

# MEMORANDUM

Agenda Item No. 5(O)

**TO:** Honorable Chairman Oliver G. Gilbert, III  
and Members, Board of County Commissioners

**DATE:** April 4, 2023

**FROM:** Geri Bonzon-Keenan  
County Attorney

**SUBJECT:** Resolution approving, after a public hearing, Marketing Partnership Naming Rights Agreement pursuant to section 2-2201 of the Code and Implementing Order 8-9 for the sale of naming rights and associated sponsorship rights to Kaseya US LLC to rename the County-owned Arena located at 601 Biscayne Blvd., Miami, FL 33132 the "Kaseya Center" for a 17-year term and \$117,370,000.00 in payments to the County; authorizing the County Mayor to execute same and exercise certain provisions therein; authorizing the County Mayor to negotiate and execute a contract for payment of a finder's fee of \$45,000.00 from revenues generated by naming rights agreement payments to PFM Financial Advisors LLC for assistance in identifying a naming rights sponsor for the arena; authorizing the County Mayor to negotiate and execute a contract for payment in an amount up to \$25,000.00 from revenues generated by naming rights agreement payments to Investigative Management Group for due diligence work; and allocating naming rights revenues, net of expenses, to the "Anti-Gun Violence and Prosperity Initiatives" Trust Fund

The accompanying resolution was prepared by the Office of Management and Budget and placed on the agenda at the request of Prime Sponsor Commissioner Keon Hardemon.

  
Geri Bonzon-Keenan  
County Attorney

GBK/ks


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# Memorandum



**Date:** April 4, 2023

**To:** Honorable Chairman Oliver G. Gilbert, III  
and Members, Board of County Commissioners

**From:** Daniella Levine Cava  
Mayor 

**Subject:** Recommendation to Award a Marketing Partnerships Program Naming Rights Agreement for the County-owned Arena located at 601 Biscayne Boulevard, Miami, Florida

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## **Executive Summary**

The item seeks approval from the Board of County Commissioners (Board) to execute a Marketing Partnerships Naming Rights Agreement with Kaseya US LLC (Kaseya), a company headquartered in Miami, Florida, for the sale of naming rights and associated sponsorship rights to the professional sports franchise facility arena (Arena) owned by Miami-Dade County (County), which currently serves as the home of the Miami Heat, a National Basketball Association (NBA) team, and rename the Arena as the Kaseya Center. Kaseya is a global software company with 48,000 customers in more than 25 countries, and approximately 4,500 employees. The Miami headquarters of Kaseya is home to over 900 employees spanning four prominent buildings in the Brickell and Downtown Miami area, and the company is committed to investing significantly over the next several years to increase its employee base in the area with an addition of more than 3,000 full-time positions. In exchange for naming and associated sponsorship rights for the Arena, Kaseya agrees to pay the County a total of \$117,370,000.00 over a 17-year term. After deductions for one-time expenses for a finder's fee, due diligence public records searches, and a media campaign introducing the Kaseya Center of up to \$95,000.00 and payments of \$2,000,000.00 annually to Basketball Properties, Ltd. (BPL) pursuant to a Management Agreement between the County and BPL whereby BPL operates and maintains the Arena, the County would receive net revenues totaling \$83,275,000.00 over the term of the Agreement to be deposited in the Anti-gun Violence and Prosperity Initiatives Trust Fund (Trust Fund), which helps the Peace and Prosperity Plan fund programs such as Fit2Lead. The Fit2Lead program is an award winning, evidenced-based paid internship program for at-risk youth ages 15-19, with a focus on court-involved youth in paid afterschool and summer activities. Fit2Lead places a strong emphasis on providing diverse experiences that expose youth to various career paths and professional mentors, along with unique experiential learning opportunities. Selecting a naming rights partner now will avoid substantial brokerage fees, generate valuable revenue in the current fiscal year, and will allow for full activation of the Agreement by BPL in time for the start of the next NBA season in October 2023.

## **Recommendation**

In accordance with the County's Marketing Partnerships Program under section 2-2201 of the Code of Miami-Dade County, Florida (County Code) and Implementing Order (IO) 8-9, it is recommended that the Board approve, after a public hearing, a Marketing Partnerships Naming Rights Agreement (MPA#008) with Kaseya for the sale of the naming rights to the County-owned Arena located at 601 Biscayne Boulevard, Miami, Florida, which currently serves as the home of the Miami Heat, an NBA team. If approved by the Board, the new name of the Arena will be the Kaseya Center. The Naming Rights Agreement between the County and Kaseya is shown as Exhibit A to the Resolution before the Board.

The Naming Rights Agreement between Kaseya and the County is for a term of 17 years with resulting revenues to the County in the amount of \$117,370,000.00 over the term and County expenses not to exceed \$25,000.00, per the terms of the Naming Rights Agreement, for a public relations and media launch campaign introducing the Kaseya Center. If approved, this transaction will provide significant revenues, net of expenses, to the County for anti-gun violence and prosperity initiatives while imposing minimal obligations on the County for the provision of the signage, promotional activities, and other entitlements in the Naming Rights Agreement as Basketball Properties, Ltd. (BPL), an affiliate of the Miami Heat Limited and operator of the Arena pursuant to a Management Agreement with the County, will fulfill those obligations under the Naming Rights Agreement pursuant to the terms of the Management Agreement with the County and a separate facilitation agreement with Kaseya.

It is further recommended that the Board delegate authority to the County Mayor or Mayor's designee: (1) negotiate and execute a contract for payment of a finder's fee of \$45,000.00 to PFM Financial Advisors LLC for work done in relation to identifying Kaseya as a potential naming rights partner and making the appropriate introductions; and (2) negotiate and execute a contract for payment in an amount up to \$25,000.00 to Investigative Management Group for due diligence records searches on Kaseya and its top five executives, in each case as expenses associated with the Naming Rights Agreement to be paid using Naming Rights funds..

### **Scope**

The Arena is in District 3, but its impact is countywide. Net revenues received from the Naming Rights Agreement and reserved for the Peace and Prosperity Plan will also have a countywide impact. Pursuant to Rule 9.02 of the Board's Rules of Procedures, the naming of County-owned facilities must be sponsored by the District Commissioner. Commissioner Keon Hardemon has agreed to sponsor this item.

### **Delegation of Authority**

Upon adoption of this Resolution, the County Mayor or County Mayor's designee will have the authority to execute and implement the Naming Rights Agreement consistent with those authorities granted under the Code of Miami-Dade County. Additional delegation of authorities requested related to this transaction are as follows:

- Authority to provide County approvals described in the Agreement except such approvals that are required to be provided by the Board or are explicitly described in the Agreement as Board approvals.
- Authority to exercise the cancellation/termination provisions in the Agreement except any termination provision that is explicitly described in the Agreement as requiring Board approval.
- Authority to exercise all other provisions and County rights contained in the Agreement except any provision or right that is explicitly reserved to the Board in the Agreement or under applicable law.
- Authority to pay a \$45,000.00 finder's fee to PFM Financial Advisors LLC and up to \$25,000.00 to Investigative Management Group for due diligence searches.
- Authority to pay possible future expenses, per the terms of this Agreement, \$25,000.00 for a public relations and media launch campaign.

### **Fiscal Impact/Funding Source**

The proposed Naming Rights Agreement with Kaseya replaces the last 17 years of the former West Realm Shire Services Inc. dba FTX.US (FTX) contract. The term of the Agreement runs

from July 1, 2023, through June 30, 2040. The first-year payment, which is due on or before June 30, 2023, is a one-time payment for the entire first year of the agreement; payments for Contract Years 2-17 are paid in two equal installments due June 30 and September 30 of every year to coincide with County Fiscal Years, which end on September 30. Over the term of the Agreement, Kaseya will pay, subject to any unexpected abatements as discussed below, the total of \$117,370,000.00 in naming rights payments, otherwise known as “Fees”.

The **left side** of the chart (Schedule 1) on the next page, shows how Fees will be paid by Kaseya over the term of the Agreement. The **right side** of Schedule 1 shows the “Net Fees” from Kaseya after annual payments of \$2,000,000.00 owed to Basketball Properties, Ltd. (BPL), a Miami Heat affiliate, which operates and maintains the Arena pursuant to a Management Agreement with the County; and a one-time Finder’s Fee of \$45,000.00; an up to \$25,000.00 cost for due diligence public record searches; and a \$25,000.00 expense for a public relations and media launch campaign. When compared to Net Fees from the former FTX contract (i.e., Fees less a \$2,000,000.00 annual payment and a one-time remaining brokerage fee of \$1.746 million), the Kaseya Agreement generates \$3,546,000.00 **more** than the FTX agreement would have over the 17-year period.

The true economic impact of the Kaseya Agreement to the County is \$83,275,000.00 of Net Fees plus the avoidance of a \$2,000,000.00 annual payment to BPL (\$34.0 million over the 17 years) from the County’s General Fund with no naming right Fees to honor this obligation, for the total positive impact of \$117,275,000.00.

Resolution No. R-238-21 adopted on March 26, 2021, approved the FTX naming rights agreement and created the Anti Gun Violence and Prosperity Initiatives (Trust Fund). The Resolution also set Board policy that all Net Fees received from any contract for Arena naming rights be deposited in the Trust Fund to be used, with prior Board approval, for anti-gun and prosperity initiatives contained in the Peace and Prosperity Plan. As noted above, the Fit2Lead program is a critical component of the Plan. Originally a parks-based program, Fit2Lead has expanded to more than eleven County departments and ten non-profit organizations, with supportive case management for justice-involved youth, enrichment activities, and character building and leadership development workshops. Interns earn \$13.88 per hour and work an average of 10 hours per week during the school week and 25 hours during the summer.

For reference, the FY 22-23 budget funds the following programs in the Plan:

Program Name	FY22-23 Budget	ATPIT	% of funding from ATPIT
Fit 2 Lead	\$ 3,062,277	\$ 1,987,277	65%
MDPD Youth Athletic and Mentoring Initiative	25,000	\$ 25,000	100%
MDPD Turn Around Police Academy	106,000	\$ 106,000	100%
MDPD Youth Outreach Unit (YOU)	75,000	\$ 75,000	100%
Project Greenlight	200,000	\$ 200,000	100%
Safe in the 305 Community Grant	75,000	\$ 75,000	100%
Independent Evaluation	100,000	\$ -	0%
	<b>\$ 3,643,277</b>	<b>\$ 2,468,277</b>	<b>68%</b>

Over the last 17 years of the FTX contract, \$79.745 million was forecasted to be deposited into the Trust Fund. Over the 17-year term of the proposed Kaseya Agreement, deposits are expected to total \$83.275 million, which is \$3.546 million more than was anticipated to be received from

FTX. However, on an annual basis, the deposits into the Trust Fund are different between the former and proposed agreements because the Fees to be paid were negotiated differently. FTX was a new firm whose business was in a volatile industry. The County demanded and received substantial payments from FTX in the early years of its contract. Kaseya is a large established firm in a growing industry and was able to negotiate a more traditional payment schedule whereby annual payments generally grow over the term of the agreement. Given the difference in expected revenue streams, deposits into the Trust Fund will be lower in FY 2023, FY 2024, and FY 2025 by \$149,000, \$750,000, and \$500,000, respectively. The negative impacts to the funding of the Peace and Prosperity Plan will be offset by budgetary adjustments in the Fiscal Years affected.

**Schedule 1**

<b>Kaseya Naming Right Payments (Fees) to County</b>				<b>County's Net Fees from Kaseya Compared to Net Fees from former FTX Contract</b>		
<b>Contract Year</b>	<b>Kaseya Contract Year Payments</b>	<b>Kaseya Semi-Annual Pymt. Jun 30 and Sept 30</b>	<b>Payment Due Date</b>	<b>Net Fees <sup>(2)</sup></b>		
				<b>Net Fees <sup>(1)</sup> from Kesaya Agreement</b>	<b>from former FTX Contract</b>	<b>Net Excess (Loss)</b>
1	\$ 3,700,000					
	-	\$ 3,700,000	06/30/2023	\$ 1,605,000	\$ 1,754,000	\$ (149,000)
		0	09/30/2023			
2	4,750,000	2,375,000	06/30/2024	2,750,000	3,500,000	(750,000)
		2,375,000	09/30/2024			-
3	5,500,000	2,750,000	06/30/2025	3,500,000	4,000,000	(500,000)
		2,750,000	09/30/2025			
4	6,000,000	3,000,000	06/30/2026	4,000,000	4,000,000	-
		3,000,000	09/30/2026			
5	6,220,000	3,110,000	06/30/2027	4,220,000	4,000,000	220,000
		3,110,000	09/30/2027			
6	6,500,000	3,250,000	06/30/2028	4,500,000	4,500,000	-
		3,250,000	09/30/2028			
7	6,660,000	3,330,000	06/30/2029	4,660,000	4,500,000	160,000
		3,330,000	09/30/2029			
8	7,000,000	3,500,000	06/30/2030	5,000,000	5,000,000	-
		3,500,000	09/30/2030			-
9	7,000,000	3,500,000	06/30/2031	5,000,000	5,000,000	-
		3,500,000	09/30/2031			-
10	7,240,000	3,620,000	06/30/2032	5,240,000	5,000,000	240,000
		3,620,000	09/30/2032			-
11	7,460,000	3,730,000	06/30/2033	5,460,000	5,000,000	460,000
		3,730,000	09/30/2033			-
12	7,680,000	3,840,000	06/30/2034	5,680,000	5,000,000	680,000
		3,840,000	09/30/2034			-
13	7,900,000	3,950,000	06/30/2035	5,900,000	5,500,000	400,000
		3,950,000	09/30/2035			-
14	8,120,000	4,060,000	06/30/2036	6,120,000	5,500,000	620,000
		4,060,000	09/30/2036			-
15	8,340,000	4,170,000	06/30/2037	6,340,000	5,500,000	840,000
		4,170,000	09/30/2037			-
16	8,560,000	4,280,000	06/30/2038	6,560,000	6,000,000	560,000
		4,280,000	09/30/2038			-
17	8,740,000	4,370,000	06/30/2039	6,740,000	6,000,000	740,000
		4,370,000	09/30/1939			
		-			-	-
	<u>\$ 117,370,000</u>	<u>\$ 117,370,000</u>		<u>\$ 83,275,000</u>	<u>\$ 79,754,000</u>	<u>\$ 3,521,000</u>

(1) Net Fees equal annual contract Fees less annual \$2.0 million payments to BPL and less one-time payment of Finder fee of \$45,000, due diligence public record search cost of up to \$25,000 and \$25,000 for a media campaign introducing the Kaseya Center.

(2) Net Fees equal annual contract Fees less annual \$2.0 million payments to BPL and less one-time payment of remaining brokerage fee of \$1.746 million.

**Track Record/Monitor**

Daniel T. Wall, Assistant Director, Office of Management and Budget will be responsible for monitoring the Naming Rights Agreement.

**Background**

**Arena Agreements and Naming Rights**

On March 26, 2021, the Board approved a Naming Rights Agreement with FTX for the sale of naming rights to the County-owned Arena. The FTX Agreement was a 19-year deal with gross revenues to the County in the amount of \$135,000,000.00. FTX made its first two years of naming rights payments to the County, which totaled \$19,500,000.00.

On November 11, 2022, and November 14, 2022, FTX Trading Ltd., and 101 of its affiliated companies (collectively Debtors, of which FTX is one) filed petitions in the United States Bankruptcy Court for the District of Delaware seeking relief under Chapter 11 of the United States Bankruptcy Code. When firms enter bankruptcy proceedings, there is an automatic stay on termination of Debtor contracts; therefore, the County needed to request permission from the Bankruptcy Court to terminate the Naming Rights Agreement. The County, wanting to sever its relationship with FTX as quickly as possible to begin the process of obtaining a new naming rights partner for the Arena, filed a motion for relief from the automatic stay on November 22, 2022. On January 11, 2023, the Bankruptcy Court approved the termination of the former Naming Rights Agreement effective December 30, 2022, which allowed the County to begin discussions with firms or individuals interested in either buying or brokering the sale of naming rights for the Arena.

Several parties approached the County and/or the Miami Heat to express interest in either acquiring or brokering the sale of naming rights for the Arena. After several discussions and an internal vetting process, it was decided to first begin direct negotiations with companies expressing interest in purchasing naming rights. This determination was based primarily on timing and cost considerations.

From a timing standpoint, electing to engage with a broker to help sell the Arena's naming rights will take about 18 to 24 months depending on how the broker is selected (i.e., competitively or not) and this timeframe increases the risk of being in a slower economic marketplace than what we have today. From a cost perspective, this type of delay will cause the County to pay \$2 million to BPL from the County's General Fund by December 31, 2023, as there would be no naming right fees to honor this annual obligation. Also, deposits into the Anti-gun Violence and Prosperity Initiatives Trust Fund will not occur in FY 2022-2023, and possibly even FY 2023-2024, thereby putting the funding of programs like the Peace and Prosperity Plan in danger. A delay may potentially compromise the ability of BPL to activate naming rights entitlements for a new partner prior to the commencement of a new NBA season, which would have a negative impact on naming right Fees. Finally, if brokers are employed, that would be a significant cost to be borne. Broker fees can range from a low of approximately four percent for an accelerated payout to ten percent, which is typically the industry standard. Using the \$117.3 million of Fees from the proposed agreement with Kaseya, brokerage fees could range from \$4,692,000.00 to \$11,730,00.00. In contrast, if the Board approves the proposed agreement, we would only be paying a Finder's Fee of \$45,000.00.

After communicating and meeting with more than five companies and in consultation with BPL and the Miami Heat, it was decided to begin negotiations with Kaseya based on their initial offer,

local company headquarters, corporate structure, market segment, financial position, background, and potential community impact. It is important to note that any naming rights sponsor for the Arena must be approved by the NBA and cannot conflict with any entity that is already an official sponsor for the Miami Heat in a particular industry-segment. We are working to obtain NBA approval, if possible, prior to the approval by the Board.

#### About Kaseya US LLC

Kaseya Limited is a privately held global software company founded in 2003 owned by Insight Partners and with its US headquarters located in Miami, Florida. Kaseya has a presence in more than 25 countries, over 4,500 employees, 48,000 customers, and is the leading provider of unified IT & security management software for IT professionals in managed service providers (MSPs) and mid-market enterprises (MMEs). Through its customer-centric approach, Kaseya delivers technologies that allow organizations to efficiently manage, secure, and backup IT.

Kaseya offers a broad array of IT management solutions, including well-known names: Kaseya, Datto, IT Glue, RapidFire Tools, Spanning Cloud Apps, ID Agent, Graphus, RocketCyber, TruMethods and Unitrends. These solutions empower businesses to command all of IT centrally; easily manage remote and distributed environments; simplify backup and disaster recovery; safeguard against cybersecurity attacks; effectively manage compliance and network assets; and streamline IT documentation and automate across IT management functions.

The Miami headquarters of Kaseya with over 900 employees spans four prominent buildings in the Brickell area, and the company is committed to investing significantly over the next several years to increase its employee base in the Downtown Miami area to more than 3,000 full-time positions. Kaseya's focus in hiring additional team members is to provide opportunities for individuals early in their careers and investing in their development through their successful "Grow Your Own" career development program. In addition, Kaseya also maintains active relationships focusing on workforce development, training, and business education and innovation with Florida International University (FIU), Miami Dade College (MDC), and the University of Miami (UM). For example, Kaseya developed its Remote IT Management and Security curriculum with FIU, and as of January 2023, the curriculum is being taught by FIU professors to nearly 70 students, and Kaseya and its top executives have partnered with MDC and UM on programs focusing on skill development for different segments of the future workforce. As one of the largest technology employers in the Miami-Dade County, Kaseya has instituted a robust internship program allowing students to gain on-the job experience while getting paid, with many former interns advancing to retain full-time employment with the company. Kaseya is committed to help address workforce challenges in the local IT sector and further establish Miami-Dade as a tech-hub.

Kaseya also demonstrates its impact in the community through volunteerism and charitable initiatives. With over 900 local employees, Kaseya's volunteer programs range from donation and fundraising drives to support the homeless and hurricane victims, a robust recycling and education program across their many offices in the county, and its recent sponsorship of Baptist Health's Bounce Back from Cancer program benefiting the Miami Cancer Institute. Established in 2020 as a response to the COVID pandemic, the Kaseya Cares program has invested over \$10,000,000.00 to assist customers navigating government relief programs and victims of natural disasters, ransomware attacks, and other high-impact events. Kaseya Cares also includes the Kaseya Disaster Response Team (DRT) that assisted more than 65 partners with technical hardware during thirty days on the ground in Texas and Florida in the wake of Hurricanes Harvey, Irma, and most recently Ian. Finally, Cooper Cares, in conjunction with the Cooper Voccola

Family Foundation, is dedicated to assisting communities that Kaseya serves with a primary focus on charitable organizations for children, veterans, and animals.

**Major Contract Terms of Naming Rights with Kaseya**

Term: July 1, 2023, through June 30, 2040

Naming Rights Fees: See left hand side of Schedule 1 on page 4 of this memorandum.

**Defaults and Remedies:**

**A. Defaults by Kaseya**

- 1) Kaseya fails to make payments when due and remains unpaid after 15 dates of notice by County;
- 2) Kaseya materially breaches any of its representations, warranties, or obligations under the contract and if not cured within 30 days of notice by County unless if cure reasonably takes longer than 30 days then the Kaseya may have up to an additional 30 days to cure;
- 3) An insolvency event in respect to the Kaseya;
- 4) Kaseya effects a change of control with the Counterparty being restricted by various lists maintained by the Federal government or on the County's Debarment list;
- 5) The Kaseya or any of its five most senior executive officers is convicted or pleads guilty or nolo contendere to a felony involving an act of moral turpitude or fraud and in the reasonable and good faith opinion of the County, same would materially disparage or materially impair the reputation of the County;
- 6) The termination of the Facilitation Agreement following the agreement of the Kaseya or as a result of a material default by the Kaseya (collectively called an "Improper Termination");
- 7) Kaseya has knowingly and intentional made any representation or warranty under the agreement that was untrue in any material respect as of the Effective Date;
- 8) Kaseya fails to maintain the ILOC required by Section 5.6 of the Agreement at all times and to increase the ILOC when due, if such failure continues for a period of 20 Business Days after the County has sent written notice of such failure.

**B. Rights and Remedies of the County**

- 1) Upon a Kaseya Default the County can 1) exercise its right under the Agreement regarding Kaseya Defaults; 2) seek to recover all damages and other sums available at law and equity; 3) exercise any other right or remedy at law, including seeking an injunction or specific performance and 4) terminate the Agreement after appropriate notice periods for:
  - i. Kaseya failure to Pay;
  - ii. An insolvency event occurs;
  - iii. Kaseya effects a change of control with the Counterparty being restricted by various lists maintained by the Federal government or on the County's Debarment list;
  - iv. An Improper Termination of the Facilitation Agreement occurs;
  - v. Kaseya fails to maintain the ILOC or increase the ILOC when due; or
  - vi. Certain criminal actions by Kaseya or its senior executives following certain additional findings by the County and additional time periods

A termination under (vi) above would also require a recommendation by the Mayor and Board approval.



- 2) Kaseya is obligated to pay an amount equal to three (3) times the average of the aggregate of Fees remaining during the Term

C. Default by the County

The County shall be in default of the Agreement if it breaches, in any material way, material provisions of the Agreement and fails to cure within the time provided

- 1) knowingly and intentionally makes a representation or warranty here that was untrue in any material respect as of the date of Agreement, or; fails to give Kaseya notice of any amendment to Arena Agreements with BPL and the Heat

D. Rights and Remedies of the Kaseya

Kaseya can 1) enforce any right under the Agreement regarding County Defaults 2) seek to recover all damages and other sums available at law and equity; 3) exercise any other right or remedy at law, including seeking an injunction or specific performance and 4) terminate the Agreement for certain defaults.

Fee Credit: The County and Kaseya agree to negotiate in good faith for an appropriate Fee Credit to be provided to Kaseya under certain circumstances delineated in the Agreement dealing largely with the number of Heat Home games and force majeure.

Irrevocable Letter of Credit (ILOC): Within 15 days of execution of the Agreement, Kaseya will provide the County an irrevocable Letter of Credit for \$7,500,000.00 from a AA-rated financial institution for the 17-year term of the Agreement. The ILOC will go into effect on July 1, 2023 and on each anniversary date of the ILOC, the ILOC will be increased in value to reflect the *next* three scheduled payments covering an 18-month period. The last increase to the ILOC will be effectuated on July 1, 2038 and will decrease on July 1, 2039. (See the attached Exhibit 1 for how the ILOC will change over the 17-year term of the Agreement). The ILOC will only be drawn upon a default by Kaseya of its fee payment obligations and any other default that leads to contract termination where the termination payment is not made. Prior to the consideration of this item by the Board, the County will receive the form of the ILOC, which will be presented to the Board.

Entitlements: The detailed list of entitlements is reflected on Schedule A of the Naming Rights Agreement, which is attached to Resolution as Exhibit A.

Pursuant to the terms of the Management Agreement between the County and BPL and through a separate facilitation agreement between Kaseya and BPL, BPL will be responsible for working with Kaseya on signage and advertising installation and other promotional displays and any costs associated with facilitation and activation work shall be incurred by BPL or paid by Kaseya directly to BPL pursuant to the agreement and negotiations between BPL and Kaseya. The County's obligations under the Naming Rights Agreement are limited to:

- 1) Granting Kaseya the right to have the Arena named the Kaseya Center.
- 2) Granting Kaseya the right to be the official Arena partner for IT Management and Security Solutions for SMEs (small-to-medium enterprises) and MSPs (managed service providers).
- 3) Granting Kaseya the entitlements reflected in Schedule A of the Naming Rights Agreement which are subject to Kaseya entering into a Naming Rights Facilitation Agreement with BPL, which provides such entitlements.

- 4) Participating and funding up to \$25,000 for a public relations launch campaign and special event to celebrate the community and announce the partnership between the County and Kaseya and two Social Media posts.
- 5) Providing the opportunity for Kaseya to have Station Domination advertising rights at three (3) mutually agreed upon Metromover stations or three (3) downtown Miami wall murals for a sixty (60) day period before October 1, 2024 if available or otherwise unsold. All advertising to be designed, produced, installed, and removed at Kaseya's expense.
- 6) Throughout the term of the Agreement, the County will explore opportunities with Kaseya for mutually acceptable charitable or educational partnerships with flexibility to adjust focus throughout the term of the Agreement in the following areas:
  - a. Technology and FinTech education
  - b. Financial wellness programs
  - c. Underprivileged community support
  - d. Animal support and services
  - e. Veteran support and services
  - f. Children's support and services
  - g. Environment, alternative energy solutions, sustainability, and education services

Change of Control, Permitted Transferee, Arena Name Change: Unless they are in Default, Kaseya may request to change the Arena's name from time to time in connection with (1) a Rebranding Event, which is limited to only one time through the Term of the Agreement, or (2) a Change of Control (merger, consolidation, reorganization, etc.) whereby 50% or more of the voting rights are acquired by another entity or if the Kaseya shareholders vote for a merger, consolidation, reorganization, etc. whereby the Kaseya controls less than 50% of the stock of the surviving entity or its board of directors before the merger, consolidation, reorganization, etc. have less than 50% of the seats of the successor's board.

The Board of County Commissioners (Board) will have the right to approve an Arena name change for a Rebranding Event or a Change of Control, when and if requested, by the Kaseya or its successor. If the request for name change is to an entity that is not a Permitted Transferee and the Board denies the request, the Kaseya or successor must accept the action as reasonable. If the request for a name change is to an entity that is a Permitted Transferee and the Board denies the request, then the Kaseya can terminate the Naming Rights Agreement without penalty if it so desires.

To be considered a Permitted Transferee, an outside third-party (e.g., large company, investment manager, etc.) as well as affiliates of Kaseya must meet certain fiscal, reputational, and other criterion, one of the most important being, not appearing on several lists maintained by the Federal government limiting dealings with entities or individuals pursuant to the National Defense Authority Act.

### **Due Diligence**

#### Financial Strength and Stability

Kaseya is a privately-owned company whose major investors are Private Equity firms, the two largest being Insight Partners and TPG, a publicly traded company. Insight Partners is a leading global software investor partnering with high-growth technology, software, and Internet startup and Scale Up companies that are driving transformative change in their industries. As of June

30, 2022, Insight Partners had over \$80 billion in regulatory assets under management. Insight Partners is headquartered in New York City and has offices in London, Tel Aviv, and Palo Alto. TPG is a leading alternative asset management firm founded in San Francisco in 1992 with \$135 billion of assets under management, as of December 31, 2022, and investment and operational teams located in 12 offices globally.

At the local level Kaseya recently received Targeted Jobs Incentive Fund (TJIF) and Relocation and Expansion Incentives Program (REIP) grants from the County which will be paid to them, over a 5-year term, as they add up to 3,400 new jobs located in Miami-Dade County, with average salaries greater than \$107,000 per year. Per the Miami-Dade Beacon Council (MDBC), "MDBC recommended Kaseya to the BCC for performance based economic development incentives to support their proposal to grow to over 4,000 employees in Miami-Dade County and execute a new lease in downtown Miami. The County TJIF and REIP applications executed by the Company attest to their job creation, average wage, capital investment and new square footage goals in Miami-Dade County – there is no opinion or feeling related to those numbers. The Beacon Council was not provided with any company financial statements to support this."

On June 23, 2022, Kaseya consummated the acquisition of Datto, a global provider of security and cloud-based software solutions for Managed Service Providers (MSPs), at an approximate price of \$6.2 billion. Datto was a publicly traded company therefore the acquisition was approved by US and International Regulators including the U.S. Department of Justice (DOJ) and the Security and Exchange Commission (SEC). The purchase was an all-cash transaction funded by an equity consortium led by Insight Partners, with significant investments by TPG and other global investment companies and investors as well as several financial institutions.

On the national and international levels, Kaseya has at least 18 branch offices in the US including the Miami office. Internationally, they have 14 offices in the following countries: Australia (3); Canada (1); Denmark (1); England (2); Germany (1); India (1); Ireland (2); Netherlands (1); New Zealand (1); and Poland (1). This international presence excludes Datto's global reach.

Also attached are Exhibit 8, a letter from Bank America, regarding its long-standing relationship with Kaseya, and Exhibit 9, a letter from Golub Capital Markets LLC, a major private lender, indicating that Kaseya currently has access to \$400,000,000.00 through a Revolving Credit Facility (RCF) and a delayed draw term loan (DDTL), both maturing on June 25, 2029.

Given the above information and additional security provided, Kaseya exceeds the financial strength and stability to honor its commitments under the proposed Naming Rights Agreement. That said, the County negotiated the Irrevocable Letter of Credit as part of the Agreement in order to provide additional assurance of financial capacity and security to meet their obligations under the Agreement.

Criminal and Civil Litigation, Property, Corporate, and Regulatory Agency Public Record Databases Search

The County retained the services of the Investigative Management Group (IMG), headquartered in New York City, to conduct a records search of public databases in the United States that would reveal public information on Kaseya's top-five executives as well as on Kaseya itself. The search of these public records would reveal criminal and civil litigations, property transfers, corporate press releases as well as trade article, and findings of regulatory agencies. Attached as Exhibits

2, 3, 4, 5, 6 and 7, which are the final reports on Kaseya and its top five executives, and which summarize the findings of IMG's research of public databases. The report findings are backed up by over 1,000 pages of various public records such as news and press releases, court dockets, probate and property transfers, and regulatory findings or 'no findings' from regulatory agencies.

As to the top five executives of Kaseya, no relevant and/or material information came out on these individuals that would persuade us not to go forward with the proposed Naming Rights Agreement with Kaseya.

As to Kaseya itself, one material event worth noting, did occur. In 2021, Kaseya suffered a ransom attack on its system. Hackers infiltrated one of its products on its platform that service its MSPs (multiple service providers) clients. MSPs are individuals or small companies that provide an array of IT services generally to small businesses. The company immediately alerted relevant authorities and all of their customers of the event. Fifty-seven (57) of Kaseya's thousands of customers were directly impacted by the attack, which caused approximately 1,500 small businesses worldwide to likewise be impacted by the ransomware. At that time, this ransomware attack was a widely reported event in the industry.

Thanks to the company's Security and Compartmentalization strategy, Kaseya was able to greatly minimize the impact of the attack. Only one product was impacted (out of 27) and only 57 out of 35,000 MSPs customers worldwide were impacted by the hack with approximately 1,500 businesses, customers of the MSPs, ultimately impacted. Following the attack, Kaseya implemented its Security First Strategy. This included the hiring of the company's Chief Information Security Officer (CISO), Mr. Jason Manar. Mr. Manar joined Kaseya following 16 years at the FBI, where he served as a Cybersecurity Leader and led the Kaseya Ransomware attack investigation and played a major role in the successful apprehension of the criminals responsible for the attack.

Kaseya was lauded for its handling of the attack by federal government officials:

- *"I want to give credit to Kaseya who was a good partner as soon as they realized that they had a problem, both in terms of making sure that their customers were aware of what happened and what was happening and status. And also working with the government. I will say that the day of, I was speaking to the CEO of Kaseya and helping to kind of organize our team along with the FBI to make sure that we understood what was happening, the potential customer impacts, and any support that they needed to kind of respond to this incident." - Brandon Wales, Executive Director of the U.S. Cybersecurity and Infrastructure Security Agency*
- *"We are here today because, in their darkest hour, Kaseya made the right choice.... they immediately took action... Kaseya's swift response allowed the FBI and our partners to quickly figure out which of its customers were hit...I want to thank Kaseya and other private sector partners for their invaluable help in this case and for the way they joined our response to the ransomware threat." - Lisa Monaco, US Assistant Attorney General*

The quick action by Kaseya was also praised by FBI Director Christopher Wray at the press conference announcing the arrest of the perpetrators (see the attached Exhibit 10).

**Conclusions**

The proposed Naming Rights Agreement with Kaseya, a company headquartered in Miami and possessing a strong local presence and track record as a successful business and socially-responsible corporate partner, offers the County the opportunity to rapidly obtain a new naming rights partner for a 17-year period with improved overall net revenues, reputation and financial stability, in comparison with the prior naming rights agreement.

Additionally, selecting a naming rights partner now will avoid substantial brokerage fees and allow for full activation of the Agreement in time for the next NBA season, which begins in October 2023.

I am pleased to make this recommendation to the Board.

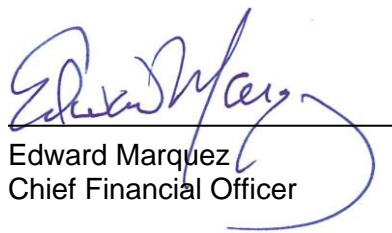
Exhibit 1 – Irrevocable Letter of Credit Stated Values Over Terms

Exhibit 2-7 - Investigative Reports on Kaseya and its Top Five Executives

Exhibit 8 – Department of Justice – Federal Bureau of Investigation News Release

Exhibit 9 – Letter from Bank of America

Exhibit 10 – Letter from Golub Capital



Edward Marquez  
Chief Financial Officer

### Exhibit 1 - Irrevocable Letter of Credit Stated Values over Term

<i>Kaseya Naming Right Payments (Fees) to County</i>				<i>ILOC Stated Values over Term</i>	
Contract Year	Kaseya Contract Year Payments	Kaseya Semi-Annual Pymt. Jun 30 and Sept 30	Payment Due Date	LOC Effective Date	LOC Amount
1	\$ 3,700,000	\$ 3,700,000	06/30/2023	07/01/2023	\$ 7,500,000
	-	0	09/30/2023		
2	4,750,000	2,375,000	06/30/2024	07/01/2024	\$ 7,875,000
		2,375,000	09/30/2024		
3	5,500,000	2,750,000	06/30/2025	07/01/2025	\$ 8,750,000
		2,750,000	09/30/2025		
4	6,000,000	3,000,000	06/30/2026	07/01/2026	\$ 9,220,000
		3,000,000	09/30/2026		
5	6,220,000	3,110,000	06/30/2027	07/01/2027	\$ 9,610,000
		3,110,000	09/30/2027		
6	6,500,000	3,250,000	06/30/2028	07/01/2028	\$ 9,910,000
		3,250,000	09/30/2028		
7	6,660,000	3,330,000	06/30/2029	07/01/2029	\$ 10,330,000
		3,330,000	09/30/2029		
8	7,000,000	3,500,000	06/30/2030	07/01/2030	\$ 10,500,000
		3,500,000	09/30/2030		
9	7,000,000	3,500,000	06/30/2031	07/01/2031	\$ 10,740,000
		3,500,000	09/30/2031		
10	7,240,000	3,620,000	06/30/2032	07/01/2032	\$ 11,080,000
		3,620,000	09/30/2032		
11	7,460,000	3,730,000	06/30/2033	07/01/2033	\$ 11,410,000
		3,730,000	09/30/2033		
12	7,680,000	3,840,000	06/30/2034	07/01/2034	\$ 11,740,000
		3,840,000	09/30/2034		
13	7,900,000	3,950,000	06/30/2035	07/01/2035	\$ 12,070,000
		3,950,000	09/30/2035		
14	8,120,000	4,060,000	06/30/2036	07/01/2036	\$ 12,400,000
		4,060,000	09/30/2036		
15	8,340,000	4,170,000	06/30/2037	07/01/2037	\$ 12,730,000
		4,170,000	09/30/2037		
16	8,560,000	4,280,000	06/30/2038	07/01/2038	\$ 13,020,000
		4,280,000	09/30/2038		
17	8,740,000	4,370,000	06/30/2039	07/01/2039	\$ 4,370,000
		4,370,000	09/30/2039		
		-			
	<u>\$ 117,370,000</u>	<u>\$ 117,370,000</u>			

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MEMORANDUM

TO: Miami Dade County

FROM: Investigative Management Group

DATE: March 21, 2023

RE: *Kaseya US LLC*

This final report summarizes the results of the confidential database public record research conducted in the United States regarding Kaseya US LLC. Our research included on-line searches for personal/business identifiers, corporate records, Uniform Commercial Code filings, liens, judgments, lawsuits, bankruptcy filings, federal tax court petitions, relevant regulatory/agency information, real property holdings and media reports.

Please note that database research includes only the jurisdictions that are available on-line, not every jurisdiction in which public records may be filed. In addition, on-line research is typically focused on, but not limited to, the states where the subject has reportedly been domiciled and conducted business, as noted herein. On-line abstracts with respect to state litigation frequently do not provide the underlying cause of the action or the disposition thereof. The absence of this information limits the analysis with respect to certain litigation records that are identified in the course of our research. Accordingly, a proper assessment of certain on-line research results may only be accomplished through a manual public record search.

Investigative Management Group has made its best effort to ensure the accuracy of the information herein. This report is being furnished to the client for its own internal use and it is not to be released or shared with others without the prior permission of Investigative Management Group. This report may have been orally modified with additional information. Investigative Management Group should therefore be consulted before the client relies on specific information contained in the report. Investigative Management Group is not liable / responsible for any damages that may result from the client's failure to comply with these terms. This report does not purport to render legal advice and counsel and does not constitute a legal opinion on any of the matters discussed herein.

## EXECUTIVE SUMMARY

Our investigation regarding Kaseya US LLC (“Kaseya”) has revealed the following information:

Six (6) federal court cases (one [1] open case and five [5] closed cases):

- One (1) open federal action in the Southern District of Florida pertaining to the July 2021 cyber intrusion and ransomware attack which exploited vulnerabilities in Kaseya’s Virtual System Administrator (“VSA”) and remote monitoring and management (“RMM”) software system. This case was filed on August 4, 2022. On November 17, 2022, Kaseya filed a motion to dismiss the complaint which is pending decision.
- Three (3) closed federal actions filed in the Southern District between 2020 and 2022 in which Kaseya was sued for violations of the Federal Fair Labor Standards Act. All of these cases were resolved via settlement before trial.
- One (1) closed federal action filed in the District of Maryland in 2021 in which Kaseya sued a competitor and two (2) former Kaseya employees for violating the terms of a confidentially and non-competition contract. This case was resolved via settlement before trial.
- One (1) closed federal action filed in the District of Nevada in 2019 in which Kaseya was sued for violations of the American Disabilities Act, retaliation and negligent hiring training and supervision. This case was resolved via settlement before trial.

Fifteen (15) state court cases (nine [9] open cases and six [6] closed cases):

- One (1) open state action in which Kaseya is named as the defendant pertaining to the aforementioned July 2021 cyber intrusion and ransomware attack. This case was filed on December 17, 2021. On February 3, 2023, the Court denied Kaseya’s motion to dismiss the complaint. No future Court dates are noted at this time.
- Eight (8) open state actions filed in March 2023 in Florida (Miami-Dade, Hillsborough, Broward and Palm Beach Counties) in which Kaseya is the Plaintiff. Kaseya, alleging breach of contract and unjust enrichment, is seeking to enforce a July 2022 \$20,000 retention bonus that was paid to former employees that did not remain with the company through December 23, 2023. All of these matters are pending.
- One (1) closed state action filed in Miami-Dade County, Florida in 2021 which was removed to Federal Court and settled. See above re: Fair Labor Standards Act.



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- One (1) closed state action filed in Clark County, Florida in 2021 which was removed to Federal Court and settled. See above re: American Disabilities Act.
- One (1) closed state action filed in Pinellas County, Florida in 2022 in which Kaseya was the Plaintiff and filed the action to enforce a non-solicitation and non-compete restrictive covenant. This case was voluntarily dismissed by Kaseya.
- One (1) closed state action filed in Hillsborough County, Florida in 2020 in which Kaseya was the Defendant. The Plaintiff filed this action to enforce a Statement of Work agreement. The Plaintiff could not affect service on Kaseya and the case was voluntarily dismissed.
- One (1) closed state tax lien filed in Florida in the amount of \$6,881. The lien was filed on January 28, 2022 and released on July 21, 2022.
- One (1) closed State of Delaware Division of Revenue lien in the amount of \$135. This lien was filed on June 11, 2021 and released on September 20, 2021.

Please note that searches were performed for “Kaseya US LLC” only. Information regarding various related Kaseya entities is not reflected in this report.

## KASEYA US LLC<sup>1</sup>

### COMPANY BACKGROUND

According to our research, on March 13, 2009, Kaseya US Sales, LLC, was organized/registered as a limited liability company in Delaware (file # 4686806). On June 2, 2009, Kaseya US Sales, LLC registered as a foreign limited liability company in the State of Florida. On December 31, 2018, Kaseya US Sales, LLC, filed a certificate of merger and changed its name in Delaware to Kaseya US LLC. On August 17, 2019, the company filed an amendment with the Florida Department of State and changed its name in Florida to Kaseya US LLC (hereinafter “Kaseya”) and is currently active.

