



PURCHASE ORDER TERMS AND CONDITIONS
(Goods and Services)

These Purchase Order Terms and Conditions (these “**Terms and Conditions**”) shall govern the purchase of Goods by a Customer (each such Customer, as applicable, “**we**”, “**us**” or “**our**”) from vendor (“**you**” or “**your**”) or the performance of Services for us by you, as specified in an Issued Order.

1. Definitions.

“**Customer**” means, as applicable, JACK Ohio Finance LLC and/or any of its direct or indirect affiliates, including by way of example only, JACK Cleveland Casino LLC, JACK Thistledown Racino LLC, May Garage Property LLC, JACK Ohio LLC, Quintus Landlord LLC, or Cleveland Public Square Hospitality LLC.

“**Contract**” means the Issued Order together with these Terms and Conditions.

“**Contract Price**” means the amount identified in the Issued Order to be paid for the Deliverables as may otherwise be adjusted pursuant to these Terms and Conditions.

“**Deliverables**” means the Goods and/or Services.

“**Delivery Date**” means the date by which the Goods shall be delivered to us and/or the Services shall be completed, as identified in the Issued Order, updated pursuant to these Terms and Conditions, and/or otherwise agreed to by the parties.

“**Goods**” means goods provided pursuant to an Issued Order, including by way of example, tangible goods, intangible goods, and specially manufactured goods.

“**Issued Order**” means the SOW and/or Purchase Order related to the applicable Deliverables.

“**JACK**” means JACK Ohio Finance LLC.

“**Purchase Order**” means a purchase order issued by a Customer to you, together with any attachments incorporated or referenced therein, that identifies the Deliverables to be provided by you to the applicable Customer.

“**Services**” means services provided pursuant to an Issued Order, including by way of example, services related to the Goods, consulting services or other professional services, and renovation, maintenance, or repair services to any portion of our property.

“**Start Date**” means the earlier of the first delivery or performance of any portion of the Deliverables or the date of the Issued Order.

“**SOW**” means an agreement executed between a Customer and you that identifies the Deliverables to be provided by you to the applicable Customer, together with any underlying agreement pursuant to which the SOW is issued.

2. Deliverables – Generally.

(a) Provision of Deliverables. All Deliverables provided by you to us must be pursuant to an Issued Order. Without an Issued Order, we are not responsible for any payment to you for any Deliverables you provide to us. You acknowledge that if the

parties enter into an SOW, the Customer may also issue you a Purchase Order for all or part of the Deliverables described in the SOW; in such case, the terms of the SOW shall control. Additionally, a Purchase Order may be issued by JACK solely on behalf of, and for the benefit of, the Customer(s) to whom Deliverables shall be provided; in such case, each such Customer shall be deemed to have issued the Purchase Order to you solely for its benefit as set forth in further detail in subsection (c) below. Your agreement to furnish, or your commencement of performance with respect to, the Deliverables constitutes your unqualified acceptance of the Contract.

(b) Terms and Conditions. All Deliverables provided by you to us pursuant to an Issued Order shall be governed by these Terms and Conditions. Notwithstanding the foregoing, if a written agreement (including an SOW) governing the provision of the Deliverables is entered into between the parties (the “**Written Agreement**”), the terms and conditions set forth in the Written Agreement shall prevail over these Terms and Conditions unless and to the extent the Written Agreement explicitly references these Terms and Conditions as the governing terms, in which case these Terms and Conditions shall control.

(c) Applicable Customer. Each Contract shall be a stand-alone agreement between Customer and you. Customer shall be responsible for its own obligations under its respective Contract. You acknowledge that any rights you may have against a Customer shall be limited to each particular Customer and you may not otherwise exercise any rights under the Contract or available at law against other Customers with whom you may have a Contract. JACK may, however, exercise any rights a Customer may have against you, in whole or in part, to the extent you breach your obligations with respect to any Customer under any Contract, whether or not explicitly provided herein; such rights afforded to JACK shall apply only to the extent that such Customer continues to remain affiliated with JACK.

(d) Changes to Deliverables. You shall not make any changes in the Deliverables without our prior written approval. Before any portion of the Deliverables are provided or performed, we may, in whole or in part, by notice to you: (i) cancel the Deliverables (and in such case, each party shall be relieved from its respective rights and obligations for the cancelled Deliverables except as explicitly set forth in Section 4); (ii) suspend (temporarily or indefinitely) our purchase of the Deliverables; or (iii) make changes in: the quantities, scope, or specifications of the Deliverables; the Delivery Date of the

Deliverables; the method of shipment or packing of the Goods; the place of delivery of the Goods or performance of the Services; or any set-up and take-down curfews specified in an Issued Order. If a suspension or change causes an increase in the Contract Price or change in the Delivery Date, you must notify us no later than five (5) days from your receipt of our suspension/change notification; failure to so timely notify us shall constitute your acceptance of the suspension or change with no other modification to the Issued Order. If you timely notify us of a change to the Contract Price or the Delivery Date, then the Contract Price and/or Delivery Date shall be equitably adjusted as the parties may mutually agree, as reflected in an updated Issued Order. In all cases, any reduction in scope of the Deliverables shall result in a proportionate decrease in the Contract Price. Nothing in this subsection is intended to excuse your performance pursuant to the Contract.

