

RESOLUTION APPROVING AGREEMENT WITH DEBTBOOK FOR DEBT MANAGEMENT OF ASHTABULA COUNTY FUNDS AUDITOR'S OFFICE

WHEREAS, David Thomas, Auditor, has presented a contract for the approval of the Board, to-wit:

Provider: DebtBook 1920 Abbott Street Suite 303 Charlotte, NC 28203

Project: Debt Management System for Ashtabula County Funds

Cost: Not to Exceed \$24,750

Term: 3 years effective 5/15/2021 ending 5/15/2024

THEREFORE, BE IT RESOLVED, By the Board of Commissioners of Ashtabula County, Ohio, that the contract outlined above is hereby approved in accordance with the copy on file in this office.

**ASHTABULA COUNTY COMMISSIONERS
CERTIFICATION PAGE**

Resolution No. 2021-191

May 11, 2021

**RESOLUTION APPROVING AGREEMENT WITH DEBTBOOK FOR DEBT
MANAGEMENT OF ASHTABULA COUNTY FUNDS AUDITOR'S OFFICE**

Upon the motion of Casey R. Kozlowski, seconded by J.P. Ducro IV.

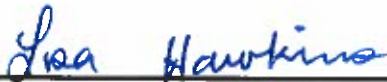
VOTE:

**Kathryn L. Whittington
J.P. Ducro IV
Casey R. Kozlowski**

**Absent
Aye
Aye**

CERTIFICATE OF CLERK

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution acted upon and duly passed by the Board of County Commissioners of Ashtabula County, Ohio, on the date noted above.



Lisa Hawkins, Clerk of the Board
Board of County Commissioners
Ashtabula County, Ohio

Contract & Pricing

Order Form

Customer: County of Ashtabula

Effective Date: 5/15/2021

DebtBook's pricing is tiered based on the amount of debt and lease obligations the County of Ashtabula has outstanding, based on both number of issues and amount outstanding. We do this for two reasons: 1. to ensure pricing is aligned with the value provided to our clients, and 2. to ensure smaller organizations have access to an affordable solution.

Implementation Charges

These charges cover DebtBook's cost of onboarding the County of Ashtabula. These are one time charges and are not recurring.

Tier	Debt & Lease Obligations Outstanding (# and \$)	Implementation Charge
1	Up to 15 and \$50 million	\$1,500
2	Up to 75 or \$200 million	\$2,250
3	Up to 150 or \$1 billion	\$3,750
4	Up to 300 or \$3 billion	\$5,250
5	Up to 500 or \$5 billion	\$7,500

Phased Implementation

Should implementation take place in multiple phases (i.e. debt immediately and leases later), DebtBook would send an invoice for the initial Implementation Charge based on the then applicable Tier at contract execution. Once the additional implementation begins, DebtBook would send a separate invoice to cover the difference between the initial Implementation Charge and the final Implementation Charge after any additional implementations have been completed.

For example, should the Customer initially implement debt with 20 loan obligations (Tier 2), a \$2,250 Setup Charge would be due. Should the Customer implement 100 leases six months later, bringing total obligations to 120 (Tier 3), an additional \$1,500 ($\$3,750 - \$2,250 = \$1,500$) would be due. Alternatively, should the Customer only have 20

leases to implement, bringing total obligations to 40 (Still Tier 2), no additional implementation charge would be due.

Recurring Charges

These charges are based on the same pricing tier as the Implementation Charges but are recurring rather than one time. These charges include unlimited access to the application, users, sharing, and support. This includes all functionality related to DebtBook's debt and lease management software.

