



**CONTRACT BETWEEN THE METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY AND  
THE NASHVILLE DOWNTOWN PARTNERSHIP**

This contract is initiated by and between **THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY** ("METRO"), acting through the **METROPOLITAN TRAFFIC AND PARKING COMMISSION** ("COMMISSION,"), and the **NASHVILLE DOWNTOWN PARTNERSHIP** ("PARTNERSHIP"), located at 150 4<sup>th</sup> Avenue North, Suite G-150, Nashville, TN 37219:

- ***Any properly executed contract amendment (most recent with first priority),***
- ***This document and attached affidavit(s),***
- ***The solicitation documentation,***

In the event of conflicting provisions, all documents shall be construed in the order listed above.

**1. Definition of Terms**

"Gross Profit" is defined as Net Revenues less all actual and direct operating expenses associated with the Parking Facilities as specified in the budget approved by METRO.

"Net Revenues" is defined as all revenues less sales tax for an individual Parking Facility and the sum of all revenues less sales tax for all the Parking Facilities.

"Parking Facilities" is defined as the parking facilities as shall be designated from time to time by METRO in writing and shall initially consist of (a) the Church Street Garage located behind the Nashville Public Library at 615 Church Street and (b) the Public Square Garage located at METRO Courthouse and also includes any equipment owned by METRO related to the operation of the designated facilities.

"Partnership Management Fee" is defined as the fixed fee paid the PARTNERSHIP for operating the Parking Facilities and shall be \$5,250.00 per month for the Church Street Garage and \$3,750.00 per month for the Public Square Garage.

"Payment to Metro" is defined as sixteen percent (16%) of all revenues of the Church Street Garage.

"Shuttle Program Expenses" is defined as the operational and marketing expenses, as specified in the budget approved by METRO, of the parking program operated by the PARTNERSHIP consisting of parking and shuttle transportation for the parking lots surrounding LP Field, including lots used primarily for parking by employees METRO.

"Surplus Revenue" is defined as Gross Profit of the Church Street Garage less the Payment to METRO, the Partnership Management Fee for the Church Street Garage and the Shuttle Program Expenses

**The parties hereby agree to the following terms and conditions:**

**1. Duties and Responsibilities of PARTNERSHIP.** PARTNERSHIP agrees to provide and METRO agrees to purchase the following goods and services:

- 1.1. The management of the Parking Facilities in order to support the economic vitality of downtown Nashville by offering affordable, user-friendly parking options. Notwithstanding anything herein to the contrary, this agreement is not intended and shall not be construed to provide any compensation to the PARTNERSHIP from the revenues of the Public Square Garage other than the Partnership Management Fee.
- 1.2. The PARTNERSHIP shall manage the Parking Facilities under the jurisdiction of METRO Department of Public Works, Parking Division as of the Effective Date of this contract. The PARTNERSHIP's management of the Parking Facilities shall be subject to any other contracts in effect related to the Parking Facilities and subject to the COMMISSION's decisions regarding the Parking Facilities. Authority is further explicitly delegated by Metro to the PARTNERSHIP for the PARTNERSHIP to enter into an Agreement with UBS AG, New York Branch, in substantially the form attached hereto as Exhibit A-1, for its use of parking spaces in the Courthouse garage as detailed therein.
- 1.3. A yearly budget and operations forecast, including requests for capital expenses, will be prepared for review and approval as requested and defined by METRO. The yearly budget will include any requests for appropriations for capital improvements, marketing, access, shuttle support, Partnership Management Fee and parking ticket equipment upgrade and replacement. METRO will communicate the required dates for submitting this budget in accordance with annual Metropolitan Government operating budget process.
- 1.4. All funds (whether cash, check, or otherwise) received by the PARTNERSHIP from the operation of the Parking Facilities and receipts from the sale of validation stamps, as applicable, shall be deposited daily into segregated bank accounts established in accordance with instructions from METRO. Such funds shall at all times be the property of METRO.
- 1.5. A monthly summary of operations will be prepared showing results of operations at each Parking Facility. METRO reserves the right to modify the operations information reporting requirements if it deems necessary.
- 1.6. By the 20<sup>th</sup> day of each month, the PARTNERSHIP shall remit: (1) monthly and year-to-date financial reports showing the previous month's activities at each Parking Facility and (2) all funds (cash, check, or otherwise) received by the PARTNERSHIP from the operation of each parking Facility and the sale of validation stamps for each facility, less the monthly amount of expenses specifically associated with each facility as

established and approved in the budget as referenced in Section 1.3. The monthly reports should include a copy of all invoices paid out of the segregated parking bank accounts, copies of all daily revenue reports, copies of all deposit slips into the accounts, and a copy of the monthly bank statements from the accounts. METRO reserves the right to modify the financial information reporting requirements if it deems necessary.

- 1.7. The secure area of level P1 of the Public Square Garage is currently used and will continue to be used throughout the term of this agreement by METRO on an unpaid basis. The COMMISSION may authorize other limited unpaid uses of the Public Square Garage by METRO so long as such unpaid use does not result in a reduction of operating revenues available for debt service on the bonds sold to finance construction of the Public Square Garage. Any regular or routine use of the Public Square Garage by METRO shall be through the use of a parking validation arrangement under which the cost of the parking is billed to the agency or department of METRO requesting such parking.
- 1.8. The PARTNERSHIP shall have prepared an annual report detailing the operations of each of the Parking Facilities, including a complete financial audit prepared by a certified public accountant with experience in governmental or not-for-profit auditing, as well as, an accounting of actual expenditures of the contributed funds. Any such audit shall be performed in accordance with generally accepted auditing standards, at the PARTNERSHIP's expense, and will be delivered to the COMMISSION within 60 days of the end of the reporting year. Such audit may be combined with an audit of all other programs of the PARTNERSHIP. If any additional funds are due as a result of the audit, a final payment for any sums due for the prior year will be made to the COMMISSION with the annual report. The PARTNERSHIP's failure to provide this annual report, including audit, may result in termination of this contract.
- 1.9. The PARTNERSHIP will provide a reconciliation of the monthly reports provided by the PARTNERSHIP to the annual audited financial statement provided by the PARTNERSHIP's accounting firm.
- 1.10. The PARTNERSHIP shall guarantee that the minimum amount of the Payment to Metro generated by the Church Street Garage will not decline from the 2006 Payment to Metro of \$301,200. Notwithstanding anything in this subsection I to the contrary, the guaranteed Payment to Metro shall be reduced should one of the following events occur:
  - 1.10.1. METRO exercises the right to withdraw the Church Street Garage from the terms of this contract; whereupon, the guaranteed minimum Payment to Metro shall be pro-rated for such period the Church Street Garage was covered by this agreement;
  - 1.10.2. The reduction in usable parking spaces at the Church Street Garage; whereupon, the guaranteed minimum Payment to Metro shall be reduced proportionally; and

- 1.10.3. Any force majeure which renders the Church Street Garage unable to generate revenue either in whole or in part; whereupon, the guaranteed minimum Payment to Metro shall be reduced proportionally.
- 1.11. Surplus Revenue. All Surplus Revenue shall be maintained by METRO in a separate fund, and shall be allocated equally between METRO and PARTNERSHIP. The portion allocated to METRO shall be used in the sole discretion of METRO for any purposes. The portion allocated to the PARTNERSHIP shall be used for projects or activities on behalf of the PARTNERSHIP to improve the downtown area. METRO's Director of Finance shall establish a procedure for funding the downtown projects or activities on behalf of the PARTNERSHIP. All Surplus Revenue allocated for downtown projects shall be available until such time as that allocation is depleted, so long as that allocation is depleted within a reasonable time period. The PARTNERSHIP shall present a plan of priorities and/or anticipated projects and activities to METRO annually. These projects or activities shall be agreed upon by the PARTNERSHIP and METRO. All property purchased with funds generated with Surplus Revenue during the performance of this contract shall be titled in the name of the PARTNERSHIP shall be insured and maintained by the PARTNERSHIP in good condition and repair, and the PARTNERSHIP shall be responsible for any liability arising from use of this property. Upon termination or conclusion of this contract, METRO shall have the option to demand that title to this property be transferred to METRO. A list of all property purchased with surplus revenue, along with location of this property, shall be provided to the Department of Public Works on July 1 of each year.
- 1.12. All press releases or publicity distributed by the PARTNERSHIP regarding the Parking Facilities shall be pre-approved by METRO. PARTNERSHIP may respond to media inquiries without prior approval of METRO but shall give notice to METRO immediately after such inquiries.
- 1.13. The PARTNERSHIP shall prepare a yearly marketing program for review and approval of METRO prior to each year of operation
- 1.14. The PARTNERSHIP agrees to manage and operate the Parking Facilities in accordance with the terms of this contract and to comply with all laws, and to obey all rules or regulations of the COMMISSION, METRO, the State of Tennessee, and the United States as these laws, rules and regulations may now exist and as they may be adopted. The PARTNERSHIP shall at all times cooperate in the COMMISSION's policy of serving the public in the best possible manner.
- 1.15. The PARTNERSHIP shall select honest, competent and courteous personnel to be employed at the Parking Facilities. The PARTNERSHIP shall be responsible for requiring licensing of those employees who are normally licensed in this type of business. The PARTNERSHIP shall provide sufficient numbers of employees as needed to effectively operate the Parking Facilities during peak periods, including evening and weekend events.

