



PAYMENT PROCESSING SERVICES STATEMENT OF WORK

between

nCourt, LLC

(“Provider”)

having its principal place of business at:

3025 Windward Parkway - Suite 200; Alpharetta GA 30005

and

Indian River County - Solid Waste Disposal District

(“Merchant”)

having its principal address at:

1325 74th SW Avenue; Vero Beach FL 32968

THIS PAYMENT PROCESSING SERVICE STATEMENT OF WORK (this “**SOW**”) is made and entered into as of the ____ day of July 2022 (“**Effective Date**”) by and between nCourt, LLC (“**Provider**”) and Indian River County - Solid Waste Disposal District (“**Merchant**”). Merchant and Provider may each be referred to individually as a “**Party**” and together as the “**Parties**.” The attached Exhibits are incorporated by reference.

TERM

This SOW will commence upon the Effective Date and continue for three (3) years, at which point in time the SOW will automatically renew for successive one (1) year periods unless either party, at least sixty (60) days prior to the expiration of the then applicable term, provides the other with written notice of its desire to terminate this SOW.

STRATEGY

After the contracting process has ended, Provider will build and the maintain payment channel(s), as defined below, to allow Merchant to securely accept, validate, and track payment data from its Customers. Where Web E-Payment System is in scope, an initial test site will be built to load all data received from Merchant and Mettler Toledo, LLC. On this test site, Provider will build logic and business rules to govern the hosted data. Once the web services have been properly built, tested, and reviewed, Provider will establish Merchant Identification credentials. Web services and Merchant Identification credentials will be applied and integrated into the hosted site and data backed payments will be tested. Once the payments are tested, Provider will initiate training for all Merchant personnel, done remotely. Upon successful training, the hosted website will be moved into a production environment and undergo a subsequent round of testing. After testing and validation of the data, Merchant will direct Provider to launch the site.

The date of System launch (“**Go-Live**”) will be targeted during an implementation kickoff call with all relevant stakeholders. The successful completion of this Statement of Work is dependent on Merchant reviewing test content, data, and functionality in a timely manner, and providing an appropriate level of operational and strategic engagement to participate in training, deploy the solution into production environments, and follow through with the responsibilities listed below.

SCOPE

For good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Merchant will make resources available to assist Provider in the timely launch of the payment processing program. Provider cannot be held accountable for unreasonable Merchant delays and may choose to delay the implementation should Merchant not be able to provide appropriate resources. If system does not launch within twelve (12) months of signature date due to Merchant delays, the full implementation fee will become due. Otherwise, there is no cost for the implementation or services provided unless specified herein.

Payments are deposited daily into a custodial account and transferred by ACH electronic transfer to Merchant daily. The payment will be accompanied by a reconciliation detailing the payments included. Any money transfer fees will be absorbed by Provider.

2. E-Payment System Utilization

2.1. Merchant will make Provider’s Services available to its Customers through various means of communication, including a) through billing statements, invoices and other payment notices; b) by providing IVR and Web payment details on the Merchant’s website including a “Pay Now” or similar link on a mutually agreed prominent place on the web site; c) through the Merchant’s general IVR/Phone system and d) other channels deemed appropriate by the Merchant.

2.2. Provider shall provide the Merchant with logos, graphics, and other marketing materials for use in its communication with its Customers regarding the payment services provided by Provider. Both parties agree that Provider will be presented as the primary payment method option. Merchant will communicate the Provider payment Service option to its Customers wherever the Merchant generally communicates its other payment methods.

2.3. Payments types shall be processed through the payment channels defined in this SOW as marked (☒):

- | | |
|---|--|
| <input type="checkbox"/> Tax | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Utilities | <input type="checkbox"/> Child Support |
| <input type="checkbox"/> Court Fees & Fines | <input checked="" type="checkbox"/> Solid Waste / Landfill |
| <input type="checkbox"/> Licenses | |

3. **Provider Deliverables:** Provider shall deliver the following, included as marked (☒):

