

Attachment 1 - WingPoints™ Contract between KRS and FBO

**ConocoPhillips - WingPoints™
PROPRIETARY LOYALTY PROGRAM SUPPORT AGREEMENT**

This “AGREEMENT” is made and entered into as of this _____ day of _____, 20____, by and between KRS Points LLC dba KRS Rewards System, an Idaho limited liability company (“KRS”), the address for which is 308 Shoshone St. E., Twin Falls, Idaho 83301, and _____ (“Merchant” or “FBO”), the address for which is _____.

Recitals:

WHEREAS, Merchant operates an authorized ConocoPhillips branded Fixed Base Operator (“FBO”) fueling location(s) at _____;

WHEREAS, KRS manages the ConocoPhillips Company (“ConocoPhillips”) proprietary aviation customer loyalty program, which will allow customers to earn points, hereafter defined as “WingPoints”, based on the volume of jet fuel and aviation fuel purchases from the enrolled FBO locations and to later redeem these points for specified rewards, hereinafter the program is collectively referred to as the “WingPoints Program”.

WHEREAS, Merchant desires to offer the WingPoints Program to its customers;

WHEREAS, KRS has the capability and facilities to support the WingPoints Program with various services and equipment;

WHEREAS, the Merchant intends to engage KRS to provide support for the WingPoints Program in accordance with the terms and provisions and subject to the conditions contained in this Agreement;

NOW, THEREFORE, for and in consideration of the foregoing premises, and the mutual covenants and conditions contained herein, the parties agree as follows:

1. Recitals set forth above are deemed part of this Agreement.

2. **Definitions**

2.1 “DCD” means a data collection device, currently a Verifone Vx570 with dual ports (RS-232 dial up port and Ethernet).

2.2 “Enrolled Customers” means an aviation fuel customer who has enrolled in the WingPoints Program using the registration material in accordance with KRS’ protocol.

2.3 “Enrolled DCD” shall mean each DCD that has been purchased by Merchant from KRS.

2.4 “Reported Transaction(s)” means each purchase by an Enrolled Customer, whether with money or credit under the WingPoints Program that has been properly reported in accordance with KRS’ protocols through a DCD.

2.5 “WingPoints Data” means but is not limited to, all Enrolled Customer information and Reported Transactions collected and related to the WingPoints Program.

3. **KRS Services**

3.1 KRS will manage and maintain the WingPoints Program and WingPoints Data. Merchant shall solely have access to Reported Transactions which occurred at FBO’s location found in the WingPoints data. KRS will provide account cards, key chain tabs, or other appropriate materials by which Enrolled Customers are identified at the DCD.

3.2 KRS will fulfill the initial and ongoing marketing packages to include WingPoints Program account cards, brochures, POP marketing materials, and training manuals. KRS will make additional marketing supplies available. Excessive requests for additional supplies will be at Merchant’s expense.

3.3 KRS shall be responsible for providing software programming to allow FBO to enter on the DCD any of FBO’s manually applied bonus points and method of payment bonus points issued to cardholders using “ConocoPhillips Branded Credit Cards”, which shall include any of the following: the Multi Service Aviation Cobrand, ConocoPhillips Cobrand MasterCard, Phillips 66 Aviation Commercial, and the Phillips 66 Aviation Personal; and customizable messages at the bottom of the receipt termed Trigger Messages. FBO shall be entitled to utilize Trigger Messages during periods not to exceed 50% at any point in time. ConocoPhillips shall retain the right to Trigger Messages for the remaining 50% of the time.

3.4 **KRS Reports.**

3.4.1 KRS agrees to provide Merchant with the following reports solely reflecting activity at each of its Enrolled DCDs.

Such reports shall include:

- a) Transaction Detail Report: Review all transactions during user defined date range, by date or card number;
- b) Redemption Report: Review redemption by user defined date range, by date or card number;

- c) Liability Report: ACH funds outstanding (i.e. how much the FBO owes based on the number of points issued from their location);
- d) Top Customers: Review top customers by user defined date range;
- e) Inactive or Lost Customers: Review inactive or lost customers by user defined date range; and
- f) Other reports such as Transaction Summary Report, Day-to-Day Issuance Report, Points on Hold Security Report, Trigger Detail and Summary Report, ConocoPhillips Branded Credit Cards Transactions (to allow gallon matching for ConocoPhillips bonus points).

3.4.2 KRS will provide Merchant these reports through the internet using a password protected portal 24 hours, 7 days a week.

3.5 KRS will provide web based or toll free telephone training to Merchant management and employees or designee.

3.6 Upon request KRS will provide personal site level training to Merchant for \$100 per FBO location per trip plus reasonable and actual travel related expenses.

