PERFORMANCE**

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of CITY, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

## **ARTICLE XXI**

### **LICENSES/CERTIFICATIONS**

LICENSEE warrants and certifies that LICENSEE and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

**ARTICLE XXII**  
**LAW APPLICABLE & LEGAL FEES**

- 22.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**
- 22.2 Unless this contract provides otherwise, all claims, counterclaims, disputes, and other matter in question between CITY and LICENSEE arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.
- 22.3 Unless provided otherwise in this Agreement, the Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

**ARTICLE XXIII**  
**LEGAL AUTHORITY**

The signer of this Agreement for LICENSEE represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of LICENSEE and to bind LICENSEE to all of the terms, conditions, provisions and obligations herein contained.

**ARTICLE XXIV**  
**PARTIES BOUND**

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

**ARTICLE XXV**  
**CAPTIONS**

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

**ARTICLE XXVI**  
**CONFIDENTIAL INFORMATION**

LICENSEE shall secure the confidentiality of records and information that LICENSEE may have access to in accordance with the applicable Federal, State, and local laws and regulations. This provision shall not be construed as limiting CITY's or its authorized representatives' right of access to records or other information under this Contract.

**ARTICLE XXVII**  
**SEVERABILITY**

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

**ARTICLE XXVIII**  
**STATE PROHIBITIONS ON CONTRACTS**

- 28.1 This Article only applies to a contract that:
- (1) is between a governmental entity and a company with 10 or more full-time employees; and
  - (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.
- 28.2 "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.
- 28.3 Prohibition on Contracts with Companies Boycotting Israel. Texas Government Code §2271.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit

commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

By executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. CITY hereby relies on Company's verification. If found to be false, CITY may terminate this contract for material breach.

- 28.4 Prohibition on Contracts with Companies Boycotting Certain Energy Companies. In accordance with SB 13, effective September 1, 2021, Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

"Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A).

By executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract. CITY hereby relies on Company's verification. If found to be false, CITY may terminate the contract for material breach.

- 28.5 Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries. In accordance with SB 19, effective September 1, 2021, Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company 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.

"Discriminate against a firearm entity or firearm trade association": (A) means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

By executing contract documents with the City of San Antonio, Company hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. CITY hereby relies on Company's verification. If found to be false, CITY may terminate the contract for material breach

**ARTICLE XXIX**  
**PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS**  
**WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION**

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. LICENSEE hereby certifies that it is not identified on such a list and that it will notify CITY should it be placed on such a list while under contract with CITY. CITY hereby relies on LICENSEE's certification. If found to be false, or if LICENSEE is identified on such list during the course of its contract with CITY, CITY may terminate this Agreement for material breach.

**ARTICLE XXX**  
**PROHIBITED CONTRIBUTIONS**

- 30.1 LICENSEE acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-profile" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 calendar days following the contract award. LICENSEE understands that if the legal signatory entering the contract has made such a contribution, the CITY may not award the contract to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.
- 30.2 LICENSEE acknowledges that the CITY has identified this Contract as high profile.
- 30.3 LICENSEE warrants and certifies, and this Agreement is made in reliance thereon, that the individual signing this Agreement has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Agreement. Should the signor of this Agreement violate this provision, the City Council may, in its discretion, declare this Agreement void.



**ARTICLE XXXI**  
**EXECUTION IN COUNTERPART**

This Agreement and any amendments thereto may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement. In the event that any signature is delivered by facsimile transmission or by email delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

**ARTICLE XXXII**  
**AUTOPEN OR ELECTRONIC SIGNATURE**

This Agreement and any amendments hereto may be signed by autopen or electronic signature (e.g., DocuSign or similar electronic signature technology) and may be transmitted by electronic means. Copies of this Agreement and any amendments hereto that are so executed and delivered have the same force and effect as if executed with handwritten signatures and physically delivered.

**ARTICLE XXXIII**  
**INCORPORATION OF EXHIBITS**

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all exhibits:

**Exhibit A** CITY’s Request for Proposal (RFP) No. 23-029; RFx 6100016328, including any addendums, exhibits, and attachments

**Exhibit B** Premises and Placement

**Exhibit C** CJIS Addendum

**Exhibit D** LICENSEE’s Proposal submitted in response to RFP No. 23-029; RFx 6100016328

**ARTICLE XXXIV**  
**ENTIRE AGREEMENT**

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated


subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI. Amendments.

**EXECUTED** and **AGREED** to as of the dates indicated below.

**CITY OF SAN ANTONIO**

**US ATM NETWORK, INC.**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
  
(Signature)

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

Printed Name: **Kimberly McKinley**

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

Title: **President**

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

Date: **5-4-2023**

Approved as to Form:

\_\_\_\_\_  
Assistant City Attorney