

EXHIBIT B



Zagster, Inc
24 Thorndike Street
Cambridge, Massachusetts 02141
United States
844-ZAGSTER

**ORDER for Corpus Christi Downtown
Management District**
Order: SO-0001047
Date: 6/28/2016
Prepared by: Michael Sheppard

Order

Company Information

Bill To:

Corpus Christi Downtown Management District
223 N. Chaparral St., Ste A
Corpus Christi, Texas 78401
United States

Billing Contact: Terry Sweeney

Billing Email: terry@cctexasdmd.com

Billing Phone: (361) 882-3832

Payment Terms

Payment Terms: Net 30 Days **Billing Frequency:** Annual

Product & One Time Fee Lines

Product & OneTime Fee	Description	Quantity	Unit Price	Total
Zagster Standard Adult Bike		30.00	\$0.00	\$0.00
Bike Parking Space (included with Bike)		30.00	\$0.00	\$0.00
Location Implementation/Setup Fee		6.00	\$0.00	\$0.00
Custom Bike	City of Corpus Christi Parking Advisory Fund - Pro-Rated Launch Marketing for Corpus Christi Bike Share	1.00	\$3,000.00	\$3,000.00
Extra Bike Parking Space		20.00	\$0.00	\$0.00
Custom Bike	Corpus Christi Downtown Management District and Downtown Revitalization Alliance - Pro-Rated Launch Marketing for Corpus Christi Bike Share	1.00	\$3,000.00	\$3,000.00

Service Lines

Service	Description	Date Start - DateEnd	Quantity	Term	Unit Price	Total
Service Fee per Bike - Annual	Corpus Christi Downtown Management District and Downtown Revitalization Alliance	8/5/2016 - 8/4/2019	5.00	3 Yr	\$1,800.00 /Yr	\$27,000.00
Service Fee per Bike - Annual	Corpus Christi Regional Transit Authority	8/5/2016 - 8/4/2019	20.00	3 Yr	\$1,800.00 /Yr	\$108,000.00
Service Fee per Bike - Annual	City of Corpus Christi Parking Advisory Fund	8/5/2016 - 8/4/2019	5.00	3 Yr	\$1,800.00 /Yr	\$27,000.00
Theft Fee per Bike - Annual	Subject to increase or reduction based on actual number of Bicycles installed	8/5/2016 - 8/4/2019	30.00	3 Yr	\$0.00/Yr	\$0.00

Products and Services Total: \$168,000.00

Net Amount: \$168,000.00

Total Applied Payments: \$0.00

Balance Due Amount: \$60,000.00

Additional Terms

Location Implementation/Setup Fee

Company will pay to Zagster the nonrefundable product and one time fees in the amounts, if any, described above, within 30 days of the Order Date.

Service Fee per Bike - Annual

Company will pay to Zagster the nonrefundable recurring fees (the "Service Lines Fees") set forth above 30 days prior to estimated start date ("Date Start") set forth above. Service Lines Fees are due annually, up front and in advance. Zagster will not launch the bike share program until the Service Lines Fees are paid.

Company Name: Corpus Christi Downtown Management District

Zagster, Inc

Signature

Signature

Name (Please Print)

Name (Please Print)

Title

Title

Date

Date

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ATTACHMENT I
TO
ZAGSTER, INC. ORDER FORM
FOR
CORPUS CHRISTI, TEXAS

Master Services Agreement

This term (the "Term") of this Master Services Agreement shall be as set forth in the Order Form between the parties dated as of the Effective Date (the "Order Form").

