

**AN ORDINANCE TO AUTHORIZE AND APPROVE THE CONTRACT BETWEEN THE CITY OF WILMINGTON AND PASSPORT LABS, INC. FOR PARKING CITATION AND PERMIT MANAGEMENT**

#0437

Sponsor:

Council  
Member  
Johnson

**WHEREAS**, pursuant to Section 2-308 and Section 8-200 of the City Charter, the City of Wilmington is authorized to enter into contracts for the supply of personal property or the rendering of services for a period of more than one year if approved by City Council by ordinance; and

**WHEREAS**, because the current contract term for parking citation and permit management is set to expire in the coming months, the Department of Finance published a request for proposals for parking citation and permit management; and

**WHEREAS**, following a competitive bidding process, the City issued a notice of intent to award the new contract for parking citation and permit management services to Passport Labs, Inc.; and

**WHEREAS**, Passport Labs has agreed to provide parking services for a period of three (3) years pursuant to this agreement with the possibility of two 1 year extensions.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:**

**SECTION 1.** The Contract between the City of Wilmington and Passport Labs, Inc., a copy of which, in substantial form, is attached hereto as Exhibit "A," for a period of three (3) years, with the possibility of two, one (1) year extensions, is hereby approved, and the Mayor and the City Clerk are hereby authorized to execute as many copies of the Contract, as well as to take all additional undertakings related thereto, as may be necessary.

**SECTION 2.** This Ordinance shall become effective upon its passage by City Council and approval by the Mayor.

First Reading..... June 6, 2024  
Second Reading..... June 6, 2024  
Third Reading.....

Passed by City Council,

\_\_\_\_\_  
President of City Council

ATTEST: \_\_\_\_\_  
City Clerk

Approved this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Mayor

**SYNOPSIS:** This Ordinance authorizes the execution of an Agreement between the City of Wilmington and Passport Labs, Inc., for parking citation and permit management. Passport Labs will provide parking services for a period of three (3) years pursuant to this agreement.

**FISCAL IMPACT STATEMENT:** The fiscal impact of this Ordinance for the period beginning September 1, 2024, is an estimated annual cost of three-hundred and fifty thousand dollars (\$350,000.00).

# Exhibit A

**ORDER FORM**

This Order Form (the "Order Form"), effective as of \_\_\_\_\_, is being entered into by and between Passport Labs, Inc. and City of Wilmington, DE ("Customer") pursuant and subject to the Software License and Service Agreement (the "Agreement") entered into by the Parties as of \_\_\_\_\_. Upon execution, this Order Form shall be incorporated by reference in and subject to the Agreement. Capitalized terms used but not defined herein shall have the same meanings as set forth in the Agreement.

**I. SUMMARY OF THE PRODUCTS AND SERVICES**

This Order Form, together with any Product Specific Terms attached hereto and made a part hereof in Schedule 1 and the SOW attached hereto and made a part hereof as Schedule 2, contains the terms and conditions applicable to the Products and related services purchased pursuant to the Agreement.

| PRODUCTS AND SERVICES                        |   |
|--|---|
| Citation Management Platform ("CMP")         | X |
| Digital Permits for Parking Platform ("DPP") | X |

**II. FEES**

A. Fees. The fees are as follows:

| Products and Services   | Fee(s)   | Fee Type(s)                                      |
|---|--|--|
| <b>Citation Management Platform ("CMP"):</b>                            |  |  |
| Annual CMP Software Licensing Fee                                       | \$25,000.00  | Annual Licensing Fee                             |
| Monthly Managed Services Fee— as defined in statement of work           | \$24,910.00  | Monthly  |
| CMP Service Fee   | \$3.00   | Per Ticket Paid Online                           |
| Additional CMP Service and License Fee After Citation Amount Escalation | 20%  | Per Ticket Paid                                  |
| Cost Per Notification Letter Sent by Passport                           | \$0.75 + applicable postage  | Per Notification Letter                          |
| Advanced Secondary Collections  | 28%  | Per Ticket Paid                                  |
| Zebra TC26/ZQ320 Handheld (30 kits @ \$1,300 a kit)                     | \$39,000.00  | One-Time   |
| <b>Digital Permits for Parking ("DPP"):</b>                             |  |  |
| Monthly DPP Service and License Fee                                     | \$2,375.00   | Monthly Licensing Fee                            |
| DPP Ancillary Fees  | \$2.00   | Per Permit Sold (does not apply to free permits) |
| <b>Merchant Services Fee</b>  | CMP: 2.9% + \$0.25 per ticket paid online<br>DPP: 3.5% + \$0.30 per permit sold online |  |
| <b>Payment Gateway Fee</b>  | \$0.05<br>All Online Transactions  |  |

III. **BILLING INFORMATION**

|                        |  |
|------------------------|--|
| Billing Contact Name:  | Brett Taylor   |
| Billing Email Address: | jbtaylor@wilmingtonde.gov                              |
| Billing Address:       | 800 North French Street, Wilmington, Delaware<br>19801 |

IN WITNESS WHEREOF, Passport and Customer have each caused this Order Form to be executed by its duly authorized representatives.

City of Wilmington, DE

Passport Labs, Inc.

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

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

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

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

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

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

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

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

## SCHEDULE 1

### 1. CITATION MANAGEMENT PLATFORM

#### **Services:**

Passport will provide services and license all software, including all web and mobile applications and related documentation, necessary for Customer to operate the CMP, which allows Customer's parking enforcement officers in any or all parking facilities owned or managed by Customer the ability to issue parking citations that may be paid online through Passport's payment portal, as follows:

- a. Passport will provide an online payment portal through which parking violators may pay outstanding parking citations.
- b. After a number of days as dictated by City Code (provided Customer has provided written notice to Passport of such requirement), parking citations will escalate in price and Passport will automatically generate and send a letter to each parking citation owner for which Passport has necessary state licensure authorization to perform a driver record lookup informing such parking violator that they have an outstanding parking citation and that the citation amount has increased. The "Additional CMP Service and License Fee After Citation Amount Escalation" fees as indicated above shall be applicable to each citation starting with the first letter sent.
- c. Passport will send a second letter after a number of days as mutually agreed upon by the Parties or as required by City Code (provided Customer has provided notice to Passport of such requirement) after issuance for each applicable unpaid citation owner.

#### **Equipment:**

- a. Customer must purchase a sufficient number of Android-based handheld devices for each parking enforcement officer to have access to one device while conducting parking enforcement activities.
- b. Customer must maintain at its sole cost one (1) wireless data plan for each Android device.
- c. Customer must possess at least one (1) Bluetooth-enabled printer per Android device described above.
- d. If Customer chooses to purchase additional Bluetooth-enabled printers through Passport, the price will be quoted at the time of order.
- e. Customer shall be responsible for applying the necessary configurations to any Android-based handheld devices and any printers it purchases using specifications provided by Passport, provided, however, that Passport shall provide the initial configuration to any printers purchased through Passport
- f. In addition to the hardware unit costs, Customer will be responsible for paying all shipping costs and printer paper costs
- g. If Customer orders custom printer paper through Passport, Customer will be responsible for paying the costs of creating, printing, and shipping such custom paper plus a service fee to Passport; Passport is unable to provide estimated costs until specific details of Customer order have been confirmed due to the variable costs of Passport's third-party vendors.