- 3.1. Web E-Payment System
- 3.1.1. Provider shall build, host and maintain Merchant-specific website(s) for Indian River County - Solid Waste Disposal District. Provider will purchase a URL, www.TBD.com.
 - 3.1.2. Provider will provide a secure website that will allow payers to enter their pertinent information, e.g., citizen name or other unique identifier, and then proceed to pay with a credit or debit card.
 - 3.1.3. System will collect and transmit payment information for authorization and settlement.
 - 3.1.4. System will provide method of transferring transaction data back to Merchant.
 - 3.1.5. Upon notification of an over- or under-payment of any fine amount, Provider will refund an overpayment or notify the Customer via automated email of their under-payment and the remaining amount due.
 - 3.1.6. The payer will be simultaneously advised via automated email that the transaction has been completed and will receive further notification when the Merchant processes the payment.
- 3.2. Counter E-Payment System
- 3.2.1. Provider shall deliver and configure 2 EMV device(s).
 - 3.2.2. Provider shall deliver an administrator portal for counter payments.
 - 3.2.3. Provider shall remotely upgrade EMV devices as appropriate.
 - 3.2.4. Provider shall provide one (1) remote, web-based training session covering setup and use of EMV devices.
- 3.3. Phone / Call Center E-Payment System
- 3.3.1. Provider shall provide a toll-free telephonic customer service function to ensure that Customers utilizing the Program have a satisfactory experience that does not require the technological assistance of Merchant personnel.
- 3.4. IVR - E-Payment System
- 3.4.1. IVR solution shall be hosted and maintained by Provider.
 - 3.4.2. Provider shall configure call scripts according to industry best practices.
 - 3.4.3. IVR functionality shall only include search/retrieval and payment processing of Case payments in full.
- 3.5. Text and Email Payment System
- 3.5.1. Provider will deliver functionality to allow Customers to set up text (SMS) and/or email payment and notification preferences through their E-Payment System profile. Customers will be required to (i) have a valid payment method stored within their profile and (ii) verify their cell phone number prior to completing registration.
- 3.6. eCheck/ACH E-Payment System
- 3.6.1. Provider will configure web E-Payment System to accept eCheck/ACH Payments.
- 3.7. Integrations
- 3.7.1. Provider will create/maintain an integration with record management or other system. System integration Statement of Work is in Exhibit B.
- 3.8. E-Payment System Training
- 3.8.1. Provider will provide support and training to Merchant personnel via live, web-based session(s). A training schedule will be shared during implementation.
4. **Merchant's Responsibilities:** In order for Provider to provide the Services outlined in this SOW, the Merchant shall deliver the following, included as marked ():
- 4.1. General
- 4.1.1. Provide ACH forms required for the remittance of funds.
 - 4.1.2. Attend client care calls as requested.
 - 4.1.3. Notify Provider of changes to any state, county, or municipal mandates or laws.
 - 4.1.4. Revoke system access of terminated Merchant employees at time of termination.
- 4.2. Web E-Payment System
- 4.2.1. For the duration of this SOW, Merchant will maintain an active link connecting the Merchant website and the Provider payment portal in a prominent and mutually agreed location on the Merchant website.

4.3. Counter E-Payment System

4.3.1. Merchant will keep all point of sale terminals in good order and repair except for normal wear and tear in the ordinary course of business.

4.4. Phone E-Payment System

4.4.1. The phone number for the payment IVR (if applicable) and Provider Call Center (if applicable) will also be added to the website.

4.4.2. The Merchant will add the IVR Payment option (if applicable) as part of the Merchant general phone system.

4.5. Integrations

4.5.1. The Merchant, via their record management system, DataBridge, will update Provider’s payment program on a near real-time basis, with data on all open and payable records from the Merchant’s server. Upon exchange of the data, the information may be accessed, and payment made by the Customer. Record management system integration Statement of Work is in Exhibit B.

4.6. PayPal setup details required:

Merchant Bank Account Information:

Name of Bank: _____

ABA No.: _____

Account No.: _____

Account Name: _____

Reference: _____

SIGNATURES

In witness whereof, the Parties have executed this SOW by their duly authorized representatives as of the date first above written.

Indian River County - Solid Waste Disposal District:

nCourt, LLC:

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A: FEES

1. The expected processing volume in the Program is estimated at 2,200 transactions per month or \$110,000 per month.
2. **E-Payment System**

In consideration for the provision of the development, hosting, application, customer service, and processing fees related to the E-Payment System, Customers will pay applicable fees (“*Convenience Fees*”) and/or Merchant will be billed applicable fees (“*Merchant Absorbed Fees*”) associated with payment transactions marked (☒) as follows:

Payment Channel	Transaction Type	Fee Structure	Merchant Absorbed
<input type="checkbox"/> Online (via web or mobile device)	<input type="checkbox"/> Credit Cards <input type="checkbox"/> Visa <input type="checkbox"/> Mastercard <input type="checkbox"/> Discover <input type="checkbox"/> American Express		<input type="checkbox"/>
	<input type="checkbox"/> Debit Cards <input type="checkbox"/> Visa <input type="checkbox"/> Mastercard <input type="checkbox"/> Discover		
	<input type="checkbox"/> PayPal / PayPal Credit / Venmo		
	<input type="checkbox"/> E-Check / ACH		
<input checked="" type="checkbox"/> Counter (in-office via PCI compliant, EMV ready card readers)	<input checked="" type="checkbox"/> Credit Cards <input checked="" type="checkbox"/> Visa <input checked="" type="checkbox"/> Mastercard <input checked="" type="checkbox"/> Discover <input checked="" type="checkbox"/> American Express	For each transaction, the higher of: 3.5% per transaction or \$1.99 minimum fee per transaction	<input type="checkbox"/>
	<input checked="" type="checkbox"/> Debit Cards <input checked="" type="checkbox"/> Visa <input checked="" type="checkbox"/> Mastercard <input checked="" type="checkbox"/> Discover		
	<input type="checkbox"/> E-Check / ACH		
<input type="checkbox"/> Call Center (via live, bilingual call center agent)	<input type="checkbox"/> Credit Cards <input type="checkbox"/> Visa <input type="checkbox"/> Mastercard <input type="checkbox"/> Discover <input type="checkbox"/> American Express		<input type="checkbox"/>
	<input type="checkbox"/> Debit Cards <input type="checkbox"/> Visa <input type="checkbox"/> Mastercard <input type="checkbox"/> Discover		
	<input type="checkbox"/> E-Check / ACH		
<input type="checkbox"/> IVR (via automated phone system)	<input type="checkbox"/> Credit Cards <input type="checkbox"/> Visa <input type="checkbox"/> Mastercard <input type="checkbox"/> Discover <input type="checkbox"/> American Express		<input type="checkbox"/>
	<input type="checkbox"/> Debit Cards <input type="checkbox"/> Visa <input type="checkbox"/> Mastercard <input type="checkbox"/> Discover		
	<input type="checkbox"/> E-Check / ACH		
<input type="checkbox"/> Cash	<input type="checkbox"/> Cash		<input type="checkbox"/>

