

TO APPROVE A LIMITED WAIVER OF SOVEREIGN IMMUNITY IN FAVOR OF SPHERECOMMERCE AND MERRICK BANK

IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION

RONALD PERRY INTRODUCED THE FOLLOWING COUNCIL BILL

A COUNCIL BILL

TO APPROVE a limited waiver of sovereign immunity in favor of SphereCommerce and Merrick Bank.

WHEREAS, in accordance with Article IX, Section 4 of the Constitution of the Choctaw Nation of Oklahoma, "The Tribal Council shall enact legislation, rules and regulations not inconsistent with this Constitution for the general good of the Choctaw Nation and for the administration and regulation of the affairs of the Choctaw Nation";

WHEREAS, the Choctaw Nation of Oklahoma (the "Nation") seeks to enter into an agreement (Agreement) with SphereCommerce, LLC, and its subsidiaries and affiliates (SphereCommerce) and Merrick Bank and its subsidiaries and affiliates, to provide a payment processing gateway, payment processing services, and transaction processing for patients using the Choctaw Nation Health Services Authority (CNHSA);

WHEREAS, the proposed Agreement with SphereCommerce and Merrick Bank contains a limited waiver of sovereign immunity from suit in favor of SphereCommerce and Merrick Bank, as set forth below (the "Waiver"); and **Limited Waiver of Sovereign Immunity - SphereCommerce and Merrick Bank Agreement.**

Per CB-__-25, the Choctaw Nation Tribal Council approves the limited waiver below:

(a) ISO and Bank agrees that the Nation (Merchant) is a federally recognized Indian tribe and is a sovereign entity, and that elements of its sovereignty may be extended to legally distinct and separate agencies or affiliates of the Nation. Notwithstanding the foregoing, to the extent that the Nation or such agencies or affiliates that are or become a party hereto or a permitted assignee of this Agreement may be entitled to claim or benefit from the Nation's sovereign immunity in respect of the obligations under this Agreement, the Nation, on behalf of itself and such agencies or affiliates, expressly agrees not to plea or otherwise claim or invoke and hereby expressly waives, such sovereign immunity to suit solely with respect to this Agreement (a "Claim") brought or maintained by ISO and Bank; provided, that the foregoing waiver shall be limited to the enforcement of the Nation's, its agencies' or Affiliates' obligations and liabilities to ISO and Bank under this Agreement and nothing in this Agreement, including this Section XX, shall be construed as extending or enlarging this limited waiver of sovereign immunity hereunder beyond the scope of Nation's and such agencies' or affiliates' obligations and liabilities to ISO and Bank (or for obligations and liabilities to Nation to allow Nation to meet obligations and liabilities to ISO and Bank) as expressly set forth in this Agreement. This limited waiver of sovereign immunity shall apply solely with respect to Claims and solely to ISO and Bank and, for the sake of clarity, nothing in this Agreement, including this Section XX, is intended to, nor shall it be construed to:

- (i) waive Nation's, its agencies or affiliates' sovereign immunity for the benefit of any third party or benefit anyone other than ISO and Bank;
- (ii) waive Nation's, its agencies' or affiliates' sovereign immunity except as specifically and expressly set forth herein;
- (iii) waive the sovereign immunity of (A) any legally distinct and separate agency or affiliate of Nation that is not a party hereto or a permitted assignee of this Agreement, or (B) any elected or appointed official acting on behalf of Nation, or such agency or affiliate, and within the scope of his or her official authority; or
- (iv) as a general waiver of Nation's, its agencies' or Affiliates' sovereign immunity, from suit.

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(b) This limited waiver of sovereign immunity applies to action(s) instituted against Nation limited to money damages, injunctive relief and/or declaratory relief, and enforcement of judgments relating solely to this Agreement; provided, however, that this limited waiver of sovereign immunity does not apply to any claim brought against Nation or its agencies or affiliates by any third party. ISO and Bank agrees it will not pursue any Claim against a Nation official in their official capacity.

(c) This limited waiver of sovereign immunity shall not, itself, permit the recovery of any attorney fees, litigation costs/expenses, and/or consequential, incidental, special or punitive damages beyond any obligations contained in this Agreement.

WHEREAS, the Tribal Council of the Choctaw Nation has determined that it is in the best interest of the Nation to grant such a limited waiver of sovereign immunity in favor of SphereCommerce and Merrick Bank solely to the extent of, and in accordance with, the terms of the Waiver.

THEREFORE, BE IT ENACTED, by the Tribal Council that this Council Bill be cited as approval and authority to grant a limited waiver of sovereign immunity in favor of SphereCommerce and Merrick Bank as set forth in the Waiver.

BE IT FURTHER ENACTED, by the Tribal Council that this Council Bill be cited as approval and authority that nothing contained herein is intended to, nor shall it be construed to, benefit any party other than SphereCommerce and Merrick Bank.

BE IT FURTHER ENACTED, by the Tribal Council of the Choctaw Nation of Oklahoma that this Council Bill be cited as approval and authority that nothing contained herein is intended to, nor shall it be construed to, waive the sovereign immunity of the Choctaw Nation of Oklahoma, Choctaw Nation Health Services Authority or any of its affiliates, departments, agencies, divisions, or subsidiaries except as specifically set forth herein.

BE IT FURTHER ENACTED, by the Tribal Council of the Choctaw Nation of Oklahoma that this Council Bill be cited as approval and authority that nothing contained herein is intended to, nor shall it be construed to, waive the sovereign immunity of any elected official, officer, or employee of the Nation or any of its departments, agencies, divisions, affiliates or subsidiaries, and no waiver of immunity is provided with respect to such parties.

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CERTIFICATION

I, the undersigned, as speaker of the Tribal Council of the Choctaw Nation of Oklahoma, do hereby certify that the Tribal Council is composed of twelve (12) seats. Eight (8) members must be present to constitute a quorum. I further certify that twelve (12) members answered roll call and that a quorum was present at the Regular Session of the Tribal Council at Tuskahoma, Oklahoma on December 14, 2024. I further certify that the foregoing Council Bill CB- 18 -25 was adopted at such meeting by the affirmative vote of twelve (12) members, zero (0) negative votes, and zero (0) abstaining.



Thomas Williston, Speaker
Choctaw Nation Tribal Council



Ronald Perry, Secretary
Choctaw Nation Tribal Council



Gary Battor, Chief
Choctaw Nation of Oklahoma

Date 12-18-24

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Purpose/Need of Council Bill: This Council Bill proposes a limited waiver of sovereign immunity in favor of SphereCommerce and Merrick Bank. The Nation seeks to enter into an agreement with SphereCommerce, LLC and Merrick Bank. SphereCommerce and Merrick Bank will provide a payment processing gateway, payment processing services, and transaction processing for patients using the Choctaw Nation Health Services Authority. This limited waiver of sovereign immunity is limited to the terms of the Waiver between the parties and the Choctaw Nation. This Council Bill furthers the Nation's strategic goal of: transitioning Choctaw Nation Health Services Authority's electronic medical record (EMR) from Indian Health Service (IHS) Resource Patient Management System (RPMS) to more modern alternatives to increase the Nation's ability to respond and recover from the COVID-19 pandemic.

Title of Council Bill: TO APPROVE A LIMITED WAIVER OF SOVEREIGN IMMUNITY IN FAVOR OF SPHERECOMMERCE AND MERRICK BANK

Agency: CNHSA

Budget: NA

Match Required: NA

Request by Project Director: Teresa Jackson, SEO of Tribal Services **Suggested**

Legislative Committee Review: Health Services