The following addresses have been reported for Kaseya:

- 701 Brickell Avenue, Suite 400, Miami, Florida 33131 – Headquarters

United States Branch addresses:

- Phoenix, Arizona
- 15300 North 90<sup>th</sup> Street, #850, Scottsdale, Arizona 85260
- 17222 Von Karman Avenue, Irvine, California 92614
- 2077 Gateway Place, #550, San Jose, California 95110
- 203 Chapala Street, #A, Santa Barbara, California 93101
- 214 ½ East De La Guerra Street, #A, Santa Barbara, California 93101
- 160 Spear Street, # 1220, San Francisco, California 94105
- Monroe, Connecticut
- Miami, Florida
- Orlando, Florida
- 4890 West Kennedy Boulevard, #140, Tampa, Florida 33609
- Red Bank, New Jersey
- 16 West 22<sup>nd</sup> Street, New York, New York 10010
- 62 West 22<sup>nd</sup> Street, Suite #2R, New York, New York 10010
- Fargo, North Dakota
- Portland, Oregon
- Columbia, South Carolina
- 2010 Corporate Ridge, #540, McLean, Virginia 22102

International Branches:

- Melbourne, Australia
- Perth, Australia

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<sup>1</sup> In a recent Federal Court filing, Kaseya US LLC filed a Rule 7.1 Corporate Disclosure statement certifying that Kaseya US LLC is a wholly owned subsidiary of Kaseya, Inc., a Delaware corporation and a privately-held corporation.

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- Sydney, Australia
- Vancouver, Canada
- Copenhagen, Denmark
- London, England
- Reading, England
- Berlin, Germany
- Bangalore, India
- Dublin, Ireland
- Dundalk, Ireland
- Amsterdam, Netherlands
- Auckland, New Zealand
- Krakow, Poland

According to the Florida Secretary of State on-line filings for Kaseya, the following individuals are directors:

- Katherine Wagner  
701 Brickell Avenue, Suite 400, Miami, Florida 33131
- Sepedeh Tofigh  
701 Brickell Avenue, Suite 400, Miami, Florida 33131

**BUSINESS AFFILIATIONS**

On-line corporate record searches revealed the following business entities with which Kaseya has been affiliated:

- Datto
- Kaseya Canada ULC
- Kaseya Canada GP Corp
- Kaseya Canada Holdings Limited Partnership
- Kaseya Corporation
- Kaseya Development, LLC
- Kaseya Global Ireland Limited
- Kaseya Holdings Inc.
- Kaseya Inc.
- Kaseya International (UK) Limited
- Kaseya Limited
- Kaseya Luxembourg Holdings S.C.A.
- Kaseya Management, LLC
- Kaseya Traverse Inc.
- Kaseya US Sales, LLC

**LITIGATION AND BANKRUPTCY FILINGS*****Federal Courts***

On-line searches of civil, criminal and bankruptcy indices for cases filed in available United States District and Bankruptcy Courts, including courts in Florida, Maryland and Nevada, revealed the following five (5) cases pertaining specifically to Kaseya US LLC as a defendant:

***Open Case***U.S. District Court, Southern District of Florida

Plaintiff:	Justtech, LLC
Defendant:	Kaseya US LLC
Case Type:	Civil – Other Personal Injury, Statutory Actions
Case Number:	1:22-CV-22454-JEM
Filing Date:	8/4/2022
Status:	Pending Court decision on motion to dismiss the Complaint – Last Docket Entry – 11/17/2022

This federal case was filed as a diversity action and under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA § 501.204) regarding the July 2021 cyber intrusion and ransomware attack which exploited vulnerabilities in Kaseya's Virtual System Administrator ("VSA") and remote monitoring and management ("RMM") software system. This system was developed by Kaseya and used by the Plaintiff to manage, secure and store customer data. The complaint alleges that Kaseya's gross negligence allowed ransomware to be maliciously deployed through Kaseya's VSA software and then into Plaintiff's and its downstream clients' computer systems and data. The complaint also alleges that Kaseya knew about the vulnerabilities for months, if not years, before the cyberattack, but Kaseya failed to timely address the issues or warn Plaintiff about them. As a result, Plaintiff (and its clients) suffered considerable economic and other damages. On November 17, 2022, Kaseya's attorneys filed a motion to dismiss the complaint, which is pending decision by the Court. The docket sheet and complaint are attached as ***Exhibit A***.

***Closed Cases***U.S. District Court, Southern District of Florida

Plaintiff:	Seever
Defendant:	Kaseya US LLC
Case Type:	Civil – Labor Fair Standards – Federal Question
Case Number:	1:22-CV-23535-LFL
Filing Date:	10/30/2022
Status:	Dismissed on 2/27/2023 – Settlement Entered

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This federal Fair Labor Standards (“FLSA”) case was filed by the plaintiff to recover unpaid overtime wages. Plaintiff worked for Kaseya from January 2002 until his termination in May 2022. Plaintiff alleged that he was not a manager and is therefore entitled to overtime wages. Plaintiff alleged that the total amount of unpaid overtime wages sought was \$2,138.20. On February 27, 2023, a settlement was reached and a joint stipulation for dismissal with prejudice was submitted, and then entered by the Court.

U.S. District Court, Southern District of Florida

Plaintiff:	Boulet
Defendant:	Kaseya US LLC
Case Type:	Civil – Labor Fair Standards – Federal Question
Case Number:	1:20-CV-61937-AMC
Filing Date:	9/23/2020
Status:	Dismissed on 2/27/2023 – Settlement Entered

This FLSA case was filed by the Plaintiff to recover \$3,354.62 in unpaid overtime wages. Plaintiff worked for Kaseya as a salesperson and alleged that he was not a manager and is therefore entitled to overtime wages. On November 8, 2022, a joint settlement paying the Plaintiff a total of \$20,000 including \$16,157.90 in attorney’s fees was reached and submitted to the Court. On November 9, 2022, the Court approved the settlement and dismissed the case with prejudice.

U.S. District Court, Southern District of Florida

Plaintiff:	Robinson
Defendant:	Kaseya US LLC
Case Type:	Civil – Labor Fair Standards – Federal Question
Case Number:	1:21-CV-21263-KMW
Filing Date:	4/2/2021
Status:	Dismissed on 7/9/2021 – Settlement Entered

This FLSA case was filed by the plaintiff to recover \$2,673 in unpaid overtime wages. Plaintiff worked for Kaseya through Accountemps as a collection specialist from December 2018 through March 2019. Plaintiff alleged that he was not a manager and is therefore entitled to overtime wages. This case was originally filed as a State action in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (Case No. 21-005111) and removed to the District Court on April 2, 2021. On June 25, 2021, the U.S. Magistrate Judge recommended that the terms of the settlement (which were announced in open court) be approved and the case be dismissed with prejudice. On July 9, 2021, the District Judge adopted and approved the Magistrate Judge’s recommendation, and the case was dismissed with prejudice.

U.S. District Court, District of Nevada

Plaintiff: Tomcik  
Defendants: Kaseya US LLC et al.  
Case Type: Civil – Violation of Americans with Disabilities Act  
Case Number: 2:19-CV-01761-KJD-EJY  
Filing Date: 10/9/2019  
Status: Dismissed on 7/15/2020 – Settlement Entered

This Americans with Disabilities Act (“ADA”) case was filed by the Plaintiff to recover monetary damages for Defendants’ violation of the ADA, retaliation and negligent hiring, training and supervision. In May 2016, Plaintiff suffered a heart attack. On July 24, 2017, Plaintiff began working for Kaseya as the Director, Software Quality and Release Management and DevOps. In March 2018 and in July 2018, Plaintiff submitted work excusal/modification forms to Defendant. In July 2018, Defendant terminated the Plaintiff, but according to the complaint erroneously informed its employees that Plaintiff left to pursue other opportunities. This case was originally filed as a State action in the District Court, Clark County, Nevada, (Case No. A-19-801739-C) and removed to the District Court on October 9, 2019. On January 16, 2020, the parties reported that they had reached a settlement that required Bankruptcy Court approval. On July 15, 2020, the parties jointly informed the Court that the case be dismissed with prejudice. On July 15, 2020, the Court entered an order dismissing the case with prejudice.

The following case names Kaseya US LLC as the plaintiff and is closed:

U.S. District Court, District of Maryland

Plaintiff: Kaseya US LLC  
Defendants: Nerdio, Inc. et al.  
Case Type: Civil – Diversity – Breach of Contract  
Case Number: 1:21-CV-01445-MJM  
Filing Date: 6/10/2021  
Status: Joint Stipulation of Dismissal on 10/24/2022

This federal case was filed as a diversity action by Kaseya for injunctive and monetary relief from Defendant Nerdio and two individual co-defendants, former employees of Kaseya, for violating terms of a confidentiality and non-competition contract. On October 19, 2022, the parties jointly informed the Court that the case be dismissed with prejudice. On October 24, 2022, the Court entered an order dismissing the case with prejudice.

The following action was filed by Kaseya US LLC with the U.S. Patent and Trademark Office's Trial and Appeal Board:

U.S. Patent and Trademark Office – Trademark Trial and Appeal Board

Plaintiff:	Kaseya US LLC
Defendants:	Reprographic Products Group
Case Number:	92073956
Filing Date:	8/19/2020
Status:	Closed on 4/18/2021

This complaint was filed by Kaseya to cancel trademark registration number 5968651 which was for the word mark "IT COMPLETE." On April 8, 2021, both parties filed an application for cancellation of the registration with the Board.

The cases set forth below were identified for the previous name used by the company, Kaseya US Sales LLC, as well as other Kaseya related entities. All of these cases are closed. At the client's request, additional information will be developed for these closed matters.

*Closed Cases*

- *Annicq v. Kaseya Holdings, Inc.*  
U.S. District Court, Southern District of New York  
Diversity - Contract  
Filed on 6/14/2021  
Closed on 12/8/2021  
Case Number 1:21-CV-05255-PAE  
Plaintiff Bruno Annicq was the former CFO of Kaseya. Plaintiff paid over \$1 million to exercise vested stock options for 110,500 Kaseya shares. Kaseya sent Plaintiff a call notice to repurchase all of these shares for \$25/share. Plaintiff alleges that shares were to be repurchased at fair market value. On December 7, 2021, parties jointly informed the court that the action be dismissed with prejudice.
- *Drivetrain, LLC v. Kaseya US Sales, LLC*  
U.S. Bankruptcy Court, Southern District of Texas  
Adversary Proceeding – Recovery of \$59,500  
Filed on 5/29/2019  
Closed on 7/17/2019  
Case Number 19-03499  
Plaintiff filed suit alleging Kaseya had received \$59,500 from Debtors for computer IT services when Debtors were insolvent. Plaintiff seeks determination that the transfer is unavoidable as a preferential transfer pursuant

to section 547 of the Bankruptcy Code. On July 17, 2019, Plaintiff informed the court that the action be dismissed with prejudice.

- Firdawcy v. Kaseya Inc. and Kaseya Management, LLC et al.  
U.S. District Court, Eastern District of Virginia  
Employment Discrimination – Civil Rights  
Filed on 6/12/2015  
Closed on 4/20/2016  
Case Number 1:15-CV-00747-TSE-MSN  
Plaintiff filed suit alleging Kaseya discriminatorily failed to promote Plaintiff and then discharged and retaliated against Plaintiff when he reported workplace discrimination on the basis of national origin and religion. On April 20, 2016, the parties jointly informed the court that the action be dismissed with prejudice.
- IT Network Solutions, LLC v. Kaseya US Sales, LLC  
U.S. District Court, Northern District of California  
Contract (Removal from NJ Supreme Court and US District Court of NJ)  
Filed on 2/23/2015  
Closed on 8/24/2015  
Case Number 5:15-CV-00784-BLF  
Plaintiff filed suit regarding a contract with Kaseya to purchase 2,500 licenses of Kaseya VSA software at a quoted price of \$112,500 with an initial \$10,000 down payment. Plaintiff alleges that they paid \$136,984, which was in excess of the quoted contract cost. Plaintiff stopped payment which caused Kaseya to state that Plaintiff was only owed 1,000 licenses. Plaintiffs sought \$73,984 which they claim as overpayment. On August 24, 2015, both parties informed the court that the action be dismissed with prejudice.
- Menark Technologies LLC, et al. v. Kaseya US Sales LLC  
U.S. District Court, District of New Jersey  
Diversity - Contract  
Filed on 6/26/2012 – Removed from NJ Courts  
Closed on 7/27/2012 – Returned to NJ Courts  
Case Number 1:12-CV-03891-RBK-AMD  
Plaintiffs filed this breach of contract action seeking \$49,000 in damages. The damage amount required for removal to Federal Court had to be greater than \$75,000; therefore the case was remanded back to State Court.



- Gemini IP, LLC v. Kaseya US Sales LLC  
U.S. District Court, Eastern District of Texas  
Patent Infringement  
Filed on 2/13/2012  
Closed on 9/28/2012  
Case Number 4:12-CV-00081-RAS  
Plaintiffs filed a patent infringement case regarding U.S. Patent No. 6,177,932 titled “Method and Apparatus for Network Based Customer Service,” originally issued on January 23, 2001. On August 24, 2012, parties jointly informed the Court that the action be dismissed with prejudice.
- Blackie et al. v. Kaseya Luxembourg Holdings, SA  
U.S. District Court, Southern District of New York  
Stockholders Suits – Demand - \$5,500,000  
Filed on 11/3/2014  
Closed on 12/3/2014  
Case Number 1:14-CV-08744-AJN  
Plaintiffs filed suit to recover \$5.5 million which they allege is the remaining consideration owed to Plaintiffs for the sale of their company to Defendants. Plaintiffs allege that Defendants have refused to release the monies from escrow. On December 3, 2014, Plaintiffs informed the court that the action be voluntarily dismissed with prejudice.

### ***State Courts***

Searches for lawsuits in jurisdictions available on-line revealed the following civil cases pertaining specifically to Kaseya US LLC:

#### ***Open Cases:***

##### Eleventh Judicial Circuit Court, Miami-Dade County, Florida

Plaintiff:	Kinetix Solutions Inc
Defendant:	Kaseya US LLC
Case Type:	Civil – Breach of Contract
Case Number:	2021-027208-CA-01
Filing Date:	12/17/2021
Status:	Open – Kaseya answered second amended complaint No further court date noted.

This state case was filed as a breach of contract action, in violation of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA § 501.204) and as a breach of covenant of good faith and fair dealing regarding the aforementioned July 2021 cyber intrusion and ransomware attack. On February 3, 2023, the Court dismissed the breach of covenant of good faith and fair dealing count contained in the second amended complaint and ordered

Kaseya to provide an answer as to the remaining counts. On February 23, 2023, Kaseya filed an answer with the Court. This matter is pending with no future court dates noted on the docket sheet. The docket sheet, original complaint, second amended complaint and answer are attached as ***Exhibit B***.

Eleventh Judicial Circuit Court, Miami-Dade County, Florida

Plaintiff: Kaseya US, LLC  
Defendant: Kenrry Fernandez  
Case Type: Civil – Breach of Contract - \$14,069  
Case Number: 2023-000867-CC-24  
Filing Date: 3/7/2023  
Status: Open – Awaiting Summons Service  
No further court date noted.

On July 11, 2022, Kaseya entered into an agreement with the defendant in which Kaseya paid the defendant a \$20,000 retention bonus contingent on the defendant remaining with the company through December 23, 2023. On October 20, 2022, the defendant voluntarily resigned from Kaseya. Through this action, Kaseya seeks to recover \$14,069 of the retention bonus paid to the defendant alleging a breach of contract and unjust enrichment. The docket sheet and complaint are attached as ***Exhibit C***.

Eleventh Judicial Circuit Court, Miami-Dade County, Florida

Plaintiff: Kaseya US, LLC  
Defendant: Ezekiel Grado  
Case Type: Civil – Breach of Contract - \$14,070  
Case Number: 2023-000868-CC-24  
Filing Date: 3/7/2023  
Status: Open – Awaiting Summons Service  
No further court date noted.

On July 11, 2022, Kaseya entered into an agreement with the defendant in which Kaseya paid the defendant a \$20,000 retention bonus contingent on the defendant remaining with the company through December 23, 2023. On October 21, 2022, the defendant voluntarily resigned from Kaseya. Through this action, Kaseya seeks to recover \$14,070 of the retention bonus paid to the defendant alleging a breach of contract and unjust enrichment. The docket sheet and complaint are attached as ***Exhibit D***.

Eleventh Judicial Circuit Court, Miami-Dade County, Florida

Plaintiff: Kaseya US, LLC  
Defendant: Ashley Kupke  
Case Type: Civil – Breach of Contract - \$14,069  
Case Number: 2023-000869-CC-24  
Filing Date: 3/7/2023  
Status: Open – Awaiting Summons Service  
No further court date noted.

On July 11, 2022, Kaseya entered into an agreement with the defendant in which Kaseya paid the defendant a \$20,000 retention bonus contingent on the defendant remaining with the company through December 23, 2023. On November 30, 2022, Kaseya terminated the defendant for cause. Through this action, Kaseya seeks to recover \$14,069 of the retention bonus paid to the defendant alleging a breach of contract and unjust enrichment. The docket sheet and complaint are attached as ***Exhibit E***.

Eleventh Judicial Circuit Court, Miami-Dade County, Florida

Plaintiff: Kaseya US, LLC  
Defendant: Michael Williams  
Case Type: Civil – Breach of Contract - \$14,069  
Case Number: 2023-000688-CC-24  
Filing Date: 3/1/2023  
Status: Open – Awaiting Summons Service  
No further court date noted.

On July 11, 2022, Kaseya entered into an agreement with the defendant in which Kaseya paid the defendant a \$20,000 retention bonus contingent on the defendant remaining with the company through December 23, 2023. On October 18, 2022, the defendant voluntarily resigned from Kaseya. Through this action, Kaseya seeks to recover \$14,069 of the retention bonus paid to the defendant alleging a breach of contract and unjust enrichment. The docket sheet and complaint are attached as ***Exhibit F***.

Eleventh Judicial Circuit Court, Miami-Dade County, Florida

Plaintiff: Kaseya US, LLC  
Defendant: Kaon Raya  
Case Type: Civil – Breach of Contract - \$18,469  
Case Number: 2023-000690-CC-24  
Filing Date: 3/1/2023  
Status: Open – Awaiting Summons Service  
No further court date noted.

On July 11, 2022, Kaseya entered into an agreement with the defendant in which Kaseya paid the Defendant a \$20,000 retention bonus contingent on the defendant remaining with the company through December 23, 2023. On August 11, 2022, Kaseya terminated the defendant for cause. Through this action, Kaseya seeks to recover \$18,469 of the retention bonus paid to the defendant alleging a breach of contract and unjust enrichment. The docket sheet and complaint are attached as ***Exhibit G***.

Eleventh Judicial Circuit Court, Miami-Dade County, Florida

Plaintiff:	Kaseya US, LLC
Defendant:	Yohim Vazquez
Case Type:	Civil – Breach of Contract - \$14,069
Case Number:	2023-000689-CC-24
Filing Date:	3/1/2023
Status:	Open – Summons Served. No further court date noted.

On July 11, 2022, Kaseya entered into an agreement with the defendant in which Kaseya paid the defendant a \$20,000 retention bonus contingent on the defendant remaining with the company through December 23, 2023. On August 12, 2022, Kaseya terminated the defendant for cause. Through this action, Kaseya seeks to recover \$14,069 of the retention bonus paid to the defendant alleging a breach of contract and unjust enrichment. The docket sheet, complaint and summons service are attached as ***Exhibit H***.

Seventeenth Judicial Circuit Court, Broward County, Florida

Plaintiff:	Kaseya US LLC
Defendant:	Javon Bibbs
Case Type:	Civil – Damages (\$8,001 - \$30,000)
Case Number:	COCE23013953
Filing Date:	3/1/2023
Status:	Open - No further court date noted.

Limited documents are available on-line for this case. However, it appears the defendant entered into an agreement similar to those described above and received a \$20,000 retention bonus from his employer, Kaseya, if he remained employed with the company through December 23, 2023. Through this action, Kaseya seeks to recover an unspecified amount (between \$8,001 and \$30,000) of the retention bonus paid to the defendant. The docket sheet is attached as ***Exhibit I***.

Fifteenth Judicial Circuit Court, Palm Beach County, Florida

Plaintiff: Kaseya US LLC  
Defendant: Mariajose Umana  
Case Type: Civil – Damages – \$14,069  
Case Number: 50-2023-CC-003039-XXXX-MB  
Filing Date: 3/7/2023  
Status: Pending

On July 11, 2022, Kaseya entered into an agreement with the defendant in which Kaseya paid the defendant a \$20,000 retention bonus contingent on the defendant remaining with the company through December 23, 2023. On November 15, 2022, the defendant voluntarily resigned from Kaseya. Through this action Kaseya seeks to recover \$14,069 of the retention bonus paid to the Defendant alleging a breach of contract and unjust enrichment. The docket sheet and complaint are attached as ***Exhibit J***.

*Closed cases:*

Eleventh Judicial Circuit Court, Miami-Dade County, Florida

Plaintiff: Angel Robinson  
Defendant: Kaseya US LLC  
Case Type: Civil – Employment  
Case Number: 2021-005111-CA-01  
Filing Date: 3/2/2021  
Status: Removed to U.S. District Court, Southern District of Florida on 4/2/2021

See ***Exhibit D*** attached (note: the State Complaint is contained in the Federal removal filing). On July 9, 2021, the United States District Judge adopted and approved the Magistrate Judge's recommendation, and the case was dismissed with prejudice.

Eight Judicial District Court, Clark County, Nevada

Plaintiff: James Tomcik  
Defendant: Kaseya US LLC et al.  
Case Type: Civil – Employment  
Case Number: A-19-801739-C  
Filing Date: 9/11/2019  
Status: Removed to U.S. District Court, District of Nevada on 10/9/2019

See ***Exhibit E*** attached (note: the State Complaint is contained in the Federal removal filing). On July 15, 2020, a settlement was entered, and the case was dismissed with prejudice.

Sixth Judicial Circuit Court, Pinellas County, Florida

Plaintiff: Kaseya US LLC  
Defendant: Demetra Faulkner  
Case Type: Civil – Damages – Violation of Separation Agreement  
Case Number: COCE23013953  
Filing Date: 3/1/2022  
Status: Voluntary dismissal on 5/16/2022

Kaseya filed this action to enforce its non-solicitation and non-compete restrictive covenant provision seeking \$75,000 in damages, for Defendant’s employment at a competitor within the one year non-compete period. On May 16, 2022, Kaseya filed a notice of voluntary dismissal with prejudice with the Court and the case was closed.

Thirteenth Judicial Circuit Court, Hillsborough County, Florida

Plaintiff: James Dolan  
Defendant: Kaseya LLC  
Case Type: Civil – Damages – Breach of Employment Contract  
Case Number: 292020SC049741A001HC  
Filing Date: 8/21/2020  
Status: Voluntary dismissal on 9/17/2020

Plaintiff filed this action against Kaseya to enforce a Statement of Work agreement to develop software. A summons was returned unserved, and the case was voluntarily dismissed.

**UNITED STATES TAX COURT**

A search of United States Tax Court records for any petitions/trials involving tax disputes with the Internal Revenue Service did not identify any proceedings involving Kaseya.

**UNIFORM COMMERCIAL CODE FILINGS, LIENS AND JUDGMENTS**

On-line searches for Uniform Commercial Code (“UCC”) filings, liens and judgments revealed the following fourteen (14) UCC filings and two (2) liens for Kaseya:

*UCC Filings:*

Delaware Secretary of State

Debtor: Kaseya US LLC  
701 Brickell Avenue, #400, Miami, FL 33131  
Secured Party: Golub Capital Markets LLC as Collateral Agent  
Filing Type: Original  
Filing Number: 20225279880  
Filing Date: 6/23/2022  
Collateral: All assets  
Status: Not reflected in on-line records

Delaware Secretary of State

Debtor: Kaseya US LLC  
26 West 17<sup>th</sup> Street, New York, NY 10011  
Secured Party: Wells Fargo Bank, NA  
Filing Type: Original  
Filing Number: 20190059944  
20225450614 – Termination – 6/29/2022  
Filing Date: 1/3/2019  
Collateral: All assets and proceeds  
Status: Terminated

Delaware Secretary of State

Debtor: Kaseya US LLC  
26 West 17<sup>th</sup> Street, New York, NY 10011  
Secured Party: Wells Fargo Bank, NA  
Filing Type: Amendment  
Filing Number: 20190059951  
Related filing - 20173448294  
Filing Date: 1/3/2019  
Collateral: Not reflected in on-line records  
Status: Not reflected in on-line records

Delaware Secretary of State

Debtor: Kaseya US LLC  
26 West 17<sup>th</sup> Street, 9<sup>th</sup> Floor, New York, NY 10011  
Secured Party: Golub Capital Markets LLC as Collateral Agent  
Filing Type: Original  
Filing Number: 20193090300  
20199267316 – Amendment – 12/27/2019  
20225279484 – Termination – 06/23/2022  
Filing Date: 5/3/2009  
Collateral: All assets  
Status: Terminated

Delaware Secretary of State

Debtor: Kaseya US LLC  
26 West 17<sup>th</sup> Street, 9<sup>th</sup> Floor, New York, NY 10011  
Secured Party: Golub Capital Markets LLC as Collateral Agent  
Filing Type: Amendment  
Filing Number: 20199267571  
Related filing - 20193090557  
Filing Date: 12/27/2019  
Collateral: Not reflected in on-line records  
Status: Not reflected in on-line records

Delaware Secretary of State

Debtor: Kaseya US LLC  
26 West 17<sup>th</sup> Street, 9<sup>th</sup> Floor, New York, NY 10011  
Secured Party: Golub Capital Markets LLC as Collateral Agent  
Filing Type: Amendment  
Filing Number: 20199267464  
Related filing - 20193090375  
Filing Date: 12/27/2019  
Collateral: Not reflected in on-line records  
Status: Not reflected in on-line records



Delaware Secretary of State

Debtor: Kaseya US LLC  
26 West 17<sup>th</sup> Street, 9<sup>th</sup> Floor, New York, NY 10011  
Secured Party: Golub Capital Markets LLC as Collateral Agent  
Filing Type: Amendment  
Filing Number: 20199267753  
Related filing - 20193089591  
Filing Date: 12/27/2019  
Collateral: Not reflected in on-line records  
Status: Not reflected in on-line records

Delaware Secretary of State

Debtor: Kaseya US LLC  
26 West 17<sup>th</sup> Street, 9<sup>th</sup> Floor, New York, NY 10011  
Secured Party: Golub Capital Markets LLC as Collateral Agent  
Filing Type: Amendment  
Filing Number: 20199267316  
Related filing - 20193090300  
Filing Date: 12/27/2019  
Collateral: Not reflected in on-line records  
Status: Not reflected in on-line records

Delaware Secretary of State

Debtor: Kaseya US LLC  
26 West 17<sup>th</sup> Street, 9<sup>th</sup> Floor, New York, NY 10011  
Secured Party: Golub Capital Markets LLC as Collateral Agent  
Filing Type: Amendment  
Filing Number: 20199267365  
Related filing - 20193090235  
Filing Date: 12/27/2019  
Collateral: Not reflected in on-line records  
Status: Not reflected in on-line records

Delaware Secretary of State

Debtor: Kaseya US LLC  
26 West 17<sup>th</sup> Street, 9<sup>th</sup> Floor, New York, NY 10011  
Secured Party: Golub Capital Markets LLC as Collateral Agent  
Filing Type: Amendment  
Filing Number: 20199267415  
Related filing - 20193090581  
Filing Date: 12/27/2019  
Collateral: Not reflected in on-line records  
Status: Not reflected in on-line records

Delaware Secretary of State

Debtor: Kaseya US LLC  
26 West 17<sup>th</sup> Street, 9<sup>th</sup> Floor, New York, NY 10011  
Secured Party: Golub Capital Markets LLC as Collateral Agent  
Filing Type: Amendment  
Filing Number: 20199267902  
Related filing - 20193090409  
Filing Date: 12/27/2019  
Collateral: Not reflected in on-line records  
Status: Not reflected in on-line records

Delaware Secretary of State

Debtor: Kaseya US LLC  
26 West 17<sup>th</sup> Street, 9<sup>th</sup> Floor, New York, NY 10011  
Secured Party: Veeam Software Limited  
Filing Type: Termination  
Filing Number: 20193091456  
Related filing – 20190342894 (Original filed on 1/15/2019)  
Filing Date: 5/3/2019  
Collateral: Not reflected in on-line records  
Status: Terminated

Delaware Secretary of State

Debtor: Kaseya US LLC  
26 West 17<sup>th</sup> Street, 9<sup>th</sup> Floor, New York, NY 10011  
Secured Party: Veeam Software Limited  
Filing Type: Amendment  
Filing Number: 2019034662  
Related filing – 20183355340  
Related filing – 20188987717 (Assignment filed 12/26/2018)  
Filing Date: 1/15/2019  
Collateral: Not reflected in on-line records  
Status: Not reflected in on-line records

Clerk's Office, Barrow County Superior Court, Georgia

Debtor: Kaseya US LLC  
26 West 17<sup>th</sup> Street, 9<sup>th</sup> Floor, New York, NY 10011  
Secured Party: Golub Capital Markets LLC as Collateral Agent  
Filing Type: Amendment  
Filing Number: 719057296  
Related filing - 719019023  
Filing Date: 12/31/2019  
Collateral: Not reflected in on-line records  
Status: Not reflected in on-line records

*Liens:*

Columbia County Circuit Court, Florida

Plaintiff: State of Florida  
Defendant: Kaseya US LLC  
Case Type: State Tax Lien  
Case Number: N21J-04611  
Amount: \$6,881  
Filing Date: 1/28/2022  
Status: Released on 7/21/2022

New Castle Superior Court, Delaware

Plaintiff: State of Delaware  
 Defendant: Kaseya US LLC  
 Case Type: Civil – Division of Revenue  
 Case Number: N21J-04611  
 Amount: \$135  
 Filing Date: 6/11/2021  
 Status: Released on 9/20/2021

**REGULATORY AND ADMINISTRATIVE ACTIONS**

***Federal Agencies***

A comprehensive search was performed of available on-line federal administrative agency decisions/orders/opinions<sup>2</sup> with respect to Kaseya. Thirty (30) filings were identified that reference this entity, all of which relate to the aforementioned cyber intrusion and ransomware attack from July 2021. Copies of these agency decisions/orders/opinions are attached as ***Exhibit K***.

***Office of Foreign Assets Control***

The Office of Foreign Assets Control (“OFAC”) administers a series of laws that impose economic sanctions against hostile targets to further U.S. foreign policy and national security objectives. Management of these sanctions is entrusted to the Secretary of the Treasury. OFAC is responsible for promulgating, developing, and administering the

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<sup>2</sup> The following federal administrative agencies are included in the inquiry: Commodity Futures Trading Commission Decisions, Commodity Futures Trading Commission No-Action, Interpretive and Exemptive Letters, Consumer Product Safety Commission Decrees, Rules, Agreements & Notices, Department of Interior Administrative Law Judge Decisions, Department of Interior Board of Contract Appeals Decisions, Department of Interior Board of Indian Appeals Decisions, Department of Interior Board of Land Appeals Decisions, Department of Justice 1984/1992/1997 Merger Guidelines, Department of Justice Business Review Letters, Department of Justice Proposed Decrees & Judgments, Department of Justice Vertical Restraints Guidelines, Environmental Protection Agency Administrative Law Judge Decisions, Civil Penalty Policies, Consent Decrees, Debarment Decisions, Environmental Appeals Board Decisions and General Counsel Memoranda, Equal Employment Opportunity Commission Private Sector Decisions, Equal Employment Opportunity Commission Public Sector Decisions, Federal Depository Insurance Corporation Interpretative Letters and Enforcement Decisions, Federal Reserve: Applications Approval/Denials, Interpretive Letters, Orders and Notices, Written Agreements, Federal Trade Commission Consent Decrees and Decisions, International Trade Commission Administrative Law Judge Decisions, International Trade Commission Decisions, International Trade Commission General Counsel Memoranda, Interstate Commerce Commission Decisions, IRS Actions on Decisions, IRS Cumulative Bulletin and Internal Revenue Bulletin, IRS General Counsel Memoranda, IRS Private Letter Rulings and Technical Advice Memoranda, IRS Technical Memoranda, National Labor Relations Board Decisions, National Labor Relations Board General Counsel Memoranda, National Mediation Board Decisions, National Transportation Safety Board Decisions, Office Comptroller Currency Enforcement Decisions, Office Comptroller Currency Interpretative Letters (Unpublished), Office of the Comptroller of the Currency - Circulars, Bulletins & Journals, Pension Benefit Guarantee Corporation Opinion Letters, Postal Service Board of Contract Appeals Decisions, Resolution Trust Corp. Complaints, Resolution Trust Corp. Opinions and Decisions, Resolution Trust Corp. Press Releases, SEC Decisions, Orders & Releases, SEC No-Action, Exemptive & Interpretative Letters, Small Business Admin 8a Office of Hearings & Appeals Decisions, Small Business Administration Office of Hearings and Appeals, US Attorney General Opinions, US Comptroller General Decisions, US Trademark Trial & Appeal Board Decisions.

sanctions for the Secretary under eight basic statutes,<sup>3</sup> and all of the bank regulatory agencies cooperate in ensuring financial institution compliance with the Regulations. The laws and regulations administered by OFAC apply to all American citizens and permanent resident aliens wherever they are located; individuals and entities located in the United States (including all foreign branches, agencies, rep offices, etc.); corporations organized under U.S. law, including foreign branches; and entities owned or controlled by any of the above, the most important being foreign-organized subsidiaries of U.S. corporations.

OFAC promulgates and regularly updates a list of those individuals and entities that the U.S. government has determined are threats to U.S. national security and interests. This list is entitled “*Specially Designated Nationals and Blocked Persons.*” The list comprises individuals and entities that are owned or controlled by, or acting for or on behalf of, the Governments of target countries or are associated with international narcotics trafficking or terrorism. These individuals and entities are listed on the Treasury Department’s Specially Designated Nationals and Blocked Persons list so that persons subject to the jurisdiction of the United States will know that they are prohibited from dealing with them and that they must block all property within their possession or control in which these individuals and entities have an interest. Kaseya is not listed on OFAC’s Specially Designated Nationals and Blocked Persons list.

### ***Global Compliance Databases***

Inquiries were conducted of various U.S. and international regulatory oversight agencies that maintain databases which contain information on companies and individuals subject to various government sanctions, litigation or other regulatory oversight. Please note that checks were also conducted of various databases that include information on parties that have been accused or suspected of questionable business practices, to include money laundering, terrorism financing, corruption and fraud.<sup>4</sup> These inquiries proved negative with respect to Kaseya.

<sup>3</sup> Trading With the Enemy Act, 50 U.S.C. App. §§ 1-44 (“TWEA”) [North Korea, Cuba, Transaction Control Regulations]; International Emergency Economic Powers Act, 50 U.S.C. §§1701-06 (“IEEPA”) [Libya, Iraq, Serbia & Montenegro and Bosnia, UNITA, Sierra Leone, Liberia, Sudan, Iran, the Balkans, Terrorism, Narcotics, Nonproliferation, the Taliban and Burma]; Iraqi Sanctions Act, Pub. L. 101-513, 104 Stat. 2047-55 (“ISA”) [Iraq]; United Nations Participation Act, 22 U.S.C. § 287c (“UNPA”) [Iraq, Libya (part), UNITA, Serbia & Montenegro, Sierra Leone, and Liberia]; International Security and Development Cooperation Act (“ISDCA”) codified at 22 U.S.C. 2349 aa-9 (Iran); The Cuban Democracy Act (“CDA”), 22 U.S.C. § 6001-10 [relating to Cuba]; The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, 22 U.S.C. 6021-91, [relating to Cuba]; The Antiterrorism and Effective Death Penalty Act, (enacting 8 U.S.C. 219, 18 U.S.C. 2332d and 18 U.S.C. 2339b) [Cuba, North Korea, Iran, Iraq, Libya, Syria and Sudan]; The Foreign Narcotics Kingpin Designation Act, Pub L. No. 106-120, tit. VIII, 113 Stat 1606, 1626-1636 (1999) (to be codified at 21 U.S.C. §§1901-1908) and; The Criminal Code at 18 U.S.C. § 1001.

<sup>4</sup> Australia Dept. of Foreign Affairs and Trade; Bureau of Industry and Security; Chiefs of State and Foreign Cabinet Members; Commodity Futures Trading Commission; DTC Debarred Parties EPLS; EU Consolidated List; FATF Financial Action Task Force; FBI Hijack Suspects; FBI Most Wanted; FBI Most Wanted Terrorists; FBI Seeking Information; FBI Top Ten Most Wanted; Foreign Agents Registrations; HM Treasury Investment Ban List; HM Treasury Sanctions; Hong Kong Monetary Authority; HUD LDP; Interpol Most Wanted; Ireland Financial Regulator Unauthorized; Japan FSA; Japan Meti-WMD Proliferators; Japan MOF Sanctions Monetary Authority of Singapore; Nonproliferation Sanctions; OFAC Non-SDN Entities; OFAC Sanctions; OFAC SDN; Offshore Financial Centers; OIG

***Securities and Exchange Commission***

An on-line search was performed for any Securities and Exchange Commission (“SEC”) records relating to Kaseya, including Forms 3, 4 and 5, Schedule 13D and Schedule 13G. Forms 3, 4 and 5 disclose directors, officers or owners of more than ten percent (10%) of a class of equity securities (initial filing, changes and annual reports, respectively); Schedule 13D discloses beneficial ownership (i.e., voting or investment power) of individuals who have acquired more than five percent (5%) of certain registered equity securities; and, Schedule 13G discloses passive investors (i.e., those who own less than twenty percent [20%] of the class of securities and do not seek to influence control of the issuer). Five hundred seventy-six (576) filings were identified referencing Kaseya. At the client’s instruction, additional analysis regarding these filings will be conducted.

Searches were also performed with the SEC’s Investment Adviser Registration Depository to ascertain any registered investment adviser information for Kaseya. No current records were identified for the entity.

***Financial Industry Regulatory Authority***

On-line searches were conducted with the Financial Industry Regulatory Authority (“FINRA”) for any information pertaining to Depository to ascertain any registered investment adviser information for Kaseya. FINRA records do not indicate any registration information or disclosure events pertaining to Kaseya.

***National Futures Association***

Inquiries were conducted with the National Futures Association (“NFA”) for any information pertaining to Kaseya. No registration information, NFA and Commodity Futures Trading Commission (“CFTC”) regulatory actions, NFA arbitration awards or CFTC reparations cases are reported for Kaseya.

**REAL PROPERTY OWNERSHIP**

On-line searches for real property records did not reveal any property transactions related to Kaseya.

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Exclusions; OSFI Consolidated List OSFI Country; Peoples Bank of China (PBC); Primary Money Laundering Concern Reserve Bank of Australia; Terrorist Exclusion List; UK FSA; UK HM Treasury List UN Consolidated List; Unauthorized Banks; World Bank Ineligible Firms.

**MEDIA**

An on-line search of local, national and international media sources revealed thirteen (13) articles referencing “Kaseya US LLC.” The articles reference US Patent and Trademark Office trademark grants, help wanted postings, a patent award and a litigation matter. The articles, none of which are derogatory in nature, are attached as ***Exhibit L***.

Numerous articles were identified for “Kaseya” which relate to the July 2021 cyber intrusion and ransomware attack which exploited vulnerabilities in Kaseya’s Virtual System Administrator (“VSA”) and remote monitoring and management (“RMM”) software system. A representative sample of these articles is attached as ***Exhibit M***.

\* \* \*

CONFIDENTIAL

MEMORANDUM

TO: Miami Dade County

FROM: Investigative Management Group

DATE: March 16, 2023

RE: *Frederick J. Voccola*

This final memorandum summarizes the results of the confidential database public record research conducted in the United States regarding Frederick J. Voccola. Our research included on-line searches for personal/business identifiers, corporate records, Uniform Commercial Code filings, liens, judgments, lawsuits, bankruptcy filings, federal tax court petitions, relevant regulatory/agency information, real property holdings and media reports. Criminal record checks were undertaken in jurisdictions corresponding to known identifiers for Mr. Voccola.

Please note that database research includes only the jurisdictions that are available on-line, not every jurisdiction in which public records may be filed. In addition, on-line research is typically focused on, but not limited to, the states where the subject has reportedly lived and/or worked, as noted herein. On-line abstracts with respect to state litigation frequently do not provide the underlying cause of the action or the disposition thereof. The absence of this information limits the analysis with respect to certain litigation records that are identified in the course of our research. Accordingly, a proper assessment of certain on-line research results may only be accomplished through a manual public record search.

Investigative Management Group has made its best effort to ensure the accuracy of the information herein. This report is being furnished to the client for its own internal use and it is not to be released or shared with others without the prior permission of Investigative Management Group. This report may have been orally modified with additional information. Investigative Management Group should therefore be consulted before the client relies on specific information contained in the report. Investigative Management Group is not liable / responsible for any damages that may result from the client's failure to comply with these terms. This report does not purport to render legal advice and counsel and does not constitute a legal opinion on any of the matters discussed herein.



## EXECUTIVE SUMMARY

Our investigation regarding Mr. Voccola revealed the following information:

- One criminal case filed in New Jersey in 1997 for public nudity/indecent exposure/urination.
- Three (3) closed traffic infractions in New Jersey and one closed traffic violation in Maryland. Mr. Voccola currently has three open New Jersey Municipal Court parking summons matters.
- Two (2) closed state-level civil cases filed in Florida. Mr. Voccola was the plaintiff in a contract action filed in 2007 which was dismissed for Mr. Voccola's failure to prosecute. Mr. Voccola was the defendant in a 2007 filing by his condominium's association for failure to pay \$5,039 in assessment dues. This case was voluntarily dismissed by the plaintiff.
- Two (2) closed/released liens filed in Florida in 2006 and 2007. Both liens were filed by Mr. Voccola's condominium association for non-payment of assessments. One of these corresponds to the aforementioned civil case for assessment dues.
- One open tax warrant filed in New York in 2019 for \$13,253.
- One closed judgment filed in New York in 2004 for \$2,000.

No additional derogatory information was identified for Mr. Voccola.

## **FREDERICK J. VOCCOLA**

### **PERSONAL BACKGROUND**

According to our research, Frederick Joseph Voccola also known as Fred Voccola, was born on July 9, 1974. Addresses have been reported for Mr. Voccola in the following jurisdictions:

- Miami-Dade County, Florida
- Monmouth County, New Jersey
- Ocean County, New Jersey
- New York County, New York
- Suffolk County, Massachusetts
- San Francisco County, California

### **TRAFFIC RECORDS<sup>1</sup>**

Searches of available traffic records revealed the following violation for Mr. Voccola in the Red Bank Borough Municipal Court, New Jersey:

- On January 21, 2021, Mr. Voccola was charged with obstructing the passage of other vehicles. On January 18, 2021, he pleaded guilty, paid \$58.30 in court fines/fees and the case was closed.

Searches of available traffic records revealed the following violation for Mr. Voccola in the Woodbridge Municipal Court, New Jersey:

- On September 1, 2015, Mr. Voccola was charged with speeding. On September 8, 2015, he pleaded guilty, paid \$95 in court fines/fees and the case was closed.