### 2. Payment Gateway Management Solutions

Passport has integrated the Services with a payment management platform (the "Payments Platform") provided in part by Cybersource Corporation ("Cybersource"). Through the integration, Passport will make available to Customer certain payment management solutions ("PGMS"). Customer's use of PGMS is subject to the following terms and conditions:

- a. **Use of PGMS:** Customer's activity in any way connected with PGMS, including the installation, configuration, and use of PGMS, shall conform in all material respects to (a) the specifications set forth in any applicable documentation provided at any time by either Passport, (b) the Agreement, including, without limitation, all licenses granted under the Agreement, (c) the Payment Card Industry Data Security Standard (as applicable), and (d) the obtainment of appropriate consent for any personal data submitted via or in connection with PGMS at any time. Customer will (1) provide all information reasonably required by Passport to successfully provision an account for Customer; and (2) enter into any applicable agreement with Cybersource and/or applicable third parties as may be reasonably required to utilize PGMS, including, without limitation, any applicable merchant agreement.
- b. **Right of Refusal:** Subject to Section 4.2 of the Agreement (License Restrictions), Customer acknowledges and agrees that Passport may, at its discretion, refuse to provide, suspend, or delete Customer's account(s) and/or access to PGMS with immediate effect, in which event Passport will promptly provide Customer with a reasonable written explanation for such refusal, suspension, or deletion.
- c. **Support:** Passport will provide initial support to handle Level-1 support inquiries from Customer, including, without limitation, technical questions, API configuration, connectivity testing and troubleshooting. Customer acknowledges and agrees

that Passport may escalate support inquiries to third party vendors pursuant to Passport's procedures detailed in any applicable documentation.

d. **Account Control:** Customer is solely responsible for maintaining adequate security and control of IDs, passwords, or any other codes for purposes of obtaining access to PGMS. Passport shall be entitled to rely on information it receives from Customer and may assume that all such information was transmitted by or on behalf of Customer.

e. **Warranties:** Customer warrants that its products and/or services (a) do not infringe on or violate the intellectual property rights of any third party, and (b) will not contain any content which violates any laws or third party rights.

f. **Disclaimer:** Notwithstanding any term or condition of the Agreement to the contrary, (a) Customer disclaims Passport and their respective affiliates from any liability to Customer for indirect, incidental, consequential, special or exemplary damage arising from or related to PGMS, and (b) any direct damages in the aggregate, under any legal or equitable theory, arising from or related to PGMS will be limited to fees actually received by Passport for provision of PGMS to Customer during the twelve (12) month period prior to the date that the cause of action arose.

g. **Access to Data:** Customer acknowledges and agrees that both Passport and Cybersource (and their affiliates) may access and use personal information for improving and/or enhancing underlying products used by Customer, detecting data security incidents, or improving and enhancing security and fraud prevention tools for use by Passport, Customer and/or any other clients of Cybersource (or its affiliates).

h. **Supported Payment Methods and Acquirers\*:** Customer may select from any of the following processing entities that have existing compatibility with PGMS. Processing entities not listed must be approved by Passport and may be subject to additional connectivity fees.

Passport Payments Merchant Processing  
Bank of America Merchant Services (BAMS/Omnipay)  
Barclays  
Chase Paymentech  
Elavon  
EVO  
First Data Merchant Solutions (FDC Compass)  
First Data Merchant Solutions (FDC Nashville Global, f.k.a. FDI Global)  
First Data Merchant Solutions (FDMS Nashville)  
First Data Merchant Solutions (FDMS South)  
Global Payments International (GPN)  
PNC  
Scotiabank  
SunTrust Bank  
TSYS  
Wells Fargo Bank (FDMS)  
WePay  
Worldpay  
Worldpay (f.k.a. Litle/Vantiv CNP)  
Worldpay (f.k.a. Vantiv Direct)

*\* Subject to modification and updating by Passport from time to time.*

### 3. Passport Payments Merchant Processing

Passport will make available to Customer certain merchant processing services as a service provider certified by the major card networks (Visa, Mastercard, Discover, and American Express) to process credit and debit card transactions, subject to the terms and conditions applicable to PGMS and the following terms and conditions:

a. **Merchant of Record:** Unless the Customer is designated as the merchant ("Merchant of Record" or "MOR") in the Order Form or another applicable written agreement of the Parties, Passport will serve as the MOR for all payments processed. Where Passport is the MOR, Customer hereby appoints Passport as its limited agent to accept and process payments in connection with the Offerings, and acknowledges that our receipt of payment from End Users in connection with the Offerings is equivalent to receipt of such funds by you. You will provide appropriate tax and banking information to us in order to allow us to make remittances according to the specified remittance schedule.

b. **Branding:** Customer's payment screen(s) will include clear and conspicuous Passport branding in a manner acceptable to Passport and in conformity with applicable card network rules and/or standards. Passport may modify (or request that Customer modify) any payment screen(s) to conform to applicable card network rules and/or standards.

c. **Inquiries and End User Support:** Passport will promptly respond to any cardholder (or end user) inquiries regarding any payments processed by Passport pursuant to the Order Form. Passport also will provide all cardholder (or end user) support for payments processed by Passport pursuant to the Order Form, including, without limitation, dispute resolution as described below. Notwithstanding the foregoing, Passport will provide to Customer information regarding chargebacks, credits, refunds, reversals and/or similar matters via Passport's systems; Passport also will promptly respond to Customer's reasonable requests for information regarding cardholder (or end user) inquiries associated with Customer.

d. **Payment Acceptance:** Payments to be processed only may be initiated by cardholders using Passport authorized mobile and/or web applications.

e. **Payment Methods:** Passport's merchant processing services will accept all major card networks (Visa, Mastercard, Discover, and American Express), as well as alternative payment methods that Passport may accept from time to time (ApplePay and Google Pay). Passport may modify the alternative payment methods accepted from time to time at Passport's sole discretion.

f. **Acceptance of Ecosystem Payments:** If agreed in writing by Customer and Passport, Customer will have access to those partners and/or others for which Passport accepts payments from time to time. For clarity, Passport will serve as the merchant (commonly known as the "merchant of record") for any such transactions.

g. **Dispute Terms:** As the MOR, Passport will bear the financial cost of chargeback processing fees for disputed transactions initiated within any Passport application. Passport reserves the right to reverse payments made to Customer associated with the transaction value for any disputed transactions. If Customer experiences excessive chargebacks, as reasonably determined by Passport, the parties will renegotiate the terms and conditions of this paragraph. Customers may request, in writing, that Passport respond to a dispute by submitting appropriate evidence as required by Passport and any applicable card networks. Notwithstanding the foregoing, Passport retains full authority with respect to managing the chargeback process.

h. **Remittance:** As the Merchant of Record ("MOR"), Passport will remit to Customer from the preceding month within fifteen (15) days of the conclusion of the month, less all applicable fees.

