



## ePORT® CONNECT SERVICES AGREEMENT

Customer/Company Name: WHEATON PARK DISTRICT ("Customer")

1. Parties—USA Technologies, Inc. (USAT), per the effective date herein, hereby agrees to provide to ("Customer") cashless financial services utilizing the USAT processing network in connection with the Customer's unattended vending or kiosk machines ("Equipment").

2. Cashless Transaction Processing & Associated Fees—USAT shall act as and is hereby appointed the agent on behalf of Customer in connection with the processing of all card transactions (authorized and settled) by the payment processor or other private network in connection with the Customer's Equipment. USAT shall retain a processing fee consisting of a percentage or a processing fee of a percentage + a set dollar amount per transaction of the gross sales price, for all card revenues derived from the Equipment. All processing fees charged to Customer, as selected by Customer, are predicated upon processor or private network authorized and settled transactions, and not from third party controllers providing DEX data or other forms of M2M data. See *Schedule A — Fees*. The net revenues (gross revenues less refunds, transaction processing fees, any consumer refund and/or chargeback fees from the card processor and/or fraudulent transactions or any other fee due to USAT hereunder) shall be remitted to Customer by USAT.

3. PrePaid Card Programs—Additional transaction and service fees may apply for the implementation and use of prepaid cards on the USAT network. The net revenues (gross revenues less refunds, prepaid transaction processing fees, any consumer chargeback and/or chargeback fees and/or fraudulent transactions or any other fee due to USAT hereunder) shall be remitted to Customer by USAT.

4. Network & Services Fees—The Customer shall pay to USAT a monthly fee per activated device or system connected to the USAT processing network for Wireless or Ethernet communications, web-based cashless transaction reporting, financial/accounting transaction services, and customer support services. See *Schedule A—Fees*. If optional M2M data transport such as CASH or DEX exceeds the monthly kilobytes within the stated price plans, Customer will be automatically moved to the next wireless data plan.

5. Seasonal Equipment—If the Customer's business (whole or in part) is of a seasonal nature whereby the Equipment will not be in use for at least four consecutive months, the Customer may elect to deactivate some or all affected Equipment for that time period. The monthly network fee may be adjusted for each seasonally designated cashless device or system connected to the USAT processing network. See *Schedule A—Fees*. The Customer will receive a one-time adjusted payment (credit) at the time of reactivation of the seasonally affected Equipment during the following month remittance to Customer by USAT.

6. Registration and Fees—USAT will charge Customer, at the time of shipment and included on the invoice, an initial fee to register each device or system installed and linked to the USAT processing network. See *Schedule A—Fees*. This may include but is not limited to the registration of a SIM card required to establish wireless communications or an Ethernet connection, in addition to administrative setup for Customer to receive weekly EFT payments, Merchant ID assignment, and access to USALive web reporting.

7. UnRegistration, ReRegistration, and Fees—The Customer may choose to unregister the SIM card or system, which stops all communications with the USAT processing network, at no charge. However, if the customer decides to re-register a SIM card or system, a re-registration fee is required. See *Schedule A—Fees*.

8. Device Default Settings—All ePorts will be shipped to Customer with the following device default settings: (a) Single-Vend — ON; (b) Multi-Vend — OFF; (c) Cash — OFF and (d) DEX — OFF.



9. **SIM Cards**—All SIM cards remain the property of USAT and must be returned to USAT upon termination of this services agreement for any reason.

10. **Device Location Assignment**—Upon installation of a Wireless or Ethernet card acceptance device into Customer's Equipment, Customer must complete the ePort Activation Transfer Template spreadsheet and remit it to USAT via e-mail or on-line. Customer bears the risk of any losses resulting from an Activation Form not completed and submitted to USAT in a timely manner, defined as 48-hours prior to installation by Customer. All Devices that have not be properly activated on the USAT network will be deactivated by USAT.

11. **Pre-Authorization**—Customer agrees for all cashless transactions, every card will be submitted to the card processor for card validation and transaction authorization.

12. **Settlement**—Customer agrees that for any transaction during the settlement process that is subsequently declined by the card processor for non-sufficient funds (NSF) or other reasons, the risk of the associated loss of vended product, settlement funds and transaction fee for that transaction shall be assumed by the Customer.

13. **Term**—The term of this Agreement shall be for a period of thirty-six (36) months effective on the effective date of this agreement. The Agreement will automatically renew for one (1) year, unless thirty (30) day written notice has been provided to USAT by Customer.

