

CONTRACT, LEASE, AGREEMENT CONTROL FORM

Date: 04/20/2020

Contract/Lease Control #: C20-2931-TDD

Procurement#: NA

Contract/Lease Type: AGREEMENT

Award To/Lessee: APPETIZE

Owner/Lessor: OKALOOSA COUNTY

Effective Date: 03/31/2020

Expiration Date: UPON FINAL PAYMENT

Description of POINT OF SALE HARDWARE CONFIGURATION

Department: TDD

Department Monitor: ADAMS

Monitor's Telephone #: 850-651-7131

Monitor's FAX # or E-mail: JADAMS@MYOKALOOSA.COM

Closed:

Cc: BCC RECORDS

Jeffrey Hyde

From: Parsons, Kerry <KParsons@ngn-tally.com>
Sent: Sunday, January 05, 2020 5:14 PM
To: Jeffrey Hyde
Subject: RE: Appetize Quote (req 1900707)

This is approved for legal purposes.

Kerry A. Parsons, Esq.

**Nabors
Giblin &
Nickerson**

1500 Mahan Dr. Ste. 200
Tallahassee, FL 32308
T. (850) 224-4070
Kparsons@ngn-tally.com

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From: Jeffrey Hyde <jhyde@myokaloosa.com>
Sent: Thursday, January 2, 2020 9:36 AM
To: Parsons, Kerry <KParsons@ngn-tally.com>
Subject: FW: Appetize Quote (req 1900707)

Kerry – attached is the revised Appetize agreement with the language corrections that I mentioned below. Please review and advise if it is legally sufficient.
Thanks

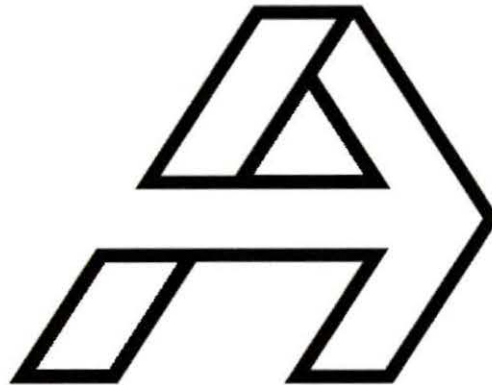
Jeffrey A. Hyde
Purchasing Manager
Okaloosa County Purchasing
850-689-5960

Please note: Due to Florida's very broad public records laws, most written communications to or from County employees regarding County business are public records, available to the public and media upon request. Therefore, this written e-mail communication, including your e-mail address, may be subject to public disclosure.

From: Jeffrey Hyde
Sent: Monday, December 23, 2019 12:23 PM
To: 'Parsons, Kerry' <KParsons@ngn-tally.com>
Subject: FW: Appetize Quote (req 1900707)

This is the one thing I had that was tagged in my follow up folder
Thanks

CONTRACT#: C20-2931-TDD
APPETIZE
POINT OF SALE HARDWARE CONFIGURATION
EXPIRES: UPON FINAL PAYMENT



Appetize

Okaloosa County, FL - Emerald Coast Convention Center


Budgetary Proposal Created for:
Okaloosa County, Florida
Emerald Coast Convention Center
Jeff Hyde
jhyde@myokaloosa.com

Created by your Appetize Team:
Dave Frawley
Strategic Accounts Executive
dave.frawley@appetizeapp.com
585.737.0964

Appetize Technologies, Inc.
6601 Center Drive West Suite 700
Los Angeles, CA 90045
877.559.4225

Version 17-Mar-19

All pricing contained in this document is subject to change and only valid for 60 days. This document is not legally binding. Please submit a validated purchase order with a reference to this proposal, as well as any required deposits, in order to fulfill your order.

Customer: Okaloosa County, Florida		 Appetize		POS Solution Proposal	
Location: Emerald Coast Convention Center					
Date: 8/27/19					
Quote # 4-004969					
5 year service plan					
Solution Set		Description			
Appetize Activate POS		Appetize Point of Sale Hardware Configuration Total		\$25,130.00	
Appetize Handhelds		Appetize Handheld Hardware Configuration Total		\$2,224.00	
POS Accessories		Optional Components		\$69.30	
7000-101	POS Staging (remote)	Equipment Staging & Configuration	\$50.00	16	\$800.00
7000-102	Project Management	Project Management Services	\$1,095.00	1	\$1,095.00
7000-103	Remote Services	Remote Configuration & Training	\$950.00	3	\$2,850.00
7000-104	On Site Specialist	On-Site System Configuration, Testing & Training	\$1,095.00	3	\$3,285.00
7000-105	On Site Specialist	Equipment Placement & Installation	\$950.00	1	\$950.00
7000-106	On Site Specialist	Event Live Support (Please see Signature Page for breakdown)	\$950.00	3	\$2,850.00
7000-107	Travel Days	Travel Days - 2 Way	\$950.00	1	\$950.00
7000-109	Remote Specialist	Post Live Support & Follow Up	\$950.00	1	\$950.00
				Proposal Subtotal	\$41,153.30
				Estimated Taxes	EXEMPT
				Shipping and Handling	\$822.70
				Total Year 1	\$41,976.00

All pricing contained in this document is subject to change and only valid for 60 days. This document is not legally binding. Please submit a validated purchase order with a reference to this proposal, as well as any required deposits, in order to fulfill your order. Proposals do not include sales tax.

Version 17-Mar-19



Appetize Proposal Worksheet

Proposal Summary Roll Up Page


Part #	Product	Description	Unit Price	Qty	Extended
<i>All-In-One POS Solutions</i>					
1000-302B	2nd GEN PLUS Android All in One (Black)	2nd GEN PLUS POS Kit: 16" Cash Drawer, MSR, 3" Printer, 2D Scanner, 2-line Display	\$1,795.00	14	\$25,130.00
<i>Apple Products</i>					
200-106	iPad mini 5 w/Cell Data	iPad mini 5 - 128GB, WiFi + AT&T or Verizon Cellular Networks	\$497.00	2	\$994.00
900-711	iPad Mini - Single Unit Charger	iPad mini Single Bay Charging Station	\$195.00	2	\$390.00
<i>Cases & Stands</i>					
500-250	iPad mini - Tough Case w/Strap	iPad mini - Ruggedized casing with card swipe guide and hand strap	\$125.00	2	\$250.00
<i>Readers & Scanners</i>					
600-301	M-Tab MSR Only	IPC Reader, w/3-track bidirectional MSR	\$295.00	2	\$590.00
TOTAL					
Proposal Summary Total:					\$27,354.00
<i>Optional Components</i>					
900-905	Patch Cable - 10'	Ethernet Patch Cable 10'	\$4.95	14	\$69.30
Optional Component Total:					\$69.30

All pricing contained in this document is subject to change and only valid for 30 days. This document is not legally binding. Please submit a validated purchase order with a reference to this proposal, as well as any required deposits, in order to fulfill your order.

