



SOFTWARE SERVICE AGREEMENT

SOFTWARE SERVICE AGREEMENT

This Software Service Agreement (“Agreement”) is made and entered into by the undersigned licensee (the “Licensee”) with Yarusso Companies Incorporated d/b/a WashCard Systems (“WashCard”) as of the date executed by the Licensee. Each of Licensee and WashCard may be referred to individually as, a “Party” or collectively as, the “Parties”. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. GENERAL TERMS

1.1 Scope of Agreement. Licensee wishes to enter into this Agreement with WashCard to utilize WashCard’s hardware and software solutions, programs, and related services to car wash operators in connection with Licensee’s car wash(es), upon the terms and conditions set forth in this Agreement.

1.2 Definitions. When used herein, the following terms shall have the meanings ascribed to them below:

- a. “WashCard” – means Yarusso Companies Incorporated, a Minnesota corporation doing business as WashCard Systems, with its principal place of business located at 2005 Gateway Circle, Centerville, MN 55038.
- b. “Licensee” – means the person, firm, entity, or company listed in the preamble above, that has placed an Order for Services with WashCard hereunder.
- c. “Intellectual Property” means all works, inventions, or other creations of WashCard, whether tangible or intangible, to which Licensee has been or will be provided access by WashCard under this Agreement, including any End User License Agreement, including, specifically, all works which are or may be subject to patent, trade secret, copyright, or trademark protection.
- d. “Order” – means any purchase order issued or requested by the Licensee for Software and/or Services from WashCard and which is approved by WashCard, the terms of which are incorporated into and made a part of this Agreement.
- e. “Quotation” – means any bid or quote from WashCard to provide software or services of the type to be memorialized in an Order under this Agreement. No Quotation becomes an Order unless approved by the Parties.
- f. “Services” – means the services WashCard agrees to provide in this Agreement and under an Order.
- g. “Site” – means the location for which the Software may be used, or in which WashCard has agreed to perform on-site Services, as identified in the Order.
- h. “Software” – means the software, program(s), platform(s), and/or application(s) provided by WashCard to Licensee under this agreement, including any software, program, platform, and/or application in which WashCard has sublicensing rights, each in executable, machine readable, object, printed or interpreted form, including any Software Protection Device and any documentation, modifications, improvements or updates

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supplied to the Licensee under any Order.

- i. “Software License” – means the revocable, non-transferable, non-exclusive, non-sublicensable license to install and use the Software provided by WashCard to Licensee hereunder, consistent with the terms of use provided under any End User License Agreement provided by WashCard to Licensee (or any end user) from time to time.
- j. “Software Protection Device” – means the hardware or software protection key supplied by WashCard to Licensee to utilize or access the Software.
- k. “Trademarks” – means all of WashCard’s trademarks, service marks, tradenames, trade dress, and any other related rights in and to the names, logos, branding, or other Intellectual Property utilized by WashCard to market the Software, including, but not limited to, any common-law or registered trademark in or to WashCard Systems, UWash, CrossConnect, Tap&App, “Sterling”, and all variations and derivations thereof.
- l. Additional terms will have the meanings given to them in the body of this Agreement based on the context in which they’re used.

1.3 Incorporation of Terms. The terms and provisions contained in this Agreement shall apply to all Software and Services supplied by WashCard to Licensee under any Order placed by the Licensee during the term of this Agreement, whether or not this Agreement is expressly referenced in connection with such Order. In the event of any ambiguity or conflict between this Agreement and any other document, the terms and provisions of the document last executed by WashCard shall govern.

2. SUBSCRIPTION TERMS

2.1 Services, Term, and Renewal. Provided Licensee is not in default, WashCard will provide Licensee with access to use the Software and/or Services Licensee has purchased or agreed to purchase through an Order for the duration of the Subscription Term. The “Subscription Term” will be the period during which Licensee has an account with, and Licensee from WashCard entitling Licensee to access WashCard’s Software and/or Services. Unless otherwise provided in an Order, your Subscription Term will begin with one month of access to the relevant Software and/or Services and will automatically renew and extend for successive one-month terms, unless or until otherwise terminated as provided herein.

2.2 Additional Services and Performance. WashCard may provide Licensee with features, services, or software, in addition to those Software and/or Services otherwise purchased or agreed to be purchased, in WashCard’s sole discretion, to better utilize the Software and Services hereunder. WashCard reserves the right to provide some or all of the Software and/or Services through third-party service providers.

2.3 Licensee Upgrades and Additional Feature Requests. Licensee may upgrade or subscribe to additional features to the Software or Services by making an additional Order with WashCard or by activating the additional features from within Licensee’s account management console, if this option is made available by WashCard. This Agreement will apply to all additional Orders, agreements, or any additional features that Licensee may activate from within its account. Unless otherwise agreed, all such upgrades and additional features will be subject to WashCard’s then-prevailing rates for the same.

