

**Buyer: WKP**

**CONTRACT NUMBER: TBA**

**Event # 005257**

**CONTRACT between the COUNTY OF OAKLAND and CONTRACTOR**

<b>Not To Exceed Amount: \$766,000.00</b>		<b>Effective Date: 4/18/2022</b>	<b>Expiration Date: 4/17/2025</b>
<b>Contract Description:</b>	POS Maintenance - P G2G		
<b>Contractor Information:</b>		<b>Contract Administrator (If Different):</b>	
<b>Wonderware Inc</b> <b>DBA CORE Business Technologies</b> 950 Warren Ave 4th Floor East Providence, RI 02914 <b>Vendor No: 29890</b>		DBA CORE Business Technologies Adam Brzezicki 950 Warren Ave 4th Floor East Providence, RI 02914 914-339-9598	
<b>Compliance Office Purchasing Information:</b>		<b>Contract Administrator Oakland County Using Department:</b>	
Buyer: Wendy Pucher Oakland County 2100 Pontiac Lake Rd., Bldg. 41W Waterford, MI 48328-0462 248-858-0511 purchasing@oakgov.com		Mike Timm 1200 N. Telegraph Rd. Building 49West Pontiac, MI 48341 248-858-0857 timmmr@oakgov.com	

The County and the Contractor may be referred to individually as a "Party" or collectively as the "Parties". The Parties agree to the attached terms and conditions:

**FOR THE CONTRACTOR:**

SIGN: Dan Paulus  
Dan Paulus (Apr 28, 2022 12:11 CDT)

**FOR THE COUNTY:**

SIGN: Michael R Timm  
Michael R Timm (Apr 29, 2022 16:01 EDT)  
Contract Administrator

SIGN: Scott N. Guzy  
Scott N. Guzy (Apr 29, 2022 16:08 EDT)  
Scott N. Guzy, CPPO, MBA, Purchasing Admin

CMK

This Contract is organized and divided into the following Sections for the convenience of the Parties.

- Section 1. Contract Definitions
- Section 2. Contract Term and Renewal
- Section 3. Contract Administration and Amendments
- Section 4. Contract Termination
- Section 5. Scope of Deliverables and Financial/Payment Obligations
- Section 6. County's G2G Marketplace Administration
- Section 7. Contractor's Warranties and Assurances
- Section 8. Liability
- Section 9. Insurance and Bond Requirements
- Section 10. Intellectual Property
- Section 11. Confidential Information
- Section 12. County Data
- Section 13. Information Technology Standards
- Section 14. General Terms and Conditions

**§1. CONTRACT DEFINITIONS**

The following words when printed with the first letter capitalized shall be defined and interpreted as follows, whether used in the singular or plural, nominative or possessive case, and with or without quotation marks:

- 1.1. **"Amendment"** means any change, clarification, or modification to this Contract.
- 1.2. **"Business Day"** means Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding County designated holidays.
- 1.3. **"Claims"** means any loss; complaint; demand for relief or damages; lawsuit; cause of action; proceeding; judgment; penalty; costs or other liability of any kind which is imposed on, incurred by, or asserted against the County or for which the County may become legally or contractually obligated to pay or defend against, whether commenced or threatened, including, but not limited to, reimbursement for reasonable attorney fees, mediation, facilitation, arbitration fees, witness fees, court costs, investigation expenses, litigation expenses, or amounts paid in settlement.
- 1.4. **"Confidential Information"** means all information and data that the County is required or permitted by law to keep confidential, which includes computer software, cybersecurity assessments and plans and measures to protect the County's security.
- 1.5. **"Contract"** means this document and any other documents expressly incorporated herein.

- 1.6. **“Contractor”** means the entity or person listed under “Contractor” on the first page of this Contract and Contractor Employee.
- 1.7. **“Contractor Employee”** means any employee; officer; director; member; manager; trustee; volunteer; attorney; licensee; contractor; subcontractor; independent contractor; subsidiary; joint venture; partner or agent of Contractor; and any persons acting by, through, under, or in concert with any of the above, whether acting in their personal, representative, or official capacities. Contractor Employee shall also include any person who was a Contractor Employee at any time during the term of this Contract but, for any reason, is no longer employed, appointed, or elected in that capacity.
- 1.8. **“Contract Documents”** mean the following documents, which this Contract includes and incorporates:  
**Exhibits (Applicable if Checked)**
- 1.8.1. ☒ Exhibit I: Insurance Requirements
- 1.8.2. ☐ Exhibit II: Business Associate Agreement (Health Insurance Portability and Accountability Act Requirements)
- 1.8.3. ☒ Exhibit III: Requirements for Contractors with Access to County PII (Personally Identifiable Information)
- 1.8.4. ☐ Exhibit IV: Requirements for Contractors with Access to Criminal Justice Information
- 1.8.5. ☐ Exhibit V: Federally Funded Contract Requirements
- 1.8.6. ☒ Exhibit VI: Software License(s)
- 1.8.7. ☒ Exhibit VII: License for Use of County Servicemark
- 1.8.8. ☒ Exhibit VIII: Acknowledgement of Independent Employment Status
- 1.8.9. ☒ Exhibit IX: Scope of Contractor Deliverables/Financial Obligations
- 1.9. **“County”** means the County of Oakland, a Municipal and Constitutional Corporation, its departments, divisions, authorities, boards, committees, and “County Agents” as defined below.
- 1.10. **“County Agent”** means any elected and appointed officials; directors; board members; council members; commissioners; employees; and volunteers of the County; whether acting in their personal, representative, or official capacities. “County Agent” shall also include any person who was a “County Agent” anytime during the term of this Contract but, for any reason, is no longer employed, appointed, or elected and in that capacity.
- 1.11. **“County Data”** means information or data collected, used, processed, stored, or generated in any format, by or on behalf of the County, in connection with the Deliverables, which shall include, but not be limited to: (a) personal health information (PHI) as defined under the Health Insurance Portability and Accountability Act (HIPAA) and Exhibit II, (b) personally identifiable information (PII) as defined in Exhibit III, and (c) Criminal Justice Information defined in Exhibit IV if the Exhibit(s) are incorporated into the Contract. County Data includes Confidential Information as defined in this Contract.
- 1.12. **“County Network”** means County owned, leased, or licensed equipment, hardware, and software that is interconnected via fiber optic, wireless, or other communication mediums for the purposes of County hosting, processing, using, sharing, and/or transporting data, video, voice, or any other form of information.