- 1.16. The PARTNERSHIP shall institute and maintain high quality service to the public. All employees on duty at the Parking Facilities shall wear suitable uniforms and nametags and all uniforms shall be properly cared for.
- 1.17. The PARTNERSHIP shall recruit and train personnel adequately, shall incorporate best practices and shall do all in its means to make the Parking Facilities operate effectively.
- 1.18. The PARTNERSHIP shall formulate a plan of operation, including traffic control, inter-floor communications and a coordination of operations, reception, parking, delivery of vehicles, collection of parking fee, and revenue control all in an efficient manner.
- 1.19. The PARTNERSHIP shall hire a Parking Facility operator subject to COMMISSION approval

## **2. *Operating Rights and Procedures***

- 2.1. Notwithstanding any provisions of this contract, it is mutually understood between the parties hereto, that this contract shall not in any way be a lease, but is merely a recitation of contract provisions.
- 2.2. The captions of the articles are for convenience only and shall not affect or be deemed to affect the meaning of any of the terms or provisions hereof.
- 2.3. The COMMISSION shall have the right to enter and inspect the Parking Facilities at all reasonable times.
- 2.4. No advertising matter of any nature and no billboards or posters shall be on or within the Parking Facilities, except those areas so designated and approved by the COMMISSION.
- 2.5. No alterations, additions or expansions to the Parking Facilities, shall be made except those areas so designated and approved by the COMMISSION.
- 2.6. The PARTNERSHIP may provide dispensing machines for the convenience of the customers and employees of the Parking Facilities, such as pay telephones, machines vending candy and/or gum but no alcoholic beverages. No other sales of merchandise or equipment shall be made or solicited, and no services shall be provided by the PARTNERSHIP other than the parking of vehicles without written consent of the COMMISSION. The PARTNERSHIP shall not enter into any lease or make any rental concession or any license agreement of any nature concerning the Parking Facility except with respect to the parking of automobiles in defined spaces.
- 2.7. The PARTNERSHIP shall promptly notify the COMMISSION of any unusual conditions that may develop in the course of the operation of the Parking Facilities, such as fire, breakage, theft, cash shortages, casualty, injuries or damage of any kind.

- 2.8. The COMMISSION shall (through Public Works) provide routine monitoring and oversight of the contract. The Department of Public Works shall review the procedures for selling validation stamps.
- 2.9. The security provided by the PARTNERSHIP (including its employees and subcontractors) in and regarding Parking Facilities will satisfy the policies, guidelines, rules, and procedures established and provided to the PARTNERSHIP by the Department of General Services.
3. **Rates and Hours of Operation.** For all Parking Facilities, the rates to be charged and the hours of operation shall be set by the COMMISSION. The PARTNERSHIP agrees that the set rates shall be charged to all persons, entities, and organizations for the use of the Parking Facilities, except as otherwise authorized by the COMMISSION. The PARTNERSHIP will review parking rates in the Downtown Area; prepare a report summarizing the same; and, present recommendations to the Traffic and Parking Commission.
4. **Standards of Service and Personnel.** These standards of service and personnel shall apply whether the PARTNERSHIP uses its own employees or subcontracts the operations to a parking operator.
5. **Term.**
- 5.1. The term of this contract will begin on the date this contract is signed by all required parties and filed in the office of the Metropolitan Clerk. METRO contemplates that the contract term will begin on or about **June 6, 2017** (beginning date). The initial contract term will end sixty (60) months from the beginning date.
6. **Compensation.** PARTNERSHIP agrees to the following:
- 6.1. All expenses for the ordinary and usual operation and maintenance of the Parking Facilities, except for Extraordinary Maintenance Expenses of floors, exterior walls, roofs, structural repairs and Capital Expenditures, shall be paid by the PARTNERSHIP from the Parking Facility revenues. Upon request, the Department of Public Works shall be provided copies of any maintenance agreements for equipment within the Parking Facilities.
- 6.2. Expenses payable from Parking Facility revenues may include salary and fringe benefits of PARTNERSHIP employees, if and to the extent such employees operate or manage the Parking Facilities. Allowable fringe benefits may include FICA, FUTA, State unemployment, Workers' compensation, life, accident, medical or disability insurance, retirement benefits, vacation, holidays and sick leave.
- 6.3. The COMMISSION reserves the right to approve all salaries and raises including that of the manager.

- 6.4. Personnel, including but not limited to managers, may not be assigned to work on any non-Metropolitan Government owned facilities without the approval of the Director of Public Works or the Director's designee.
- 6.5. METRO will retain responsibility and discretion for implementing structural repairs or Capital Expenditures recommended by its consultants or the PARTNERSHIP.
- 6.6. Extraordinary Maintenance Expenses shall be defined as amounts that exceed \$25,000 and add to the overall life expectancy of a Parking Facility. Extraordinary Maintenance Expenses shall require:
  - 6.6.1. Pre-approval by the COMMISSION, the Metropolitan Department of Finance, and the Department of Public Works; and,
  - 6.6.2. Acceptance by the COMMISSION, the Metropolitan Department of Finance, and Public Works prior to approval of the expenditure; and,
  - 6.6.3. Documentation provided of the procurement process to the COMMISSION, the Metropolitan Department of Finance, and/or Public Works.
- 6.7. The following expenses are deemed ordinary operating expenses and shall be paid by the PARTNERSHIP from Parking Facility Revenues in accordance with the annual budget approved by the COMMISSION each year: marketing, access, shuttle support and PARTNERSHIP management expenses.
- 6.8. Capital Expenditures shall be defined as furniture, fixtures or equipment that exceed \$500 and have a life expectancy of two or more years.

There will be no other charges or fees for the performance of this contract. METRO will make reasonable efforts to make payments within 30 days of receipt of invoice but in any event shall make payment within 60 days. METRO will make reasonable efforts to make payments to Small Businesses within 15 days of receipt of invoice but in any event shall make payment within 60 days.

- 7. **Electronic Payment.** All payments shall be effectuated by ACH (Automated Clearing House).
- 8. **Taxes.** METRO shall not be responsible for any taxes that are imposed on PARTNERSHIP. Furthermore, PARTNERSHIP understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to METRO.
- 9. **License.** PARTNERSHIP warrants and represents that it is the owner of or otherwise has the right to and does hereby grant METRO a license to use any software provided for the purposes for which the software was obtained or proprietary material set forth in METRO's solicitation and/or the PARTNERSHIPs response to the solicitation.
- 10. **Copyright, Trademark, Service Mark, or Patent Infringement.**

- 10.1. PARTNERSHIP shall, at its own expense, be entitled to and shall have the duty to defend any suit which may be brought against METRO to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. PARTNERSHIP shall further indemnify and hold harmless METRO against any award of damages and costs made against METRO by a final judgment of a court of last resort in any such suit. METRO shall provide PARTNERSHIP immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable PARTNERSHIP to do so. No costs or expenses shall be incurred for the account of PARTNERSHIP without its written consent. METRO reserves the right to participate in the defense of any such action. PARTNERSHIP shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon METRO unless approved by the METRO Department of Law Settlement Committee and, where required, the METRO Council.
- 10.2. If the products or services furnished under this contract are likely to, or do become, the subject of such a claim of infringement, then without diminishing PARTNERSHIP's obligation to satisfy the final award, PARTNERSHIP may at its option and expense:
  - 10.2.1. Procure for METRO the right to continue using the products or services.
  - 10.2.2. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to METRO, so that they become non-infringing.
  - 10.2.3. Remove the products or discontinue the services and cancel any future charges pertaining thereto.
  - 10.2.4. Provided, however, that PARTNERSHIP will not exercise option 10.2.3 until PARTNERSHIP and METRO have determined that options 10.2.1 and 10.2.2 are impractical.
- 10.3. PARTNERSHIP shall have no liability to METRO, however, if any such infringement or claim thereof is based upon or arises out of:
  - 10.3.1. The use of the products or services in combination with apparatus or devices not supplied or else approved by PARTNERSHIP.
  - 10.3.2. The use of the products or services in a manner for which the products or services were neither designated nor contemplated.
  - 10.3.3. The claimed infringement in which METRO has any direct or indirect interest by license or otherwise, separate from that granted herein.

