

## **PROFESSIONAL SERVICES AGREEMENT**

**THIS IS AN AGREEMENT** made as of \_\_\_\_\_, 2022 between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (**OWNER**) and KEEFE COMMISSARY NETWORK (**PROFESSIONAL**). **OWNER** intends to proceed with Commissary Services for Community Corrections in Lexington, Kentucky as described in the attached Request for Proposal document (Exhibit “A”). The services are to include Cashless Commissary Program, furnishing of all labor, food, materials, supplies and chemicals necessary and maintaining and operating an Offender Commissary Services Program for the city as contemplated in the **OWNER**’s Request for Proposal No. 25-2022. The services are hereinafter referred to as the Project.

**OWNER** and **PROFESSIONAL** in consideration of their mutual covenants herein agree in respect of the performance of Commissary Services for Community Corrections by **PROFESSIONAL** and the payment for those services by **OWNER** as set forth below.

**PROFESSIONAL** was selected by **OWNER** based upon its response to the Request for Proposal No. 25-2022.

**PROFESSIONAL** shall provide Commissary Services for **OWNER** in all phases of the Project to which this Agreement applies, serve as **OWNER'S** representative for the Project as set forth below and shall give professional consultation and advice to **OWNER** during the performance of services hereunder.

### **SECTION 1 - BASIC SERVICES OF PROFESSIONAL**

**PROFESSIONAL** shall perform all services as hereinafter stated which include customary planning and analysis incidental thereto.

The following documents are incorporated by reference herein as if fully stated and are attached hereto as exhibits: RFP No. 25-2022 and **PROFESSIONAL**’s Response dated May 11, 2022 (collectively, “Exhibit A”).

To the extent there is conflict among their provisions, the provisions of this Agreement shall take precedence, followed by the provisions of Request for Proposal No. 25-2022 (Exhibit “A”).

This Agreement (consisting of pages 1 to 8 inclusive), together with (Exhibit “A”) and schedules identified above constitutes the entire Agreement between **OWNER** and **PROFESSIONAL** and supersedes all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

The General Provisions of RFP No. 25-2022 are incorporated herein by reference as if fully stated.

## **SECTION 2 - ADDITIONAL SERVICES BY PROFESSIONAL**

- 2.1. The **OWNER** may desire to have the **PROFESSIONAL** perform work or render services in connection with this Project other than provided by (Exhibit "A") of this Agreement. Such work shall be considered as "Additional Services", subject to a change order, supplemental to this Agreement, setting forth the character and scope thereof and the compensation therefore. Work under such change order shall not proceed until the **OWNER** gives written authorization. Should the **OWNER** find it desirable to have previously satisfactorily completed and accepted plans or parts thereof revised, the **PROFESSIONAL** shall make such revisions as directed, in writing, by the **OWNER**. This work shall be considered as "Additional Services" and shall be paid as such.
- 2.2. All "Additional Services" is subject to prior written authorization of **OWNER** and necessary appropriations made by the Urban County Council.

## **SECTION 3 - OWNER'S RESPONSIBILITIES**

### **OWNER shall:**

- 3.1. Provide criteria and information as to **OWNER'S** requirements for the Project, including constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.
- 3.2. Assist **PROFESSIONAL** by placing at its disposal available information pertinent to the Project.
- 3.3. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by **PROFESSIONAL**, and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of **PROFESSIONAL**.
- 3.4. Designate in a person to act as **OWNER'S** representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define **OWNER'S** policies and decisions with respect to materials, equipment, elements and systems pertinent to **PROFESSIONAL'S** services.
- 3.5. Give written notice to **PROFESSIONAL** whenever **OWNER** observes or otherwise becomes aware of any development that affects the scope or timing of **PROFESSIONAL'S** services, or any defect in the work of Contractor(s).
- 3.6. Furnish or direct **PROFESSIONAL** to provide, necessary Additional Services as stipulated in Section Two (2) of this Agreement or other services as required.