- 1.13. **"Day"** means any calendar day, which shall begin at 12:00:00 a.m. and end at 11:59:59 p.m.
- 1.14. **"Deliverables"** means goods and/or services provided under this Contract, whether tangible or intangible, and may be more specifically described in the Exhibits.
- 1.15. **"Effective Date"** means midnight on the date listed on the first page of this Contract.
- 1.16. **"Expiration Date"** means 11:59.59 p.m. on the date listed on the first page of this Contract.
- 1.17. **"E-Verify"** means an Internet based system operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) that allows participating employers to electronically verify the employment eligibility of their newly hired employees. Information and the registration process are found at the E-Verify website: <https://e-verify.uscis.gov/enroll>.
- 1.18. **"G2G Marketplace Website"** means an Internet site used by County to provide information to PPBs about businesses providing services to County and agreements used by County and available to PPBs to procure services.
- 1.19. **"Intellectual Property"** means any developments, improvements, designs, innovations, and materials that may be the subject of a trademark/servicemark, copyright, patent, trade secret, which includes ideas, concepts, inventions, and processes related to the development and operation of computer software and systems.
- 1.20. **"Iran-Linked Business"** is defined in the Michigan Compiled Laws (MCL), specifically MCL 129.312, being Section 2 of Public Act 517 of 2012.
- 1.21. **"Not to Exceed Amount"** means the dollar amount listed on the first page of this Contract, unless amended. The "Not to Exceed Amount" is not the County's financial obligation under this Contract, but the maximum amount that can be paid to Contractor during the term of this Contract.
- 1.22. **"PPB"** which stands for Participating Public Body, means an entity created by state or Federal law which is primarily funded by or through a governmental authority and which registers to access County's G2G Marketplace Website.
- 1.23. **"Proposal"** means Contractor's response or bid to the County's Request for Proposal, Request for Qualifications, or Request for Quotes.
- 1.24. **"Purchase Order"** means the County's written request to Contractor for Deliverables pursuant to this Contract. The Purchase Order may include terms regarding delivery schedule, payment, and transportation.
- 1.25. **"Purchasing"** means the Purchasing Division of Oakland County.

## **§2. CONTRACT TERM AND RENEWAL**

- 2.1. **Contract Term.** This Contract shall begin on the Effective Date and shall end on the Expiration Date. Once the Contract has expired Contractor will no longer be listed in the G2G Marketplace, unless a new Contract is entered into by the Parties.

- 2.2. **Contract Renewal.** Unless otherwise provided herein, the Parties are under no obligation to renew or extend this Contract after the Expiration Date. This Contract may only be extended by an Amendment.
- 2.3. **Legal Effect.** This Contract shall be effective and binding when all of the following occur: (a) this Contract is signed by a Contractor Employee, legally authorized to bind Contractor; (b) this Contract is signed by an authorized County Agent; (c) all Contractor certificates of insurance, required by this Contract, are submitted and accepted by Purchasing; and (d) any other conditions precedent to this Contract have been met.

### **§3. CONTRACT ADMINISTRATION AND AMENDMENTS**

- 3.1. **Contract and Purchase Order Issuance.** Purchasing shall issue this Contract and any Purchase Orders that may be required. Purchasing is the sole point of contact in the County regarding all procurement and contractual matters relating to this Contract and any Purchase Orders. Purchasing is the only County office/department authorized to make any Amendments to this Contract or Purchase Orders.
- 3.2. **Purchase Orders.** Purchase Orders issued under this Contract are governed by the terms and conditions of this Contract and are included and incorporated herein.
- 3.3. **Project Managers.** Each Party may designate an employee or agent to act as a Project Manager. If Project Managers are selected, they shall be listed, along with their duties, in Exhibit IX. Unless otherwise stated in Exhibit IX, the County's Project Manager has no authority to amend this Contract.
- 3.4. **Contract Administrators.** The County shall designate an employee or agent to act as Contract Administrator(s). Contractor may designate its employee or agent to act as Contract Administrator(s). The Contract Administrators shall be listed on the first page of this Contract. The County's Contract Administrator(s) shall be responsible for monitoring and coordinating day-to-day activities under this Contract, reviewing Deliverables and invoices, and submitting requests for Amendments to Purchasing. The County's Contract Administrator(s) have no authority to amend this Contract.
- 3.5. **Contract Amendments.** All Amendments to this Contract must be in writing. This Contract shall not be amended by any packing slip, Purchase Order, invoice, click through license agreement, or Contractor policies or agreements published on Contractor's website or otherwise. Amendments to this Contract shall be issued only by Purchasing. The Amendment shall be effective when signed by an authorized Contractor Employee and an authorized County Agent.
- 3.6. **Unauthorized Changes.** Contract changes shall not be effective until an Amendment containing the change is executed according to the procedures described in this Contract. If the Contractor is directed to perform work that Contractor believes is a change in the Contract/Deliverables, then Contractor must notify Purchasing that it believes the requested work is a change to the Contract before performing the requested work. If Contractor fails to notify Purchasing before beginning the requested work, then Contractor waives any claims for additional compensation for performing the requested work. If Contractor begins work that is outside the scope of this Contract or begins work before an Amendment is executed and then stops performing that work, Contractor must, at the request of the County, undo any out-of-scope work that the County believes would adversely affect the County.

- 3.7. **Precedence of Contract Documents.** In the event of a conflict, the terms and conditions contained in Sections 1 through 14 of this Contract shall prevail and take precedence over any allegedly conflicting provisions in all Contract Documents, Exhibits, Purchase Orders, Amendments, and other documents expressly incorporated herein, except sections in the Sub-Merchant Agreement relating to specific Card Brand requirements. Terms and conditions contained in Contractor invoices, packing slips, receipts, acknowledgments, click-through licenses, and similar documents shall not change the terms and conditions of this Contract.

**§4. CONTRACT TERMINATION**

- 4.1. **County Termination.** In addition to any other legal rights the County may have to terminate or cancel this Contract, the County may terminate the Contract as follows:
- 4.1.1. **Immediate Termination.** The County may terminate or cancel this Contract, in whole or in part, immediately, upon notice to Contractor, if any of the following occur: (a) Contractor, officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a felony criminal offense or a criminal offense involving or related to Contractor's business; or (b) if any third-party funding for this Contract is reduced or terminated.
- 4.2. **Termination for Breach.** The County may terminate or cancel this Contract, in whole or part, at any time, upon ninety (90) Days' notice to Contractor if Contractor breaches this Contract, without incurring obligation or penalty of any kind. The effective date for termination or cancellation shall be clearly stated in the notice. **Contractor Termination.** Contractor may terminate or cancel this Contract, in whole or part, upon one hundred and eighty (180) Days' notice to the County, if the County materially breaches any duty or obligation contained herein and within such notice period has failed or has not reasonably attempted to cure the breach. The effective date of termination or cancellation and the specific alleged default shall be clearly stated in the notice to the County.
- 4.3. **County's Obligations Upon Termination.** The County's sole obligation in the event of termination or cancellation of this Contract is for payment of the actual Deliverables provided to the County before the effective date of termination. Under no circumstances shall the County be liable for any future loss of income, profits, any consequential damages, any loss of business opportunities, revenues, or any other economic benefit Contractor may have realized but for the termination or cancellation of this Contract. The County shall not be obligated to pay Contractor any cancellation or termination fee if this Contract is cancelled or terminated as provided herein. If the County chooses to terminate the Contract in part, then the charges payable under this Contract must be equitably adjusted to reflect those Deliverables that are terminated.
- 4.4. **Contractor's Obligations Upon Termination.** If the County terminates this Contract, for any reason, then Contractor must do the following: (a) cease providing all Deliverables as specified at the time stated in the notice of termination; (b) take any action necessary, or as the County may direct, to preserve and protect Deliverables or other property derived or resulting from the Contract that is in Contractor's possession; (c) return all materials and property provided to Contractor by the County; (d) take any action to mitigate and limit any potential damages, including terminate or limit, as applicable,



those subcontracts and outstanding orders for materials and supplies connected with or related to this Contract.