## **11. Termination**

- 11.1. *Breach.* Should PARTNERSHIP fail to fulfill in a timely and proper manner its obligations under this contract or if it should violate any of the terms of this contract, METRO shall have the right to immediately terminate the contract. Such termination shall not relieve PARTNERSHIP of any liability to METRO for damages sustained by virtue of any breach by PARTNERSHIP.
  - 11.2. *Lack of Funding.* Should funding for this contract be discontinued, METRO shall have the right to terminate the contract immediately upon written notice to PARTNERSHIP.
  - 11.3. *Notice.* The COMMISSION or the PARTNERSHIP may terminate this contract at any time upon thirty (30) days prior written notice to the other. Should the PARTNERSHIP provide the thirty (30) days notice, this action shall end the payment as outlined in Section 1.10 above. The PARTNERSHIP shall still be obligated, at METRO's option, to continue to operate the Parking Facilities for up to the next 180 days.
12. **Maintenance of Records.** PARTNERSHIP shall maintain documentation for all charges against METRO. The books, records, and documents of PARTNERSHIP, insofar as they relate to work performed or money received under the contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by METRO or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles. In the event of litigation, working papers and other documents shall be produced in accordance with applicable laws and/or rules of discovery. Breach of the provisions of this paragraph is a material breach of this Contract.

All documents and supporting materials related in any manner whatsoever to the contract or any designated portion thereof, which are in the possession of PARTNERSHIP or any subcontractor or sub-consultant shall be made available to METRO for inspection and copying upon written request from METRO. Said documents shall also be made available for inspection and/or copying by any state, federal or other regulatory authority, upon request from METRO. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos or other writings or things which document the procurement and/or performance of this contract. Said records expressly include those documents reflecting the cost, including all subcontractors' records and payroll records of PARTNERSHIP and subcontractors.

13. **Monitoring.** The PARTNERSHIP's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by METRO, the Department of Finance, the Division of Internal Audit, or their duly appointed representatives.
14. **Additional Audits.** In addition to the annual audit required of the PARTNERSHIP, during the term of this contract and during the period during which the records referred to in the previous paragraph shall be maintained, the PARTNERSHIP's records and accounts regarding the Parking Facilities may be audited at any time by the COMMISSION's designated representatives, or the Director of Finance of METRO, his designated representative or a private auditing firm at the request of METRO. The cost of any such audit shall be paid by

METRO unless the audit demonstrates that the annual reports of the PARTNERSHIP are misstated by ten percent (10%) or more; whereupon, the PARTNERSHIP shall pay for such audit.

**15. Condition of Parking Facilities.** The PARTNERSHIP expressly acknowledges that it has inspected the Parking Facilities and enters into this contract with the knowledge of their present condition.

**16. METRO Property.** Any METRO property, including but not limited to books, records and equipment that is in PARTNERSHIP's possession shall be maintained by PARTNERSHIP in good condition and repair, and shall be returned to METRO by PARTNERSHIP upon termination of the contract. All goods, documents, records, and other work product and property produced during the performance of this contract are deemed to be METRO property. All documents which make up this Contract;

16.1. All other documents furnished by METRO;

16.2. All conceptual drawings, design documents, closeout documents, and other submittals by PARTNERSHIP; and,

16.3. All other original works of authorship, whether created by METRO or PARTNERSHIP embodied in any tangible medium of expression, including, without limitation, pictorial, graphic, sculptural works, two (2) dimensional works, and three (3) dimensional works.

16.4. All property purchased with funds generated with Surplus Revenue during the performance of this contract shall be titled in the name of the PARTNERSHIP shall be insured and maintained by the PARTNERSHIP in good condition and repair, and the PARTNERSHIP shall be responsible for any liability arising from use of this property. Upon termination or conclusion of this contract, METRO shall have the option to demand that title to this property be transferred to METRO. A list of all property purchased with surplus revenue, along with location of this property, shall be provided to the Department of Public Works on July 1 of each year.

The PARTNERSHIP may keep one (1) copy of the aforementioned documents upon completion of the contract; provided, however, that in no event shall the PARTNERSHIP use, or permit to be used, any portion of the documents on other projects without METRO's prior written authorization

**17. Modification of Contract.** This contract may be modified only by written amendment executed by all parties and their signatories hereto. All change orders, where required, shall be executed in conformance with section 4.24.020 of the Metropolitan Code of Laws.

**18. Partnership/Joint Venture.** This Contract shall not in any way be construed or intended to create a partnership or joint venture between the Parties or to create the relationship of principal and agent between or among any of the Parties. None of the Parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become

liable for any representation, act or omission of any other party contrary to the terms of this Contract.

**19. Waiver.** No waiver of any provision of this contract shall affect the right of any party to enforce such provision or to exercise any right or remedy available to it.

**20. Employment.**

20.1. PARTNERSHIP shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.

20.2. PARTNERSHIP shall not knowingly employ, permit, dispatch, subcontract, or instruct any person who is an undocumented and/or unlawful worker to perform work in whole or part under the terms of this contract.

20.3. Violation of either of these contract provisions may result in suspension or debarment if not resolved in a timely manner, not to exceed ninety (90) days, to the satisfaction of METRO.

**21. Compliance with Laws.** PARTNERSHIP agrees to comply with all applicable federal, state and local laws and regulations.

**22. Taxes and Licensure.** PARTNERSHIP shall have all applicable licenses and be current on its payment of all applicable gross receipt taxes and personal property taxes.

**23. Ethical Standards.** PARTNERSHIP hereby represents that PARTNERSHIP has not been retained or retained any persons to solicit or secure a METRO contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under METRO contracts.

**24. Nondiscrimination.**

**24.1. Metro's Nondiscrimination Policy.** It is the policy of the METRO not to discriminate on the basis of age, race, sex, color, national origin, sexual orientation, gender identity, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities.

**24.2. Nondiscrimination Requirement.** No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in METRO's contracted programs or

activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with METRO or in the employment practices of METRO's CONTRACTORS. **PARTNERSHIP certifies and warrants that it will comply with this nondiscrimination requirement.** Accordingly, all Proposers entering into contracts with METRO shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

**25. Americans with Disabilities Act (ADA).**

PARTNERSHIP assures METRO that all services provided through this Contract shall be completed in full compliance with the Americans with Disabilities Act ("ADA") and Architectural and Transportation Barriers Compliance Board, Federal Register 36 CFR Parts 1190 and 1191, Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines; proposed rule, published in the Federal Register on July 23, 2004, as has been adopted by METRO. PARTNERSHIP will ensure that participants with disabilities will have communication access that is equally effective as that provided to people without disabilities. Information shall be made available in accessible formats, and auxiliary aids and services shall be provided upon the reasonable request of a qualified person with a disability.

**26. Insurance.** During the term of this Contract, for any and all awards, CONTRACTOR shall obtain and maintain in full force and effect for the duration of this Contract, including any extension, the types and amounts of insurance identified below. A certificate of insurance shall be required naming METRO as additional insured and shall provide that the Traffic and Parking Commission shall receive notice, in writing, thirty (30) days prior to the termination or cancellation of said policies.