Searches of available traffic records revealed the following violation for Mr. Voccola in the Spotswood Borough Municipal Court, New Jersey:

- On January 8, 2009, Mr. Voccola was charged with failure to give proper signal – turning or stopping. On January 9, 2009, he pleaded guilty, paid \$85 in court fines/fees and the case was closed.

Searches of available traffic records revealed the following violation for Mr. Voccola in the Somerset District Court, Maryland:

- On February 19, 2018, Mr. Voccola was charged with speeding. On March 7, 2018, he pleaded guilty. No further information was available.

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<sup>1</sup> Mr. Voccola has three (3) open Red Bank Borough Municipal Court parking summons for expired meters issued on March 12, 2020, March 13, 2020, and June 28, 2021. The fine for each summons is \$48, for a total due of \$144.

## **CRIMINAL RECORDS**

Criminal record searches were undertaken for the time periods in which Mr. Voccola is known to have lived and/or worked in various jurisdictions. Searches in New Jersey revealed the following record:

- On September 17, 1997, in the Point Pleasant Beach Municipal Court, New Jersey, Mr. Voccola was charged with public nudity, indecent exposure, urination (case number SC199712458), a violation of local ordinance 3-21. On the same day, he pleaded guilty to the charge, paid \$232 in court fines/fees and the case was closed.

## **BUSINESS AFFILIATIONS**

On-line corporate record searches revealed the following business entities with which Mr. Voccola has been affiliated:

- Anima Biotech Inc.
- DRDDS Solutions, LLC
- E Korb Inc.
- Floatingderf, LLC
- Kaseya US LLC
- Kaseya US Sales, LLC
- Kaseya Luxembourg Holdings S.C.A.
- Memberclicks, LLC
- Navesink Venture Partners
- The Cooper Voccola Family Foundation, Inc.
- Voccom, LLC
- Voccom Solutions, LLC
- Yodle, Inc.

On-line searches of non-verified sources, such as media and professional networking profiles, revealed the following additional business entities with which Mr. Voccola has been affiliated:

- Ardent Software Inc.
- Datto Inc.
- ERA
- FGI Risk Services (Trust Technology Corporation)
- Hackensack Meridian Health Foundation
- Identify Software Ltd.
- Identity Software – BMC Software
- Insurance News Net
- Intira
- Kaseya Corporation
- Kaseya Development, LLC
- Kaseya Holdings Inc.

- Kaseya International Shared Services, Sarl, Inc.
- Kaseya Limited
- Kaseya LLC
- Kaseya Management, LLC
- Knockout Parent Inc.
- Monmouth County SPCA (New Jersey)
- Navesink Country Club
- Nolio, Inc.
- Prism Solutions
- The Network for Teaching Entrepreneurship
- TPMG, Inc.
- Trust Technology Company
- Vorex, Inc.

## LITIGATION AND BANKRUPTCY FILINGS

### *Federal Courts*

On-line searches of civil, criminal and bankruptcy indices for cases filed in available United States District and Bankruptcy Courts, including courts in California, Florida, Massachusetts, New Jersey and New York, did not reveal any actions that pertain to Mr. Voccola.

### *State Courts*

Searches for lawsuits in jurisdictions available on-line revealed the following civil cases pertaining to Mr. Voccola:

#### Circuit Court Miami-Dade County, Florida

Plaintiff:	Frederick Voccola
Defendants:	Precise Title Services Inc. and Josephina Gandol
Case Type:	Contract / Indebtedness
Case Number:	13-2007CA005270000001
Filing Date:	2/22/2007
Status:	Dismissed on 8/20/2008 for plaintiff's failure to prosecute

#### Circuit Court Miami Dade County, Florida

Plaintiff:	Waverly at South Beach Condo Association Inc.
Defendant:	Frederick Voccola
Case Type:	Condominium assessment action (\$5,039 due)
Case Number:	13-2007-CA-034779000001
Filing Date:	10/16/2007
Status:	Voluntarily dismissed on 3/6/2008

*Please note that a lien and lis pendens corresponding to this action are listed in the **Lien and Real Property** sections below (for Property #6).*

#### UNITED STATES TAX COURT

A search of United States Tax Court records for any petitions/trials involving tax disputes with the Internal Revenue Service did not identify any proceedings involving Mr. Voccola.

#### UNIFORM COMMERCIAL CODE FILINGS, LIENS AND JUDGMENTS

On-line searches for Uniform Commercial Code filings, liens and judgments revealed the following records for Mr. Voccola:

##### *Liens*

##### Clerk of the Court – Miami-Dade County, Florida

Debtor:	Frederick Voccola Miami Beach, Florida 33139
Creditor:	The Waverly at South Beach Condominium Association
Filing Number:	2006R1132197
Filing Date:	10/20/2006
Amount:	\$1,360
Status:	Released on 3/12/2007

##### Clerk of the Court – Miami-Dade County, Florida

Debtor:	Frederick Voccola Miami Beach, Florida 33139
Creditor:	The Waverly at South Beach Condominium Association
Filing Number:	2007R0820308
Filing Date:	8/18/2007
Amount:	\$5,039
Status:	Released on 3/19/2008

*Please note that this lien corresponds to the aforementioned civil action and a lis pendens listed in the **Real Property** section below.*

*Tax Warrant*

Albany County Clerk, New York

Plaintiff:	New York State Department of Taxation and Finance
Defendant:	Fred Voccola
Filing Type:	State Tax Warrant
Filing Number:	X19-22356
Filing Date:	3/13/2019
Amount:	\$13,253
Status:	Open

*Judgment*

New York City Civil Court, New York

Plaintiff:	Uddath Relocation Systems
Defendant:	Frederick Voccola
Filing Type:	Judgment
Filing Number:	2069403
Filing Date:	1/21/2004
Amount:	\$2,000
Status:	Released on 8/17/2004

**REGULATORY AND ADMINISTRATIVE ACTIONS**

***Federal Agencies***

A comprehensive search was performed of available on-line federal administrative agency decisions/orders/opinions<sup>2</sup> with respect to Mr. Voccola. No filings were identified that pertain to him.

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<sup>2</sup> The following federal administrative agencies are included in the inquiry: Commodity Futures Trading Commission Decisions, Commodity Futures Trading Commission No-Action, Interpretive and Exemptive Letters, Consumer Product Safety Commission Decrees, Rules, Agreements & Notices, Department of Interior Administrative Law Judge Decisions, Department of Interior Board of Contract Appeals Decisions, Department of Interior Board of Indian Appeals Decisions, Department of Interior Board of Land Appeals Decisions, Department of Justice 1984/1992/1997 Merger Guidelines, Department of Justice Business Review Letters, Department of Justice Proposed Decrees & Judgments, Department of Justice Vertical Restraints Guidelines, Environmental Protection Agency Administrative Law Judge Decisions, Civil Penalty Policies, Consent Decrees, Debarment Decisions, Environmental Appeals Board Decisions and General Counsel Memoranda, Equal Employment Opportunity Commission Private Sector Decisions, Equal Employment Opportunity Commission Public Sector Decisions, Federal Depository Insurance Corporation Interpretative Letters and Enforcement Decisions, Federal Reserve: Applications Approval/Denials, Interpretive Letters, Orders and Notices, Written Agreements, Federal Trade Commission Consent Decrees and Decisions, International Trade Commission Administrative Law Judge Decisions, International Trade Commission Decisions, International Trade Commission General Counsel Memoranda, Interstate Commerce Commission Decisions, IRS Actions on Decisions, IRS Cumulative Bulletin and Internal Revenue Bulletin,

### *Office of Foreign Assets Control*

The Office of Foreign Assets Control (“OFAC”) administers a series of laws that impose economic sanctions against hostile targets to further U.S. foreign policy and national security objectives. Management of these sanctions is entrusted to the Secretary of the Treasury. OFAC is responsible for promulgating, developing, and administering the sanctions for the Secretary under eight basic statutes,<sup>3</sup> and all the bank regulatory agencies cooperate in ensuring financial institution compliance with the Regulations. The laws and regulations administered by OFAC apply to all American citizens and permanent resident aliens wherever they are located; individuals and entities located in the United States (including all foreign branches, agencies, rep offices, etc.); corporations organized under U.S. law, including foreign branches; and entities owned or controlled by any of the above, the most important being foreign-organized subsidiaries of U.S. corporations.

OFAC promulgates and regularly updates a list of those individuals and entities that the U.S. government has determined are threats to U.S. national security and interests. This list is entitled “*Specially Designated Nationals and Blocked Persons.*” The list comprises individuals and entities that are owned or controlled by, or acting for or on behalf of, the Governments of target countries or are associated with international narcotics trafficking or terrorism. These individuals and entities are listed on the Treasury Department’s Specially Designated Nationals and Blocked Persons list so that persons subject to the jurisdiction of the United States will know that they are prohibited from dealing with them and that they must block all property within their possession or control in which these individuals and entities have an interest. Mr. Voccola is not listed on OFAC’s Specially Designated Nationals and Blocked Persons list.

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IRS General Counsel Memoranda, IRS Private Letter Rulings and Technical Advice Memoranda, IRS Technical Memoranda, National Labor Relations Board Decisions, National Labor Relations Board General Counsel Memoranda, National Mediation Board Decisions, National Transportation Safety Board Decisions, Office Comptroller Currency Enforcement Decisions, Office Comptroller Currency Interpretative Letters (Unpublished), Office of the Comptroller of the Currency - Circulars, Bulletins & Journals, Pension Benefit Guaranty Corporation Opinion Letters, Postal Service Board of Contract Appeals Decisions, Resolution Trust Corp. Complaints, Resolution Trust Corp. Opinions and Decisions, Resolution Trust Corp. Press Releases, SEC Decisions, Orders & Releases, SEC No-Action, Exemptive & Interpretative Letters, Small Business Admin 8a Office of Hearings & Appeals Decisions, Small Business Administration Office of Hearings and Appeals, US Attorney General Opinions, US Comptroller General Decisions, US Trademark Trial & Appeal Board Decisions.

<sup>3</sup>Trading With the Enemy Act, 50 U.S.C. App. §§ 1-44 (“TWEA”) [North Korea, Cuba, Transaction Control Regulations]; International Emergency Economic Powers Act, 50 U.S.C. §§1701-06 (“IEEPA”) [Libya, Iraq, Serbia & Montenegro and Bosnia, UNITA, Sierra Leone, Liberia, Sudan, Iran, the Balkans, Terrorism, Narcotics, Nonproliferation, the Taliban and Burma]; Iraqi Sanctions Act, Pub.L. 101-513, 104 Stat. 2047-55 (“ISA”) [Iraq]; United Nations Participation Act, 22 U.S.C. § 287c (“UNPA”) [Iraq, Libya (part), UNITA, Serbia & Montenegro, Sierra Leone, and Liberia]; International Security and Development Cooperation Act (“ISDCA”) codified at 22 U.S.C. 2349 aa-9 (Iran); The Cuban Democracy Act (“CDA”), 22 U.S.C. § 6001-10 [relating to Cuba]; The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, 22 U.S.C. 6021-91, [relating to Cuba]; The Antiterrorism and Effective Death Penalty Act, (enacting 8 U.S.C. 219, 18 U.S.C. 2332d and 18 U.S.C. 2339b) [Cuba, North Korea, Iran, Iraq, Libya, Syria and Sudan]; The Foreign Narcotics Kingpin Designation Act, Pub L. No. 106-120, tit. VIII, 113 Stat 1606, 1626-1636 (1999) (to be codified at 21 U.S.C. §§1901-1908) and; The Criminal Code at 18 U.S.C. § 1001.

### ***Global Compliance Databases***

Inquiries were conducted of various U.S. and international regulatory oversight agencies that maintain databases that contain information on companies and individuals subject to various government sanctions, litigation or other regulatory oversight. Please note that checks were also conducted of various databases that include information on parties that have been accused or suspected of questionable business practices, to include money laundering, terrorism financing, corruption and fraud.<sup>4</sup> These inquiries proved negative with respect to Mr. Voccola.

### ***Securities and Exchange Commission***

An on-line search was performed for any Securities and Exchange Commission (“SEC”) records relating to Mr. Voccola, including Forms 3, 4 and 5, Schedule 13D and Schedule 13G. Forms 3, 4 and 5 disclose directors, officers or owners of more than ten percent (10%) of a class of equity securities (initial filing, changes and annual reports, respectively); Schedule 13D discloses beneficial ownership (i.e., voting or investment power) of individuals who have acquired more than five percent (5%) of certain registered equity securities; and, Schedule 13G discloses passive investors (i.e., those who own less than twenty percent [20%] of the class of securities and do not seek to influence control of the issuer). Four (4) records were identified that relate to Mr. Voccola all of which were Form D filings [notice of Exempt Offering of Securities] by Kaseya Luxembourg Holdings S.C.A. made on March 22, 2016; March 22, 2017; March 27, 2017; and March 27, 2019, in which Mr. Voccola is identified as a Director/Class A Manager.

Searches were also performed with the SEC’s Investment Adviser Registration Depository to ascertain any registered investment adviser information for Mr. Voccola. No current records were identified for him.

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<sup>4</sup>Australia Dept. of Foreign Affairs and Trade; Bureau of Industry and Security; Chiefs of State and Foreign Cabinet Members; Commodity Futures Trading Commission; DTC Debarred Parties EPLS; EU Consolidated List; FATF Financial Action Task Force; FBI Hijack Suspects; FBI Most Wanted; FBI Most Wanted Terrorists; FBI Seeking Information; FBI Top Ten Most Wanted; Foreign Agents Registrations; HM Treasury Investment Ban List; HM Treasury Sanctions; Hong Kong Monetary Authority; HUD LDP; Interpol Most Wanted; Ireland Financial Regulator Unauthorized; Japan FSA; Japan Meti-WMD Proliferators; Japan MOF Sanctions Monetary Authority of Singapore; Nonproliferation Sanctions; OFAC Non-SDN Entities; OFAC Sanctions; OFAC SDN; Offshore Financial Centers; OIG Exclusions; OSFI Consolidated List OSFI Country; Peoples Bank of China (PBC); Primary Money Laundering Concern Reserve Bank of Australia; Terrorist Exclusion List; UK FSA; UK HM Treasury List UN Consolidated List; Unauthorized Banks; World Bank Ineligible Firms.



***Financial Industry Regulatory Authority***

On-line searches were conducted with the Financial Industry Regulatory Authority (“FINRA”) for any information pertaining to Mr. Voccola. FINRA records do not indicate any registration information or disclosure events pertaining to him.

***National Futures Association***

Inquiries were conducted with the National Futures Association (“NFA”) for any information pertaining to Mr. Voccola. No NFA registration information, Commodity Futures Trading Commission (“CFTC”) regulatory actions, NFA arbitration awards nor CFTC reparations cases are reported for Mr. Voccola.

***Professional Licenses***

On-line searches did not reveal any professional licenses for Mr. Voccola.

**REAL PROPERTY OWNERSHIP**

On-line searches for real property records revealed the following property holdings for Mr. Voccola:

*Property # 1*

According to property records for Monmouth County, New Jersey, Mr. Voccola and Harry Voccola, his father, purchased this property as joint tenants with the rights of survivorship for \$1,600,000 from David and Ellen Huber via deed recorded on May 26, 2021. No purchase financing was recorded in connection with this transaction. Tax roll certification records for 2022 list Frederick and Harry Voccola as the current owners of this property.

*Property # 2*

According to property records for Monmouth County, New Jersey, Mr. Voccola, Harry Voccola, his father, and Nancy Voccola, his mother, purchased this property as joint tenants with the rights of survivorship for \$973,000 from Christopher and Maureen Bender via deed recorded on May 17, 2022. No purchase financing was recorded in connection with this transaction. Tax roll certification records for 2022 list Frederick, Harry and Nancy Voccola as the current owners of this property.

*Property # 3*

According to property records for Monmouth County, New Jersey, Mr. Voccola purchased this property for \$2,800,000 from Steven and Patricia Brennan via deed recorded on November 20, 2019. Purchase financing in the amount of \$800,000 was provided by OceanFirst Bank, N.A. Tax roll certification records for 2022 list Mr. Voccola as the current owner of this property.

*Property # 4*

According to property records for Monmouth County, New Jersey, Mr. Voccola and Harry Voccola, his father, purchased this property as joint tenants with the rights of survivorship for \$1,250,000 from Mary Volker via deed recorded on December 30, 2019. No purchase financing was recorded in connection with this transaction. Mr. Voccola and his parents sold this property to 78B West Front St. LLC for \$1,250,000 via deed recorded on August 20, 2021.

*Property # 5*

According to property records for Monmouth County, New Jersey, Mr. Voccola purchased this property for \$732,000 from Hesser McBride via deed recorded on October 13, 2010. Purchase financing in the amount of \$370,000 was provided by Fifth Third Mortgage Co. Mr. Voccola sold this property to Robert Lyttle for \$700,000 via deed recorded on December 9, 2019.

*Property # 6*

According to property records for Miami-Dade County, Florida, Mr. Voccola purchased this property for \$760,000 from Julian Hayward via deed recorded on August 8, 2006. Purchase financing in the amount of \$380,000 was provided by ABN Amro Mortgage Group, Inc. On October 19, 2007, a lis pendens was recorded for the property but was released on March 19, 2008. (This corresponds to the aforementioned civil action and lien.) On April 15, 2008, a second lis pendens was recorded for the property but was released on May 13, 2008. Mr. Voccola sold this property to Ronan Swords for \$850,000 via deed recorded on November 19, 2014.

*Property # 7*

According to property records for Miami-Dade County, Florida, Mr. Voccola purchased this property for \$550,000 from Xavier Ruiz via deed recorded on April 5, 2006. Purchase financing in the amount of \$417,000 was provided by Berman Mortgage Corp. Mr. Voccola sold this property to Francisco Pernia for \$550,000 via deed recorded on May 31, 2007.

**MEDIA**

An on-line search of local, national and international media sources revealed in excess of three hundred (300) articles between 2010 and 2023 referencing Mr. Voccola. More recent articles (July 2015 to present) reference Mr. Voccola as the CEO at Kaseya. Older articles refer to Mr. Kaseya as the Senior Vice President and General Manager at Yodel Brand Networks, a co-founder and COO of Identify Software, a founder of Trust Technology Company, and the President of Nolio, Inc. The majority of the articles refer to Mr. Voccola and the July 2021 cyber intrusion and ransomware attack that involved Kaseya. A

representative sample of the articles, none of which are derogatory in nature, are attached as ***Exhibit A***.

The November 8, 2021, United States Department of Justice – Federal Bureau of Investigation press release which announced the unsealed indictments of a Ukrainian and a Russian national and the seizure of \$6.1 million related to the ransom payments made in connection with the July 2021 Kaseya intrusion. This press release is attached as ***Exhibit B***.

#### **SOCIAL MEDIA**

An on-line search revealed LinkedIn,<sup>5</sup> MySpace,<sup>6</sup> and Twitter<sup>7</sup> profiles/accounts for Mr. Voccola.

At the client's instruction, additional social media review and analysis will be conducted.

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<sup>5</sup> <https://twitter.com/fredvoccola?lang=en>

<sup>6</sup> <https://myspace.com/295108949>

<sup>7</sup> <https://twitter.com/fredvoccola?lang=en>

CONFIDENTIAL

MEMORANDUM

TO: Miami Dade County

FROM: Investigative Management Group

DATE: March 16, 2023

RE: *Carl Joseph Wimley*

This final memorandum summarizes the results of the confidential database public record research conducted in the United States regarding Carl Joseph Wimley. Our research included on-line searches for personal/business identifiers, corporate records, Uniform Commercial Code filings, liens, judgments, lawsuits, bankruptcy filings, federal tax court petitions, relevant regulatory/agency information, real property holdings and media reports. Criminal record checks were undertaken in jurisdictions corresponding to known identifiers for Mr. Wimley.

Please note that database research includes only the jurisdictions that are available on-line, not every jurisdiction in which public records may be filed. In addition, on-line research is typically focused on, but not limited to, the states where the subject has reportedly lived and/or worked, as noted herein. On-line abstracts with respect to state litigation frequently do not provide the underlying cause of the action or the disposition thereof. The absence of this information limits the analysis with respect to certain litigation records that are identified in the course of our research. Accordingly, a proper assessment of certain on-line research results may only be accomplished through a manual public record search.

Investigative Management Group has made its best effort to ensure the accuracy of the information herein. This report is being furnished to the client for its own internal use and it is not to be released or shared with others without the prior permission of Investigative Management Group. This report may have been orally modified with additional information. Investigative Management Group should therefore be consulted before the client relies on specific information contained in the report. Investigative Management Group is not liable / responsible for any damages that may result from the client's failure to comply with these terms. This report does not purport to render legal advice and counsel and does not constitute a legal opinion on any of the matters discussed herein.

## **EXECUTIVE SUMMARY**

Our investigation regarding Mr. Wimley revealed the following information:

- Six (6) closed traffic infractions filed in California, Florida, New Jersey and Ohio between 1996 and 2021.

No additional derogatory information was identified for Mr. Wimley.

## **CARL JOSEPH WIMLEY**

### **PERSONAL BACKGROUND**

According to our research, Carl Joseph Wimley also known as Carl Joseph Wimley II and C.J. Wimley, was born on June 24, 1961. Addresses have been reported for Mr. Wimley in the following jurisdictions:

- Collier County, Florida
- Morris County, New Jersey
- Somerset County, New Jersey
- Essex County, New Jersey
- New York County, New York

### **TRAFFIC RECORDS**

Searches of available traffic records revealed the following violation for Mr. Wimley in Broward County, Florida:

- On May 29, 2021, Mr. Wimley was charged with unlawful speed on an interstate (93 mph in a 70-mph zone). On June 28, 2021, he pleaded nolo contendere to the charge and elected to attend traffic school. On October 28, 2021, he pleaded guilty to the charge, forfeited attending traffic school, paid \$322 in court fines/fees and the case was closed.

Searches of available traffic records revealed the following violation for Mr. Wimley in Collier County, Florida:

- On May 27, 2016, Mr. Wimley was charged with unlawful speed on a municipal road (29 mph in a 20-mph zone). On June 7, 2016, he pleaded nolo contendere to the charge and elected to attend traffic school. He was to complete traffic school by August 11, 2016. On September 12, 2016, Mr. Wimley attended traffic school and on September 26, 2016, submitted proof of traffic school attendance. Mr. Wimley paid \$181 in court fines/fees, including a traffic school nonattendance fee, and the case was closed.

Searches of available traffic records revealed the following violation for Mr. Wimley in Franklin County, Ohio:

- On May 10, 2017, Mr. Wimley was charged with speeding (85 mph in a 65-mph zone), a traffic misdemeanor. On May 11, 2017, he failed to appear. On June 12, 2017, Mr. Wimley pleaded guilty to the charge, paid \$217 in court fines/fees and the case was closed.

Searches of available traffic records revealed the following violations for Mr. Wimley in the Hanover Municipal Court, New Jersey:

- On September 21, 2015, Mr. Wimley was charged with speeding (51 mph in a 35-mph zone). On September 28, 2015, the summons/ticket was dismissed, and the case was closed.
- On August 20, 2015, Mr. Wimley was charged with speeding (51 mph in a 35-mph zone). On September 11, 2015, he pleaded guilty to the charges, paid \$105 in fines/fees and the case was closed.

Searches of available traffic infraction records revealed the following violation for Mr. Wimley in the Santa Clara County Court, California:

- On July 30, 1996, Mr. Wimley was charged with a traffic infraction. No further information regarding this case was available via on-line sources.

#### **CRIMINAL RECORDS**

Criminal record searches were undertaken for the time periods in which Mr. Wimley is known to have lived and/or worked in various jurisdictions. These searches proved negative with respect to Mr. Wimley.

#### **BUSINESS AFFILIATIONS**

On-line corporate record searches revealed the following business entities with which Mr. Wimley has been affiliated:

- Cromwell Consulting LLC
- Cromwell Realty, LLC
- Fore Shore, LLC

On-line searches of non-verified sources, such as media and professional networking profiles, revealed the following additional business entities with which Mr. Wimley has been affiliated:

- AvantGard Getpaid
- AvantGard Receivables
- Carl J. Wimley II
- Cromwell Consulting
- Getpaid Software
- Kaseya LLC
- Software Experts Inc.
- SunGard
- SunGard AvantGard LLC
- SunGard AvantGard Receivables

- TeamDynamix Solutions LLC
- The Getpaid Corporation

## **LITIGATION AND BANKRUPTCY FILINGS**

### ***Federal Courts***

On-line searches of civil, criminal and bankruptcy indices for cases filed in available United States District and Bankruptcy Courts, including courts in Florida, New Jersey and New York, did not reveal any actions that pertain to Mr. Wimley.

### ***State Courts***

Searches for lawsuits in jurisdictions available on-line did not reveal any cases pertaining to Mr. Wimley.

## **UNITED STATES TAX COURT**

A search of United States Tax Court records for any petitions/trials involving tax disputes with the Internal Revenue Service did not identify any proceedings involving Mr. Wimley.

## **UNIFORM COMMERCIAL CODE FILINGS, LIENS AND JUDGMENTS**

On-line searches for Uniform Commercial Code filings, liens and judgments did not reveal any records pertaining to Mr. Wimley.

## **REGULATORY AND ADMINISTRATIVE ACTIONS**

### ***Federal Agencies***

A comprehensive search was performed of available on-line federal administrative agency decisions/orders/opinions<sup>1</sup> with respect to Mr. Wimley. No filings were identified that pertain to him.

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<sup>1</sup> The following federal administrative agencies are included in the inquiry: Commodity Futures Trading Commission Decisions, Commodity Futures Trading Commission No-Action, Interpretive and Exemptive Letters, Consumer Product Safety Commission Decrees, Rules, Agreements & Notices, Department of Interior Administrative Law Judge Decisions, Department of Interior Board of Contract Appeals Decisions, Department of Interior Board of Indian Appeals Decisions, Department of Interior Board of Land Appeals Decisions, Department of Justice 1984/1992/1997 Merger Guidelines, Department of Justice Business Review Letters, Department of Justice Proposed Decrees & Judgments, Department of Justice Vertical Restraints Guidelines, Environmental Protection Agency Administrative Law Judge Decisions, Civil Penalty Policies, Consent Decrees, Debarment Decisions, Environmental Appeals Board Decisions and General Counsel Memoranda, Equal Employment Opportunity Commission Private Sector Decisions, Equal Employment Opportunity Commission Public Sector Decisions, Federal Depository Insurance Corporation Interpretative Letters and Enforcement Decisions, Federal Reserve: Applications Approval/Denials, Interpretive Letters, Orders and Notices, Written Agreements, Federal Trade Commission Consent Decrees and Decisions, International Trade Commission Administrative Law Judge Decisions, International Trade



### *Office of Foreign Assets Control*

The Office of Foreign Assets Control (“OFAC”) administers a series of laws that impose economic sanctions against hostile targets to further U.S. foreign policy and national security objectives. Management of these sanctions is entrusted to the Secretary of the Treasury. OFAC is responsible for promulgating, developing, and administering the sanctions for the Secretary under eight basic statutes,<sup>2</sup> and all the bank regulatory agencies cooperate in ensuring financial institution compliance with the Regulations. The laws and regulations administered by OFAC apply to all American citizens and permanent resident aliens wherever they are located; individuals and entities located in the United States (including all foreign branches, agencies, rep offices, etc.); corporations organized under U.S. law, including foreign branches; and entities owned or controlled by any of the above, the most important being foreign-organized subsidiaries of U.S. corporations.

OFAC promulgates and regularly updates a list of those individuals and entities that the U.S. government has determined are threats to U.S. national security and interests. This list is entitled “*Specially Designated Nationals and Blocked Persons*.” The list comprises individuals and entities that are owned or controlled by, or acting for or on behalf of, the Governments of target countries or are associated with international narcotics trafficking or terrorism. These individuals and entities are listed on the Treasury Department’s Specially Designated Nationals and Blocked Persons list so that persons subject to the jurisdiction of the United States will know that they are prohibited from dealing with them and that they must block all property within their possession or control in which these

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Commission Decisions, International Trade Commission General Counsel Memoranda, Interstate Commerce Commission Decisions, IRS Actions on Decisions, IRS Cumulative Bulletin and Internal Revenue Bulletin, IRS General Counsel Memoranda, IRS Private Letter Rulings and Technical Advice Memoranda, IRS Technical Memoranda, National Labor Relations Board Decisions, National Labor Relations Board General Counsel Memoranda, National Mediation Board Decisions, National Transportation Safety Board Decisions, Office Comptroller Currency Enforcement Decisions, Office Comptroller Currency Interpretative Letters (Unpublished), Office of the Comptroller of the Currency - Circulars, Bulletins & Journals, Pension Benefit Guaranty Corporation Opinion Letters, Postal Service Board of Contract Appeals Decisions, Resolution Trust Corp. Complaints, Resolution Trust Corp. Opinions and Decisions, Resolution Trust Corp. Press Releases, SEC Decisions, Orders & Releases, SEC No-Action, Exemptive & Interpretative Letters, Small Business Admin 8a Office of Hearings & Appeals Decisions, Small Business Administration Office of Hearings and Appeals, US Attorney General Opinions, US Comptroller General Decisions, US Trademark Trial & Appeal Board Decisions.

<sup>2</sup>Trading With the Enemy Act, 50 U.S.C. App. §§ 1-44 (“TWEA”) [North Korea, Cuba, Transaction Control Regulations]; International Emergency Economic Powers Act, 50 U.S.C. §§1701-06 (“IEEPA”) [Libya, Iraq, Serbia & Montenegro and Bosnia, UNITA, Sierra Leone, Liberia, Sudan, Iran, the Balkans, Terrorism, Narcotics, Nonproliferation, the Taliban and Burma]; Iraqi Sanctions Act, Pub.L. 101-513, 104 Stat. 2047-55 (“ISA”) [Iraq]; United Nations Participation Act, 22 U.S.C. § 287c (“UNPA”) [Iraq, Libya (part), UNITA, Serbia & Montenegro, Sierra Leone, and Liberia]; International Security and Development Cooperation Act (“ISDCA”) codified at 22 U.S.C. 2349 aa-9 (Iran); The Cuban Democracy Act (“CDA”), 22 U.S.C. § 6001-10 [relating to Cuba]; The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, 22 U.S.C. 6021-91, [relating to Cuba]; The Antiterrorism and Effective Death Penalty Act, (enacting 8 U.S.C. 219, 18 U.S.C. 2332d and 18 U.S.C. 2339b) [Cuba, North Korea, Iran, Iraq, Libya, Syria and Sudan]; The Foreign Narcotics Kingpin Designation Act, Pub L. No. 106-120, tit. VIII, 113 Stat 1606, 1626-1636 (1999) (to be codified at 21 U.S.C. §§1901-1908) and; The Criminal Code at 18 U.S.C. § 1001.

individuals and entities have an interest. Mr. Wimley is not listed on OFAC's Specially Designated Nationals and Blocked Persons list.

### ***Global Compliance Databases***

Inquiries were conducted of various U.S. and international regulatory oversight agencies that maintain databases that contain information on companies and individuals subject to various government sanctions, litigation or other regulatory oversight. Please note that checks were also conducted of various databases that include information on parties that have been accused or suspected of questionable business practices, to include money laundering, terrorism financing, corruption and fraud.<sup>3</sup> These inquiries proved negative with respect to Mr. Wimley.

### ***Securities and Exchange Commission***

An on-line search was performed for any Securities and Exchange Commission ("SEC") records relating to Mr. Wimley, including Forms 3, 4 and 5, Schedule 13D and Schedule 13G. Forms 3, 4 and 5 disclose directors, officers or owners of more than ten percent (10%) of a class of equity securities (initial filing, changes and annual reports, respectively); Schedule 13D discloses beneficial ownership (i.e., voting or investment power) of individuals who have acquired more than five percent (5%) of certain registered equity securities; and, Schedule 13G discloses passive investors (i.e., those who own less than twenty percent [20%] of the class of securities and do not seek to influence control of the issuer). No filings were identified for Mr. Wimley.

Searches were also performed with the SEC's Investment Adviser Registration Depository to ascertain any registered investment adviser information for Mr. Wimley. No current records were identified for him.

### ***Financial Industry Regulatory Authority***

On-line searches were conducted with the Financial Industry Regulatory Authority ("FINRA") for any information pertaining to Mr. Wimley. FINRA records do not indicate any registration information or disclosure events pertaining to him.

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<sup>3</sup>Australia Dept. of Foreign Affairs and Trade; Bureau of Industry and Security; Chiefs of State and Foreign Cabinet Members; Commodity Futures Trading Commission; DTC Debarred Parties EPLS; EU Consolidated List; FATF Financial Action Task Force; FBI Hijack Suspects; FBI Most Wanted; FBI Most Wanted Terrorists; FBI Seeking Information; FBI Top Ten Most Wanted; Foreign Agents Registrations; HM Treasury Investment Ban List; HM Treasury Sanctions; Hong Kong Monetary Authority; HUD LDP; Interpol Most Wanted; Ireland Financial Regulator Unauthorized; Japan FSA; Japan Meti-WMD Proliferators; Japan MOF Sanctions Monetary Authority of Singapore; Nonproliferation Sanctions; OFAC Non-SDN Entities; OFAC Sanctions; OFAC SDN; Offshore Financial Centers; OIG Exclusions; OSFI Consolidated List OSFI Country; Peoples Bank of China (PBC); Primary Money Laundering Concern Reserve Bank of Australia; Terrorist Exclusion List; UK FSA; UK HM Treasury List UN Consolidated List; Unauthorized Banks; World Bank Ineligible Firms.

***National Futures Association***

Inquiries were conducted with the National Futures Association (“NFA”) for any information pertaining to Mr. Wimley. No NFA registration information, Commodity Futures Trading Commission (“CFTC”) regulatory actions, NFA arbitration awards nor CFTC reparations cases are reported for Mr. Wimley.

***Professional Licenses***

On-line searches did not reveal any professional licenses for Mr. Wimley.

**REAL PROPERTY OWNERSHIP**

On-line searches for real property records revealed the following property holdings for Mr. Wimley:

*Property #1*

According to property records for Collier County, Florida, Mr. Wimley and Valerie Wimley, his wife, purchased this property for \$3,100,000 from Jason Hamilton and Desiree Decker via deed recorded on January 28, 2021. Purchase financing in the amount of \$1,000,000 was provided by American Financial Network Inc. d/b/a Orion Lending. Tax roll certification records for 2022 list the couple as the current owners of this property.

*Property #2*

According to property records for Collier County, Florida, Mr. and Mrs. Wimley purchased this property for \$725,000 from Martin and Barbara Steinberg via deed recorded on May 4, 2015. Purchase financing in the amount of \$417,000 was provided by JP Morgan Chase Bank NA. The couple sold this property to Elaine and Josh Yoltay for \$710,000 via deed recorded on February 23, 2021.

*Property #3*

According to property records for Morris County, New Jersey, Mr. and Mrs. Wimley purchased this property for \$292,000 from John McDonnell and Carole McDonnell via deed recorded on July 19, 1990. Purchase financing in the amount of \$232,000 was provided by Mayflower Savings Bank SLA. The couple sold this property to Cromwell Realty LLC for \$1.00 via quit claim deed recorded on July 22, 2015.

*Property #4*

According to property records for Morris County, New Jersey, Mr. Wimley and Valerie Vicedomini (now known as Valerie Wimley) purchased this property for \$166,000 from Frank and Lois Ransome via deed recorded on November 14, 1986. Purchase financing in the amount of \$149,400 was provided by H.W.D. Funding Corporation. The couple sold this property to Joseph Jzh-Wen Lin and Tina Wen-Ing Lin for \$161,000 via deed recorded on March 9, 1990.

**MEDIA**

An on-line search of local, national and international media sources revealed fifty-four (54) articles between 2004 and 2022 referencing Mr. Wimley. More recent articles (June 2018 to present) reference Mr. Wimley as the President and Chief Customer/Customer Success Officer at Kaseya. Older articles refer to Mr. Wimley as the CEO of TeamDynamix, in various roles with SunGard's AvantGard and as Senior Vice-President for the GETPAID Corporation. Most of the articles describe the programs, contracts and investments that are/were managed by the divisions supervised by Mr. Wimley. The articles, none of which is derogatory in nature, are attached as ***Exhibit A***.

**SOCIAL MEDIA**

An on-line search revealed a LinkedIn<sup>4</sup> profile for Mr. Wimley.

At the client's instruction, additional social media review and analysis will be conducted.

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<sup>4</sup> <https://www.linkedin.com/in/c-j-wimley-963a1a3/>

CONFIDENTIAL

MEMORANDUM

TO: Miami Dade County

FROM: Investigative Management Group

DATE: March 17, 2023

RE: *Joseph H. Smolarski*

This final memorandum summarizes the results of the confidential database public record research conducted in the United States regarding Joseph H. Smolarski. Our research included on-line searches for personal/business identifiers, corporate records, Uniform Commercial Code filings, liens, judgments, lawsuits, bankruptcy filings, federal tax court petitions, relevant regulatory/agency information, real property holdings and media reports. Criminal record checks were undertaken in jurisdictions corresponding to known identifiers for Mr. Smolarski.

Please note that database research includes only the jurisdictions that are available on-line, not every jurisdiction in which public records may be filed. In addition, on-line research is typically focused on, but not limited to, the states where the subject has reportedly lived and/or worked, as noted herein. On-line abstracts with respect to state litigation frequently do not provide the underlying cause of the action or the disposition thereof. The absence of this information limits the analysis with respect to certain litigation records that are identified in the course of our research. Accordingly, a proper assessment of certain on-line research results may only be accomplished through a manual public record search.

Investigative Management Group has made its best effort to ensure the accuracy of the information herein. This report is being furnished to the client for its own internal use and it is not to be released or shared with others without the prior permission of Investigative Management Group. This report may have been orally modified with additional information. Investigative Management Group should therefore be consulted before the client relies on specific information contained in the report. Investigative Management Group is not liable / responsible for any damages that may result from the client's failure to comply with these terms. This report does not purport to render legal advice and counsel and does not constitute a legal opinion on any of the matters discussed herein.

## **EXECUTIVE SUMMARY**

Our investigation regarding Mr. Smolarski revealed the following:

- One minor traffic violation recorded in Florida in November 2020.
- One small claims judgment in the amount of \$1,598 filed in New Jersey in 2011 naming Mr. Smolarski as the debtor. The judgment was released in 2013.

No additional derogatory information was identified for Mr. Smolarski.

Notwithstanding the foregoing, research revealed a 2022 contract/insurance matter in which an individual named Joseph Smolarski is identified as the assignor. However, available case documents do not contain personal identifiers. Therefore, it cannot be determined if this matter relates to the subject of this investigation, or his son named Joseph Raymond Smolarski (date of birth May 25, 1999).

## **JOSEPH H. SMOLARSKI**

### **PERSONAL BACKGROUND**

According to our research, Joseph Henry Smolarski was born on April 27, 1974. Addresses have been reported for Mr. Smolarski in the following jurisdictions:

- Broward County, Florida
- Palm Beach County, Florida
- Sumner County, Tennessee
- Burlington County, New Jersey
- Bucks County, Pennsylvania
- Delaware County, Pennsylvania
- Philadelphia County, Pennsylvania

### **TRAFFIC RECORDS**

Searches of available traffic records revealed the following violation for Mr. Smolarski in the Broward County, Florida:

- On November 2, 2020, Mr. Smolarski was charged with driving with an expired tag. On December 7, 2020, he pleaded guilty, paid \$115 in court fines/fees and the case was closed.

### **CRIMINAL RECORDS**

Criminal record searches were undertaken for the time periods in which Mr. Smolarski is known to have lived and/or worked in various jurisdictions. These searches proved negative with respect to Mr. Smolarski.

### **BUSINESS AFFILIATIONS**

On-line corporate record searches revealed the following business entities with which Mr. Smolarski has been affiliated:

- Extend It Systems Inc.
- Strategic Blueprint & Technology Consulting Services

On-line searches of non-verified sources, such as media and professional networking profiles, revealed the following entities with which Mr. Smolarski has been affiliated:

- Global Crossing
- Information Alternatives
- IPC Systems, Inc.
- IPCS Wireless, Inc.
- IXnet

- Kaseya US LLC
- MRP

## LITIGATION AND BANKRUPTCY FILINGS

### *Federal Courts*

On-line searches of civil, criminal and bankruptcy indices for cases filed in available United States District and Bankruptcy Courts, including courts in Florida, New Jersey, Pennsylvania and Tennessee, did not reveal any cases naming Mr. Smolarski as a party.

### *State Courts*

Searches for lawsuits in jurisdictions available on-line did not reveal any cases that definitively pertain to Mr. Smolarski.

Notwithstanding the foregoing, the following case was identified for an individual named Joseph Smolarski but contains no additional identifiers. It cannot be determined if this matter relates to the subject of this investigation, or his son named Joseph Raymond Smolarski<sup>1</sup> (date of birth May 25, 1999).

#### Circuit Court Miami-Dade County, Florida

Plaintiff:	Stand Up MRI
Assignor:	Joseph Smolarski
Defendant:	Geico General Insurance Company
Case Type:	Contract / Insurance / Personal Injury Protection
Case Number:	2022-026661-SP-25
Filing Date:	9/15/2022
Status:	Active

According to available records, Joseph Smolarski was involved in a car accident on August 19, 2019 and received medical services/treatment from the plaintiff while fully covered with personal injury protection benefits from the defendant. The defendant has denied coverage and failed to pay the plaintiff. The last docket entry for this case occurred on September 19, 2022.

## UNITED STATES TAX COURT

A search of United States Tax Court records for any petitions/trials involving tax disputes with the Internal Revenue Service did not identify any proceedings involving Mr. Smolarski.

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<sup>1</sup> Several traffic and criminal records, as well as related news articles, were identified for Joseph Raymond Smolarski, confirmed by his date of birth.



**UNIFORM COMMERCIAL CODE FILINGS, LIENS AND JUDGMENTS**

On-line searches for Uniform Commercial Code filings, liens and judgments revealed the following record pertaining to Mr. Smolarski:

Burlington County, New Jersey

Creditor:	Virtua West Jersey Health
Debtor:	Joseph H. Smolarski Medford, New Jersey 08055
Filing Type:	Small Claims Judgment
Filing Date:	5/9/2011
Amount:	\$1,598
Status:	Released on 4/12/2013

**REGULATORY AND ADMINISTRATIVE ACTIONS*****Federal Agencies***

A comprehensive search was performed of available on-line federal administrative agency decisions/orders/opinions<sup>2</sup> with respect to Mr. Smolarski. No filings were identified that pertain to him.