3.7 All points earned by customers enrolled in the WingPoints Program and entitled for redemption under the terms of the WingPoints Program shall be funded by the participating FBOs and ConocoPhillips payment of bonus points as set forth herein. KRS has the responsibility and obligation to invoice for and collect funds from the participating FBOs.

4. Equipment

4.1 The Merchant shall purchase a DCD (the Enrolled DCD) that complies with KRS' specifications (VeriFone Vx570 or similar). ConocoPhillips will reimburse Merchant for the initial DCD via KRS.

4.2 Additional equipment is available at Merchant's expense. If desired, Merchant will purchase and authorize KRS to install additional VeriFone Vx 570 stations at each of its locations at the current KRS list price at the time of sale. Merchant agrees at its own cost and expense to keep the DCD in good condition and repair and to provide all paper and other disposables employed in the operation of the DCD. _____
(please initial)

4.3 Upon termination of this Agreement, Merchant agrees to return the original DCD to KRS in good working order and condition, with data securely erased. Additional equipment purchased at Merchant expense remains with Merchant.

5. **Merchant Responsibility**

5.1 Merchant recognizes and acknowledges that it is responsible for training its employees in the terms of the program and in properly transmitting information concerning Reported Transactions. The WingPoints Program provides that for each whole gallon of jet fuel and aviation fuel sold in a Reported Transaction, Enrolled Customer shall be entitled to 10 points, and if the purchase is paid by use of any ConocoPhillips Branded Credit Cards, the WingPoints Program provides that each gallon sold of jet fuel and aviation fuel in a Reported Transaction shall entitle Enrolled Customer to an additional 10 points. For these bonus points, the FBO shall be responsible for applying method of payment bonus points to the DCD unless otherwise instructed by KRS. No award is given for partial gallons and all partial gallons will be rounded down to the next whole gallon. Additionally, Merchant may manually award bonus points as appropriate and at Merchants discretion to cardholders. Merchant will permit KRS to take direction from ConocoPhillips for the printing on customer receipts and other material given to the customer with messages promoting the use of the WingPoints Program and/or the the ConocoPhillips Branded Credit Cards.

5.2 The Merchant agrees to pay before the 18th of each month for services during the preceding month:

5.2.1 \$ 0.02 per 10 points issued to Enrolled Customer for each gallon of jet fuel and aviation fuel purchased;

5.2.2 \$ 0.02 per 10 points issued to Enrolled Customer for FBO manually applied bonus points for each gallon of jet fuel and aviation fuel purchased and any other additional bonus point determined at the sole discretion of the FBO;

5.2.3 \$ 0.00 for method of payment bonus points issued to Enrolled Customer for use of ConocoPhillips Branded Credit Cards.

5.3 In the event Merchant fails to pay for services under this Agreement, Merchant agrees that ConocoPhillips shall have the right to offset any delinquent amounts due hereunder pursuant to any agreement between ConocoPhillips and Merchant. Notwithstanding any action ConocoPhillips may take hereunder, Merchant acknowledges such failure to pay is a material default of this Agreement.

6. **Term**

6.1 The term of this Agreement shall be for an initial period of 36 months and thereafter shall automatically renew on a month to month basis unless or until FBO terminates the Agreement after the initial period by giving not less than 90 days notice to the other or immediately on the date on which ConocoPhillips and KRS discontinue the WingPoints Program, or the date Merchant and/or ConocoPhillips discontinues current or subsequent product supply agreements and the FBO becomes a non-ConocoPhillips branded location.

6.2 KRS shall be entitled to terminate this Agreement “for cause” in the event of (i) a material breach of any of the terms of the Agreement by the Merchant, or (ii) the filing of a petition in bankruptcy by the Merchant. In the event of a termination for cause, such termination shall be effective upon notice of termination by KRS to the Merchant.

6.3 Upon termination of this Agreement, KRS will transfer information pertaining to the WingPoints Program maintained on KRS’s database to ConocoPhillips.

7. **Intellectual Property and Data**

7.1 All data collected and transmitted by Enrolled Customers, including but not limited to Reported Transactions, defined as WingPoints Data, shall be the property of ConocoPhillips, which will be maintained by FBO and KRS as ConocoPhillips’ Confidential Information by each of them as defined in Section 8.2. The Merchant is hereby given a limited license to use and view certain WingPoints Data as set forth in the Exhibit A hereto. The Merchant recognizes and agrees that KRS may use the WingPoints data in statistical reports provided the Merchant is not identified and there is insufficient information in these statistical data and reports to infer the data related to the Merchant’s operations..

