



PAYMENT PROCESSING SERVICES STATEMENT OF WORK

between

Catalis Payments, LLC

("Provider")

having its principal place of business at:

3025 Windward Plaza, Suite 200
Alpharetta, Georgia 30005

and

City of Everett

("Merchant")

having its principal address at:

2930 Wetmore AVE
Everett, WA 98201

THIS PAYMENT PROCESSING SERVICE STATEMENT OF WORK (this “**SOW**”) is made and entered into as of the ____ day of _____ 20__ (“**Effective Date**”) by and between Catalis Payments, LLC (“**Provider**”) and City of Everett (“**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 then 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 JIS / Codesmart. 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 checked="" type="checkbox"/> Court Fees & Fines	<input type="checkbox"/> Miscellaneous
<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 Everett Municipal Court. Provider will purchase a URL.
- 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. 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.
- 3.1.6. Provider will include a statement on the webpage where people are making payments to the effect that: 1) The customer is not making a real-time payment; 2) The customer is paying a third party that is acting as the City's agent; and 3) The fine will show as paid when the City receives the funds. The exact wording of the statement will be determined during implementation.

3.2. ☑ Counter E-Payment System

- 3.2.1. Provider shall deliver and configure _3_ 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. Attend client care calls as requested.
- 4.1.2. Notify Provider of changes to any state, county, or municipal mandates or laws.
- 4.1.3. 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.

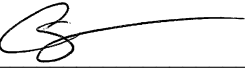
4.4. ☒ Integrations

4.4.1. The Merchant, via their record management system, JIS / Codesmart, 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.

SIGNATURES

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

CITY OF EVERETT
Everett Municipal Court:

Signed: 
Name: Cassie Franklin
Title: Mayor
Date: 10/26/2023

Catalis Payments, LLC:

Signed: Steve Ostroff
Name: Steve Ostroff
Title: Executive Vice President, Payments General Manager
Date: 10/26/2023

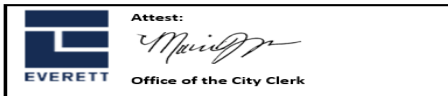
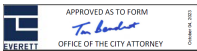


EXHIBIT A: FEES

1. The expected processing volume in the Program is estimated at \$140,000 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
☒ Online (via web or mobile device)	☒ Credit Cards ☒ Visa ☒ Mastercard ☒ Discover ☒ American Express	For each transaction, the higher of: 3.00% per transaction or \$0.95 minimum fee per transaction	<input type="checkbox"/>
	☒ Debit Cards ☒ Visa ☒ Mastercard ☒ Discover		
	☐ PayPal / PayPal Credit / Venmo		
	☐ E-Check / ACH		<input type="checkbox"/>
☒ Counter (in-office via PCI compliant, EMV ready card readers)	☒ Credit Cards ☒ Visa ☒ Mastercard ☒ Discover ☒ American Express	For each transaction, the higher of: 3.00% per transaction or \$0.95 minimum fee per transaction	<input type="checkbox"/>
	☒ Debit Cards ☒ Visa ☒ Mastercard ☒ Discover		
☒ Call Center (via live, bilingual call center agent)	☒ Credit Cards ☒ Visa ☒ Mastercard ☒ Discover ☒ American Express	For each transaction, the higher of: 6.00% per transaction or \$1.95 minimum fee per transaction	<input type="checkbox"/>
	☒ Debit Cards ☒ Visa ☒ Mastercard ☒ Discover		
	☐ E-Check / ACH		<input type="checkbox"/>
☐ IVR (via automated phone system)	☐ Credit Cards ☐ Visa ☐ Mastercard ☐ Discover ☐ American Express		<input type="checkbox"/>
	☐ Debit Cards ☐ Visa ☐ Mastercard ☐ Discover		
	☐ E-Check / ACH		<input type="checkbox"/>
☐ Cash (at participating locations)	☐ Cash		<input type="checkbox"/>

*Fee structure includes indemnified transaction processing for credit and debit transactions.