Tier	Debt & Lease Obligations Outstanding (# and \$)	Annual Rate
1	Up to 15 and \$50 million	\$5,000
2	Up to 75 or \$200 million	\$7,500
3	Up to 150 or \$1 billion	\$12,500
4	Up to 300 or \$3 billion	\$17,500
5	Up to 500 or \$5 billion	\$25,000

Pricing Adjustments After Year 1 - Recurring Charges

The Annual Rates shown above are fixed through the Contract End Date. During the course of the Initial Term, should the number of obligations increase or decrease into a new tier by a **material** amount (5 or more), the Customer's pricing tier will be reset to reflect the new number of obligations at the next 12-month anniversary of the Contract Start Date.

For example, should the Customer initially implement debt with 20 loan obligations (Tier 2), a \$7,500 Annual Rate would be charged. Should the Customer implement 100 leases six months later, bringing total obligations to 120 (Tier 3), **no additional payment would be immediately due**. At the next 12-month anniversary of the Contract Start Date, the Annual Rate would increase from Tier 2 (\$7,500) to Tier 3 (\$12,500).

Alternatively, should the Customer only have 20 leases to implement, bringing total obligations to 40 (Still Tier 2), no additional recurring charge would be due, either immediately or at the next 12-month anniversary of the Contract Start Date.

Pricing Lock Option

At any time during the Initial Term, should the Customer desire to lock in their DebtBook subscription at the appropriate recurring charge tier based on their amount of debt and lease obligations outstanding, the customer

shall have the ***the option, not the obligation*** to do so for up to five years with no escalator in future years by executing a contract with the same term as the desired price lock. The adjustments contemplated in the Pricing Adjustments - Recurring Charges section above still apply.

Total Charges

Name	Price	QTY	Subtotal
Tier 2: Recurring Charge	\$7,500.00	1	\$7,500.00
Tier 2: Setup Charge	\$2,250.00	1	\$2,250.00
		Subtotal	\$9,750.00
		Total	\$9,750.00

Terms and Conditions

This agreement will be effective as of the Effective Date and continue for a period of three (3) years (the "Initial Term") unless earlier terminated in accordance with the Master Subscription Agreement. The Parties will have the option to renew for an additional 12-month term(s) (each, a "Renewal Term") at the agreed-upon Annual Rate. The Initial Term, together with any Renewal Term, is the Term.

Contract Start Date: 5/15/2021

Contract End Date: 5/15/2024

Billing Frequency: Annual

Payment Terms: Net 30

Billing Method: Email

Contact Information for All Notices

County of Ashtabula
25 W. Jefferson St. Jefferson, OH 44047

DebtBook
1920 Abbott St. STE 303 Charlotte, NC
28203

Primary Contact: David Thomas
Email: djthomas@ashtabulacounty.us

Primary Contact: Bill Fray
Email: bill.fray@debtbook.com

Billing Contact: David Thomas
Email: djthomas@ashtabulacounty.us

All billing related inquiries may be directed to
billing@debtbook.com.

This Order Form, together with the terms of the Master Subscription Agreement ("MSA") and incorporated herein by reference (Master Subscription Agreement and together with this Order Form, the "Agreement"), constitutes the complete and exclusive statement of all mutual understandings and agreement between DebtBook and the County of Ashtabula specified above, as to its subject matter and supersedes all prior or contemporaneous proposals, communications and understandings, oral or written. DebtBook expressly rejects any different or additional terms or conditions contained in any documents issued or submitted by County of Ashtabula. DebtBook's provision of credit, acceptance of any Order Form and/or provision of any services are expressly made conditional on County of Ashtabula's assent to this Order Form and the MSA.

Except as expressly set forth herein, this Agreement may not be amended, changed, or modified, except by a written document that is duly signed by each party's authorized representative.

By signing this Order Form, DebtBook and the County of Ashtabula are agreeing to the terms in this Order Form as well as the governing Master Subscription Agreement referenced herein. If you are acting on behalf of a company, you represent that you are authorized to bind the company to this Order Form.