#### 4. Pricing

The Order Form includes all applicable fees. Notwithstanding the foregoing, Customer and Passport have agreed to such fees based upon certain estimates and information provided to Passport by Customer, including, without limitation, transaction volume, transaction rates, average dollar amount of transactions, and then-current card network fees and rates. If there are any material and/or non-trivial changes to transaction volume, transaction rates, average dollar amount of transactions, and/or card network fees and rates, Passport may adjust the applicable fees to maintain, as closely as reasonably possible, the economic arrangement anticipated, or subsequently achieved, based on the information and card network fees and/or rates in effect as of the Effective Date.



## SOFTWARE LICENSE AND SERVICE AGREEMENT

This Software License and Service Agreement is effective as of \_\_\_\_\_ (the "Effective Date") and entered into by and between Passport Labs, Inc., a Delaware corporation ("Passport"), and City of Wilmington, DE ("Customer"). Passport and Customer are each a "Party" and collectively the "Parties."

Passport is in the business of providing, and Customer desires to obtain from Passport, certain parking- or transit-related software, hardware, and/or related services. This Agreement establishes the master terms and conditions that will apply to Customer's purchase from Passport of the products and services under this Agreement and Passport's delivery of the same to Customer. In consideration of the mutual promises and covenants contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### 1. DEFINITIONS.

For purposes of this Agreement, the following terms shall have the meaning set forth below (or as otherwise defined in the Agreement):

1.1. "Agreement" means this Software License and Service Agreement, the Product-Specific Terms, the Order Form(s), the Statement(s) of Work, and all other attachments, exhibits, and schedules hereto.

1.2. "Confidential Information" means all information of either Party ("Disclosing Party") which is disclosed to the other Party ("Receiving Party") pursuant or in relation to this Agreement (a) if in written form, that is marked "Confidential," "Proprietary," or with words of similar import; and (b) if in written form, but not marked "Confidential," "Proprietary," or with words of similar import, or if disclosed verbally that a reasonable person would regard such information as confidential under the circumstances of disclosure or in view of the nature of the information. Confidential Information includes, by way of illustration and not limitation, this Agreement, the Passport System and all components thereof, the Intellectual Property, and all non-public know-how, inventions, techniques, processes, algorithms, software programs, schematics, designs, contracts, customer lists, financial information, pricing information, marketing information, and product plans.

1.3. "Customer" is the entity specified in the preamble and includes any entity directly or indirectly controlling, controlled by, or under common control with Customer including, without limitation, any subsidiary, affiliate, or parent of Customer on the Effective Date of this Agreement.

1.4. "Documentation" means the technical documentation for the Passport System provided by Passport to Customer, including all updates and versions thereof, whether in the form of electronic or printed materials, magnetic media, or machine-readable format.

1.5. "End User" means any individual who uses any component of the Passport System to transact for any Product.

1.6. "Go-Live Date" means the date on which the Passport System, or any individual Product thereof if more than one Product is purchased under this Agreement, is launched and begins to be utilized by Customer.

1.7. "Initial Term" means a period of thirty-six (36) months from the Go-Live Date, unless otherwise indicated in an Order Form.

1.8. "Intellectual Property" means all tangible and intangible property of Passport or its third-party vendors provided to Customer pursuant to this Agreement that is embodied in or used in connection with the Passport System, including, without limitation, trade names, source code, trademarks, copyrights, patents, and trade secrets, and/or which is protected or is protectable under copyright, patent, trade secret, service mark, trademark, or other intellectual property laws and/or regulations.

1.9. "License Fees" means the fees owed to Passport in consideration of providing Customer the Passport System pursuant to this Agreement as memorialized in the Order Form or elsewhere in the Agreement.

1.10. "Licensed Hardware" means the Passport hardware and any Third Party Hardware as more particularly set forth in an Order Form.

1.11. "Licensed Software" means the Passport software and any Third Party Software as more particularly set forth in an Order Form.

1.12. "Order Form" means that certain form bearing the same caption on which the Products, Third Party Products, and any other software, hardware, products, or services ordered by Customer under this Agreement, among other things, are specified.

1.13. "Passport System" means collectively the Licensed Software, Licensed Hardware, Documentation, and any Third Party Products licensed or sold under this Agreement by Passport to Customer.

1.14. "Product" means any product offered by Passport, including a mobile payments for parking platform, a citation issuance and management platform, a digital permits platform, a mobile payments for transit platform, a micromobility management platform, and a unified platform for the management and distribution of parking rates and business rules, as well as any other product identified in an Order Form.

1.15. "Product-Specific Terms" means those separate legal terms appended to this Agreement that apply to each Product purchased by Customer under this Agreement.

1.16. "Renewal Term" means a period of twelve months following the Initial Term, unless otherwise indicated in an Order Form.

1.17. "Statement of Work" or "SOW" means a statement of work agreed upon by the parties with reference to each Product purchased under this Agreement and appended to this Agreement or to an Order Form. Any variation to a Statement of Work must be memorialized in a change order that is agreed upon and signed by the parties.

1.18. "Substantial Completion Date" means the date that Passport has completed configuring the Passport System, or any individual Product thereof if more than one Product is purchased under this Agreement, to the specifications as set forth in the applicable SOW and is ready to be launched and utilized by Customer. Passport will notify Customer when it has achieved the Substantial Completion Date for each Product.

1.19. "Term" means the Initial Term and any Renewal Term(s).

1.20. "Third Party Hardware" means the hardware (and any related software embedded in or distributed with the hardware by the manufacturer of such hardware) manufactured by third parties and resold and/or sublicensed by Passport to Customer.

1.21. "Third Party Products" means Third Party Hardware and Third Party Software.

1.22. "Third Party Software" means all software owned by third parties, sublicensed by Passport to Customer and integrated into or interfaced by Passport into the Passport System.

## **2. SERVICES**

2.1. Performance. Passport shall perform the services and deliver the software and products under this Agreement in a competent, professional, and workmanlike manner consistent with industry practices. Passport will maintain all permits, certificates and licenses required by applicable law and Passport's employees performing the services will be qualified to perform the services and licensed as required. Passport will at all times during the Term be duly organized, validly existing and in good standing under the laws of the state of Delaware.

2.2. Order Forms. The Order Form shall set forth what Passport is to provide to Customer under this Agreement. To the extent Customer wishes to procure, and Passport wishes to provide, any additional products or services, the parties shall enter into one or more additional Order Forms as applicable that shall each form a part of and be subject to this Agreement.