**SECTION 4 - PERIOD OF SERVICES**

- 4.1. Time is of the essence. The term of the agreement begins on July 1, 2022 and ends on July 1, 2025. The agreement will automatically renew for two (2) additional 1 year periods if there is no written notice of intent to cancel the agreement
- 4.2. The provisions of this Section Four (4) and the various rates of compensation for **PROFESSIONAL'S** services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion.
- 4.3 If delays result by reason of acts of the **OWNER** or approving agencies or other causes, which are beyond the control of the **PROFESSIONAL**, an extension of time for such delay will be considered. If delays occur, the **PROFESSIONAL** shall within 30 days from the date of the delay apply in writing to the **OWNER** for an extension of time for such reasonable period as may be mutually agreed upon between the parties, and if approved, the Project schedule shall be revised to reflect the extension. Such extension of time to the completion date shall in no way be construed to operate as a waiver on the part of the **OWNER** of any of its rights in the Agreement. Section 6.5, under **DISPUTES**, of this Agreement, shall apply in the event the parties cannot mutually agree upon an extension of time.

In the event that the overall delay resulting from the above described causes is sufficient to prevent complete performance of the Agreement within six (6) months of the time specified therein, the Agreement fee or fees shall be subject to reconsideration and possible adjustment. Section 6.5 of this Agreement shall apply in the event the parties cannot mutually agree upon an adjustment of fee.

- 4.4. If delays result solely by reason of act of the **PROFESSIONAL**, the **PROFESSIONAL** must immediately notify the **OWNER** in the event of such delay, and provide the **OWNER** a written action plan within five (5) business days on how it will reasonably attempt to resolve the delay. If the parties cannot mutually agree to an extension of time or an adjustment, Section 6.5 of this Agreement shall apply. If the delay would prevent complete performance of the project within six (6) months of the time specified herein, **OWNER** shall have the option of canceling the project or otherwise adjusting the scope of service or work and any related fees.

**SECTION 5 - PAYMENTS TO PROFESSIONAL**

**5.1 Methods of Payment for Services of PROFESSIONAL**

**5.1.1 For Basic Services.**

This is a commission based agreement and **PROFESSIONAL** will adhere to the Option 3 commission schedule as outlined in **PROFESSIONAL'S** response dated May 11, 2022

	Commissary Sales	Cart Sales	MyCarePack Sales	Projected Annual Commission \$ to County
Option 1	40%	20%	40%	\$427,136
Option 2	44%	14%	44%	\$422,006
Option 3	40%	26%	40%	\$463,018

**5.2. Times of Payment.**

**5.2.1. Intentionally left blank**

**5.3. Other Provisions Concerning Payments.**

**5.3.1.** In the event the Agreement is terminated by the **OWNER** without fault on the part of the **PROFESSIONAL**, the **PROFESSIONAL** shall be paid for the work performed or services rendered in an amount bearing the same ratio to the total Agreement fee as the amount of work completed or partially completed and delivered to the **OWNER** is to the total amount of work provided for herein, as determined by mutual agreement between the **OWNER** and the **PROFESSIONAL**.

**5.3.2.** In the event the services of the **PROFESSIONAL** are terminated by the **OWNER** for fault on the part of the **PROFESSIONAL**, the **PROFESSIONAL** shall be paid reasonable value of the work performed or services rendered and delivered, and the amount to be paid shall be determined by the **OWNER**.

**5.3.3.** In the event the **PROFESSIONAL** shall terminate the Agreement because of gross delays caused by the **OWNER**, the **PROFESSIONAL** shall be paid as set forth in Section 5.3.1. above.

**SECTION 6 – ADDITIONAL GENERAL CONSIDERATIONS**

**6.1. Termination**

**6.1.1.** **PROFESSIONAL** may only terminate this Agreement due to **OWNER’S** material breach of the terms hereof which breach causes **PROFESSIONAL** to be unable to perform its duties and responsibilities under this Agreement, and only upon ten (10) days written notice to **OWNER**, and provided **OWNER** fails to cure such default within the ten (10) day period.

**6.1.2.** The **OWNER** reserves the right to terminate the Agreement for any reason at any time upon seven (7) days written notice to the **PROFESSIONAL**.