DebtBook

County of Ashtabula

Bill Fray

David Thomas

Name: Bill Fray

Name: David Thomas

Title: Regional Sales Director

Title: County Auditor

Date: 5/15/2021

Date: 5/15/2021

M. Whittington
~~Matthew Whittington, Pres~~
JP AUCROIX, vice-president

5/11/2021

Master Subscription Agreement

PLEASE READ THIS CAREFULLY. THIS MASTER SUBSCRIPTION AGREEMENT ("MSA") (TOGETHER WITH THE APPLICABLE ORDER FORM, THE "AGREEMENT") IS A LEGAL AGREEMENT BETWEEN FIFTH ASSET INC. ("FIFTH ASSET", "DEBTBOOK" OR "WE") AND YOU INDIVIDUALLY, IF YOU ARE AGREEING IN YOUR PERSONAL CAPACITY, OR IF YOU ARE AUTHORIZED TO CONSENT ON BEHALF OF YOUR COMPANY OR ORGANIZATION, BETWEEN THE ENTITY FOR WHOSE BENEFIT YOU ACT ("YOU" OR "CUSTOMER"). BY USING ONE OR MORE OF THE FIFTH ASSET SERVICES, YOU ARE AGREEING TO BE BOUND BY THIS AGREEMENT.

1. **Definitions.** In addition to the terms defined in the body of the Agreement, the following terms have the following meanings:

"Activation Date" means the day following the issuance of User login names and a password to the Customer to access the Fifth Asset Platform. Unless otherwise agreed by the parties, Activation Date shall occur within seventy-two (72) hours of the execution date hereof unless otherwise agreed by the parties.

"Affiliates" means any entity which directly or indirectly controls, is controlled by or is under common control with the subject entity. **"Control"**, for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Customer Data" means any data uploaded by Customer to the Fifth Asset Platform that would typically be provided in the normal course of using the Fifth Asset Platform, as well as all information generated by the End Users during the use of the Fifth Asset Platform, not including any personally identifiable information or any Public Data (whether Public Data at the time of upload or at a later time).

"End Users" means individuals who are authorized by Customer to use the Fifth Asset Platform and who have been supplied user identification and passwords by Customer (or by Fifth Asset at Customer's request). End Users may include but are not limited to employees, consultants, contractors, and agents of Customer or its Affiliates. A separate user identification and password is required for each individual End User.

"Fifth Asset Platform" means the online application provided by Fifth Asset and the underlying servers and software used to provide the online application (collectively the "System").

"Order Form(s)" means the ordering documents that are executed hereunder by the parties from time to time, in the form provided by Fifth Asset. Order Forms shall be deemed incorporated herein.

"Public Data" means any public or publicly available data in the Fifth Asset Platform, including any such data uploaded by any Customer, and includes all data uploaded by or on behalf of any government Customer or its End

Users. For the avoidance of doubt, for purposes of this Agreement “public or publicly available” shall mean any information that either party has a reasonable basis to believe is lawfully made available to the general public from: federal, state or local government records; widely distributed media; or disclosures to the general public that are required to be made by federal, state or local law.

“Subscription” means the right to access the Fifth Asset Platform during the Subscription Term.

“Support” means the general maintenance services and technical support provided in respect of the Fifth Asset Platform set forth in the Order Form.

2. Provision of the Platform.

2.1 Subject to the terms and conditions of this Agreement, Fifth Asset shall make the Fifth Asset Platform available to Customer and its End Users pursuant to this Agreement and all Order Forms during the Subscription Term. Customer agrees that its purchase of the Subscription is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Fifth Asset with respect to future functionality or features.

2.2 A Subscription relates solely to access to the Fifth Asset Platform. Customer, at its own expense, and each End User, as applicable, is responsible for procuring all services, desktop hardware, desktop software, and other technology (including, but not limited to, Internet access service, web browsers, email clients, and the Microsoft Office suite) necessary to access the Fifth Asset Platform.