(at participating locations)			
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3. Implementation Services

Only the services marked (☒) will be implemented. Fees will be waived if Merchant implements E-Payment System within twelve (12) months:

Implementation Service	Fee Recurrence	Fee
<input checked="" type="checkbox"/> E-Payment System Deployment & Program Implementation	One-time	\$10,000.00 Waived
<input type="checkbox"/> IVR Implementation	One-time	\$2,000.00 Waived
<input checked="" type="checkbox"/> Web Services or API Implementation	One-time	\$5,000.00 Waived
<input checked="" type="checkbox"/> File Integration	One-time	\$1,000.00 Waived
<input checked="" type="checkbox"/> Support & Training (__ hour(s))	Per hour	\$150.00 Waived
<input type="checkbox"/> Custom Programming (__ hour(s))	Per hour	\$150.00 Waived
<input checked="" type="checkbox"/> POS Terminals (__ terminal(s))	Per unit	\$350.00 Waived

4. Ongoing Services

Payment processing and development services to be funded by Merchant, as marked (☒):

Service	Fee Recurrence	Fee
<input type="checkbox"/> Address Verification	Per occurrence	
<input type="checkbox"/> Chargeback Processing	Per occurrence	
<input type="checkbox"/> Statement Fee	Per occurrence	

EXHIBIT B: INTEGRATION SCOPE

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EXHIBIT C: TERMS AND CONDITIONS

1. E-PAYMENT SYSTEM.

1.1. **E-Payment System.** Subject to the terms of this Agreement, during the Term, Provider will process electronic payments to Merchant (“Payments”) from Merchant’s taxpayers, citizens and/or customers (“Customers”) via an electronic payment system that is provided by Provider and is described in more detail in the SOW (the “E-Payment System”). Merchant will promptly provide Provider with information reasonably required by Provider in order to promptly and accurately perform the services contemplated by this Agreement.

1.2. **Payment Date.** The date the Payment is posted is the date the Customer manually transmits the Payment to the E-Payment System or the date an agreed automatic Payment is initiated, whichever is applicable (the “Payment Date”). The Payment Date will be deemed the date the Payment is made for all purposes, including any late fees, if any, that Merchant may charge to such Customer. Provider will remit to Merchant all Payments paid via the E-Payment System no later than two (2) business days, excluding bank holidays, following the Payment Date. Provider cannot control Merchant’s financial institution’s funds availability or posting policies.

1.3. **Chargebacks.** Merchant will promptly investigate all Chargebacks (as defined by the Rules of the applicable Payment Network) with the assistance of Provider. Merchant is responsible for the amounts of all Chargebacks, deposit errors, refunds, and unfulfilled products and services (“Disputed Amounts”). Provider is responsible for the third-party fees and penalties levied by a Payment Network in respect of the investigation and resolution of a Chargeback (“Chargeback Resolution Fees”). Provider may, in its discretion, debit Merchant’s account in respect of Disputed Amounts or bill Merchant for the amount of such Disputed Amounts.

1.4. **Fraud.** Provider may, in its sole discretion, implement any fraud prevention systems that it deems necessary, appropriate, and/or advisable, including, but not limited to, CVV2, Address Verification Service, Verified by Visa, MasterCard Secure Code and/or similar systems.

1.5. **Indemnified Payments.** Chargebacks and Fraud Sections notwithstanding, for payment types marked as Indemnified in the SOW, Provider will promptly investigate all Chargebacks (as defined by the Rules of the applicable Payment Network) with the assistance of Merchant. Provider will be liable for Chargeback liability derived from Payments processed by Provider; provided, however, that (a) the Payment was made via credit card, debit card, PayPal, or Venmo; and (b) Provider may, in its sole discretion, implement any fraud prevention systems that it deems necessary, appropriate and/or advisable, including, but not limited to, CVV2, Address Verification Service, Verified by Visa, MasterCard Secure Code and/or similar systems; and (c) Merchant, will promptly, from time to time, deliver to Provider all agreements, documents and data and perform all such acts and deeds that Provider requests from (or of) Merchant for the purpose of resolving a Chargeback; and (d) Merchant will reimburse Provider in respect to fraud, deposit errors and/or duplicative payments.

1.6. **Modification of E-Payment System.** Provider may modify the features and functionality of the E-Payment System at any time and from time to time; provided, however, that Provider will not modify the E-Payment System in a manner that would significantly adversely affect the use thereof, without providing at least ten (10) days prior notice to Merchant of any such modification.