**26.1. Garage Liability Policy**

26.1.1. Single limit liability - \$3,000,000 each occurrence

26.1.2. No deductible shall exceed \$1,000 and the amount must be stated

**26.2. Automobile Liability Insurance** in the amount one million (\$1,000,000.00) dollars (if vendor will be making on-site deliveries)

**26.3. Worker's Compensation Insurance** with statutory limits required by the State of Tennessee or other applicable laws and **Employer's Liability Insurance** with limits of no less than one hundred thousand (\$100,000.00) dollars, as required by the laws of Tennessee. (Not required for companies with fewer than five (5) employees.)

**26.4. Garage Keepers Legal Liability Insurance**

Garage Keepers legal Liability Insurance shall be carried for the benefit of the COMMISSION and METRO and the PARTNERSHIP and in an amount sufficient to protect the COMMISSION, METRO and the PARTNERSHIP against any claims, liabilities, losses or suits. Such insurance shall cover the following exposures

26.4.1. Fire and Explosion

26.4.2. Theft (of an entire car)

26.4.3. Riot and Civil Commotion and Malicious Mischief and Vandalism. The Operator shall prepare and submit within 24 hours a report on each damage and/or injury claim arising from the operation of the Parking Facilities

26.5. Such insurance shall:

26.5.1. Contain or be endorsed to contain a provision that includes METRO, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the PARTNERSHIP including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds.

26.5.2. For any claims related to this agreement, PARTNERSHIP's insurance coverage shall be primary insurance as respects METRO, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering METRO, its officials, officers, employees, and volunteers shall be excess of PARTNERSHIP's insurance and shall not contribute with it.

26.5.3. Automotive Liability Insurance including vehicles owned, hired, and non-owned. Said insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes METRO, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of PARTNERSHIP.

26.5.4. Worker's Compensation (If applicable), PARTNERSHIP shall maintain workers' compensation insurance with statutory limits as required by the State of Tennessee or other applicable laws and employers' liability insurance. PARTNERSHIP shall require each of its subcontractors to provide Workers' Compensation for all of the latter's employees to be engaged in such work unless such employees are covered by PARTNERSHIP's workers' compensation insurance coverage.

26.5.5. *Other Insurance Requirements.* PARTNERSHIP shall:

- 26.5.5.1. Prior to commencement of services, furnish METRO with original certificates and amendatory endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to:

**DEPARTMENT OF LAW  
INSURANCE AND RISK MANAGEMENT  
METROPOLITAN COURTHOUSE, SUITE 108  
PO BOX 196300  
NASHVILLE, TN 37219-6300**

- 26.5.5.2. Provide certified copies of endorsements and policies if requested by METRO in lieu of or in addition to certificates of insurance.
- 26.5.5.3. Replace certificates, policies, and/or endorsements for any such insurance expiring prior to completion of services.
- 26.5.5.4. Maintain such insurance from the time services commence until services are completed and attach the certificates of insurance in the METRO system. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by METRO as a material breach of lease.
- 26.5.5.5. Place such insurance with insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A-. Modification of this standard may be considered upon appeal to the METRO Director of Risk Management Services.
- 26.5.5.6. Require all subcontractors to maintain during the term of the agreement Commercial General Liability insurance, Business Automobile Liability insurance, and Worker's Compensation/ Employers Liability insurance (unless subcontractor's employees are covered by PARTNERSHIP's insurance) in the same manner as specified for PARTNERSHIP. PARTNERSHIP shall file subcontractor's certificates of insurance in METRO's system.
- 26.5.5.7. Any deductibles and/or self-insured retentions greater than \$10,000.00 must be disclosed to and approved by METRO prior to the commencement of services.**
- 26.5.5.8. If the PARTNERSHIP has or obtains primary and excess policy(ies), there shall be no gap between the limits of the

primary policy and the deductible features of the excess policies.

**27. Bond.** The PARTNERSHIP shall obtain and maintain a fidelity bond which shall be in favor of METRO continuous in form and in an amount equal to ten percent of the amount of funds reasonably estimated to be handled during the contract year. In no event will the fidelity bond be less than \$100,000. The bond shall inure to the benefit of any person damaged by any fraudulent act or conduct of The PARTNERSHIP or any of its employees and must be conditioned upon faithful accounting and application of all money coming into The PARTNERSHIP's possession in connection with this agreement.

**28. Indemnification and Hold Harmless.**

28.1. PARTNERSHIP shall indemnify and hold harmless METRO, its officers, agents and employees from any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligence of PARTNERSHIP, its officers, employees and/or agents, including its subcontractors, sub-consultants or independent contractors, in connection with the performance of this contract, and, any claims, damages, penalties, costs and attorney fees arising from any failure of PARTNERSHIP, its officers, employees and/or agents, including its subcontractors, sub-consultants or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

28.2. METRO will not indemnify, defend or hold harmless in any fashion the PARTNERSHIP from any claims arising from any failure, regardless of any language in any attachment or other document that the PARTNERSHIP may provide.

28.3. PARTNERSHIP shall pay METRO any expenses incurred because of PARTNERSHIP's failure to fulfill any obligation in a professional and timely manner under this Contract.

**29. Attorney Fees.** PARTNERSHIP agrees that in the event either party takes legal action to enforce any provision of the contract or to obtain a remedy for any breach of this contract, and in the event METRO prevails in such action, PARTNERSHIP shall pay all expenses of such action incurred at any and all stages of the litigation, including costs, and reasonable attorney fees for METRO.

**30. Assignment--Consent Required.** The provisions of this contract shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to PARTNERSHIP under this contract, neither this contract nor any of the rights and obligations of PARTNERSHIP hereunder shall be assigned or transferred in whole or in part without the prior written consent of METRO. Any such assignment or transfer shall not release PARTNERSHIP from its obligations hereunder.

NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO PARTNERSHIP UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF:

**METRO'S CHIEF ACCOUNTANT**

DIVISION OF ACCOUNTS  
DEPARTMENT OF FINANCE  
PO BOX 196300  
NASHVILLE, TN 37219-6300

Funds Assignment Requests should contain complete contact information (contact person, organization name, address, telephone number, and email) for Metro to use to request any follow up information needed to complete or investigate the requested funds assignment. To the extent permitted by law, Metro has the discretion to approve or deny a Funds Assignment Request

- 31. Entire Contract.** This contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.
- 32. Force Majeure.** No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
- 33. Governing Law.** The validity, construction and effect of this contract and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that the PARTNERSHIP may provide.
- 34. Venue.** Any action between the parties arising from this agreement shall be maintained in the courts of Davidson County, Tennessee.
- 35. Severability.** Should any provision of this contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this contract.

**36. Notices and Designation of Agent for Service of Process.**

All notices to METRO shall be mailed or hand delivered to:

**PURCHASING AGENT  
PROCUREMENT DIVISION  
DEPARTMENT OF FINANCE  
PO BOX 196300  
NASHVILLE, TN 37219-6300**

**DIRECTOR  
DEPARTMENT OF PUBLIC WORKS  
750 S. 5TH STREET  
NASHVILLE, TN 37206**

Notices to PARTNERSHIP shall be mailed or hand delivered to:

**PRESIDENT AND CHIEF EXECUTIVE OFFICER  
NASHVILLE DOWNTOWN PARTNERSHIP  
150 4TH AVENUE NORTH, SUITE G-150  
NASHVILLE, TN 37219**

**Telephone: 615-743-3090**

**Fax: 615-743-3099**

**E-mail: tturner@nashvilledowntown.com**

PARTNERSHIP designates the following as the PARTNERSHIP's agent for service of process and will waive any objection to service of process if process is served upon this agent:

***Designated Agent:* Thomas D Turner**

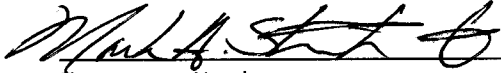
***Att'n:* Thomas D Turner**

***Addr:* 150 4<sup>th</sup> Avenue North, Suite G-150  
Nashville, TN 37219**

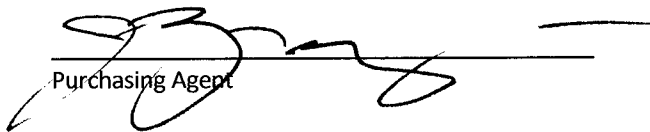
**37. Effective Date.** This contract shall not be binding upon the parties until it has been signed first by the PARTNERSHIP and then by the authorized representatives of the Metropolitan Government and has been filed in the office of the Metropolitan Clerk.