7.2 KRS will maintain a record of Reported Transactions, report to Merchant each Enrolled Customer’s accrued credits and benefits, and facilitate the redemption of funded points in exchange for goods or services as provided by the ConocoPhillips WingPoints Program; provided however, FBO shall only be entitle to access Reported Transactions and Enrolled Customer’s information associated with FBO’s Enrolled DCD.

7.3 All programs, source codes, operating and compiling systems, and other aspects of the structure whereby KRS captures, processes, maintains, compiles, and reports data remain the sole and exclusive property of KRS, and, to the extent any such information is disclosed to Merchant, it is to be maintained as Confidential Information. The software described herein and used in the DCD belongs to or is licensed by KRS. KRS grants a non-exclusive non-royalty license to Merchant the use of such software effective with date of this Agreement and ends with term of this Agreement.

7.4 To the extent any proprietary intellectual property of KRS is incorporated in or utilized as part of any sales, marketing, promotional, or instructional material for customers, its use is subject to a limited license as set forth in the Exhibit A hereto, which is hereby granted to Merchant, which terminates with the termination of this Agreement or may otherwise be terminated at any time at KRS's election. Merchant agrees that it will not itself, or through any parent, subsidiary, affiliate, agent, or other third party:

- 7.4.1 Decompile, disassemble, or reverse engineer any portion of the code or processes employed by KRS in performing its duties under this Agreement, unless and only to the extent required by federal law;
- 7.4.2 Write or develop any derivative software or any other software program based upon the Confidential Information provided by KRS; or
- 7.4.3 Sell, lease, license, sublicense, encumber, or otherwise deal with any Confidential Information, proprietary information or trademarks, copyrighted materials, or other property of KRS except as provided under this Agreement.

7.5 Merchant recognizes and acknowledges that KRS provides services to other merchants and vendors similar to those provided the Merchant under the terms of this Agreement and that KRS operates a customer loyalty program. Merchant consents to the continuation of those activities by KRS.

8. **Confidential Information.**

8.1 KRS and Merchant each agree that neither will, at any time, disclose to any unauthorized individual, corporation, partnership, joint venture, association, trust, or entity of any kind ("Person") or use for their own account or for the benefit of any third party, except as expressly provided in this Agreement, any Confidential Information, whether such information is in memory or embedded, in writing, or other physical form, without the written consent of the other party, unless and to the extent that the Confidential Information becomes generally known to and available for use by the public other than a result of a party's fault or the fault of any other Person bound by a duty of confidentiality. KRS and Merchant each agree that all of their employees and contractors shall be subject to the duties of confidentiality imposed on the Merchant and KRS herein and hereby. Merchant agrees that should a breach of Confidential Information occur, Merchant will notify KRS immediately with the details of such a breach. Merchant agrees to comply with all laws and regulations concerning electronic personal information including but not limited to the proper destruction of such information.

8.2 “Confidential Information” constitutes (i) any and all trade secrets concerning the business and affairs of KRS or Merchant, product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current, and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer software and programs (including object code and source code), computer software and database technologies, systems, structures, and architectures (and related processes, formulae, compositions, improvements, devices, know-how, inventions, discoveries, concepts, ideas, designs, methods and information) of KRS or Merchant and any other information, however documented, of KRS or Merchant that is a trade secret within the meaning of Idaho Code section 48–801 *et. seq.* and otherwise; (ii) any and all information concerning the business and affairs of KRS or Merchant (which includes historical financial statements, financial projections and budgets, historical and projected sales, capital spending budgets and plans, the names and backgrounds of key personnel, personnel training and techniques and materials, however documented; (iii) any and all notes, analysis, compilations, studies, summaries, and other material prepared by or for KRS or Merchant containing or based, in whole or in part, on any information included in the foregoing; and (iv) any and all data and information concerning the WingPoints Program, WingPoints Data, WingPoints Database, Enrolled Customers, and Reported Transactions all of which is owned by ConocoPhillips.

9. **Limitation of Warranties.** This section 9 is not used.

10. **Indemnification.**

10.1 Merchant shall indemnify, defend, and hold harmless KRS and its officers, directors, and affiliates (the “KRS Indemnitees”) from, against, and with respect to any and all loss, damage, claim, obligation, liability, cost and expense (including, without limitation, reasonable attorneys’ fees and costs and expenses incurred in investigating, preparing, defending against, or prosecuting any litigation, claim, proceeding, or demand), of any kind or character (a “Loss”) arising out of or in connection with any of the following:

(i) Any breach of any of the representations or warranties of Merchant contained in or made pursuant to this Agreement;

(ii) Any failure by Merchant to perform or observe in full any covenant, agreement, or condition to be performed or observed by it pursuant to this Agreement;

(iii) Any negligent, wrongful, or willful act or omission of Merchant, its members, managers, officers, employees, agents, successors, or assigns, or other parties acting on its behalf or under its direction, including Merchant’s strict liability and

tort, in any way arising out of Merchant's performance or activities under this Agreement;

- (iv) KRS's enforcement of this Section 10.1.