1.7. **Fees.** In consideration for the provision of the E-Payment System, Customers will pay to Provider, in respect of each Payment, the Convenience Fees that are detailed in the SOW and Merchant, if applicable, will pay to Provider the Merchant Absorbed Fees and/or other fees set forth in the SOW. Provider will pay the charges levied by the Payment Networks for processing Payments, including interchange fees, assessments, authorization fees, risk fees, transmission fees and similar fees (“Transaction Fees”) and for Chargeback Resolution Fees. If federal and/or state statutes or Payment Network Rule changes impact the ability to impose the Convenience Fees and/or Merchant Absorbed Fees, or if the Payment Network(s) notify either party of changes required to the Convenience Fees and/or Merchant Absorbed Fees, the parties agree to amend the Convenience Fees and/or Merchant Absorbed Fees to comply with such statutes and rule changes. The Convenience Fees and/or Merchant Absorbed Fees are calculated based on the assumptions that the total number of payments and the total payment amount collected each month from the use of non-consumer credit and debit cards shall be under 5% of the respective total per month and that the combined cost of Third Party Fees is less than 60% of the Convenience Fees and/or Merchant Absorbed Fees charged by Provider for a given transaction type (e.g., tax payment) and/or payment method (e.g., Visa credit) (collectively, the “Fee Assumptions”). Provider may amend the SOW, upon prior written notice to Merchant, if a Fee Assumption is not accurate or if such change is required due to changes in the Rules. “Payment Network” means a group of credit/debit card issuer banks, debit networks and other method providers, including, without limitation, PayPal Commerce, Visa U.S.A., Inc., MasterCard International, Inc., American Express, Discover, and the NYCE, Pulse, Star, and Interlink debit networks. “Rules” are the bylaws, rules, and regulations, as they exist from time to time, of the Payment Networks. “Third Party Fees” means all taxes imposed by any governmental entity and Transaction Fees.

1.8. **Reporting.** Provider will provide its standard daily transaction reports; provided, however, that Provider may provide custom transaction reports to Merchant for an additional monthly fee upon Merchant’s request.

1.9. **Routing; Transaction Processing.** Provider may, in its sole discretion, route Payments through any eligible network, including but not limited to debit networks, and/or process Convenience Fees as a single transaction (Convenience Fee plus Payment) or as separate transactions.

2. GENERAL.

2.1. **Operating Regulations.** Merchant agrees that the Association's and other payment network's by-laws, operating regulations and/or all other rules, policies and procedures, including but not limited to the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the Mastercard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations or payment networks (collectively "Operating Regulations") are incorporated by reference into this Agreement and that nothing in this Agreement shall be construed to interfere with or lessen the right of Processor, Member Bank, or the Associations to terminate the Provider Merchant Agreement at any time. "Associations" as used in the Agreement shall mean Mastercard International Inc. ("Mastercard"), VISA U.S.A. Inc. ("VISA"), Discover ("Discover"), and certain similar entities. In the event of a conflict between this Agreement and the Operating Regulations, the Operating Regulations will control. "Member Bank" as used in this Agreement shall mean a member of VISA, Mastercard and/or Discover, as applicable, that provides sponsorship services in connection with this Agreement.

2.2. Merchant Obligations.

- i. Merchant acknowledges and agrees:
 - a. it is responsible for the actions of its employees and agents;
 - b. it will comply with all applicable laws and regulations and all applicable parts of the Operating Regulations; including those parts regarding the ownership and use of an Association's mark including but not limited to names, logos, trade names, logotypes, trademarks, service marks, trade designations, and other designations, symbols ("Association Marks");
 - c. Provider or an Association is authorized to research Merchant's background including, but not limited to, credit background checks, banking relationships, and its financial history;
 - d. notwithstanding any provisions in the agreement to the contrary, information obtained in connection with Merchant's application or processing relationship may be shared with Association for any legitimate purpose;
 - e. it will notify Provider of any third party that will have access to cardholder data;
 - f. it will comply with, and will contractually require its suppliers and agents to comply with, the provisions of the Cardholder Information Security Program (CISP) and PCI DSS, or other security program as required by an Association and demonstration compliance with these security obligations; and
 - g. Associations may conduct, or direct another party to conduct, an audit of Merchant at any time, and Merchant must comply in all material respects with such audit until its completion.
 - h. In the event that more than \$1,000,000 in Visa transactions and/or \$1,000,000 in MasterCard transactions (or such other amount provided by the Operating Regulations) ("Benchmark Amount") is processed through and on behalf of Merchant in any 12-month period, Merchant will automatically be deemed to have accepted, and will be bound by, the "Merchant Services Agreement for Sub-Merchants" with Provider's designated merchant acquirer ("Acquirer") which is set forth in the Merchant Services Agreement for Sub-Merchants, the terms of which will be independently enforceable by Acquirer.
- ii. Merchant represents and warrants that it will not:
 - a. discriminate against Cards or Issuers (e.g. limited acceptance options) except in full compliance with the Operating Regulations;
 - b. intermingle fees associated with an Associations' transactions with fees associated with other Card transactions in its pricing;
 - c. submit any transaction to Provider that was previously charged back and subsequently returned to the Merchant, irrespective of Cardholder approval;
 - d. knowingly submit any transaction that is illegal or that the Merchant should have known was illegal. Merchant acknowledges that such transaction must be legal in both Cardholder's and Merchant's jurisdiction;
 - e. submit a transaction that it knows, or should have known is either fraudulent or not authorized by the Cardholder;
 - f. require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, Card expiration date, signature, or any other Card account data in plain view when mailed, nor request a Card Verification Value 2 ("CVV2") for a card-present transaction, nor retain or store any portion of the magnetic-stripe data subsequent to the authorization of a sales transaction, nor any other data prohibited by the Operating Regulations or this Agreement, including CVV2;
 - g. add a surcharge to transactions, except as expressly permitted by, and in full compliance with, the Operating Regulations;
 - h. charge a minimum or maximum amount for a transaction unless expressly authorized by, and in full compliance with, the Operating Regulations;
 - i. disburse funds in the form of cash unless Merchant is participating in full compliance with a program supported by an Association for such cash disbursements and in full compliance with the Operating Regulations;
 - j. submit a transaction that does not result from an act between the Cardholder and the Merchant;