Schedule A

Zagster Services and Fees

1. **Description of Zagster Service.** During the term of this Agreement, Zagster will provide to Company the following (collectively, the "Zagster Service"):
 - a. The Zagster Bicycles set forth in Section 5 below and the right for Users to access and use the Zagster Bicycles as described in Section 9 below.
 - b. A Site Survey to determine the Locations and Launch Date.
 - c. A license to use Zagster's proprietary bicycle rental management software (the "Zagster Software") and accompanying user information (the "Documentation") pursuant to Section 7 below.
 - d. Routine maintenance on the Zagster Bicycles to address usual and customary wear and tear maintenance on the Zagster bicycles as described in more detail in Section 8 below. Company acknowledges that routine maintenance does not cover abuse, theft, vandalism, accident and/or similar issues while the bicycles are not in use by Users unless Company has elected to include such coverage and has paid the applicable fees set forth in Section 5 below.
 - e. Automated locks and bicycle racks to be used with the Zagster Bicycles, subject to payment of the one time fee described in Section 4 below.
 - f. Zagster marketing materials (the "Zagster Marketing Materials").
 - g. Zagster customer services for Users as they are generally commercially available from time to time.
2. **Term of Agreement; Exclusivity.** The initial term of this Agreement will commence on the date as set in the Order Form and, unless terminated earlier in accordance herewith, will continue for a period of 12 months from the Launch Date. This Agreement will automatically renew for successive 12 month periods unless either party gives the other written notice of termination at least thirty (30) days prior to the end of the then-current term. During the term of this Agreement, Company agrees that Zagster shall be the only bicycle sharing and/or bicycle rental service promoted and used by Company. Unless otherwise mutually by the parties in writing, Zagster will not increase the fees payable hereunder for any renewal term.
3. **Launch Date; Site Survey.** Company acknowledges and agrees that Zagster may perform a survey of the site where Company desires that the Zagster Bicycles be installed. Zagster will perform this survey promptly after the Effective Date and the parties will mutually agree on the location of installation and the date the Zagster Service will be launched at that location. For purposes hereof, the "Launch Date" means the date on which the Zagster Service is fully implemented for Company at the first launch Location. The launch of the Zagster Service on the Launch Date is subject to both Zagster and the Company fulfilling all of their obligations under this Agreement which are required to be fulfilled to enable Zagster to launch the Zagster Service, including without limitation payment of the one-time fee set forth in Section 4 below. Promptly after the Launch Date, Zagster will provide Company with a Launch Notification Form, which will inform Company of the mutually agreed to initial installation Location and the Launch Date. Additional Locations or Bikes may be added from time to time by mutual written agreement of the parties).

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4. **One Time Fees.** Company will pay to Zagster non-refundable one-time fees in the amounts described in the Order Form to set-up and install the Zagster Bicycles at the locations set forth in the Launch Notification Form (the "Locations") and for such other materials as may be mutually agreed to by the parties and set forth in the Order Form. The Company will pay the one-time fees to Zagster on or before the Launch Date.

5. Fees and Number of Zagster Bicycles. During the Term, Zagster will provide the number of bicycles ("Zagster Bicycles") at the Locations set forth in the Launch Notification Form as set forth in the Order Form. The

number of Zagster Bicycles may be increased, with a corresponding increase in the Recurring Fees to be paid by Company, by mutual written agreement of the parties. Recurring Fee payment terms are described in the Order Form. Provided, Zagster understands and agrees that Locations may be on the property of third parties not controlled by Company. Company will attempt to collect the fees required hereunder for such Locations and remit such fees to Zagster. However, Zagster agrees that Company shall not be responsible or liable for the payment of any fees associated with Locations on the property of third parties. In the event any third party fails to pay the fees required in the Order Form, Company will notify Zagster of such failure to pay and Zagster's sole remedy shall be to decline to install the Zagster Bicycles or to provide any other Zagster Service with respect to such third party (or to remove the Zagster Bicycles and terminate the Zagster Services with respect to such third party if the Zagster Bicycles and Zagster Services have previously been provided). Accordingly, Company acknowledges and agrees that Zagster will not launch such Locations unless and until Zagster has been paid in full for the applicable fees for such Locations.