- 4.5. **Assumption of Subcontracts.** If Contractor is in breach of this Contract and the County terminates this Contract, then the County may assume, at its option, any subcontracts and agreements for Deliverables provided under the Contract and may pursue completion of the Deliverables by replacement Contract or otherwise as the County, in its sole judgment, deems expedient.

**§5. SCOPE OF DELIVERABLES AND FINANCIAL/PAYMENT OBLIGATIONS**

- 5.1. **Performance of Deliverables.** Contractor shall provide all Deliverables identified in and as set forth in Exhibit IX, any Purchase Orders, or any Amendments to this Contract.
- 5.2. **Software License(s).** If Contractor requires County to comply with a software license or any other third-party terms, the software license or other third-party terms must be attached to this Contract in Exhibit VI, and the Parties shall follow the terms and conditions therein. County is not obligated to follow or comply with any software license or other third-party terms that are not attached to or included in this Contract. Unless specifically agreed to by County in writing, if County Agents are required to accept click through license terms or any other terms not included in this Contract to access or use any of the Deliverables in this Contract, the terms and conditions of those click through licenses and other terms are without force and effect.
- 5.3. **Financial Obligations.** Except as otherwise set forth in this Contract, the County's sole financial obligation under this Contract shall be set forth in the Exhibit IX. The amount and manner of payment of the financial obligation shall be set forth in Exhibit IX and may be in the Software License Exhibit VI, if applicable, or a Purchase Order.
- 5.4. **Payment Obligations.** Except as otherwise set forth in the Exhibits, Contractor shall submit an invoice to the County's Contract Administrator itemizing amounts due and owing under this Contract, as of the date of the invoice, within thirty (30) days of Contractor's performance of the Deliverables listed in the invoice. Invoices shall contain the following information: (a) County Contract Number; (b) dates of Deliverables; (c) itemized list of Deliverables; (d) Contractor Tax ID Number (federal and State); (e) licenses; and (f) any other information reasonably requested by Purchasing. Unless otherwise set forth in the Exhibits, the County will pay undisputed invoices, which comply with this section (5.4), within thirty (30) days after receiving the invoice. Unless otherwise set forth in the Exhibits, the County shall only pay Contractor for Deliverables under this Contract and not any subcontractors or assignees of Contractor.
- 5.5. **Not to Exceed Amount.** The amount due and owing to Contractor, under this Contract, shall not exceed the "Not to Exceed Amount." If Contractor can reasonably foresee that the total financial obligation for the Contract will exceed the "Not to Exceed Amount," then Contractor shall provide Purchasing with notice of this fact as soon as possible, but no later than ten (10) days before this event.
- 5.6. **County Not Obligated for Penalties/Costs/Fines.** The County shall not be responsible or liable for any cost; fee; fine; penalty; or other assessment of any kind that is incurred or suffered by Contractor in connection with or resulting from Contractor's performance of this Contract under any circumstances.

5.7. **Set-Off of County Costs.** If the County incurs any loss or damage that is caused by or results from Contractor or Contractor Employees, then the County has the right to set-off those costs, loss, and/or damage from any amounts due and owing Contractor. This set-off includes, but is not limited to, withholding payment in an amount equal to the cost of any County-provided equipment, supplies, or badges, or other property that are not returned by Contractor upon completion, termination, or cancellation of this Contract. County also reserves the right at any time to set-off any amounts it owes to Contractor under this Agreement against any amounts that Contractor owes to County.

5.8. **In-Kind Services.** Unless expressly provided herein, this Contract does not authorize any in-kind services by either Party.

**§6. COUNTY'S G2G MARKETPLACE ADMINISTRATION.**

6.1. **Deliverables and Terms Extended to PPBs.** After a competitive bidding and selection process by County, Contractor was chosen to provide the Deliverables, described more fully in the Exhibit IX, to County. Contractor shall offer the pricing, terms, and conditions in this Contract to a PPB, to enable a PPB to make purchases from Contractor according to the terms herein. Notwithstanding the foregoing, Contractor and a PPB may negotiate customized terms at their own discretion.

6.2. **No County Liability.** County shall not be a party to a contract or purchase order of any type between Contractor and a PPB. County shall not have any liability, of any sort, to Contractor, a PPB, or any other third party, for any harm, damage, loss, or action that may arise from purchases made by any PPB pursuant to the terms of this Contract.

6.3. **Contractor and PPB Direct Dealing.** PPBs must deal directly with Contractor for any transactions such as purchases, invoices, price questions, disputes, etc. that relate to their individual agreement with Contractor. Contractor must respond timely to PPB inquiries. Failure to do so may result in County removing the Contract and Contractor's Information from the G2G Marketplace Website.

6.4. **G2G Marketplace Website.** County will provide the following information on its G2G Marketplace website:

6.4.1. State that the Contract was the result of a competitive bidding process.

6.4.2. Provide Contractor's contact information for inquiries.

6.4.3. Acknowledge that the County will receive a benefit from purchases subject to this Contract.

6.4.4. Provide a County Liaison to answer questions concerning the expiration date of the Contract, the procedure for purchasing off the Contract, and the competitive bidding process followed by County.

6.5. **Contractor Information.** Contractor shall provide the following information to County and shall update the information timely whenever changes occur:

6.5.1. Description of Contractor's **Deliverables** relating to those requested in the Request for Proposal will be placed on the G2G Marketplace Website.

6.5.2. Every six months Contractor shall provide County with a "Contract Usage Statement" which means the names, Scope of Services selected, quantities purchased, and dollar amount of each agreement signed



by a PPB using this Contract. Contractor may provide the dollar amount of an agreement only if a PPB will not permit disclosure of the other items. Failure to provide the Contract Usage Statement information to County may result in Contractor being removed from the G2G Marketplace website.

6.5.3. The names of two representatives to act as a primary and secondary point of contact to provide County with the Contract Usage Statements and other information required in this Contract.

6.6. **Administrative Fee.** In recognition of the benefits to Contractor for County providing information to PPBs and potential participants, and the costs savings to Contractor for having this information available, Contractor shall pay County an administrative fee or other benefit described below in this section (the "Administrative Fee") if Contractor offers the pricing, terms, and/or conditions in this Contract to a PPB. The Administrative Fee will correspond to two percent (2%) of the revenue Contractor receives from orders, purchases, and/or contracts it has entered into with PPBs who are receiving goods or services from Contractor based on the pricing, terms, and/or conditions of this Contract. Contractor shall pay the Administrative Fee to the County on a quarterly basis after the Contractor is paid by the PPB. County may provide Contractor with additional instructions regarding the procedure and/or manner of paying the Administrative Fee to County. In addition to and without limiting any other remedies allowed by law or equity, Contractor's failure to timely pay the Administrative Fee may, in County's sole discretion, result in removal of Contractor from the G2G Marketplace website.

## **§7. CONTRACTOR'S WARRANTIES AND ASSURANCES**

7.1. **Full Knowledge of Contract Expectations.** Contractor warrants that before submitting its Proposal and/or entering into this Contract, it had a full opportunity to review all County requirements and/or expectations for this Contract. Contractor is responsible for being adequately and properly prepared to execute this Contract. Contractor has satisfied itself in all material respects that it will be able to perform the Contract as specified herein.