Version 17-Mar-19

Part #		Product	Description	Unit Price	Qty	Extended
Appetize						
Appetize Activate POS - Standard						
SUGGESTED USE CASES: Permanent POS installation at concession, portable, merchandise stands.						
All-In-One POS Solutions						
1000-3028	2nd GEN PLUS Android All in One (Black)	2nd GEN PLUS POS Kit: 16" Cash Drawer, MSR, 3" Printer, 2D Scanner, 2-line Display	\$1,795.00	14	\$25,130.00	
TOTAL						
Proposal Summary Total:					\$25,130.00	
Optional Components						
900-905	Patch Cable - 10'	Ethernet Patch Cable 10'	\$4.95	14	\$69.30	
Optional Component Total:					\$69.30	

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		Appetize Proposal Worksheet			
Appetize Activate POS - Hand Held Solutions					
SUGGESTED USE CASES: On the go POS for servers, hawkers, portable areas, parking attendants.					
Part #	Product	Description	Unit Price	Qty	Extended
<i>Apple Products</i>					
200-106	iPad mini 5 w/Cell Data	iPad mini 5 - 128GB, WiFi + AT&T or Verizon Cellular Networks	\$497.00	2	\$994.00
900-711	iPad Mini - Single Unit Charger	iPad mini Single Bay Charging Station	\$195.00	2	\$390.00
<i>Cases & Stands</i>					
500-250	iPad mini - Tough Case w/Strap	iPad mini - Ruggedized casing with card swipe guide and hand strap	\$125.00	2	\$250.00
<i>Readers & Scanners</i>					
600-301	M-Tab MSR Only	IPC Reader, w/3-track bidirectional MSR	\$295.00	2	\$590.00
TOTAL					
Proposal Summary Total:					\$2,224.00

OK
JK

Okaloosa County, Florida
 Emerald Coast Convention Center
 Jeff Hyde
 jhyde@myokaloosa.com
 Quote valid for 30 Days

8/27/19

Appetize Technologies, Inc.
 6601 Center Drive West Suite 700
 Los Angeles, CA 90095



Statement of Work

[Empty box for Statement of Work]

Service Type	Description of Services	Resources	Days	Total	Rate	Extended
POS Staging	Staging and Configuration, DB Load, Testing and QA			16	\$ 50.00	\$ 800.00
Project Management	PM Scoping, Resource Planning and Milestone Management	1	1	1	\$ 1,095.00	\$ 1,095.00
Remote Services	Remote Programming and Configuration	1	3	3	\$ 950.00	\$ 2,850.00
On Site Services	On-Site System Configuration, Testing & Training	1	3	3	\$ 1,095.00	\$ 3,285.00
On Site Services	Equipment Placement and Installation	1	1	1	\$ 950.00	\$ 950.00
On Site Services	Live Support and Event Day Training - Event 1	1	1	1	\$ 950.00	\$ 950.00
On Site Services	Live Support and Event Day Training - Event 2	1	1	1	\$ 950.00	\$ 950.00
On Site Services	Live Support and Event Day Training - Event 3	1	1	1	\$ 950.00	\$ 950.00
On Site/Remote Services	Post Live Support - Report Reconciling, Training & Event Analysis	1	1	1	\$ 950.00	\$ 950.00
Travel Days	2-Way Travel Days	1	1	1	\$ 950.00	\$ 950.00
						\$ 13,730.00

The parties hereby accept and agree to this purchase order, which incorporates by reference all the terms and conditions set forth in the Subscription Agreement or Venue Agreement attached hereto as Exhibit A and the Service Level Agreement attached hereto as Exhibit B (all, collectively with this purchase order, the "Agreement") effective as of the later of the signature dates below.

Customer Name
Jeffrey Hyde
 Print Name
Purchasing Mgr
 Title
 DocuSigned by:
Jeffrey Hyde
 Signature
1/6/2020
 Date

Appetize Technologies, Inc.
Dan Machock
 Print Name
cfo
 Title
 DocuSigned by:
Dan Machock
 Signature
3/31/2020
 Date

BILL TO:
 Account Okaloosa County, Florida
 Address 302 N. Wilson St. Suite 203
 City, State, Zip Crestview, FL 32536
 ATTN: Jeff Hyde
 Email jhyde@myokaloosa.com
 PO# PO21900655

SHIP TO:
 Site Name: Emerald Coast Convention Center
 Address 1250 Miracle Strip Parkway SE
 City, State, Zip Fort Walton Beach, FL 32548
 ATTN: Jennifer Minto
 Email jminto-jennifer@aramark.com
 Phone No. (850) 609-3905

Term of Agreement (Years) **N/A** Years from provision date
 Target Live Date **5/15/20**
 PO Number (if applicable) **PO21900655**

PAYMENT TERMS	
CONTRACT TOTAL	\$ 41,976.00
DEPOSIT AMOUNT	\$ 28,246.00
BALANCE DUE	\$ 13,730.00

LICENSE AND SERVICES BILLING OPTIONS			
Annual Billing		Yes	
Monthly Billing (+ 5%)		No	
5 Year		Custom	
Annual Billing Total	\$ -	\$ -	
Monthly Billing Total (+5%)	\$ -	\$ -	

Payment remittance information:

Appetize Technologies For ACH/Wire:
 ATTN: Accounts Receivable Silicon Valley Bank
 6601 Center Drive West Suite 700 Routing #: 121140399
 Los Angeles, CA 90045 Account#: 3302128675

ACCOUNTING CONTACT INFORMATION
 Contact Okaloosa County Finance Department
 Email accounts payable@okaloosazlerk.com
 PO # PO21900655

Complete Venue Information if different from Ship To address:

Venue Location
 Venue Name:
 Contact Name:
 Address:
 City, State, Zip:

* Customer is responsible for paying applicable taxes
 Tax Exempt - Certificate #: 85-8013105818C-2
 (If checked, send exemption certificate to accounting@appetizeapp.com)

- As more fully set forth in the Agreement:
- * To ensure ontime implementation, this contract must be signed 75 days prior to go live and deposit received 60 days prior to go live. Hardware will be shipped after deposit received and takes approximately 10-15 business days to ship.
 - * First year subscription fees due prior to go live date
 - * If no term is specified above, the term is set forth in the Agreement
 - * After the term, the Agreement automatically renews
 - * Customer is responsible for on-site contractor's travel expenses

Please Remit Payment To:

Appetize Technologies, Inc.
 6601 Center Drive West
 Suite 700
 Los Angeles, CA 90045



For electronic payment:

Silicon Valley Bank
 Routing Number: 121140399
 Account Number: 3302128675

Date	Invoice No.
8/27/19	4-004969
PO No.	