(e) Acceptance. Our acceptance of the Deliverables shall be in accordance with the acceptance criteria set forth in the Issued Order, if any. If there are no such criteria, then the Deliverables shall be deemed to have been accepted by us only if we have not notified you of any non-conformance associated with the Deliverables within ninety (90) days of receipt or completion of the applicable Deliverable (but the foregoing shall not diminish any warranty set forth herein). Our payment to you for the Deliverables shall not mean that you have provided the Deliverables in accordance with the Contract.

(f) Vendor's Personnel. The parties may agree that certain Services shall be performed pursuant to a staffing plan ("**Staffing Plan**") listing your key personnel and subcontractors (if any) assigned to perform the Services and the respective role/responsibility of each, as shall be set forth in an Issued Order or as may be approved by us from time-to-time. No changes or substitutions shall be made to the Staffing Plan without our advance consent.

3. Payment.

(a) For Deliverables properly provided pursuant to the Contract, you shall be paid the Contract Price. The Contract Price includes all taxes related to the Deliverables and you agree to remit all applicable taxes to the appropriate taxing authorities. We shall pay you the undisputed portion of the billed Contract Price within sixty (60) days after our receipt of a proper invoice and supporting documentation (as set forth below or that we may request) to substantiate the requested payment.

(b) Invoices shall be submitted no more frequently than monthly and no later than the 10th day of each month covering the Deliverables provided in the previous calendar month. All invoices shall be emailed to us at accountspayable@jackentertainment.com and to such other mailing or email address as the Issued Order may indicate, or to such other mailing or email address as we may advise you of from time-to-time. Each invoice shall identify the corresponding Issued Order and shall contain detailed entries describing the Deliverables provided, the date(s) the Deliverables are provided, detailed entries for the dollar amount owed, and the timekeeper and amount of time billed (each as applicable). To the extent that an Issued Order allocates the Contract Price to specific

Customers, each Customer shall be billed directly for their portion of the Contract Price.

(c) We are entitled to withhold payment for disputed portions of the billed Contract Price, including by way of example only, requested payments related to defective or non-conforming Deliverables or costs billed to us for which you are responsible. Moreover, we are entitled to offset against the Contract Price costs we may expend to correct your defective, non-conforming, or non-delivered Deliverables. In the event of a dispute regarding payment, you shall not suspend, withhold, or slow down the performance of the Deliverables or otherwise terminate the Contract. The parties shall endeavor to resolve such dispute within thirty (30) days of our notice to you of the disputed amount.

(d) To the extent the Deliverables you provide to us relate specifically to renovations, maintenance or repairs to our property, the following provisions shall also apply:

(i) Included with the submission of any invoice to us, you must also submit: (x) an Application and Certificate for Payment pursuant to the form then promulgated by the American Institute of Architects (AIA), (y) documentation, as applicable, to evidence that you or your subcontractor holds a special business classification (e.g., a locally headquartered or based business, a small business or minority- or woman-owned business), and (z) conditional lien waivers from you and your subcontractors and suppliers reflecting that the payment requested is in full satisfaction of the Deliverables (and materials and labor related thereto) provided in connection with the applicable invoice.

(ii) If the Deliverables are scheduled to take thirty (30) days or less to complete, you shall only invoice us upon completion of the Deliverables. If the Deliverables are scheduled to take more than thirty (30) days to complete, you shall invoice us for progress payments for the portion of the Deliverables completed in the previous calendar month. In any event, all payments due shall be subject to 10% retention until we confirm that the Deliverables have been provided in accordance with the Contract.

(iii) Provided we have paid you in accordance with the Contract, you shall be responsible to remove, within 30 days after completion of the Deliverables or notice from us, all liens against our property and to settle all claims for payment filed or asserted by subcontractors, suppliers or others performing Deliverables or furnishing labor or material to you for the Deliverables.

(iv) If any subcontractor of yours is unable to perform its portion of the Deliverables under the Contract, you shall promptly locate a substitute subcontractor that is acceptable to us and who, if applicable, is able to comply with applicable Gaming Requirements. In any event, the Contract Price shall not increase due to such substitute subcontractor, but the Contract Price shall decrease if the amount charged by such substituted subcontractor is less than the amount that would have been charged by the previous subcontractor.