3. FEES

3.1 Subscription Fees (Card-Based Systems). Unless otherwise provided in an Order, Licensee agrees to pay to WashCard Subscription Fees for all card-based systems based on Licensee’s total monthly volume.

- a. Fee calculation. The monthly Subscription Fee, including secure transaction data management, for all card-

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based transactions will be calculated by multiplying the total monthly transaction volume by the corresponding commission percentage in the pricing table below. The Subscription Fees may vary from the base rates provided in the table based on: (i) Licensee exceeding applicable use limits; (ii) upgrades to products, Services, Software, or WashCard's base packages; (iii) subscriptions to additional features or products to be included in the Services and/or Software; or (iv) as otherwise approved in writing by WashCard and Licensee, including any Order. Any Subscription Fee schedule, commission schedule, or rates approved by WashCard in writing and incorporated into this Agreement will supersede the table below for the term specified therein.

Total Monthly Transaction Volume	Transaction Commission Percentage
\$0.00 - \$69.00	(base rate)
\$69.01 - \$2,500.00	2.75%
\$2,500.01 - \$5,000.00	2.55%
\$5,000.01 - \$10,000.00	2.35%
\$10,000.01 - \$20,000.00	2.30%
\$20,000.01 - \$30,000.00	2.25%
\$30,000.01 - \$50,000.00	2.20%
\$50,000.01 - \$75,000.00	2.15%
\$75,000.01 - \$100,000.00	2.10%
\$100,000.01 - \$200,000.00	2.05%
\$200,000.01 - \$500,000.00	2.00%
\$500,000.00+	1.95%

- b. Fee percentage determination per billing period. The specific fee tier and charges in any billing period will be adjusted with each billing period based on the specific charges and volume from the prior billing period.
- c. Fee adjustments. WashCard may alter its Subscription Fees in advance of any renewal period to match any changes to its current pricing and commission rates or other charges passed onto WashCard by its card processor(s). In the event of any change, WashCard we will provide Licensee with notice at least thirty (30) days in advance of the term in which such rates will go into effect and be applied by WashCard. If Licensee rejects any such change, it may terminate this Agreement by providing the notice required herein.

3.2 UWash Fees. In the event Licensee's Software and Services include access to the UWash app, "UWash Fees" (Subscription Fees and UWash Fees are collectively, "Commission Fees") will be calculated at the time a consumer/end user purchase washes from Licensee using the UWash app on a per transaction basis as provided below. Similar to the Subscription Fees above, UWash Fees may vary from the base rates below based on: (i) Licensee exceeding applicable use limits; (ii) upgrades to products, Services, Software, or WashCard's base packages; (iii) subscriptions to additional features or products to be included in the Services and/or Software; or (iv) as otherwise approved in writing by WashCard and Licensee, including any Order. Any UWash Fee schedule, commission schedule, or rates approved by WashCard in writing and incorporated into this Agreement will supersede the table below for the term specified therein.

- a. Payment processing fee. \$0.30 + 3.00% of total transaction amount; and
- b. Business development commission. 10.00% of total transaction amount.

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c. Fee adjustments. WashCard may alter its UWash Fees in advance of any renewal period to match any changes to its current pricing and commission rates or other charges passed onto WashCard by its card processor(s). In the event of any change, WashCard we will provide Licensee with notice at least thirty (30) days in advance of the term in which such rates will go into effect and be applied by WashCard. If Licensee rejects any such change, it may terminate this Agreement by providing the notice required herein.

3.3 Service Fees. Licensee agrees to pay WashCard Service Fees (Commission Fees and Service Fees are collectively, the “Fees”) in the total amount based on the rates listed in an Order or purchase agreement for any applicable Services Licensee has ordered and WashCard has agreed to provide. Other charges for use of WashCard’s products and services will be as set forth in the “Service Plan Summary” document which is incorporated herein and made a part of this Agreement by reference.

3.4 Expenses. Licensee agrees to pay WashCard for any travel, accommodation, or related expenses incurred by WashCard to perform the Services hereunder at WashCard’s prevailing rates and as otherwise agreed between the Parties.

4. PAYMENT

4.1 Collection and Payment. Licensee acknowledges and agrees that WashCard is entitled to pay itself for all Fees paid directly to WashCard in connection with the Software or Services. When a consumer makes a purchase through WashCard’s Software, WashCard will process the payment through one of its affiliates. WashCard will then aggregate all transactions for a two-week period and process an ACH bank transfer directly to Licensee’s bank account within two weeks thereafter for the preceding two-week period for all such customer transactions, less withholding of WashCard’s Fees hereunder. WashCard will make available to Licensee a report for each ACH transfer showing the specific transactions and fees through WashCard’s UWash Account Portal.