Bill To:
Okaloosa County Finance Department Okaloosa County, Florida 302 N. Wilson St. Suite 203 Crestview, FL 32536

DUE UPON RECEIPT

QTY	Description	Amount	Tax
	Emerald Coast Convention Center Hardware Deposit	28245.999	TBD
Total			\$28,246.00

EXHIBIT A
SUBSCRIPTION AGREEMENT
TERMS AND CONDITIONS

This Subscription Agreement ("**Agreement**") is entered into effect as of the date of full execution as indicated on the signature page ("**Effective Date**") between Appetize Technologies, Inc., a Delaware corporation, ("**Appetize**") and the customer indicated on the signature page ("**Operator**"). This Agreement contains the terms by which Appetize will provide to Operator any goods and services, and access to Appetize's proprietary system, technology, and product support teams. The parties agree as follows:

1. DEFINITIONS

1.1 "**Access Credentials**" means the secure method by which Appetize provides Operator, generally through Operator's own computer systems or Appetize Hardware, access to the Appetize Technology and other systems. Access Credentials can include, without limitation, (i) user ID and password, VPN login information, a security token, or other means to authenticate Operator's identity to Appetize computer systems; or (ii) a dedicated telecommunications network connection or virtual private network connection to Appetize Technology or systems.

1.2 "**Appetize Hardware**" means all tangible items of hardware provided by Appetize to Operator in connection with this Agreement, as specified on a Purchase Order.

1.3 "**Appetize Platform**" means the proprietary system developed and owned by Appetize for the placing and processing of concession and Merchandise orders from customers.

1.4 "**Appetize Technology**" means, generically or together, the Appetize Platform, Appetize Web Portal, copies of computer programs and software that Appetize provides for use in conjunction with Appetize Hardware or to end users to facilitate their purchase of Merchandise, and any and all related software applications (including mobile applications), technology, and documentation of Appetize provided hereunder. Appetize Technology does not include Appetize Hardware or any other hardware.

1.5 "**Appetize Web Portal**" means the web-based management console accessible by Operator using an Internet browser and access credentials. The Appetize Web Portal is located at the URL: <https://connect.appetizeapp.com>

1.6 "**Deposit**" means, with respect to any Hardware Fees, the entire amount of such Hardware Fees, unless a contrary deposit amount is expressly set forth in a Purchase Order.

1.7 "**Error**" means a failure of the Appetize Technology to perform substantially in accordance with the material technical specification set forth in the applicable written functional description of the Appetize Technology delivered by Appetize with the Appetize Technology (excluding faults in such documentation).

1.8 "**Go Live**" means the date upon which Appetize certifies to Operator in writing that the Appetize Technology has been made available to Operator for commercial use.

1.9 "**Merchandise**" means a concession or item of merchandise offered for sale or sold by Operator.

1.10 "**Ordering System**" means the mobile application and other point-of-sale systems and technology developed by Appetize for use by end users to input and transmit orders for Merchandise via the Appetize Platform.

1.11 "**Purchase Order**" means a Point-of-Sale Solution Proposal or other purchasing document that sets forth Appetize Hardware and/or Services that Appetize is to provide and that is executed by the parties. A Purchase Order can also include changes to previous Purchase Orders.

1.12 "**Service Level Agreement**" means the support described on **Exhibit B**.

1.13 "**Services**" means, generically or together, the Set-up Services and Subscription Services.

1.14 "**Set-up Services**" means the services described in Section 2.1.

1.15 "**Subscription Services**" means the services described in Section 3.1.

1.16 "**Term**" has the meaning set forth in Section 6.1

2. SERVICES

2.1 **Set-Up Services.** Subject to the terms and conditions of this Agreement, as specified in an applicable Purchase Order, Appetize will assist Operator in the installation of the Appetize Hardware and training of Operator's personnel on use of the Appetize Technology at a cost equal to the cost for onsite assistance as set forth in the Service Level Agreement, unless another cost is expressly set forth in a Purchase Order. Operator will cooperate with Appetize to assist in the set-up of the Appetize Hardware and training of Operator's personnel on use of the Appetize Hardware and the Appetize Technology, at the times and dates arranged in advance with Appetize. In connection with the Set-up Services, Operator will provide a list of all Merchandise that Operator sells, including retail purchase prices therefor ("**Merchandise List**") via the Appetize Web Portal, as well as provide materials (such as photos) reasonably necessary to customize the Ordering System's user interface. Additional onsite support is subject to the terms set forth in the Service Level Agreement.

2.2 **Project Management.** Appetize and Operator will each designate a single point of contact within their organizations to manage the Set-up Services, who will meet (telephonically or in person) as necessary to manage the Set-up Services.

2.3 **Returns of New Hardware.** Appetize may, in its sole and absolute discretion, accept returns of new-in-box Appetize Hardware within 14 days of Operator's receipt. Appetize Hardware that has been customized or configured for Operator will not be eligible for return. Any and all returns are subject to Appetize's then-applicable restocking fee, which as of this writing is 15%, and Operator is responsible for return shipment.

3. USE OF THE APPETIZE PLATFORM

3.1 **Access to the Appetize Technology.** Subject to the terms and conditions of this Agreement, Appetize grants to Operator a limited, non-exclusive, non-transferable, non-sub licensable right during the Term to (a) use the Ordering System and Appetize Hardware to access the Appetize Platform solely to: (i) receive, process and fulfill Merchandise orders; and (ii) communicate with customers in connection with Merchandise orders, solely

as necessary to process and fulfill Merchandise orders; and (b) use the Appetize Web Portal to (i) access, review and download Reports; and (ii) access the Appetize Platform in order to perform other administrative functions permitted under this Agreement; in each case, solely in connection with Operator's sales of Merchandise and Operator's internal business operations.

3.2 Submissions to Appetize Platform. Operator grants Appetize a limited, non-exclusive, non-transferable, non-sublicensable right during the Term to make, use, modify, improve, reproduce and distribute copies, publicly display and perform all writings, pictorial works, audiovisual works, motion pictures and all other works that Operator submits to Appetize Platform for the purpose of performing under this Agreement and enabling Operator's use of the Appetize Platform to sell Merchandise. Operator represents, warrants and guarantees that (i) those works are original to Operator or were made on Operator's behalf and otherwise owns or possesses sufficient right under all copyrights, patents, trademarks and all other intellectual property rights of all parties relating to those works necessary to grant this license; and that (ii) submitting and using those works publicly in association with the Appetize Platform will cause no injury, will violate nobody's rights of privacy or publicity, and will not be a wrongful or illegal act.

3.3 Transactions. The Operator is solely responsible for processing and collecting on any and all payments for Merchandise purchased through the Appetize Technology, using the Operator's own third party payment processor.

3.4 Updates to Merchandise List. Operator will promptly update the Merchandise List via the Appetize Web Portal to reflect any changes in Operator's Merchandise. Operator must maintain accurate prices for each item on the Merchandise List that reflect the actual retail purchase price for such items of Merchandise (including any applicable taxes) at Operator's physical concession stands.