4. Term and Termination. The Contract shall commence on the Start Date and shall continue until such time as all of the Deliverables under the Contract have been provided in accordance with the terms of the Contract. We or JACK may terminate the Contract as follows: (a) for any reason upon seven (7) days advance notice to you, or (b) immediately for your breach of your obligations under the Contract. If the Contract is terminated for reasons other than a breach by you or the Deliverables are cancelled pursuant to Section 2(d), you shall be entitled to payment under the Contract only for all documented, actual direct costs for the Deliverables expended or incurred by you prior to the effective termination or cancellation date, and you hereby waive all claims for other damages; you shall promptly reimburse us for any payment we made that covers a period following the effective termination or cancellation date. As used herein, "direct costs" means Goods previously procured for us but not yet delivered or Services actually rendered, and specifically excludes any costs expended or incurred by you while in breach of your obligations, any equipment purchased by you to provide the Deliverables, and any fixed costs incurred by you. Any right, obligation or required performance of the parties in the Contract that by its express terms or nature and context is intended to survive termination or expiration of the Contract, shall survive any such termination or expiration.

5. Shipment; Delivery; Schedule.

(a) Timing. Time is of the essence in the performance of your obligations. You shall perform the Deliverables by the Delivery Date. You shall immediately notify us if you anticipate, or there is, any delay in the delivery of any portion of the Deliverables beyond the Delivery Date, after which we shall have the option of canceling all or part of the Deliverables under the Issued Order without liability. Our acceptance of your notice, however, does not constitute a waiver of your obligations. To the extent the Deliverables are not completed by the Delivery Date, we may be entitled to liquidated damages as set forth in the Issued Order.

(b) Delivery and Risk. You shall pay all costs of delivery and freight of the Goods to the location set forth in the Issued Order, and if no location is identified, to our loading dock. You assume the risk of any loss or damage to the Goods until the Goods are accepted by us at the correct place of delivery.

(c) Incorrect Delivery of Goods. At our option, we may store incorrect deliveries of Goods for a reasonable amount of time at your risk and expense, or reject such Goods and return them to you. Incorrect deliveries are Goods that are delivered: (i) in an amount different than stated in the Issued Order, (ii) more than three (3) business days prior to the Delivery Date, or (iii) after the Delivery Date.

(d) Packing of Goods. You shall package and handle the Goods to protect them from loss or damage pursuant to our specifications and if none are specified, in accordance with good commercial practices and industry standards. You shall be liable for, and shall promptly refund to us, the amount of any loss or damage due to your failure to properly package or handle such Goods. You shall include with each shipment of Goods an itemized packing list that identifies the Issued Order, product

numbers, a description and the quantity of each Good shipped, and the date of shipment. You shall make any Issued Order number plainly visible in every invoice and bill of lading.

6. Independent Contractor. You agree that you and your employees and agents are independent contractors and shall not have any employee status with us. Neither party has any authority to act for any other party as an agent, partner, or joint venturer as a result of the Contract. You have no authority to bind us to any agreements, promises, or undertakings. The Contract shall not be construed as creating or constituting a partnership or joint venture between any of the parties. You shall report for federal, state and local income tax purposes all amounts received by you under the Contract as income. You shall have sole responsibility for the withholding of all federal, state and local income taxes, unemployment insurance tax, social security tax, and other withholding with respect to payments you make to your employees, agents, contractors and other persons performing the Deliverables pursuant to the Contract.

7. Warranties. You represent and warrant that:

(a) You shall at all times maintain all necessary business licenses or approvals necessary for you to fully perform your obligations under the Contract.

(b) You are free to enter into the Contract and are not a party to or otherwise bound by any contracts or restrictive covenants preventing full performance of your duties thereunder.

(c) You shall follow any rules we disclose to you when working at or around our property, including for example, rules involving health, safety, the environment, and security. You are responsible for all safety precautions required for the performance of the Deliverables. You shall take special precautions as necessary to protect any existing facilities and personal property at our property or on adjacent properties from damage caused in your performance of the Deliverables or your other activities at or around our property. You shall promptly repair any damage or loss caused in your performance of the Deliverables.

(d) All materials and equipment furnished shall be new.

(e) The Deliverables sold and/or performed by you pursuant to the Contract shall: (i) be of a professional quality and performed in a professional and timely manner in accordance with the highest applicable industry standards and practices, and in connection with the foregoing, that all applicable personnel shall have the requisite expertise and ability to perform the Services; (ii) be free from any defects in design, materials and workmanship; (iii) comply in all respects with any specifications, drawings, samples, or other descriptions set forth in the Issued Order, or later communicated to you, and shall otherwise be fit for the purpose intended and merchantable; and (iv) be free from all liens, encumbrances, and rights of third parties. You shall be required to replace or re-perform any of the Deliverables (including any replacement Deliverables) that fail to comply with this subsection. Your failure to do so shall entitle us to the following remedies (without prejudice to us of any other rights or remedies available at law or under the Contract): (1) rectifying such defect on

your behalf and you reimbursing us for all such costs we incur or otherwise offsetting these costs against any amounts we may owe you; or (2) a full refund for any amount paid for the applicable Deliverables. The warranties set forth in this subsection shall be for a period of two (2) years commencing upon completion of delivery of the Goods or performance of the Services in the manner required under the Contract and shall survive any expiration or termination of the Contract.