14. **Termination**— Customer may choose to terminate its USAT ePort Connect Services agreement on all of its Customer-owned equipment with a written thirty (30) day notice. The termination of this Agreement by the Customer shall not affect any equipment LEASE agreement relating to an e-Port between Customer and USAT which shall remain in full force and effect in accordance with the terms provided within the LEASE agreement.

15. **Availability of Service**—Customer acknowledges that USAT relies on third-party providers in the delivery of its services, including, but not limited to, wireless data network providers, cellular radio service provided by third parties that is available only when within the operating range of cellular systems, and cellular service is subject to transmissions limitations and dropped or interrupted transmissions. Cellular service may be temporarily refused, limited, interrupted, or curtailed because of government regulations or orders, atmospheric and/or topographical conditions, and cellular system modifications, repairs, and upgrades. Customer agrees that USAT shall not be liable for, and to hold USAT harmless for any losses, damages, or business interruptions sustained as a result of interruptions caused by its wireless data network providers or any other third-party provider.

16. **No Consequential Damages**—In no event shall USAT be liable for any punitive, incidental, or consequential damages or any damages for loss of profits, business interruption, loss of information, or pecuniary loss, even if such party has been advised of the possibility of such damages.

17. **Indemnification**—Each party shall indemnify and hold harmless the other party, its officers, directors, agents, and employees from and against any and all claims, demands, causes of action, obligations, liabilities, expense (including reasonable attorney's fees), damages, or suits whatsoever, in connection with, arising out of, or relating to, in whole or in part, any act or omission of Customer, including, but not limited to, the operation and management of the Equipment.



18. Validity — Should any part of this Agreement, for any reason, be declared invalid, then such portion shall be invalid only to the extent of the prohibition without invalidating or affecting the remaining provisions of the Current Customer and USAT Agreement. This agreement shall be constructed in accordance with the laws of the State of Pennsylvania exclusive of any conflicts of law principles.

### Schedule A—Fees

Service/Fee	US Blended Rate/Fee (A)	Discount Rate Transaction Fee (B)	Canadian Blended Rate/Fee (C)	INITIAL Your Average VEND Price Range
Average Vend Price: \$0.50–\$0.99	-	3.95% + \$0.08	-	
Average Vend Price: \$1.00–\$1.49	-	3.95% + \$0.06	-	
Average Vend Price: \$1.50–\$1.99	5.95%	-	5.95%	
Average Vend Price: \$2.00–\$2.49	5.10%		5.10%	
Average Vend Price: \$2.50–\$2.99	4.50%		4.50%	
Average Vend Price: \$3.00–\$3.49	4.10%	-	4.10%	
Average Vend Price: \$3.50–\$3.99	3.75%	-	3.75%	
Average Vend Price: \$4.00–\$4.99	3.50%		3.50%	
Average Vend Price: \$5.00–\$5.99	3.20%		3.20%	
Average Vend Price: \$6.00–\$6.99	2.95%		2.95%	
Average Vend Price: \$7.00–\$7.99	2.80%		2.80%	
Average Vend Price: \$8.00–\$8.99	2.75%		2.75%	
Average Vend Price: \$9.00–\$9.99	2.65%		2.65%	
Average Vend Price: \$10.00–up	2.55%		2.55%	

Activation/Fee	US Dollars	Canadian Dollars
Registration/Activation Fee per Device or System— <i>Fee is billed by separate invoice at the time of shipment of devices.</i>	\$30.00	\$30.00
Re-Registration Fee per Device or System	\$15.00	\$15.00
Chargeback/Fee	US Dollars	Canadian Dollars
Consumer Chargeback Fee per item + Actual Transaction Amount	\$25.00	\$25.00



Network Data Service Plans	US Dollars	Canadian Dollars	INITIAL Your Monthly Service Option
Cashless only	\$ 9.95	\$16.95	C <sup>20</sup>
Cashless and CASH	\$12.95	\$19.95	
Cashless, Cash and DEX	\$14.95	\$21.95	
DEX only	\$ 6.95	\$12.95	
De-Activated (Seasonal) Devices	\$ 4.95	\$ 6.95	

All FEES are deducted from the monthly EFT payment to Customer except where noted.