4.2 Payment Terms. Except for the Fees that WashCard is authorized to withhold to pay itself hereunder, Licensee agrees to pay WashCard all other fees promptly when due, consistent with the terms of any Order or other agreement between the Parties. If not specified, all amounts are due within 30 days of the date of any invoice. Without prejudice to any other rights or remedies provided in this Agreement, in the event Licensee fails or refuses to pay any amount due to WashCard hereunder when due, WashCard may, at its sole discretion, suspend its performance under this Agreement, including any of Licensee’s rights to the Software or Services, unless or until such unpaid balance is resolved to WashCard’s satisfaction. In the event this Agreement and the Services performed hereunder are terminated, and except as otherwise provided herein, WashCard will refund any Fees paid by Licensee in advance, less all amounts due or otherwise incurred at the time of such termination.

5. PROFESSIONAL SERVICES

5.1 Professional Service Purchases and Terms. In addition to the Software and its related Services, Licensee may purchase other professional and consulting Services by making an Order with WashCard. With the exception of Onboarding (described below), all Services will be described in a Quotation, Order, and/or subsequent agreement. Once accepted by WashCard, the terms of the Quotation, Order, and/or subsequent agreement will be incorporated into, and made a part of, this Agreement. In the event of any conflict, the terms of the document last executed and accepted by WashCard shall govern.

5.2 Fees for Services. If Licensee elects to purchase recurring Services, Licensee agrees to pay for such Services (“Service Fees”) in addition to any of Licensee’s Commission Fees above. Recurring Services and all Services Fees will renew automatically unless or until terminated as provided herein. All Services are performed remotely, unless the Parties otherwise agree. For on-site Services, in addition to all Service Fees, Licensee agrees to pay all of WashCard’s costs and expenses incurred in connection with the same within thirty (30) days of the date of WashCard’s invoice.

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If the Services are for a designated number of hours, any unused hours will expire as indicated in the applicable purchase order.

5.3 Deliverables and Delays. If WashCard is to provide any deliverable in connection with the Services purchased, WashCard will utilize commercially reasonable efforts to complete the deliverables within such time period (“Delivery Term”). If the Services, including any deliverables, provided by WashCard hereunder are not complete at the end of the Delivery Term due to Licensee’s failure to make the necessary resources available to WashCard or to otherwise perform Licensee’s obligations, WashCard may deem all Services complete at the end of the Delivery Term specified in the Quotation, Order, or other agreement in its sole discretion. In the event WashCard is unable to complete the Services by the end of the Delivery Term due to WashCard’s failure to make necessary resources available to Licensee or to otherwise perform WashCard’s obligations, WashCard will extend the Delivery Term to allow for completion of the Services in full. WashCard reserves the right to provide some or all elements of the Services through third-party service providers.

5.4 Non-Refundable. Notwithstanding anything to the contrary contained herein, all fees for Services are non-refundable. Once approved by WashCard, Licensee may not cancel any Services to be performed or completed, except for recurring Services, which may be terminated as otherwise provided herein.

5.5 Onboarding. As part of the Services, WashCard will communicate with Licensee to gather data, initialize startup procedures, and begin hardware and software preparations before shipping customized products (“Onboarding”). Onboarding may also include remote installation support, instruction, and assistance during WashCard’s business hours or as otherwise scheduled by appointment. Unless otherwise agreed, assistance will be provided via telephone and e-mail. Onboarding, specifically, includes the following:

- a. Support setup. WashCard will obtain information about Licensee’s car wash location(s), including the service types, device types, timers, etc. One of WashCard’s team members will walk through all of these items with Licensee during an Onboarding phone call to make sure WashCard has all of the information it needs to get assist in promptly programming Licensee’s devices and equipment.
- b. Customizing Licensee’s app and graphics. Licensee will work with WashCard’s marketing team to create custom icons, custom decals and signage for Licensee’s bays, custom advertisements, and such other items as may be necessary or agreed upon by the Parties to assist with ensuring the Software is customized for Licensee’s car wash. All such customization must be completed before WashCard is able to ship any equipment to Licensee. If requested, WashCard’s Trademarks may be included in the customized Software. In such event, WashCard shall grant Licensee a limited License to use such Trademarks only in connection with the Software and Services hereunder during the term of this Agreement. Upon termination of this Agreement, Licensee’s License shall be terminated, and Licensee shall immediately cease any and all use of WashCard’s Trademarks. For the avoidance of doubt, all right, title, and interest in and to the Trademarks and Intellectual Property, including any customization of the Software made hereunder, shall remain with WashCard both during and after the termination of this Agreement, and nothing herein shall create any “work-for-hire” or provide any other rights to any Intellectual Property to Licensee, except for the limited License provided herein.
- c. Installation and training. WashCard will work with Licensee to schedule installation and to add UWash activation modules (“UWash Activation Modules”) to Licensee’s car wash equipment. WashCard will provide remote instruction and assist any “on-site” technician installing and testing the UWash Activation Modules required to activate car wash services. WashCard will also provide remote instruction and assistance for any on-site network administrator who requires additional guidance and direction in configuring the necessary network modifications to allow the UWash Activation Modules to communicate out of the local network and allow incoming connections to reach the UWash Activation Modules over predetermined ports. During remote