6. **Marketing.** Zagster will provide to Company (a) a Zagster Account Manager and (b) the Zagster Marketing Materials to promote Zagster's bike sharing program. In addition, Zagster will provide the Company with Zagster's standard signage (the "Zagster Signage") at or adjacent to all Zagster locations at the locations set forth in the table above (the "Locations"). Prior to the Launch Date, Zagster will also provide the Company's marketing contact with training on the Zagster Service and the use of the Zagster Software. This training may be provided on site or online at Zagster's discretion.
7. **License Grant.** Subject to the terms and conditions of this Agreement and payment of the fees described herein, Zagster hereby grants Company a non-exclusive, non-transferable license in the United States for the term of this Agreement to access and use the Zagster Software as hosted by Zagster and the related Documentation solely for Company's management of the Zagster Bicycles at the Locations. Company may not redistribute or permit third parties to access or use the Zagster Software. Company agrees to maintain the security and confidentiality of the user names and passwords provided by Zagster to the Company in connection with Company's use of the Zagster Software. Except for the rights granted to Company in this Section, all right, title and interest in and to the Zagster Software and the Documentation, including without limitation all intellectual property embodied therein, shall remain exclusively in Zagster. The license granted hereunder includes no rights in or to the source code versions of the Zagster Software or to the object code version of the Zagster Software, other than to the object code version as hosted by Zagster. Neither Company nor its employees shall attempt to reproduce, copy, disassemble, alter, decompile or otherwise reverse engineer or modify or create derivative works of the Zagster Software in any way. Neither Company nor its employees shall make access to the Zagster Software available to others in connection with a service bureau, application service provider, or similar business, nor permit anyone else to do so.
8. **Maintenance Services.** Zagster will provide the following maintenance services (the costs of which will be included in the Recurring Fees as outlined in Section 5 above) with respect to the Zagster Bicycles (the "Maintenance Services"):
a. Zagster maintenance personnel will visit each of the Locations on a regular basis to inspect the Zagster Bicycles and perform the following maintenance services on the Zagster Bicycles: (i) replace worn tires, (ii) replace worn drive train components, (iii) clean and lube drive train components, and (iv) general cleaning.
b. Zagster will, at Zagster's sole option, either replace or fully refurbish the Zagster Bicycles as reasonably necessary, but no less frequently than every three years from the Launch Date.
9. **Zagster Membership**
a. Generally. Each person that has been authenticated by Zagster and is a Zagster member in good standing shall be eligible to use the Zagster Bicycles (a "User") at the usage rates set forth at www.zagster.com and subject to Zagster then current policies and procedures, including without limitation the terms and conditions of Zagster's member agreement. To become a Zagster member, a person shall complete Zagster's membership application and, if approved for membership by Zagster, shall enter into Zagster's member agreement in the form set forth at www.zagster.com. Zagster may revise the membership application and member agreement, as well as membership fees, from time to time at its sole discretion. Zagster owns all right, title and interest in and to any and all information and data submitted to Zagster by Users and prospective users. Company will have the right to set the usage fees charged to Users for use of the Zagster Bicycles and Zagster will publish such rates to Users. Notwithstanding the foregoing, if Company is a hotel, Zagster agrees that Company's guests may use the Zagster Bicycles as Users without becoming a Zagster member provided that Company requires the User to sign Zagster's standard liability waiver in the form provided by Zagster to Company from time to time (the "Waiver") and Company shall retain the originally signed Waivers for a period of at least six (6) years from the date of each use by a User.

- b. **Payment of Membership and Usage Fees.** Users shall be responsible for paying, via credit card, Zagster's annual membership fee, usage fees, and such additional fees and charges as set forth at www.Zagster.com, as adjusted from time to time in Zagster's sole discretion. All fees paid by Users will be processed by Zagster's third party credit card processor and Zagster will not receive, process, retain or maintain any credit card data. Zagster will share a portion of the usage fees actually collected from Users that use the Zagster Bicycles at the Locations with Company less usage fees which Zagster credits or reimburses the User (the "Net Usage Fees"). Within thirty (30) days from the end of each calendar quarter during the Term, Zagster will remit to Company 93% of the Net Usage Fees and a report summarizing the calculation of Net Usage Fees. Zagster may offset against the Net Usage Fees any and all other amounts, fees, or charges due from Company to Zagster hereunder.