3.5 No Extra Transaction Fees. Operator will not charge purchasers of Merchandise any additional fees, surcharges, tips, delivery charges, or other service charges for Merchandise purchased through, or other services in connection with, the Appetize Technology. For clarity, the parties intend that Merchandise purchased through the Appetize Technology will be no more expensive than the same Merchandise purchased at the Operator's physical concession stands.

3.6 Appetize Marks. Subject to the terms and conditions of this Agreement, Appetize grants to Operator a limited, non-exclusive, non-transferable, non-sublicensable right during the Term to use the trademarks, logos and name of Appetize ("**Appetize Marks**") in connection with Operator's marketing or advertising of its use of Appetize Technology; *provided*, that each use of the Appetize Marks by Operator is approved by Appetize in writing in advance of any such use, and that Operator will only use the Appetize Marks in accordance with Appetize's trademark use guidelines. Operator acknowledges that it has no interest in the Appetize Marks other than the license granted under this Agreement and that Appetize will remain the sole and exclusive owner of all right, title and interest in and to the Appetize Marks. Any use by Operator of the Appetize Marks, and all goodwill associated therewith, will inure solely to the benefit of Appetize.

3.7 Use Restrictions. Except as otherwise expressly provided in this Agreement or to the extent such restrictions are impermissible pursuant to applicable law, Operator will not, and will not permit or authorize third parties to (i) modify, reproduce, translate, enhance, disassemble, decompile, reverse engineer or create derivative works of any portion of the Appetize Technology; (ii) make rent, lease, or otherwise permit third parties to use any portion of the Appetize Technology; (iii) remove, obscure or alter any Appetize trademark, logo or marking from any Appetize Hardware or within any Appetize Technology; (iv) operate any Appetize Technology end user programs on devices other than Appetize Hardware; or (v) circumvent or disable any security or other technological features or measures of any portion of the Appetize Technology.

3.8 Protection Against Unauthorized Use. Operator will use commercially reasonable efforts to prevent any unauthorized use of the Appetize Technology and immediately notify Appetize in writing of any unauthorized use that comes to Operator's attention. If there is unauthorized use by anyone who obtained access to the Appetize Technology directly through Operator, Operator will take all steps reasonably necessary to terminate the unauthorized use. Operator will cooperate and assist with any reasonable actions taken by Appetize to prevent or terminate unauthorized use of any Appetize Technology.

3.9 Access Credentials. To enable Operator to access the Appetize Technology and other services, Appetize may provide Operator with Access Credentials. Operator will not provide or disclose its Access Credentials to any third party and will be solely responsible for maintaining the strict confidentiality of its Access Credentials at all times. Operator will use only its Access Credentials and not the Access Credentials of any third party. Operator will notify Appetize immediately of any use of Operator's Access Credentials by any third party. Appetize will have no liability for any loss that Operator incurs as a result of third party's use of Operator's Access Credentials, whether with or without Operator's knowledge or consent. Operator will be liable for any losses incurred by Appetize or its Affiliates due to third-party use of Operator's Access Credentials.

3.10 Business Practices. Operator's use of the Appetize Technology will comply with all applicable laws and regulations, and Operator will refrain from any unethical conduct or any other conduct that may tend to damage the reputation of Appetize. Operator will not make or publish any representations, warranties, guarantees, or commitments on behalf of Appetize concerning any matter whatsoever. Operator will ensure that all of the employees of Operator that operate the Appetize Technology are fully trained with respect to its use.

3.11 Fulfillment of Merchandise Orders. Operator agrees and acknowledges that the success of the Subscription Services and the reputation of Appetize depends on Operator's fulfillment of all Merchandise orders in a professional and timely manner. During the Term, Operator will timely fulfill and deliver all Merchandise ordered via the Ordering System. Operator will maintain a sufficient number of trained employees to provide a high level of customer service to customers.

3.12 Care for Appetize Hardware. Unless a Purchase Order specifically provides that Operator is purchasing Appetize Hardware rather than Appetize retaining ownership, Operator acknowledges that all Appetize Hardware remains the private property of Appetize, and that Appetize continues to own all right, title and interest to all such Appetize Hardware, outside of the limited uses that are made available to Operator hereunder. As such, Operator will keep all such Appetize Hardware in its possession and will not permit others to possess or use it, and will not sell, collateralize, or encumber any such Appetize Hardware in any way. Operator is responsible, without limitation, to use reasonable care in its custody and use of Appetize Hardware, and is responsible for all loss or damage, other than ordinary wear and tear. Without limiting the foregoing, Operator is responsible to keep Appetize Hardware updated with all software and system upgrades instructed by Appetize, and to keep all Appetize Hardware out of excess temperature, free from drops or physical impact, and water damage. Operator will not alter or obscure any labels or markings of Appetize inventory tracking numbers or ownership markings. On reasonable notice, not less than seven days, Operator will permit Appetize to enter its premises and inspect Appetize Hardware. In the event of any damage or loss to Appetize Hardware, Operator is solely responsible to pay Appetize the replacement cost. At the end of the Term, Operator will return all Appetize Hardware in its possession, other than that which it purchased, to Appetize.

4. REPORTS AND SUPPORT

4.1 Reports. During the Term, Operator will have access to reports available via the Appetize Web Portal ("**Reports**").

4.2 Support Services. During the Term, the Operator is entitled to receive support from Appetize as set forth in the Service Level Agreement.

4.3 **Error Reporting.** Operator will document and promptly report all detected Errors in the Appetize Technology to Appetize with enough detail to permit Appetize to reproduce the Error. Operator will provide reasonable assistance to Appetize in recreating and diagnosing each Error. Operator will provide Appetize with reasonable access to all necessary personnel to answer questions regarding Errors and other problems reported by Operator.

4.4 **Error Corrections.** Appetize will use commercially reasonable efforts to correct Errors affecting Operator's use of the Appetize Technology with a level of effort commensurate with the severity of the Error, as more fully set forth in the Service Level Agreement.

4.5 **Exclusions.** Unless otherwise expressly agreed to by Appetize in a separate written agreement, the Support Services do not include any work with or relating to any third party equipment or software.

5. FEES AND PAYMENT TERMS

5.1 **Fees.** Operator will pay to Appetize the fees set forth in each Purchase Order (the "Fees").