(f) You are financially solvent and possess sufficient experience, authority, and working capital to perform and complete your obligations under the Contract in a timely manner.

(g) You are not bound by the terms of any agreement with any other person or entity to refrain from: (i) using or disclosing any trade secret or confidential or proprietary information that may be used in the course of performing the Deliverables, or (ii) competing, directly or indirectly, with the business of any such third party that would prevent performing the Deliverables.

(h) The Deliverables and any work product shall not violate or in any way infringe upon any rights of third parties including any copyrights, patents, trademarks, trade secrets, or other proprietary rights.

8. Insurance.

(a) During the term of the Contract, you shall maintain, at your expense (and cause any subcontractor to maintain at their expense), the following insurance coverages:

(i) Commercial General Liability (“**CGL**”) insurance providing coverage against all claims, including premises/operations, independent contractors, products/completed operations, bodily injury, property damage, and personal and advertising injury in the following limits:

Each Occurrence Limit:	\$1,000,000
General Aggregate Limit:	\$2,000,000
Personal & Advertising Injury Limit:	\$1,000,000
Products/Completed Operations Limit:	\$2,000,000

There shall be no endorsement or modification of the CGL policy limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage, and the CGL policy shall include a “Per Project Aggregate” endorsement.

(ii) Umbrella insurance with a limit of not less than \$5,000,000 per occurrence and aggregate and a “Per Project Aggregate” endorsement.

(iii) Business automotive liability insurance providing coverage for all owned, non-owned and hired vehicles in an amount not less than \$1,000,000 per accident.

(iv) Workers’ compensation and employer’s liability insurance in such minimum limits as required by applicable law in any state in which the Deliverables shall be provided, but in any event not less than \$1,000,000 for each accident for bodily injury by accident or \$1,000,000 for each employee for bodily injury by disease. This limit may be satisfied in conjunction with the umbrella insurance.

(v) Professional liability insurance (also known as “errors and omissions insurance”) with limits of \$2,000,000 per occurrence and aggregate that provides coverage for errors and omissions caused by your negligence in the performance of any

Services. The foregoing insurance obligation shall be required only to the extent that you are providing professional services or regularly providing advice to us, and shall otherwise be maintained in force for so long as you are providing such services.

(vi) Such other insurance and/or bond required by applicable law and/or as we may require.

(b) You shall furnish us certificates of insurance, duly executed by an authorized representative of each insurer, evidencing the insurance required hereunder, prior to furnishing any Deliverables. Upon request, you shall promptly provide copies of any or all policies of insurance, and required endorsements, maintained in fulfillment hereof.

(c) All of the insurance policies required hereunder:

(i) shall be endorsed to name us, JACK, and other parties we identify from time-to-time as an additional insured, as well as contain such other riders and endorsements as we deem necessary (provided, however, that such additional insured requirements only apply to the coverages required under sections (a)(i) and (a)(ii) above);

(ii) shall be endorsed to contain a waiver of subrogation and evidence thereof provided to us; moreover, you also waive the right of your insurer to subrogate against us any claims the insurer may have paid;

(iii) shall provide that the coverage afforded to the additional insureds shall be primary insurance of the additional insureds with respect to claims arising out of operations performed by or on their behalf, and not excess over, or contributing with, any insurance purchased or maintained by the additional insured; and

(iv) must: (1) be written on an “occurrence” basis rather than a “claims-made” basis (except that the Professional Liability coverage may be written on “claims-made” basis); (2) be issued by a financially responsible company or companies authorized to issue such policy or policies acceptable to us; and (3) provide that the insurance policy shall not be subject to cancellation, termination or material change except after thirty (30) days’ prior written notice to us (10 days’ notice for non-payment of premium).

(d) Failure by us to demand any certificate, endorsement or other evidence of full compliance with these insurance requirements or failure by us to identify and/or notify you of any deficiency hereunder shall not be construed as a waiver of your obligations to maintain such insurance. You agree that the obligation to provide the insurance required hereunder is your sole responsibility and that this requirement cannot be waived by any conduct, action, inaction, or omission by us. Furthermore, nothing contained in the insurance requirements hereunder is to be construed as limiting your liability.