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Schedule B

Company Obligations

1. Generally. During the term of the Agreement, Company will:

- (a) Permit Zagster personnel to access each Location, at mutually agreed dates and times, to perform a site survey, take pictures of the Location, and otherwise review and inspect the Location with Company personnel to determine a mutually agreed to area at each Location to install the Zagster Signage, Zagster Bicycles and Zagster bicycle racks.
- (b) Provide the required square footage in a mutually agreed to area at each Location to enable Zagster to install the Zagster bicycle racks and Zagster Bicycles and provide the necessary additional space for any mutually agreed to increase in the number of Zagster Bicycles. In addition, Company agrees to receive shipments of the Zagster Bicycles and related materials and will store the Zagster Bicycles and related materials in a secure location until Zagster personnel arrive to install same. Company shall permit Zagster to dispose of shipping materials at the Locations and provide access to Company's trash facilities in connection with same.
- (c) Permit Zagster personnel to access each Location, at a mutually agreed to date and time, to set-up and install the Zagster Bicycles and Zagster Signage at the Locations, including installation of appropriate bicycle racks to be provided by Zagster, and to take pictures of the Zagster Bicycles as installed at each Location. Only upon its prior written authorization (which shall not be unreasonably withheld) will Company agree to allow Zagster to use the pictures for marketing Zagster Services.
- (d) Permit Zagster personnel to access the Locations during normal business hours Monday--Friday, or as may be otherwise required, to provide Maintenance Services. Company will provide Zagster with an appropriate number of parking passes to be provided to Zagster personnel to enable Zagster personnel to access the Locations without charge.
- (e) Keep all Locations where Zagster Bikes are stored clean and debris--free in substantially similar condition to the condition as of the Launch Date, and comply with Zagster's then standard requirements for the Zagster Service.

2. Marketing.

- (a) *Information.* Following the Effective Date, Company will provide to Zagster the information and materials required to implement the Zagster Service at the Company's Locations.
- (b) *Marketing Contact.* Company will assign and maintain an appropriate Company contact who will (i) have responsibility for all interactions with Zagster regarding matters covered by this Agreement, (ii) be reasonably accessible to Zagster during normal business hours, and (iii) use the Zagster Marketing Materials to promote the availability of Zagster Bicycles and/or work with Zagster to create relevant materials. Company acknowledges and agrees that the success of the program will depend on the level of marketing support provided by the Company. The marketing contact will be responsible for training Company's employees with respect to the Zagster Service and the Zagster Software
- (c) *Marketing Obligations.* Company's marketing contact will coordinate marketing opportunities with Zagster and will assist Zagster in marketing the Zagster Service to Users and prospective users. The Company may use the Marketing Materials for the sole purpose of marketing the Zagster Service to Users and prospective users. Further, if Company desires to create custom email communications or other marketing materials, Company may do so subject to Zagster's prior review and approval, which will not be unreasonably withheld or delayed. Zagster may provide any approvals required under this section via email. Zagster shall not distribute or publish any Marketing Materials contemplated under this Agreement, or otherwise make any public statements in any social forum or medium relating to this Agreement or referencing this arrangement with the Company without the prior written consent of the Company (which shall not be unreasonably withheld).
- (d) *Zagster Marketing Rights.* Company, at its sole discretion, will provide Zagster with a list of Company's prospective users of the Zagster Bicycles, which list shall include name, e-mail address, and other mutually agreed to information (the "Marketing List"). Company hereby agrees that Zagster may use such Marketing List to send marketing information and materials about Zagster and the Zagster Bicycles available at the Locations, provided, that Zagster receives prior written approval of the proposed marketing information from Company (which shall not be unreasonably withheld) and that Zagster provides the recipients with the ability to opt-out of receiving future communications.