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<sup>2</sup> The following federal administrative agencies are included in the inquiry: Commodity Futures Trading Commission Decisions, Commodity Futures Trading Commission No-Action, Interpretive and Exemptive Letters, Consumer Product Safety Commission Decrees, Rules, Agreements & Notices, Department of Interior Administrative Law Judge Decisions, Department of Interior Board of Contract Appeals Decisions, Department of Interior Board of Indian Appeals Decisions, Department of Interior Board of Land Appeals Decisions, Department of Justice 1984/1992/1997 Merger Guidelines, Department of Justice Business Review Letters, Department of Justice Proposed Decrees & Judgments, Department of Justice Vertical Restraints Guidelines, Environmental Protection Agency Administrative Law Judge Decisions, Civil Penalty Policies, Consent Decrees, Debarment Decisions, Environmental Appeals Board Decisions and General Counsel Memoranda, Equal Employment Opportunity Commission Private Sector Decisions, Equal Employment Opportunity Commission Public Sector Decisions, Federal Depository Insurance Corporation Interpretative Letters and Enforcement Decisions, Federal Reserve: Applications Approval/Denials, Interpretive Letters, Orders and Notices, Written Agreements, Federal Trade Commission Consent Decrees and Decisions, International Trade Commission Administrative Law Judge Decisions, International Trade Commission Decisions, International Trade Commission General Counsel Memoranda, Interstate Commerce Commission Decisions, IRS Actions on Decisions, IRS Cumulative Bulletin and Internal Revenue Bulletin, IRS General Counsel Memoranda, IRS Private Letter Rulings and Technical Advice Memoranda, IRS Technical Memoranda, National Labor Relations Board Decisions, National Labor Relations Board General Counsel Memoranda, National Mediation Board Decisions, National Transportation Safety Board Decisions, Office Comptroller Currency Enforcement Decisions, Office Comptroller Currency Interpretative Letters (Unpublished), Office of the Comptroller of the Currency - Circulars, Bulletins & Journals, Pension Benefit Guaranty Corporation Opinion Letters, Postal Service Board of Contract Appeals Decisions, Resolution Trust Corp. Complaints, Resolution Trust Corp. Opinions and Decisions, Resolution Trust Corp. Press Releases, SEC Decisions, Orders & Releases, SEC No-Action, Exemptive & Interpretative Letters, Small Business Admin 8a Office of Hearings & Appeals Decisions, Small Business Administration Office of Hearings and

### ***Office of Foreign Assets Control***

The Office of Foreign Assets Control (“OFAC”) administers a series of laws that impose economic sanctions against hostile targets to further U.S. foreign policy and national security objectives. Management of these sanctions is entrusted to the Secretary of the Treasury. OFAC is responsible for promulgating, developing, and administering the sanctions for the Secretary under eight basic statutes,<sup>3</sup> and all of the bank regulatory agencies cooperate in ensuring financial institution compliance with the Regulations. The laws and regulations administered by OFAC apply to all American citizens and permanent resident aliens wherever they are located; individuals and entities located in the United States (including all foreign branches, agencies, rep offices, etc.); corporations organized under U.S. law, including foreign branches; and entities owned or controlled by any of the above, the most important being foreign-organized subsidiaries of U.S. corporations.

OFAC promulgates and regularly updates a list of those individuals and entities that the U.S. government has determined are threats to U.S. national security and interests. This list is entitled “*Specially Designated Nationals and Blocked Persons.*” The list comprises individuals and entities that are owned or controlled by, or acting for or on behalf of, the Governments of target countries or are associated with international narcotics trafficking or terrorism. These individuals and entities are listed on the Treasury Department’s Specially Designated Nationals and Blocked Persons list so that persons subject to the jurisdiction of the United States will know that they are prohibited from dealing with them and that they must block all property within their possession or control in which these individuals and entities have an interest. Mr. Smolarski is not listed on OFAC’s Specially Designated Nationals and Blocked Persons list.

### ***Global Compliance Databases***

Inquiries were conducted of various U.S. and international regulatory oversight agencies that maintain databases that contain information on companies and individuals subject to various government sanctions, litigation or other regulatory oversight. Please note that checks were also conducted of various databases that include information on parties that have been accused or suspected of questionable business practices, to include money

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Appeals, US Attorney General Opinions, US Comptroller General Decisions, US Trademark Trial & Appeal Board Decisions.

<sup>3</sup>Trading With the Enemy Act, 50 U.S.C. App. §§ 1-44 (“TWEA”) [North Korea, Cuba, Transaction Control Regulations]; International Emergency Economic Powers Act, 50 U.S.C. §§1701-06 (“IEEPA”) [Libya, Iraq, Serbia & Montenegro and Bosnia, UNITA, Sierra Leone, Liberia, Sudan, Iran, the Balkans, Terrorism, Narcotics, Nonproliferation, the Taliban and Burma]; Iraqi Sanctions Act, Pub.L. 101-513, 104 Stat. 2047-55 (“ISA”) [Iraq]; United Nations Participation Act, 22 U.S.C. § 287c (“UNPA”) [Iraq, Libya (part), UNITA, Serbia & Montenegro, Sierra Leone, and Liberia]; International Security and Development Cooperation Act (“ISDCA”) codified at 22 U.S.C. 2349 aa-9 (Iran); The Cuban Democracy Act (“CDA”), 22 U.S.C. § 6001-10 [relating to Cuba]; The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, 22 U.S.C. 6021-91, [relating to Cuba]; The Antiterrorism and Effective Death Penalty Act, (enacting 8 U.S.C. 219, 18 U.S.C. 2332d and 18 U.S.C. 2339b) [Cuba, North Korea, Iran, Iraq, Libya, Syria and Sudan]; The Foreign Narcotics Kingpin Designation Act, Pub L. No. 106-120, tit. VIII, 113 Stat 1606, 1626-1636 (1999) (to be codified at 21 U.S.C. §§1901-1908) and; The Criminal Code at 18 U.S.C. § 1001.

laundering, terrorism financing, corruption and fraud.<sup>4</sup> These inquiries proved negative with respect to Mr. Smolarski.

### ***Securities and Exchange Commission***

An on-line search was performed for any Securities and Exchange Commission (“SEC”) records relating to Mr. Smolarski, including Forms 3, 4 and 5, Schedule 13D and Schedule 13G. Forms 3, 4 and 5 disclose directors, officers or owners of more than ten percent (10%) of a class of equity securities (initial filing, changes and annual reports, respectively); Schedule 13D discloses beneficial ownership (i.e., voting or investment power) of individuals who have acquired more than five percent (5%) of certain registered equity securities; and, Schedule 13G discloses passive investors (i.e., those who own less than twenty percent [20%] of the class of securities and do not seek to influence control of the issuer). No filings were identified that reference Mr. Smolarski.

Searches were also performed with the SEC’s Investment Adviser Registration Depository to ascertain any registered investment adviser information for Mr. Smolarski. No current records were identified for him.

### ***Financial Industry Regulatory Authority***

On-line searches were conducted with the Financial Industry Regulatory Authority (“FINRA”) for any information pertaining to Mr. Smolarski. FINRA records do not indicate any registration information or disclosure events pertaining to him.

### ***National Futures Association***

Inquiries were conducted with the National Futures Association (“NFA”) for any information pertaining to Mr. Smolarski. No registration information, NFA and Commodity Futures Trading Commission (“CFTC”) regulatory actions, NFA arbitration awards or CFTC reparations cases are reported for him.

### ***Professional Licenses***

On-line searches did not reveal any professional licenses for Mr. Smolarski.

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<sup>4</sup>Australia Dept. of Foreign Affairs and Trade; Bureau of Industry and Security; Chiefs of State and Foreign Cabinet Members; Commodity Futures Trading Commission; DTC Debarred Parties EPLS; EU Consolidated List; FATF Financial Action Task Force; FBI Hijack Suspects; FBI Most Wanted; FBI Most Wanted Terrorists; FBI Seeking Information; FBI Top Ten Most Wanted; Foreign Agents Registrations; HM Treasury Investment Ban List; HM Treasury Sanctions; Hong Kong Monetary Authority; HUD LDP; Interpol Most Wanted; Ireland Financial Regulator Unauthorized; Japan FSA; Japan Meti-WMD Proliferators; Japan MOF Sanctions Monetary Authority of Singapore; Nonproliferation Sanctions; OFAC Non-SDN Entities; OFAC Sanctions; OFAC SDN; Offshore Financial Centers; OIG Exclusions; OSFI Consolidated List OSFI Country; Peoples Bank of China (PBC); Primary Money Laundering Concern Reserve Bank of Australia; Terrorist Exclusion List; UK FSA; UK HM Treasury List UN Consolidated List; Unauthorized Banks; World Bank Ineligible Firms.

## REAL PROPERTY OWNERSHIP

On-line searches for real property records revealed the following property holdings for Mr. Smolarski:

### *Property #1*

According to property records for Palm Beach County, Florida, Mr. Smolarski purchased this property from Nathalie Obrechts for \$230,000 via deed recorded on November 9, 2021. Purchase financing information is not reflected in the on-line record. Tax roll certification records for 2022 list Mr. Smolarski as the current owner of this property.

### *Property #2*

According to property records for Palm Beach County, Florida, Mr. Smolarski and his wife, Nichole Smolarski, purchased this property from Ilan Miller for \$920,000 via deed recorded on October 5, 2018. Purchase financing in the amount of \$690,000 was provided by NBKC Bank. Tax roll certification records for 2022 list Mr. and Mrs. Smolarski as the current owners of this property.

### *Property #3*

According to property records for Sumner County, Tennessee, Mr. and Mrs. Smolarski purchased this property from the Sanborn Family Trust for \$3,250,000 via deed recorded on August 26, 2022. Tax roll certification records for 2022 list Mr. and Mrs. Smolarski as the current owners of this property.

### *Property #4*

According to property records for Bucks County, Pennsylvania, Mr. and Mrs. Smolarski purchased this property from Paul and Maricar Crane for \$960,000 via deed recorded on June 26, 2013. Purchase financing in the amount of \$768,000 was provided by Hudson County Savings Bank. The couple used this property as collateral to secure non-purchase financing in the amount of \$100,000 from Manufacturers and Traders Trust on November 2, 2018. Tax roll certification records for 2022 list Mr. and Mrs. Smolarski as the current owners of this property.

### *Property #5*

According to property records for Burlington County, New Jersey, Mr. and Mrs. Smolarski purchased this property from Robert and Mary Sperrazza for \$572,000 via deed recorded on October 28, 2004. The couple sold the property to Leonard Viccharelli for \$525,000 via deed recorded on August 13, 2013.

*Property #6*

According to property records for Burlington County, New Jersey, Mr. Smolarski purchased this property from Michael Moore for \$192,500 via deed recorded on July 27, 1999. Mr. and Mrs. Smolarski sold the property to Robert and Joan Campbell for \$336,000 via deed recorded on November 3, 2004.

*Property #7*

According to property records for Philadelphia County, Pennsylvania, Mr. Smolarski and his sister, Alberta Smolarski, transferred this property to their father, Henry R. Smolarski, on March 19, 1997. They had acquired the property from their aunt and uncle, Mark and Judith Smolarski, via deed recorded on January 21, 1992. No purchase financing information was provided for either transaction.

**MEDIA**

An on-line search of local, national and international media sources revealed several articles referencing Mr. Smolarski. Recent articles identify him as Chief Operating Officer of Kaseya, while older articles reference his work with MRP and IPC Systems, Inc. A sample of articles, none of which is derogatory in nature, is attached as ***Exhibit A***.

**SOCIAL MEDIA**

An on-line search revealed Facebook<sup>5</sup> and LinkedIn<sup>6</sup> profiles for Mr. Smolarski as well as a private Instagram<sup>7</sup> account and a limited Twitter<sup>8</sup> account.

At the client's instruction, additional social media review and analysis will be conducted.

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<sup>5</sup> <https://www.facebook.com/joe.smolarski>

<sup>6</sup> <https://www.linkedin.com/in/joesmolarski/>

<sup>7</sup> <https://www.instagram.com/joesmoco/>

<sup>8</sup> [https://twitter.com/smolarski\\_joe](https://twitter.com/smolarski_joe)

CONFIDENTIAL

MEMORANDUM

TO: Miami Dade County

FROM: Investigative Management Group

DATE: March 17, 2023

RE: *Katherine M. Wagner*

This final memorandum summarizes the results of the confidential database public record research conducted in the United States regarding Katherine M. Wagner. Our research included on-line searches for personal/business identifiers, corporate records, Uniform Commercial Code filings, liens, judgments, lawsuits, bankruptcy filings, federal tax court petitions, relevant regulatory/agency information, real property holdings and media reports. Criminal record checks were undertaken in jurisdictions corresponding to known identifiers for Ms. Wagner.

Please note that database research includes only the jurisdictions that are available on-line, not every jurisdiction in which public records may be filed. In addition, on-line research is typically focused on, but not limited to, the states where the subject has reportedly lived and/or worked, as noted herein. On-line abstracts with respect to state litigation frequently do not provide the underlying cause of the action or the disposition thereof. The absence of this information limits the analysis with respect to certain litigation records that are identified in the course of our research. Accordingly, a proper assessment of certain on-line research results may only be accomplished through a manual public record search.

Investigative Management Group has made its best effort to ensure the accuracy of the information herein. This report is being furnished to the client for its own internal use and it is not to be released or shared with others without the prior permission of Investigative Management Group. This report may have been orally modified with additional information. Investigative Management Group should therefore be consulted before the client relies on specific information contained in the report. Investigative Management Group is not liable / responsible for any damages that may result from the client's failure to comply with these terms. This report does not purport to render legal advice and counsel and does not constitute a legal opinion on any of the matters discussed herein.

## **EXECUTIVE SUMMARY**

Our investigation regarding Ms. Wagner revealed the following information:

- Two (2) closed traffic infractions in Florida.
- One state-level civil (small claims) case filed in Palm Beach County, Florida in January 1998, which was settled and closed in March 1998.

No additional derogatory information was identified for Ms. Wagner.

Due to the commonality of the subject's name, numerous records were identified that relate to one or more individuals named Katherine/Kathy Wagner. This report reflects our findings as limited by the personal identifiers available for the subject of this investigation.

## **KATHERINE M. WAGNER**

### **PERSONAL BACKGROUND**

According to our research, Katherine M. Wagner, also known as Kathy Wagner and Katherine/Kathy Raith, was born on December 12, 1969. Addresses have been reported for Ms. Wagner in the following jurisdictions:

- Broward County, Florida
- Burlington County, New Jersey
- Palm Beach County, Florida
- Martin County, Florida
- Saint Lucie County, Florida

### **TRAFFIC RECORDS**

Searches of available traffic records revealed the following violation for Ms. Wagner in Broward County, Florida:

- On March 15, 2012, Ms. Wagner was charged with unlawful speed. (39 mph in a 30-mph zone). (Case number 062012TR013319A88810). On July 12, 2012, adjudication on the citation was withheld, Ms. Wagner paid \$180 in fines/court fees and the case was closed.

Searches of available traffic records revealed the following violation for Ms. Wagner in Martin County, Florida:

- On February 5, 1997, Ms. Wagner was charged with speeding in a posted municipal zone. (Case number 491997TR001659TRAXMX). No disposition information was available via on-line sources. This case status is reported as closed.

### **CRIMINAL RECORDS**

Criminal record searches were undertaken for the time periods in which Ms. Wagner is known to have lived and/or worked in various jurisdictions. These searches proved negative with respect to Ms. Wagner.

### **BUSINESS AFFILIATIONS**

On-line corporate record searches revealed the following business entities with which Ms. Wagner has been affiliated:

- Citrix Systems, Inc.
- Kaseya US LLC
- Kaseya US Sales, LLC



On-line searches of non-verified sources, such as media and professional networking profiles, revealed the following additional business entities with which Ms. Wagner has been affiliated:

- Arthur Andersen LLP
- Ernst & Young LLP

## **LITIGATION AND BANKRUPTCY FILINGS**

### ***Federal Courts***

On-line searches of civil, criminal and bankruptcy indices for cases filed in available United States District and Bankruptcy Courts, including courts in Florida and New Jersey, did not reveal any actions that pertain to Ms. Wagner.

### ***State Courts***

Searches for lawsuits in jurisdictions available on-line revealed the following case pertaining to Ms. Wagner:

#### **Circuit Court Palm Beach County, Florida**

Plaintiff:	Al Packer Inc.
Defendant:	Katherine Wagner
Case Type:	Civil – Small Claims
Case Number:	50-1998-SC-001707-SMRB-MB
Filing Date:	1/28/1998
Status:	Voluntarily dismissed by plaintiff on 3/18/1998 (settled)

## **UNITED STATES TAX COURT**

A search of United States Tax Court records for any petitions/trials involving tax disputes with the Internal Revenue Service did not identify any proceedings involving Ms. Wagner.

## **UNIFORM COMMERCIAL CODE FILINGS, LIENS AND JUDGMENTS**

On-line searches for Uniform Commercial Code filings, liens and judgments did not reveal any records pertaining to Ms. Wagner.

## REGULATORY AND ADMINISTRATIVE ACTIONS

### *Federal Agencies*

A comprehensive search was performed of available on-line federal administrative agency decisions/orders/opinions<sup>1</sup> with respect to Ms. Wagner. No filings were identified that pertain to her.

### *Office of Foreign Assets Control*

The Office of Foreign Assets Control (“OFAC”) administers a series of laws that impose economic sanctions against hostile targets to further U.S. foreign policy and national security objectives. Management of these sanctions is entrusted to the Secretary of the Treasury. OFAC is responsible for promulgating, developing, and administering the sanctions for the Secretary under eight basic statutes,<sup>2</sup> and all the bank regulatory agencies

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<sup>1</sup> The following federal administrative agencies are included in the inquiry: Commodity Futures Trading Commission Decisions, Commodity Futures Trading Commission No-Action, Interpretive and Exemptive Letters, Consumer Product Safety Commission Decrees, Rules, Agreements & Notices, Department of Interior Administrative Law Judge Decisions, Department of Interior Board of Contract Appeals Decisions, Department of Interior Board of Indian Appeals Decisions, Department of Interior Board of Land Appeals Decisions, Department of Justice 1984/1992/1997 Merger Guidelines, Department of Justice Business Review Letters, Department of Justice Proposed Decrees & Judgments, Department of Justice Vertical Restraints Guidelines, Environmental Protection Agency Administrative Law Judge Decisions, Civil Penalty Policies, Consent Decrees, Debarment Decisions, Environmental Appeals Board Decisions and General Counsel Memoranda, Equal Employment Opportunity Commission Private Sector Decisions, Equal Employment Opportunity Commission Public Sector Decisions, Federal Depository Insurance Corporation Interpretative Letters and Enforcement Decisions, Federal Reserve: Applications Approval/Denials, Interpretive Letters, Orders and Notices, Written Agreements, Federal Trade Commission Consent Decrees and Decisions, International Trade Commission Administrative Law Judge Decisions, International Trade Commission Decisions, International Trade Commission General Counsel Memoranda, Interstate Commerce Commission Decisions, IRS Actions on Decisions, IRS Cumulative Bulletin and Internal Revenue Bulletin, IRS General Counsel Memoranda, IRS Private Letter Rulings and Technical Advice Memoranda, IRS Technical Memoranda, National Labor Relations Board Decisions, National Labor Relations Board General Counsel Memoranda, National Mediation Board Decisions, National Transportation Safety Board Decisions, Office Comptroller Currency Enforcement Decisions, Office Comptroller Currency Interpretative Letters (Unpublished), Office of the Comptroller of the Currency - Circulars, Bulletins & Journals, Pension Benefit Guaranty Corporation Opinion Letters, Postal Service Board of Contract Appeals Decisions, Resolution Trust Corp. Complaints, Resolution Trust Corp. Opinions and Decisions, Resolution Trust Corp. Press Releases, SEC Decisions, Orders & Releases, SEC No-Action, Exemptive & Interpretative Letters, Small Business Admin 8a Office of Hearings & Appeals Decisions, Small Business Administration Office of Hearings and Appeals, US Attorney General Opinions, US Comptroller General Decisions, US Trademark Trial & Appeal Board Decisions.

<sup>2</sup> Trading With the Enemy Act, 50 U.S.C. App. §§ 1-44 (“TWEA”) [North Korea, Cuba, Transaction Control Regulations]; International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06 (“IEEPA”) [Libya, Iraq, Serbia & Montenegro and Bosnia, UNITA, Sierra Leone, Liberia, Sudan, Iran, the Balkans, Terrorism, Narcotics, Nonproliferation, the Taliban and Burma]; Iraqi Sanctions Act, Pub.L. 101-513, 104 Stat. 2047-55 (“ISA”) [Iraq]; United Nations Participation Act, 22 U.S.C. § 287c (“UNPA”) [Iraq, Libya (part), UNITA, Serbia & Montenegro, Sierra Leone, and Liberia]; International Security and Development Cooperation Act (“ISDCA”) codified at 22 U.S.C. 2349 aa-9 (Iran); The Cuban Democracy Act (“CDA”), 22 U.S.C. § 6001-10 [relating to Cuba]; The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, 22 U.S.C. 6021-91,

cooperate in ensuring financial institution compliance with the Regulations. The laws and regulations administered by OFAC apply to all American citizens and permanent resident aliens wherever they are located; individuals and entities located in the United States (including all foreign branches, agencies, rep offices, etc.); corporations organized under U.S. law, including foreign branches; and entities owned or controlled by any of the above, the most important being foreign-organized subsidiaries of U.S. corporations.

OFAC promulgates and regularly updates a list of those individuals and entities that the U.S. government has determined are threats to U.S. national security and interests. This list is entitled “*Specially Designated Nationals and Blocked Persons.*” The list comprises individuals and entities that are owned or controlled by, or acting for or on behalf of, the Governments of target countries or are associated with international narcotics trafficking or terrorism. These individuals and entities are listed on the Treasury Department’s Specially Designated Nationals and Blocked Persons list so that persons subject to the jurisdiction of the United States will know that they are prohibited from dealing with them and that they must block all property within their possession or control in which these individuals and entities have an interest. Ms. Wagner is not listed on OFAC’s Specially Designated Nationals and Blocked Persons list.

### ***Global Compliance Databases***

Inquiries were conducted of various U.S. and international regulatory oversight agencies that maintain databases that contain information on companies and individuals subject to various government sanctions, litigation or other regulatory oversight. Please note that checks were also conducted of various databases that include information on parties that have been accused or suspected of questionable business practices, to include money laundering, terrorism financing, corruption and fraud.<sup>3</sup> These inquiries proved negative with respect to Ms. Wagner.

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[relating to Cuba]; The Antiterrorism and Effective Death Penalty Act, (enacting 8 U.S.C. 219, 18 U.S.C. 2332d and 18 U.S.C. 2339b) [Cuba, North Korea, Iran, Iraq, Libya, Syria and Sudan]; The Foreign Narcotics Kingpin Designation Act, Pub L. No. 106-120, tit. VIII, 113 Stat 1606, 1626-1636 (1999) (to be codified at 21 U.S.C. §§1901-1908) and; The Criminal Code at 18 U.S.C. § 1001.

<sup>3</sup>Australia Dept. of Foreign Affairs and Trade; Bureau of Industry and Security; Chiefs of State and Foreign Cabinet Members; Commodity Futures Trading Commission; DTC Debarred Parties EPLS; EU Consolidated List; FATF Financial Action Task Force; FBI Hijack Suspects; FBI Most Wanted; FBI Most Wanted Terrorists; FBI Seeking Information; FBI Top Ten Most Wanted; Foreign Agents Registrations; HM Treasury Investment Ban List; HM Treasury Sanctions; Hong Kong Monetary Authority; HUD LDP; Interpol Most Wanted; Ireland Financial Regulator Unauthorized; Japan FSA; Japan Meti-WMD Proliferators; Japan MOF Sanctions Monetary Authority of Singapore; Nonproliferation Sanctions; OFAC Non-SDN Entities; OFAC Sanctions; OFAC SDN; Offshore Financial Centers; OIG Exclusions; OSFI Consolidated List OSFI Country; Peoples Bank of China (PBC); Primary Money Laundering Concern Reserve Bank of Australia; Terrorist Exclusion List; UK FSA; UK HM Treasury List UN Consolidated List; Unauthorized Banks; World Bank Ineligible Firms.

### ***Securities and Exchange Commission***

An on-line search was performed for any Securities and Exchange Commission (“SEC”) records relating to Ms. Wagner, including Forms 3, 4 and 5, Schedule 13D and Schedule 13G. Forms 3, 4 and 5 disclose directors, officers or owners of more than ten percent (10%) of a class of equity securities (initial filing, changes and annual reports, respectively); Schedule 13D discloses beneficial ownership (i.e., voting or investment power) of individuals who have acquired more than five percent (5%) of certain registered equity securities; and, Schedule 13G discloses passive investors (i.e., those who own less than twenty percent [20%] of the class of securities and do not seek to influence control of the issuer). One filing of (Form 8K – report of unscheduled material events or corporate changes) by Sycamore Networks, Inc. was identified in which Ms. Wagner is listed in a patent sale agreement as the Controller of Citrix Systems, Inc.

Searches were also performed with the SEC’s Investment Adviser Registration Depository to ascertain any registered investment adviser information for Ms. Wagner. No current records were identified for her.

### ***Financial Industry Regulatory Authority***

On-line searches were conducted with the Financial Industry Regulatory Authority (“FINRA”) for any information pertaining to Ms. Wagner. FINRA records do not indicate any registration information or disclosure events pertaining to her.

### ***National Futures Association***

Inquiries were conducted with the National Futures Association (“NFA”) for any information pertaining to Ms. Wagner. No NFA registration information, Commodity Futures Trading Commission (“CFTC”) regulatory actions, NFA arbitration awards nor CFTC reparations cases are reported for Ms. Wagner.

### ***Professional Licenses***

On-line searches revealed that Ms. Wagner is registered with the Florida Department of Business and Professional Regulation as a Certified Public Accountant (License number AC34925). Her license was issued on May 1, 2002, and is scheduled to expire on December 31, 2024. There is no record of public discipline for Ms. Wagner.

## REAL PROPERTY OWNERSHIP

On-line searches for real property records revealed the following property holding for Ms. Wagner:

### *Property # 1*

According to property records for Palm Beach County, Florida, Ms. Wagner and William Wagner, her husband, purchased this property for \$480,000 from Arthur and Camille Snyder via deed recorded on October 2, 2001. Purchase financing in the amount of \$255,000 was provided by First Union Mortgage Corporation. Ms. Wagner and her husband have used this property to secure the following non-purchase financing:

- \$100,000 from First Union National Bank on March 13, 2002;
- \$247,000 from Washington Mutual Bank, FA on April 4, 2003;
- \$200,000 from BankAtlantic on May 27, 2006;
- \$205,000 from PFG Loans, Inc. on October 22, 2009;
- \$182,000 from PFG Loans, Inc. on March 10, 2012.

Tax roll certification records for 2023 list the couple as the current owners of this property.

## MEDIA

An on-line search of local, national and international media sources revealed three (3) articles in 2022 referencing Ms. Wagner, all of which identify her as the CFO of Kaseya. In two (2) articles from July 2022, Ms. Wagner comments from an internal email were quoted in which she wrote that “zero changes” would be made to Datto employee benefits. (Kaseya had recently acquired Datto.) In a January 2022 PR Newswire article, an examination of Kaseya’s growth, enhancements, and hybrid and work environments during 2021 were reviewed. The articles, none of which is derogatory in nature, are attached as *Exhibit A*.

## SOCIAL MEDIA

An on-line search revealed a LinkedIn<sup>4</sup> profile account for Ms. Wagner.

At the client’s instruction, additional social media review and analysis will be conducted.

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<sup>4</sup> <https://www.linkedin.com/in/kathy-wagner-5b872526/>

CONFIDENTIAL

MEMORANDUM

TO: Miami Dade County

FROM: Investigative Management Group

DATE: March 16, 2023

RE: *Jason T. Manar*

This final memorandum summarizes the results of the confidential database public record research conducted in the United States regarding Jason T. Manar. Our research included on-line searches for personal/business identifiers, corporate records, Uniform Commercial Code filings, liens, judgments, lawsuits, bankruptcy filings, federal tax court petitions, relevant regulatory/agency information, real property holdings and media reports. Criminal record checks were undertaken in jurisdictions corresponding to known identifiers for Mr. Manar.

Please note that database research includes only the jurisdictions that are available on-line, not every jurisdiction in which public records may be filed. In addition, on-line research is typically focused on, but not limited to, the states where the subject has reportedly lived and/or worked, as noted herein. On-line abstracts with respect to state litigation frequently do not provide the underlying cause of the action or the disposition thereof. The absence of this information limits the analysis with respect to certain litigation records that are identified in the course of our research. Accordingly, a proper assessment of certain on-line research results may only be accomplished through a manual public record search.

Investigative Management Group has made its best effort to ensure the accuracy of the information herein. This report is being furnished to the client for its own internal use and it is not to be released or shared with others without the prior permission of Investigative Management Group. This report may have been orally modified with additional information. Investigative Management Group should therefore be consulted before the client relies on specific information contained in the report. Investigative Management Group is not liable / responsible for any damages that may result from the client's failure to comply with these terms. This report does not purport to render legal advice and counsel and does not constitute a legal opinion on any of the matters discussed herein.

## EXECUTIVE SUMMARY

Our investigation regarding Mr. Manar revealed the following:

- One federal civil lawsuit filed in Kentucky in July 2004. In this prisoner civil rights action, Mr. Manar is named as a co-defendant in his former role as a Kentucky State Trooper. The case was dismissed with prejudice against Mr. Manar, and the remaining defendants, in January 2005.
- One state-level civil action filed in Florida in July 2020 against Mr. Manar and his wife. This real property matter (also identified as a lis pendens in real property records) was voluntarily dismissed three (3) weeks after filing.
- Several articles, published between 2006 and 2007, were identified that discuss a case in Kentucky relating to a 2003 arrest made by Mr. Manar, in his capacity as a Kentucky State Police Detective. Mr. Manar admitted to fabricating a story to gain entry to a suspect's home so he could search for drugs. When he observed cocaine and marijuana, he arrested the suspect and his roommate for possession of drugs and paraphernalia. The two (2) defendants pleaded guilty to the charges but on the condition that they could challenge the legality of the search. Ultimately, the Kentucky Supreme Court ruled that Mr. Manar "crossed the line of civilized notions of justice," and the suspect's conviction was dismissed with prejudice, while his roommate's conviction was voided.

No additional derogatory information was identified for Mr. Manar.

## **JASON T. MANAR**

### **PERSONAL BACKGROUND**

According to our research, Jason Thomas Manar was born on February 7, 1976. Addresses have been reported for Mr. Manar in the following jurisdictions:

- Broward County, Florida
- Oakland County, Michigan
- Loudoun County, Virginia
- Scott County, Iowa
- Caldwell County, Kentucky
- Calloway County, Kentucky
- Fayette County, Kentucky
- Marshall County, Kentucky
- McCracken County, Kentucky
- Warren County, Kentucky

### **TRAFFIC RECORDS**

Searches of available traffic records did not reveal any infractions for Mr. Manar.

### **CRIMINAL RECORDS**

Criminal record searches were undertaken for the time periods in which Mr. Manar is known to have lived and/or worked in various jurisdictions. These searches proved negative with respect to Mr. Manar.

### **BUSINESS AFFILIATIONS**

On-line corporate record searches did not reveal any business entities with which Mr. Manar has been affiliated.

On-line searches of non-verified sources, such as media and professional networking profiles, revealed the following entities with which Mr. Manar has been affiliated:

- Kaseya
- Federal Bureau of Investigation
- Kentucky State Police



## LITIGATION AND BANKRUPTCY FILINGS

### *Federal Courts*

On-line searches of civil, criminal and bankruptcy indices for cases filed in available United States District and Bankruptcy Courts, including courts in Florida, Iowa, Kentucky, Michigan and Virginia, revealed the following civil case naming Mr. Manar as a party:

#### U.S. District Court, Western District of Kentucky (Bowling Green)

*George L. Hampton v. Tony Chism, Todd Young, Jamie West, Jason Manar and unknown defendants*

Case Number 1:04-cv-00122-JHM

This prisoner civil rights action was filed on July 22, 2004. The plaintiff alleged that he was subjected to illegal search and seizure when he was arrested on April 19, 2002. Mr. Manar was named as a co-defendant in his role as a Kentucky State Trooper who searched the plaintiff's property. On November 19, 2004, Mr. Manar filed a motion to dismiss the complaint because the statute of limitations for the claim had expired after one year. On January 13, 2005, the case was dismissed against the defendants. A copy of the docket sheet, complaint, motion to dismiss and dismissal are attached as ***Exhibits A – A-2***.

### *State Courts*

Searches for lawsuits in jurisdictions available on-line revealed the following case for Mr. Manar:

#### 17<sup>th</sup> Judicial Circuit, Broward County, Florida

Plaintiff:	Heron Bay Community Association Inc.
Defendants:	Jason Manar and Angela Manar
Case Type:	Real Property
Case Number:	CACE20012413
Filing Date:	7/31/2020
Status:	Voluntarily Dismissed on 8/20/2020

*Please note that a lis pendens corresponding to this action is listed in the **Real Property** section for Property #1.*

## UNITED STATES TAX COURT

A search of United States Tax Court records for any petitions/trials involving tax disputes with the Internal Revenue Service did not identify any proceedings involving Mr. Manar.

## UNIFORM COMMERCIAL CODE FILINGS, LIENS AND JUDGMENTS

On-line searches for Uniform Commercial Code filings, liens and judgments did not reveal any records pertaining to Mr. Manar.

## REGULATORY AND ADMINISTRATIVE ACTIONS

### *Federal Agencies*

A comprehensive search was performed of available on-line federal administrative agency decisions/orders/opinions<sup>1</sup> with respect to Mr. Manar. No filings were identified that pertain to him.

### *Office of Foreign Assets Control*

The Office of Foreign Assets Control (“OFAC”) administers a series of laws that impose economic sanctions against hostile targets to further U.S. foreign policy and national security objectives. Management of these sanctions is entrusted to the Secretary of the Treasury. OFAC is responsible for promulgating, developing, and administering the sanctions for the Secretary under eight basic statutes,<sup>2</sup> and all of the bank regulatory

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<sup>1</sup> The following federal administrative agencies are included in the inquiry: Commodity Futures Trading Commission Decisions, Commodity Futures Trading Commission No-Action, Interpretive and Exemptive Letters, Consumer Product Safety Commission Decrees, Rules, Agreements & Notices, Department of Interior Administrative Law Judge Decisions, Department of Interior Board of Contract Appeals Decisions, Department of Interior Board of Indian Appeals Decisions, Department of Interior Board of Land Appeals Decisions, Department of Justice 1984/1992/1997 Merger Guidelines, Department of Justice Business Review Letters, Department of Justice Proposed Decrees & Judgments, Department of Justice Vertical Restraints Guidelines, Environmental Protection Agency Administrative Law Judge Decisions, Civil Penalty Policies, Consent Decrees, Debarment Decisions, Environmental Appeals Board Decisions and General Counsel Memoranda, Equal Employment Opportunity Commission Private Sector Decisions, Equal Employment Opportunity Commission Public Sector Decisions, Federal Depository Insurance Corporation Interpretative Letters and Enforcement Decisions, Federal Reserve: Applications Approval/Denials, Interpretive Letters, Orders and Notices, Written Agreements, Federal Trade Commission Consent Decrees and Decisions, International Trade Commission Administrative Law Judge Decisions, International Trade Commission Decisions, International Trade Commission General Counsel Memoranda, Interstate Commerce Commission Decisions, IRS Actions on Decisions, IRS Cumulative Bulletin and Internal Revenue Bulletin, IRS General Counsel Memoranda, IRS Private Letter Rulings and Technical Advice Memoranda, IRS Technical Memoranda, National Labor Relations Board Decisions, National Labor Relations Board General Counsel Memoranda, National Mediation Board Decisions, National Transportation Safety Board Decisions, Office Comptroller Currency Enforcement Decisions, Office Comptroller Currency Interpretative Letters (Unpublished), Office of the Comptroller of the Currency - Circulars, Bulletins & Journals, Pension Benefit Guaranty Corporation Opinion Letters, Postal Service Board of Contract Appeals Decisions, Resolution Trust Corp. Complaints, Resolution Trust Corp. Opinions and Decisions, Resolution Trust Corp. Press Releases, SEC Decisions, Orders & Releases, SEC No-Action, Exemptive & Interpretative Letters, Small Business Admin 8a Office of Hearings & Appeals Decisions, Small Business Administration Office of Hearings and Appeals, US Attorney General Opinions, US Comptroller General Decisions, US Trademark Trial & Appeal Board Decisions.

<sup>2</sup>Trading With the Enemy Act, 50 U.S.C. App. §§ 1-44 (“TWEA”) [North Korea, Cuba, Transaction Control Regulations]; International Emergency Economic Powers Act, 50 U.S.C. §§1701-06 (“IEEPA”)[Libya, Iraq,

agencies cooperate in ensuring financial institution compliance with the Regulations. The laws and regulations administered by OFAC apply to all American citizens and permanent resident aliens wherever they are located; individuals and entities located in the United States (including all foreign branches, agencies, rep offices, etc.); corporations organized under U.S. law, including foreign branches; and entities owned or controlled by any of the above, the most important being foreign-organized subsidiaries of U.S. corporations.

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### ***Global Compliance Databases***

Inquiries were conducted of various U.S. and international regulatory oversight agencies that maintain databases that contain information on companies and individuals subject to various government sanctions, litigation or other regulatory oversight. Please note that checks were also conducted of various databases that include information on parties that have been accused or suspected of questionable business practices, to include money laundering, terrorism financing, corruption and fraud.<sup>3</sup> These inquiries proved negative with respect to Mr. Manar.

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Serbia & Montenegro and Bosnia, UNITA, Sierra Leone, Liberia, Sudan, Iran, the Balkans, Terrorism, Narcotics, Nonproliferation, the Taliban and Burma]; Iraqi Sanctions Act, Pub.L. 101-513, 104 Stat. 2047-55 (“ISA”) [Iraq]; United Nations Participation Act, 22 U.S.C. § 287c (“UNPA”) [Iraq, Libya (part), UNITA, Serbia & Montenegro, Sierra Leone, and Liberia]; International Security and Development Cooperation Act (“ISDCA”) codified at 22 U.S.C. 2349 aa-9 (Iran); The Cuban Democracy Act (“CDA”), 22 U.S.C. § 6001-10 [relating to Cuba]; The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, 22 U.S.C. 6021-91, [relating to Cuba]; The Antiterrorism and Effective Death Penalty Act, (enacting 8 U.S.C. 219, 18 U.S.C. 2332d and 18 U.S.C. 2339b) [Cuba, North Korea, Iran, Iraq, Libya, Syria and Sudan]; The Foreign Narcotics Kingpin Designation Act, Pub L. No. 106-120, tit. VIII, 113 Stat 1606, 1626-1636 (1999) (to be codified at 21 U.S.C. §§1901-1908) and; The Criminal Code at 18 U.S.C. § 1001.

<sup>3</sup>Australia Dept. of Foreign Affairs and Trade; Bureau of Industry and Security; Chiefs of State and Foreign Cabinet Members; Commodity Futures Trading Commission; DTC Debarred Parties EPLS; EU Consolidated List; FATF Financial Action Task Force; FBI Hijack Suspects; FBI Most Wanted; FBI Most Wanted Terrorists; FBI Seeking Information; FBI Top Ten Most Wanted; Foreign Agents Registrations; HM Treasury Investment Ban List; HM Treasury Sanctions; Hong Kong Monetary Authority; HUD LDP; Interpol Most Wanted; Ireland Financial Regulator Unauthorized; Japan FSA; Japan Meti-WMD Proliferators; Japan MOF Sanctions Monetary Authority of Singapore; Nonproliferation Sanctions; OFAC Non-SDN Entities; OFAC Sanctions; OFAC SDN; Offshore Financial Centers; OIG Exclusions; OSFI Consolidated List OSFI Country; Peoples Bank of China (PBC); Primary Money Laundering Concern Reserve Bank of Australia; Terrorist Exclusion List; UK FSA; UK HM Treasury List UN Consolidated List; Unauthorized Banks; World Bank Ineligible Firms.

### ***Securities and Exchange Commission***

An on-line search was performed for any Securities and Exchange Commission (“SEC”) records relating to Mr. Manar, including Forms 3, 4 and 5, Schedule 13D and Schedule 13G. Forms 3, 4 and 5 disclose directors, officers or owners of more than ten percent (10%) of a class of equity securities (initial filing, changes and annual reports, respectively); Schedule 13D discloses beneficial ownership (i.e., voting or investment power) of individuals who have acquired more than five percent (5%) of certain registered equity securities; and, Schedule 13G discloses passive investors (i.e., those who own less than twenty percent [20%] of the class of securities and do not seek to influence control of the issuer). No filings were identified that reference Mr. Manar.

Searches were also performed with the SEC’s Investment Adviser Registration Depository to ascertain any registered investment adviser information for Mr. Manar. No current records were identified for him.

### ***Financial Industry Regulatory Authority***

On-line searches were conducted with the Financial Industry Regulatory Authority (“FINRA”) for any information pertaining to Mr. Manar. FINRA records do not indicate any registration information or disclosure events pertaining to him.

### ***National Futures Association***

Inquiries were conducted with the National Futures Association (“NFA”) for any information pertaining to Mr. Manar. No registration information, NFA and Commodity Futures Trading Commission (“CFTC”) regulatory actions, NFA arbitration awards or CFTC reparations cases are reported for him.

### ***Professional Licenses***

According to on-line records maintained by the SANS Institute and GIAC, Mr. Manar obtained the Strategic Planning, Policy and Leadership certification on January 1, 2020. This is scheduled to expire on January 31, 2024. He also obtained the Security Leadership Certification on August 21, 2017, and it is scheduled to expire on August 31, 2025. He obtained the Information Security Fundamentals Certification on December 7, 2015; however, it expired on December 31, 2019.

## REAL PROPERTY OWNERSHIP

On-line searches for real property records revealed the following property holdings for Mr. Manar:

### *Property #1*

According to property records for Broward County, Florida, Mr. Manar and his wife, Angela Manar, purchased this property from Ayad Chadi for \$480,000 via deed recorded on January 20, 2015. Purchase financing in the amount of \$297,000 was provided by Wells Fargo Bank. On August 3, 2020, a lis pendens was recorded for the property but was released on August 21, 2020. The couple used this property as collateral to secure non-purchase financing in the amount of \$240,500 from Wells Fargo Bank on April 6, 2022. Tax roll certification records for 2022 list Mr. and Mrs. Manar as the current owners of this property.

### *Property #2*

According to property records for Oakland County, Michigan, Mr. and Mrs. Manar purchased this property from Larry and Mary Stewart for \$330,000 via deed recorded on December 28, 2009. Purchase financing in the amount of \$260,000 was provided by Wells Fargo Bank. Mr. and Mrs. Manar sold the property to Nandkishor and Priya Nema for \$417,000 via deed recorded on February 10, 2015.

### *Property #3*

According to property records for Scott County, Iowa, Mr. and Mrs. Manar purchased this property from Tradewinds Custom Homes Inc. for \$190,000 via deed recorded on September 28, 2006. Purchase financing in the form of two (2) loans totaling \$170,000 was provided by Wells Fargo Bank. The couple sold the property to Prudential Relocation Inc. for \$195,000 via deed recorded on November 4, 2009.