**THE METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY**

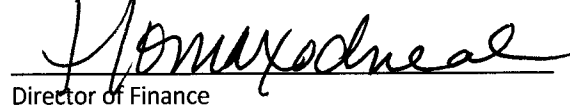
**APPROVED AS TO PROJECT SCOPE:**

  
Department Head

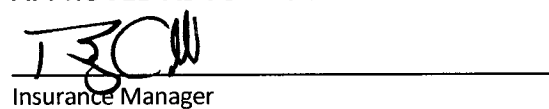
**APPROVED AS TO COMPLIANCE WITH  
PROCUREMENT CODE:**

  
Purchasing Agent

**APPROVED AS TO AVAILABILITY OF FUNDS:**

  
Director of Finance

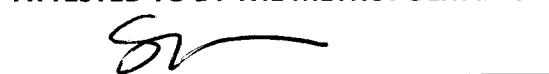
**APPROVED AS TO PROOF OF INSURANCE:**

  
Insurance Manager

**APPROVED AS TO FORM AND LEGALITY:**

  
Metropolitan Attorney

**ATTESTED TO BY THE METROPOLITAN CLERK:**



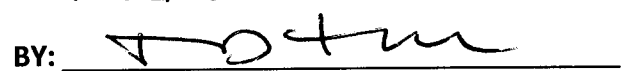
Date: 4/7/2017  
B-2017-709

**RECOMMENDED BY:**

Chair, Traffic and Parking Commission

**PARTNERSHIP**

Company: Nashville Downtown Partnership

BY: 

Print: Thomas D. Turner

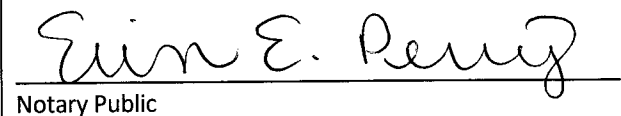
Title: President & CEO

Sworn to and subscribed to before me, a

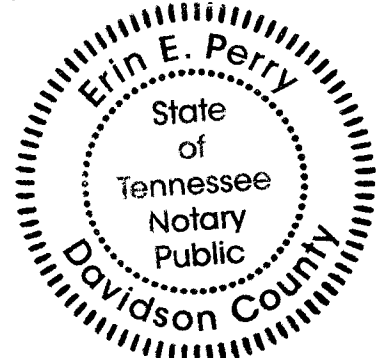
Notary Public, this 19<sup>th</sup> day  
of April, 2017,

by Thomas D. Turner,

the President & CEO  
of PARTNERSHIP and duly authorized to  
execute this instrument on PARTNERSHIP's  
behalf.

  
Notary Public

My Commission Expires Nov 5, 2019



## Affidavits

### State of Tennessee in the County of Davidson.

As used herein, "Offeror" will include bidders and proposers.

**Compliance with Laws:** After first being duly sworn according to law, the undersigned (Affiant) states that he/she is the President and Chief Executive Officer of the Nashville Downtown Partnership, and that Offeror is presently in compliance with, and will continue to maintain compliance with, all applicable laws.

**Taxes and Licensure:** Thus, Affiant states that Offeror has all applicable licenses, including business licenses, copies of which are attached hereto. Finally, Affiant states that Offeror is current on its payment of all applicable gross receipt taxes and personal property taxes. M.C.L. 4.20.065

**Nondiscrimination Requirement:** PARTNERSHIP, after being first duly sworn, affirms that by its employment policy, standards and practices it does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, religion, color, national origin, age or sex and that it is not in violation of and will not violate any applicable laws concerning the employment of individuals with handicaps and/or disabilities. PARTNERSHIP shall not discriminate on the basis of age, race, sex, color, religion, national origin or handicap and/or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services and activities. With regard to all aspects of this contract, PARTNERSHIP certifies and warrants it will comply with this nondiscrimination requirement. M.C.L. 4.28.020

**Employment Requirement:** Offeror, declares that neither the prime, subcontractors, sub-consultants, nor providers of day laborers employ any person who is not a legal resident of the United States. Any contractor who knowingly violates the provisions of this section is subject to debarment or suspension. M.C.L. 4.40.060

**Contingent Fees:** It is a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a METRO contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. After first being duly sworn according to law, the undersigned (Affiant) states that the Offeror has not retained anyone in violation of the foregoing. M.C.L. 4.48.080

#### And Further Affiant Sayeth Not:

By: [Signature]  
Title: President & CEO Nashville Downtown Partnership  
Address: 150 4th Ave N, Suite G-150  
Nashville TN 37219

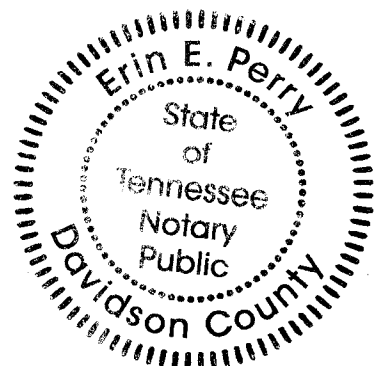
Sworn to and subscribed before me on this 19th day of April, 2017.

[Signature: Erin E. Perry]

Notary Public

My commission expires: Nov 5, 2019

**The provision of false information is a material breach.**



**Exhibit E**  
**Insurance Forms**

*This Exhibit shall house the proof of insurance in the amounts and form set required by the contract.*



# CERTIFICATE OF LIABILITY INSURANCE

NASHDO1

OP ID: AR

DATE (MM/DD/YYYY)

04/19/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

|                                                                                                                                                              |                                               |                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|------------------------------------|
| <b>PRODUCER</b><br>Martin & Zeffoss, Inc.<br>P.O.Box 121587<br>Nashville, TN 37212<br>Michael R. Martin                                                      | <b>CONTACT NAME:</b> Michael R. Martin        |                                    |
|                                                                                                                                                              | <b>PHONE (A/C, No, Ext):</b> 615-297-8500     | <b>FAX (A/C, No):</b> 615-269-7390 |
| <b>INSURED</b><br>Nashville Downtown Partnership<br>Nashville District Management<br>Corporation Inc.<br>150 4th Ave., N., Suite G150<br>Nashville, TN 37219 | <b>E-MAIL ADDRESS:</b>                        |                                    |
|                                                                                                                                                              | <b>INSURER(S) AFFORDING COVERAGE</b>          |                                    |
|                                                                                                                                                              | <b>INSURER A:</b> Cincinnati Insurance Co     |                                    |
|                                                                                                                                                              | <b>INSURER B:</b> Travelers Insurance Company |                                    |
|                                                                                                                                                              | <b>INSURER C:</b>                             |                                    |
|                                                                                                                                                              | <b>INSURER D:</b>                             |                                    |
| <b>INSURER E:</b>                                                                                                                                            |                                               |                                    |
| <b>INSURER F:</b>                                                                                                                                            |                                               |                                    |

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE                                                                                                                                                                                                                                                                                        | ADDL INSD | SUBR WVD | POLICY NUMBER  | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS                                                                                                                                                                                                                                         |
|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|----------|----------------|-------------------------|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A        | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br><br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC<br>OTHER: | X         | X        | ENP0292476     | 12/01/2016              | 12/01/2017              | EACH OCCURRENCE \$ 1,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000<br>MED EXP (Any one person) \$ 5,000<br>PERSONAL & ADV INJURY \$ 1,000,000<br>GENERAL AGGREGATE \$ 2,000,000<br>PRODUCTS - COMP/OP AGG \$ 2,000,000<br>\$ |
| A        | <b>AUTOMOBILE LIABILITY</b><br><input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS<br><input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS                                  |           |          | EBA0292476     | 12/01/2016              | 12/01/2017              | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$<br>\$                                                                                |
| A        | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR<br><input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE<br>DED RETENTION \$                                                                                                             |           |          | ENP0292476     | 12/01/2016              | 12/01/2017              | EACH OCCURRENCE \$ 4,000,000<br>AGGREGATE \$ 4,000,000<br>\$                                                                                                                                                                                   |
| B        | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below                                                                                                            | Y/N       | N/A      | IKUB8D41126816 | 12/01/2016              | 12/01/2017              | PER STATUTE OTH-ER<br>E.L. EACH ACCIDENT \$ 500,000<br>E.L. DISEASE - EA EMPLOYEE \$ 500,000<br>E.L. DISEASE - POLICY LIMIT \$ 500,000                                                                                                         |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Additional insured, waiver of subrogation and primary/noncontributory language provided by the GA210.