3. Zagster Bicycles.

- (a) Company will use reasonable efforts to report any maintenance issues relating to Zagster Bikes or the Zagster Bike Racks or facility on Company premises. Such reasonable efforts by the Company will be construed only to mean a general visual inspection to look for flat tires, obvious and material cosmetic defects to the bicycles and/or racks, and graffiti. Zagster will respond to all maintenance issues reported by Company as soon as commercially practicable.
- (b) At Zagster's request, unless Company has elected Damage Coverage, Company shall reimburse Zagster for the costs, including costs of labor, to replace and/or repair Zagster Bicycles (only if it is apparent that such Bicycles are vandalized, stolen or damaged while not in use by a User but not for normal or expected wear and tear due to routine usage nor for damage, vandalism, or Zagster Bicycles stolen while in use by a user), Zagster automated locks, and/or Zagster bicycle racks that have been vandalized, stolen, and/or damaged by accident or misuse or abuse. Zagster shall invoice Company for such costs on a regular basis and shall accompany the invoice with supporting documentation. Company shall pay such invoices within thirty (30) days of receipt.
- (c) Company will use its commercially reasonable best efforts to promptly remove all non--Zagster bicycles from the Zagster bicycle racks at the Locations.

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Schedule C

Terms and Conditions

1. **Services; Relationship of the Parties.** Subject to the terms and conditions of this Agreement, Zagster will provide the Zagster Service set forth in Schedule A and Company will perform the obligations set forth on Schedule B. The relationship of the parties to this Agreement is solely that of independent contractors. Neither party will have any authority to contract with third parties on behalf of the other party or to expressly or impliedly represent that it has any such authority, to any person.
2. **Payment Terms.** Other than the One Time Fees, which shall be due and payable in accordance with Schedule A, all fees payable hereunder are due within 30 days from the date of Zagster's invoice. If Company fails to pay an invoice in a timely manner, Zagster will give Company written notice. If Company fails to make payment within 10 business days of Zagster's notice, then (a) Zagster will have the right to enter Company's property after Zagster notifies Company of its intention to remove its equipment during normal business hours and remove the Zagster Bicycles and Zagster bicycle racks, signage and any other Zagster materials, and Company will be liable for all fees, costs, and expenses actually incurred by Zagster in connection with such removal, and (b) interest will accrue on all amounts due from the original date due to the date paid, at the lesser of 12% per year or the highest rate permitted by applicable law. Company will pay all taxes or other governmental charges (including import duties) levied in connection with the Services.
3. **Insurance.** During the term of this Agreement, Zagster will maintain appropriate business and liability insurance protection covering its activities hereunder.
4. **Publicity.** Zagster may release a press release announcing the parties' relationship hereunder with the prior consent of Company, which shall not be unreasonably withheld. Unless otherwise expressly permitted in this Agreement, neither party will use the other party's name, logos, trademarks or service marks in any manner without the other party's prior written approval. Company must first expressly approve in writing any and all proposed uses of the Company's name, logos, trademarks and service marks (i) to, create marketing and advertising materials for Company to use to promote the Service to its employees and (ii) on Zagster's customer list which will be displayed on Zagster's website and in other publications. Each party consenting to use of its Marks hereunder shall remain the sole and exclusive owner of all right, title and interest in and to its Marks and the goodwill associated therewith. Upon termination of this Agreement, such use of the other party's Marks shall immediately cease.
5. **DISCLAIMER OF WARRANTIES.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, ZAGSTER MAKES NO WARRANTIES WITH RESPECT TO THE ZAGSTER SERVICE OR THE SUBJECT MATTER OF THIS AGREEMENT AND HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. NO WARRANTY IS MADE THAT THE ZAGSTER SERVICE WILL MEET COMPANY'S REQUIREMENTS.
6. **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR INTERRUPTION OF BUSINESS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT WITH RESPECT TO COMPANY'S PAYMENT OBLIGATIONS AND EACH PARTY'S CONFIDENTIALITY OBLIGATIONS, NEITHER PARTY'S LIABILITY HEREUNDER WILL EXCEED THE FEES PAID AND PAYABLE FOR THE ZAGSTER SERVICE THAT IS THE SUBJECT OF THE CLAIM. COMPANY ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION REPRESENT A REASONABLE ALLOCATION OF RISK THAT IS REFLECTED IN THE FEES PAID BY COMPANY. THE FOREGOING LIMITATION OF LIABILITY IS NOT INTENDED TO LIMIT EITHER PARTY'S LIABILITY FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
7. **Confidentiality; Suggestions.** Each party acknowledges that during the term of this Agreement the other party may disclose information, whether orally, visually, or in tangible form, that is proprietary and confidential to the disclosing party and is disclosed or marked as proprietary or confidential (hereafter "Confidential Information") and that the unauthorized disclosure of Confidential Information may cause irreparable harm to the disclosing party. Zagster acknowledges that Company's prospective user lists (if applicable) are proprietary to Company and Zagster will not use them, other than to provide Zagster Service hereunder, without Company's permission. Each party shall only use the Confidential Information to perform its obligations hereunder and will take all reasonable measures to safeguard and prevent the unauthorized disclosure of Confidential Information, but no less than the measures it takes to safeguard its own confidential information, including without limitation disclosing Confidential Information only to those of its employees with a need to know such information to perform their obligations hereunder and which have been advised of the confidential nature of the information and have agreed to protect the Confidential Information to the same extent as Company hereunder. The parties acknowledge that it will be impossible to measure the damages that would be suffered by one party if the other party fails to comply with the provisions of this Section 7 and that in the event of any such failure, such party will not have an adequate remedy at law and shall, therefore, be entitled, in addition to any other rights and remedies, to seek specific performance of the receiving party's obligations and to seek immediate injunctive relief with respect thereto.