2.3. Products. As of the Effective Date, Passport provides the Products (as defined above) in the marketplace (as well as related Third Party Products). Customer may request the addition of any Products and related services to the extent not provided by Passport to Customer as of the Effective Date and any additional software or platforms developed by Passport from and after the Effective Date, which shall be memorialized in a subsequent Order Form along with any additional terms (if applicable).

## **3. COMPLIANCE WITH LAW**

3.1. In providing the services under this Agreement, Passport will comply at its sole cost and expense with all applicable federal, state, provincial, county, and municipal laws, statutes, rules, regulations and ordinances.

## **4. LICENSE; SERVICES**

4.1. License Grant. Subject to the terms and conditions of this Agreement and all Third Party Software licenses, including, without limitation, the payment of all applicable License Fees, Passport hereby grants Customer a revocable, non-exclusive, nontransferable, non-subliceable, and non-assignable license to use the Passport System during the Term for Customer's own internal operations in accordance with the terms of, and subject to the restrictions contained in, this Agreement.

4.2. License Restrictions. As a condition to the license set forth in Section 4.1, Customer shall not, directly, indirectly, alone, or with another person or entity (a) decompile, disassemble, interpret, reverse engineer, translate, or otherwise determine or attempt to determine any source code, algorithms, or underlying ideas of the Licensed Software or any portion thereof; (b) remove or modify any Passport or third-party markings, identification, copyright, or other notices from the Passport System; (c) sublicense, provide, lease, lend, pledge, use for timesharing or service bureau purposes, or allow others to use the Passport System to or for the benefit of third parties; (d) modify, change, incorporate into other software, create any databases other than as permitted herein, or create a derivative work of any part of the Licensed Software or Documentation; (e) disclose results of any performance information,

analysis, or program benchmark tests without Passport's prior written consent; (f) make the Passport System, in whole or in part, available in any manner to any third party; (g) install or use the Passport System in any manner not in accordance with the license grant pursuant to Section 5.1; or (h) attempt to do any of the foregoing whether individually or with others.

4.3. No Other Licenses. Except as specifically granted in this Agreement, no license or other right is granted, either directly or indirectly, by implication or otherwise, to Customer, and all other rights are expressly reserved to Passport or its third-party vendors, as applicable.

## 5. THIRD PARTY PRODUCTS

5.1. The successful delivery of the Passport System may require that Customer use certain Third Party Products depending on Customer's operations, and, if so, Customer will be notified. Customer agrees to be bound to all licenses, obligations, restrictions, and limitations in connection with any Third Party Products. Excluding warranty of title to any Third Party Products, all other Third Party Product warranties, including, without limitation, warranties with respect to materials, workmanship, capability, and intellectual property rights are made by such manufacturers and not by Passport. Passport will use commercially reasonable efforts to pass through to Customer for Customer's benefit all end-user warranties that the Third Party Products vendor(s) provides directly to Passport. Customer will look solely to such vendors or manufacturers for all remedies under such warranties.

## 6. INTELLECTUAL PROPERTY

6.1. Ownership. Customer acknowledges and agrees that the Intellectual Property is exclusively owned by and reserved to Passport, or to Passport's Third Party Software or Third Party Hardware providers, as the case may be, and Passport or such Third Party Software or Third Party Hardware providers will retain all right, title, and interest in the Intellectual Property. Customer will neither acquire nor assert any ownership or other proprietary rights in the Intellectual Property or in any derivation, adaptation, or variation thereof (regardless of who creates the derivation, adaptation, or variation) except as otherwise explicitly set forth in this Agreement.

6.2. Feedback. Nothing in this Agreement or in the Parties' dealings arising out of or related to this Agreement will restrict Passport's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback (as defined below), without compensating or crediting Customer or the individual providing such Feedback, except to the limited extent that Section 21 (Confidentiality; Trade Secrets) governs Feedback that constitutes Customer's Confidential Information. Notwithstanding the provisions of Section 21 (Confidentiality; Trade Secrets), Customer may not designate Feedback as its Confidential Information to the extent that such Feedback relates to the Passport System. "Feedback" refers to any suggestion or idea for improving or otherwise modifying the Passport System.

## 7. PRIVACY POLICY; TERMS OF USE

7.1. End users' use of the Passport System shall at all times be governed by Passport's Privacy Policy, which can be viewed at <https://passportinc.com/privacy-policy/>, and Passport's Terms and Conditions, which can be viewed at <https://passportinc.com/terms-and-conditions/>. Passport's Privacy Policy and Terms and Conditions may be amended from time to time in Passport's sole discretion.

## 8. SUPPORT SERVICES

8.1. Customer Support. Passport will provide telephone and email support to Customer's staff Monday through Friday between 8:00 a.m. to 7:00 p.m. ET to address technical support issues. Passport will provide 24/7 after-hours telephone support. Passport can be contacted for support issues at:

- 980-939-0990 or via email at [help@passportinc.com](mailto:help@passportinc.com) (Monday-Friday 8AM-7PM ET)
- 866.815.3043 or [help247@passportinc.com](mailto:help247@passportinc.com) (after-hours support)

8.2. End User Support. Customer shall provide initial support, including inquiries via telephone and email, for End Users. If Customer is unable to address End User inquiries, Customer may direct End Users to Passport's End User support team, which is available Monday through Saturday between the hours of 8:00 a.m. to 9:00 p.m. ET at 704-817-2500 or via email at [support@passportinc.com](mailto:support@passportinc.com). Customer should not display Passport's support phone numbers (or other direct contact information for Passport) on any marketing or signage visible by End User.

## 9. PRODUCT UPDATES

9.1. Updates. To the extent that Passport releases any system-wide improvements, modifications, updates, or enhanced versions of the Licensed Software during the Term, the improvements, modifications, updates, or enhanced versions will, when available, be provided to Customer at no charge and will automatically be subject to the terms of this Agreement.

9.2. New Features. Customer may request new features or functionality to be built into the Passport System, and, to the extent that Passport plans in its sole discretion to incorporate such requested new features or functionality into the Passport System, Passport will develop such features and functionality at no cost to Customer pursuant to Passport's development timeline. If Customer desires to expedite such development, Passport may, in its sole discretion, charge Customer an expedite fee to develop the requested features or functionality, provided, however, that Passport shall first notify Customer of the expedite fee and receive written approval from Customer to proceed. If Customer's requested features or functionality are created for Customer's use and Passport does not plan to incorporate such requested features into the Passport System, Passport may, in its sole discretion, charge Customer a custom development fee for the development of such features or functionality, provided again, however, that Passport shall first notify Customer of the custom development fee and receive written approval from Customer to proceed.