### *Property #4*

According to property records for Trigg County, Kentucky, Mr. and Mrs. Manar sold this property to Douglas and Leandrea Hammond for an unspecified amount via deed recorded on September 22, 2017. Information relating to their initial purchase of the property is not reflected on-line.

## MEDIA

An on-line search of local, national and international media sources revealed numerous any articles referencing Mr. Manar. Recent articles identify him as the Chief Information Security Officer at Kaseya. Older articles reference his work with the FBI and Kentucky State Police. Additional articles include obituaries in which he is referenced as a family member of the deceased and announcements regarding his election to the Madison District

Public School Board in Michigan in 2010. A representative sample of articles, none of which is derogatory in nature, is attached as ***Exhibit B***.

Several articles published between 2006 and 2007 discuss a case in Kentucky relating to a 2003 arrest made by Mr. Manar, in his capacity as a Kentucky State Police Detective. Mr. Manar admitted to fabricating a story to gain entry to a suspect's home so he could search for drugs. When he observed cocaine and marijuana, he arrested the suspect and his roommate for possession of drugs and paraphernalia. The two (2) defendants pleaded guilty to the charges but on the condition that they could challenge the legality of the search. Ultimately, the Kentucky Supreme Court ruled that Mr. Manar "crossed the line of civilized notions of justice," and the suspect's conviction was dismissed with prejudice, while his roommate's conviction was voided. A sample of articles covering this case is attached as ***Exhibit C***.

*Please note that the litigation resulting from this matter does not appear to name Mr. Manar as a party. The case was filed against the Commonwealth of Kentucky, and therefore not initially identified during on-line litigation searches. Additional research is underway to obtain copies of relevant case filings.*

#### **SOCIAL MEDIA**

An on-line search revealed Facebook<sup>4</sup> and LinkedIn<sup>5</sup> profiles for Mr. Manar as well as a private Instagram<sup>6</sup> account.

At the client's instruction, additional social media review and analysis will be conducted.

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<sup>4</sup> <https://www.facebook.com/jason.manar>

<sup>5</sup> <https://www.linkedin.com/in/jason-manar-5a92a923/>

<sup>6</sup> <https://instagram.com/jtmanar?igshid=YmMyMTA2M2Y=>



Global Commercial Banking  
701 Brickell Ave, 8<sup>th</sup> Floor  
Miami, FL 33131

February 27, 2023

To whom it may concern:

I, Gianira Obregon, a Senior Vice President of Bank of America, N.A. ("Bank"), do hereby certify that Kaseya . ("Kaseya" or "Client"), and its subsidiaries, has been a client of Bank of America, N.A. or its predecessor organizations for a period of over eight years. During this period, Kaseya has always satisfactorily fulfilled its obligations to Bank of America.

Bank of America acts as Kaseya's lead global treasury management provider and hold balances in the high eight digit value. The Bank's relationship with Kaseya has proved to be highly professional, and we hold Kaseya's management team in the highest regard.

This certification is being delivered to you at the request of our Client. Please note that the information set forth in this letter is subject to change without notice, and is provided in strict confidence to you for your own use only, without any responsibility, guarantee, commitment or liability on the part of Bank of America, N.A., its affiliates or any of its or its affiliates' directors, officers or employees. Bank of America, N.A. cannot provide any credit ratings or opinions of the creditworthiness of Client or any of its/his/her affiliates, and the above information does not constitute an opinion of Bank of America, N.A. of Client's ability to successfully perform its obligations under any agreement it may enter into with you, Bank of America, N.A. or any other entity. Finally, Bank of America, N.A. undertakes no responsibility to update the information set forth in this letter.

If you have any additional questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads "Gianira Obregon". The signature is written in a cursive, flowing style.

Gianira Obregon  
Senior Vice President, Bank of America  
Tel: (786) 810-1778

March 1, 2023

Kaseya Inc.  
701 Brickell Ave  
Miami, FL 33131  
Attention: Kathy Wagner

Mrs. Wagner,

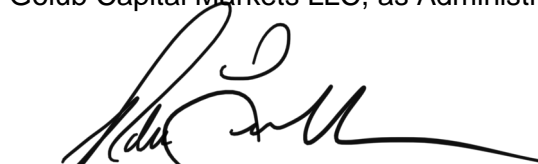
Pursuant to your request, Golub Capital Markets LLC, in its capacity as Administrative Agent (the "Agent") under the Credit Agreement provided to Kaseya Inc., as borrower and the other parties thereto, dated as of June 23, 2022 (the "Credit Agreement"), hereby confirms, solely as of the date of this letter, that the information below is true and correct:

1. The Agent is not aware of any default or event of default under the Credit Agreement;
2. the current amount of unfunded commitments under the revolving credit facility (the "RCF") is \$200,000,000.00;
3. the current amount of funded commitments under the RCF is \$0.00;
4. the current amount of unfunded commitments under the delayed draw term loan facility (the "DDTL") is \$200,000,000.00;
5. the maturity date of the existing loans and commitments under the Credit Agreement is June 25, 2029; and
6. the Agent is not aware of any current amendments or modifications to the Credit Agreement.

Regarding the current status of the RCF and DDTL, although there is nothing currently contemplated, we cannot guarantee that either the RCF or DDTL will remain idle, nor undergo modifications in the future. No third party shall be entitled to rely on the contents hereof.

Thank you,

Golub Capital Markets LLC, as Administrative Agent



Name: Robert G. Tuchscherer  
Title: Senior Managing Director



2021 WL 5178945 (D.O.J.)

Department of Justice (D.O.J.)

Federal Bureau of Investigation (FBI)

(NEWS RELEASE)

## ARREST ANNOUNCED IN SODINOKIBI/REVIL RANSOMWARE ATTACK

November 8, 2021

*FBI Director Christopher Wray delivered the following remarks during a press conference at the Department of Justice in Washington, D.C., with partner agency officials announcing arrests and charges in connection with the Sodinokibi/REvil ransomware. (Remarks as delivered.)*

Good afternoon. Today's announcement of the arrest of Yaroslav Vasinskiy in Poland, and the charges against and seizure from Yevgeniy Polyanin, shows what's possible when federal and international law enforcement work together with private sector companies.

It also demonstrates our resolve in pursuing criminal enterprises that use ransomware to threaten our critical infrastructure, our public health and safety, and our economic vitality.

As the Attorney General noted, this ransomware strain has wreaked havoc across the globe, extorting vast sums and inflicting significant damage with attacks on, to name just a few: JBS foods, local governments in Texas, hospitals, schools, 911 call centers, and of course, **Kaseya**.

When **Kaseya** realized some of their customers' networks were infected with ransomware, they immediately took action.

They worked to make sure both their own customers--managed service providers [[MSPs]]--and those MSPs' customers downstream quickly disabled **Kaseya's** software on their systems

They also engaged with us early. The FBI coordinated with a host of key partners--including CISA and foreign law enforcement and intelligence services--so **Kaseya** could benefit from all of our expertise and reach as it worked to put out the fire.

**Kaseya's** swift response allowed the FBI and our partners to quickly figure out which of its customers were hit and for us to quickly share with **Kaseya** and its customers information about what the adversaries were doing, what to look for, and how the companies could best address the danger.

Here, we were able to obtain a usable decryption key that allowed us to generate a capability to unlock **Kaseya** customers' data.

We immediately strategized with our interagency partners and reached a carefully considered decision about how to help the most companies possible, both by providing the key, and by maximizing our government's impact on our adversaries, who continued to mount new attacks.

Ultimately, we were able both to unlock encrypted data and to take bad actors out of operation, including by hitting Sodinokibi more broadly, seizing cryptocurrency, and, as you just heard, late last week our partner Romanian authorities also arrested two other individuals suspected of cyberattacks using Sodinokibi/REvil ransomware.

As the attorney general and deputy attorney general mentioned, the steps we've announced today are yet another example highlighting why the public needs breach reporting legislation that provides the FBI real-time access to information about ransomware attacks and other criminal breaches.

When the FBI is engaged early, we can provide victims more and better support. We get them the intelligence and technical information they need faster. And we can quickly work back from that intrusion to follow and seize the criminals' money before it can jump through wallet after wallet and exchange after exchange, identify other victims about to be hit or in the early stages of further attacks, and make connections between what the reporting victim sees and intelligence we gather from around the world, arming both the private sector and our government partners with insights they can act on.

We've deployed technically trained agents, computer scientists, intelligence analysts, and others in every one of our 56 field offices across the country so we can warn businesses big and small, wherever they may be, quickly and with the information they need to defend their networks.

Over the past few years, ransomware schemes have repeatedly crippled hospital systems, targeted the energy sector, threatened emergency services, and cost or endangered thousands of jobs at businesses of every kind and size.

Most of the time, the actors themselves are trying to hide abroad, but as we've shown time and again, we'll still pursue them, disrupt them, and hold them accountable. The long arm of the law reaches a lot farther than they think.

And we've got ways of disrupting those sheltering in places like Russia--as Polyanin discovered when he woke up and found \$6.1 million he'd extorted from his victims missing.

Good partners of ours, like the Treasury and State departments, are also adept at turning the results of our investigations into action and pressure abroad.

I want to thank **Kaseya** and other private sector partners for their invaluable help in this case--and for the way they've joined our response to the ransomware threat.

I also want to thank our own Dallas and Jackson field offices for leading the investigation.

And I'm grateful to all our federal partners, and our many foreign partners, especially Poland, Romania, Ukraine, France, and Germany.

The cyber threat is daunting--but when we combine the right people, the right tools, and the right authorities, our adversaries are no match for what we can accomplish together.

Thank you. And now I'll turn the podium over to the Deputy Secretary of the Treasury Wally Adeyemo.

Washington, D.C.  
FBI National Press Office  
(202) 324-3691

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2021 WL 5178945 (D.O.J.)

End of Document

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# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Oliver G. Gilbert, III  
and Members, Board of County Commissioners

**DATE:** April 4, 2023

**FROM:**   
Gen Bonzon-Keenan  
County Attorney

**SUBJECT:** Agenda Item No. 5(O)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☒ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present \_\_\_\_, 2/3 membership \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) \_\_\_\_ to approve
- ☒ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 5(O)  
4-4-23

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING, AFTER A PUBLIC HEARING, MARKETING PARTNERSHIP NAMING RIGHTS AGREEMENT (“AGREEMENT”) PURSUANT TO SECTION 2-2201 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA AND IMPLEMENTING ORDER 8-9 FOR THE SALE OF NAMING RIGHTS AND ASSOCIATED SPONSORSHIP RIGHTS TO KASEYA US LLC (“KASEYA”) TO RENAME THE COUNTY-OWNED ARENA (“ARENA”) LOCATED AT 601 BISCAYNE BLVD., MIAMI, FL 33132 THE “KASEYA CENTER” FOR A 17-YEAR TERM AND \$117,370,000.00 IN PAYMENTS TO THE COUNTY; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO EXECUTE SAME AND EXERCISE CERTAIN PROVISIONS THEREIN; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO NEGOTIATE AND EXECUTE A CONTRACT FOR PAYMENT OF A FINDER’S FEE OF \$45,000.00 FROM REVENUES GENERATED BY NAMING RIGHTS AGREEMENT PAYMENTS TO PFM FINANCIAL ADVISORS LLC FOR ASSISTANCE IN IDENTIFYING A NAMING RIGHTS SPONSOR FOR THE ARENA; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO NEGOTIATE AND EXECUTE A CONTRACT FOR PAYMENT IN AN AMOUNT UP TO \$25,000.00 FROM REVENUES GENERATED BY NAMING RIGHTS AGREEMENT PAYMENTS TO INVESTIGATIVE MANAGEMENT GROUP FOR DUE DILIGENCE WORK; AND ALLOCATING NAMING RIGHTS REVENUES, NET OF EXPENSES, TO THE “ANTI-GUN VIOLENCE AND PROSPERITY INITIATIVES” TRUST FUND (“TRUST FUND”)

**WHEREAS**, on July 15, 2014, the Board of County Commissioners (“Board”) adopted Ordinance No. 14-99 creating the Miami-Dade County Marketing Partnerships Program and creating section 2-2201 of the Code of Miami-Dade County, Florida (“County Code”); and

**WHEREAS**, section 2-2201(1)(b) of the County Code defines a “Marketing Partnership Agreement” as an agreement with a third party to provide a financial benefit to the County in the form of non-tax revenue and/or in-kind fees (products or services) in exchange for the access to the marketing commercial potential associated with select County assets for the use in strategies to promote, sell, or distribute a product or service by incorporating marketing privileges such as the acquisition of naming rights; and

**WHEREAS**, on October 7, 2014, the Board adopted Implementing Order (“IO”) 8-9 relating to the Marketing Partnership Program wherein the policy provides that the “intent of the marketing partnership is not to generate revenue to replace core funding for programs and services (County operations). Rather, marketing partnerships are developed as creative and imaginative approaches to generate and enhance non-tax revenue funds to complement or provide new funding for County operations (programs, services, etc.)”; and

**WHEREAS**, on June 3, 2014, the Board adopted Resolution No. R-499-14 approving amended and restated agreements with Basketball Properties, Ltd. (“BPL”) and the Miami Heat Limited Partnership for the development, improvement, operation, and management of the arena owned by Miami-Dade County located at 601 Biscayne Blvd., Miami, FL 33132 (the “Arena”) which included a County option to exercise control over the sale of Arena naming rights commencing on January 1, 2020 subject to naming rights payments to BPL in the amount of \$2,000,000.00 per year; and

**WHEREAS**, on October 23, 2018, the Board adopted Resolution No. R-1079-18 to exercise the County’s option to sell, license, or otherwise grant the naming rights to the Arena; and

**WHEREAS**, on March 26, 2021, the Board adopted Resolution No. R-238-21 approving a Naming Rights Agreement with West Realm Shire Services Inc. dba FTX.US (“FTX”) for the Arena and establishing the Anti-gun Violence and Prosperity Initiatives Trust Fund (“Trust Fund”) and Board policy that naming rights revenues received under the Agreement or any other contract for Arena naming rights be deposited in the Trust Fund to be used, subject to prior Board approval, for anti-gun violence and prosperity initiatives; and

**WHEREAS**, on November 11, 2022, and November 14, 2022, FTX Trading Ltd. and one hundred and one (101) affiliated companies, including FTX, filed petitions seeking relief under Chapter 11 of the United States Bankruptcy Code; and

**WHEREAS**, on January 11, 2023, the United States Bankruptcy Court for the District of Delaware approved termination of the Naming Rights Agreement with FTX as of December 30, 2022, allowing the County to begin again the process of securing a new Arena naming rights sponsor; and

**WHEREAS**, PFM Financial Advisors LLC approached the County to inquire about Arena naming rights sponsorship and introduced Kaseya to the County; and

**WHEREAS**, Investigative Management Group conducted a due diligence public record search on Kaseya and its top five executives; and

**WHEREAS**, the County negotiated a Naming Rights Agreement, attached to this resolution as Exhibit “A”, with Kaseya US LLC (“Kaseya”) to rename the Arena the Kaseya Center for \$117,370,000.00 in payments from Kaseya to the County over a 17-year term; and

**WHEREAS**, following deductions for the annual \$2,000,000.00 naming rights payment to BPL, the finder’s fee of \$45,000.00 to PFM Financial Advisors LLC, a payment of up to \$25,000.00 to Investigative Management Group for due diligence, and a \$25,000.00 public



relations launch campaign to be funded by the County pursuant to the terms of the Naming Rights Agreement, as more specifically set forth in the accompanying memorandum, the County's estimated net revenues from the Naming Rights Agreement over the 17-year term to be deposited in the Trust Fund are \$83,275,000.00; and

**WHEREAS**, this Board wishes to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that:

**Section 1.** The above recitals are incorporated herein by reference and approved.

**Section 2.** This Board approves the award, after a public hearing, of a Marketing Partnership Naming Rights Agreement (MPA#008) (the "Naming Rights Agreement"), pursuant to section 2-2201 of the County Code and IO 8-9, for the County's sale of naming rights and other associated sponsorship rights to Kaseya to rename the Arena the Kaseya Center, in substantially the form attached hereto as Exhibit "A" and made a part hereof, for a 17-year term and \$117,370,000.00 in payments to the County.

**Section 3.** This Board authorizes the County Mayor or County Mayor's designee to:

- (a) execute the Naming Rights Agreement; (b) provide those County approvals described in the Naming Rights Agreement, except such approvals that are explicitly required to be provided by the Board in the Naming Rights Agreement as Board approvals; (c) exercise the cancellation/termination provisions in the Naming Rights Agreement, except any termination provision that it explicitly described in the Naming Rights Agreement as requiring Board approval; and (d) exercise all other remaining provisions contained in the Naming Rights Agreement, except for making material amendments to the Naming Rights Agreement.

**Section 4.** This Board authorizes the County Mayor or County Mayor’s designee to (1) negotiate and execute a contract for payment of a finder’s fee of \$45,000.00 to PFM Financial Advisors LLC for work done in relation to identifying Kaseya as a potential naming rights partner and making the appropriate introductions; and (2) negotiate and execute a contract for payment in an amount up to \$25,000.00 to Investigative Management Group for due diligence records searches on Kaseya and its top five executives. The authorized payments of \$45,000.00 to PFM Financial Advisors LLC and \$25,000.00 to Investigative Management Group shall be from revenues generated by payments under the Naming Rights Agreement.

**Section 5.** This Board directs the County Mayor or County Mayor’s designee to deposit net revenue received by the County from the Naming Rights Agreement or, to the extent that the Naming Rights Agreement is terminated prior to the expiration of the 17-year term, any other naming rights agreement for the Arena entered into by the County, after deduction for all associated expenses to be paid, as set forth in the accompanying memorandum, into the Trust Fund in fiscal year 2022-2023 and all subsequent fiscal years through fiscal year 2039-2040, and used and allocated in accordance with the “Anti-gun Violence and Prosperity Initiatives” provisions of Resolution No. R-238-21.

The foregoing resolution was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman	
Anthony Rodríguez, Vice Chairman	
Marleine Bastien	Juan Carlos Bermudez
Kevin Marino Cabrera	Sen. René García
Roberto J. Gonzalez	Keon Hardemon
Danielle Cohen Higgins	Eileen Higgins
Kionne L. McGhee	Raquel A. Regalado
Micky Steinberg	



The Chairperson thereupon declared this resolution duly passed and adopted this 4<sup>th</sup> day of April, 2023. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

LUIS G. MONTALDO, CLERK AD INTERIM

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.



Eduardo W. Gonzalez  
Monica Rizo Perez

**NAMING RIGHTS AGREEMENT**

***-by and between-***

**Miami-Dade County, Florida**

***-and-***

**KASEYA US LLC**

**Dated as of the Effective Date**

## NAMING RIGHTS AGREEMENT

This **NAMING RIGHTS AGREEMENT** (this “**Agreement**”) is made and entered into by and between the Miami-Dade County, Florida, a political subdivision of the state of Florida, with an office address at 111 NW 1st Street Miami, Florida 33128 (“**COUNTY**”), and Kaseya US LLC, a Delaware limited liability company with an office address at 701 Brickell Ave, Suite 400, Miami, FL 33131 (“**NAMING RIGHTS PARTNER**”). **NAMING RIGHTS PARTNER** and **COUNTY** are sometimes together referred to herein as the “**Parties**” and individually as a “**Party**”.

### W I T N E S S E T H:

WHEREAS the **COUNTY** owns a structure formerly named the American Airlines Arena and the FTX Arena, which currently serves as the home of the Miami Heat of the National Basketball Association, located at 601 Biscayne Boulevard, Miami, Florida 33132 and all the improvements on the Site including but not limited to an On-Site Garage (as same may be modified, expanded and reconstructed, the “**Arena**”) as defined and described pursuant to the Management Agreement between the **COUNTY** and Basketball Properties, Ltd. (“**BPL**”); and

WHEREAS, as set forth in and subject to Section 4.5 of the Management Agreement, **COUNTY** has the right, among other rights, to sell naming rights and other sponsorship and associated rights to the **Arena**; and

WHEREAS, **NAMING RIGHTS PARTNER** now desires to purchase naming rights to the **Arena** and other sponsorship and associated rights with respect to the **Arena** (each, an “**Entitlement**,” collectively, the “**Entitlements**”), all as more fully set forth herein during the Term; and

WHEREAS, the **COUNTY** owns the rights to sell naming rights and associated sponsorship to the **Arena** and desires to grant same to the **NAMING RIGHTS PARTNER**, in consideration for the covenants and agreements set forth in this Agreement, provided, that the **NAMING RIGHTS PARTNER** understands and acknowledges that the **NAMING RIGHTS PARTNER** needs to, and will, enter into a separate Naming Rights Facilitation Agreement with **BPL** (defined below) for the facilitation and provision of the **Entitlements** to **NAMING RIGHTS PARTNER**; and

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

### **AGREEMENT**

1. **Definitions.** As used in this Agreement, the following terms have the following meanings.

“**Additional Category**” means any other product or service category outside the scope of the Exclusive Category.

**“Additional Team”** means any professional, collegiate or amateur sports team (other than the Team or Team’s affiliate e-sports team, currently known as Heat Check Gaming) that plays all or a substantial portion of its “home” games at the Arena in any year or season. A “home” game for an Additional Team shall be determined by the league in which the Additional Team plays.

**“Affiliate”** means a Person or entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, a Person. As used in this definition, the term “controls” or “controlled by” means the possession of the power to direct the management and policies of the Person or entity, whether through ownership of voting securities, by contract or otherwise.

**“Agreement”** has the meaning set forth in the Preamble.

**“Approval Deadline”** has the meaning set forth in Section 22.

**“Approved Nickname”** means any other abbreviation, nickname, or shortened form of the Arena Name that is mutually agreed upon in writing by COUNTY, BPL and NAMING RIGHTS PARTNER.

**“Arena”** has the meaning set forth in the Recitals.

**“Arena Agreements”** means the Deed of Restriction granted to the COUNTY in connection with the initial conveyance of the real property at the Site by the City of Miami or any other agreements the COUNTY has entered concerning the Arena with the Heat or any affiliates thereof.

**“Arena Image Marks”** has the meaning set forth in Section 4.1.2.

**“Arena Logo”** has the meaning set forth in Section 4.1.3.1.

**“Arena Name”** has the meaning set forth in Section 4.1.1.

**“Arena Social Media Accounts”** shall mean the social media accounts for the Arena.

**“Assignee”** has the meaning set forth in Section 12.2.1.

**“Board”** means the Miami-Dade County Board of County Commissioners.

**“BPL”** means Basketball Properties Limited or any successor or assign designated to manage and operate the Arena on behalf of the COUNTY.

**“Business Day”** means a day of the year that is not a Saturday, Sunday, or a COUNTY recognized holiday.

**“Change of Control”** means (i) the acquisition by any Person or any group of Persons acting together which would constitute a “group” for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended, or any successor provisions thereto, of substantially all of the assets held or owned by NAMING RIGHTS PARTNER, (ii) the acquisition by any Person or any

group of Persons acting together which would constitute a “group” for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended, or any successor provisions thereto, of beneficial ownership of at least fifty percent (50%) of the aggregate voting power (either directly or by acquisition or transfer or series of acquisitions or transfers of a parent entity which grants effective control of at least fifty percent (50%) of the aggregate voting power) of all classes of voting securities of NAMING RIGHTS PARTNER (“**Voting Securities**”), or (iii) the stockholders of NAMING RIGHTS PARTNER approve a merger or consolidation of NAMING RIGHTS PARTNER with any other corporation or entity, and such merger or consolidation is consummated, other than a merger or consolidation (a) that would result in the Voting Securities outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least fifty percent (50%) of the total voting power of NAMING RIGHTS PARTNER or such surviving entity outstanding immediately after such merger or consolidation or (b) in which fifty percent (50%) or more of the board of directors of the surviving entity is composed of members from the board of directors of NAMING RIGHTS PARTNER immediately prior to such approval. For the avoidance of doubt a Change of Control of any direct or indirect parent of NAMING RIGHTS PARTNER shall be treated as a Change of Control of NAMING RIGHTS PARTNER. The fifty percent (50%) threshold contemplated throughout this definition of “Change of Control” shall be referred to hereunder as the “**Voting Percentage**”.

“**Contract Year**” means each subsequent twelve (12) month period beginning on July 1 and ending on the immediately following June 30 during the Term. For the purposes of this Agreement, Contract Year 1 will commence on the later of (x) the Effective Date or (y) July 1, 2023 and end on June 30, 2024, and, unless this Agreement is sooner terminated, Contract Year 17 will commence on July 1, 2039 and end on June 30, 2040.

“**COUNTY**” has the meaning set forth in the Preamble.

“**COUNTY Account**” has the meaning set forth in Section 5.3.

“**COUNTY Default**” shall have the meaning set forth in Section 9.3.

“**COUNTY Extension Notice**” has the meaning set forth in Section 3.2.

“**COUNTY Indemnitees**” has the meaning set forth in Section 13.1.

“**Direct Listing**” means the NAMING RIGHTS PARTNER’S, or a direct or indirect parent thereof, initial listing and first day of trading of its common stock on a nationally recognized securities exchange or market by means of an effective registration statement on Form S-1 filed by the NAMING RIGHTS PARTNER with the Securities and Exchange Commission.

“**EBITDA Margin**” means with respect to any Person for any period, the quotient derived by dividing the (x) the earnings of such Person before tax and interest, plus depreciation and amortization, by (y) the total amount of revenues of such Person, all as determined in accordance with GAAP.

**“Effective Date”** shall be the date that this Agreement is executed by the County Mayor or County Mayor’s designee following the Board’s resolution approving this Agreement.

**“Enterprise Level Customer”** shall mean a Person (as defined below) with significant business operations and requirements that has a significant number of employees (in excess of 5,000 globally), a large customer base, a high volume of sales, or complex organizational structures.

**“Entitlements”** has the meaning set forth in the Recitals and identified in SCHEDULE A, which is hereby incorporated into this Agreement.

**“Event”** has the meaning set forth in the Exhibit 1 of the Management Agreement.

**“Exclusive Category”** shall mean IT Management and Security Solutions for SMEs and MSPs.

**“Exclusive Category Competitor”** shall mean, collectively, (A) any Person (other than NAMING RIGHTS PARTNER) that primarily sells IT Management and Security Solutions for SMEs and MSPs and such sales constitute eighty percent (80%) or more of such Person’s gross revenue, and (B) the Restricted Competitors.

**“Expiration Date”** means the last day of the Term, as applicable.

**“Facilitate” or “Facilitation”** means all acts necessary to supply or provide the Entitlements to the NAMING RIGHTS PARTNER and all acts necessary to maintain, operate and repair the Entitlements once completed and all acts, including but not limited to, and by way of example, the permitting, design, architectural services, engineering services, fabrication, production, manufacturing, delivery, installation, etc. necessary to deliver, service and provide the Entitlements.

**“Fee”** has the meaning set forth in Section 5.1.

**“Fee Abatement Dispute”** has the meaning set forth in Section 9.7.

**“Fee Credit”** means a cash credit towards the remaining Fees payable hereunder. If any Party is entitled to a Fee Credit under this Agreement with respect to any Contract Year, the Fee Credit shall be applied to the first installment of the Fee due immediately after the Party becomes entitled to the Fee Credit. In the event a Party is entitled to a Fee Credit for the final Contract Year of the Term, the Fee Credit shall be applied as a cash refund due to the entitled Party by January 1 of the immediately following year.

**“Force Majeure”** means the occurrence and continuation of an event, condition or circumstance (except, in each case, for the payment of money) which is beyond the reasonable control and due to no fault of the Party asserting the Force Majeure, that directly prevents or delays such Party from performing any of its obligations pursuant to this Agreement including: (a) war (including civil war, revolution or insurrection), invasion, armed conflict, violent act of a foreign enemy, military or armed blockade, or military or armed takeover; (b) riot, insurrection, civil

commotion, civil disturbance, or act of terror or sabotage; (c) nuclear explosion or meltdown, or radioactive, chemical or biological contamination; (d) fire, explosion or other serious casualty; (e) severe weather or other natural disasters (including, but not limited to, hurricanes, tornadoes, floods, earthquakes, tsunamis, named windstorms, or snow or ice storms); (f) events resulting in the declaration of a state of emergency; (g) pandemics or epidemics; or (h) strike, lock-out, or labor dispute (including, but not limited to, any strike, slow-down, lock-out, walk-out, or work stoppage, or other labor dispute involving NBA players or NBA referees that result in the cancellation of one or more preseason, regular season, or postseason NBA Team Games).

**“Full Day”** Twelve (12) hours of use, not including the time it takes to set up or take down the relevant materials for such usage.

**“Gaming Company”** is a business or entity (i) that directly or indirectly offers, accepts, or facilitates wagering related to NBA sporting events (such as businesses that provide odds management or sell “picks”); or (ii) with operations substantially dedicated to content related to wagering on NBA and other sporting events.

**“Half Day”** Six (6) hours of use, not including the time it takes to set up or take down the relevant materials for such usage.

**“Hearing Examiner”** has the meaning set forth in Section 9.7.1.

**“Historical Use”** means any use that is primarily for the purpose of: (a) providing historical information and commentary regarding the naming rights or other Entitlements granted to NAMING RIGHTS PARTNER under this Agreement; (b) retrospective or commemorative events taking place at the Arena for which the period of time during which this Agreement was in effect is relevant to such retrospective or commemorative event; or (c) the preparation, publication, sale or distribution of literary, photographic, video, digital, or other documentary works by any means of technology, whether now known or hereafter created, that discuss the Arena and its history or events that took place at the Arena during the period of time during which this Agreement was in effect.

**“Home NBA Team Games”** means all preseason, regular season, and post-season basketball games played by the Team in the Arena that are scheduled or designated by the NBA as a “home” game of the Team.

**“Insolvency Event”** means, with respect to NAMING RIGHTS PARTNER, the occurrence of any of the following: (a) NAMING RIGHTS PARTNER shall commence a voluntary case concerning itself under any Insolvency Law; (b) an involuntary case is commenced against NAMING RIGHTS PARTNER and the petition is not controverted within fifteen (15) Business Days, or is not dismissed within sixty (60) days, after commencement of the case; (c) a custodian is appointed for, or takes charge of, all or substantially all of the property of NAMING RIGHTS PARTNER or commences any other proceedings under any Insolvency Law relating to NAMING RIGHTS PARTNER or there is commenced against NAMING RIGHTS PARTNER any such proceeding which remains undismissed for a period of sixty (60) days; (d) any order of relief or other order approving any such case or proceeding is entered; (e) NAMING RIGHTS

PARTNER is adjudicated insolvent or bankrupt; (f) NAMING RIGHTS PARTNER suffers any appointment of any custodian, receiver or the like for it or any substantial part of its property to continue undischarged or unstayed for a period of sixty (60) days; or (g) NAMING RIGHTS PARTNER makes a general assignment for the benefit of creditors.

**“Insolvency Law”** means any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar Law of any jurisdiction, whether federal, state or foreign, and whether now existing or hereafter in effect.

**“Intellectual Property”** means all brand names, trademarks, trade names, domain names, social media accounts and handles, service marks, copyrights, logos, symbols, emblems, designs, colors, identifications, and designations. As of the date hereof, NAMING RIGHTS PARTNER’s social media handles and domain names are set out in Exhibit 1.

**“IPO”** means the first firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act covering the offer and sale by the NAMING RIGHTS PARTNER, or a direct or indirect parent thereof, of its equity securities, as a result of or following which such equity securities shall be publicly held and traded on a nationally recognized securities exchange or market.

**“IPSIG”** has the meaning set forth in Section 34.1.

**“IT Management and Security Solutions for SMEs and MSPs”** shall mean IT software and service solutions for managed service providers (**“MSPs”**) and internal IT organizations to support and/or provide the IT functions of small- to medium- enterprises (**“SMEs”**), that include, among other things, monitoring and management, systems management, business management tools and security and data protection; provided that, for the purposes of clarity only, **“IT Management and Security Solutions for SMEs and MSPs”** does not include:

(A) Software products or services primarily targeted to Enterprise Level Customers;

(B) Niche or domain-specific IT software or service solutions developed, marketed and sold specifically and predominantly for and to Enterprise Level Customer by a vendor, reseller or service provider whose business is targeted to, and who derive more than eighty percent (80%) of its gross revenue from, Enterprise Level Customers;

(C) Niche or domain-specific IT management or security solutions developed, marketed and sold predominantly for Enterprise Level Customers, by a vendor, reseller or service provider whose sales are predominantly targeted towards, or predominantly sold directly to Enterprise Level Customers;

(D) Hardware products, including the manufacturing, distribution, sale and lease thereof, and related services (e.g., installation, maintenance and support) or the selling, renting or other distribution of IT software, services and/or hardware by general distributors, suppliers or wholesalers that sell, rent or distribute a variety of competing IT software, services, hardware or other solutions; however, the Parties agree that this



Subsection (D) will not include IT companies targeting MSPs and SMEs that sell back up hardware as part of their primary services (i.e., more than 80% of their gross revenues);

(E) Cloud computing and infrastructure platforms, including comprehensive infrastructure as-a-service (“**IaaS**”), platform-as-a-service (“**PaaS**”), and/or software-as-a-service (“**SaaS**”) thereof, software and services that enable end users to access, manage, develop and offer web-based applications and services via widely distributed data center(s) or hybrid environments;

(F) Data or network software, services or solutions, including wireless, wireline and internet services, network connectivity, transport, data network, transfer and storage, transmission, collaboration tools and mobility solutions and cloud infrastructure applications, services and platforms, as well as managed communications services (e.g., e-mail, unified communications, VOIP, and OTT)

(G) Customer Relationship Management (“**CRM**”) solutions comprised of platforms, software and/or services that provide tools to manage, track and store information related to, and market to, an organization’s current and potential customers;

(H) Enterprise Resource Planning (“**ERP**”) solutions comprised of platforms, software and/or services that provide tools to manage business activities such as accounting, project management and risk management;

(I) Vendor Relationship Management (“**VRM**”) solutions comprised of platforms, software and/or services that assist organizations with analyzing, sourcing, procuring, managing and/or monitoring vendors, which may include features and functionalities for measuring the efficiency of suppliers and vendors, tracking procurement activities, sourcing assignment of orders, managing contracts and invoices, etc.;

(J) Business Expense Management solutions comprised of platforms, software and/or services to automate, track, manage or process travel and business expenses, invoices and reimbursements; or

(K) Human Capital Management solutions comprised of platforms, software and/or services for human resource management, HR and payroll support and outsourcing, employee benefits administration, business and income tax filing and return preparation, tax planning and consulting services.

“**Knowledge**” shall mean with respect to NAMING RIGHTS PARTNER, that the executive officers and directors of NAMING RIGHTS PARTNER are aware of or reasonably should have been aware of a particular fact or matter after conducting reasonable due diligence and inquiry.

**“Laws”** means any applicable federal, state, local, or foreign constitution, treaty, law, statute, ordinance, resolution, rule, code, regulation, order, writ, decree, injunctions, judgment, stay, or restraining order, provisions and conditions of permits, licenses, registrations, and other operating authorizations, and any judgment, opinion, or ruling of, any governmental authority, in each case, whether currently in effect or which may hereinafter be enacted as existing or amended.

**“Losses”** has the meaning set forth in Section 13.1.

**“Management Agreement”** means the Amended and Restated Management Agreement dated as of July 1, 2013, between the COUNTY and BPL, which was approved by the Board pursuant to Resolution R-499-14, and all modifications, renewals, extensions, and amendments thereof.

**“Marks”** means, collectively, NAMING RIGHTS PARTNER Marks. A Mark means, individually, a NAMING RIGHTS PARTNER Mark or Arena Mark.

**“Minimum Event Threshold”** has the meaning set forth in Section 16.1.

**“Name Change Notice”** has the meaning set forth in Section 4.1.5.2.

**“Naming Rights Facilitation Agreement”** has the meaning set forth in Section 10.

**“NAMING RIGHTS PARTNER”** has the meaning set forth in the Preamble.

**“NAMING RIGHTS PARTNER Default”** has the meaning set forth in Section 9.1.

**“NAMING RIGHTS PARTNER Default Payment”** has the meaning set forth in Section 9.2.4.

**“NAMING RIGHTS PARTNER Indemnitees”** has the meaning set forth in Section 13.2.

**“NAMING RIGHTS PARTNER Marks”** means all names, trademarks, trade names, service marks, logos, symbols, emblems, URLs, designs, colors, identifications and designations of (or related to) NAMING RIGHTS PARTNER, as they may exist from time to time, including any NAMING RIGHTS PARTNER Marks incorporated as part of the Arena Name, the Arena Logo or both and it is agreed that that “NAMING RIGHTS PARTNER Marks” shall include the Arena Logo, the Arena Name, and any Approved Nickname.

**“NBA”** means the National Basketball Association, its successors and assigns.

**“NBA Team Games”** means all preseason, regular season, and post-season basketball games played by the Team that are scheduled by the NBA as NBA Team Games.

**“NBA Organizations”** means any member or team of the NBA, the NBA and any other NBA league (e.g., WNBA, NBA G League, NBA 2K League, Basketball Africa League).

**“NBA Rules”** means the Constitution and Bylaws of the NBA and the Articles of Association and Bylaws of the NBA, including any amendments to either such document and any interpretations of either such document issued from time to time by the Commissioner which are in the Commissioner’s jurisdiction; all operative NBA resolutions that are within the NBA’s respective jurisdictions; any existing or future agreements entered into by the NBA, including, without limitation, any television agreements or any collective bargaining or other labor agreements (including, without limitation, any NBA player salary guarantees and pension fund agreements), and any agreements made in settlement of any litigation against the NBA or the NBA member clubs (including litigation against such clubs, or agreements made by such clubs, jointly or collectively); and such other rules or policies as the NBA or the Commissioner may issue from time to time that are within the issuing party’s jurisdiction.

**“Negotiating Period”** has the meaning set forth in Section 3.2.

**“Neutral”** has the meaning set forth in Section 9.7.

**“NHL”** means the National Hockey League.

**“Objection Notice”** has the meaning set forth in Section 4.1.5.2.

**“Obscure”** means to remove, obscure, mask, cover, obstruct or otherwise block from view in any material respect.

**“OFAC”** means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

**“OFAC Regulations”** means any and all laws and regulations promulgated or issued, as amended from time to time, by OFAC and any successor organization.

**“Office”** means the offices of the Heat located within the Arena.

**“Official Designations”** means *The Official IT Solutions Partner of Kaseya Center* or such other designation that is reasonably agreed to by the Parties and BPL in writing together with any other designations as may be approved by the Parties and BPL from time to time.

**“On-Site Garage”** has the meaning set forth in Exhibit 1 of the Management Agreement.

**“Operating Cash Flow”** means with respect to any Person for any period, an amount equal to the sum of the net income of a Person, plus depreciation and amortization, minus increases in working capital.

**“Other Event”** means any revenue or nonrevenue producing sports, entertainment, cultural, civic or any other activity, meeting or event which is held at the Arena or elsewhere on the Site, including, but not limited to, Significant Events, NCAA or other college or high school sporting events, concerts, family shows, wrestling, boxing and other professional and amateur sporting events (including, by way of example only and without specific limitation, the Olympic Games, Olympic Trials or any World Junior hockey tournament), national or international

championship athletic events, NBA games, NHL games, college conference tournaments, award shows, sponsored concerts, conferences, political, business, religious, and other types of games, contests, exhibitions, concerts, performances, conventions, meetings, assemblages, etc., excluding all Home NBA Team Games and Additional Team games; provided that, for the avoidance of doubt, the term “Other Events” shall include any NBA game that is played at the Arena (including any All-Star Game) that is not a Home NBA Team Game.

“**Party**” or “**Parties**” has the meaning set forth in the Preamble.

“**Permitted Assignee**” has the meaning set forth in Section 12.2.1.

“**Permitted Transferee**” means

(a) is an equity holder of NAMING RIGHTS PARTNER as of the Effective Date, so long as such equity holder (i) expressly agrees to be bound by all of NAMING RIGHTS PARTNER’s obligations under this Agreement and (ii) is a Tier 1 Fund; or

(b) is a Tier 1 Fund that is substituting itself as the primary investor in NAMING RIGHTS PARTNER and immediately subsequent to the date of the Change of Control, NAMING RIGHTS PARTNER, in the case of (A) below, or the Tier 1 Fund, in the case of (B) – (H), meet the following additional requirements:

(A) NAMING RIGHTS PARTNER (i) possesses liquidity (including borrowing capacity under any revolving or delayed draw credit facilities) as reflected on a consolidated balance sheet of NAMING RIGHTS PARTNER and its subsidiaries, in conformity with generally accepted accounting practices, international financial reporting standards or equivalent standards in whichever county or jurisdiction is applicable (“**Applicable GAAP**”), equal to or greater than that of NAMING RIGHTS PARTNER as of the date immediately prior to the date of the Change of Control and (ii) possesses consolidated bona fide net assets, excluding goodwill but including intangible assets, calculated in accordance with Applicable GAAP, consistently applied, equal to or greater than that of NAMING RIGHTS PARTNER as of the Effective Date;

(B) is not and none of its controlled Affiliates is (i) blocked pursuant to any OFAC Regulations and/or appears on: (a) OFAC’s list of blocked persons pursuant to Executive Order or OFAC Regulations, as amended from time to time; (b) OFAC’s list of Specially Designated Nationals, as amended from time to time; or (c) other lists of prohibited or blocked persons maintained by OFAC amended from time to time; (ii) listed on the Prohibited Vendor List, as amended from time to time, that can be found on the GSA SmartPay website: <https://smartpay.gsa.gov/content/ndaa-section-889>; (iii) listed on the Federal Communication Commission’s List of equipment and Services Covered by Section 2 of the Secure Networks Act deemed to pose an unacceptable risk to the national security of the United

States as listed here: <https://www.fcc.gov/supplychain/coveredlist>; or (iv) listed on the COUNTY's Contractor Debarment Report maintained pursuant to Section 10-38 of the Code of Miami-Dade County at <https://www.miamidade.gov/smallbusiness/library/reports/contractor-debarment.pdf>;

(C) is not engaged in any material litigation or legal dispute with, nor has threatened to bring any actions, proceedings or other legal action against, the COUNTY or BPL;

(D) has and maintains insurance policies that meet the requirements set forth in the Naming Rights Facilitation Agreement with a reputable and substantial insurance carrier;

(E) following the consummation of the assignment or transfer would not result, or cause the COUNTY to be, in violation of Applicable Law or any NBA Rules;

(F) is not a government, governmental or quasi-governmental entity or wholly owned or controlled by a government, governmental or quasi-governmental entity, provided that the foregoing shall not preclude (i) governmental pension funds (e.g., CalPERS) who participate as investors in a Permitted Transferee nor (ii) sovereign wealth funds or sovereign development funds to the extent not in violation of subsection B of this definition; and

(G) expressly agrees to be bound by all of NAMING RIGHTS PARTNER's obligations under this Agreement; or

(H) was not formed for the sole purpose of circumventing, frustrating, hindering or otherwise interfering with the requirements set forth herein.