- k. accept a Card issued by a U.S. Issuer to collect or refinance an existing debt, unless expressly authorized by, and in full compliance with, Operating Regulations;
- l. request or use a Card account number for any purpose other than as payment for its goods or services; and
- m. add any tax to transactions, unless applicable law expressly requires that a Merchant be permitted to impose a tax. In such event, any tax amount, if allowed, must be included in the transaction amount and not collected separately.
- n. If applicable, Merchant will provide Provider with a copy of its annual PCI Attestation of Compliance (AOC) and/or PCI Self-Assessment Questionnaire (SAQ) (as applicable based on PCI DSS qualifications) annually.

2.3. **American Express.** If Merchant chooses to accept American Express, then Merchant agrees to the terms and conditions set forth below.

- i. Processing Restrictions. Merchant is prohibited from processing Transactions or receiving payments on behalf of, or (unless required by law) re-directing payments to any other party.
- ii. Third Party Beneficiary Rights.
 - a. Merchant confers on American Express the beneficiary rights, but not obligations, to the Agreement and, as such, American Express has the express right to enforce the terms of the Agreement against the Merchant.
 - b. Merchant warrants that it does not hold third party beneficiary rights to any agreements between Provider and American Express and at no time will attempt to enforce any such agreements against American Express.
- iii. American Express Liability. MERCHANT ACKNOWLEDGES AND AGREES THAT IN NO EVENT SHALL AMERICAN EXPRESS, ITS AFFILIATES, AGENTS, SUCCESSORS, OR ASSIGNS BE LIABLE TO MERCHANT FOR ANY DAMAGES, LOSSES, OR COSTS INCURRED, INCLUDING INCIDENTAL, INDIRECT, SPECULATIVE, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (WHETHER BASED ON CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, FRAUD, OR OTHERWISE, OR STATUTES, REGULATIONS, OR ANY OTHER THEORY), ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT.
- iv. The American Express Merchant Operating Guide may be viewed at: www.americanexpress.com/merchantopguide

2.4. **PayPal.** If Merchant chooses to accept PayPal, then Merchant authorizes and directs Provider to:

- i. establish a PayPal account for and on behalf of Merchant (“Merchant’s PayPal Account”);
- ii. authorize and direct PayPal to deposit Payments from Customers to Merchant via PayPal (“PayPal Payments”) into the Merchant’s PayPal Account;
- iii. authorize and direct PayPal to link Merchant’s PayPal Account to Merchant’s bank account described below (“Merchant’s Bank Account”);
- iv. authorize and direct PayPal to regularly sweep funds from the Merchant’s PayPal Account to Merchant’s Bank Account; and
- v. administer and manage the Merchant’s PayPal Account, including receipt of any PayPal notices in connection with each account.

Provider believes that, pursuant to its contract with PayPal as outlined above, Provider does not receive, transfer and/or transmit funds. Rather, funds flow from Customers to PayPal, and then from PayPal to Merchant.

If, however, any governmental entity asserts that Provider does receive, transfer and/or transmit funds, then:

- i. Merchant hereby appoints Provider as its lawful agent to receive and process PayPal Payments; and
- ii. Merchant acknowledges and agrees that, with respect to the payor, payment to Provider constitutes delivery of such payment to Merchant; and, as such, Merchant will not hold the Customer responsible for Provider’s failure to deliver payment, but rather Merchant will seek redress only from Provider.

2.5. **Exclusivity.** Merchant will not accept credit card or other Electronic Payments through a similar E-Payment System for Payments from Customers for the services listed in the SOW hereto other than through Provider without the prior written consent of Provider.

2.6. **Compliance with Law.** Each party will comply, at such party’s own expense, with all laws, policies, guidelines, regulations, ordinances, orders, and rules of all governmental authorities and/or regulatory bodies having jurisdiction over such party and/or the subject matter of this Agreement, including, without limitation, the rules promulgated by the Credit Card Payment Networks, the Payment Card Industry (PCI) Data Security Standard, Visa Cardholder Information Security Program (CISP), the MasterCard Site Data Protection Program (SDP), and the Federal Trade Commission. Provider shall comply with applicable laws and regulations governing electronic check processing, check conversion, and/or the initiation of preauthorized electronic debit entries, including but not limited to the Electronic Fund Transfer Act of 1978, Federal Reserve Regulation E, the Electronic Signatures in Global and National Commerce Act, and all FTC and NACHA rules and regulations. Merchant may be responsible for any fines and/or penalties related to ACH notifications of change (NOC) and/or electronic check return cancellations that are not remedied in accordance with the NACHA Rules.

2.7. **Nondisclosure.** Each party agrees to keep confidential and to use only for purposes of performing under this Agreement, any proprietary or confidential information of the other party disclosed pursuant to this Agreement which is appropriately marked as confidential or which could reasonably be considered of a proprietary or confidential nature (“Confidential Information”), and, except

as otherwise permitted by this Agreement, the terms of this Agreement and all negotiations relating thereto (but not the existence of this Agreement generally). The obligation of confidentiality does not apply to information which is required by law to be disclosed (including public right-to-know laws), which is publicly available through authorized disclosure, is known by the receiving party at the time of disclosure, or is rightfully obtained from a third party that has the right to disclose it. All Confidential Information will remain the property of the disclosing party.