7.2. **Complete and Accurate Representations.** Contractor certifies that all statements, assurances, records, and materials submitted to the County in connection with seeking and obtaining this Contract have been truthful, complete, and accurate.

7.3. **Access to Contractor Policies.** If the Parties agree in this Contract to follow any Contractor policies, such as acceptable use or privacy policies, then Contractor shall retain each version of such policy with the effective dates and shall promptly provide such to the County, if requested.

7.4. **Grant Compliance.** If any part of this Contract is supported or paid for with any State, federal, or other third-party funds granted to the County, then Contractor shall comply with all applicable grant requirements. Upon request of Contractor, the County shall provide Contractor with a copy of the applicable grant requirements.

7.5. **Contractor Incidental Expenses.** Except as otherwise expressly provided in this Contract, Contractor shall be solely responsible and liable for all costs and expenses associated or needed to perform this Contract, including, but not limited to, any professional dues, association fees, license fees, fines, taxes, and penalties.

- 7.6. **Equipment and Supplies.** Contractor is responsible for providing all equipment and supplies to perform this Contract, which are not expressly required to be provided by the County.
- 7.7. **Contractor Employees.**
- 7.7.1. **Number and Qualifications of Contractor Employees.** Contractor shall employ and assign qualified Contractor Employees as necessary and appropriate to perform this Contract. Contractor shall ensure all Contractor Employees have the knowledge, skill, and qualifications to perform this Contract and possess any necessary licenses, permits, certificates, and governmental authorizations as may be required by law.
- 7.7.2. **Control and Supervision of Contractor Employees.** Contractor shall solely control, direct, and supervise all Contractor Employees with respect to all Contractor obligations under this Contract. Contractor will be solely responsible for and fully liable for the conduct and supervision of any Contractor Employees.
- 7.7.3. **Removal or Reassignment of Personnel at the County's Request.** Contractor shall remove a Contractor Employee performing work under this Contract at the County's request provided that the County's request is based on legitimate, good-faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the removal of a Contractor Employee results in an unanticipated delay, which is attributable to the County, then this delay shall not be considered a breach of the Contract and the terms and conditions of this Contract effected by the removal will be adjusted accordingly.
- 7.7.4. **Contractor Employee Identification.** If requested by the County, Contractor Employees shall wear and display a County-provided identification badge at all times while working on County premises. In order to receive a County identification badge, a Contractor Employee shall sign the "Acknowledgement of Independent Contractor Status" form, Exhibit VIII to this Contract. Contractor shall return all County-provided identification(s) upon completion of Contractor's obligations under this Contract.
- 7.7.5. **Background Checks.** At the County's request, Contractor Employees performing work under this Contract shall be subject to a background check by the County. The scope of the background check is at the discretion of the County and the results will be used to determine Contractor Employee's eligibility to perform work under this Contract. Any request for background checks will be initiated by the County and will be reasonably related to the type of work requested. Contractor and Contractor Employees shall provide all information or documents necessary to perform the background check.
- 7.7.6. **Contractor Employee Expenses.** All Contractor Employees shall be employed at the Contractor's sole expense (including employment-related taxes and insurance). Contractor warrants that all Contractor Employees shall fully comply with and adhere to the terms of this Contract. Contractor shall be solely liable for all applicable Contractor Employees' federal, state, or local payment withholdings or contributions and/or all Contractor Employee related pension or welfare benefits plan contributions under federal or state law. Contractor shall indemnify, defend, and hold the County harmless for all Claims against the County by any Contractor Employee, arising out of any contract for hire or employer-employee relationship between Contractor and any Contractor Employee including, but not limited to, Worker's Compensation, disability pay, or other insurance of any kind.

- 7.7.7. **Contractor's Compliance with the Patient Protection and Affordable Care Act.** If Contractor is subject to the Patient Protection and Affordable Care Act ("ACA"), PL 111-148, 124 Stat 119, then Contractor shall ensure that all Contractor Employees, under assignment to the County, and their dependents, as defined by the ACA, are provided with or have access to insurance as required by the ACA. If Contractor is subject to the ACA, Contractor warrants it offers group health coverage to Contractor Employees and their dependents that is affordable, that provides minimum essential coverage and value, and that each offer of coverage meets the timing requirements of the ACA. Contractor warrants, whether or not it is subject to the ACA, that it will pay all applicable fees, taxes, or fines, as set forth in the employer mandates of the ACA under Tax Code §4980H and related regulations for any Contractor Employee, whether the fee, tax, or fine is assessed against the Contractor or the County.
- 7.8. **Acknowledgment of Independent Contractor Status.**
- 7.8.1. **Independent Contractor.** Nothing in this Contract is intended to establish an employer-employee relationship between the County and Contractor or any Contractor Employee. In no event, shall Contractor Employees be deemed employees, agents, volunteers, or subcontractors of the County. Contractor shall ensure that Contractor Employees are apprised of their status and the limitations independent contractors have of this status.
- 7.8.2. **Contractor/Contractor Employee Representations.** Contractor and/or Contractor Employees shall not represent themselves as County employees. Contractor shall ensure that Contractor Employees do not represent themselves as County employees.
- 7.8.3. **County Benefits and Plans.** Contractor and Contractor Employees shall not be entitled to participate in any County employee benefit plans and programs, including but not limited to, retirement, deferred compensation, insurance (including without limitation, health, disability, dental, and life), and vacation pay. This limitation includes access to benefit plans and programs that are not described by a written plan. However, Contractor Employees who are retired County Employees may receive vested post-employment benefits such as retiree health care and pension benefits from Oakland County.
- 7.8.4. **County Reliance.** The County entered into this Contract in reliance of the representations made by Contractor regarding its understanding of the role of independent contractors, its stated relationship to Contractor Employees, and other representations Contractor has made regarding the management and performance oversight of Contractor Employees.
- 7.8.5. **Independent Employment Status.** If Contractor provides Contractor Employees for staffing and/or leasing services to County, those Contractor Employees shall sign Exhibit VIII, Acknowledgement of Independent Employment Status, prior to performing services for the County.
- 7.9. **Permits and Licenses.** Contractor shall be responsible for obtaining and maintaining, throughout the term of this Contract, all licenses, permits, certificates, governmental authorizations, and business/professional licenses necessary to perform this Contract. Upon request by the County, Contractor shall furnish copies of any permit, license, certificate, or governmental authorization necessary to perform this Contract.
- 7.10. **E-Verify.** In accordance with Miscellaneous Resolution No. 09116 (BOC Minutes, July 30, 2009, pp 37-38), unless otherwise exempted, all service contractors who wish to contract with the County to provide

services must first certify they have registered with, will participate in, and continue to utilize, once registered, the E-Verify Program (or any successor program implemented by the federal government or its departments or agencies) to verify the work authorization status of all newly hired employees employed by the Contractor. Breach of this term or condition is considered a material breach of this Contract. Contractor's execution of this Contract constitutes a certification that they are authorized to certify on behalf of Contractor and do hereby certify on behalf of Contractor that the Contractor has registered with, has and will participate in, and does and will continue to utilize once registered and throughout the term of this Contract and any permissible extension hereof, the E-Verify Program (or any successor program implemented by the federal government or its departments or agencies) to verify the work authorization status of all newly hired employees employed by the Contractor.