5.2 **Appetize Hardware.** Operator will pay to Appetize the amounts set forth on the Purchase Orders for the Appetize Hardware ("Hardware Fees"). Appetize may invoice Operator for Hardware Fees set forth on any Purchase Order immediately upon execution of such Purchase Order, or at any time thereafter. Appetize will not be obligated to order, obtain, ship, or provide to Operator any Appetize Hardware until the applicable Deposit on such invoiced Hardware Fees has been paid by means of one of the payment methods set forth in Section 5.3; and in the event that such Deposit is not received in full by Appetize within two days of the date of the applicable invoice for the Hardware Fees, any schedule, date, or deadline for delivery of such Appetize Hardware will be automatically extended by (and any failure by Appetize to make such Appetize Hardware available on such schedule, date, or deadline will be excused to the extent such failure does not exceed) one day for each day the Deposit remains unpaid after the date of such invoice.

5.3 **Payment Terms.** Except with respect to Hardware Fees which may be invoiced as set forth in Section 5.2, Appetize may invoice each Operator monthly for any and all Fees due hereunder in respect of each calendar month. If Operator believes that there is an error on any invoice, it will notify Appetize of the error specifically in writing within 30 days, or else the invoice is deemed correct. Operator will pay each invoice in full within 30 days of the date of each such invoice by either (i) wire transfer to a bank account designated by Appetize or (ii) delivery to Appetize of a bank check immediately payable to Appetize and drawn on a United States bank account with sufficient funds.

5.4 **Late Payments.** If Operator fails to make a payment to Appetize when due as set forth in Section 5.3, such unpaid amount will be increased by interest equal to 1% of the unpaid balance per calendar month or the highest rate permitted by applicable law, whichever is less, determined and compounded daily from the date such payment is due until the date such payment is paid to Appetize; provided, however, that Appetize will not charge Operator interest on any past due amount unless Appetize has first given Operator written notice of Appetize's intent to charge interest and Operator fails to pay such past due amounts within ten days of receipt of such notice.

5.5 **Taxes.** Operator is responsible for and will pay all taxes and other governmental charges on the Services, the Appetize Hardware, the Merchandise and the sale thereof, and all transactions and payments made through the Appetize Technology or made pursuant to this Agreement, except for government taxes imposed on the net income, personnel, or real property of Appetize.

5.4 **Access.** Operator will ensure Appetize representatives are allowed to access the Operator's venue for general servicing, training, and observance of the Appetize system upon seven days' prior notice.

6. TERM AND TERMINATION

6.1 **Term.** Except to the extent that any Purchase order specifically states otherwise, this Agreement and all Purchase Orders will commence upon the Effective Date of Operator's first Purchase Order and continue for the term specified on the signature page of that First Purchase Order, or if no such term is specified on the signature page, five years (the "Initial Term"). At the conclusion of the Initial Term and each Renewal Term, this Agreement will automatically renew for additional successive one-year terms (each, a "Renewal Term", and together with the Initial Term, the "Term") until (i) either party gives notice to the other party at least 90 days before the end of the then-current term that such party does not wish to renew this Agreement or (ii) this Agreement is earlier terminated in accordance with the terms hereof.

6.2 **Notice of Breach.** If either party breaches this Agreement, then the non-breaching party may give the breaching party written notice of the breach (including a statement of the facts relating to the breach, the provisions of this Agreement that are in breach, and the action required to cure the breach) and of the non-breaching party's intention to terminate the Agreement pursuant to Section 6.3 if the breach is not cured within 30 days after the breaching party's receipt of such notice (or such later date as may be specified in such notice).

6.3 **Termination for Breach.** If the breaching party fails to cure a material breach specified in any notice given under Section 6.2 within 30 days after receipt of notice (or such later date as may be specified in such notice) then the non-breaching party may immediately terminate this Agreement by giving the breaching party written notice of termination. If Operator fails to timely pay any fees due to Appetize under this Agreement, Appetize may, without limitation to any of its other rights or remedies, suspend Operator's access to the Appetize Technology and the performance of any Service until it receives all undisputed amounts due.

6.4 **Termination for Bankruptcy.** Either party may terminate this Agreement immediately upon written notice to the other party if the other party becomes the subject of a petition in bankruptcy filed either by that party or by any creditor of that party; makes an assignment on behalf of creditors, has a receiver, bankruptcy trustee, or similar official appointed to handle its assets or affairs; or becomes insolvent or otherwise unable to pay its debts when due.

6.5 **Post-Termination Obligations.** If this Agreement expires or is terminated for any reason, the following obligations will survive such expiration or termination: (a) any and all liabilities accrued prior to the effective date of the expiration or termination; and (b) Sections 1, 6.5, 7, 8.3, 9, 10, 11, 13, 14.

7. INTELLECTUAL PROPERTY

7.1 **Ownership; Rights Reserved.** Except as expressly set forth in this Agreement, neither party assigns any right, title, or interest in, or grants any licenses under, any patent, copyright, trade secret, trademark, or other intellectual property right of such party, whether by implication, estoppel, or otherwise. Except as expressly granted in Section 3.1, Operator will not have any rights to the Appetize Technology, including without limitation any other non-express or implied right to make, use, sell, offer for sale, reproduce or distribute copies, modify, improve or prepare derivative works, or publicly perform or display Appetize Technology or any part thereof.

7.2 **Feedback.** Operator grants to Appetize a royalty-free, fully paid-up, nonexclusive, perpetual, irrevocable, worldwide, transferable, sublicensable license to use, copy, modify, or distribute, including by incorporating into the Appetize Technology, any suggestions, enhancement requests, recommendations, or other feedback provided by Operator to Appetize.

8. WARRANTIES AND DISCLAIMER

8.1 **Mutual Warranties.** Each party represents and warrants to the other that: this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of this Agreement; the execution, delivery, and performance of this Agreement does not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound; and it will comply with all applicable laws in connection with this Agreement.

8.2 **Appetize Warranty.** Appetize represents and warrants that the Appetize Technology will conform in all material respects to the documentation for the Appetize Technology to the extent that Operator uses the Appetize Technology for its intended purposes and in accordance with the documentation that Appetize provides; provided, however, that Appetize's sole obligation and Operator's sole remedy for a breach of this warranty is that Appetize will upon notice of nonconformance make commercially reasonable efforts to remedy such nonconformance as further set forth in the Service Level Agreement. Appetize advises Operator not to install or operate any computer programs or applications on Appetize Hardware other than that which is provided by Appetize for use on the specific Appetize Hardware device at any given time. **INSTALLING ANY OTHER COMPUTER PROGRAMS OR APPLICATIONS VOIDS ALL APPETIZE WARRANTIES.** Operator may replace Appetize Hardware end user devices with devices of which Appetize approves in advance in its reasonable discretion as being compatible with Appetize Technology. But Appetize makes no warranty as to the proper functioning of that replaced Appetize Hardware.

8.3 **Third Party Manufacturer Warranty.** Appetize itself provides no warranty on Appetize Hardware. Any warranty on Appetize Hardware is provided by the device manufacturer itself, and the warranty term normally starts whenever the Appetize Hardware first is operated. Appetize will use commercially reasonable efforts to assist Operator in making claims under those third party warranties. Operator is solely responsible for registering each Appetize Hardware device with the manufacturer to receive any the benefit of any such third party warranties.

