

## Bypass Data Sharing Agreement

This Bypass Data Sharing Agreement (**Agreement**) is made by and among First Data Merchant Services LLC (**First Data**), ASM Global, LLC (**ASM**), and Oklahoma City Public Property Authority, a public trust with the City of Oklahoma City as its sole beneficiary and The City of Oklahoma City a municipal corporation organized under the laws of the State of Oklahoma (collectively "**Customer**").

### Background

- First Data (as successor-in-interest to Bypass Mobile, LLC) provides to Customer the Bypass System for use in Customer's venue or arena.
- ASM manages certain retail sales at Customer's entertainment venue or arena, using the Bypass System, but does not receive the Customer Bypass Data.
- ASM desires to receive Customer Bypass Data from First Data; and Customer has authorized and directed First Data to share with ASM the Customer Bypass Data.
- Subject to the terms of this Agreement, First Data is willing to provide Customer Bypass Data to ASM.

The parties agree:

### 1. Definitions.

- 1.1. **Bypass Agreement** means the Professional Services Agreement between Customer and Bypass Mobile, LLC dated August 16, 2016
- 1.2. **Customer Bypass Data** means the data described in the Bypass Persistent Data Export as amended from time to time..
- 1.3. **Bypass System** means, collectively, the point of sale software and hardware that First Data provided (or currently provides) to Customer under the Bypass Agreement
- 1.4. **Card** means a credit or debit card used for purchases of goods and services from the Customer by a Cardholder.
- 1.5. **Cardholder** means the person to whom a Card has been issued and those authorized by that person to use that Card.
- 1.6. **Confidential Information** means, any Bypass System-related technology, know-how, data, research, compilations, techniques, development efforts, inventions, trade secrets, methods, processes, designs, drawings and marketing and other information disclosed by First Data or otherwise made available to Customer or ASM in the course of ASM accessing or using the Customer Bypass Data.

**Effective Date** means the latest date set forth on the signature blocks below

### 2. ASM's Access to and Use of the Customer Bypass Data.

- 2.1. Subject to the terms of this Agreement, Customer agrees to permit First Data to share with ASM , and for ASM to access and use, Customer Bypass Data received from First Data. Customer hereby authorizes and directs First Data to share with ASM any and all Customer Bypass Data (including information related to (i) Customer's business, owners, management, and Card transactions (including transaction data, merchant identification numbers, and merchant account information) and/or (ii) the services provided under the Bypass Agreement). First Data will provide the Customer Bypass Data to ASM via the Bypass System's standard daily export function First Data has no responsibility for the completeness or accuracy of the Customer Bypass Data.

- 2.2. Customer and ASM each acknowledge and agree that ASM's access to and use of the Customer Bypass Data is: (i) subject to the terms of this Agreement Customer hereby consents to (y) ASM accessing and using the Customer Bypass Data; and (z) First Data sharing with ASM the Customer Bypass Data. Customer acknowledges and agrees that the terms this Agreement do not relieve Customer of its obligations, or affect First Data's rights, under the Bypass Agreement, including, without limitation, any regarding access and use of the Customer Bypass Data by Customer. ASM acknowledges and agrees that the terms of this Agreement do not relieve ASM of its obligations, including, without limitation, any regarding access and use of confidential information and/or transaction data by ASM.
- 2.3. ASM represents and warrants that it will comply with all applicable local, state and federal laws regarding the storage, access, use and transfer of Customer Bypass Data. This specifically includes, but is not limited to 74 O.S. § 3113.1 and the City's Personally Identifiable Information Policy.

### **3. ASM's Access to and Use of the Customer Bypass Data.**

- 3.1. ASM and Customer each acknowledge and agree that: (i) First Data is the owner or licensee of the Bypass System and Confidential Information which are protected by the copyright, patent, trademark, service mark, trade secret and other intellectual property laws of the United States; and (ii) neither Customer nor ASM will acquire any rights, by license or otherwise, to the Bypass System or Confidential Information or First Data's intellectual property rights in them. Customer and ASM each agree: (y) to safeguard, and not disclose to any third party, Customer Bypass Data and/or Confidential Information; and (z) to limit the internal access, disclosure, distribution and use of the Customer Bypass Data and Confidential Information to their respective employees, agents and representatives who have a need to know, use, or access them and will at all times have appropriate policies in effect to ensure the confidential status thereof and First Data's intellectual property rights therein. Customer and ASM will each be responsible for the acts and omissions of their respective employees, agents or representatives with respect to the access to, use, and disclosure of, the Customer Bypass Data and Confidential Information. Customer or ASM, as applicable will immediately notify First Data of any actual or suspected compromise of security affecting any of the Customer Bypass Data or Confidential Information.
- 3.2. Each of Customer and ASM acknowledge that breach of any of the provisions of this Section 3 by such party, its employees, representatives, or agents would cause immediate and irreparable harm to First Data for which money damages could not be sufficient compensation. First Data will be entitled to injunctive relief for any such breach of any provision of this section without proof of actual damages. Such remedy will not be deemed to be the exclusive remedy for such breach, but will be in addition to all other remedies available at law or in equity. Customer's and ASM's obligations, and First Data's rights under this Section 3, will survive termination of this Agreement and termination of the Bypass Agreement and Merchant Agreement, as applicable.