3. Data and Requirements.

3.1 Ownership and License of Data. Customer retains all right, title and interest in and to all Customer Data, but not in Public Data. Customer hereby grants to Fifth Asset a limited worldwide, non-exclusive, non-transferable (except as set forth herein), sub-licensable (to the extent reasonably necessary for the operation of the Fifth Asset Platform, including any backup or disaster recovery) license to Fifth Asset to the Customer Data, including use and copying, for purposes of operation of the Fifth Asset Platform, including backup and disaster recovery. Customer acknowledges and agrees that Fifth Asset is not subject to any limitations with regard to Public Data, including in its use, processing, distribution, sale, or copying, and that Fifth Asset may provide Public Data to any other customer without restriction.

3.2 Compliance. Customer is responsible for all activities that occur in the Customer account and for End Users’ compliance with this Agreement including End Users’ compliance with Customer’s obligations herein. Customer shall comply with all local, state, federal or foreign law, treaty, regulation or convention applicable to the Customer in connection with the use of the Fifth Asset Platform, including without restriction, the CAN-SPAM Act of 2003

(U.S.A.), the Personal Information Protection and Electronic Documents Act (PIPEDA) (Canada), the EU Data Protection Directive and other laws applicable to the Customer related to privacy, publicity, data protection, electronic communications and anti-spamming laws. Customer is responsible for the collection, legality protection and use of Customer Data that is stored on the System or used in connection with the Fifth Asset Platform. Customer and its End Users shall not upload personally identifiable information to the Fifth Asset Platform.

3.3 Use Guidelines. The Customer shall use the Fifth Asset Platform for internal business purposes as contemplated by the Agreement and shall not: (i) tamper with the security of the System or tamper with other customer accounts of Fifth Asset, (ii) access data on the System not intended for the Customer, (iii) log into a server or account on the System that the Customer is not authorized to access, (iv) attempt to probe, scan or test the vulnerability of any System or to breach the security or authentication measures without proper authorization; (v) render any part of the System unusable; (vi) lease, distribute, license, sell or otherwise commercially exploit the Fifth Asset Platform or make the Fifth Asset Platform available to a third party other than as contemplated in this Agreement; (vii) use the Fifth Asset Platform for timesharing or service bureau purposes or otherwise for the benefit of a third party; (viii) provide to third parties any evaluation version of the Fifth Asset Platform without Fifth Asset's prior written consent; (ix) use the Fifth Asset Platform in violation of any Acceptable Usage Policy (AUP) which Fifth Asset may make available from time to time by notice to Customer or by posting on the Fifth Asset website; or (x) permit or allow any End User sharing, distribution or group use of login information, including usernames or passwords.

3.4 Communications Responsibilities. The Customer shall be responsible for the content of all communications sent by the Fifth Asset Platform. The Customer agrees that it will not use the Fifth Asset Platform to communicate any message or material that (i) is libelous, harmful to minors, obscene or constitutes pornography; (ii) infringes the intellectual property rights of a third party or is otherwise unlawful; or (iii) would otherwise give rise to civil liability, or that constitutes or encourages conduct that could constitute a criminal offense, under any applicable law or regulation.

3.5 Breaches of Section 3. In the event of a material breach under this Section 3, Fifth Asset will endeavor to provide Customer with the opportunity to remove or disable access to the offending material or content. However, in addition to any other rights and remedies under the Agreement and in law, Fifth Asset reserves the right to immediately suspend access to the Fifth Asset Platform if such breach, in Fifth Asset's opinion, is an imminent threat to the Systems or other customer accounts.

4. Confidentiality.

4.1 Definition of Confidential Information. As used herein, "Confidential Information" means all confidential information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party") that is designated in writing as confidential, as well as Customer Data (not including any Public Data) and the terms and conditions of this Agreement. Confidential Information shall not include information which: (a) is known publicly; (b) is generally known in the industry before disclosure; (c) has become known publicly, without fault of the Receiving Party, subsequent to disclosure by the Disclosing Party; or (d) has been otherwise lawfully known or received by the Receiving Party and not subject to a confidentiality obligation.