10.2 KRS shall indemnify, defend, and hold harmless Merchant and its officers, directors, and affiliates (the "Merchant Indemnitees") from, against, and with respect to any and all loss, damage, claim, obligation, liability, cost and expense (including, without limitation, reasonable attorneys' fees and costs and expenses incurred in investigating, preparing, defending against, or prosecuting any litigation, claim, proceeding, or demand), of any kind or character (a "Loss") arising out of or in connection with any of the following:

- (i) Any breach of any of the representations or warranties of KRS contained in or made pursuant to this Agreement;

- (ii) Any failure by KRS to perform or observe in full any covenant, agreement, or condition to be performed or observed by it pursuant to this Agreement;

- (iii) Any negligent, wrongful, or willful act or omission of KRS, its members, managers, officers, employees, agents, successors, or assigns, or other parties acting on its behalf or under its direction, including KRS' strict liability and tort, in any way arising out of KRS' performance or activities under this Agreement;

- (iv) Merchant's enforcement of this Section 10.2.

11. **Survival of Terms.** The terms and provisions hereof, including, without limitation, the representations and warranties, shall survive the termination of this Agreement and shall remain in full force and effect thereafter.

12. **Entire Agreement.** This Agreement embodies the entire understanding between the parties relative to the subject matter hereof, and there are no oral or parol agreements existing between the parties concerning the subject matter hereof which are not expressly set forth and covered hereby.

13. **Notices.** All notices given pursuant to this Agreement shall be in writing and shall be given by personal service, by United States mail, or by United States express mail or other express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address for that party set forth above. For the purpose of this Agreement, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address first specified above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to this section, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (a) the date of the attempted delivery or refusal to accept delivery, (b) the date of the postmark on the return receipt, or (c) the

date of receipt of notice of refusal or notice of non-delivery by the sending party. If the delivery by personal service is attempted, the party attempting such delivery shall leave evidence of such attempted delivery at the address specified pursuant to this section including, without limitation, a copy of the applicable notice or other document.

14. **Counterparts.** This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

15. **Additional Acts.** Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed, and/or delivered by either party, the parties hereto agree to perform, execute, and/or deliver, or cause to be performed, executed, and/or delivered, any and all such further acts, deeds, and assurances that either party may reasonably require to consummate the transaction contemplated hereby.

16. **Construction.** This Agreement shall be construed under and in accordance with the laws of the State of Idaho including its choice of law provisions.

17. **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

18. **Attorneys' Fees.** Should either party use a court of competent jurisdiction employ an attorney or attorneys to enforce any of the provisions hereof, or to protect its interest in any manner arising under this Agreement as a result of an alleged breach by a party, or to recover damages for the breach of this Agreement, the prevailing party in such action shall be entitled to recover its costs, including attorneys' fees, expended or incurred in connection therewith.

19. **Assignment.**

19.1 This Agreement is personal to Merchant and assignable or transferable by Merchant only with the prior written consent of KRS, which consent shall not be unreasonably withheld. Dealer must make a written request to KRS for such consent at least sixty (60) days prior to the desired effective date of the proposed assignment or transfer of this Agreement. FBO understands, however, that consent to any assignment may include, but not be limited to, requiring the agreement of the proposed assignee to assume responsibility in writing for FBO's contractual liabilities to KRS hereunder. Refusal of the proposed assignee or transferee to accept said liabilities may be a reason for KRS to withhold its consent to the assignment.

19.2 If FBO is a corporation, partnership or other business entity, any transfer of any controlling interest in such entity shall be deemed an assignment requiring the prior written consent of KRS.

19.3 KRS may assign this Agreement upon notice to Merchant; provided however, any assignment by KRS shall require assignee to assume responsibility for KRS's contractual liabilities to FBO hereunder.

20. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and permitted assigns.

IN WITNESS WHEREOF, the parties hereto have set their hands hereunder as of the date and year first above written.

KRS:

MERCHANT:

KRS POINTS, L.L.C., an
Idaho limited Liability Company,

(Business name, if applicable)

By: _____
(Signature)

By: _____
(Signature)

Print Name: _____

Print Name: _____

Its: _____

Its: _____