Company may, from time to time, provide suggestions, techniques, know-how, comments, feedback or other input to Zagster with respect to the Zagster Service (collectively, "Suggestions"). Both parties agree that each Suggestion is and shall be given entirely voluntarily. Each Suggestion, even if designated as confidential by Company shall not, absent a signed, written agreement with Zagster, create an obligation of confidentiality for Zagster. Company agrees that it shall not give any Suggestion that is subject to license terms or restrictions that seek to require any Zagster technology, service, product or documentation incorporating or derived from such Suggestion, or any Zagster intellectual property, to be licensed or otherwise shared with Company or any third party. Furthermore, Company hereby assigns all right, title and interest in and to Suggestions to Zagster including without limitation all intellectual property rights therein, and will take any and all actions reasonably requested by Zagster to effect such assignment.

8. Termination.

- a. Company shall have a one-time right to terminate this Agreement, with such termination to be effective on the 60th day following the Effective Date, by providing written notice to Zagster at least ten (10) days prior to such 60th day. If Company does not exercise the foregoing right in accordance with the foregoing sentence, Company will have no further right to terminate this Agreement other than in accordance with Section 8(b) below. Should Company exercise its right to terminate the Agreement by the 60th day following the Effective Date, Company shall be liable only for the One Time Fees and for the Recurring Fees for the number of months Company has subscribed to the Zagster Service (plus any number of days beyond the last full month the Agreement is in effect on a pro-rated basis).
- b. If either party breaches this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of that breach from the other party, then the other party may terminate this Agreement effective as of the end of that period. The commitment of an act of bankruptcy (such as a giving general assignment for the benefit of creditors) or the filing of a bankruptcy petition will be deemed a breach if not vacated within thirty (30) days of filing. It is recognized that some breaches are not capable of cure, such as a cessation of business. With respect to any such incurable breach by a party, if it remains possible to give notice, then upon such written notice by the other party this Agreement will be deemed terminated. If it is not possible then this Agreement will be deemed to terminate automatically upon such breach. In addition, if Company has entered into this Agreement in its capacity as a multi-family property owner or management company, Company may terminate this Agreement with written notice to Zagster terminating this Agreement within 30 days of the consummation of a change of control of Company which results in the assignment of this Agreement to Company's successor.
- c. No termination for cause will be deemed a waiver of any claim for damages by the terminating party.
- d. Upon the termination of this Agreement, each party will promptly destroy or, on the other party's request, return all of the other party's Confidential Information, including all copies thereof. The payment and fee provisions of Schedule A shall survive any termination or expiration of this Agreement with respect to any unpaid fees due and owing hereunder. Sections 5, 6, 7, 8, and 9 of this Schedule C shall survive any termination or expiration of this Agreement.