2.8. **Privacy and Security.** Merchant is solely responsible for the security of data residing on servers owned or operated by Merchant and all third parties (other than Provider) designated by Merchant (e.g., a Web hosting Merchant, processor and other service providers), and for data transmitted to Provider. Merchant will not use, disclose, sell, and/or disseminate any cardholder information obtained in connection with a Payment (including the names, addresses and card account numbers of cardholders) except for purposes of authorizing, completing, and settling a Payment and resolving any Chargebacks, retrieval requests, or similar issues involving a Payment, other than pursuant to a court or governmental agency request, subpoena, or order. Merchant will use proper controls for and limit access to, and render unreadable prior to discarding, all records containing card account numbers and card imprints. Merchant agrees that it will comply with all Provider security protocols and security advisories in effect during the Term. Merchant is responsible for verifying the accuracy and completeness of all Payments submitted and processed by Provider associated with Merchant's account and verifying that all corresponding funds are accurately processed.

2.9. **System Breach.** Merchant warrants that Merchant has taken such precautions as are necessary to ensure that Merchant server and electronic systems are secure from breach or intrusion by unauthorized third parties. In the event that Merchant system is breached, or is suspected of having been breached, and an unauthorized third party has access to or has accessed end-user data or Payment data, Merchant will notify Provider promptly of such breach and will take such precautions as may be necessary to prevent such breaches from occurring in the future.

2.10. **Specific Prohibitions.** Notwithstanding anything contrary in this Agreement, Merchant will not:

- i. rent, lease, assign, sublicense, transfer, distribute, allow access to, and/or time share the E-Payment System to or with any third party;
- ii. disassemble, decompile, decrypt, extract, reverse engineer and/or modify the E-Payment System, or otherwise apply any procedure or process to the E-Payment System in order to ascertain, derive, and/or appropriate for any reason or purpose the source code or source listings for the E-Payment System or any algorithm, process, procedure, or other information contained in the E-Payment System;
- iii. distribute, facilitate, enable or allow access or linking to the E-Payment System in any manner deemed by Provider in its sole and absolute discretion to be objectionable or harmful to the business and/or reputation of Provider and/or for any unlawful, illegal, pornographic, and/or injurious purpose;
- iv. make any use of the E-Payment System that impairs the functionality of the E-Payment System;
- v. make use of the E-Payment System in any way, other than in accordance with this Agreement or as otherwise instructed by Provider in writing;
- vi. use the E-Payment System, either directly or indirectly, to develop any product or service that competes with the products and/or services provided by Provider;
- vii. make any copies of the E-Payment System;
- viii. circumvent or attempt to circumvent any applicable security measures of the E-Payment System;
- ix. attempt to access or actually access portions of any Provider systems and/or software not authorized for Merchant's use; and/or
- x. use the E-Payment System in any manner, or in furtherance of any activity that may cause Provider to be subject to investigation, prosecution, and/or legal action.

2.11. **Intellectual Property.** Provider represents that it owns, licenses or has the right to use and will retain during the Term all proprietary rights in and to the E-Payment System and related materials that Provider may use in connection with implementation and operation of the E-Payment System. Merchant acknowledges that, as between Merchant and Provider, Provider owns, licenses and/or has the right to use, all right, title and interest, including without limitation any and all rights existing under patent law, copyright law, moral rights law, trade secret law, trademark law, unfair competition law, publicity rights law, privacy rights law, and any and all other proprietary rights in and to all of the intellectual property developed, owned, used and/or licensed by Provider in connection with its performance under this Agreement, including the E-Payment System (the "Provider IP") and that Merchant will not acquire any right, title, or interest in or to the Provider IP, including the E-Payment System. There are no implied licenses granted under this Agreement, and any rights not expressly granted to Merchant hereunder are reserved by Provider. Merchant will not take any action inconsistent with Provider's property rights in and to the E-Payment System, and/or any other intellectual property right of Provider.

2.12. **Terminals.** Merchant acknowledges and agrees that Provider may provide Merchant point of sale terminals solely for the purpose of permitting Customers to initiate Payments via the E-Payment System. Upon receipt, this hardware becomes the sole and exclusive property of the Merchant. Provider will facilitate processing of any warranty claims on the provided devices during the manufacturers' warranty period. Following the expiration of the manufacturers' warranty, Provider will subsidize proportions of the replacement cost of any defective or damaged device according to the following schedule:

- 1st year following warranty expiration: 25%
- 2nd year following warranty expiration: 50%
- 3rd year following warranty expiration: 75%
- 4th year following warranty expiration and beyond: 100%

2.13. **Change Control Process.** The Parties agree to use the Provider organizational standard change process "Change Control Process" for all changes requested by Merchant and agreed to by Provider. Provider may, in its sole discretion, change, modify and/or update the Change Control Process at any time provided that Provider provides at least ten days prior notice to Merchant.