(d) Any other Person that meets the following requirements:

(A) Possesses creditworthiness, business reputation and good standing in its jurisdiction sufficient to perform all obligations and assume all liabilities of NAMING RIGHTS PARTNER under this Agreement;

(B) is not a tobacco, adult entertainment, gambling, wagering or alcoholic beverage company; provided that routine lawsuits or claims submitted to the Equal Employment Opportunity Commission alleging obscenity, offense or discrimination of a protected class which are customary in type, number or scope as those received by companies of similar size and scope, whether as class actions or otherwise, shall not alone absent more be sufficient to disqualify such Person as a Permitted Transferee

(C) is not and none of its controlled Affiliates is (i) blocked pursuant to any OFAC Regulations and/or appears on: (a) OFAC's list of blocked persons pursuant to Executive Order or OFAC Regulations, as amended from time to time; (b) OFAC's list of Specially Designated Nationals, as amended from time to time; or (c) other lists of prohibited or blocked persons maintained by OFAC amended from time to time; (ii) listed on the Prohibited Vendor List, as amended from time to time, that can be found on the GSA SmartPay website: <https://smartpay.gsa.gov/content/ndaa-section-889>; (iii) listed on the Federal Communication Commission's List of equipment and Services Covered by Section 2 of the Secure Networks Act deemed to pose an unacceptable risk to the national security of the United States as listed here: <https://www.fcc.gov/supplychain/coveredlist>; or (iv) listed on the COUNTY's Contractor Debarment Report maintained pursuant to Section 10-38 of the Code of Miami-Dade County at <https://www.miamidade.gov/smallbusiness/library/reports/contractor-debarment.pdf>.

(D) does not have any economic interests in conflict with the economic success of the Arena or any Affiliates with any economic interests in conflict with the economic success of the Arena;

(E) does not own any direct or indirect interest of any kind (contingent or otherwise) in any NBA Organization or Gaming Company, and none of its owners (whether general or limited partners, members, shareholders or otherwise), nor any officer, director, manager, employee, agent or representative of such Person owns any direct or indirect interest of any kind (contingent or otherwise) in, or holds a controlling management (e.g., CEO, President) or Board of Directors position with, any NBA Organization or any Gaming Company;

(F) (x) for two (2) consecutive years immediately prior to the date of assignment or transfer and (y) on a proforma basis following the consummation of such assignment or transfer (all as determined by the COUNTY upon review of financial statements provided by the assignee), (1) has a Working Capital Ratio of at least 1.5x; (2) generates positive "EBITDA Margin", as well as positive "Operating Cash Flow", and (3) has a debt/equity ratio that does not exceed 2.0x;

(G) is not engaged in any material litigation or legal dispute with, nor has threatened to bring any actions, proceedings or other legal action against, the COUNTY or BPL;

(H) has and maintains insurance policies that meet the requirements set forth in the Naming Rights Facilitation Agreement with a reputable and substantial insurance carrier;

(I) following the consummation of the assignment or transfer would not result, or cause the COUNTY to be, in violation of Applicable Law or any NBA Rules, or conflict with, result in a breach of or constitute an event of default under any material agreement to which the COUNTY is or may be bound;

(J) the representations and warranties set forth in Sections 11.1 are true and correct in all material respects with respect to such Person on and as of the date of consummation of the assignment or transfer, which representations and warranties shall be deemed to be made by such Person with respect to itself on and as of such date;

(K) is not a government, governmental or quasi-governmental entity or wholly owned or controlled by a government, governmental or quasi-governmental entity, provided that the foregoing shall not preclude (i) governmental pension funds (e.g., CalPERS) who participate as investors in a Permitted Transferee nor (ii) sovereign wealth funds or sovereign development funds to the extent not in violation of subsection C of this definition;

(L) is an entity duly organized under the laws of the United States or of a State or other jurisdiction within the United States, provided that such entity having a direct or indirect parent which is not so organized shall not disqualify such Person from being a Permitted Transferee so long as any such direct or indirect parent is not a Person that is the subject of sanctions administered or enforced by OFAC, the United States National Security Council, the European Union or Her Majesty's Treasury ("**Additional Sanctions**"); and

(M) expressly agrees to be bound by all of NAMING RIGHTS PARTNER's obligations under this Agreement.

Without limiting the foregoing, the COUNTY may determine in its sole discretion that a Person is a "Permitted Transferee" even if such Person does not meet all of the requirements set forth above by providing written notice to NAMING RIGHTS PARTNER of such determination.

**"Person"** means any natural person, corporation, partnership, limited partnership, limited liability company, estate, trust, joint venture, association, government (and any branch, agency or instrumentality thereof), governmental entity or other form of entity or business organization.

**"Project Manager"** means the County Project Manager identified in Section 18.

**"Public Liquidity Event"** means an IPO, Direct Listing or a SPAC Transaction.

**“Restricted Competitors”** means those competitors of Naming Rights Partner listed on Exhibit 2, as same may be updated by NAMING RIGHTS PARTNER with the County’s and BPL’s prior, written consent.

**“Signage”** means all signs, banners, flags, pennants, monuments, statues and similar items, whether permanent (including any of the foregoing that is permanently affixed to any item or imbedded in any item), temporary (including any of the foregoing that is electronic, virtual or otherwise projected) or mixed and includes new technologies as same may be developed, such as by way of example only, holograms. The term “Signage” includes all signage that is attached or affixed to, or hung from, the structure of the Arena and/or projected onto a specific location in or on the Arena and any signage that is displayed in any area on or in the Site and also includes ribbon boards, LED, video boards or other digital displays in which the advertisers/sponsors and content frequently change and includes, without limitation, LED, backlit, projection, laser and similar type signage in which content is static (i.e., does not frequently change).

**“Significant Event”** means any of the following events: (i) the Olympic Games, (ii) the Olympic Trials, (iii) FIFA-sanctioned international soccer matches (including World Cup soccer matches), (iv) any other event of significant national or international importance, the promoter, organizer or operator of which restricts or requires the restriction of advertising, sponsorship, or marketing activities at the locations at which such event is played or held, and (v) any other event designated a “Significant Event” by mutual agreement between the parties; provided that in no event shall any NBA Team Game (or Additional Team game) be deemed to be a “Significant Event.”

**“Site”** has the meaning set forth in the Exhibit 1 of the Management Agreement.

**“SPAC Transaction”** means a merger or other business combination of the NAMING RIGHTS PARTNER, or a direct or indirect parent thereof, with a special purpose acquisition company in which the post-merger or post-business combination securities of the NAMING RIGHTS PARTNER, or direct or indirect parent thereof are publicly traded on a nationally recognized securities exchange or market.

**“Substitute Entitlement”** has the meaning set forth in Section 4.2.6.

**“Style Guide”** has the meaning set forth in Section 8.1.

**“Suites”** has the meaning set forth in Exhibit 1 of the Management Agreement.

**“Team”** means the Miami Heat Limited Partnership (the **“Heat”**), a Florida limited partnership and the owner and operator of the Heat of the National Basketball Association, and its permitted successors or assigns.

**“Term”** has the meaning set forth in Section 3.1.

**“Tier 1 Fund”** shall mean an investment fund, managed account or other investment vehicle that is, directly or indirectly, managed, advised or sub-advised by an investment fund or any other pooled investment vehicle with (i) assets under management in excess of \$20 billion,



and (ii) a limited partner base consisting of limited partners customarily associated with the top funds in the world, including, without limitation, the largest endowments, pension funds (both private and public) or insurance companies in the world. At the time of determination, satisfaction of these thresholds shall be tested solely with respect to the lead arranging Tier 1 Fund without regard to syndication. In the event NAMING RIGHTS PARTNER contemplates a Change of Control to a Tier 1 Fund, the COUNTY shall have the right, exercised in the COUNTY's reasonable discretion, within ten (10) Business Days following receipt of a Name Change Notice, to request that NAMING RIGHTS PARTNER (i) use its commercially reasonable efforts to cause the transferee to produce confirmation, in form and substance reasonably satisfactory to the COUNTY, from one of the top ten (10) national public accounting firms, which may be, at NAMING RIGHTS PARTNER's sole discretion, the external auditors of the transferee, that the transferee is a Tier 1 Fund.

“**Transfer**” has the meaning set forth in Section 12.1.

“**Winding Down Period**” has the meaning set forth in Section 4.1.5.2.

“**Working Capital Ratio**” means with respect to any Person for any period, the quotient derived by dividing (x) the total current assets of such Person by (y) the total current liabilities of such Person, all as determined in accordance with GAAP.

2. **Arena.** The COUNTY hereby represents that, as of the Effective Date, it owns the Arena and has the right to enter into this Agreement and that the Arena is operated by BPL, as set forth in the Management Agreement (a true and complete copy of which is annexed hereto). As of the Effective Date, the Arena is an enclosed, all-weather, arena which is the home arena for the Miami Heat of the NBA and is customarily open year-round for Other Events. In addition, the Arena contains various facilities for ancillary uses such as (by way of example and not in limitation thereof) offices, practice facility, retail marketing, and restaurants. However, nothing contained herein shall obligate the COUNTY to operate the Arena on any particular day or for any particular number of hours per day.

3. **Term & Right of First Negotiation.**

3.1. **Term.** The initial term of this Agreement shall commence on the Effective Date and will continue through June 30, 2040 (the “**Term**”) subject to extension or earlier termination as set forth in this Agreement. In the event the 2039-40 NBA season and post-season conclude following June 30, 2040 and the Team continues to play NBA Team Games at the Arena, the Term shall be extended a maximum of sixty (60) days to fulfill the end of the NBA season. Should the end of the 2039-40 NBA season and post-season conclude after August 31, 2040, the Term shall end as stated on June 30, 2040.

3.2. **Right of First Negotiation.** In the event the COUNTY retains the rights to sell naming rights and the Entitlements to the Arena following the Term of this Agreement and so long as there is not a NAMING RIGHTS PARTNER Default, the following right of first negotiation shall apply. No later than the last day of

Contract Year 15, NAMING RIGHTS PARTNER may, in its sole discretion, provide the COUNTY with written notice (“**COUNTY Extension Notice**”) of its intention to negotiate with the COUNTY for a new naming rights agreement or an extension of this Agreement, in either case, to commence on the day immediately following the end of Contract Year 17. Provided NAMING RIGHTS PARTNER has timely delivered the COUNTY Extension Notice and NAMING RIGHTS PARTNER is not otherwise in default of this Agreement, COUNTY and NAMING RIGHTS PARTNER shall negotiate in good faith for a period of six (6) months from the first day of Contract Year 16 (“**Negotiating Period**”) with respect to such new naming rights agreement or extension. If the COUNTY Extension Notice has not been timely delivered and in accordance with the requirements set forth herein, the COUNTY shall have no obligations under this Section 3.2. During and prior to the Negotiating Period, COUNTY may not negotiate with, or solicit or respond to proposals from, any Person (other than the NAMING RIGHTS PARTNER) with respect to any agreement or arrangement that would prevent the COUNTY from granting NAMING RIGHTS PARTNER the Entitlement. Notwithstanding anything to the contrary in this Section 3.2 or any other provision of this Agreement, if COUNTY and NAMING RIGHTS PARTNER do not enter into a binding agreement with respect to such new naming rights agreement or extension by the end of the Negotiating Period, COUNTY shall be free to negotiate and enter into any agreement with any third party without future notice or obligation to the NAMING RIGHTS PARTNER.

4. **Grant of Naming Rights.** NAMING RIGHTS PARTNER understands and acknowledges that BPL is the manager and operator of the Arena pursuant to the Management Agreement. NAMING RIGHTS PARTNER understands and further acknowledges that while the COUNTY owns the Arena and has the right to sell naming rights and other associated sponsorship rights to the Arena pursuant to the Management Agreement, the cooperation and participation of BPL is necessary to effectuate, implement, service, operate, maintain and otherwise Facilitate the Entitlements. Accordingly, NAMING RIGHTS PARTNER has represented to the COUNTY that it intends to enter into a separate agreement with BPL to provide for the Facilitation of the Entitlements and this Agreement. The entry (or lack thereof) into and the terms and conditions of the Naming Rights Facilitation Agreement between and by BPL and NAMING RIGHTS PARTNER and the performance or non-performance of BPL or the NAMING RIGHTS PARTNER under and pursuant to such agreement shall have no effect on NAMING RIGHTS PARTNER’s obligations under this Agreement except to the extent expressly provided for herein. Similarly, the COUNTY’s obligations under this Agreement are limited to granting NAMING RIGHTS PARTNER the rights to Facilitate, through BPL, the Entitlements set forth herein and the COUNTY shall have no right or obligation to NAMING RIGHTS PARTNER, to BPL or any other third party to: (a) effectuate, fund, implement or otherwise Facilitate the Entitlements except as otherwise specifically set forth herein; or (b) to expend or provide any funds for the implementation, Facilitation, or provision of any additional rights or entitlements beyond the Entitlements at the Arena and Site for NAMING RIGHTS PARTNER. NAMING RIGHTS PARTNER understands, acknowledges and agrees that: (a) the Naming Rights Facilitation Agreement or other agreement with the Team, BPL or their

affiliates may grant NAMING RIGHTS PARTNER additional entitlements and rights beyond those Entitlements set forth herein; (b) the COUNTY shall have no obligations to fund or provide funds with respect to such additional rights and entitlements; and (c) provided the provision, effectuation, funding, implementation or Facilitation of such additional rights and entitlements is consistent with this Agreement, the Management Agreement or any of the other agreements between the COUNTY and BPL with respect to the Arena, the COUNTY does not object to the provision thereof and will not take any actions to frustrate, hinder or otherwise interfere with BPL's Facilitation and provision of such additional entitlements and rights by BPL, Team or their Affiliates. To the extent that BPL concludes that under the Management Agreement the COUNTY must affirmatively consent, direct or instruct BPL in connection with the provision of any Entitlements, and the COUNTY agrees with such conclusion, the COUNTY agrees that it will, at the request of NAMING RIGHTS PARTNER, take all necessary action to consent, direct or instruct BPL regarding the provision of such Entitlements. If, however, the COUNTY concludes that it is not required to provide consent under the Management Agreement it will notify BPL of same and BPL may rely on such notice in order to provide such Entitlements.

#### 4.1. Naming Rights

- 4.1.1. Arena Name. Commencing on the Effective Date and continuing throughout the Term, the name of the Arena shall be "Kaseya Center" ("**Arena Name**"), subject to change only in accordance with Section 4.1.5 below.
- 4.1.2. Official Designations and Right to Use Image of the Arena. Subject to the terms and conditions set forth in this Agreement and the Naming Rights Facilitation Agreement, NAMING RIGHTS PARTNER shall have the right, during the Term, to use any one or more of the Official Designations in connection with the advertisement, promotion, provisions, and sale of NAMING RIGHTS PARTNER's products and services in the Exclusive Category. COUNTY consents to and grants to NAMING RIGHTS PARTNER for the duration of the Term, a royalty-free, worldwide, fully-paid, non-exclusive, irrevocable license to use and exploit and image, likeness, drawing, replica, model, rendering, photograph or other visual or symbolic representative reproduction or depiction of the Arena or any substantial portion thereof, but excluding any and all NAMING RIGHTS PARTNER Marks incorporated therein ("**Arena Image Marks**") (in any medium, whether now existing or hereinafter created) solely in furtherance of the advertisement, promotion, provision, and sale of NAMING RIGHTS PARTNER's products and services in the Exclusive Category and for the advertisement and promotion of the NAMING RIGHTS PARTNER's general brand. All goodwill arising from NAMING RIGHTS PARTNER's use of the Arena Image Marks shall inure to the sole benefit of the COUNTY.

4.1.3. Arena Logo.

- 4.1.3.1 During the Term, NAMING RIGHTS PARTNER shall have the right to create one or more logos for the Arena (the “**Arena Logo**”), which shall include NAMING RIGHTS PARTNER’s corporate name or trade name, and the Arena Name shall be the prominent message displayed in each Arena Logo. NAMING RIGHTS PARTNER will use commercially reasonable efforts to complete the Arena Logo as soon as reasonably practicable after the Effective Date, and the costs and expenses associated with developing the NAMING RIGHTS PARTNER Marks shall be the sole responsibility of the NAMING RIGHTS PARTNER.
- 4.1.3.2 All proposed Arena Logos shall be subject to final written approval by the COUNTY and BPL (which approval by COUNTY shall not be unreasonably withheld, conditioned, or delayed). The COUNTY shall have ten (10) Business Days from the date that it receives any written request for approval from the NAMING RIGHTS PARTNER seeking approval to approve or reject (and, if a rejection, such rejection shall describe with particularity the reasons for the rejection). NAMING RIGHTS PARTNER shall coordinate directly with BPL for its approval of the Arena Logos. However, a failure by the COUNTY to respond within such timeframe shall NOT be deemed an approval. NAMING RIGHTS PARTNER acknowledges that COUNTY will not approve and BPL shall have no obligation to approve any Arena Logo that COUNTY or BPL reasonably believe (a) reflects unfavorably upon, disparages, or could cause embarrassment to the Arena, the Site, or the COUNTY or BPL, or any of their respective owners or employees (including elected officials); (b) relates or refers to any subject matter, business or enterprise that might reasonably be deemed to be immoral (including any sexually oriented, tobacco or narcotics-related subject matter, business or enterprise); or (c) contains any political reference.
- 4.1.3.3 Following the execution of the Agreement and subject to Section 38 hereof, COUNTY shall consent to and shall not take any actions to frustrate, hinder or otherwise interfere with the placement of the Arena Logo as agreed to between NAMING RIGHTS PARTNER and BPL in accordance with applicable NBA Rules.

4.1.4. Arena Name References. The Parties understand and agree that the obligations set forth in this Section 4.1.4 will be implemented within a commercially reasonable timeframe following the Effective Date. NAMING RIGHTS PARTNER understands and acknowledges that the obligations set forth herein in subsection 4.1.4 are those of the COUNTY only and that the COUNTY makes no representations or warranties as to the actions of, and does not obligate itself to direct or control BPL with respect thereto, except that the COUNTY shall consent to and shall not take any actions to frustrate, hinder or otherwise interfere with BPL's actions or undertakings consistent with those set forth in this subsection 4.1.4.

4.1.4.1 COUNTY shall refer to the Arena only by the Arena Name (and not by any other name, including any abbreviation, nickname, or shortened form of the Arena Name, other than an Approved Nickname) in all public references to the Arena; *provided however*, that, for the avoidance of any doubt, COUNTY shall not be deemed in breach of this Agreement in the event any such third-party, including but not limited to BPL, fails to refer to the Arena with the Arena Name;

4.1.4.2 COUNTY shall change all offsite (meaning not in the Arena or on the Site) public references to the "American Airlines Arena", "FTX Arena" or generic references to "Arena" that are within the control of the COUNTY to the Arena Name, provided that (i) to the extent effecting such change is not within the control of the COUNTY, then the COUNTY shall use commercially reasonable efforts to request the federal, state or local agency with such authority to effect such changes and (ii) to the extent generic references to "Arena" are not able to be changed to "Kaseya Center" such generic references shall remain unchanged;

4.1.4.3 COUNTY shall not refer to the Arena as "American Airlines Arena" or "FTX Arena" or any other name by which the Arena was previously known or any abbreviation, nickname, or shortened form of the Arena Name (other than an Approved Nickname);

4.1.4.4 COUNTY shall not airbrush, delete, or otherwise intentionally Obscure or alter the Arena Name, Arena Logo or any Signage or advertising in the Arena or elsewhere on the Site that includes any of the Marks from any photographs, videos, or any other images of the Arena displayed or otherwise used by the COUNTY;

- 4.1.4.5 Promptly following the Effective Date, the COUNTY shall issue a press release and post a copy thereof on the official COUNTY website to notify all elected officials (other than the Board of County Commissioners) and all of the COUNTY's vendors, business partners, employees and agents and all other third parties with whom the COUNTY does business, of the new Arena Name and that they are to refer to the Arena only by the Arena Name and not by any other name (the Parties acknowledge and agree that passage of the resolution approving this Agreement by the Board of County Commissioners constitutes sufficient notice to those elected officials and to the County Mayor of the new Arena Name and the requirements set forth in this Agreement);
- 4.1.4.6 COUNTY shall include the Arena Logo and the Arena Name in or on all advertising and promotional materials which mention or reference the Arena within the COUNTY's control, including any portion thereof (including the internet, billboards and newspaper and television advertisements, with mentions in all radio advertising).

4.1.5. Name Changes.

- 4.1.5.1 Unless there is a NAMING RIGHTS PARTNER Default, NAMING RIGHTS PARTNER may request to change the name of the Arena from time to time during the Term (i) in connection with a rebranding event (which NAMING RIGHT PARTNER agrees to limit to no more than once during the Term), or (ii) a merger, corporate restructuring, reorganization or consolidation, or other Change of Control event of NAMING RIGHTS PARTNER or any of its material businesses or assets, which either results in the successor of NAMING RIGHTS PARTNER or its such businesses or assets having or using a different name or brand name or results in a change in the name or brand name under which NAMING RIGHTS PARTNER does business in the United States; *provided however*, that any such change to the name of the Arena shall require the consent of (i) the COUNTY, which consent requires Board approval, and (ii) BPL. The COUNTY agrees that any consent under this Section 4.1.5.1 shall not be unreasonably withheld, conditioned or delayed and if withheld, the COUNTY shall describe with particularity the reasons for the rejection; provided, however, that any rejection resulting from a proposed change of the name of the Arena to any entity other than a Permitted Transferee shall be reasonable and shall not

require any additional reasoning by the COUNTY. For the avoidance of doubt, a rebranding event shall include, but not be limited to, a Public Liquidity Event and any other transaction other than those which qualify as a Change of Control.

- 4.1.5.2 If the NAMING RIGHTS PARTNER desires to change the name of the Arena in accordance with the terms and conditions of Section 4.1.5.1, then the NAMING RIGHTS PARTNER shall provide prior written notice to the COUNTY (which notice shall be delivered to the COUNTY at the notice address listed in Section 18) and to BPL of the desired name change along with any information necessary to show the name change is of a Permitted Transferee or to a name adopted in connection with a rebranding event (the “**Name Change Notice**”), and the COUNTY shall have ninety (90) days from the receipt of the Name Change Notice to object by delivering to NAMING RIGHTS PARTNER a written objection (the “**Objection Notice**”) to any proposed name or deliver written notice of the COUNTY’s approval of the proposed name. In the event the COUNTY delivers an Objection Notice to NAMING RIGHTS PARTNER within such ninety (90) day period, NAMING RIGHTS PARTNER shall not be permitted to change the name of the Arena to the name identified in the Name Change Notice unless otherwise approved by the Board. NAMING RIGHTS PARTNER shall coordinate, discuss and attempt to resolve any objections: (a) raised by BPL directly with BPL and (b) any objections raised by the COUNTY directly with the COUNTY. If a proposed change in name of the Arena shall be made by the NAMING RIGHTS PARTNER to a name of a Permitted Transferee or to a name adopted in connection with a rebranding event by which NAMING RIGHTS PARTNER shall primarily conduct business and such name change shall not be approved by the COUNTY, then so long as the then current name of the Arena is no longer the name under which NAMING RIGHTS PARTNER primarily conducts business, NAMING RIGHTS PARTNER may terminate this Agreement by written notice given within ninety (90) days of notification to NAMING RIGHTS PARTNER of the determination by the COUNTY whereupon all payment obligations set forth in Section 5 (other than Section 5.4) hereunder shall cease with the remainder of this Agreement remaining in effect for an additional ninety (90) period (the “**Winding Down Period**”) to allow for customary winding down measures

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(e.g., removal of signage, communications with the community, etc.) and this Agreement terminating in its entirety upon the conclusion of such Winding Down Period. Notwithstanding the foregoing, to the extent that a name change as contemplated under this Section 4.1.5 occurs during NBA season or post season (to the extent the Heat are involved in the post-season), the name change will occur as soon as practicably possible after the NBA season or post season concludes.

4.1.5.3 If NAMING RIGHTS PARTNER changes the name of the Arena under this Section 4.1.5. and the new name of the Arena relates to a category other than the Exclusive Category, and/or the business of any successor of NAMING RIGHTS PARTNER is in a category other than the Exclusive Category, then, subject to BPL's prior written approval (in their reasonable discretion), the exclusivity provisions of this Agreement may be amended to comply with respect or such other Additional Category, except that each of the COUNTY and BPL shall be entitled to fulfill its bona fide obligations under any sponsorship agreements for such Additional Category with third parties to which it is a party until the expiration or earlier termination of such agreement (including any renewal rights or options to extend or provided for in such agreement).

4.1.5.4 In the event of any name change of the Arena under this Section 4.1.5, NAMING RIGHTS PARTNER shall bear all out of pocket costs and expenses incurred by the COUNTY in connection with such change, including without limitation, attorneys' fees, other professionals' fees and all other out of pocket costs and expenses relating to Signage, promotions, branding, advertising and marketing (and everywhere else the Arena Name or Arena Logo appears) to rebrand all Signage in connection with any name change, and obtaining any required consents and approvals associated with such change, including without limitation, to replace, modify, reprogram, reproduce or otherwise change signs and Signage, banners, building elements, wall and floor coverings, printed, electronic and video materials, publications, video graphics and materials, staff uniforms and concessionaire uniforms and supplies and all other materials regardless of format that need to be changed to effect the renaming and rebranding of the Arena with the new Arena Name. NAMING RIGHTS PARTNER understands, acknowledges and agrees that the COUNTY



shall incur no expense nor fund any costs associated with, nor undertake, any Facilitation, implementation or provision of any Entitlements, including Signage, with respect to a change in name of the Arena. Specifically, but without limitation, in the event of any name change of the Arena under this Section 4.1.5, NAMING RIGHTS PARTNER shall own all right, title, and interest in and to the NAMING RIGHTS PARTNER Marks, including the new Arena Name and Arena Logo, and all Intellectual Property rights inherent therein and appurtenant thereto, and NAMING RIGHTS PARTNER shall bear all out of pocket costs and expenses associated with (a) creating, developing, and registering and maintaining with the United States Patent and Trademark Office, the new Arena Name and the Arena Logo, (b) producing and installing the new Arena Name and Arena Logo on all elements of the Arena that bear the Arena Name and/or Arena Logo, (c) reprinting current publications and other written materials bearing the Arena Name and/or Arena Logo to include the new Arena Name and/or Arena Logo and (d) creating and producing Signage, print and other advertising copy to replace the former Arena Name and/or Arena Logo. The Parties shall work together and cooperate in good faith with respect to the transition from the existing Arena Name and/or Arena Logo the new Arena Name and/or Arena Logo, including without limitation, (i) prompt notification by the COUNTY to its advertisers, sponsors and media partners of the name change by issuing a press release and posting the press release on the COUNTY'S official website, and (ii) to minimize the disruption to the operation of the Arena during Arena events. For avoidance of doubt, the Parties acknowledge and agree that the COUNTY shall have no liability in connection with any name change of the Arena under this Section 4.1.5 for any inability to have applicable local, state, regional or federal transportation authorities or agencies install and erect the directional or wayfinding Signage or any other signs that refer to the new Arena Name on any highway or roadway in the vicinity of the Arena; provided, that the COUNTY shall use commercially reasonable efforts to effectuate all of the foregoing, in accordance with Section 4.4.

#### 4.2. Entitlements

- 4.2.1. Commencing on the Effective Date and throughout the Term of this Agreement, COUNTY shall: (a) consent to and shall not take any actions to frustrate, hinder or otherwise interfere with BPL's Facilitation

of the Entitlements set forth in SCHEDULE A; and (b) provide to NAMING RIGHTS PARTNER and NAMING RIGHTS PARTNER shall be entitled to any and all rights or interests of the COUNTY to every Entitlement set forth in SCHEDULE A recognizing, however, that NAMING RIGHTS PARTNER will contract directly with BPL for the Facilitation of the Entitlements set forth on SCHEDULE A all subject to the provisions of the first paragraph of Section 4 of this Agreement. The Parties understand and agree that the COUNTY shall be in breach of its obligations under Section 4.2.1 of this Agreement if the COUNTY (i) assigns, sells, or otherwise transfers any right or interest it has in the Entitlements set forth in SCHEDULE A to any party other than NAMING RIGHTS PARTNER through the Term of this Agreement, (ii) fails to perform its obligations as set forth in this Agreement, or (iii) takes any action or fails to take any action which it is required to take under the Management Agreement, which restricts, impairs or frustrate the provision of the Entitlements hereunder. Subject to the foregoing, COUNTY shall bear no responsibility, and NAMING RIGHTS PARTNER shall have no claim against the COUNTY for the failure of the Entitlements to be provided and implemented within a commercially reasonable timeframe following the Effective Date (but the foregoing is not intended to limit the rights of the NAMING RIGHTS PARTNER to seek a Fee Credit as provided for herein). Notwithstanding anything to the contrary herein, each Party agrees that nothing in this Agreement prevents or precludes NAMING RIGHTS PARTNER from seeking, among other relief legally available to it, specific performance against the COUNTY under this Agreement to enforce its rights.

4.2.2. Arena Naming Rights Launch Campaign. COUNTY shall organize and provide a launch campaign, which costs and expenses to the COUNTY for all obligations under this Section 4.2.2 shall not exceed twenty-five thousand USD (\$25,000.00), and which NAMING RIGHTS PARTNER may determine to provide additional financial support for, shall consist of the following:

4.2.2.1 Public Relations Campaign. The COUNTY will execute a large-scale public relations campaign, to be mutually agreed upon in writing by the Parties.

4.2.2.2 Special Event. The COUNTY will, stage a special event to celebrate the community and announce the new partnership, to be mutually agreed upon in writing by the Parties.

4.2.2.3 Social Media. NAMING RIGHTS PARTNER shall be entitled to two (2) social media posts on social media

accounts owned and managed by the COUNTY in the first thirty (30) days following the Effective Date.

- 4.2.3. Station Domination, Downtown Wall Murals, Other Benefits. NAMING RIGHTS PARTNER will be entitled to Station Domination for three (3) Metromover stations, mutually agreed upon, and for a sixty (60) day period during each of Contract Year 1 or Contract Year 2 and before October 2024. In the event the COUNTY is unable to provide the Station Domination due to the fact that (a) there are no unsold spots available to NAMING RIGHTS PARTNER or (b) the unsold spots available are not desirable to the NAMING RIGHTS PARTNER, it shall not be deemed a COUNTY default and the Parties agree that, as a Substitute Entitlement, the NAMING RIGHTS PARTNER shall be entitled to three (3) downtown Miami wall murals on COUNTY-owned properties that currently exhibit wall murals for a sixty (60) day period during each of Contract Year 1 or Contract Year 2, and before October 2024. The Station Domination and wall murals will contain content announcing the new partnership and promoting NAMING RIGHTS PARTNER. NAMING RIGHTS PARTNER acknowledges and agrees that it shall only be entitled to those aspects of Station Domination and the downtown Miami wall murals in spots that are unsold as of the installation date mutually agreed upon by the COUNTY and the NAMING RIGHTS PARTNER and the unavailability for such reason shall not be deemed a COUNTY default. The design, fabrication, production, delivery, installation, and removal of the Station Domination and wall murals shall be at NAMING RIGHTS PARTNER's sole cost and expense. In the event the COUNTY is unable to provide either the Station Domination or wall murals contemplated in this Section 4.2.3. after October 2024, the Parties will meet at least thirty (30) days prior to October 1, 2024 to discuss in good faith Substitute Entitlements (it being understood and agreed that should the COUNTY be able to provide a Station Domination or, should a Station Domination not be available, wall murals subsequent to October 2024, NAMING RIGHTS PARTNER will be entitled to such Entitlement in accordance with this Section 4.2.3). For the purposes of this entitlement, "Station Domination" means NAMING RIGHTS PARTNER having the opportunity to fully create and post branded messaging across all media spaces available at a Metromover station.
- 4.2.4. Charitable and Educational Partnerships. NAMING RIGHTS PARTNER shall be entitled to work with the COUNTY on charitable and educational partnerships in the following areas, without limitation, to be subsequently mutually agreed upon in writing and subject to Board approval, where applicable, to be determined by the COUNTY, with flexibility to adjust focus throughout Term:

- Technology and fintech education
- Financial wellness programs
- Underprivileged community support
- Animal support and services
- Veteran support and services
- Children's support and services environment, alternative energy sources, sustainability and education services

4.2.5. If, in NAMING RIGHTS PARTNER's sole discretion, NAMING RIGHTS PARTNER does not wish to be associated with any particular Other Event at the Arena, NAMING RIGHTS PARTNER shall provide written notice to the COUNTY and the COUNTY shall consent to and shall not take any actions to frustrate, hinder or otherwise interfere with any agreement or understanding between NAMING RIGHTS PARTNER and BPL: (i) to cause to be unlit any signage at the Arena with the name of the NAMING RIGHTS PARTNER, (ii) to remove, obscure, mask, cover, obstruct or otherwise block from view, to the extent reasonably practicable, any portion of the NAMING RIGHTS PARTNER's advertising recognition or signage for the duration of the Other Event and/or (iii) to an appropriate disclaimer provided by NAMING RIGHTS PARTNER to BPL, in a manner reasonably requested by NAMING RIGHTS PARTNER, to the effect that the views expressed by the sponsors of the Other Event do not reflect the NAMING RIGHTS PARTNER's views.

4.2.6. The COUNTY acknowledges and agrees that certain Entitlements may become unavailable during the Term and a substitute Entitlement ("**Substitute Entitlement**") may be desired. In the event a Substitute Entitlement (as defined in the Facilitation Agreement) is desired and NAMING RIGHTS PARTNER and BPL negotiate Substitute Entitlements pursuant to the terms of the Naming Rights Facilitation Agreement, following such agreement between NAMING RIGHTS PARTNER and BPL, the NAMING RIGHTS PARTNER shall notify the COUNTY in writing of such Substitute Entitlement and the COUNTY shall not take any actions to frustrate, hinder or otherwise interfere with the provision of such Substitute Entitlements. Provided, however, should the COUNTY reasonably determine, within thirty (30) days of being notified of such Substitute Entitlement by NAMING RIGHTS PARTNER, that such Substitute Entitlement will expose it to additional financial or legal liability for which no indemnification or other financial remedy is available to the COUNTY under the Arena Agreements, the COUNTY may object to such Substitute Entitlement and such Substitute Entitlement shall not be provided until such time as NAMING RIGHTS PARTNER and BPL determine an alternate Substitute Entitlement that does not expose the COUNTY to such

additional financial or legal liability or the COUNTY, NAMING RIGHTS PARTNER and BPL mutually agree on a solution to address the same.

#### 4.3. Signage.

##### 4.3.1. COUNTY Approval of Certain Signage.

The Parties understand and agree that COUNTY shall bear no responsibility for the cost, expense, design, creation, fabrication, production, delivery, installation, or activation of any of the Signage for the Entitlements and other advertising opportunities granted to the NAMING RIGHTS PARTNER described in SCHEDULE A or the cost or expense for the removal of any existing Signage. However, COUNTY shall retain the right to approve the following Signage:

(1) Signage displaying the Arena Logo on the main entrance on west side of Arena - Faces Biscayne Blvd (over gates 1 and 2);

(2) Signage displaying the Arena Logo on Gate 5 (north entrance) of Arena - Faces 8th Street;

(3) Signage displaying the Arena Logo on Gate 6 (south entrance) of Arena - Faces Port Blvd. and Bayside Mall; and

(4) Signage displaying the Arena Logo placed on the rooftop of the Arena.

Subject to Section 38 hereof, COUNTY approval of the above-listed Signage shall not be unreasonably withheld, conditioned, or delayed and if approval is granted COUNTY shall not take any actions to frustrate, hinder or otherwise interfere with BPL's Facilitation of all approved signage. The COUNTY's approval of the above-listed Signage shall be granted or withheld by notice given within sixty (60) days of submission by NAMING RIGHTS PARTNER of the request; and, if a rejection, such rejection shall describe with particularity the reasons for the rejection. In addition, if the COUNTY provides written notice to NAMING RIGHTS PARTNER that, in its reasonable discretion, it determines that any other Signage containing any writing or depiction other than simply the name of NAMING RIGHTS PARTNER or the Arena Logo, which, in the reasonable determination of the COUNTY (a) reflects unfavorably upon, disparages, or causes embarrassment to the Arena, the Site, or the COUNTY, or any of their respective owners or employees (including elected officials); (b) relates or refers to any subject matter, business or enterprise that might reasonably be deemed to be immoral (including any sexually oriented subject matter, business

or enterprise); or (c) contain any political reference, then NAMING RIGHTS PARTNER agrees and acknowledges to remove (or have BPL remove through its Naming Rights Facilitation Agreement) such Signage at its cost and expense.

4.3.2. Applicable Law. The production and activation, implementation, and requested updates of all Signage, and all other actions referenced in this Section 4.3, shall be in compliance with all applicable Laws.

4.4. Public Signage. To the extent federal or State of Florida transportation authorities install and erect roadway, traffic, and/or pedestrian directional signs or maps providing directions to the Arena, COUNTY shall use commercially reasonable efforts (at no cost or expense to the NAMING RIGHTS PARTNER) to cause such authorities to identify the Arena (or any portions thereof) using the Arena Name and/or Arena Logo; *provided however*, that, for the avoidance of any doubt, COUNTY shall not be deemed in breach of this Agreement in the event any such third-party fails to identify Signage or maps.

## 5. Fees and Security.

5.1. Fees. In consideration for the Entitlements and other rights, benefits, and privileges granted to it under this Agreement, NAMING RIGHTS PARTNER shall pay to COUNTY, in United States Dollars, the following fees (collectively, the “Fee” or “Fees”)

Contract Year	Fee
Contract Year 1	\$3,700,000
Contract Year 2	\$4,750,000
Contract Year 3	\$5,500,000
Contract Year 4	\$6,000,000
Contract Year 5	\$6,220,000
Contract Year 6	\$6,500,000
Contract Year 7	\$6,660,000
Contract Year 8	\$7,000,000
Contract Year 9	\$7,000,000

Contract Year 10	\$7,240,000
Contract Year 11	\$7,460,000
Contract Year 12	\$7,680,000
Contract Year 13	\$7,900,000
Contract Year 14	\$8,120,000
Contract Year 15	\$8,340,000
Contract Year 16	\$8,560,000
Contract Year 17	\$8,740,000
Total	\$117,370,000

- 5.2. Payment Schedule. The Fee for each Contract Year shall be due and payable to the COUNTY in two (2) equal installments per year, the first such payment shall be payable in advance of the upcoming Contract Year on or before June 30 of each Contract Year and the second such payment shall be due and payable on or before September 30 of each Contract Year. (e.g., for Contract Year 4 which commences on July 1, 2026, the first installment payment for Contract Year 4 shall be due on or before June 30, 2026 and the second installment payment shall be due on or before September 30, 2026). Notwithstanding the foregoing, there shall only be one installment payment for the total Fee for Contract Year 1 which shall be due and payable in advance by NAMING RIGHTS PARTNER on or before June 30, 2023.
- 5.3. Payments. All payments shall be made by wire transfer of immediately available funds over the U.S. Federal Reserve System to the account of COUNTY, which COUNTY shall provide to NAMING RIGHTS PARTNER in writing prior to the first payment, unless COUNTY shall designate another account to NAMING RIGHTS PARTNER at least five (5) Business Days prior to the date the payment is due (“**COUNTY Account**”). If any payment date is not a Business Day, the payment shall be due on the next immediately succeeding Business Day.
- 5.4. Costs & Expenses: Signage Removal. NAMING RIGHTS PARTNER or BPL, as determined between NAMING RIGHTS PARTNER and BPL, shall be responsible for all costs and expenses associated with the design, fabrication, production, delivery, and installation of Signage and other physical advertising included in the Entitlements. NAMING RIGHTS PARTNER or BPL, as determined between NAMING RIGHTS PARTNER and BPL, shall be responsible for all costs and expenses incurred in connection with the removal of its Signage from the Arena and the COUNTY shall not be responsible to the NAMING RIGHTS PARTNER

for any costs and expenses in connection with the removal of any signage existing as of the Effective Date.

- 5.5. Payment Requests & Interest on Late Payments. Any payment required to be made by NAMING RIGHTS PARTNER that is not paid within fifteen (15) Business Days from the date such payment becomes due and owing, via invoice delivered to namingrights@kaseya.com, shall bear interest at an annual rate of twelve percent (12%) per annum or, if lower, the maximum allowed by Law, from the due date to the date payment is actually made. The right of COUNTY to receive interest under this Section shall be in addition to all other rights it may have as a result of NAMING RIGHTS PARTNER's failure to make payments when due.
- 5.6. Irrevocable Letter of Credit. Within 15 days of the Effective Date, NAMING RIGHTS PARTNER will procure an irrevocable letter of credit ("ILOC") from the CIBC Bank USA or such other bank as NAMING RIGHTS PARTNER shall bank with from time to time so long as it has an AA credit rating ("Issuer") in favor of the COUNTY in the amount of \$ 7,500,000.00. On or before June 30, 2024 and every June 30<sup>th</sup> thereafter during the Term, NAMING RIGHTS PARTNER shall adjust and increase the amount of the ILOC to the full amount owed to the COUNTY as Fees for the subsequent 18-month period. The ILOC shall be to secure NAMING RIGHTS PARTNER's financial obligations under this Agreement, including but not limited to, the payment of the Fees hereunder. Upon a NAMING RIGHTS PARTNER Default under Section 9.1.1 or 9.1.3 of this Agreement, following any applicable notice and expiration of any cure period, the COUNTY shall be entitled to draw upon the ILOC by making a written request to Issuer.

## **6. Exclusivity.**

- 6.1. Category Exclusivity. From the Effective Date through the end of the Term but excluding Significant Events, and as long as no NAMING RIGHTS PARTNER Default exists, the COUNTY hereby grants to NAMING RIGHTS PARTNER and NAMING RIGHTS PARTNER shall enjoy, exclusive advertising, branding and promotion rights in the Exclusive Category, in respect to the Arena or on the Site. In furtherance of this grant:
- 6.1.1. COUNTY shall not, directly or indirectly (e.g., via sublicense), grant to, or permit the grant to any Exclusive Category Competitor of any right or license to advertise or promote any products or services or to display any sign advertising, promoting or referencing any products or services within the Exclusive Category anywhere in the Arena, on the exterior of the Arena or on the Site (including, without limitation, on any structural improvements or erected improvements to the court or other service within the Arena or elsewhere in the Arena, on the exterior of the Arena or on the Site).