**CERTIFICATE HOLDER**

MGOV001

Metro Government of Nashville  
and Davidson County  
Metropolitan Courthouse  
One Public Square Ste 102  
Nashville, TN 37201

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Michael R. Martin*

© 1988-2014 ACORD CORPORATION. All rights reserved.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## COMMERCIAL GENERAL LIABILITY BROADENED ENDORSEMENT

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### A. Endorsement - Table of Contents:

| <u>Coverage:</u>                                                     | <u>Begins on Page:</u> |
|----------------------------------------------------------------------|------------------------|
| 1. Employee Benefit Liability Coverage.....                          | 2                      |
| 2. Unintentional Failure to Disclose Hazards .....                   | 7                      |
| 3. Damage to Premises Rented to You .....                            | 7                      |
| 4. Supplementary Payments .....                                      | 9                      |
| 5. Medical Payments.....                                             | 9                      |
| 6. 180 Day Coverage for Newly Formed or Acquired Organizations ..... | 9                      |
| 7. Waiver of Subrogation .....                                       | 9                      |
| 8. Automatic Additional Insured - Specified Relationships: .....     | 9                      |
| • Managers or Lessors of Premises;                                   |                        |
| • Lessor of Leased Equipment;                                        |                        |
| • Vendors; and                                                       |                        |
| • State or Political Subdivisions - Permits Relating to Premises     |                        |
| 9. Property Damage to Borrowed Equipment .....                       | 12                     |
| 10. Employees as Insureds - Specified Health Care Services: .....    | 12                     |
| • Nurses;                                                            |                        |
| • Emergency Medical Technicians; and                                 |                        |
| • Paramedics                                                         |                        |
| 11. Broadened Notice of Occurrence.....                              | 12                     |

#### B. Limits of Insurance:

The Commercial General Liability Limits of Insurance apply to the insurance provided by this endorsement, except as provided below:

##### 1. Employee Benefit Liability Coverage

Each Employee Limit: \$ 1,000,000  
Aggregate Limit: \$ 3,000,000  
Deductible: \$ 1,000

##### 3. Damage to Premises Rented to You

The lesser of:

- a. The Each Occurrence Limit shown in the Declarations; or
- b. \$500,000 unless otherwise stated \$ \_\_\_\_\_

##### 4. Supplementary Payments

- a. Bail bonds: \$ 1,000
- b. Loss of earnings: \$ 350

##### 5. Medical Payments

Medical Expense Limit: \$ 10,000

##### 9. Property Damage to Borrowed Equipment

Each Occurrence Limit: \$ 10,000  
Deductible: \$ 250

## C. Coverages

### 1. Employee Benefit Liability Coverage

- a. The following is added to **SECTION I - COVERAGES: Employee Benefit Liability Coverage.**

#### (1) Insuring Agreement

- (a) We will pay those sums that the insured becomes legally obligated to pay as damages caused by any act, error or omission of the insured, or of any other person for whose acts the insured is legally liable, to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend against any "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any claim or "suit" that may result. But:

- 1) The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE**; and
- 2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

- (b) This insurance applies to damages only if the act, error or omission, is negligently committed in the "administration" of your "employee benefit program"; and
- 1) Occurs during the policy period; or
  - 2) Occurred prior to the effective date of this endorsement provided:

- a) You did not have knowledge of a claim or "suit" on or before the effective date of this endorsement.

You will be deemed to have knowledge of a claim or "suit" when any "authorized representative";

- i) Reports all, or any part, of the act, error or omission to us or any other insurer;
- ii) Receives a written or verbal demand or claim for damages because of the act, error or omission; and

- b) There is no other applicable insurance.

#### (2) Exclusions

This insurance does not apply to:

- (a) **Bodily Injury, Property Damage or Personal and Advertising Injury**

"Bodily injury", "property damage" or "personal and advertising injury".

- (b) **Dishonest, Fraudulent, Criminal or Malicious Act**

Damages arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

- (c) **Failure to Perform a Contract**

Damages arising out of failure of performance of contract by any insurer.

- (d) **Insufficiency of Funds**

Damages arising out of an insufficiency of funds to

meet any obligations under any plan included in the "employee benefit program".

**(e) Inadequacy of Performance of Investment / Advice Given With Respect to Participation**

Any claim based upon:

- 1) Failure of any investment to perform;
- 2) Errors in providing information on past performance of investment vehicles; or
- 3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program".

**(f) Workers' Compensation and Similar Laws**

Any claim arising out of your failure to comply with the mandatory provisions of any workers' compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

**(g) ERISA**

Damages for which any insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

**(h) Available Benefits**

Any claim for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

**(i) Taxes, Fines or Penalties**

Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.

**(j) Employment-Related Practices**

Any liability arising out of any:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, acts or omissions; or
- (4) Consequential liability as a result of (1), (2) or (3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

**(3) Supplementary Payments**

**SECTION I - COVERAGES, SUPPLEMENTARY PAYMENTS - COVERAGES A AND B** also apply to this Coverage.

**b. Who is an Insured**

As respects Employee Benefit Liability Coverage, **SECTION II - WHO IS AN INSURED** is deleted in its entirety and replaced by the following:

- (1)** If you are designated in the Declarations as:

- (a)** An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- (b)** A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds but only with respect to the conduct of your business.
- (c)** A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds.

eds, but only with respect to their duties as your managers.

- (d) An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - (e) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
- (2) Each of the following is also an insured:
- (a) Each of your "employees" who is or was authorized to administer your "employee benefit program".
  - (b) Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed.
  - (c) Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
- (3) Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar insurance applies to that organization. However, coverage under this provision:
- (a) Is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
  - (b) Does not apply to any act, error or omission that was committed before you acquired or formed the organization.

### c. Limits of Insurance

As respects Employee Benefit Liability Coverage, **SECTION III - LIMITS OF INSURANCE** is deleted in its entirety and replaced by the following:

- (1) The Limits of Insurance shown in Section **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** and the rules below fix the most we will pay regardless of the number of:

- (a) Insureds;
- (b) Claims made or "suits" brought;
- (c) Persons or organizations making claims or bringing "suits";
- (d) Acts, errors or omissions; or
- (e) Benefits included in your "employee benefit program".

- (2) The Aggregate Limit shown in Section **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".

- (3) Subject to the limit described in (2) above, the Each Employee Limit shown in Section **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiaries, as a result of:

- (a) An act, error or omission; or
- (b) A series of related acts, errors or omissions, regardless of the amount of time that lapses between such acts, errors or omissions,

negligently committed in the "administration" of your "employee benefit program".

However, the amount paid under this endorsement shall not exceed, and will be subject to the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program".

#### (4) Deductible Amount

- (a) Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the deductible amount stated in the Declarations as applicable to Each Employee. The limits of insurance shall not be reduced by the amount of this deductible.
- (b) The deductible amount stated in the Declarations applies to all damages sustained by any one "employee", including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.
- (c) The terms of this insurance, including those with respect to:
  - 1) Our right and duty to defend the insured against any "suits" seeking those damages; and
  - 2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or claim,apply irrespective of the application of the deductible amount.
- (d) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.

#### d. Additional Conditions

As respects Employee Benefit Liability Coverage, SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:

- (1) Item 2. Duties in the Event of Occurrence, Offense, Claim or Suit is deleted in its entirety and replaced by the following:
  - 2. Duties in the Event of an Act, Error or Omission, or Claim or Suit

- a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a claim. To the extent possible, notice should include:

- (1) What the act, error or omission was and when it occurred; and
- (2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.

- b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of

an act, error or omission to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

- (2) Item 5. **Other Insurance** is deleted in its entirety and replaced by the following:

**5. Other Insurance**

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

**a. Primary Insurance**

This insurance is primary except when c. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in b. below.

**b. Method of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**c. No Coverage**

This insurance shall not cover any loss for which the insured is entitled to recovery under any other insurance in force previous to the effective date of this Coverage Part.