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training, WashCard will create Licensee's login credentials and assist in configuring all promotional settings, verifying wash packages and pricing, verify map placement on the UWash app, configure "house" accounts, review promotional options and reporting tools, train Licensee on how to upload new advertisements, and answer questions. WashCard will provide one (1) combined hour of remote training on the UWash app and the UWash management portal, upon Licensee's request and scheduling of the same.

- d. Ongoing support. WashCard is available to provide ongoing support as may be needed from time to time, including, but not limited to, assisting with down modules, making changes to the Software, or otherwise consulting with Licensee to better meet its wash goals. Such ongoing support will be provided during WashCard's normal business hours and may be subject to additional fees at WashCard's prevailing service rates.

5.6 Technical Support Services. WashCard will undertake commercially reasonable efforts to provide fixes, workarounds, or other reasonable solutions to remedy Licensee's reproducible errors and bugs in the current version of the Software that are reported to WashCard and cause a "Material Malfunction". A "Material Malfunction" means the substantial failure of the Software to function for its intended use. WashCard will utilize commercially reasonable efforts to provide support by telephone or e-mail Monday through Friday from 9:00 a.m. to 5:00 p.m. CST to respond to any reasonable request by the Licensee for support. WashCard's maintenance and support services do not include fixes of errors that arise: (i) out of the Licensee's alteration of the software, hardware, housing unit, or fixes or errors caused in whole or in part by persons other than WashCard; (ii) from products, computer programs, or stored procedures not furnished by WashCard; (iii) from programming, error correction or custom work required as a result of conversions or updates involving Licensee's core software; (iv) from improper hardware installation or server configuration, housing unit specifications, or defect; (v) from issues related to Licensee's core processing systems or server; or (vi) any other violation of this Agreement by Licensee. If a suspected error results from unauthorized alteration of the software, hardware, or housing unit, or the use of the software that is not in accordance with standard operating procedures or WashCard's recommended minimum system specifications, then Licensee shall be solely responsible for any and all costs incurred in connection with the same on a time and materials basis at WashCard's then-current standard hourly rate.

6. LICENSEE REQUIREMENTS

6.1 Maintenance. Licensee is responsible for maintaining the hardware and software specifications required by WashCard's secure, on-site computer, the Site Management Controller ("SMC"). Licensee shall, at its sole cost, provide and maintain a high-speed telecommunications link into Licensee's system to WashCard's information system for the purpose of providing card processing, maintenance, and support. WashCard shall provide the SMC upon initiation of services. Upon termination of this Agreement, Licensee agrees to work with WashCard in good faith to return the SMC or otherwise coordinate with WashCard for its return, at WashCard's cost.

6.2. Acceptable Use. Licensee agrees not to use, or allow a third party to use, directly or indirectly, WashCard's products or services for or in the pursuit of any illegal purpose, including, but not limited to, money laundering, harassment, fraudulent advertising, hacking, spamming, unsolicited advertising, trademark, copyright, or any other intellectual property infringement or misappropriation. Licensee agrees not to make or allow any attempt to disrupt or attack the WashCard system or services, and WashCard reserves the right to seek damages or legal recourse against Licensee in the event Licensee or any third-party attempts to abuse, attack, or hack the Software systems, servers, or services. The Licensee agrees not to add, remove, or modify any software, hardware, or applications to the SMC except as expressly authorized by WashCard in writing in advance. Licensee agrees that the SMC shall not be used for personal or business purposes of the Licensee, such as e-mail, web surfing, security systems, or any other use not expressly authorized by WashCard, as any of the foregoing could jeopardize the security of the SMC and/or

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WashCard's database server.

6.3 End User License Agreement. Licensee acknowledges and agrees that use of the Software and Services is subject to WashCard's End User License Agreement, the terms of which are incorporated herein by reference, as may be amended from time-to-time in WashCard's sole discretion.