4.2 Confidentiality. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission; subject to any compelled disclosure addressed in Section 4.4 below.

4.3 Protection. The Receiving Party agrees to keep confidential all Confidential Information disclosed to it by the Disclosing Party, and to protect the confidentiality thereof in the same manner as it protects the confidentiality of its own (at all times exercising at least a reasonable degree of care in the protection of Confidential Information).

4.4 Compelled Disclosure. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. Notwithstanding the foregoing, for any legally compelled disclosure under an applicable state or federal open records act, the Receiving Party shall not be required to assist the Disclosing Party in contesting such compelled disclosure.

5. Fees and Taxes.

5.1 Fees. The Customer shall pay to Fifth Asset all of the fees specified in the Order Forms. Except as otherwise provided in the Order Forms and in Section 7.4, all fees are quoted in United States currency; fees are based on Subscriptions purchased and not on actual usage; payment obligations are non-cancellable; and fees are nonrefundable. All subscription fees must be paid in advance of service by credit card or via ACH transfer.

5.2 Invoicing and Payment. Professional services fees for implementation and Support will be invoiced in accordance with the terms stated on the Order Form. Unless otherwise stated, professional services fees are due within thirty (30) days from the invoice date.

5.3 Overdue Payments. Any payment not received from the Customer by the due date shall accrue (except with respect to charges then under reasonable and good faith dispute), at the lower of 1.5% or the maximum rate permitted by law of the outstanding balance per month from the date such payment is due until the date paid.

5.4 Suspension of Service. If any Customer account is 30 days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any other rights and remedies (including the termination rights set forth in this Agreement), Fifth Asset reserves the right to suspend the Fifth Asset Platform without liability to Fifth Asset, until such account is paid in full.

5.5 Taxes. The Customer shall be responsible for all sales, use, value added, withholding or other taxes or duties, payable with respect to its purchases hereunder, other than Fifth Asset income taxes. If Fifth Asset pays any such taxes on the Customer's behalf, the Customer agrees to reimburse Fifth Asset for such payment unless the Customer provides Fifth Asset with a valid exemption certificate authorized by the appropriate taxing authority.

5.6 Expenses. If Fifth Asset is required to incur any additional costs or expenses in providing Support to the Customer to be reimbursed by Customer, Fifth Asset shall first obtain written approval from Customer, and such costs or expenses are due within thirty (30) days from the invoice date.

6. Proprietary Rights.

6.1 Proprietary Rights. The Fifth Asset Platform and all intellectual property rights therein and all intellectual property rights relating to the provision of the Support are owned or licensed by Fifth Asset. Except for the Subscription granted hereunder, nothing in this Agreement gives the Customer any right, title or interest to the Fifth Asset Platform or the Support.

6.2 Restrictions. Customer shall not: (i) modify, translate, or create derivative works based on the Fifth Asset Platform, except for such configuration as expressly contemplated by the Fifth Asset Platform (through the modification of program options, data fields, etc.); (ii) create any link to the Fifth Asset Platform or frame or mirror any content contained or accessible from the Fifth Asset Platform, (iii) reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Fifth Asset Platform; (iv) or access the Fifth Asset Platform in order to (a) build a competitive product or service, or (b) copy any ideas, features, functions or graphics of the Fifth Asset Platform.

7. Term and Termination.

7.1 Term of the Agreement. This Agreement commences on the Effective Date of this Agreement and continues until the Subscription to the Fifth Asset Platform granted in accordance with this Agreement has expired or been terminated.

7.2 Subscription Term of Fifth Asset Platform. Subscription to the Fifth Asset Platform will automatically commence on the Effective Date and continue for the term specified in the Order Form (the "Subscription Term"). The Subscription to the Fifth Asset Platform shall automatically renew for periods of twelve (12) months at the

subscription price and subject to the then-current Agreement terms in effect at the time of the renewal unless either party gives the other notice of non renewal at least 30 days prior to the end of the relevant Subscription Term.