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### **4. Representations and Warranties.**

ASM represents and warrants to First Data that ASM is authorized by Customer to access and use the Customer Bypass Data. Customer represents and warrants to First Data that Customer has authorized ASM to access and use the Customer Bypass Data. Each time ASM accesses (or requests access to) the Customer Bypass Data pursuant to this Agreement, each of ASM and

Customer reaffirms its respective representations and warranties set forth herein. First Data, in accepting this Agreement, is acting and relying upon the foregoing representations and warranties.

## **5. Limit on Liability; Indemnification.**

5.1. First Data shall have no liability to ASM whatsoever regarding the access or use of the Customer Bypass Data, it being understood that First Data's obligations and responsibilities with respect thereto apply to Customer only and are governed by the Bypass Agreement. For clarity, and to the extent permitted under Oklahoma law, First Data's liability to Customer under this Agreement with respect to the Customer Bypass Data, if any, shall be governed by (and shall in no event exceed) the limitation of liability set forth in the Bypass Agreement. ASM shall be responsible for any liability, loss, or damage resulting from the actions of First Data with respect to the Customer Bypass Data taken in accordance with ASM's instruction.

1.1. ASM agrees to indemnify and hold First Data harmless from and against any and all actions, claims, losses or damages of any nature whatsoever (including but not limited to attorneys' fees and court costs) arising directly or indirectly from: (a) ASM's access to any Customer Bypass Data or First Data's reliance on ASM's instructions concerning such Customer Bypass Data, whether or not authorized by Customer, which are communicated and received by First Data in good faith; (b) ASM's breach of any of its representations, warranties, covenants, or obligations hereunder or under applicable law; (c) any data security breach concerning the Customer Bypass Data; (d) ASM's gross negligence or willful misconduct; € any Network Fees (as defined in the Merchant Agreement) imposed on First Data as a result of ASM's access to or use of the Customer Bypass Data; or (f) any enforcement action (including a private right of action) concerning the Customer Bypass Data brought under the California Consumer Privacy Act (Cal. Civ. Code §§1798.1, *et seq.*) or equivalent. However, ASM shall not be obligated to indemnify First Data for actions, claims, losses, or damages solely attributable to First Data's gross negligence or willful misconduct. To the extent permitted under Oklahoma law, in no event will First Data be liable for any consequential, special, punitive, or indirect loss or damage which ASM or Customer may incur or suffer in connection with this Agreement, regardless of whether ASM or Customer has been advised of the possibility thereof. The provisions of this Section 5 shall survive termination of this Agreement.

## **6. Transaction Data.**

Customer consents to First Data accessing, retaining and using and sharing Customer Bypass Data for: (i) purposes of providing services to Customer; First Data shall comply with all applicable local, state and federal laws regarding the storage, access, use and transfer of Customer Bypass Data.

## **7. Force Majeure.**

Each Party shall have no responsibility or liability for any failure, error, malfunction or any delay in carrying out any of its obligations under this Agreement if such failure, error, malfunction or delay results from acts of God; strikes or stoppages of labor; power or equipment failure (including that of any common carrier, transmission line or software); emergency conditions; adverse weather conditions; any pandemic not in effect on the Effective Date; or any other factor, medium, instrumentality, condition, or cause beyond the Party's control.

## **8. Termination.**

This Agreement begins on the Effective Date and will continue in full force and effect until it is terminated. This Agreement and the services provided hereunder may be terminated at any time by

any party upon at least ninety (90) days' prior written notice to the other parties. Any party may terminate this Agreement immediately upon written notice (including email) to the other parties in the event of any one or more of the following: (i) breach of a material obligation under this Agreement or applicable law; (ii) breach of a material obligation under the Bypass Agreement; (iii) breach of a material obligation under the Merchant Agreement; (iv) insolvency, receivership, or voluntary or involuntary bankruptcy, or the institution of any proceeding therefor, or any assignment for the benefit of creditors, or if in the good faith opinion of First Data the financial condition of Customer or ASM has become impaired; and/or (v) termination or expiration of the Bypass Agreement and/or Merchant Agreement. Upon termination of this Agreement, ASM will promptly (i) return to First Data or destroy (as directed by First Data) all raw Customer Bypass Data, (ii) cease accessing the Customer Bypass Data provided hereunder, and (iii) pay to First Data all sums due or to become due under this Agreement.