9. Regulatory Requirements.

(a) General. You acknowledge we hold privileged gaming licenses and we are required to adhere to all applicable gaming statutes and the regulations, resolutions and orders promulgated pursuant thereto (collectively, as replaced, amended, supplemented, or construed, the “**Gaming Requirements**”) that may be imposed or enforced by the applicable gaming commission (each, as applicable, the “**Gaming**

Commission”). You agree to comply with all Gaming Requirements that may apply to you before providing any portion of the Deliverables. If at any time any Gaming Commission disapproves of the Contract, in whole or in part, we may immediately terminate the Contract. Additionally, we may immediately terminate the Contract if we determine, in our sole discretion, that it violates any Gaming Requirements, or that it would be in our best interest to protect our or JACK’s privileged gaming licenses or status with any Gaming Commission. Notwithstanding any other terms to the contrary, if the Contract is terminated pursuant to this Section 9, we shall only be liable for paying costs incurred under the Contract through the date of termination to the extent allowable under applicable Gaming Requirements.

(b) Suitability of Persons Providing Services on Property. Prior to any of your employees or agents providing the Deliverables on any portion of our property, you shall conduct appropriate background checks on such persons to ensure they have not been convicted of any felony, or any misdemeanor relating to gambling, dishonesty, theft or fraud. You also agree that we may prohibit your employees or agents from providing the Deliverables on any portion of our property due to a variety of reasons (without specifically identifying the reason), including by way of example, that such person is participating in a state exclusion program, such person is on a state exclusion list, such person self-excluded themselves from our property, or such person was temporarily or permanently evicted from our property.

(c) Ohio Specific Regulatory Requirements. You agree as follows:

(i) For any non-gaming Deliverables provided directly or indirectly to a Customer subject to the Ohio Casino Control Commission Gaming Requirements that equal or exceed \$100,000.00 in a rolling 12-month period, you acknowledge that you must promptly execute a vendor certification prior to reaching such threshold pursuant to Ohio Administrative Code Section 3772-10-30 (or any successor provision) in a form approved by the Ohio Casino Control Commission. So as to minimize interruption of you providing Deliverables to such Customer, you agree to execute such vendor certification at such time the aggregate value of the Deliverables you provide to such Customer reaches \$80,000.00 in a rolling 12-month period.

(ii) For any portion of the Deliverables that are considered “gaming goods or services” under the applicable Gaming Requirements, such portion of the Deliverables may only be provided to us if you maintain a gaming supplier license from the applicable Gaming Commission, regardless of the dollar value attributable to such Deliverables.

(iii) You shall ensure that any of your employees or agents (including those of your subcontractors) providing the Deliverables on any portion of our property shall report to our property’s Security Command Center to be issued an appropriate vendor or visitor badge.

(d) Indemnification. You agree to indemnify and hold us, JACK, and our and JACK’s direct or indirect affiliates, parents, and subsidiaries, and each of the foregoing’s respective qualifiers,

officers, shareholders, members, directors, managers, employees, or agents (individually and collectively, the “**Indemnitees**”) harmless from and against any and all direct or indirect claims, actions, demands, liabilities, losses, fines, costs, damages (including, without limitation, incidental damages, consequential damages and lost profits) and expenses (including, without limitation, attorneys’ fees, experts’ fees and court costs) that may be made by anyone, including the Indemnitees, directly or indirectly arising out of or relating to your or your subcontractor’s failure to comply with this Section 9. Your foregoing indemnity obligations shall survive expiration or termination of the Contract.

10. Confidentiality.

(a) You shall treat any and all information we or JACK provides you in connection with the Contract or that you obtain in connection with providing the Deliverables as confidential (the “**Confidential Information**”) whether provided or obtained before or after the Start Date. Notwithstanding the foregoing, Confidential Information does not include information that: (i) has become public knowledge through legal means without your fault; (ii) is shown by written record that it was known by you prior to the transactions contemplated by the Contract and not otherwise restricted by contract or law; or (iii) is demonstrated by documentary evidence became available to you on a non-confidential basis from a third party not restricted by contract or law regarding such information.

(b) You shall use the Confidential Information solely to provide the Deliverables. You shall use the same degree of care in safeguarding the Confidential Information as you use for your own confidential information, but in no event less than reasonable care, and you shall restrict disclosure of the Confidential Information to those of your employees and professional advisors who have a need to know the same in furtherance of providing the Deliverables and who are bound by obligations of non-disclosure and limited use at least as strict as those contained herein. Upon request by us or JACK, you shall return, or otherwise destroy, all copies of the Confidential Information, and in either case, you shall certify in writing your compliance with the terms of this provision. After such destruction or delivery, you shall not retain any copies of the Confidential Information. You are responsible for any breach of the confidentiality provisions of the Contract by your employees or agents. You expressly acknowledge that damages alone shall be an inadequate remedy for any breach or violation of the confidentiality provisions of the Contract and in view of the difficulties of placing a monetary value on any such breach, we or JACK shall be entitled to a preliminary and final injunction to prevent any breach or further breach of the confidentiality provisions of the Contract. This remedy is separate and apart from any other remedy we or JACK may have at law or in equity. In connection with the foregoing, you shall not raise the defense of an adequate remedy at law.