- 7.11. **Iran-Linked Business Certification.** Contractor certifies that it is not an Iran-Linked Business. Contractor further certifies that it was not an Iran-Linked Business at the time it submitted its Proposal for this Contract. Contractor must promptly notify the County, if Contractor becomes an Iran-Linked Business at any time during this Contract.
- 7.12. **Foreign Adversary Certification.** If Contractor supplies technology or equipment to County, Contractor certifies that the technology and/or equipment was not produced, assembled or manufactured by a foreign adversary, as defined, and as prohibited by the federal government.
- 7.13. **Taxes.**
- 7.13.1. **Contractor Taxes.** Contractor shall collect and pay its local, state, and federal taxes, including but not limited to, all employment taxes, sales taxes, personal property taxes, and real property taxes. The County shall not be liable to or required to reimburse Contractor for any local, state, or federal tax of any kind.
- 7.13.2. **County Tax-Exempt.** The County is exempt from state and local sales tax, personal property tax, and real property tax. Prices under this Contract shall not include taxes, unless the County is not tax-exempt for a specific Deliverable. Exemption certificates for sales tax will be furnished upon request.
- 7.14. **Warranty for Services.** Contractor warrants that all Deliverables that are services shall be performed in compliance with all applicable laws, statutes, regulations, ordinances, requirements and specifications in the Exhibits, industry best practices and care, professional standards, and in a diligent, workmanlike, and expeditious manner. Contractor acknowledges and agrees that time is of the essence for all Deliverables that are services.
- 7.15. **Warranty for Goods.** All Deliverables that are goods shall be subject to the following warranties:
- 7.15.1. **Warranty of Merchantability.** Goods provided by Contractor pursuant to this Contract shall: (a) be merchantable; (b) be of good quality; (c) be fit for their ordinary purpose; (d) be adequately contained and packaged; and (e) conform to the specifications and descriptions contained in this Contract. Contractor acknowledges and agrees that time is of the essence for providing all Deliverables that are goods.

- 7.15.2. **Warranty of Fitness for a Particular Purpose.** If Contractor knows or has reason to know that the goods will be used for a particular purpose and the County is relying on Contractor's skill or judgment to select or furnish the goods, then there is a warranty that the goods are fit for a particular purpose.
- 7.15.3. **Warranty of Title.** All goods conveyed to the County shall be conveyed and transferred: (a) with good title; (b) free from any security interest, lien, or encumbrance that the County did not have knowledge of when the Contract was executed; and (c) free of any rightful claim of infringement or similar claim by a third-party.
- 7.16. **ADA and Section 508 Compliance.** If Contractor is providing a Deliverable that requires County Agents or the public to use a software application or to access a website, Contractor warrants that end users can utilize the software or access the website in accordance with the accessibility requirements of the ADA and the Rehabilitation Act of 1973. Contractor's Deliverable will conform, where relevant, to level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0. Contractor may provide a description of conformance with the above-mentioned specifications by means of a completed Voluntary Product Accessibility Template for WCAG 2.0 (WCAG 2.0 VPAT) or another comparable document. Any additional compliance requirements shall be specified in the Scope of Contractor's Deliverables Exhibit IX.

## **§8. LIABILITY**

- 8.1. **Contractor Indemnification.** Contractor shall indemnify, defend, and hold the County harmless from all Claims, incurred by or asserted against the County by any person or entity, which are alleged to have been caused directly or indirectly from the acts or omissions of Contractor or Contractor's Employees. The County's right to indemnification is in excess and above any insurance rights/policies required by this Contract.
- 8.2. **No Indemnification from the County.** Contractor shall have no rights against the County for indemnification, contribution, subrogation, or any other right to be reimbursed by the County, except as expressly provided herein.
- 8.3. **County Limitation of Liability.**
- 8.3.1. County shall not be liable for any consequential, incidental, indirect, remote, speculative, punitive, exemplary, liquidated, treble, or special damages, including, but not limited to, loss of profit, opportunity, use, revenue, data, or goodwill, whether based in whole or in part in contract, tort, equity, strict liability, under statute, or any other theory of liability, regardless of whether such damages were foreseeable or contemplated and even if County was advised or aware of the possibility of such damages. Notwithstanding any other provisions in this Agreement, in the event County suffers a security breach of County Data that is not in any way caused by Contractor, any fines levied by Visa, Mastercard, Discover, American Express and any other such card associations against County as a result of a breach of County Data, are the responsibility of County.
- 8.3.2. County shall not be liable in contract, tort, equity, strict liability, under statute, or any other theory of liability, for total aggregate damages in excess of County's payment obligations to Contractor for the Deliverables under this Contract.



**INSURANCE AND BOND REQUIREMENTS**

- 8.4. **Contractor Provided Insurance.** At all times during this Contract, Contractor shall obtain and maintain insurance according to the requirements listed in Exhibit I.
- 8.5. **Contractor Provided Bonds.** Pursuant to Public Act 213 of 1963, if the Contract Not to Exceed Amount exceeds fifty thousand dollars (\$50,000.00) and the Contract is for the construction, alteration, or repair of any public building or public work or improvement of the County, then the Contractor shall furnish, at its sole cost, a performance bond and a payment bond to the County, which shall become binding upon execution of the Contract. Each bond shall be in an amount fixed by the County, as set forth in Exhibit IX, but in no event shall each bond be less than 25% of the Contract Not to Exceed Amount.

**§9. INTELLECTUAL PROPERTY**

- 9.1. **Contractor Use of County Licensed Software.** In order for Contractor to perform this Contract, the County may permit Contractor or Contractor Employees to access certain Software licensed to the County. Contractor or Contractor Employees shall not transfer, remove, use, copy, or otherwise provide or make available such Software or documentation to any other person or entity, for any purpose, without the prior written consent of the County and/or the licensor. Furthermore, neither Contractor nor Contractor Employee shall produce a source listing, decompile, disassemble, or otherwise reverse engineer any Software. Neither Contractor nor Contractor Employee shall use any Software contrary to the provisions of any applicable Software license agreement or state or federal law.
- 9.2. **Contractor License to Use County Servicemarks.** If this Contract involves the use of County servicemarks, then Contractor is granted a license to use the servicemarks subject to the terms listed in Exhibit VII. Contractor shall only use the servicemarks as directed by the County in Exhibit VII. If Exhibit VII is not selected and attached to this Contract, Contractor shall not and has no right to use County servicemarks.
- 9.3. **Assignment of Rights.** In consideration for the performance of this Contract and the fees paid to Contractor, Contractor agrees that Contractor shall have no copyright, patent, trademark, or trade secret rights in County Intellectual Property;
- 9.4. **Infringement Remedies.** If, in either Party's opinion, any of the services or Deliverables supplied by Contractor or Contractor Employees are likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor shall at its own expense: (a) procure for County the right to continue using the services or Deliverables, or if this option is not reasonably available to Contractor; (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by County with appropriate credits to County and reimburse County for any losses or costs incurred as a consequence of County ceasing its use and returning it.