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	
<input type="checkbox"/> Web Services or API Implementation	One-time	
<input checked="" type="checkbox"/> File Integration	One-time	\$1,000.00 Waived
<input checked="" type="checkbox"/> Support & Training (_4_ hour(s))	Per hour	\$150.00 Waived
<input type="checkbox"/> Custom Programming (__ hour(s))	Per hour	
<input checked="" type="checkbox"/> POS Terminals (3 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

1. Merchant will make *JIS / Codesmart* (“**Software Vendor**”) aware of the requirement to integrate with the Provider E-Payment system and of the anticipated Go-Live date contemplated herein. Merchant will compel Software Vendor to assist in setting up direct data interface, including providing all file descriptions or API and/or FTP documentation.
2. If Provider is delivering a web service or API service, Provider will need access and resources from the Merchant to ensure both systems from each company can interface and exchange data appropriately. Failure to grant Provider access or a Merchant resource to help support this step of the implementation process will result in delays to the Merchant’s Go-Live date.
3. **Provider Responsibilities**
 - 3.1. All payment transactions will update the Merchant’s case management system on a predetermined cadence.
 - 3.2. If there are designated payments which are ineligible for online payment, Merchant will be able to omit those records from being paid through Provider via their case management system.
 - 3.3. Dependent on information from Software Vendor, data may be searched by the following fields, or similar identifying characteristic of the Customer.
 - 3.3.1. First Name
 - 3.3.2. Last Name
 - 3.3.3. Driver’s License Number
 - 3.3.4. Ticket Number
 - 3.3.5. Citation Number
 - 3.3.6. Case Number
4. **Merchant Responsibilities**
 - 4.1. Merchant will supply Provider with Software Vendor contact information
 - 4.2. Merchant will actively participate in accomplishing the Go-Live of the Program in the specified timeframe outlined herein.
 - 4.3. Merchant shall provide access to a dedicated test and production environment for the implementation lifecycle.
 - 4.4. Merchant will provide the file format specification currently used to post its payments to the Codesmart system. Merchant will fully cooperate with Provider and provide the information required to integrate with the Merchant’s system.
 - 4.5. Merchant to provide multiple copies of bills and/or receipts to Provider, if in project scope.
 - 4.6. Merchant is responsible for determining and notifying Provider if (i) defendant shall be allowed the option(s) to select Traffic School or proof of corrections, or (ii) a partial or full payment by the defendant shall be allowed. This notification must take place prior to completion of the Design Document and the beta version of the Merchant site, and no later than thirty (30) days after the Effective Date.
 - 4.7. Merchant acknowledges that Counter is embedded in Merchant’s JIS system and all transactions will stay within Merchant’s JIS system.
 - 4.8. Merchant will compel Software Vendor to supply Provider with a CSV file containing the following information. Provider shall confirm file receipt.
 - 4.8.1. Citation Number (Required)
 - 4.8.2. Case Number (Required)
 - 4.8.3. Defendant’s Name (Required)
 - 4.8.4. Date of Birth (Required for IVR)
 - 4.8.5. Amount Due (Required)
 - 4.8.6. Payability / Must Appear Flag (Required)
 - 4.8.7. Address
 - 4.8.8. Offense
 - 4.8.9. Violation Date
 - 4.8.10. Court Date
 - 4.9. Merchant shall supply Provider with the following:
 - 4.9.1. Payment information
 - 4.9.2. W9 with Employer Identification Number (EIN)
 - 4.9.3. Financial Disbursement Agreement (FDA) for each judge in scope
 - 4.9.4. Any applicable test case scenarios
 - 4.9.5. Applicable collections logic
 - 4.9.6. Applicable custom verbiage to be included by record type

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 (30) 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. Provider acknowledges that Merchant may continue to accept payments through other systems implemented prior to Go-Live.

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.** Provider and Merchant warrant that each Party has taken such precautions as are necessary to ensure that such Party’s server and electronic systems are secure from breach or intrusion by unauthorized third parties. In the event that a Party’s 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, such Party will notify the other 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 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 prime interest rate as of the date of the invoice calculated as simple interest. 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.

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 Merchant 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 Washington 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 Washington. 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.