(c) If you are directed to disclose any Confidential Information pursuant to an order of a court or governmental agency (including any Gaming Commission), you shall first use reasonable efforts to provide us and JACK with advance notice to

permit us or JACK to seek a protective order or otherwise restrict the disclosure of the Confidential Information. In such event, you shall cooperate in good faith with us and JACK in our efforts to obtain a protective order or take such other action we or JACK deems necessary, and if a protective order or other remedy is not obtained despite our or JACK's efforts, you shall disclose only that portion of the Confidential Information you are legally required to disclose and shall make reasonable efforts to obtain reliable assurance that confidential treatment shall be afforded to the Confidential Information.

(d) Regardless of the expiration or termination of the Contract, your obligations concerning the Confidential Information shall remain in effect until such time as the Confidential Information loses its status as Confidential Information.

(e) You agree that the terms and conditions set forth in the Issued Order are confidential. Accordingly, you shall not disclose the terms of the Issued Order to any party (except to those of your employees and professional advisors who have a need to know the same in furtherance of providing the Deliverables) without our prior written consent.

11. Intellectual Property Rights.

(a) If you or your subcontractors develop, improve upon, or create any intellectual property or derivative works using or related to our Confidential Information, you hereby irrevocably assign, and agree to assign (and shall cause your subcontractors to so irrevocably assign), to us all right, title and interest in and to any such intellectual property or derivative works, including all patents, copyrights, trademarks, registrations and such other intellectual property rights therein, whether developed solely by you or jointly by the parties, without the requirement of further consideration and free from any claim or lien or retention of rights. All such copyrightable works shall be considered "works made for hire" as accorded to such definition of Title 17 of the United States Copyright Code. You further agree to execute all instruments or documents required or reasonably requested to perfect or record our right, title or interest and hereby irrevocably designate and appoint us and our duly authorized officers and agents, as your agents and attorney in-fact, coupled with an interest to do all other lawfully permitted acts to further the purposes set forth above in this Section 11. You further agree not to utilize or incorporate any intellectual property rights, open source software, or Confidential Information owned by any third party ("**Other Rights**") into the Deliverables or any Deliverables hereunder without first obtaining our prior written approval; notwithstanding the foregoing, to the extent that Other Rights are incorporated into the Deliverables or any Deliverables hereunder, you hereby grant, and agree to grant, an irrevocable, worldwide, perpetual, transferable, royalty free, fully paid-up license, and non-exclusive license to fully exploit such Other Rights for any purpose without further consideration. Your foregoing obligations shall survive expiration or termination of the Contract.

(b) Furthermore, all drawings, plans, sketches, specifications, engineering data, logs, reports and other

documents, including those in electronic form, prepared by you or your subcontractors in the performance of the Deliverables, are considered "**Instruments of Service**" for all purposes under the Contract. In connection with the foregoing, you grant us a nonexclusive and irrevocable license to use and reproduce the Instruments of Service for our purposes. You shall obtain similar nonexclusive licenses from your subcontractors as required. It is expressly agreed that we have undertaken substantial obligations and put substantial resources at risk in reliance on this license and that it represents a license that is coupled with an interest on our part and that in no case may it be terminated or revoked. Any dispute that may arise between the parties shall not affect our license to use the Instruments of Service, it being expressly understood that any such dispute shall be resolved solely via litigation without any recourse to our license. It is understood and agreed that, in the event you are precluded from completing all the Deliverables provided for under the Contract, there is a significant risk of misinterpretation and misuse of any Instruments of Service that are only partially complete. Therefore, we hereby indemnify and hold you harmless from and against any and all third party claims against you arising out of our use of the Instruments of Service (i) for completion of the Instruments of Services that you may not have completed or were otherwise tasked with, (ii) on any project other than that contemplated by an Issued Order. All Instruments of Service submitted to us shall be in electronic form, ordered, indexed and file-named using conventions that are user-friendly.

12. Assignment; Subcontracting.

(a) You may not assign the Contract without our prior written consent. Any merger, reorganization, or sale of all or substantially all your assets or stock or equity interests, or any direct or indirect change in the control of your stock or equity interests, shall be deemed to be an assignment. We may freely assign the Contract without your consent, including in connection with any merger, reorganization, or sale of all or substantially all our assets or stock or equity interests, or any direct or indirect change in the control of our stock or equity interests.

(b) You acknowledge that we have selected you on the basis of, and we are relying on, your expertise in providing the Deliverables. Accordingly, you shall not use any subcontractor, consultant, agent, or other third party to provide the Deliverables without our prior written approval. Any consent by us to an assignment or subcontracting shall not constitute a consent to any subsequent assignment or subcontracting. Any consent by us to an assignment or subcontracting shall be conditioned on all requirements and obligations applicable to you under the Contract applying to the assignee or subcontractor.