7.3 Termination. Unless otherwise stated in the Order Form, this Agreement may only be terminated by either party: (a) upon 30 days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; (b) if either party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors; or (c) immediately upon written notice to the other party in the event of a material breach of Section 3 hereof (subject to, and in accordance with, Section 3.5).

7.4 Outstanding Fees. Termination shall not relieve Customer of the obligation to pay Fifth Asset the fees agreed in the Order Form unless Customer terminates the Agreement for cause in which case Customer shall be entitled to a prorated amount of any pre-paid Subscription Fees equal to the remaining number of whole monthly units left in the Subscription Term following the effective date of termination.

7.5 Return of Customer Data. Upon written request by Customer made within 30 days after the effective date of termination, Fifth Asset, at no further charge to Customer, will provide Customer with temporary access to the Fifth Asset Platform so that Customer can retrieve its Customer Data in a commercially transferrable format and will use commercially reasonable efforts to assist Customer, at Customer's request, with such retrieval. After such 30-day period, Fifth Asset shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, delete all Customer Data in the Systems or otherwise in its possession or control.

7.6 Surviving provisions. The following provisions shall survive any termination or expiration of this Agreement: Sections 1, 3.1, 3.2 and 4 to 13.

8. Warranties and Disclaimers.

Each party represents and warrants that it has the legal power to enter into this Agreement. **Functionality Warranty.** Fifth Asset warrants that the Fifth Asset Platform will operate in a manner consistent with general industry standards reasonably applicable to the provision hereof and in substantial conformity with the applicable documentation provided by Fifth Asset prior to the Effective Date.

8.1 Security Warranty. Fifth Asset or its licensors or hosting providers have implemented Appropriate Security Measures (as hereinafter defined). "Appropriate Security Measures" means commercially reasonable efforts to ensure that Customer Data will be maintained accurately and safeguarded as well as technical and physical controls to protect Customer Data against destruction, loss, alteration, unauthorized disclosure to third parties or unauthorized access by employees or contractors employed by Fifth Asset, whether by accident or otherwise.

8.2 Disclaimer. Except as expressly provided herein, FIFTH ASSET DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, TO THE FULLEST EXTENT ALLOWED UNDER LAW, AND MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, COMPLIANCE WITH LAW, ACCURACY OR QUALITY OF INFORMATIONAL CONTENT, QUIET ENJOYMENT, TITLE, NONINFRINGEMENT, VALIDITY, EXCLUSIVITY, CONDITION, QUALITY, DURABILITY, SUSTAINABILITY, ARISING FROM A COURSE OF DEALING, A COURSE OF PERFORMANCE, OR USAGE OF TRADE, OR UNDER ANY ENACTMENT OF THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT, AND ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS OR STATEMENTS MADE ON OR PRIOR TO THE AGREEMENT DATE. TO THE EXTENT ANY SUCH WARRANTY MAY NOT BE DISCLAIMED, ANY SUCH WARRANTY IS HEREBY LIMITED TO THE MINIMUM DURATION AND EXTENT ALLOWED UNDER APPLICABLE LAW. Fifth Asset does not warrant that the functions contained in the Fifth Asset Platform will meet the Customer's requirements or that the operation of the Fifth Asset Platform will be uninterrupted or error-free. Further, Fifth Asset does not warrant that all errors in the Fifth Asset Platform can or will be corrected.

9. Limitation of Liability.

9.1 Limitation of Liability. FIFTH ASSET, ITS SUPPLIERS, AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS SHALL NOT BE LIABLE FOR ANY CAUSE RELATED TO OR ARISING OUT OF THIS AGREEMENT, WHETHER IN CONTRACT, NEGLIGENCE OR TORT, IN EXCESS OF THE TOTAL FEES AND CHARGES PAID BY THE CUSTOMER FOR THE FIFTH ASSET PLATFORM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE THE CAUSE OF ACTION AROSE.