**6.2. Ownership and Reuse of Documents.**

All documents, including Drawings and Specifications, prepared by the **PROFESSIONAL** pursuant to this Agreement shall be delivered to and become the property of the **OWNER**. The **OWNER** shall have the right to reuse same without restriction or limitation, but without liability or legal exposure to **PROFESSIONAL**.

### **6.3. Legal Responsibilities and Legal Relations.**

**6.3.1.** The **PROFESSIONAL** shall familiarize itself with and shall at all times comply with all federal, state and local laws, ordinances, and regulations which in any manner affect the services of this Agreement.

**6.3.2.** In performing the services hereunder, the **PROFESSIONAL** and its **PROFESSIONALS**, employees, agents and representatives shall not be deemed or construed to be employees of **OWNER** in any manner whatsoever. Except as otherwise provided in this Agreement, the **PROFESSIONAL** shall be acting as an independent contractor. The **PROFESSIONAL** shall not hold itself out as, nor claim to be, an officer or employee of **OWNER** by reason hereof and shall not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of **OWNER**. The **PROFESSIONAL** shall be solely responsible for any claims for wages or compensation by **PROFESSIONAL'S** employees, agents and representatives, including **PROFESSIONALS**, and shall save and hold **OWNER** harmless therefrom.

**6.3.3.** The parties hereto agree that causes of actions between the parties shall be governed by applicable provisions of the Kentucky Revised Statutes, that venue of any legal action shall be a court of appropriate jurisdiction in Fayette County, Kentucky, and that Kentucky law shall apply with respect to the interpretation of any provision of this Agreement.

### **6.4. Successors and Assigns.**

**6.4.1.** **PROFESSIONAL** binds itself and its partners, successors, executors, administrators, assigns and legal representatives to this Agreement in respect to all covenants, agreements and obligations of this Agreement. **PROFESSIONAL** shall not assign any interest, obligation or benefit in this Agreement. **PROFESSIONAL** shall not assign any interest, obligation or benefit in this Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent of **OWNER**.

**6.4.2.** The **PROFESSIONAL** shall not subcontract more than fifty percent (50%) of the work, based upon dollar value, to be provided under this Agreement. The **PROFESSIONAL** shall obtain written approval prior to subletting or assigning any services contained in this Agreement, and consent to sublet or assign any part of this Agreement shall not be construed to relieve the **PROFESSIONAL** of any responsibility for compliance with the provisions of this Agreement.

**6.4.3.** Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than **OWNER** and **PROFESSIONAL**.

### **6.5. Disputes.**

Except as otherwise provided in this Agreement, any dispute concerning the amount of payment due the **PROFESSIONAL** or any dispute concerning any question of fact of any act to be performed under this Agreement, which is not disposed of by agreement between the Urban County Division of Central Purchasing and the **PROFESSIONAL**, shall be

submitted to the Commissioner, Department of General Services, Lexington-Fayette Urban County Government for review. The decision of the Commissioner as to the determination of such dispute shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith. Pending a final decision of a dispute hereunder, the **PROFESSIONAL** shall proceed diligently with the performance of the Agreement in accordance with the directions of the **OWNER**.

#### **6.6. Security Clause.**

The **PROFESSIONAL** certifies that it shall not at any time release or divulge any information concerning the services covered by this Agreement to any person or any public or private organization except the **OWNER** without prior approval of the **OWNER** unless required by law.

#### **6.7. Access to Records.**

The **PROFESSIONAL** and its sub-**PROFESSIONALS** shall maintain all books, documents, papers, and accounting records, and make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract for inspection by the **OWNER**, and copies thereof shall be furnished if requested. Failure to maintain such records for three (3) years after the date of final payment may be grounds for the **OWNER** to disqualify the **PROFESSIONAL** from consideration for future **PROFESSIONAL** service agreements.

#### **6.8. Required Risk Management Provisions.**

The Risk Management Provisions of RFP No.25-2022 are incorporated herein by reference as if fully stated. Copies of the required Certificates of Insurance shall be provided to **OWNER** as required therein.