(c) The assignment or subcontracting of any rights under the Contract shall not relieve you of primary liability for your obligations under the Contract, and as between the parties, you shall continue to be liable for all of your obligations under the Contract as though no assignment or subcontracting had been made. You shall also be responsible for ensuring that any subcontracting party fully complies with all applicable Gaming

Requirements, including any licensure requirements for such party or their respective employees or agents.

13. Indemnification; Waiver.

(a) You agree to indemnify and hold the Indemnitees harmless from and against any and all direct or indirect claims, actions, demands, liabilities, losses, fines, costs, damages (including, without limitation, incidental damages, consequential damages and lost profits) and expenses (including, without limitation, attorneys' fees, experts' fees and court costs) that may be made by anyone, including the Indemnitees, directly or indirectly arising out of or relating to: (i) any actual or alleged infringement or misappropriation by the Deliverables of the intellectual property rights of any third party by you or your subcontractor; (ii) any actual or alleged injury to any person, damage to any property, or any other damage or loss resulting or claimed to result in whole or in part from any actual or alleged defect in the Deliverables; (iii) any actual or alleged violation of any law, statute, rule or regulation relating to any Deliverables, or failure to comply with any industry standards by you or your subcontractor; (iv) any breach or alleged breach of any of your or your subcontractor's obligations, representations or warranties under the Contract; or (v) any act, activity or omission by you or any of your affiliates, employees, subcontractors, agents, or contractors. Your foregoing indemnity obligations shall survive expiration or termination of the Contract.

(b) You waive any and all claims that may directly or indirectly arise against us in the performance of the Deliverables, unless and to the extent such claim arises out of our gross negligence. In no event shall we be responsible for any claims for consequential, incidental and special damages.

14. Force Majeure. Neither party shall be liable for any delay in performing or failing to perform its obligations hereunder to the extent that and for so long as the delay or failure results from an event beyond its reasonably foreseeable control such as war, riot, strikes, government action or acts of God. The party affected by the event of force majeure shall promptly notify the other party in writing of the occurrence thereof, shall indicate the expected duration of such interruption, and shall use all reasonable efforts to mitigate the effect of the force majeure event in the best possible way. If the force majeure event continues beyond a period of seven (7) days or if more than one force majeure event occurs within a six (6) month period, the other party shall have the right to terminate the Contract by written notice, without having to pay any form of compensation.

15. Compliance with Laws; Permits. You shall give all notices required by and otherwise comply with all applicable laws, ordinances, rules, regulations, restrictions and/or orders of any public authority and/or governmental entity (which includes any Gaming Commission) related to the performance of the Deliverables. You shall obtain and pay for all permits, approvals, inspections, and, if applicable, certificate of occupancy or certificate of completion required for the Deliverables. You shall schedule all required inspections with government officials and shall notify us in advance of such inspections so that we can attend if we so desire.

16. Deliverables Performed at Customer's Property. You shall comply with all of our requirements and restrictions regarding locations for your dumpster and equipment, locations for delivery, unloading and storage of materials, locations for worker parking, access to existing buildings, building security and similar matters. Deliverables requiring tie-ins to, or interruption or shutdown of, building systems must be scheduled with us in advance and, if required by us, must be performed after normal business hours for the facilities. You shall provide regular clean-up of areas you work in or about as requested by us and promptly remove and legally transport and dispose of all construction debris and rubbish incidental to the Deliverables. You shall erect and maintain all safety barricades as per applicable standards, erect and maintain dust control measures to protect all areas of the facility beyond the work area, maintain all security measures as dictated by us. You shall secure our approval prior to moving on with a new phase of the Deliverables and co-ordinate all Deliverables with us to assure no unnecessary interruption occurs. If the Deliverables are performed within an existing facility, we and our tenants, and their employees and guests, may continue to occupy and use such existing facilities during the performance of the Deliverables, and you shall be required to take special precautions to avoid interference with such continued use of the facilities. You acknowledge that you have verified all conditions of our property and any existing facilities(s) as necessary for the performance of your Deliverables activities.

17. Notices. All notices, requests, demands, and other communications that are required or permitted to be given under the Contract shall be in writing and shall be deemed to have been duly given: (a) upon receipt if delivered in person; (b) the third business day after mailing by first-class certified or registered mail, return receipt requested and postage prepaid; (c) the following business day after mailing by recognized overnight courier, with proof of delivery requested and charges prepaid; or (d) the same business day if sent by email prior to 4:00 pm ET (the following business day if sent after 4:00 pm ET) and proof of such email delivery can be reasonably established, when sent to the mailing or email addresses set forth in the Issued Order, or to such other mailing or email address as a party may specify by written notice to the other party in accordance with this section. Notices to us shall be sent to the attention of the Corporate VP of Purchasing with a required copy sent to our Legal Department (legalnotices@jackentertainment.com).