9.2 Exclusion of Consequential and Related Damages. THE PARTIES AGREE THAT THE CONSIDERATION PAID UNDER THIS AGREEMENT DOES NOT INCLUDE CONSIDERATION FOR THE ASSUMPTION OF THE RISK OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, THEREFORE, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, LOST PROFITS OR REVENUE.

Because some states and jurisdictions do not allow limitation of liability in certain instances, portions of the above limitation set forth in this section may not apply to Customer.

No action against either party arising out of this Agreement may be brought by the other party more than one year after first becoming aware that the cause of action has arisen.

10. Intellectual Property Indemnification. Fifth Asset shall, at its cost and sole expense, defend, indemnify and hold harmless the Customer against any loss, damage or cost (including reasonable attorney's fees), claims, demands, suits or proceedings ("Damages") made or brought against Customer by a third party alleging that the use of the Fifth Asset Platform, as contemplated hereunder, infringes the intellectual property rights of a third party (an "Infringement Claim"). Notwithstanding the foregoing if Fifth Asset reasonably believes that the Customer's use of any portion of the Fifth Asset Platform and/or Support is likely to be enjoined by reason of an Infringement Claim, violation or misappropriation of any third party's intellectual property rights then Fifth Asset may, at its expense: (i) procure for the Customer the right to continue using the Fifth Asset Platform or Support; (ii) replace the same with other software, services or other material of equivalent functions and efficiency that is not subject to an action of infringement; or (iii) modify the applicable software, support services or other material so that there is no longer any infringement or breach, provided that such modification does not adversely affect the functional capabilities of the Fifth Asset Platform and/or Support as set out herein. Fifth Asset shall have no liability respecting any Infringement Claim or breach as aforesaid to the extent such Infringement Claim is caused by the combination, operation or use of the Fifth Asset Platform or Support with other equipment or software not supplied by Fifth Asset or in a manner not consistent with Fifth Asset instructions.

11. Mutual Provisions. With regards to any indemnification obligation in Sections 10 or 11 hereto, any such indemnification obligation shall be solely to the extent permitted by applicable law. Each party's indemnity obligations under this Agreement are subject to the following: (i) the aggrieved party shall promptly notify the indemnifier in writing of the Claim; (ii) the indemnifier shall have sole control of the defense and all related settlement negotiations with respect to the Claim (provided that the indemnifier may not settle or defend any Claim unless it unconditionally releases the aggrieved party of all liability); and (iii) the aggrieved party shall cooperate fully to the extent necessary, and execute all documents necessary for the defense of such Claim.

12. General Provisions.

12.1 Entire Agreement. This Agreement, inclusive of the Order Forms and any amendments or additions thereto, constitutes the entire agreement and sets forth the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and discussions with respect thereto. Fifth Asset expressly rejects any different or additional terms or conditions contained in any documents issued or submitted by Customer. Fifth Asset's provision of credit, acceptance of any Order Form and/or provision of any services are expressly made conditional on Customer's assent to the MSA and applicable Order Form. In the event of an inconsistency between the terms and conditions of this Agreement and the Order Forms now or hereafter appended hereto, the terms of the Order Form shall govern.

12.2 Marketing. Neither party may issue press releases related to this Agreement without the other party's prior written consent. Either party may include the name and logo of the other party in lists of customers or vendors.

12.3 Relationship of Customer and Fifth Asset. The parties are independent contractors. This Agreement does not create a joint venture or partnership between the parties; no party is by virtue of this Agreement authorized as an agent, employee or representative of the other party.

12.4 Modifications and Waiver. No modification of, amendment or addition to this Agreement is valid or binding unless set forth in writing and fully executed by both parties hereto. Any waiver of any right or remedy under this Agreement must be in writing and signed by each party. No delay in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on one occasion shall not be construed as a waiver of any right or remedy on any future occasion.