- 9. Miscellaneous.** Each party represents and warrants to the other that it has the authority to enter into this Agreement and is not under any obligation to any third party that would conflict with this Agreement. This Agreement, including all of the Schedules hereto, is the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior and contemporaneous agreements and understandings, oral and written, between the parties with respect to the subject matter hereof. Additional or different terms in any purchase order or similar document will not modify or add to the terms of this Agreement unless mutually agreed in writing by the parties. This Agreement may be amended only by a written agreement between the parties. If one party fails to enforce any provision of this Agreement, such party will not be precluded from enforcing the same provision at another time. This Agreement and the rights granted under it may not be assigned or transferred by either party without the written consent of the other party; provided, however, either party will have the right to assign this Agreement to its successor in the event of a merger, acquisition or other consolidation, including without limitation the sale of all or substantially all of its assets or stock or business to which this Agreement relates. In the event that any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be deemed modified to the minimum extent necessary to render the provision enforceable in a manner that most closely represents the original intent of the parties and the remaining terms and conditions of this Agreement will remain in full force and effect. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to conflicts of laws provisions thereof. The parties agree that the sole jurisdiction and venue for actions related to the subject matter hereof shall be the state and federal courts located in Boston, Suffolk County, Massachusetts, and consent to the exclusive jurisdiction of such courts. In the event of any adjudication of any dispute under this Agreement, the prevailing party in such action will be entitled to reimbursement of its attorneys' fees and related costs by the other party. The paragraph headings contained in this Agreement are for convenience only and are not intended to be used nor may they be used in the interpretation of this Agreement. Neither party will be responsible for delays or failures in performance resulting from acts beyond its control. Such acts include but are not be limited to acts of God, labor conflicts, acts of war or civil disruption, governmental regulations imposed after the fact, public utility out failures, industry wide shortages of labor or material, or natural disasters.

- 10. Indemnification.** Notwithstanding any limitations on liability that have been previously stated, Zagster agrees to defend, indemnify and hold harmless Company, Company's affiliates, its officers, directors, shareholders, members, employees or agents from any and all third party claims asserted against Company by a third party ("Third Party Claims") alleging (i) the gross negligence or willful

misconduct of Zagster or its employees in the performance of the services hereunder (ii) infringement by the Zagster Software or Zagster trademarks of the third party's intellectual property rights; and Zagster shall pay all damages awarded by a court of competent jurisdiction or agreed to in settlement with respect to such Third Party Claims; provided, that (i) Company shall provide Zagster with written notice promptly upon learning of any Third Party Claims or complaints that may reasonably result in the indemnification of Company, provided, however, that failure by Company to provide notice to Zagster shall not relieve Zagster of its obligations under this Section unless such failure prejudices Zagster's defense or settlement of the Third Party Claim; (ii) Company will permit Zagster to control the defense and settlement of the Third Party Claim, provided Zagster may not settle the Third Party Claim in a manner adverse to Company or which would impose liability on Company without Company's prior written consent (which will not be unreasonably withheld or delayed); and (iii) Company will provide Zagster with assistance in the defense and settlement of the Third Party Claim at Zagster's expense. Company may (at its own cost) engage its own counsel to participate in the defense and settlement of the Third Party Claim.