6.4 Prohibited Conduct. Without limiting anything to the contrary contained herein, except as otherwise agreed to by WashCard in writing, Licensee shall not:

- a. access the Software if Licensee sells or develops competitive products or services, for purposes of reverse-engineering, or for any other benchmarking, performance, functionality, or competitive purpose;
- b. allow use of the Services for the benefit of anyone other than Licensee or authorized end users;
- c. offer, sell, sublicense, or otherwise provide use of the Services for anyone other than Licensee or authorized end users;
- d. post content or data that infringes on anyone's rights (including Intellectual Property or privacy rights) or is libelous, obscene, or otherwise unlawful;
- e. post any content or data that contains malicious code;
- f. attempt to gain access to anyone else's data;
- g. copy or reproduce any part of the Software or Services for any purpose not otherwise authorized herein, including for use on another computer system or to build a competitive product or offer competitive services;
- h. attempt to reverse engineer any feature of the Software unless permitted by applicable law; or
- i. attempt to integrate any non-WashCard application with the Software or Services.

6.5 Licensee Responsibilities. Licensee is responsible for, and agrees to hold WashCard harmless from and against any claim, damage, loss, or liability, arising out of or related to Licensee's breach or other failure to ensure compliance with the requirements herein.

7. DATA AND INFORMATION

7.1 Data and Information Maintenance. WashCard endeavors not to permanently store or otherwise maintain any of Licensee's or its customers' cardholder data and information, including any of their debit or credit card numbers, PIN numbers, security codes, or other sensitive identifying information ("Identifying Information").

- a. Identifying information from Licensee. WashCard will not seek any such Identifying Information from the Licensee, and the Licensee agrees that it will not send WashCard any such Identifying Information. Licensee agrees to notify WashCard if it sends any such Identifying Information immediately upon learning of such transmission. Upon such notice, WashCard will take commercially reasonable steps to completely and securely destroy such Identifying Information from its systems.
- b. Critical cardholder data from customers. Notwithstanding the foregoing, due to the nature of the Software and Services, WashCard will receive critical cardholder data ("CCD") as necessary to process transactions. In such event, WashCard holds such CCD only in temporary memory, and only for the duration of time required to receive an approval or declined response from the credit card processor, with the transaction's identification token. WashCard then clears all CCD from memory and stores only the cardholder name, expiration date, and the last four digits of the card number for future reporting ("Reporting Information"). Thereafter, any and all additional references to a transaction (for example, in the event of any refund) are made utilizing the transaction token and any Reporting Information, but not the CCD or Identifying Information. While WashCard provides usage reports that show both individual transaction details and/or summaries of total usage, revenue, etc.,

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these reports do not include any Identifying Information or CCD, but only the Reporting Information.

- c. Breach and security standards. In case of a security breach, no critical data is stored on the local SMC or on WashCard's primary database systems. Additional information on card security and credit card processing can be found in the WashCard PA-DSS Implementation Guide. WashCard can also be found on the PCI Security Standards Council list of Validated Payment Applications at the following URL: <https://www.pcisecuritystandards.org/>

7.2 Loyalty System Data Retention, Sharing, Access, and Removal. WashCard allows users to register for certain loyalty benefits through the Software. In such event, WashCard will collect, retain, and make available to Licensee the name, physical address, phone number, and email address of users. Users may opt-in or opt-out of marketing communications, and each outgoing, system-generated email contains a one-click unsubscribe link, as required by the FTC's CAN-SPAM Act. Users can edit, add, or remove their name, physical address, phone number, or email address from their Account profile through the end-user facing Account Portal or the UWash app.

7.3 Third-Party Access to Data. WashCard does not sell, lease, lend, or otherwise provide data access to third parties except under the following conditions.

- a. In-app sharing. WashCard may share app-specific data required to provide a specific service, including credit card processing, bank transactions, reporting, and other business functions. WashCard complies with applicable third-party terms of agreement when using licensed applications.
- b. Operator use and sharing. WashCard may share certain data and information with Licensee and/or operator(s) in connection with marketing, performance, and user history. WashCard has developed direct integrations with MailChimp and FreshLime for automated marketing services. Licensee may utilize these third-party services, backed by automated, periodic synchronization of account communication details, to market to their end users. End users may utilize account preferences for opt-in/opt-out, which is honored in both of automated marketing integrations. Licensee is also able to view user accounts to access the end user's name, address, and contact information, as the same are entered into the Software. Contact information for all accounts can be batch exported to comma separated variable (CSV) format from the "Export Account Details" tool in the Business Management Center for use by the Licensee only. If the exported account detail is to be used for marketing through an outside service, opted-out accounts are excluded from the resulting list. Exported information can include the following categories: (i) account holder/user name; (ii) account type; (iii) last use; (iv) last payment; (v) primary contact; (vi) e-mail address; (vii) telephone number; (viii) billing address; (xiv) shipping address; (xv) time schedule; (xvi) spending profile; and (xvii) organization.