2.14. **Billing Terms.** All pricing is contained in the SOW and any Amendments or Addendums that may be executed by the Parties. The proposed pricing model may contain no transaction related or recurring costs for the Merchant and could result in Merchant incurring no charges during a billing cycle. Provider will send Merchant a monthly invoice for any charges incurred. The invoices will include detail for volumes and the number of transactions processed.

Merchant shall pay invoices, per the Florida Local Government Prompt Payment Act, within thirty (30) days of issue. Invoices not paid within this period shall be charged interest which compounds daily. The interest rate shall be the lower of 18% simple interest, or the highest amount allowable under applicable law. This interest shall accrue from the issue date and shall continue until invoice is paid in full.

Merchant is additionally liable for any applicable federal, state, or local Taxes (exclusive of income or gross receipts Taxes properly payable by Provider) and other fees or assessments incurred as a result of the use of the E-Payment System by Merchant.

2.15. **Customer Terms & Conditions.** As part of the E-Payment System, the Customer will agree to the E-Payment System terms and conditions ("Disclaimer Language"). Provider may, in its sole discretion, change, modify and/or update the Disclaimer Language at any time provided that Provider provides at least ten days prior notice to Merchant.

3. DISCLAIMER OF WARRANTIES.

3.1. **AVAILABILITY.** PROVIDER MAKES NO WARRANTIES REGARDING THE QUALITY, RELIABILITY, TIMELINESS OR SECURITY OF THE WORLD WIDE WEB OR TELEPHONE LINES, THE INTERNET AND OTHER GLOBALLY LINKED COMPUTER NETWORKS, OR THE WEBSITES ESTABLISHED THEREON INCLUDING THE E-PAYMENT SYSTEM, WILL BE UNINTERRUPTED OR ERROR FREE AND PROVIDER WILL IN NO WAY BE LIABLE TO MERCHANT OR CUSTOMER DUE TO ANY DISRUPTION OF PROVIDER'S E-PAYMENT SYSTEM OR NON-AVAILABILITY OF THE E-PAYMENT SYSTEM DURING WHICH CUSTOMERS ARE UNABLE TO ACCESS OR USE THE E-PAYMENT SYSTEM DUE TO A CONFIRMED PROBLEM THEREIN.

3.2. **THIRD PARTY PRODUCTS.** MERCHANT UNDERSTANDS AND AGREES THAT PROVIDER MAY USE THIRD PARTY PRODUCTS IN CONNECTION WITH THE E-PAYMENT SYSTEM OFFERED HEREUNDER. THESE PRODUCTS MAY INCLUDE FIREWALL SECURITY, WEB SERVER SOFTWARE AND ENCRYPTION SOFTWARE. PROVIDER MAKES NO REPRESENTATION OR WARRANTY REGARDING THE PERFORMANCE OF SUCH THIRD-PARTY SOFTWARE, SPECIFICALLY INCLUDING ANY WARRANTY THAT PERFORMANCE WILL BE UNINTERRUPTED OR ERROR-FREE.

3.3. **NO IMPLIED WARRANTIES.** EXCEPT FOR ANY EXPRESS WARRANTIES CONTAINED IN THIS AGREEMENT, NEITHER PROVIDER NOR ANY THIRD PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, REGARDING THE E-PAYMENT SYSTEM OR SERVICES PROVIDED HEREUNDER AND SPECIFICALLY DISCLAIMS THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND AGAINST INFRINGEMENT, TO THE MAXIMUM EXTENT POSSIBLE BY LAW.

4. NO CONSEQUENTIAL DAMAGES.

4.1. IN NO EVENT WILL A PARTY BE LIABLE TO THE OTHER PARTY, OR TO ANY THIRD PARTY, FOR CONSEQUENTIAL, EXEMPLARY, INDIRECT, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, EVEN IF THE PARTY THAT WOULD OTHERWISE HAVE BEEN LIABLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5. LIMITATION OF LIABILITY.

5.1. IN NO EVENT WILL PROVIDER'S LIABILITY EXCEED THE CONVENIENCE FEES PAID TO PROVIDER UNDER THIS AGREEMENT DURING THE 12 MONTH PERIOD PRIOR TO THE ACCRUAL OF THE CLAIM REGARDLESS OF THE FORM OF THE CLAIM (INCLUDING, WITHOUT LIMITATION, ANY CONTRACT, PRODUCT LIABILITY, OR TORT CLAIM).

6. INDEMNIFICATION.

6.1. Provider shall hold harmless, indemnify, and defend Merchant, and all of its officers, employees, and/or officials from any and all liability, actions, claims, losses, damages, or other costs of whatsoever nature that may be asserted by any THIRD PARTY arising from or in connection with the collection of payments by credit or debit card or through internet transactions pursuant to the terms of this Agreement.

7. TERMINATION.

7.1. **Termination for Cause.** Either party may terminate this Agreement at any time upon written notice to the other party as a result of any of the following events:

- i. any noncompliance with this Agreement which is not cured within thirty (30) days of notice thereof from the other party (except that no cure period is allowed for termination based on fraud); and/or
- ii. any voluntary or involuntary bankruptcy or insolvency proceeding involving the other party.
- iii. Additionally, Provider may terminate this Agreement, upon thirty (30) days' notice to Merchant, if Provider determines in its sole discretion that it is no longer economically prudent for Provider to absorb liability for Chargebacks.
- iv. Provider certifies that it and those related entities of Provider as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. In addition, if this agreement is for goods or services of one million dollars or more, Provider certifies that it and those related entities of Provider as defined by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473 of the Florida Statutes and are not engaged in business operations in Cuba or Syria.
- v. Merchant may terminate this Agreement if Provider is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or been engaged in business operations in Cuba or Syria, as defined by section 287.135, Florida Statutes.
- vi. Merchant may terminate this Agreement if Provider, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies that exist for the purpose of making profit, is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in section 215.4725, Florida Statutes.