## 9. Notices.

Written notices (other than normal operations) required under this Agreement will be sent by email, certified mail, or courier (all with tracking and delivery confirmation). Notices will be effective upon receipt.

Notices to Customer will be sent to: Sue Hollenbeck, Special Projects Manager, 200 N. Walker, Ste. 300, Oklahoma City, OK 73102, [sue.hollenbeck@okc.gov](mailto:sue.hollenbeck@okc.gov) ; with a copy to: Laura McDevitt, Deputy Municipal Counselor, 200 N. Walker, Ste 400, Oklahoma City OK 73102, [laura.mcdevitt@okc.gov](mailto:laura.mcdevitt@okc.gov)

Notices to ASM will be sent to: ASM Global, Attn: Gary McAneney, Senior Vice President, 300 Conshohocken State Road, Suite 770, W. Conshohocken, PA 19428; with a copy to: ASM Global, Attn: General Counsel, 300 Conshohocken State Road, Suite 770, W. Conshohocken, PA 19428. Emailed notices to Company will be sent to: [gmcaney@asmglobal.com](mailto:gmcaney@asmglobal.com).

Notices to First Data will be sent to: First Data Merchant Services LLC, Attn: Legal Department, 4000 NW 120th Avenue, MS/CON – MER, Coral Springs, Florida 33065; with a copy to First Data Merchant Services LLC, Attn: General Counsel, 6855 Pacific Street, Omaha, Nebraska 68106. Emailed notices to First Data will be sent to: [legalpapers@fiserv.com](mailto:legalpapers@fiserv.com).

## 10. General Provisions.

10.1. *Relationship of the Parties.* Customer and ASM each acknowledge and agree that no partnership, joint venture, agency, or fiduciary relationship exists or is intended by and among ASM, Customer, and First Data; it being the intent of the parties that each party hereto is an independent contractor which is not under the control by the other parties in the performance of its agreements hereunder.

10.2. *Waivers.* No party's failure or delay in exercising any right or remedy under this Agreement will operate as a waiver of such right or remedy, and no single or partial exercise of any right or remedy under this Agreement will preclude any additional or further exercise of such right or remedy or the exercise of any other right. No waiver by either party of any breach of this Agreement will operate as a waiver of any prior, current or subsequent breach. No waiver, breach, right or remedy will be effective unless made in writing.

10.3. *[Reserved.]*

10.4. *Complete Agreement; Amendments.* This Agreement is the final and complete agreement by and among First Data, ASM, and Customer with respect to the sharing of Customer Bypass Data as described herein and supersedes all other oral or written agreements, understandings, and representations; provided, however, that as between (i) Customer and First Data this Agreement does not alter or supersede the Bypass Agreement and (ii) ASM and First Data this Agreement does not alter or supersede the Merchant Agreement. Headings are for reference only and are not part of this Agreement.

10.5. *Successors and Assigns; Governing Law.* No party may sell, assign, or transfer this Agreement or any of its rights or duties hereunder without the prior written consent of the other parties. This Agreement is binding upon and shall inure to the benefit of First Data, Customer, and ASM and their respective successors and assigns, and shall be construed and interpreted in accordance with the laws of the State of Oklahoma. Even if a provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality, or enforceability of the other provisions of this Agreement will not be affected or impaired by such holding.

10.6. The Parties hereby irrevocably submit to the exclusive jurisdiction of the state courts of, and the federal courts sitting in, the State of Oklahoma and agree that any legal action or proceeding with respect to this Agreement must be commenced in such courts.

[Signature Page Follows]

**Authorized Signatures:**

**First Data Merchant Services LLC**

(First Data)

By: DocuSigned by:  
Joseph Profeta  
855EAAC90E5D4D4...

Name: Joseph Profeta

Title: Chief sales officer

Date: 8/1/2023

**ASM Global, LLC**

(ASM)

By: DocuSigned by:  
Mark Rozells  
AB604DFCB7C143F...

Name: Mark Rozells

Title: CFO

Date: 8/1/2023

**TRUSTEES OF THE OKLAHOMA CITY PUBLIC PROPERTY AUTHORITY**

**ATTEST:**

By: Amy K. Simpson  
**Secretary**



David Holt  
**Chairman of Trustees**

**THE CITY OF OKLAHOMA CITY**

**ATTEST:**

By: Amy K. Simpson  
**City Clerk**



David Holt  
**MAYOR**

**REVIEWED for form and legality.**

Karen K. McDevitt  
**Assistant Municipal Counselor**