8. PROPRIETARY INFORMATION

8.1 Proprietary Information. WashCard and the Licensee agree not to disclose any of each other's proprietary, confidential, trade secret, or otherwise competitively sensitive information to any person not authorized to receive it. A person will be "authorized to receive" if the information is necessary for such person to perform its duties or obligations (or interpret the same) under this Agreement. Without limiting the foregoing, Licensee shall treat all WashCard software, hardware, housing units and all related information including any and all updates, improvements, modifications and enhancements as confidential and proprietary to WashCard, and shall protect such information in the same manner that it protects the confidentiality of its own confidential proprietary information. Licensee agrees that all Intellectual Property of WashCard, unless publicly available, shall be proprietary and confidential hereunder.

8.2 Modifications. The Parties acknowledge and agree that nothing herein shall be construed as, or otherwise create any "work-for-hire" or similar relationship. In the event that Licensee asks for, and WashCard produces, any new feature or modification in the Software or otherwise applicable in connection with the Services, Licensee agrees that

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WashCard, and not Licensee, shall have all right title and interest in and to the same, and Licensee expressly disclaims any right to such feature independent of its rights to use the same in connection with the Software and as part of the Services under this Agreement.

9. WASHCARD OBLIGATIONS.

9.1 Uptime Commitment. WashCard will use commercially reasonable efforts to meet or exceed a service uptime of 99.5% of the time for the Service in any given calendar month. WashCard's service status can be viewed online at <http://status.washcard.com>. WashCard's service uptime commitment is breached when a critical outage or other severe issue that constitutes a catastrophic problem causes complete inability to use or access the Software and/or Services, excluding any free services, across a significant portion of the production environment (e.g. crash or hang), resulting in production downtime and where there is no workaround or solution to the problem. Notwithstanding the foregoing, WashCard's Service uptime commitments do not apply in the following "Excluded Circumstances":

- a. unavailability caused by circumstances beyond WashCard's reasonable control, including, without limitation, acts of God, acts of government, emergencies, natural disasters, flood, fire, civil unrest, pandemic, epidemic, acts of terror, acts of third-parties over whom WashCard has no control (including any ISP or other network or utility provider), strikes or other labor problems (other than those involving WashCard's employees), or any other force majeure event or factor beyond WashCard's reasonable control;
- b. any problems resulting from Licensee or any User combining or merging the Software and/or Services with any hardware or software not supplied by WashCard or not otherwise identified by WashCard in writing as compatible with the Software and/or Services;
- c. interruptions or delays in providing the Service resulting from telecommunications or Internet service provider failures outside of our datacenter as measured by our third party website availability monitoring provider; and/or
- d. any interruption or unavailability resulting from the misuse, improper use, alteration, or damage of the Software and/or Services by third-parties over whom WashCard has no control, including Licensee or any User.

9.2 Remedies. As Licensee's sole and exclusive remedy for failure to meet availability or support/uptime commitments herein, in the event there are two (2) or more consecutive calendar months during which the Service uptime falls below 99.5% in such calendar months, Licensee will be entitled to receive a credit equal to the prorated amount of fees applicable to the downtime as measured within two (2) or more consecutive calendar months during which the Service Uptime fell below 99.5%, which credit shall be applied against an invoice or charge for the following renewal Subscription Term, provided Licensee requests such credit within ten (10) days of the end of the relevant calendar month. All availability and uptime calculations will be based on WashCard's system records.

10. SUSPENSION

10.1 Suspension for Prohibited Acts. Notwithstanding any right to terminate this Agreement or any other remedy provided herein, WashCard may suspend Licensee's or any user's access to any or all Software and/or Services without notice for use of the same in a way that violates applicable local, state, federal, or foreign laws or regulations, or the terms of this Agreement or any End User Licensing Agreement, including, but not limited to, instances of posting or uploading material that infringes or is alleged to infringe on the copyright or trademark rights of any person or entity, including, but not limited to any of WashCard's Intellectual Property or Trademarks. In such event, WashCard may, without notice, review and delete any Licensee data or materials that we determine in good faith violate these terms or any other terms of use or service that may apply from time to time.

10.2 Suspension for Non-Payment. WashCard may also suspend Licensee's or any user's access to the Software

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and/or Services in the event of non-payment of any amount due. WashCard will generally provide Licensee with notice of non-payment of any amount due, and unless the full amount has been paid within the time required thereafter, WashCard may suspend access to any or all of the Software or Services unless or until it has been paid in full. WashCard may charge a reactivation fee to reinstate any Software or Service that has been suspended for non-payment. The foregoing, however, shall not otherwise limit or reduce any right or remedy available to WashCard to recover any unpaid balance. Further, WashCard may, in its reasonable discretion, suspend service for non-payment without notice where Licensee has failed to pay all amounts due on more than one occasion.