EXHIBIT D: MERCHANT SERVICES AGREEMENT FOR SUB-MERCHANTS

This Merchant Services Agreement for Sub-Merchants ("Sub-MSA") is made among WORLDPAY, LLC, having its principal office at 8500 Governors Hill Drive, Symmes Township, OH 45249-1384 and its designated Member Bank (collectively "Acquirer") and Merchant in connection with the agreement between Merchant and Provider. Acquirer will provide Merchant (in this Exhibit heretofore "Sub-merchant") with certain payment processing services ("Services") in accordance with the terms of this Sub-MSA. In consideration of Sub-merchant's receipt of credit or debit card funded payments, and participation in programs affiliated with Mastercard International Inc. ("Mastercard"), VISA U.S.A. Inc. ("VISA"), Discover ("Discover"), and certain similar entities (collectively, "Associations"), Sub-merchant is required to comply with the Operating Regulations (defined below) as they pertain to applicable credit and debit card payments. In addition, if Sub-merchant meets certain requirements under the Operating Regulations or an Association or the Operating Regulations otherwise require, Sub-merchant may be required to enter into a direct relationship with an entity that is a member of the Associations. By executing this Sub-MSA, Sub-merchant has fulfilled such requirement. However, Acquirer understands that Sub-merchant may have contracted with Provider to obtain certain processing services and that Provider may have agreed to be responsible to Sub-merchant for all or part of Sub-merchant's obligations contained herein. In consideration of the foregoing recitals and of the mutual promises contained herein, the parties agree as follows:

1. Certain Sub-merchant Responsibilities. Sub-merchant agrees to comply, and to cause third parties acting as Sub-merchant's agent ("Agents") to comply, with 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"). Sub-merchant may review the VISA, Mastercard, and Discover websites for a copy of the Visa, Mastercard and Discover regulations. The websites are: <https://usa.visa.com/support/small-business/regulations-fees.html> and <http://www.mastercard.com/us/merchant/> and <http://www.discovernetwork.com/merchants/>. Sub-merchant also agrees to comply with all applicable state, federal, and local laws, rules, and regulations ("Laws"). Without limiting the foregoing, Sub-merchant agrees that it will fully comply with any and all anti-money laundering laws and regulations, including but not limited to the USA PATRIOT Act, the Bank Secrecy Act, the Federal Trade Commission and obligations imposed by the US Treasury's Office of Foreign Assets Control (OFAC). For purposes of this section, Agents include, but are not limited to, Sub-merchant's software providers and/or equipment providers.

If appropriately indicated in Sub-merchant's agreement with Provider, Sub-merchant may be a limited-acceptance merchant, which means that Sub-merchant has elected to accept only certain Visa and Mastercard card types (i.e., consumer credit, consumer debit, and commercial cards) and Sub-merchant must display appropriate signage to indicate the same. Acquirer has no obligation other than those expressly provided under the Operating Regulations and applicable law as they may relate to limited acceptance. Sub-merchant, and not Acquirer, will be solely responsible for the implementation of its decision for limited acceptance, including but not limited to policing the card type(s) accepted at the point of sale.

Sub-merchant shall only complete sales transactions produced as the direct result of bona fide sale made by Sub-merchant to cardholders. and is expressly prohibited from presenting sales transactions which are produced as a result of sales made by any person or entity other than Sub-merchant, or for any purposes related to any illegal or prohibited activity, including but not limited to money-laundering or financing of terrorist activities.

Sub-merchant may set a minimum transaction amount to accept a card that provides access to a credit account, under the following conditions: i) the minimum transaction amount does not differentiate between card issuers; ii) the minimum transaction amount does not differentiate between Mastercard, Visa, or any other acceptance brand; and iii) the minimum transaction amount does not exceed ten dollars (or any higher amount established by the Federal Reserve). Sub-merchant may set a maximum transaction amount to accept a card that provides access to a credit account, under the following conditions: Sub-merchant is a i) department, agency or instrumentality of the U.S. government; ii) corporation owned or controlled by the U.S. government; or iii) Sub-merchant whose primary business is reflected by one of the following MCCs: 8220, 8244, 8249 - Schools, Trade or Vocational; and the maximum transaction amount does not differentiate between Mastercard, Visa, or any other acceptance brand.