**§10. CONFIDENTIAL INFORMATION**

- 10.1. **Contractor Use of Confidential Information.** Contractor and Contractor Employees shall use appropriate safeguards to protect the confidentiality and integrity of Confidential Information. Contractor shall not reproduce, provide, disclose, or give access of Confidential Information to any



Contractor Employee or third-party not having a legitimate need to know. Contractor and Contractor Employees shall only use the Confidential Information for performance of this Contract.

Notwithstanding the foregoing, Contractor may disclose the Confidential Information, if required by law, statute, or other legal process; provided that Contractor: (a) gives the County prompt written notice of the impending disclosure; (b) provides reasonable assistance to the County in opposing or limiting the disclosure; and (c) makes only such disclosure as is compelled or required. This Contract imposes no obligation upon Contractor with respect to any Confidential Information which Contractor can establish by legally sufficient evidence: (a) was in possession of or was known by Contractor, prior to its receipt from the County, without any obligation to maintain its confidentiality; or (b) is obtained by Contractor from a third party having the right to disclose it, without an obligation to keep such information confidential.

- 10.2. **County Confidentiality Obligations.** County has no obligation to Contractor to keep confidential any information or records that are required to be disclosed by County under the Michigan Freedom of Information Act, 1976 PA 442, as amended (the "FOIA") nor shall County be obligated to inform or provide notice to Contractor regarding the disclosure of information or records that are required to be disclosed under the FOIA. Furthermore, County may disclose Confidential Information to third parties if required by law, statute, subpoena, court order, or other legal process.

**§11. COUNTY DATA.** If Contractor uses or possesses County Data in the performance of this Contract, then the following provisions contained in this section apply:

- 11.1. **Use of County Data.** Contractor and Contractor Employees shall have a limited license to County Data, including a license to collect, process, store, generate and display County Data but only to the extent necessary to provide services under this Contract. Contractor and Contractor Employees may not use, sell, rent, transfer, distribute, or otherwise disclose or make available County Data to any third-party, for Contractor's own purposes, or for the benefit of anyone other than the County, without the County's prior written consent, unless otherwise provided for within an Exhibit to this Contract.
- 11.2. **Unauthorized Access/Disclosure or Theft of County Data.** Contractor or Contractor Employees shall notify the County's Chief Information Office as soon as practicable but no later than forty-eight (48) hours of "Discovery" of suspected unauthorized access, acquisition, disclosure, or theft of County Data (a "Security Breach"). "Discovery" means the first day on which the Security Breach is known to Contractor or Contractor Employees. Upon Discovery of a Security Breach, Contractor shall do the following: (a) take reasonable measures to promptly cure the deficiencies relating to the Security Breach in order to secure County Data; (b) cooperate with the County in investigating the occurrence, including making available all relevant records, logs, files, and data reporting materials required upon request by the County; and (c) comply with all applicable federal or state laws and regulations pertaining to unauthorized disclosures or as otherwise directed by the County. If Contractor uses or possesses County Data described in Exhibit II (HIPAA), Exhibit III (PII), or Exhibit IV (CJIS), Contractor shall follow the procedures in the applicable Exhibits governing the unauthorized access/disclosure or theft of County Data.
- 11.3. **Storage of County Data.** Contractor shall only store and process County Data at and from data centers located within the United States. Contractor shall not permit Contractor Employees to store County

Data on portable devices, including, but not limited to, personal computers, tablets, laptops, and phones, except for portable devices that encrypt County Data at rest, have up-to-date firewall and antivirus protection, require multi-factor authentication to access, and are used and kept within the U.S. Contractor shall permit its Contractor Employees to access County Data remotely only as required to provide the Deliverables.

11.4. **Requirements for PCI Data.** If Contractor possesses, stores, processes, or transmits County Data that is considered Payment Card Industry (PCI) Data by the PCI Security Standards Council, Contractor shall comply with PCI Data Security Standard (DSS) and shall provide the County with a copy of its PCI DSS Attestation of Compliance and its Certificate of Compliance with PCI Data Security Standard on or before the Effective Date. Contractor warrants that it will keep its Certification of Compliance with PCI Data Security Standard current and will provide evidence that the Certification of Compliance is current to County upon request.

11.5. **Response to Legal Request for County Data.** If the County receives a Court Order, a Freedom of Information Act (FOIA) request, or other legal request to provide County Data held by Contractor, then Contractor shall provide County Data to the County, in a format directed by the County, within the time frame required by law.

11.6. **Obligations upon Expiration, Termination or Cancellation of Contract.** At the County's sole discretion, upon expiration, termination, or cancellation of this Contract, Contractor shall return County Data in a mutually agreeable format in a prompt and orderly manner or provide for the secure disposal of County Data as directed by County.

**§12. INFORMATION TECHNOLOGY STANDARDS.** If Contractor provides a technology application or requires the use of the Internet to access a Deliverable, the following sections apply:

12.1. **County Standards.** If Contractor and Contractor Employees that will be given access to the County Network, Contractor and Contractor Employees shall comply with the County Electronic Communications and Use of Technology Policy.

12.2. **Implementation of Security Measures.** Contractor shall implement and maintain appropriate administrative, technical, and organizational security measures to safeguard against unauthorized access to the County Network and County Data. Such measures shall be in accordance with security industry best practice and not less stringent than the measures Contractor applies to protect its own data of a similar kind.

12.3. **Completion of County Security Questionnaire.** Contractor warrants it has completed the County's security questionnaire. Each year, prior to the anniversary date of this Contract, and upon receipt of the County's security questionnaire, Contractor shall promptly provide the County with the answers to the County's security questionnaire.

**§13. GENERAL TERMS AND CONDITIONS**

13.1. **Access to County Property or Facilities.** As set forth in this Contract, Contractor has access to and the right to use County property and facilities necessary to perform this Contract. Unless otherwise provided in this Contract or Contractor receives prior written permission from the County's Director

responsible for the department requiring access outside of Business Days, Contractor may only access and use County property and facilities for performance of this Contract on Business Days.