**e. Additional Definitions**

As respects **Employee Benefit Liability Coverage, SECTION V - DEFINITIONS** is amended as follows:

- (1) The following definitions are added:

**1. "Administration" means:**

- a. Providing information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";
- b. Interpreting the "employee benefit programs";
- c. Handling records in connection with the "employee benefit programs"; or
- d. Effecting, continuing or terminating any "employee's" participation in any benefit included in the "employee benefit program".

However, "administration" does not include:

- a. Handling payroll deductions; or
- b. The failure to effect or maintain any insurance or adequate limits of coverage of insurance, including but not limited to unemployment insurance, social security benefits, workers' compensation and disability benefits.

- 2. "Cafeteria plans" means** plans authorized by applicable law to allow "employees" to elect to pay for certain benefits with pre-tax dollars.

3. "Employee benefit programs" means a program providing some or all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:

- a. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
- b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;
- c. Unemployment insurance, social security benefits, workers' compensation and disability benefits; and
- d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies.

(2) The following definitions are deleted in their entirety and replaced by the following:

21. "Suit" means a civil proceeding in which money damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such dam-

ages are claimed and to which the insured must submit or does submit with our consent;

- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or

- c. An appeal of a civil proceeding.

8. "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

## 2. Unintentional Failure to Disclose Hazards

**SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 7. Representations** is hereby amended by the addition of the following:

Based on our dependence upon your representations as to existing hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not reject coverage under this Coverage Part based solely on such failure.

## 3. Damage to Premises Rented to You

- a. The last Subparagraph of **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions** is hereby deleted and replaced by the following:

Exclusions c. through q. do not apply to damage by fire, explosion, lightning, smoke or soot to premises while rented to you or temporarily occupied by you with permission of the owner.

- b. The insurance provided under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** applies to "property damage" arising out of water damage to premises that are both rented to and occupied by you.

- (1) As respects Water Damage Legal Liability, as provided in Paragraph 3.b. above:

The exclusions under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions**, other than **i. War** and the **Nuclear Energy Liability Exclusion**, are deleted and the following are added:

This insurance does not apply to:

**(a) "Property damage":**

- 1) Assumed in any contract; or
- 2) Loss caused by or resulting from any of the following:
  - a) Wear and tear;
  - b) Rust, corrosion, fungus, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
  - c) Smog;
  - d) Mechanical breakdown including rupture or bursting caused by centrifugal force;
  - e) Settling, cracking, shrinking or expansion; or
  - f) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

**(b) Loss caused directly or indirectly by any of the following:**

- 1) Earthquake, volcanic eruption, landslide or any other earth movement;
- 2) Water that backs up or overflows from a sewer, drain or sump;
- 3) Water under the ground surface pressing on, or flowing or seeping through:

- a) Foundations, walls, floors or paved surfaces;
- b) Basements, whether paved or not; or
- c) Doors, windows or other openings.

**(c) Loss caused by or resulting from water that leaks or flows from plumbing, heating, air conditioning, or fire protection systems caused by or resulting from freezing, unless:**

- 1) You did your best to maintain heat in the building or structure; or
- 2) You drained the equipment and shut off the water supply if the heat was not maintained.

**(d) Loss to or damage to:**

- 1) Plumbing, heating, air conditioning, fire protection systems, or other equipment or appliances; or
- 2) The interior of any building or structure, or to personal property in the building or structure caused by or resulting from rain, snow, sleet or ice, whether driven by wind or not.

**c. Limit of Insurance**

The Damage to Premises Rented to You Limit as shown in the Declarations is amended as follows:

**(2) Paragraph 6. of SECTION III - LIMITS OF INSURANCE is hereby deleted and replaced by the following:**

6. Subject to 5. above, the Damage to Premises Rented to You Limit is the most we will pay under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** for damages because of "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of any one "oc-

currence" to which this insurance applies.

- (3) The amount we will pay is limited as described in Section **B. Limits of Insurance, 3. Damage to Premises Rented to You** of this endorsement.

#### 4. Supplementary Payments

Under **SECTION I - COVERAGE, SUPPLEMENTARY PAYMENTS - COVERAGES A AND B:**

- a. Paragraph 2. is replaced by the following:

Up to the limit shown in Section **B. Limits of Insurance, 4.a.** Bail Bonds of this endorsement for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

- b. Paragraph 4. is replaced by the following:

All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to the limit shown in Section **B. Limits of Insurance, 4.b.** Loss of Earnings of this endorsement per day because of time off from work.

#### 5. Medical Payments

The Medical Expense Limit of Any One Person as stated in the Declarations is amended to the limit shown in Section **B. Limits of Insurance, 5. Medical Payment** of this endorsement.

#### 6. 180 Day Coverage for Newly Formed or Acquired Organizations

**SECTION II - WHO IS AN INSURED** is amended as follows:

Subparagraph a. of Paragraph 4. is hereby deleted and replaced by the following:

- a. Insurance under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

#### 7. Waiver of Subrogation

**SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 9. Transfer of Rights of Recovery Against Others to**

**Us** is hereby amended by the addition of the following:

We waive any right of recovery we may have because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a written contract requiring such waiver with that person or organization and included in the "products-completed operations hazard". However, our rights may only be waived prior to the "occurrence" giving rise to the injury or damage for which we make payment under this Coverage Part. The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce those rights.

#### 8. Automatic Additional Insured - Specified Relationships

- a. The following is hereby added to **SECTION II - WHO IS AN INSURED:**

- (1) Any person or organization described in Paragraph 8.a.(2) below (hereinafter referred to as additional insured) whom you are required to add as an additional insured under this Coverage Part by reason of:

- (a) A written contract or agreement; or  
(b) An oral agreement or contract where a certificate of insurance showing that person or organization as an additional insured has been issued,

is an insured, provided:

- (a) The written or oral contract or agreement is:

- 1) Currently in effect or becomes effective during the policy period; and  
2) Executed prior to an "occurrence" or offense to which this insurance would apply; and

- (b) They are not specifically named as an additional insured under any other provision of, or endorsement added to, this Coverage Part.

- (2) Only the following persons or organizations are additional insureds under this endorsement, and insurance coverage provided to

such additional insureds is limited as provided herein:

- (a) The manager or lessor of a premises leased to you with whom you have agreed per Paragraph 8.a.(1) above to provide insurance, but only with respect to liability arising out of the ownership, maintenance or use of that part of a premises leased to you, subject to the following additional exclusions:

This insurance does not apply to:

- 1) Any "occurrence" which takes place after you cease to be a tenant in that premises.
  - 2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.
- (b) Any person or organization from which you lease equipment with whom you have agreed per Paragraph 8.a.(1) above to provide insurance. Such person(s) or organization(s) are insureds solely with respect to their liability arising out of the maintenance, operation or use by you of equipment leased to you by such person(s) or organization(s). However, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.
- (c) Any person or organization (referred to below as vendor) with whom you have agreed per Paragraph 8.a.(1) above to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:
  - 1) The insurance afforded the vendor does not apply to:

- a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- b) Any express warranty unauthorized by you;
- c) Any physical or chemical change in the product made intentionally by the vendor;
- d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- g) Products which, after distribution or sale by you, have

been labeled or re-labeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.

- 2) This insurance does not apply to any insured person or organization:

a) From whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products; or

b) When liability included within the "products-completed operations hazard" has been excluded under this Coverage Part with respect to such products.

- (d) Any state or political subdivision with which you have agreed per Paragraph 8.a.(1) above to provide insurance, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent or control and to which this insurance applies:

- 1) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
- 2) The construction, erection, or removal of elevators; or
- 3) The ownership, maintenance, or use of any

elevators covered by this insurance.

- (3) Any insurance provided to an additional insured designated under Paragraph 8.a.(2) Subparagraphs (a), (b) and (d) does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence or willful misconduct of the additional insured or their agents, "employees" or any other representative of the additional insured.

**b. SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is hereby amended as follows:

Condition 5. Other Insurance is amended to include:

- (1) Where required by a written contract or agreement, this insurance is primary and / or noncontributory as respects any other insurance policy issued to the additional insured, and such other insurance policy shall be excess and / or noncontributing, whichever applies, with this insurance.