10.3 Suspension for Present Harm. WashCard may suspend all or any access to the Software and/or Services, if it determines Licensee's or any user's use or access of the Software and/or Services is: (i) subjected to denial of service attacks or other disruptive activity; (ii) used to engage in denial of service attacks or other disruptive activity; (iii) creating a security vulnerability for others; (iv) consuming excessive bandwidth; (v) causing harm to WashCard or others; or (vi) otherwise violates any term of condition of this Agreement, by providing electronic or telephonic notice. Any such suspension will be effective immediately, and WashCard reserves the right to suspend such access in advance of providing any notice of the same based upon its reasonable discretion. WashCard will try to limit the suspension to the affected portion of the Software and/or Services so affected, and will work to promptly resolve the issues causing the suspension of the same, except to the extent caused by the negligent, willful, malicious, or intentional acts of Licensee or any user.

10.4 No Waiver of Rights. Notwithstanding the foregoing, nothing in this Article 10 shall limit WashCard's right to terminate this Agreement for cause as provided herein, if WashCard determines that Licensee or any user is acting, or has acted, in a way that WashCard reasonably determines has or will harm it or others.

11. TERMINATION

11.1 Termination, Generally. Unless otherwise provided in an Order, the Parties may only terminate this Agreement as provided in this Article 11.

11.2 Termination of Recurring Services for Convenience. Each recurring subscription term will automatically renew for a successive one-month term unless terminated by providing written notice of non-renewal and termination to the other Party not less than ten (10) days before the end of the then-current Subscription Term (usually the last day of the month, unless otherwise provided in an Order).

11.3 Termination for Cause. Either Party may terminate this Agreement for cause, as to any or all Services immediately: (i) upon written notice to the other Party of a material breach, if such breach is capable of cure and remains uncured at the expiration of thirty (30) days; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, cessation of business, liquidation or assignment for the benefit of creditors. WashCard may also terminate this Agreement by providing written notice to Licensee upon the earlier of the end of the then-current Subscription Term or thirty (30) days, if it determines, in its sole discretion, that Licensee (including any person affiliated with Licensee) is acting or has acted in a manner that may reflect negatively upon WashCard, its business, prospects, or any other licensee with whom it works. This Agreement may not otherwise be terminated prior to the end of the Subscription Term.

12. INDEMNIFICATION, LIMITATION OF LIABILITY, WARRANTY, AND DISCLAIMER

12.1 Disclaimer. In no event shall WashCard, its directors, officers, employees, or any affiliated party be liable to the Licensee or any user utilizing the Software or Services on behalf of the Licensee for damages resulting from Material Malfunctions that arise out of: (i) the Licensee's breach or non-fulfillment of any obligation under this Agreement, including, but not limited to, any alteration or misuse of WashCard's software, hardware or housing unit; (ii) a Material Malfunction caused in whole or in part by persons other than WashCard, by products, computer programs or stored

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procedures not furnished by WashCard; (iii) for programming, error connection or custom work required as a result of conversions or updates involving your core software; (iv) or by improper hardware installation or server configuration, housing unit specifications or defects, or due to issues related to Licensee's core processing systems or server. Licensee shall indemnify, defend and hold harmless, WashCard from and against any and all losses resulting from the foregoing and any Material Malfunction described herein. While WashCard assumes no obligation to monitor the Licensee's behavior with respect to compliance with this Agreement, Licensee agrees and understands that WashCard may monitor Licensee's usage and behavior relating to the Software, Services, and this Agreement in WashCard's sole discretion. The Licensee agrees and understands that WashCard reserves the right to immediately, without notice, refuse, suspend or terminate the Licensee's current and future services if WashCard reasonably believes that the Licensee is in violation of any of any of the requirements contained herein.