12.5 Assignment. This Agreement and any rights or obligations hereunder, shall not be assigned, sublicensed or otherwise transferred by the parties without the prior written consent of the non-assigning party except that either party may assign or transfer this Agreement upon a change of control of a party or by operation of law by providing the non-assigning party with prior written notice thereof provided that the assignee agrees in writing to be bound by the terms of this Agreement. This Agreement shall be binding on, and shall inure solely to the benefit of, the parties, their respective successors and permitted assigns.

12.6 Solicitation. During the Subscription Term and for a period of one (1) year following the termination or expiration of this Agreement (the "Restricted Period"), neither party shall employ, offer employment to or solicit the employment of or otherwise entice away from the employment of the other party any individual employee or independent contractor employed or engaged by such other party during the Restricted Period without the prior written consent of such other party.

12.7 Governing Law. This Agreement shall be solely governed by and construed in accordance with the laws of Ohio, USA, without regard to conflicts of laws principles. The parties agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods do not apply to this Agreement. The parties irrevocably and unconditionally agree to submit to the personal and exclusive jurisdiction of the federal and state courts located in Ohio, USA, and all courts competent to hear appeals therefrom. To the extent permitted by applicable law, the parties waive any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

12.8 Notices. Any notices under this Agreement shall be in writing and shall be deemed to have been delivered: (i) upon personal delivery; (ii) the fifth business day after mailing; (iii) the third business day after sending by

confirmed facsimile; or (iv) the third business day after sending by email. Notices shall be addressed to the addresses set forth above or as otherwise indicated by written notice.

12.9 Severability. If any provision of this Agreement is held to be unenforceable or illegal by a court of competent jurisdiction, such provision shall be modified to the extent necessary to render it enforceable, or shall be severed from this Agreement, and all other provisions of this Agreement shall remain in full force and effect.

12.10 Facsimile Transmission/Counterparts. This Agreement (including any Order Form) may be executed and delivered by facsimile or email, and upon receipt such transmission shall be deemed delivery of an original. This Agreement (including any Order Form) may be executed in several counterparts each of which when executed shall be deemed to be an original, and such counterparts shall each constitute one and the same instrument and notwithstanding their date of execution shall be deemed to bear the day and year first above written.

12.12 Force Majeure. Neither party to this Agreement shall be liable to the other for any failure or delay in performance by circumstances beyond its control, including but not limited to, acts of God, fire, labor difficulties, governmental action or terrorism, provided that the party seeking to rely on such circumstances gives written notice of such circumstances to the other party hereto and uses reasonable efforts to overcome such circumstances.

12.13 Cooperative Purchasing: Fifth Asset shall allow for other Governments in Ohio to purchase these items or services at the same price as quoted in the Order Form. Other Governments may determine to use their standard Contract as drafted by their legal authority.

FISCAL OFFICER'S CERTIFICATE
5705.41 O.R.C.

The undersigned, County Auditor of Ashtabula County, hereby certifies that the amount required to meet the obligations of the County during the year 2021 under the Agreement has been lawfully appropriated for that purpose, and is in the Treasury of the County or in the process of collection and free from any previous encumbrances to the credit of:

1001.002.100-601; not to exceed \$9,750.00.

Agreement Title: RESOLUTION APPROVING AGREEMENT WITH DEBTBOOK FOR DEBT MANAGEMENT OF ASHTABULA COUNTY FUNDS AUDITOR'S OFFICE



**David Thomas, Ashtabula County
Auditor**

Date: May 10, 2021

Signature Page

Agreement Title: Agreement with Debtbook, Auditor's Office.

Approved as to Legal Form Only:

By: _____



Colleen O'Toole,
Ashtabula County Prosecutor

Dated: _____, 2021

~~April~~ May 15