- 13.2. **Signs on County Property or Facilities.** Contractor shall not place any signs or advertisements on County property or facilities without the prior written permission of the County's Director of Facilities Management or successor, or designee.
- 13.3. **Use of County Property or Facilities.** While performing this Contract, Contractor shall keep County property or facilities and anything stored thereon in a clean, safe, sanitary, responsible, and healthful condition and shall keep the property and facilities in a manner that will not prevent or interfere with the County's performance of its functions.
- 13.4. **Removal of Contractor Personal Property.** At the expiration or termination of this Contract, Contractor shall leave County property or facilities in the same condition that Contractor found them and clean of all rubbish. Contractor shall remove all of its personal property within thirty (30) Days of expiration or termination of this Contract. If Contractor does not remove its personal property within the thirty (30) Day period, then the County may, at County's sole discretion, dispose of the personal property and bill Contractor for any costs associated with the removal and disposal or keep, have all rights to, and be the owner of the personal property.
- 13.5. **Damage to County Property or Facilities.** Contractor shall be responsible for any damage to any County property or a facility that is caused by Contractor or Contractor Employees. If damage occurs, the County shall make the necessary repairs and/or replacements or cause a third party to make the necessary repairs or replacements, provided, however, that Contractor shall reimburse the County for all costs associated with repairing and/or replacing the damaged property or facilities. Without limiting any of the County's other setoff rights in this Contract, County has the right to set-off those costs and/or damages from any amounts due and owing Contractor.
- 13.6. **Damage to Contractor's Property.** Contractor shall be solely liable and responsible for any property loss or damage resulting from fire, theft, or other means to Contractor's personal property located, kept, or stored on or at County property or facilities during performance of this Contract.
- 13.7. **County's Right to Suspend Contract Performance.** Upon written notice, the County may require Contractor to suspend performance of this Contract if Contractor has failed to comply with any federal, state, or local laws or any requirements contained in this Contract. The right to suspend performance of this Contract is in addition to the County's right to terminate and/or cancel this Contract. The County shall incur no penalty, expense, or liability to Contractor if the County suspends performance of this Contract under this Section.
- 13.8. **Discrimination.** Contractor, and its subcontractors under this Contract, shall not discriminate against an employee or an applicant for employment in hiring, any terms and conditions of employment or matters related to employment regardless of race, color, religion, sex, sexual orientation, gender identity or expression, national origin, age, genetic information, height, weight, disability, veteran status, familial status, marital status or any other reason, that is unrelated to the person's ability to perform the duties of a particular job or position, in accordance with applicable federal and state laws.

- 13.9. **Conflict of Interest.** Pursuant to Public Act 317 and 318 of 1968, as amended (MCL 15.301, *et seq.* and MCL 15.321, *et seq.*), no contracts shall be entered into between the County and any County Agent. To avoid any real or perceived conflict of interest, Contractor shall disclose to the County the identity of all Contractor Employees and all Family Members of Contractor Employees who: a) are employed by the County on the date the Contract is executed; and b) become employed by the County during the term of the Contract. Contractor shall also disclose to the County the identity of all County Agents and all Family Members of County Agents who: a) are employed by Contractor on the date the Contract is executed; and b) become employed by Contractor during the term of the Contract. For the purposes of this section, "Family Member" means a person's spouse or spouse's sibling or child; a person's sibling or sibling's spouse or child; a person's child or child's spouse; or a person's parent or parent's spouse, and includes these relationships as created by adoption, marriage, or law.
- 13.10. **Access and Records.** Contractor will maintain accurate books and records in connection with performance of this Contract for thirty-six (36) months after the end of this Contract and Contractor shall provide the County with reasonable access to such books and records, upon request.
- 13.11. **Audit.** The County or an independent auditor hired by the County may perform contract audits (in its sole discretion) and shall have the authority to access all pertinent records and data and to interview any Contractor Employee during the term of this Contract and for a period of three years after final payment. Contractor shall explain any audit findings, questioned costs, or other Contract compliance deficiencies to the County within thirty (30) Business Days of receiving the draft audit report. Contractor's written response shall include all necessary documents and information that refute the draft audit report and an action plan to resolve the audit findings. A copy of Contractor's response will be included in the final report. Failure by Contractor to respond in writing within thirty (30) Business Days shall be deemed acceptance of the draft audit report and will be noted in the final report.
- 13.12. **Assignments/Delegations/Subcontracts.**
- 13.12.1. **Prior Written Consent Required.** Except by operation of law, neither Party may assign, delegate, or subcontract any of its duties, obligations, or rights under this Contract without the prior written consent of the other Party; provided, however, Contractor may assign, delegate, or subcontract this Contract to an affiliate, subsidiary, or successor in interest (new owner of Contractor) as long as the affiliate, subsidiary, or successor in interest is adequately capitalized, provides prompt written notice to County of the assignment, delegation, or subcontract, and can provide adequate written assurances to the County that the affiliate or subsidiary can perform this Contract. The County may withhold consent, if the County determines that the assignment, delegation, or subcontract would impair performance of this Contract or the County's ability to recover damages under this Contract. Contractor shall also provide the County with adequate information to allow the County to make a determination regarding the assignment, delegation, or subcontract.
- 13.12.2. **Flow Down Clause Required.** Any assignment, delegation, or subcontract by Contractor must include a requirement that the assignee, delegee, or subcontractor will comply with the terms and conditions of this Contract. The assignment, delegation, or subcontract shall in no way diminish or impair performance of any term or condition of this Contract.

- 13.12.3. **Contractor Responsibility for Assigns/Delegates/Subcontractors.** If Contractor assigns, delegates, or subcontracts this Contract, in whole or in part, Contractor shall remain the sole point of contact regarding all matters under this Contract and shall remain liable for performance of this Contract. Contractor is solely responsible for the management of assignees, delegees, and subcontractors.
- 13.12.4. **Performance Required.** If an assignee, delegee, or subcontractor fails to perform as required under this Contract, Contractor shall contract with another entity for such performance. Any additional costs associated with securing another assignee, delegee, or subcontractor shall be the sole responsibility of Contractor.
- 13.13. **Non-Exclusive Contract.** This Contract is a non-exclusive agreement. No provision in this Contract limits or is intended to limit, in any way, Contractor's right to offer and provide its services to the general public, other business entities, municipalities, or governmental agencies during or after the term of this Contract. Similarly, the County may freely engage other persons to perform the same work that Contractor performs. Except as provided in this Contract, this Contract shall not be construed to guarantee Contractor or any Contractor Employee any fixed or certain number of Deliverables.
- 13.14. **No Third-Party Beneficiaries.** Except as expressly provided for the benefit of the Parties and the PPBs, this Contract does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to be indemnified, right to be subrogated to the Parties' right in this Contract, or any other right in favor of any other person or entity.
- 13.14.1. **Survival of Terms and Conditions.** The following terms and conditions shall survive and continue in full force beyond the termination or cancellation of this Contract (or any part thereof) until the terms and conditions are fully satisfied or expire by their nature: **Section 1.** Contract Definitions, **Section 2.** Contract Term and Renewal, **Section 5.** Scope of Deliverables and Financial/Payment Obligations, **Section 6.** County's G2G Marketplace Administration, **Section 7.** Contractor's Warranties and Assurances, **Section 8.** Liability, **Section 9.** Insurance and Bond Requirements, **Section 10.** Intellectual Property, **Section 11.** Confidential Information, **Section 13.** Information Technology Standards, and **Section 14.** General Terms and Conditions; and if incorporated into this Contract, Exhibit II: Business Associate Agreement (Health Insurance Portability and Accountability Act Requirements), Exhibit III: Requirements for Contractors with Access to County PII (Personally Identifiable Information), and Exhibit IV: Requirements for Contractors with Access to CJIS Data (Criminal Justice Information Security).
- 13.15. **Reservation of Rights.** This Contract does not, and is not intended to impair, divest, delegate, or contravene any constitutional, statutory, or other legal right, privilege, power, obligation, duty, or immunity of the County.
- 13.16. **Compliance with Laws.** Contractor shall comply with all federal, state, and local laws, statutes, ordinances, regulations, executive orders, insurance policy requirements, and requirements applicable to its activities under this Contract. Contractor shall comply with all applicable laws and regulations related to the import, export, re-export, transfer, shipping, sale, re-sale, and/or use of goods, services, information, data, and equipment involving or related to this Contract.
- 13.17. **Force Majeure.** Notwithstanding any other term or condition of this Contract, neither Party shall be liable for failure to perform contractual duties or obligations caused by events beyond their reasonable



control, including but not limited to: (a) acts of public enemies; (b) natural disasters; (c) terrorism; (d) war; (e) insurrection or riot; (f) natural disasters; (g) strikes, lockouts, work stoppages, or other labor difficulties; or (h) compliance with law. Reasonable notice shall be given to the affected Party of such event. Contractor is expected, through insurance or alternative temporary or emergency service arrangements, to continue its contractual duties or obligations if a reasonably anticipated, insurable business risk, such as business interruption or any insurable casualty or loss occurs.