8.4 **Disclaimer.** EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION 8, APPETIZE MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. APPETIZE EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. APPETIZE DOES NOT WARRANT THAT THE APPETIZE TECHNOLOGY OR APPETIZE HARDWARE IS OR WILL BE ERROR-FREE OR THAT OPERATION OF ANY APPETIZE TECHNOLOGY OR APPETIZE HARDWARE WILL BE SECURE OR UNINTERRUPTED. APPETIZE EXERCISES NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON OPERATOR'S USE OF THE APPETIZE TECHNOLOGY UNLESS SUCH USE IS IN COMPLIANCE WITH APPETIZE DIRECTION, GUIDANCE OR RECOMMENDATION.

9. INDEMNIFICATION BY APPETIZE

9.1 **Defense.** Appetize will defend Operator and its employees, directors, agents, and representatives ("**Operator Indemnified Parties**") from: (i) any actual or threatened third party claim that the Appetize Technology infringes or misappropriates any U.S. patent issued as of the Effective Date or any copyright or trade secret of any third party during the Term and (ii) any third-party claim arising from Appetize's negligence, violation of applicable law, or breach of this Agreement, in each case only if the applicable Operator Indemnified Party (a) gives Appetize prompt written notice of the claim, (b) gives Appetize complete control over the defense and settlement of the claim, provided however that Appetize will not without the consent of Operator agree to any settlement that admits fault by Operator or requires Operator to pay money, (c) provides information and assistance in connection with the defense and settlement of the claim as Appetize may reasonably request; and (d) complies with any settlement or court order made in connection with the claim (e.g. relating to the future use of any infringing or allegedly infringing materials).

9.2 **Indemnification.** Appetize will indemnify each of the Operator Indemnified Parties against (i) all damages, costs, and attorneys' fees finally awarded against any of them in any proceeding under Section 9.1; (ii) all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by any of them in connection with the defense of such proceeding (other than attorneys' fees and costs incurred without Appetize's consent after Appetize has accepted defense of such claim); and (iii) if any proceeding arising under Section 9.1 is settled, all amounts to any third party agreed to by Appetize in settlement of any such claims.

9.3 **Mitigation of Infringement Action.** If Operator's use of the Appetize Technology is, or in Appetize's reasonable opinion is likely to become, enjoined or materially diminished as a result of a proceeding arising under Section 9.1, then Appetize will either (i) procure the continuing right of Operator to use the Appetize Technology, (ii) replace or modify the Appetize Technology in a functionally equivalent manner so that it no longer infringes, or if, despite its commercially reasonable efforts, Appetize is unable to do either (i) or (ii), Appetize may (iii) terminate this Agreement.

9.4 **Exclusions.** Appetize will have no obligation under this Section 9 for any infringement or alleged infringement to the extent that it arises out of or is based upon (i) the combination, operation, or use of the Appetize Technology or Appetize Hardware together with other components not provided by Appetize, if such infringement or alleged infringement would have been avoided but for such combination, operation, or use; (ii) designs, requirements, or specifications required by or provided by Operator, if the infringement or alleged infringement would not have occurred but for such designs, requirements, or specifications; (iii) use of the Appetize Technology or Appetize Hardware outside of the scope of the rights granted to Operator; (iv) Operator's failure to use the latest release of any Appetize Technology or to comply with instructions provided by Appetize, if the infringement or alleged infringement would not have occurred but for such failure; or (v) any modification of any portion of the Appetize Technology not made by Appetize where such infringement or alleged infringement would not have occurred absent such modification.

9.5 **Exclusive Remedy.** This Section 9 states Appetize's sole and exclusive liability, and Operator's sole and exclusive remedy, for the actual or alleged infringement of any third party intellectual property right by any portion of the Appetize Technology or Appetize Hardware.

10. INDEMNIFICATION BY OPERATOR

10.1 **Defense by Operator.** To the extent provided by law, without waiving any immunity provided by law, Operator will defend Appetize and its employees, directors, agents, and representatives ("**Appetize Indemnified Parties**") from any actual or threatened third party claim arising out of or based upon (i) Operator's fulfillment of orders for Merchandise and (ii) Operator's negligence, violation of applicable law, or breach of this Agreement, in each case only if Appetize (a) gives Operator prompt written notice of the claim, (b) grants Operator complete control over the defense and settlement of the claim, provided however that Operator will not without the consent of Appetize agree to any settlement that admits fault by Appetize or requires Appetize to pay money, and (c) provides such information and assistance with the defense and settlement of the claim as Operator may reasonably request.

10.2 **Indemnification by Operator.** To the extent provided by law, without waiving any immunity provided by law, Operator will indemnify Appetize against (i) all damages, costs, and attorneys' fees finally awarded against Appetize in any proceeding under Section 10.1; (ii) all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by Appetize in connection with the defense of such proceeding (other than attorneys' fees and costs incurred without Operator's consent after Operator has accepted defense of such claim); and (iii) if any proceeding arising under Section 10.1 is settled, Operator will pay any amounts to any third party agreed to by Operator in settlement of any such claims. This Section 10.2 will apply regardless of any insurance coverage held by Appetize.

11. LIMITATIONS OF LIABILITY

11.1 Disclaimer of Indirect Damages. EXCEPT FOR BREACH OF SECTION 123 (CONFIDENTIALITY) AND PAYMENTS TO THIRD PARTIES MADE PURSUANT TO SECTIONS 9 AND 10 (INDEMNIFICATION), NEITHER PARTY WILL UNDER ANY CIRCUMSTANCES BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, EVEN IF A PARTY IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

11.2 Cap on Liability. EXCEPT FOR A PARTY'S INDEMNIFICATION AND DEFENSE OBLIGATIONS UNDER SECTIONS 9 AND 10 OF THIS AGREEMENT, UNDER NO CIRCUMSTANCES WILL EITHER PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EXCEED THE AGGREGATE FEES (BUT NOT INCLUDING ANY HARDWARE FEES OR DEPOSITS PAID THEREON) PAID OR PAYABLE TO APPETIZE BY OPERATOR DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE ACTS OR CIRCUMSTANCES FROM WHICH SUCH LIABILITY AROSE.