### **SECTION 7 - EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this service agreement, the **PROFESSIONAL** agrees as follows:

**7.1.** The **PROFESSIONAL** will not discriminate against any employee or application for employment because of race, color, religion, national origin, sex, age or handicap. The **PROFESSIONAL** will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, national origin, sex, age or handicap. Such action shall include, but not be limited to the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The **PROFESSIONAL** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.

7.2 The **PROFESSIONAL** will, in all solicitations or advertisements for employees placed by or on behalf of the **PROFESSIONAL**, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, age (between forty and seventy), or handicap.

## **SECTION 8 - SPECIAL PROVISIONS**

8.1. This Agreement is subject to the following provisions.

8.1.2. Pursuant to subparagraph 3.4 of this Agreement, **OWNER'S** representative is authorized to monitor, direct and review the performance of work of the **PROFESSIONAL**. Documents, data, reports and all matters associated with carrying out this Agreement shall be addressed to the **OWNER'S** representative or their designee. Questions by the **PROFESSIONAL** regarding interpretations of the terms, provisions and requirements under this Agreement shall be addressed to the **OWNER'S** representative or their designee. The **PROFESSIONAL** shall look only to the **OWNER'S** representative or their designee for direction in its performance under this Agreement; no other direction shall be binding upon **OWNER**. **OWNER** shall respond to written requests by **PROFESSIONAL** within thirty (30) days.

8.2. **NO THIRD PARTY RIGHTS.** This agreement does not create a contractual relationship with or right of action in favor of a third party against either **OWNER** or **PROFESSIONAL**.

8.3. **UNENFORCEABLE TERMS/SURVIVABILITY.** If any term or provision of this Agreement shall be found to be illegal or unenforceable, this Agreement shall remain in full force and such term or provision shall be deemed stricken. The provisions of Section 6 of this Agreement shall survive its termination.

8.4. **NON-WAIVER.** The failure of either party to enforce any right reserved to it in this Agreement shall not be a waiver of any such right to which the party is entitled.

## **SECTION 9 – PAYMENT SERVICES**

9.1 **SERVICES.** **PROFESSIONAL** will provide cash handling services and payment processing services for payments made through kiosks, walk-in retailers, online websites and/or mobile sites, call centers or applications operated by **PROFESSIONAL** or such other methods ("**Transactions**") for crediting account balances held by **OWNER** on behalf of the recipients of funds (the "**Services**"). **PROFESSIONAL** provides the Services in its capacity as a licensed money services business. **PROFESSIONAL** represents and warrants to **OWNER** that **PROFESSIONAL** is duly licensed to provide the Services and will do so in compliance with applicable laws and regulations.

**9.2 AUTHORIZATION.** **OWNER** authorizes **PROFESSIONAL** to act on its behalf in handling cash and to submit Transactions initiated by individuals through the Services to the credit card networks or otherwise for authorization, processing and settlement to **OWNER** for the benefit of designated recipients.

### **9.3 RESPONSIBILITIES OF PROFESSIONAL**

**9.3.1** **PROFESSIONAL** will receive payments from the public, directed to recipients by way of the Services.

**9.3.2** **PROFESSIONAL** will transfer payment files to **OWNER** on a daily basis. **PROFESSIONAL** will deliver payments to **OWNER** by the second business day following (but not including) the day of the transaction by means of an electronic funds transfer (“EFT”) to **OWNER**’s designated bank account; provided, however, **PROFESSIONAL**, in its sole discretion, reserves the right to delay its acceptance of any transaction that **PROFESSIONAL** determines to be suspicious and warrants further investigation. **OWNER** acknowledges and agrees that **PROFESSIONAL** may reject, terminate or cancel any proposed transaction should **PROFESSIONAL** determine the transaction is being made for an improper or illegal purpose.

**9.3.3** **PROFESSIONAL** will provide **OWNER** with daily payment information by way of the **PROFESSIONAL OWNER** interface.