18. Publicity; Use of Trademarks. You shall not issue any public statements or promotional materials disclosing the existence of the Contract or the delivery or performance of the Deliverables or use any of our or JACK's trademarks, service marks, trade names, logos, or domain names without our prior written approval. We may issue such public statements or promotional materials concerning the existence of the Contract or performance of the Deliverables.

19. Audit. You shall keep and maintain accurate records relating to the Contract and shall retain the same for the five (5) year period following the termination or expiration of the Contract. Within ten (10) days of our request, you shall provide access to those of your records that are reasonably necessary for us to

confirm your compliance with the Contract. Your foregoing obligations shall survive expiration or termination of the Contract with respect to obligations arising prior to such expiration or termination.

20. Labor Disputes. You shall give us prompt notice of any actual or potential labor dispute that delays or may delay timely performance of your obligations under the Contract.

21. No Exclusivity. Nothing within the Contract is intended nor shall be construed as limiting our ability to procure the same or similar goods or services from any other party.

22. Miscellaneous.

(a) Entire Contract; Amendments. Subject to any Written Agreement (in which case, the Written Agreement shall control as specified herein), the Contract constitutes the entire agreement of the parties with respect to the subject matter of the Contract. No representation or warranty has been made by either party, or is relied on by the other, unless set out in this Agreement or any Issued Order. The Contract may not be amended or modified by you except by a document signed by authorized persons of each party. If there is a conflict between these Terms and Conditions and the Issued Order, the Issued Order shall prevail. The terms and conditions set forth in your invoice, quotation, purchase order or other document (even if attached to or referenced in a document attached to the Issued Order) shall not be binding and shall not supersede, supplement or modify the Contract; any such terms and conditions are hereby expressly objected to and rejected. We may change these Terms and Conditions at any time by posting such on our website or by email, and such revised Terms and Conditions shall supersede and replace the earlier Terms and Conditions for Deliverables provided thereafter. Any provision of Services or delivery of Goods after such revision shall constitute your acceptance of the revised Terms and Conditions.

(b) Headings. The headings contained in the Contract are for ease of reference only and shall not affect the meaning or interpretation of the Contract.

(c) Severability. If any provision of the Contract is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of the Contract, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties.

(d) Interpretation. The Contract is entered into among competent and experienced businesspersons and has been negotiated and reviewed by the parties and their counsel. Therefore, the language in the Contract shall not be construed against any particular party as the drafter of such language.

(e) Beneficiaries. The Contract, and the rights and obligations under it, shall be binding on and shall inure to the benefit of each party's successors and permitted assigns. The Contract is intended for the benefit of the parties to the Issued Order (including JACK) and nothing contained herein shall be deemed to give any third-party (except JACK) any intended or incidental claim or right of action against either party that does not otherwise exist without regard to the Contract.

(f) Waiver of Contractual Right. The failure of either party to enforce any provision of the Contract shall not be construed as a waiver or limitation of the party's right to subsequently enforce and compel strict compliance with every provision of the Contract. To be effective, each waiver of any right must be in writing and signed by the party waiving its rights.

(g) Applicable Law. The Contract shall be governed by, and construed in accordance with, the laws of the state of Ohio, without giving effect to its conflict of law principles. The parties irrevocably consent to the jurisdiction and venue of the state courts in Ohio, and if original jurisdiction can be established, in the applicable federal court as the forum for any such relief under the Contract. The parties stipulate that the venue referenced herein is convenient.

(h) Waiver of Jury Trial. Each party irrevocably and unconditionally waives any right it may have to a trial by jury for any court proceeding arising out of or relating to the Contract or the transactions contemplated hereby for which a party may bring such a court proceeding.

(i) Attorneys' Fees. The prevailing party in any dispute arising out of the Contract shall be entitled to an award of costs and attorneys' fees, including, but not limited to, in-house counsel fees calculated at market rate. For purposes of the Contract, prevailing party shall be defined as the party for whom a court of competent jurisdiction renders judgment.

(j) Remedies Not Exclusive. The remedies provided for in the Contract are in all cases cumulative and not exclusive.

(k) Due Authority. For any Issued Order or other document requiring signatures, a person who signs on behalf of a party is authorized to execute the Issued Order or other document on behalf of such party and bind such party and any of its affiliated companies to the terms and conditions thereof.

(l) Counterparts; Electronic Transmission. Any Issued Order or other document requiring signatures may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Your online acceptance of any or all portions of the Contract shall be deemed an execution for purposes of the preceding sentence. You have no right to object to the manner (i.e., online acceptance, electronic signatures, fax, or scanned images of signature pages) in which the Contract was executed as a defense to the enforcement of the Contract.

[END OF PURCHASE ORDER TERMS AND CONDITIONS]