## 10. UPTIME

10.1. Passport will provide the Passport System with Uptime (as defined below) of at least ninety-nine percent (99.0%) calculated over a rolling six-month period ("Uptime Guarantee"). For any month during which the Passport System uptime drops below the Uptime Guarantee, Passport will provide a billing credit in an amount equal to the percentage difference between a) the lowest uptime reached at any point during the month (calculated on a rolling six month period) and b) the Uptime Guarantee, multiplied by the total fees payable to Passport for such month. For example, if Uptime falls to ninety-five percent (95.0%) during a given month and if during that month the fees payable to Passport were one hundred dollars (\$100.00), Passport will issue a billing credit of four dollars (\$4.00). Uptime is defined as any period of time during which end users of the Passport System can use the Passport System, excluding any scheduled maintenance performed by Passport after hours or unavailability or impaired functionality of the Passport System due to causes outside of Passport's reasonable control (e.g., disruptions caused by Passport's hosting or payment processing partners).

## 11. FEES; PAYMENT

11.1. License Fees. In consideration for the licenses granted to Customer under this Agreement, Customer shall pay to Passport the License Fees.

11.2. Annual License Fees. For License Fees that are payable on an annual basis, as indicated in an Order Form, License Fees for the first year of the Term are due and payable upon the Effective Date and, thereafter, on the anniversary of the Effective Date for the duration of the Term.

11.3. Third Party Products Fees. Customer shall pay Passport all fees related to Third Party Products supplied to Customer under this Agreement as set forth in an Order Form (collectively, the "Third Party Product Fees"), if applicable. Fees for Third Party Products provided through Passport from and after the Effective Date may be subject to change based on the then-prevailing market rates of any Third Party Product provider for such products.

11.4. Implementation or Monthly Minimum Fees. Customer shall pay Passport the implementation fees or monthly minimum fees, if any, as set forth in an Order Form.

11.5. Fee Assumptions. Passport's License Fees, gateway services fees, and merchant services provider fees as set forth in this Agreement as of the Effective Date are conditioned upon certain underlying information pertaining to Customer's operations provided to Passport by Customer relating to transaction volume (e.g., number of mobile pay transactions, number of citations written, or number of parking permits purchased), transaction rates (e.g., hourly parking rates, citation rates, and permits rates), and average dollar amount of transactions as of the Effective Date, as well as card network fees in effect as of the Effective Date. To the extent there are non-trivial changes in any of the foregoing from and after the Effective Date, the License Fees, gateway services fees, and/or merchant services provider fees are subject to change to maintain, as closely as possible, the economic arrangement anticipated, or subsequently achieved, based on the information and card network fees in effect as of the Effective Date. Passport and Customer shall negotiate in good faith with respect to the same, provided, however, that Passport shall not be obligated to continue providing the Passport System if the Parties are unable to reach agreement on a revised fee structure.

11.6. Expenses. Customer shall reimburse Passport for any travel, lodging, and meal expenses incurred in connection with Passport's performance under this Agreement, which shall be invoiced as incurred.

11.7. Payment Terms. Unless otherwise indicated in an Order Form, all payments due to Passport hereunder are due and payable within thirty (30) days after the date of the invoice. Any amounts not timely paid shall bear interest at the rate of one and one-half percent (1.5%) per month from the due date or, if lower, the maximum rate permissible by law. If Customer fails to remit payment when due, Passport will have, in its sole discretion, the right to immediately suspend or terminate Customer's access to the Passport System in accordance with Section 17.2.1 and/or withhold funds in Passport's possession that would otherwise be remitted to Customer, in addition to any other remedies available to Passport under this Agreement or under law. Unless otherwise specified in an Order Form, all amounts payable to Passport hereunder are payable in full in United States Dollars without deduction or set off and shall be in addition to all tax obligations of Customer. If a currency other than the U.S. Dollar is specified in the Order Form, the exchange rate will be fixed at the foreign exchange rate published by the United States Federal Reserve on the date the remittance of payment is made or pursuant to a suitable commercially available service to the extent utilized by Passport in its sole discretion. If Customer requires remittance of funds by check or custom invoicing inconsistent with Passport's standard format, Passport reserves the right to assess reasonable additional fees that shall be communicated and agreed upon with Customer in advance.

## 12. CUSTOMER OBLIGATIONS.

In addition to the payment of fees as set forth above any other obligations of Customer set forth in this Agreement, Customer shall also be subject to the following covenants:

12.1. Customer shall use Passport as Customer's sole provider for the Products and services procured by Customer under this Agreement and any substantially similar products or services provided by other vendors that are capable of being provided by Passport.

12.2. Passport's pricing is conditioned on Customer's continuous use of the Passport System throughout the Term consistent with historical use of the Passport System or any predecessor system. Customer covenants that it will not, during the Term, take any action that would materially diminish or cease the use of the Passport System, except in the case of a termination pursuant to Section 17.2.

12.3. From and after the Effective Date, Customer shall cooperate reasonably and promptly with Passport, and devote sufficient personnel and resources, to support the configuration and implementation of the Passport System through and including the Substantial Completion Date and Go-Live Date, and thereafter as reasonably necessary to continue the ongoing operations and maintenance of the Passport System on behalf of Customer.

### **13. PAYMENT GATEWAY PROVIDER**

13.1. Passport is a payment gateway provider and shall provide payment gateway services to Customer in connection with the Products delivered under the Passport System at the rates indicated in the Order Form.

### **14. MERCHANT SERVICES PROVIDER**

14.1. Passport Labs, Inc. is a full-service Merchant Services Provider, meaning a service provider certified by the major card networks (Visa, Mastercard, Discover, and American Express) to process credit and debit card transactions. Passport maintains itself as the merchant of record and Merchant Services Provider in connection with the provision of the Passport system. Customer will be responsible for paying all transaction and processing fees as defined in the fee schedule. Passport may change or add fees and/or charges following a major network update that significantly impacts the merchant costs assumed by Passport and will communicate applicable updates through Passport's Service Delivery Process. Upon notice of changes, such fees and/or charges shall be immediately payable by Customer when assessed by Passport. Should additional fees or charges be deemed commercially unreasonable, Customer has the option to terminate this Agreement within fifteen (15) days of notice of change in fees by providing written notice to Passport.

### **15. TAXES**

15.1. To the extent applicable, Customer agrees to pay all taxes levied by a duly constituted taxing authority against or upon the products and services provided pursuant to this Agreement, or arising out of this Agreement (excluding, however, taxes based on Passport's income) regardless of whether such taxes become due or payable at the time of delivery or use of the Passport System or subsequent thereto. Customer agrees to pay any tax for which it is responsible hereunder which may be levied on or assessed against Customer directly, and, if any such tax is paid by Passport, to reimburse Passport therefore, upon receipt of proof of payment by Passport. Customer agrees to indemnify, defend, and hold Passport harmless with respect to all taxes or duties which any federal, state, or local taxing authority requires Passport to pay on behalf of Customer.