**9.3.4** **PROFESSIONAL** will be responsible for responding to and resolving inquiries and complaints from senders of funds arising out of **PROFESSIONAL**’s failure to timely transmit any payment to **OWNER**.

**9.3.5** **PROFESSIONAL** will provide sufficient promotional material to be posted by **OWNER**.

**9.3.6** **PROFESSIONAL**, upon receipt of written notice from **OWNER**, shall place limitations on transactions. The limitations will be implemented by **PROFESSIONAL** as soon as is reasonably practicable.

**9.3.7** **PROFESSIONAL** may contract with a third-party service provider to remove cash from kiosks, to replace receipt paper and to assume responsibility for the funds until deposited into the designated bank account.

### **9.4 RESPONSIBILITIES OF OWNER**



- 9.4.1** **OWNER** will provide **PROFESSIONAL** with the required bank account information for transmission of an EFT. **OWNER** agrees to notify **PROFESSIONAL**, in writing, giving fourteen (14) days' notice, of any changes to the bank account information.
- 9.4.2** **OWNER** will, upon receipt of written documentation of overpayment, promptly, but in no event more than ten (10) business days, refund any overpayment made by **PROFESSIONAL**, for any reason. This is to include, but not be limited to, duplicate payments, payments refunded to **OWNER** by **PROFESSIONAL** and any incorrect payments. At **PROFESSIONAL**'s sole option and in lieu of the foregoing, **PROFESSIONAL** may offset any such overpayments from future payment amounts transmitted by **PROFESSIONAL** to **OWNER** and notify **OWNER** of any such offset.
- 9.4.3** Upon implementation of the Services, **OWNER** agrees that it will not accept payments designated for recipient accounts. **OWNER** will close any window or other collection method currently used to accept payments within sixty (60) days of kiosk implementation.
- 9.4.4** **OWNER** will promptly report receipt of each payment to the designated account or recipient in accordance with the **OWNER**'s policy.
- 9.4.5** **OWNER** agrees that it shall, to the full extent allowed by law, assume all liability, responsibility and risk of loss associated with its breach of any of the terms or conditions within this Section 9 and/or its negligence in the performance of its duties hereunder.
- 9.4.6** **PROFESSIONAL** will provide all labor necessary for and will guarantee the workmanship of the installation of a lobby kiosk including, but not limited to, material handling within the facility and all costs associated with the networking, internet connectivity and electrical enhancements required to install a kiosk at the **OWNER**'s location.
- 9.4.7** **OWNER** agrees that **PROFESSIONAL** may determine, in its sole discretion, to suspend, terminate or place restrictions on one or more individual's ability to use the Services.

## **9.5 RATES**

The Services shall be provided at no cost to **OWNER**. **PROFESSIONAL** shall charge persons initiating a Transaction a service fee in accordance with its rate schedule which the **OWNER** acknowledges may be amended by **PROFESSIONAL** in its sole discretion from time to time.

## **9.6 EXCLUSIVITY**

**PROFESSIONAL** has the exclusive right to provide the Services for the **OWNER** and the exclusive right to collect and receive money handling fees associated with the Services which fees will belong to **PROFESSIONAL**.

## **9.7 TERMINATION**

The Services may be immediately terminated by either Party, in its sole discretion, in the event a Party has not cured a breach of the terms or conditions contained in this Section 9 within thirty (30) days of written notice of such purported breach from the non-terminating Party. Termination of the Services does not affect either Party's rights or obligations as to any transaction submitted for processing prior to termination.

## **9.8 REFUNDS/CHARGEBACKS**

**9.8.1** The Parties acknowledge that once **PROFESSIONAL** accepts a transaction submitted to the applicable payment network or otherwise for processing, **PROFESSIONAL** cannot cancel or change the transaction. Except to the extent required by applicable law, payments processed by **PROFESSIONAL** are non-refundable to the individual by **PROFESSIONAL**. Individuals may have additional refund or chargeback rights under their cardholder agreement with the card issuer or applicable law.