12.2 Limitation of Liability. EXCEPT AS EXPRESSLY PROVIDED HEREIN, WASHCARD MAKES NO OTHER WARRANTIES OR REPRESENTATIONS AS TO THE SERVICES RENDERED OR PRODUCTS AND SOFTWARE OFFERED, AND HEREBY DISCLAIMS ALL EXPRESS AND OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. WASHCARD FURTHER DISCLAIMS ANY WARRANTY THAT THE SERVICES WILL SUCCEED IN RESOLVING ANY PROBLEM, OR THAT ANY WORK PRODUCT OF THE SERVICES WILL BE FREE FROM ERRORS. IN NO EVENT SHALL WASHCARD BE LIABLE TO LICENSEE FOR ANY AMOUNT IN EXCESS OF THE FEES ACTUALLY PAID BY LICENSEE TO WASHCARD FOR SERVICES PROVIDED. IN NO EVENT SHALL WASHCARD BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR INTERRUPTION OF BUSINESS, WHETHER SUCH DAMAGES ARE ALLEGED IN TORT, CONTRACT, INDEMNITY, OR OTHERWISE, EVEN IF WASHCARD HAS BEEN APPRISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.3 Indemnification. Client shall defend and indemnify WashCard, including any of its parent, subsidiaries, or affiliates, as well as each of their owners, shareholders, members, officers, directors, governors, managers, employees, agents, representatives, and affiliates against any third party claim, suit or proceeding arising out of or related to Licensee's alleged or actual use of, misuse of, or failure to use the Software and/or Services, including, but not limited to, any breach or non-fulfillment of Licensee's obligations under this Agreement.

13. MISCELLANEOUS

13.1 Authority. Licensee acknowledges and agrees that it is required to enter into this Agreement in order to place an Order or otherwise receive the benefit of any WashCard product or service, including, but not limited to, the Software and Services hereunder. This Agreement shall remain in full force and effect unless or until otherwise terminated as provided herein. By executing this Agreement, Licensee represents and warrants that it has the requisite power and authority to enter into this Agreement and agrees to perform and otherwise be bound by all of its obligations hereunder.

13.2 Force Majeure. In no event will WashCard be held liable to Licensee for any breach, default, or delay in performance of any obligation occasioned by occurrences or contingencies beyond WashCard's reasonable control, including, but not limited to, acts of God, fire, flood, weather, strike or lockout, labor disputes, civil commotion, war, embargo, public health crisis, pandemic, epidemic, government demand, civil unrest, act of terrorism, invasion, or such other event beyond WashCard's reasonable control (each, a "Force Majeure Event"). In such event, however, WashCard will undertake commercially reasonable efforts to resume performance as soon as practical upon the termination of such Force Majeure Event.

13.3 Entire Agreement. This Agreement and the documents, exhibits, and schedules addressed herein and incorporated herein by reference contains the entire understanding between WashCard and Licensee with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understands, inducements, or conditions, express or implied, oral or written, except as herein contained. The express terms hereof control and

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supersedes any course of performance or usage of trade inconsistent with any of the terms hereof. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Parties agree that neither has relied upon any such prior or contemporaneous communications.

13.4 Governing Law. This Agreement shall be construed in accordance with, and all actions arising under or in connection therewith shall be governed by, the internal laws of the State of Minnesota, without regard to principles relating to conflicts of law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota and federal laws of the United States of America. The parties hereby consent and submit to the jurisdiction and forum of the state and federal courts in the State of Minnesota in all questions and controversies arising out of this Agreement.

13.5 Assignment. This Agreement will be binding and inure to the benefit of the Parties' respective successors and assigns. Licensee may assign this Agreement or any right or duty hereunder, without WashCard's prior written consent. Nothing herein shall prohibit or otherwise restrict WashCard from assigning all or a portion of this Agreement, in its sole discretion.

13.6 Relationship of the Parties. The Parties mutually confirm that they enter this Agreement as principals, and that no agency relationship is intended, and neither Party shall have the authority to act on behalf of or bind the other Party in any way. The Parties to this Agreement are independent contractors, and this Agreement does not create a partnership, joint venture, fiduciary, or any other relationship between the parties.

13.7 Collection Costs and Attorney's Fees. In the event this Agreement or any related documents are placed in the hands of an attorney or agency for collection or enforcement (including but not limited to arbitration, mediation, and/or appeal) Licensee shall pay WashCard's attorneys' fees, costs, and expenses actually incurred in connection therewith, together with prejudgment interest owed, to the fullest extent permitted by applicable law, whether or not suit is filed.

13.8 No Waiver. WashCard shall not be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No breach of this Agreement will constitute a waiver of any other breach of this Agreement by WashCard.

13.9 Amendment. This Agreement may not be modified except by written agreement signed by the Parties' authorized representatives.

13.10 Compliance with Laws. Both Parties shall perform under this Agreement in compliance with all applicable laws. Without limiting the foregoing, the Parties shall maintain the security and privacy of all patient information exchanged in the performance of the Services in compliance with applicable laws and regulations.

13.11 Severability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected thereby.

13.12 Execution in Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.

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ACCEPTED AND AGREED by the undersigned Licensee as of the date below.

LICENSEE

By: _____

Its: _____

Dated: _____

Software Maintenance and Technical Support Agreement