### **16. SHIPMENT AND DELIVERY**

16.1. If any Third Party Products are purchased by Customer under this Agreement, Passport will deliver the same FOB shipping point for delivery to the installation site designated by Customer. Customer agrees

to pay all reasonable delivery charges for the Third Party Products. Delivery schedules may not be canceled, postponed, or changed without Passport's prior written consent. Unless otherwise expressly stated, shipments shall be separately invoiced and paid as billed without regard to subsequent deliveries. Failure to timely pay Passport any monies due or owing Passport shall excuse Passport from making further deliveries, in addition to any other remedies to which Passport is entitled under this Agreement. Title to and risk of loss in the Third Party Products shall pass to Customer when the delivery carrier takes possession of the Third Party Products.

## 17. TERM AND TERMINATION

17.1. Term. This Agreement is effective as of the Effective Date and shall remain effective for as long as there is an active Order Form, unless sooner terminated pursuant to Section 17.2 below. Upon expiration of the Initial Term of an Order Form, the Order Form shall automatically renew for successive Renewal Terms on the same terms and conditions, unless either Party notifies the other in writing not less than ninety (90) calendar days prior to the expiration date of the Initial Term or the applicable Renewal Term of its intent not to renew.

17.2. Termination. The following termination rights are in addition to any rights provided elsewhere in this Agreement and are without prejudice to any other right or remedy available to Passport or Customer at law or in equity:

17.2.1. Passport may terminate this Agreement and all licenses granted hereunder upon notice to Customer in the event that Customer fails to make full payment when due of any amount required to be paid by Customer under this Agreement within ten (10) calendar days of Passport's written notice of such failure to pay.

17.2.2. This Agreement may be terminated by either Party upon thirty (30) calendar days' prior written notice to the other Party in the event of a material breach of a material provision of this Agreement, provided, however, that the termination shall not be effective if, during the thirty (30) day notice period, or such other cure period as mutually agreed upon by the Parties, the breaching Party cures the breach.

17.3. Effect of Termination. Upon expiration or termination of this Agreement for any reason, (a) any licenses granted to Customer and all rights of Customer in and to the Passport System will immediately terminate; (b) Customer shall immediately cease using the Passport System; (c) Customer shall return to Passport any Licensed Hardware which Customer has not obtained title to as of such expiration or termination, and (d) all monies paid or due or owing to Passport by Customer up to such cancellation, completion, expiration, or termination shall be deemed non-refundable. Customer shall make payment on Passport's final invoice as set forth in Section 12.4. Passport will provide commercially reasonable assistance to Customer to enable the transition of the services to a successor vendor, if requested by Customer, provided first, however, that Customer has remitted to Passport all outstanding balances.

## 18. WARRANTIES.

### 18.1. Passport Warranties.

18.1.1. Passport warrants that it has full power and authority to license the Passport System to Customer as provided herein without the consent of any other person, or, in the event such consent is required, Passport has obtained said consent.

18.1.2. Passport warrants that the unmodified Passport System will operate in accordance with its specifications. Under this warranty, Passport will correct any errors in the unmodified Passport System at no extra charge to Customer. The foregoing warranty shall not apply to Third Party Products.



18.1.3. Passport further represents and warrants that (a) it has the full power and authority to enter into this Agreement and to carry out its obligations under this Agreement; (b) this Agreement shall be the legal, valid, and binding obligation of Passport, enforceable against it in accordance with the terms hereof; (c) the execution and performance of this Agreement will not violate any federal, state, or local statute, rule, or regulation or any other contractual obligation of Passport, and (d) the person signing this Agreement on behalf of Passport is authorized to bind Passport to this Agreement.

18.2. Customer Warranties.

Customer represents and warrants that (a) it has the full power and authority to enter into this Agreement and to carry out its obligations under this Agreement; (b) this Agreement shall be the legal, valid, and binding obligation of Customer, enforceable against it in accordance with the terms hereof; (c) the execution and performance of this Agreement will not violate any federal, state, or local statute, rule, or regulation or any other contractual obligation of Customer, and (d) the person signing this Agreement on behalf of Customer is authorized to bind Customer to this Agreement.

**19. DISCLAIMERS**

19.1. GENERAL. EXCEPT AS EXPLICITLY SET FORTH IN THIS AGREEMENT, PASSPORT EXPRESSLY DISCLAIMS, AND CUSTOMER HEREBY EXPRESSLY WAIVES, ALL WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF QUALITY, CAPABILITIES, OPERATIONS, PERFORMANCE, SUITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. PASSPORT DOES NOT WARRANT AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS THAT THE PASSPORT SYSTEM WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE PASSPORT SYSTEM AND/OR ITS USE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT EVERY DEFECT IN THE PASSPORT SYSTEM WILL BE CORRECTED. THE PASSPORT SYSTEM IS EXPRESSLY PROVIDED "AS IS."

19.2. THIRD PARTY SOFTWARE AND THIRD PARTY HARDWARE DISCLAIMER. PASSPORT MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO THE THIRD PARTY SOFTWARE AND AS TO THE THIRD PARTY HARDWARE INCLUDING, WITHOUT LIMITATION, AS TO QUALITY, CAPABILITIES, OPERATIONS, PERFORMANCE, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ALL OTHER WARRANTIES OR REPRESENTATIONS WITH RESPECT TO ANY THIRD PARTY SOFTWARE OR THIRD PARTY HARDWARE ARE HEREBY EXPRESSLY DISCLAIMED. THIRD PARTY SOFTWARE OR THIRD PARTY HARDWARE PROVIDED UNDER THIS AGREEMENT ARE EXPRESSLY PROVIDED "AS IS."

19.3. EXCLUSIONS. Notwithstanding any other provisions of this Agreement to the contrary, the limited warranties provided in this Agreement shall not apply to nonconformities, errors, or defects of any goods or services provided by Passport pursuant to this Agreement or any amendments thereto due to any of the following: (a) Customer misuse of the Passport System; (b) Customer modification of the Licensed Software; (c) Customer failure to utilize compatible computer and networking hardware and software or to install updated or enhanced versions of the Licensed Software provided by Passport; or (d) interaction with software or hardware not provided by Passport.

**20. LIMITATION OF LIABILITY**

20.1. IN NO EVENT SHALL PASSPORT'S LIABILITY ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNT OF ALL FEES ACTUALLY PAID BY CUSTOMER TO PASSPORT PURSUANT TO THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD ENDING ON THE DATE OF THE EVENT GIVING RISE TO SUCH LIABILITY. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, COST OF COVER, PUNITIVE, OR EXEMPLARY DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING OUT OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOSS OF BUSINESS, LOSS OF REVENUE, OR LOSS OF ANTICIPATED PROFITS, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY (A) TO CUSTOMER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT; OR (B) IN THE EVENT OF A BREACH OF THE PARTIES' CONFIDENTIALITY OBLIGATIONS CONTAINED IN THIS AGREEMENT.

20.2. PASSPORT AND CUSTOMER EACH ACKNOWLEDGE THAT THE PROVISIONS OF THIS AGREEMENT WERE NEGOTIATED TO REFLECT AN INFORMED, VOLUNTARY ALLOCATION BETWEEN THEM OF ALL RISKS (BOTH KNOWN AND UNKNOWN) ASSOCIATED WITH THE TRANSACTIONS CONTEMPLATED HEREUNDER. THE PROVISIONS OF THIS SECTION SHALL BE ENFORCEABLE INDEPENDENT OF AND SEVERABLE FROM ANY OTHER PROVISION OF THIS AGREEMENT.