**9.8.2** In the case of chargebacks or returned funds, **PROFESSIONAL** will be responsible for pursuing the chargeback through the card association's dispute resolution processes, if appropriate in **PROFESSIONAL**'s sole discretion. Upon written request from **PROFESSIONAL**, **OWNER** agrees to provide requested information needed to pursue the chargeback.

**9.8.3** If an individual requests a refund, **PROFESSIONAL** will not be responsible for making those funds available if they have been already settled to a designated account by **PROFESSIONAL** or are beyond **PROFESSIONAL**'s control.

**9.8.4** If **OWNER** and sender of funds issue inconsistent instructions or requests to **PROFESSIONAL**, **OWNER**'s instructions will control and **OWNER** will reimburse, defend, indemnify and hold **PROFESSIONAL** harmless from any and all losses, costs and expenses (including reasonable attorneys' fees) as a result of complying with **OWNER**'s instructions.

### **9.8.5 DAMAGES CAP; NO OTHER WARRANTY**

**OTHER THAN PROFESSIONAL'S OBLIGATION FOR ANY FUNDS RECEIVED FROM INDIVIDUALS, IN NO EVENT SHALL PROFESSIONAL'S AGGREGATE LIABILITY IN TOTAL FOR ALL CLAIMS ARISING FROM OR RELATING TO THE SERVICES PROVIDED FOR IN THIS SECTION 9, EXCEED THE AMOUNT**

OF SERVICE FEES PAID TO **PROFESSIONAL** FOR THE TRANSACTIONS RELATING TO THE CLAIM. THE FOREGOING LIMITATION APPLIES REGARDLESS OF THE NATURE OF THE CLAIM OR THE FORM OF THE ACTION EMPLOYED, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE. THE SERVICES ARE PROVIDED “AS IS.” EXCEPT AS EXPRESSLY STATED IN THIS EXHIBIT B, NEITHER PARTY MAKES, AND EACH PARTY EXPRESSLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES FOR THE SERVICES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR IMPLIED WARRANTIES ARISING FROM THE COURSE OF DEALING OR COURSE OF PERFORMANCE.

## **SECTION 10 – RELEASE PAY PREPAID DEBIT CARD SERVICES**

**10.1 Release Services.** PROFESSIONAL shall provide technical support and coordination for the following Release Pay™ services (“Release Services”) for processing inmate trust fund balances to OWNER inmates at time of release from the OWNER:

*Prepaid Debit Cards* (“Cards”): described as, a debit card which may be used for ATM withdraws and/or pin-based and signature purchases after inmate validation. Funds will be held by Axiom Bank N.A. (“Sponsor Bank”) from Maitland, FL. Axiom Bank will also be responsible for card issuances to the OWNER. All transactions are processed by a third-party processor - Rapid Financial Solutions, LLC (“Processor”).

\* Additional Release Services may be made available to the OWNER throughout the term of this Agreement and shall become part of this Agreement with the OWNER’s acceptance. No Release Services shall be implemented without OWNER approval. Another card brand, issuing bank or program manager may be substituted during the term of this Agreement at **PROFESSIONAL**’s discretion and shall not constitute an “Additional Release Service.” The OWNER will be notified in advance in writing of any such change.

**10.2 Designated Account.** OWNER hereby agrees that neither the Processor nor Sponsor Bank control the inputs affecting the amount that is to be paid to the recipients. Therefore, as with all financial processes, OWNER agrees to take full responsibility for maintaining a sufficient balance with the Sponsor Bank in the OWNER’s Designated Account for making payments, as well as audit the OWNER’s Designated Account on a regular basis.

**10.3 Responsibilities of the OWNER.** All responsibilities of the OWNER are outlined in the “Security Requirements for the Storage of Prepaid Cards”, which are attached hereto and incorporated herein by reference. **PROFESSIONAL** reserves the right to modify the “Security Requirements

for the Storage of Prepaid Cards”. **PROFESSIONAL** shall notify the OWNER of any such change in writing at least 30 days prior to the change being implemented.