11.3 Independent Allocations of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY APPETIZE UNDER THIS AGREEMENT AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT. ALL SUCH LIMITATIONS, DISCLAIMERS, AND EXCLUSIONS (INCLUDING THIS SECTION 11) WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

12. INSURANCE

12.1 Coverage Requirements. Without in any way limiting the indemnification obligations of either party under this Agreement, Appetize shall at its sole expense procure and maintain at all times during the Term all of the following insurance: (i) Commercial general liability insurance of not less than \$2,000,000 each occurrence and \$2,000,000 in the aggregate; (ii) an umbrella or excess liability insurance policy in an amount of not less than \$5,000,000 per occurrence; (iii) worker's compensation insurance that complies fully with all applicable statutory requirements, and (iv) cyber liability insurance coverage with minimum aggregate policy limits of not less than \$3,000,000 per occurrence and \$3,000,000 in aggregate covering liabilities arising from: (a) breaches of security, including media liability coverage and breach notification coverage; (b) violation of any right to privacy, breach of federal, state, or foreign security and/or privacy laws or regulations; and, (c) data theft, damage, destruction, or corruption, including unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential corporate information, transmission of a computer virus or other type of malicious code. As and when reasonably requested by Operator, Company shall deliver to Operator certificates of insurance confirming the existence of the insurance required by this Agreement and naming the Operator and its affiliates as additional insureds thereunder. By requiring and providing coverage pursuant to the limits set forth herein, neither party represents that such coverage and limits will necessarily be adequate with respect to any particular claim or claims.

13. CONFIDENTIALITY

13.1 Definition. "Confidential Information" means any trade secrets, data, or other information of a party relating to Appetize's performance under this Agreement, and future purchase orders that Operator is considering, whether of a technical, business, or other nature (including information relating to a party's technology, software, products, services, designs, methodologies, business plans, finances, marketing plans, customers, prospects, or other affairs), that is disclosed to the receiving party during the Term and that such receiving party knows or has reason to know is confidential, proprietary, or trade secret information of the disclosing party; except that Confidential Information does not include any information that (i) was known to the receiving party prior to receiving the same from the disclosing party in connection with this Agreement; (ii) is independently developed by the receiving party without use of or reference to the Confidential Information of the disclosing party; (iii) is acquired by the receiving party from another source without restriction as to use or disclosure; or (iv) is or becomes publicly known through no fault or action of the receiving party.

13.2 Restricted Use and Nondisclosure. During and after the Term, each receiving party will (i) use the disclosing party's Confidential Information solely to perform receiving party's obligations and exercise receiving party's rights under this Agreement; (ii) not disclose the other party's Confidential Information to a third party unless such third party must access the Confidential Information to perform in accordance with this Agreement and such third party has executed a written agreement that contains terms that are substantially similar to the terms contained in this Section 13; and maintain the secrecy of, and protect from unauthorized use and disclosure, the other party's Confidential Information to the same extent (but using no less than a reasonable degree of care) that receiving party protects its own Confidential Information of a similar nature.

13.3 Required Disclosure. If receiving party is required by law or judicial process to disclose Confidential Information, such receiving party must give prompt written notice to disclosing party of such requirement before such disclosure.

13.4 Return of Materials. Upon the termination or expiration of this Agreement, each receiving party will upon disclosing party's request deliver to the disclosing party or destroy all of disclosing party's Confidential Information that such receiving party may have in its possession or control.

14. GENERAL

14.1 Governing Law. This Agreement will be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Florida, U.S.A., without regard to the conflict of laws principles thereof.

14.2 Relationship. Appetize is an independent contractor (and not an agent or representative of Operator) in the performance of this Agreement. This Agreement does not, and will not be interpreted or construed to, create or evidence any association, joint venture, partnership, or franchise between the parties; impose any partnership or franchise obligation or liability on either party; or prohibit or restrict Appetize from performing any services for any third party or providing any products to any third party.

14.3 Assignability. Neither party shall assign any part of this Agreement or delegate any of the obligations set forth herein without the prior written consent of the other party, and any attempt to assign this Agreement in whole or in part without the other party's prior written consent is void; except that either party may assign this Agreement in its entirety without such prior written consent to any parent entity or subsidiary entity of such party, or to such party's successor in interest in connection with a merger, acquisition, reorganization, or change of control of such party, or the sale of substantially all of such party's assets to which this Agreement pertains.

14.4 Subcontractors. Appetize may utilize one or more subcontractors or other third parties to perform its duties under this Agreement as long as Appetize remains responsible for all of its obligations under this Agreement.

14.5 References. Appetize may request of Operator, and Operator is not obligated to agree to, but will consider in good faith, Appetize's request to: (a) make one or more representatives reasonably available for reference inquiries from potential Appetize customers, partners, and investors; (b) permit

Appetize to create and publish a case study describing in general terms the nature of Operator's use of the Appetize Platform; and/or (c) permit Appetize to issue and publish a press release containing a quotation from a representative of Operator announcing that Operator and Appetize have entered into this Agreement

14.6 **Notices.** Any notice required or expressly permitted to be given under this Agreement will be made in writing and will be deemed given (i) four days after being sent by certified United States mail, or (ii) two days after being sent by a reputable overnight courier such as Federal Express, in either case with delivery confirmation and all postage and delivery fees prepaid, to the appropriate party at the address set forth on the signature page of this Agreement, or to such other address as either party may provide from time to time by notice to the other party in accordance with this section.

14.7 **Force Majeure.** Appetize will not be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any natural disaster, fire, earthquake, flood, weather condition, epidemic, acts of war or terror, civil disorder or disturbance, explosion, sabotage, technology attacks, governmental action or prohibition, failure of power, transportation, or communication systems, or any other cause or condition beyond Appetize's reasonable control, so long as Appetize uses all commercially reasonable efforts to avoid or remove such causes of non-performance.

14.8 **Government Rights.** All software components of the Appetize Technology are commercial computer software. Government technical data and software rights related to such software include only those rights customarily provided to commercial licensees. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Appetize to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

14.9 **Waiver.** The waiver by either party of any breach of any provision of this Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with this Agreement will not be a waiver of such party's right to demand strict compliance in the future, nor will the same be construed as a novation of this Agreement.

14.10 **Severability.** If any provision of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement will remain in full force and effect, and the parties agree to replace such illegal, unenforceable, or invalid provision with a legal, enforceable, and valid provision that effects the original intent of the parties with respect to such provision.

14.11 **Commencing Legal Action.** Any action arising out of this Agreement (including any action for breach of this Agreement or any arbitration or petition for equitable relief) must be commenced within one year from the date that the right, claim, or cause of action first accrued.

14.12 **Interpretation.** The parties have had an equal opportunity to participate in the drafting of this Agreement and the attached exhibits. No ambiguity will be construed against any party based upon a claim that that party drafted the ambiguous language. The headings appearing at the beginning of several sections contained in this Agreement have been inserted for identification and reference purposes only and will not be used to construe or interpret this Agreement. Whenever required by context, a singular number will include the plural, the plural number will include the singular, and the gender of any pronoun will include all genders. Any reference to any agreement, document or instrument will mean such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof. Whenever the words "include", "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation." Whenever the words "hereunder," "hereof," "hereto," and words of similar import are used in this Agreement, they will be deemed references to this Agreement as a whole and not to any particular article, section or other provision hereof. The word "or" is used in the inclusive sense of "and/or." The terms "or," "any" and "either" are not exclusive.