2. Sub-merchant Prohibitions. Sub-merchant must not i) 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; ii) add any tax to transactions, unless applicable law expressly requires that a Sub-merchant impose a tax (Any tax amount, if allowed, must be included in the transaction amount and not collected separately); iii) request or use an account number for any purpose other than as payment for its goods or services; iv) disburse funds in the form of travelers checks if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from Sub-merchant; v) disburse funds in the form of cash unless Sub-merchant is dispensing funds in the form of travelers checks, Travel Money cards, or foreign currency (in such case, the transaction amount is limited to the value of the travelers checks, Travel Money cards, or foreign currency, plus any commission or fee charged by the Sub-merchant), or Sub-merchant is participating in a cash back service; vi) submit any transaction receipt for a transaction that was previously charged back to the Acquirer and subsequently returned to Sub-merchant, irrespective of cardholder approval; vii) accept a Visa consumer credit card or commercial Visa product issued by a U.S. issuer to collect or refinance an existing debt; viii) accept a card to collect or refinance an existing debt that has been deemed uncollectable; or ix) submit a transaction that

represents collection of a dishonored check. Sub-merchant further agrees that, under no circumstance, will Sub-merchant store cardholder data in violation of the Laws or the Operating Regulations including but not limited to the storage of track-2 data. Neither Sub-merchant nor its Agent shall retain or store magnetic-stripe data subsequent to the authorization of a sales transaction.

3. Settlement. Upon receipt of Sub-merchant's sales data for card transactions, Acquirer will process Sub-merchant's sales data to facilitate the funds transfer between the various Associations and Sub-merchant. After Acquirer receives credit for such sales data, subject to the terms set forth herein, Acquirer will fund Sub-merchant, either directly to the Sub-merchant-Owned Designated Account or through Provider to an account designated by Provider ("Provider Designated Account"), at Acquirer's discretion, for such card transactions. Sub-merchant agrees that the deposit of funds to the Provider Designated Account shall discharge Acquirer of its settlement obligation to Sub-merchant, and that any dispute regarding the receipt or amount of settlement shall be between Provider and Sub-merchant. Acquirer will debit the Provider Designated Account for funds owed to Acquirer as a result of the Services provided hereunder, provided that Acquirer may also debit Sub-merchant's designated demand deposit account ("Sub-merchant-Owned Designated Account") upon receipt of such account information from Sub-merchant or Provider, or if Acquirer deposits settlement funds into the Sub-merchant-Owned Designated Account. Further, if a card holder disputes a transaction, if a transaction is charge.cl back for any reason, or if Acquirer reasonably believes a transaction is unauthorized or otherwise unacceptable, the amount of such transaction may be charged back and debited from Sub-merchant or Provider.

4. Term and Termination. This Sub-MSA shall be binding upon Sub-merchant upon Sub-merchant's execution. The term of this Sub-MSA shall begin, and the terms of the Sub-MSA shall be deemed accepted and binding upon Acquirer, on the date Acquirer accepts this Sub-MSA by issuing a merchant identification number, and shall be coterminous with Provider's agreement with Sub-merchant.

Notwithstanding the foregoing, Acquirer may immediately cease providing Services and/or terminate this Sub-MSA without notice if (i) Sub-merchant or Provider fails to pay any amount to Acquirer when due, (ii) in Acquirer's opinion, provision of a service to Sub-merchant or Provider may be a violation of the Operating Regulations or any Laws, (iii) Acquirer believes that Sub-merchant has violated or is likely to violate the Operating Regulations or the Laws, (iv) Acquirer determines Sub-merchant poses a financial or regulatory risk to Acquirer, Member Bank, or an Association, (v) Acquirer's agreement with Provider terminates, (vi) any Association de-registers Provider, (vii) Acquirer ceases to be a member of the Associations or fails to have the required licenses, or (viii) Acquirer is required to do so by Member Bank or any of the Associations.

5. Limits of Liability. Sub-merchant agrees to provide Acquirer, via a communication with Provider, with written notice of any alleged breach by Acquirer of this Sub-MSA, which notice will specifically detail such alleged breach, within thirty (30) days of the date on which the alleged breach first occurred. Failure to so provide notice shall be deemed an acceptance by Sub-merchant and a waiver of any and all rights to dispute such breach.

EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS SUB-MSA, ACQUIRER DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Sub-merchant's sole and exclusive remedy for any and all claims against Acquirer arising out of or in any way related to the transactions contemplated herein shall be termination of this Sub-MSA . In the event that Sub-merchant has any claim arising in connection with the Services, rights, or obligations defined in this Sub-MSA , Sub-merchant shall proceed against Provider and not against Acquirer, unless otherwise specifically set forth in the Operating Regulations. In no event shall Acquirer have any liability to Sub-merchant with respect to this Sub-MSA or the Services. Sub-merchant acknowledges Acquirer is only providing this Sub-MSA to assist in Provider's processing relationship with Sub-merchant, that Acquirer is not liable for any action or failure to act by Provider, and that Acquirer shall have no liability whatsoever in connection with any products or services provided to Sub-merchant by Provider. If Provider is unable to provide its services to Sub-merchant in connection with this Sub-MSA and Acquirer elects to provide those services directly, Sub-merchant acknowledges and agrees that the provisions of this Sub-MSA will no longer apply and the terms of Acquirer's then current Bank Card Merchant Agreement, which would be provided to Sub-merchant upon request, will govern Acquirer's relationship with Sub-merchant. If Provider subsequently provides its services to Sub-merchant in connection with this Sub-MSA, Acquirer will cease to provide such services after receipt of notice from Provider and this Sub-MSA will govern Acquirer's relationship with Sub-merchant.

6. Miscellaneous. This Sub-MSA is entered into, governed by, and construed pursuant to the laws of the State of Ohio without regard to conflicts of law provisions. This Sub-MSA may not be assigned by Sub-merchant without the prior written consent of Acquirer. This Sub-MSA shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees and assignees. This Sub-MSA is for the benefit of, and may be enforced only by, Acquirer and Sub-merchant and is not for the benefit of, and may not be enforced by, any other party. Sub-merchant shall not disclose any Acquirer confidential information to any person or entity (other than to those employees or agents of Sub-merchant who participate directly in the performance of this Sub-MSA and need access to such information, or in response to a valid subpoena, court order, or Association requirement.) Acquirer may amend this Sub-MSA upon notice to Sub-merchant in accordance with Acquirer's standard operating procedure. If any provision of this Sub-MSA is determined to be illegal or invalid, such illegality or invalidity of that provision will not affect any of the remaining provisions and this Sub-MSA will be construed as if such provision is not contained in the Sub-MSA . "Member Bank" as used in this Sub-MSA shall mean a member of VISA, Mastercard and/or Discover, as applicable, that provides sponsorship services in connection with this Sub-MSA. As of the commencement of this Sub-MSA , Member Bank shall be Fifth Third Bank,

N. A., located in Cincinnati, OH, 45263. The Member Bank is a party to this Sub-MSA. The Member Bank may be changed, and its rights and obligations assigned to another party by Acquirer at any time without notice to Sub-merchant.

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**ADDENDUM
(WASHINGTON STATE TRANSPARENCY LAWS)**



Vendor:	Catalis Payments LLC
Agreement:	PAYMENT PROCESSING SERVICES STATEMENT OF WORK

The City of Everett and the above Vendor are parties to the above Agreement. Regardless of anything to the contrary in the Agreement, Vendor agrees as follows:

1. The Agreement does not require the City to keep confidential or otherwise refrain from disclosing anything that is determined by the City Clerk to be subject to disclosure under the Washington Public Records Act, chapter 42.56 RCW.
2. The Agreement does not require the City to destroy or return anything that is subject to retention requirements established by the Washington Secretary of State or established by applicable law.
3. The Agreement does not require the City to have any City employee sign any agreement.
4. The Agreement itself (and its related amendments, purchase orders, scopes of work, service orders or similar documents stating work to be done for the City or pricing for the City) are never confidential and may at any time be posted to the City's public website.

Signature on this Addendum may be by ink, pdf, email, fax, electronic signature or other electronic means, any of which is fully effective.

VENDOR:

By: Steve Ostroff

Printed Name: Steve Ostroff

Title: Executive Vice President, Payments General Manager

Email Address of Signer: **sostroff@catalisgov.com**












Catalis Payment Processing_rev.SD

Final Audit Report

2023-10-26

Created:	2023-10-25
By:	Marista Jorve (mjorve@everettwa.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAZzoUVCMIlt-xxwNBliWrLO6zGgg10z1Jm

"Catalis Payment Processing_rev.SD" History

-  Document created by Marista Jorve (mjorve@everettwa.gov)
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