- 10.4 Representation and Warranty of OWNER.** The parties hereby state that, based upon their understanding of the applicable laws and regulations, the terms of this Agreement are allowable.
- 10.5 Fees and Charges.** **PROFESSIONAL** shall charge a fee for its role in setting up the bank account with the bank issuing the Cards and for coordinating third party processing services. “Coordination Fees” are in accordance with the fee structure described in this Section 10. All fees shall be assessed to the card holder/inmate.
- 10.6 Payment Choice Requirement.** Processor and Sponsor Bank require all **PROFESSIONAL OWNERS** to offer in all circumstances and to all persons a choice of payment other than Debit Cards (the “Payment Choice Requirement”), and OWNER shall be responsible for ensuring compliance with the Payment Choice Requirement. **PROFESSIONAL** reserves the right to request written certification the Payment Choice Requirement is being followed by OWNER, a copy of which shall be promptly provided upon request. For the avoidance of doubt, any **PROFESSIONAL OWNER**’s noncompliance with the Payment Choice Requirement, shall constitute a material breach of this Agreement by OWNER, which, among other things, shall give **PROFESSIONAL** the right to terminate this Agreement and entitle **PROFESSIONAL** to any lawful indemnification by OWNER pursuant to Section 18 above. **PROFESSIONAL** or its vendor agrees to provide a Payment Choice Option in the loading interface within its software within 60 days of installation.
- 10.7 Taxes.** Each party shall be responsible for calculating, collecting and remitting their own Federal, state and/or local taxes, associated with the Release Services. **\*Taxes should not be levied on the issuance of a Card unless OWNER’s laws dictate such.**
- 10.8 Equipment.** Upon expiration or termination of this Agreement, OWNER agrees that all equipment and materials remain the property of **PROFESSIONAL** and upon expiration or termination of this Agreement **PROFESSIONAL** agrees to promptly remove all equipment and materials from the above mentioned OWNER. OWNER shall be responsible for any unusual wear and tear, lost or stolen equipment as well as any lost, stolen or improperly funded Cards during the term of this Agreement as per the “Security Requirements for the Storage of Prepaid Cards”.
- 10.9 Exclusivity.** OWNER acknowledges that based on this Agreement, **PROFESSIONAL** has the sole and exclusive right and authority to provide the Release Pay™ services contemplated by this Agreement for all inmate accounts under the OWNER’s control and OWNER shall not, throughout the term of the

Agreement, engage the services of any other company to provide such Release Pay™ services.

**10.10 Compliance.** **PROFESSIONAL** and the OWNER shall comply with all laws, orders, rules and regulations applicable to it that are associated with the performance of its duties and obligations under this Agreement.

**10.11 Fiduciary Responsibility.** OWNER agrees that it shall, to the full extent allowed by law, assume all liability for any OWNER related job functions that lead to discrepancies/deficiencies associated with any funding, Card loss, improper storage, etc. expressly attributed to the loading, inventorying and distribution of the Cards to the OWNER inmates.

**10.12 Security Requirements for the Storage of Prepaid Cards**

**10.12.1** The security requirements in this document are based on policies and guidelines developed by the Payment Networks and industry best practices. These requirements must be implemented at all locations that store and distribute instant-issue card products.

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**10.12.2** Card Ordering

Card orders will be shipped to the designated locations by Rapid or its assignees by bonded and approved carrier. Card orders must be signed for upon arrival. All cards must be placed at the time of receipt into inventory in a secured storage area. An employee designated by management should be appointed to ensure the physical and procedural security policies are implemented.

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**10.12.3** Card Inventory

Physical security of the cards in inventory must be maintained at all times. Cards must be stored in a controlled environment, such as a safe or locked storage device, with access limited to employees who have successfully passed background screening checks.

**10.12.4** An inventory log must account for the number of cards received, cards used, cards spoiled (cards that cannot be used due to damage, tampering or expiration) and remaining cards that should balance to the number of cards on hand at any time. An explanation of spoilage should be included on the log. Any inventory discrepancy must be reported to Rapid as soon as detected.

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**10.12.5** Card Destruction

Rapid may request return of unused cards in inventory for destruction for any of the reasons listed below.