- (2) Any insurance provided by this endorsement shall be primary to other insurance available to the additional insured except:

(a) As otherwise provided in **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 5. Other Insurance, b. Excess Insurance**; or

(b) For any other valid and collectible insurance available to the additional insured as an additional insured by attachment of an endorsement to another insurance policy that is written on an excess basis. In such case, the coverage provided under this endorsement shall also be excess.

**9. Property Damage to Borrowed Equipment**

- a. The following is hereby added to Exclusion j. **Damage to Property** of Paragraph 2., **Exclusions of SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY.**

Paragraphs (3) and (4) of this exclusion do not apply to tools or equipment loaned to you, provided they are not being used to perform operations at the time of loss.

- b. With respect to the insurance provided by this section of the endorsement, the following additional provisions apply:

- (1) The Limits of Insurance shown in the Declarations are replaced by the limits designated in Section **B. Limits of Insurance, 9. Property Damage to Borrowed Equipment** of this endorsement with respect to coverage provided by this endorsement. These limits are inclusive of and not in addition to the limits being replaced. The Limits of Insurance shown in Section **B. Limits of Insurance, 9. Property Damage to Borrowed Equipment** of this endorsement fix the most we will pay in any one "occurrence" regardless of the number of:

- (a) Insureds;
- (b) Claims made or "suits" brought; or
- (c) Persons or organizations making claims or bring "suits".

**(2) Deductible Clause**

- (a) Our obligation to pay damages on your behalf applies only to the amount of damages for each "occurrence" which are in excess of the deductible amount stated in Section **B. Limits of Insurance, 9. Property Damage to Borrowed Equipment** of this endorsement. The limits of insurance will not be reduced by the application of such deductible amount.
- (b) **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 2. Duties in the Event of Occurrence, Offence, Claim or Suit**, applies to each claim or "suit" irrespective of the amount.
- (c) We may pay any part or all of the deductible amount to

effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

**10. Employees as Insureds - Specified Health Care Services**

It is hereby agreed that Paragraph 2.a.(1)(d) of **SECTION II - WHO IS AN INSURED**, does not apply to your "employees" who provide professional health care services on your behalf as duly licensed:

- a. Nurses;
- b. Emergency Medical Technicians; or
- c. Paramedics,

in the jurisdiction where an "occurrence" or offense to which this insurance applies takes place.

**11. Broadened Notice of Occurrence**

Paragraph a. of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 2. Duties in the Event of Occurrence, Offence, Claim or Suit** is hereby deleted and replaced by the following:

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

This requirement applies only when the "occurrence" or offense is known to an "authorized representative".

PUBLIC SQUARE PARKING GARAGE  
PARKING SPACE LICENSE AGREEMENT  
between the  
NASHVILLE DOWNTOWN PARTNERSHIP  
and  
UBS AG, NEW YORK BRANCH

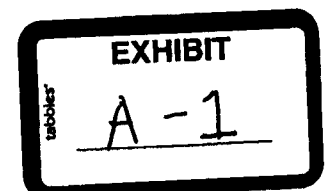
1. Parties. This License Agreement is made and entered as of the \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the Nashville Downtown Partnership (hereinafter referred to as the "Manager"), acting as Manager of the Public Square Garage at the Metropolitan Courthouse by and through the authority of the Metropolitan Traffic and Parking Commission of the Metropolitan Government of Nashville and Davidson County (hereinafter referred to as the "Parking Commission"), and UBS AG, New York Branch (hereinafter referred to as "Licensee").

2. Lease. Licensee wishes to enter into a lease of office space (the "Lease") at 315 Deaderick Street (the "Building") and to supplement the parking in the Building desires to enter into this License.

3. License. The Manager hereby gives permission, revocable and terminable as hereinafter provided, to Licensee and Licensee's subtenants and occupants under the Lease and their respective contractors, officers, employees and invitees (the "Parkers") to enter the Public Square Garage at the Metropolitan Courthouse, 100 James Robertson Parkway, Nashville, Tennessee (hereinafter referred to as the "Garage"), for the purpose of parking passenger automobiles and/or light trucks, SUVs and oversize handicapped vans within, at up to one hundred twenty five (125) parking spaces in the Garage, and for no other purpose, during the times specified herein. The size of vehicles to enter the Garage shall be limited by the current dimensions of the Garage. Licensee may, at any time during the Term, but no more than once per month, indicate the number of lesser parking spaces required for such month upon written notice to Operator not less than five (5) days prior to the first day of the month, whereupon such number shall remain constant at such amount, subject only to any further change that Licensee may thus elect up to 125 spaces. Throughout the Term, notwithstanding anything to the contrary, Licensee shall pay the monthly fee for the actual number of parking spaces actually elected by Licensee for such month hereunder. Licensor shall retain the right to in its sole discretion deactivate access cards for cause.

4. Licensed Premises. The Licensed Premises consist of up to one hundred twenty five (125) non-reserved parking spaces within the Garage. Licensee may, from time to time, request more parking spaces than 125, and if Manager (in its sole and absolute discretion) agrees to provide the same, such spaces shall be provided and used on a month-to-month basis only, and otherwise on the terms and provisions hereof, subject to Licensee paying such monthly parking charges as Manager shall establish from time to time generally as to licensees using the Garage on a month-to-month basis.

5. Use of Licensed Premises. Licensee shall be permitted to use the Licensed Premises only for the purposes stated herein. Licensee shall not provide access to the spaces in consideration of payment to persons or entities other than Licensee Parkers.



6. Compensation. For each of the up to one hundred twenty five (125) parking spaces for which access to the Garage is to be provided for any part of a month at the request of Licensee by the issuance of an access card or such other form of access then in use, Licensee shall pay an amount equal to one hundred dollars (\$100.00) per month per parking space. Payments shall be made by one check for each month, and are due and payable on or before the first day of each month, commencing on the first day of the term of this License Agreement. Checks shall be made payable and delivered to the Manager's then current Garage operator ("Operator") (at the time of execution of this License Agreement, the Operator is Central Parking System). Failure to make payment when due and after ten (10) days notice by the Manager to Licensee of such failure, is a material breach for which this License Agreement may be terminated by the Manager.

7. Term. The term of this License Agreement shall begin thirty days after Licensee gives notice to Operator that Licensee will begin to conduct business operations in the Building and shall continue until the 6th day of June, 2017. An extension of this term may be negotiated by the parties to this Agreement, if the Contract between the Metropolitan Government of Nashville and Davidson County and the Nashville Downtown Partnership, dated June 6, 2012 and approved by Council by Ordinance No. BL2012-146, is extended.

8. Access. Manager shall provide Licensee access to the Licensed Premises twenty-four hours a day, seven days a week, for the uses authorized herein. The Garage Operator shall issue Licensee up to one hundred twenty five (125) Garage access cards (or, if cards are no longer in use, whatever access method is then currently in use), for use only by the Licensee's Parkers. Lost or damaged Garage access card keys (or substitute access means) shall be replaced in accordance with the Garage operator's rules and regulations, including fees. At the completion or termination of the License Agreement, the access card keys (or substitutes) shall be returned to the Garage operator. Manager reserves the right to in its sole discretion deactivate access card keys (or substitutes) for cause.

9. Terminations - Breach. Should either party fail or neglect to comply with any term or condition of this License Agreement or to comply with written notice and demand, this License Agreement shall be subject to termination if not remedied within thirty (30) days after receipt of written notice thereof from the other party, or if such condition cannot be remedied within such period, if such party does not within thirty (30) days after written notice thereof commence such act or acts as shall be necessary to remedy the condition and shall not thereafter diligently prosecute such cure and complete such act or acts. In the event of such termination, Licensee shall immediately vacate the Licensed Premises and surrender all rights and privileges under this License Agreement. Such termination shall not relieve either party of any liability for damages sustained by virtue of any breach by the other party.

10. Termination - Convenience. Licensee may terminate this License Agreement, to be effective on the last day of any month, by delivering sixty (60) days advance written notice to the Manager.

11. Notices. All notices and other communications under or with respect to this License shall be in writing to the address set forth in this License and shall be deemed delivered upon (i) delivery by an overnight courier such as Federal Express; or (ii) delivery by the U.S. Postal Service via certified mail, return receipt requested.