14.13 **Amendment.** This Agreement may be changed only by a written agreement signed by an authorized agent of the party against whom enforcement is sought. No usage of trade or other regular practice or method of dealing between the parties will be used to modify, interpret, supplement, or alter the terms of this Agreement. No employee, agent, or other representative of Appetize has any authority to bind Appetize with respect to any statement, representation, warranty, or other expression unless the same is specifically set forth in this Agreement. Appetize will not be bound by, and specifically objects to, any term, condition or other provision that is different from or in addition to this Agreement (whether or not it would materially alter this Agreement) that is proffered by Operator in any receipt, acceptance, confirmation, correspondence, purchase order, or otherwise, unless Appetize specifically agrees to such provision in writing and signed by an authorized agent of Appetize.

14.14 **Supremacy.** The terms of this Agreement prevail if there is any conflict between any term in this Agreement and any term in a Purchase Order, except to the extent the term in the Purchase Order specifically references the term in this Agreement and amends it in accordance with Section 14.13.

14.15 **Entire Agreement.** This Agreement, including all schedules and exhibits expressly referred to by or incorporated by reference into this Agreement, is the final and complete expression of the agreement between these parties regarding the Appetize Technology. This Agreement supersedes, and the terms of this Agreement govern, all previous oral and written communications regarding these matters, all of which are merged into this Agreement, except that this Agreement does not supersede any prior nondisclosure or comparable agreement between the parties executed prior to this Agreement being executed. In the event of a conflict between the terms of this Agreement and the terms of any exhibit or annex incorporated herein, the terms of the applicable exhibit or annex will prevail and be binding upon the parties.

14.16 **Counterparts.** This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments hereto or thereto, may be executed in two or more counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered will be an original, but all of which together will constitute one and the same instrument. Any such counterpart, to the extent delivered by means of a fax machine or by .pdf, .tif, .gif, .jpeg or similar attachment to electronic mail (any such delivery, an "Electronic Delivery") will be treated in all manner and respects as an original executed counterpart and will be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto shall raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery as a defense to the formation of a contract, and each party forever waives any such defense, except to the extent that such defense relates to lack of authenticity.

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EXHIBIT B
SERVICE LEVEL AGREEMENT

1. Overview

This exhibit represents a Service Level Agreement (“SLA”) between Appetize Technologies, Inc. (“Appetize”) and the customer receiving Services from Appetize (“Operator”) pursuant to a Subscription Agreement or Master Services Agreement, as applicable (the “Agreement”) for the provisioning of support services required to sustain the Appetize Technology.

2. Service Agreement

2.1. *Service Scope.* The following support services are covered by this SLA:

- Support by telephone, email, and online chat.
- Remote assistance, using Remote Desktop when applicable.
- Planned or Emergency Onsite assistance (for which extra costs will apply).

2.2. *Appetize Responsibilities.* The following service parameters are the responsibility of Appetize during the term of this SLA:

- Providing responses for support-related incidents.
- Meeting required response times.
- Providing reasonable notification to Operator for scheduled maintenance.

2.3. *Operator Responsibilities.* Appetize's provision of support services under this SLA is dependent upon customer:

- Paying any applicable fees and costs for support as set forth in the SLA or the Agreement.
- Making Operator's representative(s) reasonably available to Appetize personnel resolving a service request.
- Providing sufficient detail that Appetize personnel can reproduce and identify any reported issues.
- Promptly implementing all version updates and workarounds provided.
- Archiving or backing up all data to mitigate against any data losses that may occur.
- Upon request from Appetize, upgrading its systems at Operator's own cost to Appetize's then-current supported versions of system components, so that Appetize may provide the then-current version updates and workarounds.
- Using Appetize Technology only for its intended purpose of selling Merchandise in accordance with Appetize documentation, and not installing any computer programs or software on any Appetize Hardware except for that provided by Appetize for use on that Appetize Hardware.

3. **Support Management.** The following sections provide relevant details on support availability, monitoring of in-scope services and related components.

3.1. *Support Availability.* Coverage parameters specific to the support services covered in this SLA are as follows:

- Support via telephone at 877-559-4225: 24 hours per day Monday – Sunday
- Support via email at support@appetizeapp.com: 24 hours per day Monday – Sunday
- Support via online chat at connect.appetizeapp.com: 24 hours per day Monday – Sunday
- Onsite assistance: within 24 hours of customer's request at a cost of \$950 per day (minimum 2 days) plus the reasonable expenses for related travel and lodging of Appetize personnel providing such services, and subject to the reasonable availability of Appetize personnel.

3.2. *Support Levels.* Operator will have support access to an Appetize Operator Service Representative 24 hours per day, 7 days a week. Appetize will respond to support service incidents and/or requests submitted by the Operator within the following time frames:

- **Level 1** (not impeding payment acceptance functionality): Appetize will respond within 24 hours of receiving the request.
- **Level 2** (impeding payment acceptance functionality): Appetize will respond within six hours by providing a resolution, providing a workaround, or by escalating to Appetize development personnel for advanced technical support.
- **Level 3** (onsite assistance): Operator may request onsite assistance of an Appetize representative within 24 hours, in which case the Operator will pay Appetize \$950 per day (minimum 2 days) for this support service plus the reasonable expenses for related travel and lodging of such Appetize representative. Onsite support is subject to the reasonable availability of Appetize personnel.

4. **Software Updates.** All software updates and other modifications to the supported software provided by Appetize to Operator will be subject to the terms and conditions of the agreement that is provided with the software update or modification, and Operator is bound when they first activate the software; or, if no agreement is provided with the software update or modification, the software update or modification will be subject to the terms of the Agreement.

5. **Limitations on Support Services.** The following provisions limit the responsibilities of Appetize to provide support services under this SLA.

5.1. *Outdated Software Versions.* Appetize will provide support services with respect to the version of the supported software that was originally provided to Operator for a period of 12 months following the date of receipt. Thereafter, Appetize will provide support services with respect to the then-current version of the supported software. Appetize may, at its sole discretion, provide support services for outdated versions of the supported software; however, it is anticipated that outdated versions of the supported software may lack features, corrections, or bugfixes that are available in the then-current version.

5.2. *Exclusions.* Unless otherwise expressly agreed to in writing by Appetize, Appetize is not obligated to provide support services related to: (i) a Operator's failure to implement all version updates, corrections, and workarounds provided by or on behalf of Appetize; (ii) modification of or additions to the supported software by any party other than Appetize; (iii) interconnection of the supported software with third party software or hardware not furnished by Appetize or not specified in the documentation as approved for use with the supported software; (iv) use of the supported software in a manner for which it was not designed or beyond the scope of the license set forth in the Agreement; (v) a Operator or a third party's negligence; or (vi) any breach by a Operator of this Agreement.