1. Cards are compromised or tampered with;
2. Card stock expired;
3. Cards are damaged or defective;
4. Program is terminated.

**10.12.6** Cards to be returned should be securely packaged. A copy of the inventory log should be included in the shipment. A second copy of the inventory log should be transmitted to Rapid electronically.

**10.12.7** Alternatively, the location may destroy any defective or damaged card and certify its destruction by maintaining a detailed inventory log, and destroying the cards using a cross cut shredder that creates pieces no larger than ¼ “ by ½” in size. A certified report of destruction (“Certificate of Destruction of Defective or Damaged Cards”), attached below hereto and incorporated herein by this reference must be submitted to Rapid on a monthly cycle even if no cards were destroyed in that period.

The remainder of this page intentionally left blank.

**Certificate of Destruction of Defective or Damaged Cards**

I \_\_\_\_\_ certify that the cards listed below were either damaged or defective. I further certify that the cards below were destroyed using a cross cut shredder that created pieces no larger than ¼ " by ½" in size.

Destruction Date (mm/dd/yyyy)	Card Number	Expiration	Name (first, last)	Signature


## Inmate Release Card Program Fees

Cardholder Fees Associated with the Inmate Release Program

	Charge
<b>Card Activation Fee</b>	FREE
<b>Support Calls Fee</b>	FREE
<b>PIN Change Fee</b>	FREE
<b>Point of Sale (POS) Transactions (PIN &amp; Signature)</b>	FREE
<b>Cash Back Option with POS purchase</b>	FREE
<b>POS Declines</b>	FREE
<b>Card to Bank ACH Transfer****</b>	FREE
<b>Cash Out at any Principal MasterCard Member Institution</b>	FREE
<b>Monthly Maintenance Fee*</b>	\$3.95
<b>ATM Account Inquiry Fee</b>	\$1.50
<b>Inactivity Fee**</b>	\$3.95
<b>Domestic ATM Fees***</b>	\$2.95
<b>ATM Decline for Non-Sufficient Funds Fee</b>	\$2.95
<b>International ATM Fees***</b>	\$3.95
<b>ATM Decline International Fee</b>	\$3.95
<b>Replacement of lost or stolen card</b>	FREE
<b>Account Closure Fee/Request for Balance by Check</b>	FREE

\* After 15 days of the card being validated (used for a transaction) the card starts incurring a monthly maintenance fee to cover the cost of the FDIC insured account. Once the card has been validated the inactivity fees no longer apply. Both fees will never be charged together.

\*\* If after 100 days the card has not been validated (used for a transaction) the card will be charged an inactivity fee of \$3.95 per month. Until the card has been validated (used for a transaction).

\*\*\*Fees may also be imposed by the local ATM provider in addition to card fees. For a listing of surcharge-free ATM's, visit <http://www.moneypass.com/> .

\*\*\*\*Returned or rejected ACH transfers for invalid banking information are subject to a \$9.95 returned processing fee.

\*\*\*\*\*Cardholder fees are subject to change. Thirty (30) day prior written notice of a change in fees will be given. The changes will be posted on the Card website at [www.accessfreedomcard.com](http://www.accessfreedomcard.com). You will be deemed to have proper notice thirty days (30) after the amendments are posted.

Customer Service / Servicio Al Clients:  
Toll Free from U.S.A. – (888) 609-0008  
[www.accessfreedomcard.com](http://www.accessfreedomcard.com)



**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement as of the day and year first above written.

**OWNER (LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT):**

Signature: \_\_\_\_\_  
MAYOR

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

ATTEST:

\_\_\_\_\_  
CLERK OF URBAN COUNTY COUNCIL

**PROFESSIONAL (KEEFE COMMISSARY NETWORK, LLC):**

Signature: \_\_\_\_\_

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

Position: \_\_\_\_\_

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

COMMONWEALTH OF KENTUCKY  
COUNTY OF ( \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me by  
\_\_\_\_\_ as \_\_\_\_\_ for  
and on behalf of \_\_\_\_\_, on this the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC, STATE AT LARGE, KY

**Exhibit A**  
**RFP and Response**