7.2. **Effect of Termination.** Termination of this Agreement will not relieve either party of any obligation to pay the other party any amounts due and owing to the other party prior to such termination, including, without limitation any amounts owing in respect of Disputed Amounts.

7.3. **Survival.** The following Sections will survive any termination or expiration of this Agreement: General, Disclaimer of Warranties, No Consequential Damages, Limitation of Liability, Indemnification, & Miscellaneous.

8. MISCELLANEOUS.

8.1. **Promotion of Services.** Merchant will promote the use by Customers of the E-Payment System by, including, but not limited to, publishing relevant URL(s) and telephone numbers for the E-Payment System on the Merchant's home page, billing notices and promotional materials and distributing point of sale materials. All published materials referencing Provider or the E-Payment System will be approved for accuracy by Provider prior to publishing.

8.2. **Governing Law; Waiver of Jury Trial.** This Agreement will be governed by and construed in accordance with the laws of the State of Florida without reference to conflict of law provisions. Any action, proceeding, litigation, or mediation relating to or arising from this Agreement must be brought exclusively in Indian River County, Vero Beach, Florida. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

8.3. **Binding Upon Successors and Permitted Assigns.** This Agreement will be binding upon and inure to the benefit of the parties, their successors and permitted assigns. Neither this Agreement nor any right, license, privilege or obligation provided herein may be assigned or transferred by a party without the other party's prior written consent, which consent will not be unreasonably withheld, and any attempted assignment or transfer without such consent is void; provided, however, that each party may, without the consent of the other party, assign this Agreement (and its rights hereunder) in connection with any reorganization, consolidation, merger, sale of stock, sale of substantially all assets and/or similar type of transaction(s), if the successor in interest to such assigning party assumes the obligations of the assigning party under this Agreement in writing, is properly licensed to conduct the business contemplated hereunder, and otherwise agrees to be bound by all of the terms of this Agreement.

8.4. **Relationship of Parties.** The relationship of Provider to Merchant under this Agreement will be that of an independent contractor and nothing contained in this Agreement will create or imply an agency relationship between Merchant and Provider, nor will this Agreement be deemed to constitute a joint venture or partnership between Merchant and Provider.

8.5. **Limited Agent.** Notwithstanding anything to the contrary in this Agreement, Merchant hereby appoints Provider as its lawful agent to receive and process Payments and acknowledges and agrees that: (a) a Customer payment to Provider constitutes delivery of such payment to Merchant; and (b) Merchant will not hold Customer responsible for Provider's failure to deliver payment, but rather Merchant will seek redress only from Provider.

8.6. **Notices.** All notices required or permitted under the Agreement will be in writing and sent to the other party at the address specified on the signature page below or to such other address as either party may substitute from time to time by written notice to the other and will be deemed validly given upon receipt of such notice given by mail (postage prepaid), electronic mail, or personal or courier delivery to such address.

8.7. **Captions and Headings.** The captions and headings appearing in this Agreement are for reference only and will not be considered in construing this Agreement.

8.8. **Waiver.** No term or condition of this Agreement may be waived except pursuant to a written waiver executed by the party against whom such waiver is sought to be enforced.

8.9. **Severability.** If any provision of this Agreement, or the application thereof, is found invalid or unenforceable, that provision will be amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of this Agreement will remain in full force.

8.10. **Publicity.** The parties agree that they will not use the other party's name, trademark or service mark, or the existence of the contractual relationship in any press release, marketing, promotional, advertising, or any other materials without the other party's prior written consent.

8.11. **Amendment and Changes.** This Agreement or any provision hereof may not be changed, amended, supplemented, discharged, terminated, or otherwise altered except by a statement in writing signed by the party against whom enforcement of same is sought.

8.12. **Force Majeure.** Neither party will be liable for delays in processing or other nonperformance caused by such events as fires, telecommunications, utility, or power failures, equipment failures, labor strife, riots, war, nonperformance of our vendors or suppliers, acts of God, or other causes over which the respective party has no reasonable control, except that nothing in this clause will affect or excuse a party's liabilities and obligations for Disputed Amounts.

8.13. **Entire Agreement.** This Agreement, including the SOW and Merchant Services Agreement for Sub-Merchants, contains the entire understanding and agreement between the parties with respect to its subject matter, superseding all prior or contemporaneous representations, understandings, and any other oral or written agreements between the parties with respect to such subject matter.

8.14. **Facsimile Signature and Counterparts.** An SOW or Amendment to this Agreement may be executed by exchange of signature pages by facsimile, e-mail and in any number of counterparts, each of which will be an original as against any party whose signature appears thereon and all of which together will constitute one and the same instrument.

8.15. **E-Verify Registration.** Provider is registered with and will use the Department of Homeland Security's E-Verify system (www.e-verify.gov) to confirm the employment eligibility of all newly hired employees for the duration of this agreement, as required by Section 448.095, F.S. Contractor is also responsible for obtaining proof of E-Verify registration and utilization for all subcontractors