1. The transaction processing rates are predicated upon the indicated average vend prices and upon 30-days of initial transaction processing, the customer initiated vend price and rate will be reviewed.
2. Customer agrees that if the average vend price is below the customer initiated vend price, then USAT may adjust the rate according to the schedule provided above upon written notice.
3. If the semi-annual Card Associations Interchange or Processor fee increases are in excess of the stated processing fees above, with a 30-day written notice USAT has the right to increase rates and pass through to Customer.

Customer/Company: WHEATON PARK DISTRICT

Signature: [Signature]

Printed Name: MIKE BENARO

Title: EXECUTIVE DIRECTOR

Address: 102 E WESLEY ST.

City, State/Province & Zip/Postal Code:

WHEATON, IL 60187

Phone: 630-510-4945 Fax: \_\_\_\_\_

Primary Contact: DAUCE STOLLER

E-Mail: DSTOLLER@WHEATONPARK.IL.GOV

CUSTOMER SIGNATURE DATE: 4/4/16

Service Provider: USA Technologies, Inc.

Signature: [Signature]

Printed Name: Amy T Seymour

Title: VP of Print Connect Svcs

Address: 100 Deerfield Lane, Suite 140

City, State & Zip: Malvern, PA 19355

Phone: 800-633-0340 Fax: 610-989-0344

EFFECTIVE AGREEMENT DATE: 4/14/16

## RIDER

### TO AGREEMENT BETWEEN USA TECHNOLOGIES ("USAT") AND WHEATON PARK DISTRICT ("Park District") FOR EPORT CONNECT SERVICES

This Rider amends, supplements and supersedes that certain Agreement by and between USAT and Park District dated March 14, 2016 (the "Effective Date"). In the event of any conflict between any of the provisions of this Rider and the provisions of the Agreement, the provisions of this Rider will control. USAT and Park District are hereinafter sometimes individually referred to as a "Party" or collectively as "Parties."

R-1 Section 13 Term is hereby amended as follows:

- a. In the second line, capitalized "Effective Date."
- b. Delete the last sentence.

R-2 Section 14 Termination is hereby amended as follows:

- a. In the second line, change "thirty (30)" to "seven (7)."
- b. Add after the first sentence the following: "In the event of such termination, USAT will be paid for all approved services rendered to the date of termination, and upon such payment, all obligations of Park District to USAT under this Agreement shall cease. In no event shall the Park District be charged an early termination or penalty fee for terminating this Agreement for any reason."
- c. Add the following new paragraphs to this section:

"Park District shall have the right to terminate this Agreement immediately and without notice upon USAT's default of its obligations hereunder or its violation of any federal or state laws, or local regulations or ordinances. Upon termination due to USAT's breach of this Agreement, USAT shall pay Park District all reasonable costs incurred by Park District due to said breach. In the event of such termination, payment to USAT of any sums earned to the date of such termination shall be in full satisfaction of any and all claims by USAT against Park District under this Agreement, and acceptance of sums paid by USAT shall constitute a waiver of any and all claims that may be asserted by USAT against Park District.

If USAT is adjudged as bankrupt, or makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of USAT's insolvency, or if any provision of the bankruptcy law is invoked by or against USAT, then notwithstanding any other rights or remedies granted the Park District, the Park District may, without prejudice to any other right or remedy, (a) terminate the employment of USAT and/or (b) finish the services by whatever method the Park District may deem expedient. In such case, USAT shall not be entitled to receive any further payment until the services are finished and the Park District may be entitled to recover and deduct from any remaining amounts due USAT all damages allowed by law."

R-3 Section 15 Availability of Service is hereby amended by deleting the last sentence in this section.

R-4 Section 16 No Consequential Damages is hereby deleted in its entirety.


R-5 Section 17 Indemnification is hereby amended by deleting the paragraph in its entirety and replacing with the following:

"To the fullest extent permitted by law, USAT, its officers, directors, employees, volunteers and agents shall indemnify, defend and hold harmless Park District and its officers, officials, employees, volunteers

and agents from and against all claims, suits, damages, causes of action, judgment, losses, costs and expenses, including but not limited to reasonable legal fees (attorney's and paralegals' fees and court costs), caused by the services performed by USAT, its officers, directors, employees, volunteers and agents under this Agreement, including but not limited to any accident, injury, damage, property loss or theft, or arising from or caused by any negligent act, omission, wrongful act of USAT, its officers, director, employees, volunteers and agents, except to the extent caused by Park District. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to Park District. USAT shall similarly indemnify, defend, and hold harmless Park District, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to reasonable legal fees, incurred by reason of USAT's breach of any of its obligations under, or USAT's default of, any provision of this Agreement."