- 6.1.2. The COUNTY shall not display (or cause, authorize or permit the display of) any Signage or other advertisement or promotion in the Arena, on the exterior of the Arena or anywhere else on the Site that promotes, identifies or refers to any products or services in the Exclusive Category (other than products or services in the Exclusive Category of or concerning NAMING RIGHTS PARTNER);
- 6.1.3. The COUNTY shall not, directly or indirectly, grant to, or permit the grant of any right or license to use the Arena Name, Arena Logo, or the Arena likeness (A) to any Person (other than NAMING RIGHTS PARTNER) in connection with any products or services in the Exclusive Category or (B) to any Exclusive Category Competitor for any purpose;
- 6.1.4. The COUNTY shall not engage in or authorize any Person to conduct any activation or promotional activity with respect to any products or services in the Exclusive Category in the Arena, on the exterior of the Arena or elsewhere on Site, or directly or indirectly, grant to, or permit the grant of, or allow any Exclusive Category Competitor any right to conduct any activation or promotional activity, at or in connection with the Arena or anywhere on the Site.
- 6.1.5. Subject to the restrictions in Sections 6.1.1, 6.1.2, 6.1.3 and 6.1.4 above, the Parties acknowledge that while the Arena itself shall be known exclusively by the Arena Name, certain areas within the Arena may be referred to or associated with other names and the COUNTY shall not be in breach of this Agreement if BPL permits additional Persons to sponsor and/or name one or more localized areas within the Arena.
- 6.1.6. Additional Teams. The COUNTY acknowledges and agrees that the Entitlements granted hereunder will apply and will be provided by the COUNTY to the NAMING RIGHTS PARTNER, with respect to any Additional Teams that may, from time to time, play its Home NBA Team Games. In connection therewith, NAMING RIGHTS PARTNER shall not be required to pay any additional Fees or other sums in connection with any Additional Team and such Additional Teams shall be subject to the exclusive rights granted to NAMING RIGHTS PARTNER under this Agreement.
- 6.1.7. The Parties agree that, except for the benefits expressly granted to NAMING RIGHTS PARTNER under this Agreement and the restrictions expressly imposed on the COUNTY under this Agreement, all other rights, benefits and privileges of the COUNTY are expressly reserved by the COUNTY, and any benefits not explicitly granted exclusively to NAMING RIGHTS PARTNER pursuant to this Agreement may be sold or licensed by the COUNTY to other Persons,

provided that the sale or license of such benefits does not conflict with NAMING RIGHTS PARTNER's rights under this Agreement or violate any of the COUNTY's obligations under this Agreement (including but without limitation, the restrictions in Sections 6.1.1, 6.1.2, 6.1.3 and 6.1.4 herein).

- 6.1.8. The COUNTY consents to and shall not take any actions to frustrate, hinder or otherwise interfere with any agreement between BPL and NAMING RIGHTS PARTNER concerning Other Events and Significant Events at the Site or in the Arena, provided that advance notice is provided to the COUNTY of the terms of any such agreement, and that any such agreement shall be consistent with the terms of the Management Agreement and is subject to Section 38 of this Agreement.

## **7. Intellectual Property.**

- 7.1. Ownership of NAMING RIGHTS PARTNER Marks. NAMING RIGHTS PARTNER shall own all right, title, and interest in and to the NAMING RIGHTS PARTNER Marks, and all Intellectual Property rights inherent therein and appurtenant thereto. Nothing in this Agreement serves to assign, convey or transfer any right in any of the NAMING RIGHTS PARTNER Marks to COUNTY. COUNTY agrees that all uses by COUNTY of the NAMING RIGHTS PARTNER Marks shall inure to the benefit of NAMING RIGHTS PARTNER, and any right that may accrue to COUNTY related thereof and any goodwill associated therewith are hereby granted and assigned to NAMING RIGHTS PARTNER or its designee upon the request of NAMING RIGHTS PARTNER.
- 7.2. Registration and Protection of Arena Logo and Arena Name. NAMING RIGHTS PARTNER shall file appropriate applications for registration of the Arena Name and the Arena Logo, as applicable and appropriate, with the United States Patent and Trademark Office and, if reasonably requested by COUNTY, any foreign governmental authorities, in each case, at the sole cost and expense of NAMING RIGHTS PARTNER. NAMING RIGHTS PARTNER agrees to use reasonable efforts and to not abandon, forfeit, or cancel any state, federal or foreign applications or registrations sought or obtained by NAMING RIGHTS PARTNER relating to the Arena Name and Arena Logo without the prior written consent of COUNTY, and will take all reasonable steps to maintain, demonstrate usage, and renew such applications or registrations and to keep them in good standing during the Term and any subsequent period in which COUNTY may use the Arena Name. In event NAMING RIGHTS PARTNER fails to, or otherwise refuses to, undertake or fulfill the obligations set forth in this Section 7.2, COUNTY shall have the right to undertake and fulfill such obligations in the name of NAMING RIGHTS PARTNER at NAMING RIGHTS PARTNER's sole expense.
- 7.3. Assignment of Rights. In the event that, through performance of this Agreement, COUNTY has or acquires any interest in the NAMING RIGHTS PARTNER Marks

or any adaptations or derivative works created from the foregoing or produced pursuant to this Agreement, COUNTY hereby grants and assigns to NAMING RIGHTS PARTNER any and all of the rights of COUNTY in and to the foregoing, including copyright and trademark rights, any goodwill associated therewith and all causes of action, accrued or accruing, known or unknown, for infringement or otherwise, relating thereto. COUNTY shall cooperate with NAMING RIGHTS PARTNER during and after the Term, to grant and assign any such interest to NAMING RIGHTS PARTNER (or such designee), including the prompt execution of all necessary instruments to vest full title of, and all rights in and to, such interest in NAMING RIGHTS PARTNER (or such designee).

7.4. Grant of Licenses to COUNTY. Subject to the terms and conditions of this Agreement, NAMING RIGHTS PARTNER hereby grants to COUNTY (and as explicitly set forth below, to BPL) the following licenses:

- 7.4.1. During the Term, non-exclusive, royalty-free, worldwide, fully paid-up, license to use the NAMING RIGHTS PARTNER Marks and the goodwill associated therewith to allow COUNTY to designate the Arena by the Arena Name and to fulfill its obligations to NAMING RIGHTS PARTNER hereunder;
- 7.4.2. During the Term, a non-exclusive, royalty free, fully paid-up license to use the NAMING RIGHTS PARTNER Marks to fulfill its obligation to NAMING RIGHTS PARTNER hereunder, to identify NAMING RIGHTS PARTNER as the naming sponsor of the Arena and for related business purposes consistent with NAMING RIGHTS PARTNER's status as the naming sponsor of the Arena; and
- 7.4.3. During and after the Term, a non-exclusive, royalty-free, worldwide, fully paid-up, license to use the NAMING RIGHTS PARTNER Marks for Historical Uses.
- 7.4.4. COUNTY's use of NAMING RIGHTS PARTNER Marks for purposes other than to fulfill its obligations to NAMING RIGHTS PARTNER hereunder, shall be subject to the prior written approval by NAMING RIGHTS PARTNER and subject to the following process: NAMING RIGHTS PARTNER shall have ten (10) Business Days from the date that it receives any written request for approval from the COUNTY seeking approval to approve or reject (and, if a rejection, such rejection shall describe with particularity the reasons for the rejection).
- 7.4.5. In the event the NAMING RIGHTS PARTNER Marks are changed following the Effective Date of this Agreement, NAMING RIGHTS PARTNER agrees to grant to the COUNTY the same license to use the NAMING RIGHTS PARTNER Marks as granted herein.

- 7.5. Suits Against Infringers. Each Party shall promptly notify the other Party of any unauthorized use or other infringement of the trademark rights or copyright in the Marks of which it becomes aware. NAMING RIGHTS PARTNER shall have the right (in its sole discretion), but not the obligation, to initiate and be responsible for the costs, expenses and control of any legal action. In any such legal actions, the COUNTY shall provide NAMING RIGHTS PARTNER, at NAMING RIGHTS PARTNER's sole cost and expense, its reasonable cooperation and assistance with respect to any such legal action.
- 7.6. Conformance with Law and NBA Rules. Notwithstanding anything herein, the COUNTY shall have no obligation to install or display the NAMING RIGHTS PARTNER Marks in violation of, and all uses of the NAMING RIGHTS PARTNER Marks in the Arena or elsewhere on the Site shall comply with and be subject to: (a) any and all applicable Laws, including, without limitation, laws regulating trademarks, copyrights, and other forms of Intellectual Property, and (b) the NBA Rules and any other requirements, policies and limitations as may be imposed by the NBA. The COUNTY reserves the right, to be exercised in its reasonable discretion, to determine whether any display or use of the NAMING RIGHTS PARTNER Marks is suitable for such use in accordance with the requirements of the preceding sentence.
- 7.7. Rights Upon Expiration or Termination. Except as set forth below in this Section 7.7, upon expiration or termination of this Agreement, the COUNTY and NAMING RIGHTS PARTNER agree that the licenses granted under this Agreement shall terminate and the Parties shall cease all use of the NAMING RIGHTS PARTNER Marks and thereafter shall no longer refer to the Arena as the Arena Name in any advertising or promotional materials, or any other communications. Notwithstanding the foregoing, if the termination or expiration occurs during the NBA season and the Arena is still the home Arena of an NBA team, the COUNTY, at its sole discretion, may elect to extend the use of the NAMING RIGHTS PARTNER Marks and Arena Name until the end of the NBA Season. Additionally, Parties shall have one hundred twenty (120) days from the expiration or termination of this Agreement, to sell or otherwise dispose of goods or materials which are then in existence and which bear any of the NAMING RIGHTS PARTNER Marks as well as to remove all Signage of which the NAMING RIGHTS PARTNER Marks constitute a part of. In accordance with Section 5.4 of this Agreement, NAMING RIGHTS PARTNER shall be responsible for all costs and expenses incurred in connection with the removal of its Signage from the Arena.

## **8. Approval Process and Quality Control.**

- 8.1. Style Guide. As soon as reasonably practical after the Effective Date, NAMING RIGHTS PARTNER shall develop a style guide that sets forth approved uses of the NAMING RIGHTS PARTNER Marks (as updated, the "**Style Guide**"), which shall be provided to the COUNTY. Any use by the COUNTY of any Marks shall comply with the Style Guide in all material respects. NAMING RIGHTS

PARTNER reserves the right to update the Style Guide from time to time and shall provide the updated Style Guide to COUNTY. Notwithstanding the foregoing, in no event shall any revisions or changes to NAMING RIGHTS PARTNER MARKS, apart from stylistic revisions and changes, be made or approved through a style guide.

- 8.2. Approvals by NAMING RIGHTS PARTNER. Any use of the NAMING RIGHTS PARTNER Marks by the COUNTY that departs in any material respect from the agreed upon Style Guide shall, in each case, be submitted to NAMING RIGHTS PARTNER for its prior written approval (which approval shall not be unreasonably withheld, conditioned, or delayed).
- 8.3. Approval Procedure. To be effective, all approvals required under this Section 8.3 for uses of the NAMING RIGHTS PARTNER Marks shall be requested and approved in writing including but not limited to electronic mail. The COUNTY may also request in writing that the NAMING RIGHTS PARTNER pre-approve certain types or categories of usage.

## **9. Default and Remedies.**

- 9.1. Default by NAMING RIGHTS PARTNER. The occurrence of one or more of the following matters shall constitute a default by NAMING RIGHTS PARTNER (a “NAMING RIGHTS PARTNER Default”):
  - 9.1.1. NAMING RIGHTS PARTNER fails to make any scheduled payment required under Section 5.1 when due, if such failure continues for a period of fifteen (15) Business Days after COUNTY gives NAMING RIGHTS PARTNER written notice of such failure;
  - 9.1.2. NAMING RIGHTS PARTNER breaches in any material respect, any of its material representations, warranties or obligations under this Agreement, unless, if such breach is curable, NAMING RIGHTS PARTNER cures such breach within thirty (30) days after COUNTY gives NAMING RIGHTS PARTNER written notice of such breach; *provided* however, if NAMING RIGHTS PARTNER has taken reasonable steps to cure such failure within such thirty (30) days, but the failure is of a type or character which is not reasonably susceptible of cure within such thirty (30) days, and would otherwise be capable of cure by NAMING RIGHTS PARTNER using reasonable efforts, NAMING RIGHTS PARTNER shall have such additional time as may be necessary in order to effect such cure, but not to exceed an additional thirty(30) days;
  - 9.1.3. An Insolvency Event occurs with respect to NAMING RIGHTS PARTNER;

- 9.1.4. NAMING RIGHTS PARTNER effects a Change of Control in which the counterparty thereto is (i) blocked pursuant to any OFAC Regulations and/or appears on: (a) OFAC's list of blocked persons pursuant to Executive Order or OFAC Regulations, as amended from time to time; (b) OFAC's list of Specially Designated Nationals, as amended from time to time; or (c) other lists of prohibited or blocked persons maintained by OFAC amended from time to time; (ii) listed on the Prohibited Vendor List, as amended from time to time, that can be found on the GSA SmartPay website: <https://smartpay.gsa.gov/content/ndaa-section-889>; (iii) listed on the Federal Communication Commission's List of equipment and Services Covered by Section 2 of the Secure Networks Act deemed to pose an unacceptable risk to the national security of the United States as listed here: <https://www.fcc.gov/supplychain/coveredlist>; or (iv) listed on the COUNTY's Contractor Debarment Report maintained pursuant to Section 10-38 of the Code of Miami-Dade County at <https://www.miamidade.gov/smallbusiness/library/reports/contractor-debarment.pdf>;
- 9.1.5. NAMING RIGHTS PARTNER or any of its five (5) most senior executive officers is convicted of, or pleads guilty or *nolo contendere* to, a felony charge involving an act of moral turpitude or fraud, and in the reasonable and good faith opinion of the COUNTY, same would materially disparage or materially impair the reputation and integrity of the COUNTY;
- 9.1.6. The termination of the Naming Rights Facilitation Agreement (a) following agreement by NAMING RIGHTS PARTNER to such termination; or (b) as the result of a material default by NAMING RIGHTS PARTNER of the terms and conditions thereunder (collectively referred to as "**Improper Terminations**");
- 9.1.7. NAMING RIGHTS PARTNER has knowingly and intentionally made any representation or warranty hereunder that was untrue in any material respect as of the Effective Date; or
- 9.1.8. NAMING RIGHTS PARTNER fails to maintain the ILOC required under Section 5.7 of this Agreement at all times and to increase the ILOC when due, if such failure continues for a period of twenty (20) Business Days after COUNTY gives NAMING RIGHTS PARTNER written notice of such failure.

9.2. Rights and Remedies of COUNTY.

- 9.2.1. Upon the occurrence of a NAMING RIGHTS PARTNER Default, the COUNTY shall have the right to do any one or more of the following:

(A) enforce any rights provided for herein with respect to such NAMING RIGHTS PARTNER Default, (B) seek to recover all damages and other sums available at law or in equity to which it is entitled with respect to such NAMING RIGHTS PARTNER Default, (C) exercise any other right or remedy at law or in equity with respect to such NAMING RIGHTS PARTNER Default, including seeking an injunction or order of specific performance, and (D) solely to the extent provided in Section 9.2.3, terminate this Agreement in accordance with Section 9.2.3 or 9.2.3. Provided that, in connection with a NAMING RIGHTS PARTNER Default under Section 9.1.5, the COUNTY may not pursue its remedies under this Section 9.2.1 until the expiration of the Cooling Off Period (as described below), if any.

9.2.2. Upon the occurrence of a NAMING RIGHTS PARTNER Default specified in Section 9.1.5 (a “**Triggering Event**”), the COUNTY may terminate this Agreement subject to the following conditions:

9.2.2.1 With respect to any Triggering Event that relates to a particular employee or employees, the Parties agree that if NAMING RIGHTS PARTNER takes reasonable remedial action to mitigate the harmful reputational effects (e.g., termination, suspension, etc.), then the COUNTY shall not have a right to claim a NAMING RIGHTS PARTNER Default or terminate this Agreement, unless the Triggering Event is an intentional, unlawful and violent act that is so egregious that no remedial action will be adequate to mitigate the harmful reputational effect(s). If the NAMING RIGHTS PARTNER does not or cannot take reasonable remedial action to mitigate the harmful reputational effects, the COUNTY’s right to terminate pursuant to this Section remains intact but is subject to the Cooling Off Period described in 9.2.2.2 below.

9.2.2.2 Upon the occurrence of a Triggering Event, NAMING RIGHTS PARTNER shall provide written notice to the COUNTY of its intent to consider termination of this Agreement and for a period of thirty (30) days following the delivery of such notice (the “**Cooling Off Period**”), the Parties shall discuss in good faith ways in which NAMING RIGHTS PARTNER can mitigate the harmful reputational effects regarding the act that gave rise to such Triggering Event. If the COUNTY, in its good faith business judgment, believes that such efforts have not been or will not be adequate to mitigate the harmful reputational effects, then the COUNTY may terminate this Agreement by providing written notice to NAMING RIGHTS PARTNER within

fifteen (15) days of the Cooling Off Period, which termination shall become effective immediately upon delivery of such notice.

9.2.2.3 The COUNTY's termination under Section 9.2.3. requires a written recommendation of the County Mayor and Board approval.

9.2.3. Except as otherwise provided in this Agreement (and without limiting any termination right expressly provided in any other provision of this Agreement), the COUNTY shall have the right to terminate this Agreement as a result of a NAMING RIGHTS PARTNER Default, which termination shall become effective thirty (30) days after delivery of written notice thereof to NAMING RIGHTS PARTNER, upon the occurrence of any of the following:

9.2.3.1 a NAMING RIGHTS PARTNER Default specified in Section 9.1.1;

9.2.3.2 a NAMING RIGHTS PARTNER Default specified in Section 9.1.3;

9.2.3.3 a NAMING RIGHTS PARTNER Default specified in 9.1.4;

9.2.3.4 a NAMING RIGHTS PARTNER Default specified in 9.1.6; or

9.2.3.5 a NAMING RIGHTS PARTNER Default specified in Section 9.1.8.

9.2.4. In the event COUNTY terminates this Agreement as a result of a NAMING RIGHTS PARTNER Default, NAMING RIGHTS PARTNER shall be obligated to pay to COUNTY the average of the aggregate amount of Fees to be paid during the remaining Term divided by the number of years in the remaining Term multiplied by 3 ("**NAMING RIGHTS PARTNER Default Payment**") and such NAMING RIGHTS PARTNER Default Payment shall be due within sixty (60) days of the effective date of the termination. The Parties acknowledge and agree that the harm caused to the COUNTY by a termination of the Agreement under this Section 9.2. would be impossible or very difficult to accurately estimate as of the Effective Date, and that the NAMING RIGHTS PARTNER Default Payment is a reasonable estimate of the anticipated or actual harm that might arise from such termination. NAMING RIGHTS PARTNER's payment of the NAMING RIGHTS PARTNER Default Payment is NAMING RIGHTS PARTNER's sole liability and entire obligation and the



COUNTY's exclusive remedy for termination of the Agreement under this Section 9.2.

9.3. Default by COUNTY. The occurrence of one or more of the following matters shall constitute a default by COUNTY (a "**COUNTY Default**"):

- 9.3.1. COUNTY breaches, in any material respect, any of its material representations, warranties, or obligations under this Agreement, unless, if such breach is curable, COUNTY cures such breach within thirty (30) days after NAMING RIGHTS PARTNER gives COUNTY written notice of such breach; *provided however*, if COUNTY has taken reasonable steps to cure such failure within such thirty (30) days, but the failure is of a type or character which is not reasonably susceptible of cure within such thirty (30) days, and would otherwise be capable of cure by COUNTY using reasonable efforts, COUNTY shall have such additional time as may be necessary in order to effect such cure, but not to exceed an additional thirty (30) days;
- 9.3.2. COUNTY has knowingly and intentionally made any representation or warranty hereunder that was untrue in any material respect as of the Effective Date; or
- 9.3.3. Any Arena Agreements are amended in a manner which could reasonably be expected to have a material adverse effect on NAMING RIGHTS PARTNER's rights hereunder.

9.4. Rights and Remedies of NAMING RIGHTS PARTNER.

- 9.4.1. Upon the occurrence of a COUNTY Default, NAMING RIGHTS PARTNER shall have the right to do any one or more of the following: (A) enforce any rights provided for herein with respect to such COUNTY Default, (B) seek to recover all damages and other sums available at law or in equity to which it is entitled with respect to such COUNTY Default, (C) exercise any other right or remedy at law or in equity with respect to such COUNTY Default, including seeking an injunction or order of specific performance, and (D) solely to the extent provided in Section 9.4.2, terminate this Agreement in accordance with Section 9.4.2.
- 9.4.2. Except as otherwise provided in this Agreement (and without limiting any termination right expressly provided in any other provision of this Agreement), the NAMING RIGHTS PARTNER shall have the right to terminate this Agreement as a result of a COUNTY Default, which termination shall become effective thirty (30) days after delivery of written notice thereof to the COUNTY, upon the occurrence of repeated, material and recurring COUNTY Defaults in connection with

a breach of the COUNTY's obligations under the lead in paragraph to Section 4 and Section 4.2.1 (after expiration of all applicable notice and cure periods, if any, provided for herein).

9.5. Termination Rights of NAMING RIGHTS PARTNER. NAMING RIGHTS PARTNER may terminate this Agreement with prior written notice to COUNTY as set forth herein and upon the occurrence of any one or more of the following events following the expiration of any required cure and negotiation periods where the applicable matter remains unresolved:

- 9.5.1. The mutual termination of the Management Agreement of the Arena or, following any other termination that is being challenged, a final, unappealable court order or judgement upholding the termination, and upon no less than thirty (30) days' prior written notice;
- 9.5.2. The termination of the Naming Rights Facilitation Agreement, provided that to the extent such termination arose from a material default by BPL thereunder and in the event such material default is capable of being cured by BPL, that NAMING RIGHTS PARTNER first notifies the COUNTY of such default and the COUNTY is thereafter unable to successfully compel BPL to cure same within sixty (60) days of NAMING RIGHTS PARTNER notifying the COUNTY of such default or, if such default is not one that can be reasonably cured within such sixty (60) days, that BPL commences such cure within said 60 days and diligently prosecutes same to completion. For the avoidance of doubt, if the Naming Rights Facilitation Agreement is terminated by either Party due to an Improper Termination, the COUNTY will be entitled to the NAMING RIGHTS PARTNER Default Payment.
- 9.5.3. A material modification of the Management Agreement without prior notice or consent to NAMING RIGHTS PARTNER that materially and adversely affects the rights of NAMING RIGHTS PARTNER hereunder or shall serve to frustrate the purpose hereof; provided that NAMING RIGHTS PARTNER shall first notify the COUNTY of the material and adverse effect of its rights resulting from such amendment, and the COUNTY is thereafter unable to successfully address such concerns with BPL to the reasonable satisfaction of NAMING RIGHTS PARTNER within sixty (60) days of NAMING RIGHTS PARTNER notifying the COUNTY of the material and adverse effect;
- 9.5.4. Thirty (30) days following the permanent relocation by the Heat to a venue other than the Arena; provided, that if such relocation is challenged by the COUNTY within such initial thirty (30) day period, a termination right shall not arise until there is a final, unappealable court order or judgement upholding the relocation, and, in such event, such

termination shall be effective upon no less than thirty (30) days' prior written notice to the COUNTY;

- 9.5.5. Ninety (90) days following the announcement by the Heat of a permanent relocation to another city outside of Miami-Dade County and provided that, NAMING RIGHTS PARTNER can first prove that, during such ninety (90) day period, there was a material and precipitous drop in attendance to Team NBA Home Games;
  - 9.5.6. The Heat are no longer members of the NBA or no longer play in the NBA and upon no less than thirty (30) days' prior written notice;
  - 9.5.7. Due to or in connection with a Force Majeure event (which shall include use of the Arena as a shelter, temporary hospital, or similar type use), no Home NBA Team Game is played or no Other Event is held at the Arena for a period longer than one (1) year and upon no less than thirty (30) days' prior written notice;
  - 9.5.8. Following a fire, casualty or condemnation (or other similar event), a public announcement is made by or on behalf of the COUNTY that no Home NBA Team Game is to be played for the longer of one (1) or more calendar years or one (1) full NBA season and upon no less than thirty (30) days' prior written notice; or
  - 9.5.9. Fire or casualty significantly damages the Arena or a condemnation event affects the Arena and the COUNTY (or owner if other than the COUNTY) announces that it shall not reconstruct or repair the damage or that the time period for reconstruction or repair shall exceed one (1) or more calendar years or one (1) full NBA season and upon no less than thirty (30) days' prior written notice.
- 9.6. Abatement of Payments in Lieu of Termination. Upon the occurrence of the events set forth in Sections 9.5.7, 9.5.7 and 9.5.9, notwithstanding NAMING RIGHTS PARTNER's right to terminate same pursuant to such sections and without abrogating NAMING RIGHTS PARTNER's right to later pursue such termination so long as the conditions set forth in such sections remain, NAMING RIGHTS PARTNER may instead elect to maintain this Agreement by providing written notice of such election to COUNTY whereupon the payment schedule shall immediately convert to a semimonthly schedule (e.g., payments for the remainder of the applicable season shall equal the aggregate payments remaining for such season divided by the number of weeks remaining in such season multiplied by two (2)), with payments owed each 1<sup>st</sup> and 15<sup>th</sup> of the applicable months but abated to the extent on any such date a Home NBA Team Game scheduled during the following two weeks is suspended. The payment schedule will resume as contemplated under Section 5.2 for the first full season in which the first regularly scheduled Home NBA Team Game for such season occurs and the Parties shall

meet as soon as is commercially practicable thereafter and in good faith make a determination as to whether the abatement fairly compensated NAMING RIGHTS PARTNER for the lost benefit of its Entitlements. If the Parties determine that the abatement provided was not sufficient to compensate NAMING RIGHTS PARTNER, then an additional abatement shall be provided. If the Parties determine that the abatement provided was more than sufficient to compensate NAMING RIGHTS PARTNER, NAMING RIGHTS PARTNER shall pay the overage to the COUNTY. If the Parties are unable to resolve any disagreement with respect to any additional abatements or overages, such a disagreement shall be resolved in accordance with the dispute resolution process set forth in Section 9.7 below. For the avoidance of doubt, the abatement contemplated in this Section 9.6 shall not occur until NAMING RIGHTS PARTNER's termination rights contemplated in Sections 9.5.7, 9.5.7 and 9.5.9 arise (i.e., after the one (1) calendar year or one (1) NBA season contemplated in such sections has occurred) and prior to such period any such fee abatements shall be governed by Section 16 hereof.

- 9.7. Mediation and Disputes for Fee Abatements. In the event of any default, disagreement, breach or other dispute between the Parties in connection with fee abatements under Sections 9.6, 15 and 16 this Agreement (collectively, a "Fee Abatement Dispute"), the Parties shall comply with the procedures set forth in this Section 9.7. Within seven (7) Business Days after written request by either party, the Parties promptly shall hold an initial meeting to attempt in good faith to negotiate a settlement of the Fee Abatement Dispute; provided that no request shall be made after expiration of the statute of limitations applicable to such Fee Abatement Dispute. If within ten (10) Business Days after the initial meeting, the Parties have not negotiated a settlement of the Fee Abatement Dispute, the Parties jointly shall appoint a mutually acceptable neutral person who is not affiliated with either of the Parties or BPL (the "Neutral") to serve as a mediator between the Parties. The Parties shall attend mediation with the Neutral on a date that is no later than twenty (20) days after the appointment of the Neutral and both Parties shall act in good faith to resolve the Fee Abatement Dispute through mediation. If the parties resolve their Fee Abatement Dispute through their own negotiations or in the mediation, the resolution shall be reduced to the form of a written settlement agreement which shall be binding upon both parties and shall preclude any litigation with respect to such Fee Abatement Dispute. If the Parties have not resolved the Fee Abatement Dispute through the mediation within thirty (30) days after the appointment of a Neutral, either Party may initiate the dispute resolution process set forth herein.

Following mediation, the following provisions shall govern all Fee Abatement Disputes under this Agreement. Exhaustion of these procedures shall be a precondition to any lawsuit permitted hereunder.

- 9.7.1. Upon a written request by either Party, a hearing examiner shall be appointed from among the list of hearing examiners maintained by the

Clerk of the Board for bid protests or, any other attorney mutually agreed to by the Parties (the “**Hearing Examiner**”)

- 9.7.2. As soon as practicable, the Hearing Examiner shall adopt a schedule for the NAMING RIGHTS PARTNER and COUNTY to file written submissions stating their respective positions and the bases therefore. The written submissions shall include copies of all documents and sworn statements in affidavit form from all witnesses relied on by each Party in support of its position. Within twenty (20) Business Days of the date on which such written submissions are filed, the Hearing Examiner shall afford each party an opportunity to present a maximum of one hour of argument. The Hearing Examiner may decide the Fee Abatement Dispute on the basis of the affidavits and other written submissions if, in their opinion, there is no issue of material fact and the Party is entitled to a favorable resolution pursuant to the terms of this Agreement. The Hearing Examiner shall have the authority to rule on questions of law, including disputes over contract interpretation, and to resolve claims, or portions of claims, via summary judgment where there are no disputed issues of material fact. Furthermore, the Hearing Examiner is authorized by both Parties to strike elements of claims seeking relief or damages not available under the Agreement by summary disposition.
- 9.7.3. In the event that the Hearing Examiner determines that the affidavits or other written submissions present issues of material fact, he/she shall allow the presentation of evidence in the form of lay or expert testimony directed solely to the issues which he may specifically identify to require factual resolution. The testimonial portion of the process shall not exceed one day in duration per side, including opening statements and closing arguments, if allowed by the Hearing Examiner at his/her reasonable discretion.
- 9.7.4. No formal discovery shall be allowed in connection with any proceeding under this article except that each Party shall be entitled to submit, within ten (10) days of the written request to initiate this Fee Abatement Dispute resolution process, one request for production of documents not to exceed ten (10) requests per Party and responses shall be due thirty (30) days after the request. The Hearing Examiner shall promptly resolve any disputes arising from the limited discovery allowed hereunder.
- 9.7.5. The Hearing Examiner shall not schedule the hearing until both Parties have made all their respective records available for inspection and reproduction and the Parties have been afforded reasonable time to analyze the records. The continued failure of a Party to comply with the document inspection, examination, or submission requirements

shall constitute a waiver of that Party's claims and/or defenses, as applicable. Hearsay evidence shall be admissible but shall not form the sole basis for any finding of fact. Failure of any Party to participate on a timely basis, to cooperate in the proceedings, or to furnish evidence in support or defense of a claim all of which shall be a criterion in determining the sufficiency and validity of a claim.

9.7.6. The Hearing Examiner shall issue a written decision within fifteen (15) working days after conclusion of any testimonial proceeding and, if no testimonial proceeding is conducted, within forty-five (45) days of the filing of the last written submission. This written decision shall set forth the reasons for the disposition of the claim and a breakdown of any specific issues or subcontractor claims. The decision of the Hearing Examiner is binding on the parties, unless either Party elects to appeal the decision of the Hearing Examiner.

9.7.7. If either Party wishes to appeal, such Party may file an appeal within thirty (30) days in a court of competent jurisdiction, it being understood that the review of the court shall be limited to the question of whether or not the Hearing Examiner's determination was arbitrary and capricious, unsupported by any competent evidence, or so grossly erroneous to evidence bad faith.

10. **Naming Rights Facilitation Agreement.** It is acknowledged that NAMING RIGHTS PARTNER is required to separately enter into a Naming Rights Facilitation Agreement with BPL, which shall set forth the terms and conditions of BPL's responsibilities under, and in connection with, this Agreement ("**Naming Rights Facilitation Agreement**"). NAMING RIGHTS PARTNER acknowledges and warrants that the Naming Rights Facilitation Agreement will not violate any of the COUNTY's obligations with NAMING RIGHTS PARTNER under this Agreement. Except for matters arising as a consequence of COUNTY'S failure to fulfill its obligations set forth in the lead-in paragraph of Section 4 hereof, NAMING RIGHTS PARTNER releases COUNTY from any obligations or liabilities with respect to the Naming Rights Facilitation Agreement. If NAMING RIGHTS PARTNER is unable to reach an agreement with BPL concerning the Naming Rights Facilitation Agreement on or before April 20, 2023, NAMING RIGHTS PARTNER or the COUNTY may elect to terminate this Agreement on thirty (30) days prior written notice to the other party.

11. **Representations, Warranties and Other Covenants.**

11.1. **Representations and Warranties of NAMING RIGHTS PARTNER.** NAMING RIGHTS PARTNER represents and warrants to COUNTY that:

11.1.1. NAMING RIGHTS PARTNER is a corporation in good standing under the laws of the State of Delaware and is duly authorized to transact business in the state of Florida;

- 11.1.2. It has the full corporate power and legal authority to enter into and perform this Agreement in accordance with its terms;
- 11.1.3. All necessary corporate approvals for the execution, delivery, and performance by NAMING RIGHTS PARTNER of this Agreement have been obtained, and no consent or approval of any other Person is required for execution of and performance by NAMING RIGHTS PARTNER of this Agreement;
- 11.1.4. This Agreement has been duly executed and delivered by NAMING RIGHTS PARTNER and constitutes a legal, valid and binding obligation of NAMING RIGHTS PARTNER enforceable in accordance with its terms;
- 11.1.5. The execution, delivery and performance of this Agreement by NAMING RIGHTS PARTNER will not conflict with its articles of incorporation, by-laws or other charter and governing documents and will not conflict with or result in the breach or termination of, or constitute a default under, any lease, agreement, commitment or other instrument, or any order, judgment or decree, to which NAMING RIGHTS PARTNER is a party or by which NAMING RIGHTS PARTNER is bound;
- 11.1.6. All materials and other promotions provided or undertaken by NAMING RIGHTS PARTNER do not and will not infringe the rights of any third-party;
- 11.1.7. It owns sufficient right, title and interest in and to the NAMING RIGHTS PARTNER Marks to grant to COUNTY the right and license to use the NAMING RIGHTS PARTNER Marks as contemplated by this Agreement;
- 11.1.8. It has not granted any rights to use the NAMING RIGHTS PARTNER Marks to any Person in any manner which would (A) cause the NAMING RIGHTS PARTNER to be in default under any agreement between the NAMING RIGHTS PARTNER and any other Person, or (B) prevent NAMING RIGHTS PARTNER from entering into and performing its obligations under this Agreement; and
- 11.1.9. There is no litigation pending or, to the Knowledge of NAMING RIGHTS PARTNER, threatened against NAMING RIGHTS PARTNER which would prevent or hinder the consummation of the transactions contemplated by this Agreement or its obligations hereunder.

11.2. Representations and Warranties of COUNTY. COUNTY represents and warrants to NAMING RIGHTS PARTNER that:

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- 11.2.1. It has the full power and legal authority to enter into and perform this Agreement in accordance with its terms. The execution and delivery of this Agreement on behalf of the COUNTY has been duly authorized, all necessary approvals for the execution, delivery, and performance by the COUNTY of this Agreement have been obtained;
- 11.2.2. This Agreement has been duly executed and delivered by the COUNTY and constitutes a legal and binding obligation of the COUNTY enforceable in accordance with its terms;
- 11.2.3. All votes, approvals and proceedings required to be taken by or on behalf of the COUNTY to authorize the COUNTY to execute and deliver this Agreement and to perform its covenants, obligations and agreements hereunder have been duly taken, and no additional consent or approval to the execution and delivery of this Agreement by the COUNTY or the performance by the COUNTY of its covenants, obligations and agreements hereunder are required from any other governmental entity or other Person;
- 11.2.4. The COUNTY is authorized, pursuant to the Management Agreement or any other agreement or arrangement, to enter into this Agreement and to grant to the NAMING RIGHTS PARTNER all of the COUNTY's rights, benefits, and privileges to the Entitlements contemplated to be granted to the NAMING RIGHTS PARTNER hereunder;
- 11.2.5. The COUNTY is not a party to or otherwise bound by any agreement regarding the Arena Naming Rights or any promotion of or advertising relating to the Arena that, in each case, conflicts with the provisions of this Agreement or otherwise impairs any of the Entitlements, rights or other benefits NAMING RIGHTS PARTNER is entitled to receive hereunder. The COUNTY has validly exercised its right to control its naming rights pursuant to and not in contravention of the provisions set forth in the Management Agreement;
- 11.2.6. The COUNTY has not granted any rights pertaining to the subject matter of this Agreement to any Person in a manner which would (A) cause the COUNTY to be in default under any agreement between the COUNTY and any other Person, except for any default that could not reasonably be expected to materially and adversely affect the NAMING RIGHTS PARTNER's rights hereunder, or (B) prevent the COUNTY from granting any of the Entitlements to NAMING RIGHTS PARTNER under this Agreement.

**12. Assignment.**



12.1. Assignments by NAMING RIGHTS PARTNER. The NAMING RIGHTS PARTNER shall not sell, assign, sublicense, pledge, encumber or otherwise transfer (each, a “**Transfer**”) its interest in this Agreement or any of its rights under this Agreement without the prior written consent of the COUNTY (which may be given or withheld in its sole discretion exercised in good faith); provided that (i) in addition to the COUNTY’s written approval, NAMING RIGHTS PARTNER shall not Transfer all or any portion of its interest in this Agreement to any successor, acquirer or transferee of NAMING RIGHTS PARTNER’s business in connection with a merger, corporate restructuring, reorganization or consolidation, Change of Control, or any sale or other transfer of all or substantially all of the NAMING RIGHTS PARTNER’s assets (a) unless the transferee shall assume in writing for the benefit of the COUNTY all obligations in respect of the rights assigned or transferred to such transferee under this Agreement pursuant to an instrument reasonably satisfactory to the COUNTY; and (b) unless NAMING RIGHTS PARTNER’s transferee has a consolidated bona fide net worth net of goodwill, equal to or greater than that of NAMING RIGHTS PARTNER as of the date hereof, such Transfer shall not relieve NAMING RIGHTS PARTNER of any of its obligations under this Agreement, and (ii) the COUNTY’s written approval shall not be required in the event that NAMING RIGHTS PARTNER Transfers this Agreement to an Affiliate of NAMING RIGHTS PARTNER, so long as the Affiliate satisfies the criteria set forth in subsections (d)(B), (d)(C), (d)(D), (d)(E), (d)(G), (d)(I) and (d)(K) of the definition of “Permitted Transferee” and is not subject to, and is not owned by any Person subject to, Additional Sanctions (a “**Permitted Assignee**”) and NAMING RIGHTS PARTNER remains responsible for all obligations of NAMING RIGHTS PARTNER under this Agreement and such Transfer shall not relieve NAMING RIGHTS PARTNER of any of its obligations under this Agreement. For the avoidance of doubt, Transfers contemplated herein shall consist solely of actual Transfers as opposed to Transfers which may occur solely by operation of law (e.g., automatically upon consummation of a merger). If a proposed Transfer is deemed to require consent of the COUNTY hereunder in connection with a merger, corporate restructuring, reorganization or consolidation, Change of Control, or any sale or other transfer of all or substantially all of the NAMING RIGHTS PARTNER’s assets and such Transfer shall not be approved by the COUNTY, then the COUNTY shall describe with particularity the reasons for the rejection. NAMING RIGHTS PARTNER shall coordinate in good faith, discuss and attempt to resolve any objections: (a) raised by BPL directly with BPL and (b) any objections raised by the COUNTY directly with the COUNTY. If the Transfer is to a Permitted Assignee and the COUNTY does not approve such Transfer and the Parties are unable to resolve any such disputes within five (5) days from the date that the COUNTY withholds its approval, NAMING RIGHTS PARTNER may terminate this Agreement upon written notice given within ninety (90) days of notification to NAMING RIGHTS PARTNER of the determination by the COUNTY whereupon all payment obligations set forth in Section 5 (other than Section 5.4) hereunder shall cease with the remainder of this Agreement remaining in effect for the Winding Down Period to allow for customary winding down measures (e.g., removal of signage,

communications with the community, etc.) and this Agreement terminating in its entirety upon the conclusion of such Winding Down Period. For the avoidance of doubt: (x) NAMING RIGHTS PARTNER shall have no right to terminate the Agreement under this subsection 12.1 if a proposed Transfer is to an entity that is not a Permitted Assignee and the COUNTY withholds its approval; and (y) to the extent a change of NAMING RIGHTS PARTNER'S name is contemplated in connection with any assignment contemplated herein, such name change shall be governed exclusively by Section 4.1.5.

12.2. Assignments by COUNTY.

- 12.2.1. COUNTY may Transfer its interest in this Agreement and any or all of its rights and obligations hereunder (including, without limitation, its right to receive the Fees and other payments hereunder) to any other entity, including, without limitation, any Affiliate, any successor, acquirer or transferee of all or substantially all of COUNTY's assets, any source of or guarantor or insurer of financing or any trustee, collateral agent or other entity appointed in connection with such financing (an "Assignee"), whether by assignment, purchase agreement, bill of sale, security agreement, contribution, transfer or otherwise; *provided however*, that such transfer shall not relieve COUNTY of its obligations under this Agreement, except to the extent any such Assignee assumes in writing the obligations of COUNTY under this Agreement. NAMING RIGHTS PARTNER agrees that it will cooperate with COUNTY in effectuating any such Transfer, including, without limitation, by: (a) reaffirming its obligations hereunder, including its obligation to pay the Fees hereunder to any Assignee, subject to the terms and conditions of this Agreement; (b) executing and delivering to COUNTY or such Assignee such agreements, documents and certificates as COUNTY or such Assignee may reasonably request to acknowledge and confirm that upon any such Transfer (i) this Agreement shall remain in full force and effect, (ii) this Agreement shall continue to be a legal, valid and binding obligation of NAMING RIGHTS PARTNER enforceable in accordance with its terms (subject to applicable bankruptcy or Insolvency Laws and general principles of equity), and (iii) neither NAMING RIGHTS PARTNER nor, to NAMING RIGHTS PARTNER's Knowledge, COUNTY is in default of this Agreement (as set forth in Section 9); and (c) making any payments due hereunder (including, without limitation, all installments of the Fees) to such Assignee to the accounts or locations specified by such Assignee.
- 12.2.2. In the event that the COUNTY shall Transfer its interest in this Agreement to an entity which is not wholly owned, directly or indirectly, by the COUNTY, NAMING RIGHTS PARTNER may, within one hundred and eighty (180) days of the later of the (i)

completion of the Transfer, or (ii) notification of the Transfer by the COUNTY, terminate this Agreement on no less than sixty (60) days' prior written notice to the COUNTY and the transferee. At the request of the COUNTY and prior to the completion of any Transfer of the type specified in Section 12.2.1, NAMING RIGHTS PARTNER will meet with the proposed transferee to negotiate a mutually acceptable amendment to this Agreement addressing those concerns of NAMING RIGHT PARTNER associated with the proposed Transfer. Nothing herein shall obligate NAMING RIGHTS PARTNER to enter into any such amendment. In the event the proposed transferee and NAMING RIGHTS PARTNER reach an agreement and enter into a proposed amendment to this Agreement, NAMING RIGHTS PARTNER shall not terminate this Agreement as set out in this Section 12.2.2. Notwithstanding anything to the contrary herein, in the event the COUNTY assigns this Agreement to the Heat or BPL, NAMING RIGHTS PARTNER may not terminate this Agreement in accordance with this Section 12.2.2.