## 21. CONFIDENTIALITY; TRADE SECRETS.

21.1. Obligations. Each Party will maintain in strict confidence all Confidential Information of the Disclosing Party. The Receiving Party will not disclose or grant use of the Disclosing Party's Confidential Information to any third party except to the Receiving Party's employees and other representatives who have a need to know such Confidential Information or as expressly authorized by the Disclosing Party in writing. The Receiving Party will not use the Disclosing Party's Confidential Information except as authorized by this Agreement. The Receiving Party will use at least the same standard of care to protect the Confidential Information of the Disclosing Party as it uses to protect its own confidential information of a similar nature, but in no event with less than reasonable care. The Receiving Party will cause each employee or other representative to whom the Receiving Party discloses the Confidential Information to be bound by an obligation of confidentiality that is at least as rigorous as the obligations contained in this Agreement. The Receiving Party will promptly notify the Disclosing Party upon discovery of any unauthorized use or disclosure of the Disclosing Party's Confidential Information. Unless otherwise set forth herein, upon the expiration or termination of this Agreement for any reason, or upon the request of the Disclosing Party, the Receiving Party shall promptly return to the Disclosing Party (or, at the Receiving Party's option, destroy) all of the Disclosing Party's Confidential Information and shall promptly certify in writing that it has done so; provided, however, that the Receiving Party shall not be obligated to return or destroy any Confidential Information stored in archival or back-up files for which return or destruction is not reasonably practicable or any Confidential Information that must be retained for as long as necessary for purposes of audit, compliance, dispute resolution, or record retention pursuant to this Agreement.

21.2. Exceptions. The foregoing obligations of confidentiality shall not apply to any information that the Receiving Party can show is or was: (a) already known to the Receiving Party at the time of disclosure without obligation of confidentiality; (b) independently developed by the Receiving Party without use of or access to the Confidential Information of the Disclosing Party; (c) approved for disclosure by the Disclosing Party beforehand and in writing; (d) in the public domain without breach of this Agreement; or (e) lawfully received by the Receiving Party from a third party without obligation of confidentiality.

21.3. Permitted Disclosures. Nothing in this Section shall be construed to prohibit either Party from disclosing the Confidential Information of the other Party to the extent that such disclosure is required by applicable law or order of a court or other governmental agency, including pursuant to any open records law, open meetings law, or any other local public disclosure law applicable to Customer; provided, however, that the Receiving Party shall promptly notify the Disclosing Party in writing of such requirement and shall cooperate with the Disclosing Party to minimize the scope of any such disclosure and to obtain a protective or similar order.

21.4. Trade Secrets. Customer hereby acknowledges that the Passport System and its components, whether provided by Passport or its third-party vendors or licensors, constitute trade secrets of Passport and/or its third party-vendors or licensors, and as such are protected by civil and criminal law, are very valuable to Passport and/or its third-party vendors or licensors, and that their use must be carefully and continuously controlled. Customer agrees to notify Passport immediately of the unauthorized possession, use, or knowledge of any item supplied under this Agreement by any person or organization not authorized by this Agreement to have such possession, use, or knowledge. Customer will promptly furnish Passport full details of such possession, use, or knowledge and will cooperate fully with Passport in any litigation against third parties reasonably deemed necessary by Passport to protect its proprietary rights.

21.5. No Adequate Remedy. In the event of a breach of this Section 21, the parties agree that the Disclosing Party may not have an adequate remedy at law, in money, or damages and, accordingly, shall be entitled to seek an injunction against such breach without posting a bond, in addition to any other remedies at law or in equity.

## 22. DATA RIGHTS.

This Section shall govern the rights of Passport and Customer, as the case may be, with respect to the data that is subject to this Agreement. Passport will, by provisions in its Privacy Policy or otherwise, procure from such end users all such lawful consents and rights necessary to grant to Customer the rights in such data as stated in this Section. Passport's Privacy Policy, as it may be amended from time to time in Passport's sole discretion, can be viewed at <https://www.passportinc.com/privacy-policy>.

22.1. Operational Data. Operational Data is data specific to Customer's operation that is provided by Customer to Passport to be used in the configuration and provision of the Passport System for Customer's use. Operational Data is specific to Customer's operation, which is not available to Passport publicly or by other means. Operational Data may include, but is not limited to, zone information, rate information, operational schedules, business metrics, business rules, parking and other inventory and assets, and relevant details of partner agreements. In each case, Operational Data may refer to past, present, or future states of such items. Operational Data is the sole and exclusive property of Customer. Customer grants Passport a perpetual, irrevocable, royalty-free, and non-exclusive license to Operational Data.

22.2. PCI-DSS Information. Payment Card Industry-Data Security Standard Information ("PCI-DSS Information") consists of the following items, each as defined by the then-current Payment Card Industry Data Security Standards ("PCI-DSS"): Account Data; Cardholder Data; Primary Account Number; and Sensitive Authentication Data. Passport acquires a license or sublicense to the PCI-DSS Information from end users who share such data with Passport in connection with their use of the Software. In providing the services under this Agreement, Passport will maintain Payment Card Industry – Data Security Standard certification and secure PCI-DSS Information in accordance with PCI-DSS. As such, Passport may not grant Customer derivative rights to such PCI-DSS Information and Passport shall not be required to disclose such PCI-DSS Information to Customer.

22.3. Personal Identifiable Information. Personal identifiable information ("PII") is any representation of information that permits the identity of an individual to whom the information applies to be reasonably determined or inferred by either direct or indirect means. Name, address, social security number, telephone number, or email address directly identify individuals. Certain data elements—including gender, race, birth date, geographic indicator (such as zip code or postal code), and other descriptors—can be used in conjunction or with other data elements to indirectly identify individuals.

22.4. Activity Data. Activity Data is any data generated in the providing of services under this Agreement by Passport to Customer and by end users' interactions with the services or with Passport directly that is

not otherwise PCI-DSS information or PII as defined above. Activity Data may include, but is not limited to, user interaction data, geolocation data, opt-in/opt-out status (including compliance logs), purchase and session data, application diagnostic data, service performance data, and support data. Data that is derived from Activity Data is also Activity Data. Activity Data is the sole and exclusive property of Passport. Passport grants Customer an irrevocable, royalty-free, non-exclusive, non-assignable, and nontransferable license to Activity Data for the Term to the extent and in the format that Passport chooses in its sole discretion to expose such Activity Data through its administrative portal or as otherwise agreed upon with Customer and only for Customer's internal use in connection with the services provided under this agreement.