R-6 Section 18 Validity delete the last sentence in its entirety.

R-7 Add the following new sections:



"19. New Equipment and Chargebacks. ~~USAT shall upgrade the Park District's Equipment to accept payment by secure EMV chip cards at no cost to the Park District as soon as practicable and in no event shall such upgrade take place later than January 1, 2018.~~ Until the Park District's Equipment is upgraded as provided herein, USAT shall waive, release, not impose any chargeback fees due to R62 (EMV specific) related chargebacks and shall defend, indemnify and hold the Park District harmless from any claims or losses the Park District incurs arising from USAT's non-use of EMV chip card technology.

20. Payment - Payment of said invoices, and any late payment penalties, shall be governed by the applicable provisions of the Local Government Prompt Payment Act (50 ILCS 505 *et seq.*).

21. Insurance - USAT shall purchase and maintain the types and amounts of insurance as set forth in Exhibit 1, attached to and incorporated as part of this Agreement.

22. Independent Contractor - The relationship between USAT and Park District is that of an independent contractor. USAT shall supply all personnel, equipment, materials, and supplies at its own expense, except as specifically set forth herein. USAT shall not be deemed to be, nor shall it represent itself as, employees, partners, or joint venturers of Park District. USAT is not entitled to workers' compensation benefits or other employee benefits from Park District and is obligated to directly pay federal and state income tax on money earned under this Agreement.

23. No Third Party Beneficiary - This Agreement is entered into solely for the benefit of the contracting Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and/or entity who is not a party to this Agreement or to acknowledge, establish or impose any legal duty to any third party.

24. Laws, Permits, Approvals and Licenses - USAT shall comply with all applicable codes, laws, ordinances and regulations of Park District, the City of Wheaton, DuPage County, the State of Illinois, and the Federal Government. "USAT shall, at its sole cost and obligation, be responsible for obtaining all permits and licenses required to perform its duties under this Agreement.

25. Choice of Law/Venue - This Agreement is governed by the law of Illinois. Any suit or action arising under this Agreement shall be commenced in the Circuit Court of DuPage County, Illinois. In any suit or action arising under this Agreement, the prevailing party shall be entitled to an award of reasonable

26. Headings - The headings for each paragraph of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraphs or of this Agreement nor in any way affect this Agreement.

27. Notices - All notices, demands, requests, exercises and other communications required or permitted to be given by either Party under this Agreement shall be in writing and shall be deemed given when such notice has been personally delivered, sent by facsimile or deposited in the United States mail, with postage thereon prepaid, addressed to each party at the following addresses:

If to USAT:

USA Technologies, Inc.  
100 Deerfield Lane, Suite 140  
Malvern, PA 19355  
Fax: (610) 989-0344

If to the Park District: Executive Director  
Wheaton Park District  
102 Wesley Drive  
Wheaton, Illinois 60187  
Fax: (630) 665-5880

28. No Waiver - Waiver of any of the terms of this Agreement shall not be valid unless it is in writing and signed by all Parties. The failure of claimant to enforce the provisions of this Agreement, or require performance by opponent of any of the provisions, shall not be construed as a waiver of such provisions or affect the right of claimant to thereafter enforce the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of the Agreement. Nothing herein shall be construed as an express and/or implied waiver of any common law and/or statutory immunities, defenses and/or privileges of Park District and/or USAT, and/or any of their respective officials, officers and/or employees.

29. Non-Assignment - This Agreement is non-assignable in whole or in part by USAT, and any assignment shall be void without prior written consent of the Park District.

30. Entire Agreement - This Agreement contains the entire agreement between the Parties and no statement, promise or inducement made by either Party to the agency of either Party that is not contained in this written Agreement shall be valid or binding.

31. Amendment - No amendment or modification shall be made to this Agreement unless it is in writing and signed by both Parties."

R-8 Authorization for Electronic Funds Transfer Form is hereby amended by deleting the last paragraph on this form.

WHEATON PARK DISTRICT

By: 

As Its: EXECUTIVE DIRECTOR

Date: 4/14/16

USA TECHNOLOGIES, INC.

By: 

As Its: VP of eProcurement + Connect Svcs

Date: 4/14/16