### **13. Indemnification and Injunctive Relief.**

- 13.1. NAMING RIGHTS PARTNER Indemnity. NAMING RIGHTS PARTNER shall indemnify, defend, and hold harmless COUNTY and its employees, licensees, successors, and assigns (collectively, the “**COUNTY Indemnitees**”) from and against all actions, causes of action, suits, debts, obligations, losses, damages, amounts paid in settlement, liabilities, costs, and expenses (including reasonable attorney’s fees) whatsoever raised, filed or asserted by any third-party, including reasonable attorneys’ fees (collectively, “**Losses**”), to the extent attributable to (a) any breach, failure to perform or misrepresentation by NAMING RIGHTS PARTNER under this Agreement, (b) the distribution, delivery, provision, advertisement, promotion or sale of any product or service by NAMING RIGHTS PARTNER to, any Person attending events at the Arena or on the Site, (c) the ownership, use or display of the NAMING RIGHTS PARTNER Marks, including but not limited to, claims that the NAMING RIGHTS PARTNER or COUNTY has infringed or misappropriated the Intellectual Property rights of a third party, of trademark infringement, of unfair competition, or any other liability but only to the extent arising from NAMING RIGHTS PARTNER or COUNTY’S use of trademarked or copyrighted material in accordance with the terms of this Agreement; or (d) the negligence or willful misconduct of NAMING RIGHTS PARTNER or any of its officers, directors, managers, members, partners, owners, employees, licensees, successors, and assigns in connection with this Agreement, except, in each case, to the extent caused by a breach of this Agreement by any COUNTY Indemnitee or any willful misconduct or negligent act or omission of any COUNTY Indemnitee. NAMING RIGHTS PARTNER shall promptly notify the COUNTY in writing of the pendency of any claim against NAMING RIGHTS PARTNER covered by subsection (c) herein within 15 days of becoming aware of such claim.

- 13.2. COUNTY Indemnity. Subject to and within the limitations of the provisions of Section 768.28, Fla. Stat., whereby the COUNTY shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum set forth in said statute, or any claims or judgments or portions thereof, which, when totaled with all other occurrences, exceeds the sum set forth in said statute, COUNTY shall indemnify, defend and hold harmless NAMING RIGHTS PARTNER and its officers, directors, managers, members, partners, owners, employees, licensees, successors and assigns (collectively, the “**NAMING RIGHTS PARTNER Indemnitees**”) from and against any and all Losses, whether arising out of a claim involving a third-party, resulting to, imposed upon, asserted against, or incurred by any of the NAMING RIGHTS PARTNER Indemnitees for any claim arising on the grounds of the Arena resulting from (a) any breach, failure to perform or misrepresentation by COUNTY under this Agreement, or (b) the negligence or willful misconduct of COUNTY, its officers, agents or employees, in providing any Entitlement to NAMING RIGHTS PARTNER, except, in each case, to the extent caused by any willful misconduct or negligent act or omission of any NAMING RIGHTS PARTNER Indemnitee. For the avoidance of doubt, COUNTY shall not indemnify or defend NAMING RIGHTS PARTNER Indemnitees from any Losses resulting from any acts or omissions, negligence, or willful misconduct of BPL, Team, or any of their Affiliates.
- 13.3. Limitations of Liability. Notwithstanding anything to the contrary herein, no claim may be made by either Party against the other Party or any Affiliate, director, member, manager, officer, employee, attorney or agent thereof for any special, indirect, consequential, incidental or punitive damages in respect of any claim for breach of contract or any other theory of liability arising out of or related to the transactions or relationships contemplated by this Agreement or any other transaction, relationship, act, omission or event arising or occurring in connection therewith. Each Party waives, releases and agrees not to sue upon any claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.
- 13.4. Survival. The obligations in this Section 13 shall survive the expiration or earlier termination of this Agreement, but only insofar as they relate to claims that accrue or arise prior to the expiration or earlier termination of this Agreement.
14. Compliance. This Agreement is subject and subordinate to (i) NBA Rules, (ii) solely with respect to Significant Events, if and to the extent applicable, the rules and regulations, the sanctioning bodies and governing authorities for the applicable Significant Event, as the same may be amended or adopted from time to time, (iii) the terms and conditions of the Management Agreement (as in effect on the Effective Date), and (iv) all Laws as they currently exist or as they may be amended or modified from time to time hereafter.
15. Force Majeure. If a Force Majeure Event prevents or delays COUNTY from performing any of its obligations under this Agreement, then COUNTY shall be excused from such performance (but shall not be excused from providing a Substitute Entitlement or Fee

Credit in lieu of the Entitlement which is unavailable) and shall not be in breach of this Agreement for any nonperformance to the extent, but only to the extent, made necessary by the Force Majeure Event and only until such time as the Force Majeure Event terminates or is revoked or resolved, *provided, however*, that the COUNTY shall promptly take all reasonable steps to reduce the time the Force Majeure period is in effect and the effect of the Force Majeure Event and provided further, however, that the COUNTY shall use commercially reasonable efforts to carry out the purposes of this Agreement notwithstanding the occurrence of a Force Majeure Event. For the avoidance of doubt, any Substitute Entitlements contemplated under this Section will be determined pursuant to Section 4.2.6 and any Fee Credits contemplated under this Section pursuant to Section 16.2. The absence of a reference to the term “Force Majeure Event” in any provision of this Agreement shall not be considered in interpreting whether such provision may be subject to a Force Majeure Event.

**16. Abatement of Fees and Make Good Rights.**

- 16.1. **Minimum Event Threshold.** If the Arena does not host at least forty (40) Events (in addition to regular season Home NBA Team Games) in any Contract Year (the “**Minimum Event Threshold**”), the Parties shall negotiate in good faith for an appropriate Fee Credit to be provided to NAMING RIGHTS PARTNER. If the parties are unable to agree on a mutually acceptable Fee Credit, then the dispute resolution process set forth in Section 9.7. shall apply.
- 16.2. **Benefits Materially Frustrated.** If the NAMING RIGHTS PARTNER’s ability to realize the full benefits of the Agreement is materially frustrated by (i) a Force Majeure Event (described in greater detail in Section 15 above); (ii) a change of Law; or (iii) an NBA team’s failure to occupy and play more than twenty (20) Home NBA Team Games in any Contract Year, the Parties shall negotiate in good faith for an appropriate Fee Credit to be provided to NAMING RIGHTS PARTNER. If the parties are unable to agree on a mutually acceptable Fee Credit, then the dispute resolution provisions of Section 9.7 shall apply.
- 16.3. **NBA Strike or Lock-Out.** If the NBA players strike or the NBA owners’ lockout the players during an NBA season, resulting in the cancellation of more than 25% of the regular season games of the Team, the Parties shall negotiate in good faith for an appropriate Fee Credit to be provided to NAMING RIGHTS PARTNER. If the parties are unable to agree on a mutually acceptable Fee Credit, then the dispute resolution provisions of Section 9.7 shall apply.

**17. Exculpation.**

- 17.1. NAMING RIGHTS PARTNER shall look only to COUNTY for the satisfaction of NAMING RIGHTS PARTNER’s remedies or for the collection of a judgment (or other judicial process) requiring the payment of money by COUNTY in the event of any COUNTY Default hereunder.

17.2. COUNTY shall look only to NAMING RIGHTS PARTNER (or its successors, and assigns, if applicable) or its property for the satisfaction of COUNTY's remedies or for the collection of a judgment (or other judicial process) requiring the payment of money by NAMING RIGHTS PARTNER in the event of any NAMING RIGHTS PARTNER Default hereunder.

17.3. This provision shall survive the expiration or termination of this Agreement.

**18. Notices.**

18.1. All notices, demands, certificates or other communications under this Agreement shall be in writing and by both (x) email and (y) commercial courier, or certified mail, return receipt requested (except where otherwise expressly provided). Notices shall be deemed delivered: (i) when actually received if personally delivered by hand or by reputable courier service, or (ii) three (3) Business Days after deposit in the U.S. Mail postage prepaid, certified mail return receipt requested, and in each case properly addressed as follows:

If to NAMING RIGHTS PARTNER:

Kaseya US LLC  
ATTN: Sepi Tofigh  
Title: Chief Legal & HR Officer  
701 Brickell Ave, Suite 400  
Miami, FL 33131

With a copy to:

Greenberg Traurig P.A.  
333 S.E. 2<sup>nd</sup> Avenue  
Miami, FL, 33133, United States  
Attention: Jaret Davis

With copy by email to all of the following:

[namingrights@kaseya.com](mailto:namingrights@kaseya.com)  
[davisj@gtlaw.com](mailto:davisj@gtlaw.com)

If to COUNTY:

County Mayor's Office  
111 NW 1st Street, 29th Floor, Suite 2910  
Miami, FL 33128

With a copy to:

Office of the County Attorney  
Stephen P. Clark Center  
111 NW 1st Street  
Suite 2810  
Miami, Florida 33128

and

111 NW 1st Street, 22<sup>nd</sup> Floor  
Miami, FL 33128  
Attn: Daniel Wall, Assistant Director,  
Office of Management and Budget  
(the “Project Manager”)

With copy by email to all of the following:  
[Daniel.wall@miamidade.gov](mailto:Daniel.wall@miamidade.gov)

- 18.2. The COUNTY will provide KASEYA with written notice if BPL and the COUNTY intend to amend any Arena Agreements in a manner that is reasonably expected to have an adverse effect on KASEYA’S rights hereunder.
19. **Governing Law and Venue.** This Agreement and all other documents to be entered into in connection with the transactions contemplated hereby shall be governed by, and construed and enforced in accordance with, the substantive laws of the State of Florida without regard to its principles of conflicts of law. The Parties consent and submit to the exclusive jurisdiction of the United States District Court for the Southern District of Florida or the Eleventh Judicial Circuit Court for the State of Florida, in connection with the enforcement of this Agreement and all other documents to be entered into in connection with the transactions contemplated hereby. This provision shall survive expiration or termination of this Agreement.
20. **Press Releases.** The Parties agree that, unless the other party hereto is in default hereunder, they will not issue any press release related to this Agreement and the matters contemplated therein without the prior written consent of the other and if a press release is to be issued the parties will agree in advance on the timing of the release. The content of all such press releases and any related announcements regarding this Agreement shall be mutually agreed upon by the Parties prior to their release.
21. **Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer upon any entity or person other than the Parties and their permitted successors and assigns and BPL any rights or remedies under or by reason of this Agreement as a third-party beneficiary or otherwise except as specifically provided in this Agreement; or authorize anyone not a party to this Agreement (with the exception of BPL) to maintain an action pursuant to or based upon this Agreement. The Parties understand and agree that they intend to, and do hereby, make BPL an intended third-party beneficiary to this

Agreement with the right to enforce and exercise all of the provisions contained herein as against NAMING RIGHTS PARTNER.

22. **Additional Right to Terminate Based on Failure to Obtain NBA Approval.** The Parties agree and acknowledge that the entitlement regarding placement of the Arena Logo onto the Team basketball court is subject to the written approval by the NBA. Accordingly, if no such NBA approval has been received by NAMING RIGHTS PARTNER within 60 days of execution of this agreement or such approval has been denied (“**Approval Deadline**”), then, in addition to any and all rights and remedies of NAMING RIGHTS PARTNER in Section 9.4 of this Agreement (and without limiting any termination right expressly provided in any other provision of this Agreement), NAMING RIGHTS PARTNER and the COUNTY shall have the right to terminate this Agreement, which right of termination may be exercised by NAMING RIGHTS PARTNER, in its sole discretion, by written notice to the COUNTY within 10 days of the Approval Deadline that includes the following: (a) an explicit statement that NAMING RIGHTS PARTNER is exercising its right under Section 22 of this Agreement to terminate this Agreement and (b) a representation that NBA approval for placement of the Arena Logo onto the Team basketball court has not yet been provided or has been denied. If NAMING RIGHTS PARTNER fails to provide such written notice within 10 days of the Approval Deadline, NAMING RIGHTS PARTNER shall be deemed to have waived any rights under this Section 22 to terminate this Agreement. In the event this Agreement is timely terminated by NAMING RIGHTS PARTNER under this Section 22, NAMING RIGHTS PARTNER shall be under no obligation of any fees, expenses, or anything related to this Agreement.
23. **Drafting; Neutral Interpretation.** Each Party recognizes that this is a legally binding contract and acknowledges and agrees that they have had the opportunity to consult with legal counsel of their choice. Each Party has cooperated in the drafting, negotiation and preparation of this Agreement. In any construction to be made of this Agreement, this Agreement shall be interpreted neutrally, and no rule of construction shall be construed against either Party on the basis of that Party being the drafter of such language.
24. **Amendments; Waivers.** This Agreement may not be amended, modified, altered or supplemented other than by means of a written instrument approved by the Parties’ appropriate authorities duly executed and delivered by the Parties hereto. Except as expressly provided in this Agreement, no waiver of any provision of, or consent or approval required by, this Agreement, nor any consent to or approval of any departure here from, shall be effective unless it is in writing and signed by the Party against whom enforcement of any such waiver, consent or approval is sought; provided that for avoidance of doubt the Parties acknowledge that a failure to respond or act when required (or within the time limit) to do so shall not be affected by this requirement for a waiver to be in writing. Such waiver, consent or approval shall be effective only in the specific instance and for the purpose for which given. Neither the failure of any Party to enforce, nor the delay of any Party in enforcing, any condition, provision or part of this Agreement at any time shall be construed as a waiver of that condition, provision or part or forfeit any rights to future enforcement thereof. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party hereto, shall be deemed to constitute a waiver by the Party taking action



of compliance by any other Party with any representation, warranty, covenant or agreement contained herein.

25. **Severability.** Should any provision of this Agreement be determined to be invalid for any reason, such invalidity shall not affect the validity of any other provisions, which other provisions shall remain in full force and effect as if this Agreement had been executed with the invalid provision eliminated, and it is hereby declared the intention of the Parties that they would have executed the other provisions of this Agreement without including therein any such provisions which may for any reason be hereafter determined invalid.
26. **Relationship of Parties.** Nothing contained herein shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent or master and servant between the Parties, or provide either Party with the right, power, or authority, whether express or implied, to create any such duty or obligation on behalf of the other Party. Further, NAMING RIGHTS PARTNER understands and agrees that BPL is not, and nothing herein or otherwise shall be deemed to create as between BPL and the COUNTY, any association, partnership, joint venture, or relationship of principal and agent or master and servant between BPL and the COUNTY, or provide either BPL or the COUNTY with the right, power, or authority, whether express or implied, to create any such duty or obligation on behalf of the other party.
27. **Headings.** The headings utilized in this Agreement are intended solely for convenience of reference and shall be given no effect in the structural interpretation of this Agreement.
28. **References.** Unless explicitly stated otherwise, all references to “sections”, “schedules” or “exhibits” shall be references to the sections, schedules and exhibits to this Agreement, as amended, modified, supplemented or restated from time to time. All references to this Agreement shall include all such sections, schedules and exhibits.
29. **General Interpretative Provisions.** Terms for which meanings are defined in this Agreement shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine and feminine forms. Unless otherwise set forth in this Agreement, whenever used in any provision of this Agreement, the term “including” means including but without limiting the generality of any description preceding or succeeding such term. Each reference to a Person or entity shall include a reference to the successors and assigns of such Person or entity. Wherever in this Agreement there is an obligation on the COUNTY to use “commercially reasonable efforts”, such obligations shall not require the COUNTY to expend any funds to effectuate the commercially reasonable efforts.
30. **Entire Agreement.** This Agreement, including all Schedules and attachments hereto, constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings. All representations and negotiations relative to the matters contemplated by this Agreement are merged herein, and there are no contemporaneous understandings or agreements relating to the matters set forth herein other than those incorporated herein.

31. **Electronic Signature.** This Agreement may be executed in counterparts and/or by electronic signature (e.g., docusign) with the same effect as an original signature.
32. **Survival.** The provisions of this Agreement, which by their nature should apply beyond their terms, will remain in force after any termination or expiration of this Agreement including, but not limited to, Sections **Error! Reference source not found.**-5.5, 7.1, 7.5, 7.7, 9, 13, 19-38. In addition, any payment obligation of either Party that (i) accrues or arises prior to or at the time of expiration or earlier termination of this Agreement and (ii) that is contemplated under the terms of this Agreement to be paid after such expiration or earlier termination shall survive such expiration or earlier termination until paid.
33. **Vendor Registration/ Conflict of Interest.**
- 33.1. NAMING RIGHTS PARTNER shall be a registered vendor with the COUNTY – Internal Services Department, Procurement Management Division, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, NAMING RIGHTS PARTNER confirms its knowledge of and commitment to comply with the following:
1. ***Miami-Dade County Ownership Disclosure Affidavit***  
(Section 2-8.1 of the County Code)
  2. ***Miami-Dade County Employment Disclosure Affidavit***  
(Section 2-8.1(d)(2) of the County Code)
  3. ***Miami-Dade Employment Drug-free Workplace Certification***  
(Section 2-8.1.2(b) of the County Code)
  4. ***Miami-Dade Disability and Nondiscrimination***  
(Section 2-8.1.5 of the County Code)
  5. ***Miami-Dade County Debarment Disclosure***  
(Section 10.38 of the County Code)
  6. ***Miami-Dade County Vendor Obligation to County Affidavit***  
(Section 2-8.1 of the County Code)
  7. ***Miami-Dade County Code of Business Ethics Affidavit***  
(Article I, Section 2-8.1(i) of the County Code)
  8. ***Miami-Dade County Family Leave***
  9. ***Miami-Dade County Suspected Workers' Compensation Fraud Affidavit***  
(Resolution No. R-919-18)
  10. ***Miami-Dade County Domestic Leave and Reporting***  
(Article 8, Section 11A-60, 11A-67 of the County Code)
  11. ***Miami-Dade County Verification of Employment Eligibility (E-Verify) Affidavit***  
(Section 448.095, Florida Statutes)
  12. ***Miami-Dade County Pay Parity Affidavit*** (Resolution No. R-1072-17)
  13. ***Subcontracting Practices***  
(Section 2-8.8 of the County Code)
  14. ***Subcontractor /Supplier Listing***  
(Section 2-8.1 and 10.34 of the County Code)

**15. W 9 and 8109 Forms**

(as required by the Internal Revenue Service)

**16. FEIN Number or Social Security Number**

In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:

- Identification of individual account records
- To make payments to individual/Contractor for goods and

services provided to Miami- Dade County

- Tax reporting purposes
- To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records.

**17. Office of the Inspector General**  
(Section 2-1076 of the County Code)

**18. Small Business Enterprises**

The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.

**19. Antitrust Laws**

By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

- 33.2. **Conflict of Interest/Code of Ethics.** Section 2-11.1(d) of Miami-Dade County Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. All autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Miami-Dade County Code relating to Conflict of Interest and Code of Ethics. In accordance with 2-11.1 (y), the Miami Dade County Commission on Ethics and Public Trust (Ethics Commission) shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Conflict of Interest and Code of Ethics Ordinance.

**34. Inspector General Reviews.**

- 34.1. Independent Private Sector Inspector General Reviews. Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter “**IPSIG**”), whenever the County deems it appropriate to do so. Upon written notice from the COUNTY, the NAMING RIGHTS PARTNER shall make available to the IPSIG retained by the COUNTY, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The COUNTY shall be responsible for the payment of these IPSIG services, and under no circumstance shall the NAMING RIGHTS PARTNER’s compensation and any changes thereto approved by the COUNTY, be inclusive of any charges relating to these IPSIG services. The terms of this provision apply to the NAMING RIGHTS PARTNER, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the COUNTY to conduct an audit or investigate the operations, activities and performance of the NAMING RIGHTS PARTNER in connection with this Agreement. The terms of this Article shall not impose any liability on the COUNTY by the NAMING RIGHTS PARTNER or any third party.
- 34.2. Miami-Dade County Inspector General Review. According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all COUNTY contracts, throughout the duration of said contracts. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the COUNTY from progress payments to the NAMING RIGHTS PARTNER. The audit cost shall also be included in all change orders and all contract renewals and extensions.
- 34.3. *Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-38; (m) federal, state and local government-funded grants; and (n) interlocal agreements. Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.*
- 34.4. Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all COUNTY contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General

is authorized and empowered to review past, present, and proposed COUNTY and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications, and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the contract. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the NAMING RIGHTS PARTNER, its officers, agents and employees, lobbyists, COUNTY staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

- 34.5. Upon written notice to the NAMING RIGHTS PARTNER from the Inspector General or IPSIG retained by the Inspector General, the NAMING RIGHTS PARTNER shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the NAMING RIGHTS PARTNER's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

### **35. Compliance with Laws.**

- 35.1. NAMING RIGHTS PARTNER agrees to comply, subject to applicable Laws, with the provisions of any and all applicable Federal, State and County orders, statutes, ordinances, rules and regulations which may pertain to the services required under this Agreement, including, but not limited to:
- 35.1.1. Equal Employment Opportunity (EEO), in compliance with Executive Order 11246, as amended and applicable to this Agreement.
  - 35.1.2. Miami-Dade County Small Business Enterprises Development Participation Provisions, as applicable to this Agreement.
  - 35.1.3. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.

- 35.1.4. Section 2-11.1 of the Code of Miami-Dade County, “Conflict of Interest and Code of Ethics.”
- 35.1.5. Section 10-38 of the Code of Miami-Dade County, “Debarment of Contractors from County Work.”
- 35.1.6. Section 11A-60 - 11A-67 of the Code of Miami-Dade County, “Domestic Leave.”
- 35.1.7. Section 21-255 of the Code of Miami-Dade County, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against the County.
- 35.1.8. The Equal Pay Act of 1963, as amended (29 U.S.C. 206(d)).
- 35.1.9. Section 448.07 of the Florida Statutes “Wage Rate Discrimination Based on Sex Prohibited.”
- 35.1.10. Chapter 11A of the Code of Miami-Dade County (§ 11A-1 et seq.) “Discrimination.”
- 35.1.11. Chapter 22 of the Code of Miami-Dade County (§ 22-1 et seq.) “Wage Theft.”
- 35.1.12. Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 et seq.) “Gender Price Discrimination Ordinance.”
- 35.1.13. Any other laws prohibiting wage rate discrimination based on sex.
- 35.1.14. To the extent applicable, Section 255.05, Florida Statutes.
- 35.2. By entering into this Agreement, the NAMING RIGHTS PARTNER is certifying that the NAMING RIGHTS PARTNER is in compliance with, and will continue to comply with, the provisions of items “35.1.8” through “35.1.13” above.
- 35.3. The NAMING RIGHTS PARTNER shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the COUNTY or NAMING RIGHTS PARTNER for failure of NAMING RIGHTS PARTNER to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the NAMING RIGHTS PARTNER. The Project Manager shall verify the certification(s), license(s), permit(s), etc. for the NAMING RIGHTS PARTNER.
- 35.4. Notwithstanding any other provision of this Agreement, NAMING RIGHTS PARTNER shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith

determination of the NAMING RIGHTS PARTNER, constitute a violation of any law or regulation to which NAMING RIGHTS PARTNER is subject, including but not limited to laws and regulations requiring that NAMING RIGHTS PARTNER conduct its operations in a safe and sound manner.

**36. Non-Discrimination.**

- 36.1. During the performance of this Agreement, NAMING RIGHTS PARTNER agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or status as veteran, and on housing related contracts because of the source of income, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.
- 36.2. By entering into this Agreement, the NAMING RIGHTS PARTNER attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami- Dade County Resolution No. R-385-95. If the NAMING RIGHTS PARTNER or any owner, subsidiary or other firm affiliated with or related to the NAMING RIGHTS PARTNER is found by the responsible enforcement agency or the COUNTY to be in violation of the Act or the Resolution, such violation shall render this Agreement void. This Agreement shall be void if the NAMING RIGHTS PARTNER submits a false affidavit pursuant to the Resolution or the NAMING RIGHTS PARTNER violates the Act or the Resolution during the term of this Agreement, even if the NAMING RIGHTS PARTNER was not in violation at the time it submitted its affidavit.

**37. Public Records and Contracts for Services Performed on Behalf of the COUNTY.**

- 37.1. The NAMING RIGHTS PARTNER shall comply with the Public Records Laws of the State of Florida, including, but not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the COUNTY in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the COUNTY would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the COUNTY all public records in possession of the NAMING RIGHTS PARTNER upon termination of the contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the

COUNTY in a format that is compatible with the information technology systems of the COUNTY. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of this Agreement and shall be enforced in accordance with the terms and conditions of this Agreement.

- 37.2. **IF THE NAMING RIGHTS PARTNER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE NAMING RIGHTS PARTNER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, ISD-VSS@MIAMIDADE.GOV, 111 NW 1ST STREET, SUITE 1300, MIAMI, FLORIDA 33128.**

**38. COUNTY's Rights as Sovereign**

- 38.1. Notwithstanding and prevailing over any contrary provision in this Agreement, it is expressly understood that the COUNTY retains all of its sovereign prerogatives and rights as a county under Florida laws and shall in no way be estopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations of whatever nature. The COUNTY shall not by virtue of this Agreement be obligated to grant NAMING RIGHTS PARTNER or BPL any approvals of applications for building, zoning, planning, improving, equipping, or development under present or future laws and ordinances of whatever nature.
- 38.2. Any COUNTY covenant or obligation that may be contained in this Agreement shall not bind the Board of County Commissioners, any zoning appeals board, the Department of Regulatory and Economic Resources of Miami-Dade County or any other County, local, federal or state department, authority, or agency to grant or leave in effect any zoning changes, variances, permits, waivers, or any other approvals that may be granted, withheld or revoked in the discretion of the applicable COUNTY or other applicable governmental entities in the exercise of its police power; and the County shall be released and held harmless, by NAMING RIGHTS PARTNER from any liability, responsibility, claims, consequential or other damages, or losses to NAMING RIGHTS PARTNER or to any third parties resulting from denial, withholding, or revocation (in whole or in part) of any zoning or other changes, variances, permits, waivers, amendments, or approvals of the kind or nature specified above.

[signature page follows]



**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date.

STATE OF FLORIDA  
COUNTY OF

**KASEYA US LLC**

\_\_\_\_\_  
The foregoing instrument was acknowledged before me by means of \_\_\_\_\_ physical presence or \_\_\_\_\_ online notarization on, \_\_\_\_\_ by \_\_\_\_\_, who is personally known to me or who produced Driver's License as identification.

**By:** \_\_\_\_\_

**Name:** Sepedeh Tofigh

**Title:** Chief Legal & HR Officer

**Date:** March 28, 2023

Notary Public State of Florida

Name typed, printed, or stamped My  
Commission Expires:

(Affix Notarial Seal)

Approved by the County Attorney as  
To form and legal sufficiency. \_\_\_\_

**MIAMI-DADE COUNTY, FLORIDA**

**By:** \_\_\_\_\_

**Name:** Daniella Levine Cava

**Title:** Mayor

(OFFICIAL SEAL)

**Effective Date:** \_\_\_\_\_

ATTEST:  
HARVEY RUVIN, CLERK

By:

\_\_\_\_\_  
Deputy Clerk

**SCHEDULE A**  
**Entitlements**

*Applicable during the Term, as of the Effective Date*

The Parties agree and acknowledge that the Entitlements listed below, other than the naming of the Arena as the “Kaseya Center,” are subject to NAMING RIGHTS PARTNER entering into a Naming Rights Facilitation Agreement, which provides such Entitlements.

1. Social Media Launch Campaign. Two (2) social media posts in the first thirty (30) days following the Effective Date of the Agreement by Arena Social Media Accounts.
2. Exterior Signage. NAMING RIGHTS PARTNER shall, in accordance with and as permitted by applicable law, be entitled to:
  - 2.1 Arena Logo Marquee Locations.
    - 2.1.1 Signage displaying the Arena Logo on the main entrance on west side of Arena - Faces Biscayne Blvd (over gates 1 and 2);
    - 2.1.2 Signage displaying the Arena Logo on Gate 5 (north entrance) of Arena - Faces 8th Street; and
    - 2.1.3 Signage displaying the Arena Logo on Gate 6 (south entrance) of Arena - Faces Port Blvd. and Bayside Mall
  - 2.2 Rooftop Arena Logo. Signage displaying the Arena Logo placed on the rooftop of the Arena.
  - 2.3 Arena Media Mesh. Place promotional messaging for minimum of twenty (20) minutes per day on the digital motion graphic marquee on front of the Arena.
  - 2.4 8th Street Signage. Signage displaying the Arena Logo between the Box Office and Sponsored Gate 4 of the Arena above Team Store. NAMING RIGHTS PARTNER hereby acknowledges and agrees that Signage will recognize the third-party sponsor of Gate 4; for purposes of example, Lexus Gate 4 at Kaseya Center.
  - 2.5 Box Office. Rotation on Exterior Box Office digital displays.
  - 2.6 On-Site Garage.
    - 2.6.1 Arena Logo on the exterior entrance/exit wayfinding and directional Signage of the On-Site Garage.
    - 2.6.2 Arena Logo on the pillars and walls located inside the On-Site Garage.

2.6.2.1 NAMING RIGHTS PARTNER shall have the right to place “Welcome to Kaseya Center” messaging or graphic within On-Site Garage elevator.

2.6.3 Arena Logo on interior On-Site Garage wayfinding and directional Signage.

2.7 Trash Enclosures. Arena Logo on applicable exterior trash/recycling enclosures.

2.8 LEED Banner. Arena Logo placement on all LEED certification banners on the Site.

2.9 Site Wayfinding Signage. Arena Logo placement on wayfinding signs located on the Site.

2.10 Additional Exterior Signage. NAMING RIGHTS PARTNER shall have the right to place additional signs, videoboards, or free-standing features on the exterior of the Arena as approved in writing by BPL, such approval not to be unreasonably withheld, conditioned, or delayed.

3. Interior Signage. NAMING RIGHTS PARTNER shall be entitled to:

3.1 Arena Branding.

3.1.1 Arena Logo or Arena Name included throughout interior finishes with graphic coverings as mutually agreed upon in writing by the Parties and BPL, which approval shall not be unreasonably conditioned, withheld or delayed

3.1.2 Arena Logo or Arena Name included in wayfinding Signage within Arena

3.1.3 Arena Logo or Arena Name included on exterior and interior of all Suites

3.1.4 Arena Name placements as allowable and pursuant to any conditions by the NBA will be affixed to the primary and all secondary basketball playing surfaces, including basketball courts. This grant shall not include any practice courts.

3.1.5 Arena Name placements will be affixed to other playing surfaces for other sporting events held in the Arena as permitted by the rules or regulations of the applicable league or governing body (excluding esports).

3.1.6 Arena Name or Logo recognition on (non-emergency) Arena “welcome/walk-up” PA announcements and entrance/exit Signage welcoming fans to the Arena.

- 3.2 Courtside Lounge. Arena Logo or Name Signage above each vomitory on each side of both lounges. NAMING RIGHTS PARTNER hereby acknowledges and agrees that the Signage will recognize the third-party sponsor of lounges; for purposes of example, Club XYZ at Arena Logo / Name.
- 3.3 Gate 4 Entrance. Arena Logo or Name placement in VIP/Business entrance. NAMING RIGHTS PARTNER hereby acknowledges and agrees that the Signage will recognize the third-party sponsor of Gate 4; for purposes of example, Lexus Gate 4 at Kaseya Center.
- 3.4 Concourse.
  - 3.4.1 Guest Service Booths. Arena branding on all concourse guest service booths, including but not limited to the main concourse and upper concourse.
  - 3.4.2 Flooring. The main concourse flooring may feature Arena Logo or Arena Name in replacement terrazzo flooring, carpeting, and/or floor graphic wraps, including main ingress/egress areas, such as elevator and escalator landings, stairwells, etc.
- 3.5 Staff Uniforms. Arena Logo placement on staff uniforms and/or badges at the Arena (security, ushers, etc.). NAMING RIGHTS PARTNER shall not be responsible for the cost and expense of the Arena Logo placement on staff uniforms.
- 3.6 Center Hung Main Scoreboard.
  - 3.6.1 Permanent Arena Logo recognition on underbelly Signage of main, center-hung scoreboard (will be the default position when this sign becomes digital).
  - 3.6.2 Permanent Arena Logo recognition on the main, center-hung scoreboard in a position mutually agreed upon in writing by NAMING RIGHTS PARTNER and BPL (current and future designs).
  - 3.6.3 For all Home NBA Team Games, opening game 'Welcome to Kaseya Center' spot.
- 3.7 Mezzanine Level.
  - 3.7.1 Arena Name or Logo placement inside main entrance
  - 3.7.2 Arena Name or Logo placement within the Office, including directional Signage therein.
- 3.8 NAMING RIGHTS PARTNER shall have the right to place the Arena Logo on the end of all in-bowl seating rows.

- 3.9 NAMING RIGHTS PARTNER shall have the right to place “Welcome to Kaseya Center” messaging or graphic within Arena elevators.
- 3.10 Additional Interior Signage. NAMING RIGHTS PARTNER shall have the right to place additional signs, videoboards, or free-standing features in the interior of the Arena as approved in writing by the NAMING RIGHTS PARTNER and BPL, which approval shall not be unreasonably withheld, conditioned, or delayed.
- 4. Print/Collateral. NAMING RIGHTS PARTNER shall be entitled to:
  - 4.1 Arena Name or Logo inclusion on Event ticketing, including both mobile and printed tickets.
  - 4.2 Arena Name or Logo placement on Arena will call envelopes.
  - 4.3 Arena Name or Logo inclusion on Employee ID badges.
  - 4.4 Business Materials and Communication Collateral.
    - 4.4.1 Arena Logo placement on communication collateral (e.g., emails, letterhead, business cards, envelopes, mailing labels, press releases, printed programs, yearbooks and other communication forms used by Arena personnel).
    - 4.4.2 Arena Logo placement may be incorporated into mutually agreed upon non-cup concessions packaging and components, subject to BPL and Concessionaire written approval, such approvals shall not be unreasonably withheld, conditioned, or delayed. NAMING RIGHTS PARTNER shall be responsible for all incremental costs (and only such incremental costs) associated with the incorporation of the Arena Logo.
- 5. Digital/Social. NAMING RIGHTS PARTNER shall be entitled to:
  - 5.1 Arena Logo and NAMING RIGHTS PARTNER messaging integrated within Arena website, including click through capabilities.
  - 5.2 Twelve (12) social media posts per year per Arena Social Media Account (current and future platforms).
  - 5.3 Arena URL and social media handles to be changed to include NAMING RIGHTS PARTNER.
- 6. Other Arena Assets. NAMING RIGHTS PARTNER shall be entitled to:
  - 6.1 Activate mutually agreed upon (in writing) concourse promotional displays, interior or exterior activation set-ups at all Events. NAMING RIGHTS PARTNER has the right to activate via a permanent unmanned, digital booth in the concourse at the investment of NAMING RIGHTS PARTNER.

- 6.2 One (1) giveaway/contest per publicly ticketed general admission Event other than HOME NBA Team Games. Such Events that involve a third-party promoter will require written approval from such promoter. In, addition, NAMING RIGHTS PARTNER shall be entitled to two (2) giveaways/contests per HOME NBA Team Game, which shall be the sole responsibility of BPL.
- 6.3 Naming Rights Partner shall reserve the right to conduct mutually agreed upon (in writing) in-Arena promotional/marketing activities at the investment of NAMING RIGHTS PARTNER. Activities shall be subject to promoter contractual rights.
- 7. Hospitality and Arena Use. NAMING RIGHTS PARTNER shall be entitled to:
  - 7.1 Luxury Suite.
    - 7.1.1 Luxury Suite from among the Suites with sixteen (16) tickets and six (6) red parking passes or their subsequent equivalent for all Home NBA Team Games and Other Events for which Suite and premium seat holders receive tickets. At the commencement of this Agreement, NAMING RIGHTS PARTNER's Suite shall be Suite 270.
      - 7.1.1.1 Seating is: Twelve (12) Seats, four (4) Barstools, and four (4) Suite passes.
    - 7.1.2 NAMING RIGHTS PARTNER acknowledges and agrees that the use of the Suite is subject to BPL's standard Arena rules and regulations and the standard Suite license agreement.
  - 7.2 Food and Beverage Credit. An aggregate budget of Fifty-Five Thousand Dollars (\$55,000) per year for food and beverage expenses, to be used at the NAMING RIGHTS PARTNER's discretion, within the NAMING RIGHTS PARTNER's luxury suite for Home NBA Team Games and all other Events at the Arena.
  - 7.3 Premium Tickets.
    - 7.3.1 NAMING RIGHTS PARTNER shall receive four (4) season tickets to all Home NBA Team Games at Arena, including pre-season, regular season and post-season. At the commencement of this Agreement, the season tickets to be provided to NAMING RIGHTS PARTNER shall be Courtside South, Seats 48-51 (including access to the courtside lounge (currently called the Courtside Lounge) and two (2) blue parking passes or their subsequent equivalent).
    - 7.3.2 Includes the right to upgrade to courtside season tickets as soon as available and at no cost to NAMING RIGHTS PARTNER if and when courtside tickets become available throughout the Term.
    - 7.3.3 For Events that are not Home NBA Team Games and for which Suite and premium seat holders receive tickets, NAMING RIGHTS PARTNER shall

receive four (4) premium tickets in the lower bowl comparable to courtside location, subject to Event configuration (including access to the courtside lounge (currently called the Courtside Lounge) and two (2) blue parking passes or their subsequent equivalent).

7.3.4 All tickets set forth in this Section 7.3 of Schedule A include the right of ticketholders to access the Arena through a separate entrance or “skip-the-line” to avoid any wait time at entry.

7.3.5 NAMING RIGHTS PARTNER acknowledges and agrees that the use of the premium tickets set forth in this Section 7.3 of Schedule A is subject to BPL’s standard Arena rules and regulations.

7.4 Ticket Limitations. The tickets set forth in this Section 7 of Schedule A may not be used for any sweepstakes, contest, or other promotion that is prohibited by BPL and the NBA, as applicable.

7.5 Facility Use.

7.5.1 Up to ten (10) Half Day uses of Arena annually (date to be mutually agreed upon in writing, pending Event schedule). The rental fee shall be waived for these events, but NAMING RIGHTS PARTNER shall cover all food, beverage, and staffing costs.

7.5.2 Up to five (5) Full Day use of Arena annually (date to be mutually agreed upon in writing, pending Event schedule). The rental fee shall be waived for these events, but NAMING RIGHTS PARTNER shall cover all food, beverage, and staffing costs.

7.5.3 To the extent reasonably and commercially necessary in BPL’s good faith business judgment, and solely in order to accommodate a revenue-generating event or Significant Event, BPL may reschedule any facility uses contemplated under this Section 7.5 of Schedule A, provided that BPL must notify NAMING RIGHTS PARTNER of its intent to reschedule within thirty (30) days prior the scheduled date of such use as confirmed by BPL in writing prior to such thirty (30) day period; provided, further that to the extent BPL is able to commit to a scheduled use contemplated hereunder with reasonable modifications to accommodate the contemplated use, BPL shall notify NAMING RIGHTS PARTNER of the same prior to rescheduling. NAMING RIGHTS PARTNER and BPL agree that to the extent NAMING RIGHTS PARTNER hosts DattoCon at the Arena and the event details, including the date(s) and time(s) of such event have been confirmed in writing by BPL in all respects, such event may not be rescheduled by BPL without the prior written of consent of NAMING RIGHTS PARTNER (not to be unreasonably withheld, conditioned or delayed), subject in all events to Section 16 (Force Majeure).

## **EXHIBIT 1**

### **KASEYA WEBSITE DOMAINS AND SOCIAL HANDLES**

#### **Kaseya**

<https://www.kaseya.com/>

<https://www.facebook.com/KaseyaFan>

<https://twitter.com/kasevacorp>

<https://www.linkedin.com/company/kaseya>

<https://www.instagram.com/kasevacorp/?hl=en>

#### **Datto**

<https://www.datto.com/>

<https://www.facebook.com/dattoinc/>

<https://twitter.com/datto?lang=en>

<https://www.linkedin.com/company/datto-inc>

[https://www.instagram.com/datto\\_inc/?hl=en](https://www.instagram.com/datto_inc/?hl=en)

#### **Unitrends**

<https://www.unitrends.com/>

<https://www.facebook.com/unitrends>

<https://twitter.com/Unitrends>

<https://www.linkedin.com/company/unitrends>

<https://www.instagram.com/unitrends/>

#### **Spanning**

<https://spanning.com/>



<https://www.facebook.com/SpanningBackup>

<https://twitter.com/spanningbackup/>

<https://www.linkedin.com/company/spanning-cloud-apps/>

## **Backupify**

<https://www.backupify.com/>

<https://www.facebook.com/backupify/>

<https://twitter.com/backupify>

<https://www.linkedin.com/company/backupify>

## **TruMethods**

<https://www.trumethods.com/>

<https://www.facebook.com/trumethods/>

<https://twitter.com/TruMethods>

<https://www.linkedin.com/company/trumethods-llc>

## **IT Glue**

<https://www.itglue.com/>

<https://www.facebook.com/itglue>

<https://twitter.com/itglue>

<https://www.linkedin.com/company/it-glue/>

[https://www.instagram.com/it\\_glue/](https://www.instagram.com/it_glue/)

## **ConnectBooster**

<https://www.connectbooster.com/>

<https://www.facebook.com/Connectbooster>

<https://twitter.com/connectbooster>

<https://www.linkedin.com/company/connectbooster/>

<https://www.instagram.com/connectbooster/>

## **Graphus**

<https://www.graphus.ai/>

<https://www.facebook.com/GraphusInc>

<https://twitter.com/graphusinc>

<https://www.linkedin.com/company/graphus-inc->

## **Compliance Manager GRC**

<https://www.compliancemanagergrc.com/>

<https://www.facebook.com/ComplianceManagerGRC>

[https://twitter.com/CM\\_GRC](https://twitter.com/CM_GRC)

<https://www.linkedin.com/company/compliance-manager-grc>

## **ID Agent**

<https://www.idagent.com/>

<https://www.facebook.com/MyIDAgent>

[https://twitter.com/ID\\_Agent](https://twitter.com/ID_Agent)

<https://www.linkedin.com/company/id-agent>

## **Rapid Fire Tools**

<https://www.rapidfiretools.com/>

<https://www.facebook.com/rapidfiretools>

<https://twitter.com/RapidFireTools>

<https://www.linkedin.com/company/rapidfire-tools>

## **Powered Services**

<https://www.kaseva.com/managed-service-providers/powered-services/>

<https://www.linkedin.com/showcase/powered-services>

## **EXHIBIT 2**

### **RESTRICTED COMPETITORS**

Acronis International Arcserve LLC, Arctic Wolf Atera Networks Ltd, Auvik Networks Inc., Avanan (CheckPoint), Axcient, Barracuda Networks Inc., Blackpoint Cyber, Carbonite Inc., Carbon Black, Check Point, Commvault Systems Inc., Comodo Security Solutions Inc., ConnectWise LLC, Entegation Inc., eSentire, Hudu, Huntress Labs, Ivanti Inc., JumpCloud, KnowBe4, JamfPro, GoTo (formerly LogMeIn), Mimecast, N-Able, NinjaOne, pax8, OpenText, Proofpoint, ServiceNow Inc., SentinelOne, Solarwinds, Sophus, Syncro MSP, TeamViewer GmbH, TrendMicro, Veeam Software, Zerto, Zomentum and Zoho Corporation Private Limited