### **23. PUBLICITY; USE OF NAMES AND MARKS.**

Subject to the provisions of Section 21 (Confidentiality; Trade Secrets), the parties will have the right to publicly disclose that Passport is Customer's provider of the Passport System as set forth herein by means of, by way of illustration and not limitation, news releases, public announcements, or other forms of publicity. Passport may use the name or marks of Customer, or reference the fact that Customer is a client of Passport, for business development purposes, as part of a portfolio or work, or in an illustrative list of clients.

### **24. DISPUTE RESOLUTION**

24.1. Negotiation. If a dispute arises between or among Passport and Customer arising out of or concerning the meaning or interpretation of this Agreement or the terms or performance of this Agreement (collectively, a "Dispute"), Passport and Customer shall first attempt to settle such Dispute through good faith discussions and negotiations among principals of each Party authorized to bind each Party.

24.2. Venue; Jurisdiction. Any action or proceeding directly or indirectly arising out of a dispute will be settled exclusively in Mecklenburg County in the state of North Carolina and the parties expressly submit to and consent that the courts and authorities of the state of North Carolina will have exclusive jurisdiction over any such litigation. The parties hereby consent to service, jurisdiction, and venue of such courts for any litigation.

24.3. Governing Law. This Agreement, and any Disputes arising hereunder, shall be governed, interpreted, construed, and enforced in all respects in accordance with the laws of the State of North Carolina, excluding its conflict of laws rules.

### **25. GENERAL PROVISIONS.**

25.1. Complete Agreement. This Agreement is intended as the complete, final, and exclusive statement of the terms of the agreement between the parties regarding the subject matter hereof and supersedes all other prior or contemporaneous agreements or understandings, whether written or oral, between them relating to the subject matter hereof. No amendment to, or modification of, this Agreement shall be binding unless in writing and signed by a duly authorized representative of both parties. Each Party expressly acknowledges that there are no warranties, representations, covenants, or understandings of any kind, manner, or description whatsoever by either Party to the other except as expressly set forth in this Agreement.

25.2. No Waiver. Failure by either Party to insist upon or enforce strict performance of any provision of this Agreement or to exercise any rights or remedies under this Agreement will not be construed or deemed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions, rights, or remedies in that or any other instance; rather, the same will be and will remain in full force and effect. Any waiver by either Party of its rights under this Agreement must be in writing and signed by a duly authorized representative of the waiving Party.

25.3. Assignment. This Agreement and all of its provisions will be binding upon and inure to the benefit of the parties and their respective permitted successors and assignees. Neither Passport nor Customer may assign any rights, interests, or obligations hereunder without prior written consent of the other Party, provided, however, that Passport may, without such written consent, assign this Agreement and its rights and delegate its obligations hereunder in connection with the transfer or sale of all or substantially all of its assets or business related to this Agreement, or in the event of its merger, consolidation, change in control or similar transaction. Any permitted assignee shall assume all assigned obligations of its assignor under this agreement. Any purported assignment in violation of this section shall be void and of no effect.

25.4. Construction. The language of all parts of this Agreement will in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either of the parties. Headings of paragraphs herein are for convenience of reference only and are without substantive significance. No rule of law that requires that any part of the Agreement be construed against the Party drafting the language will be used in interpreting this Agreement.

25.5. Severability. In the event that any provision of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid, or unenforceable, (a) the Parties shall amend the pertinent provision(s) to reflect as nearly as possible the original intentions of the Parties, and (b) the remaining terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect.

25.6. Relationship of Parties. The Parties expressly understand and agree that each Party is an independent contractor in the performance of each and every part of this Agreement and is solely responsible for all of its employees and agents and its labor costs and expenses arising in connection therewith. Further, neither Party, by virtue of this Agreement, will have any right, power, or authority to act or create any obligation, expressed or implied, on behalf of the other Party.

25.7. No Third Party Beneficiaries. This Agreement is made for the benefit of Passport and Customer and not for the benefit of any third parties.

25.8. Notices. All notices or other communications required or permitted to be made or given hereunder by one Party to the other Party shall be in writing and shall be deemed to have been given: (a) when hand delivered; (b) on the third (3rd) business day after the day of deposit in the United States mail when sent by certified mail, postage prepaid and return receipt requested; or (c) on the next business day after the day of deposit with reputable overnight delivery service. Such notices shall be sent to the address set forth below, or at such other addresses as may hereafter be furnished in writing by either Party to the other Party specifically as the Party's replacement address for notice under this Agreement.

**[continued next page]**

**If to Passport:**

Passport Labs, Inc.  
128 S. Tryon St., Suite 1000  
Charlotte, NC 28202  
Fax: (888) 804-1783  
sales@passportinc.com  
Attn: CRO

With a hard copy to General Counsel  
and by email to  
[legal@passportinc.com](mailto:legal@passportinc.com)

**If to Customer:**

Department of Finance  
City of Wilmington, DE  
800 North French Street, 5<sup>th</sup> Floor  
Wilmington, Delaware 19801  
jbtaylor@wilmingtonde.gov  
Attn: Brett Taylor

With a hard copy to the City Solicitor:  
City of Wilmington Law Department  
800 North French Street, 9<sup>th</sup> Floor  
Wilmington, Delaware 19801  
Attn: City Solicitor

25.9. Force Majeure. If the performance of this Agreement or of any obligation hereunder is interfered with by reason of any circumstances beyond the reasonable control of the Party affected, including, by way of illustration and not limitation, fire, explosion, power failure, acts of God, war, revolution, epidemic, pandemic, or other public health concern, civil commotion, acts of public enemies, cybersecurity incident, any law, order, regulation, ordinance, executive order, or requirement of any government or legal body, delays or omissions attributable to third-party vendors, suppliers, or integration partners, or labor unrest, including, without limitation, strikes, slowdowns, picketing, or boycotts, then the Party affected shall be excused from such performance on a day-to-day basis to the extent of such interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent such Party's obligations are contingent on the performance so interfered with); provided that the Party so affected shall use reasonable efforts to remove such causes of nonperformance.

25.10. Survival of Obligations. All rights and obligations of the parties under this Agreement, including, without limitation, those contained in the confidentiality provisions herein, which by their nature would continue beyond the termination or expiration of this Agreement, shall survive termination or expiration of this Agreement and shall remain in full force and effect between the parties.

25.11. Counterparts. This Agreement may be executed in several counterparts, each of which when executed and delivered shall be deemed an original and each of which alone and all of which together shall constitute one and the same instrument. Facsimile signatures (or signatures in a .pdf or similar copy of the original) or electronic signatures shall be treated as original signatures for the purpose of enforcing this Agreement. Any signature delivered by a Party by facsimile transmission or electronic delivery shall be deemed to be an original signature hereto.

**[signature page follows]**

**IN WITNESS WHEREOF**, each Party hereto, intending to be legally bound hereby, has caused its duly authorized representative to execute this Agreement and bind such Party effective as of the Effective Date.

CITY OF WILMINGTON, DE

PASSPORT LABS, INC.

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

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

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

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

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

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

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

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