13.18. **Notices.**

13.18.1. **Written Notice.** All notices required under this Contract shall be in writing. Notices shall be effective: (a) the next Business Day, if personally delivered; (b) the third Business Day, if sent by U.S. mail, postage prepaid, return receipt requested; (c) the next Business Day, if sent by a nationally recognized overnight express courier with a reliable tracking system; or (d) the next Business Day with a written response or receipt of confirmation, if sent by e-mail or fax.

13.18.2. **Notice to Contractor.** Unless otherwise specified, Notice to Contractor shall be addressed to the Contract Administrator listed on the first page of this Contract.

13.18.3. **Notice to County.** Unless otherwise specified herein, Notice to the County shall be addressed to Purchasing, the County Project Manager (if applicable), and the County Contract Administrator(s) listed on the first page of this Contract.

13.19. **Captions.** Section and subsection numbers, captions, and any index to sections or subsections contained in this Contract are intended for the convenience of the reader and are not intended to have any substantive meaning and shall not be interpreted to limit or modify any substantive provisions of this Contract. In this Contract, for any noun or pronoun, use of the singular or plural form, use of the nominative, possessive, or objective case, and any reference to gender (masculine, feminine, and neuter) shall mean the appropriate form, case, or gender as the context requires.

13.20. **Waiver.** Waiver of any term or condition under this Contract must be in writing and notice given pursuant to this Contract. No written waiver, in one or more instances, shall be deemed or construed as a continuing waiver of any term or condition of this Contract. No waiver by either Party shall subsequently affect its right to require strict performance of this Contract.

13.21. **Cumulative Remedies.** A Party's exercise of any remedy shall not preclude the exercise of any other remedies, all of which shall be cumulative. A Party shall have the right, in its sole discretion, to determine which remedies are to be exercised and in which order.

13.22. **Severability.** If a court of competent jurisdiction finds a term or condition of this Contract to be illegal or invalid, then the term or condition shall be deemed severed from this Contract. All other terms or conditions shall remain in full force and effect. Notwithstanding the above, if Contractor's promise to indemnify or hold the County harmless is found illegal or invalid, Contractor shall contribute the maximum it is permitted to pay by law toward the payment and satisfaction of any Claims against the County.



- 13.23. **Dispute Resolution.** All disputes arising under or relating to the execution, interpretation, performance, or nonperformance of this Contract involving or affecting the Parties may first be submitted to the respective Project Manager (if applicable) and Contract Administrators for possible resolution.
- 13.24. **Governing Laws/Consent to Jurisdiction and Venue.** This Contract shall be governed, interpreted, and enforced by the laws of the State of Michigan, excluding Michigan's conflict of law principles. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Contract shall be brought in the Sixth Judicial Circuit Court of the State of Michigan, the 50<sup>th</sup> District of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above. The choice of forum set forth above shall not be deemed to preclude the enforcement of any judgment obtained in such forum or taking action under this Contract to enforce such judgment in any appropriate jurisdiction.
- 13.25. **Entire Contract.** This Contract represents the entire agreement and understanding between the Parties. This Contract supersedes all other prior oral or written understandings, communications, agreements, or contracts between the Parties. The language of this Contract shall be construed as a whole according to its fair meaning and not construed strictly for or against any Party.

## EXHIBIT I

### INSURANCE REQUIREMENTS

During this Contract, the Contractor shall provide and maintain, at Contractor's expense, all insurance as set forth and marked below, protecting the County against any Claims, as defined in this Contract. The insurance shall be written for not less than any minimum coverage herein specified. Limits of insurance required in no way limit the liability of the Contractor.

#### **Primary Coverages**

**Commercial General Liability Occurrence Form** including: (a) Premises and Operations; (b) Products and Completed Operations (including On and Off Premises Coverage); (c) Personal and Advertising Injury; (d) Broad Form Property Damage; (e) Broad Form Contractual including coverage for obligations assumed in this Contract;

\$1,000,000 – Each Occurrence Limit

\$1,000,000 – Personal & Advertising Injury

\$2,000,000 – Products & Completed Operations Aggregate Limit

\$2,000,000 – General Aggregate Limit

\$ 100,000 – Damage to Premises Rented to You (formally known as Fire Legal Liability)

**Workers' Compensation Insurance** with limits statutorily required by any applicable Federal or State Law and Employers Liability insurance with limits of no less than \$500,000 for each accident, \$500,000 for a disease for each employee, and \$500,000 for a disease policy limit. Contractor must comply with one of the following:

1. Be a Fully Insured or State approved self-insurer;
2. Sole Proprietors must submit a signed Sole Proprietor form; or
3. Exempt entities, Partnerships, LLC, etc., must submit a State of Michigan form WC-337 Certificate of Exemption.

Evidence of workers' compensation insurance is not necessary if neither Contractor nor any Contractor Employees come onsite to any County real property, land, premises, buildings, or other facilities in the performance of this Contract

**Commercial Automobile Liability Insurance** covering bodily injury or property damage arising out of the use of any owned, hired, or non-owned automobile with a combined single limit of \$1,000,000 each accident. This requirement is waived if there are no company owned, hired or non-owned automobiles utilized in the performance of this Contract.

**Commercial Umbrella/Excess Liability Insurance** with minimum limits of \$2,000,000 each occurrence. This coverage shall be in excess of the scheduled underlying General Liability, Automobile Liability, and Employer's Liability Insurance policies with exclusions that are not broader than those contained in the underlying policies. This Umbrella/Excess requirement may be met by increasing the primary Commercial General Liability limits to meet the combined limit requirement.

**Supplemental Coverages. The following supplemental coverages are required if selected (checked):**

1. ☒ **Professional Liability/Errors & Omissions Insurance** (i.e., Consultants, Technology Vendors, Architects, Engineers, Real Estate Agents, Insurance Agents, Attorneys, etc.) with minimum limits of \$1,000,000 per claim and \$1,000,000 aggregate shall be required when the Contractor provides professional services that the County relies upon.
2. ☒ **Cyber Liability Insurance** with minimum limits of \$1,000,000 per claim and \$1,000,000 aggregate shall be required when the Contractor has access to County IT systems and/or stores County data electronically.

**General Insurance Conditions**

The aforementioned insurance shall be endorsed, as applicable, and shall contain the following terms, conditions, and/or endorsements. All certificates of insurance shall provide evidence of compliance with all required terms, conditions and/or endorsements.

1. All policies of insurance shall be on a primary, non-contributory basis with any other insurance or self-insurance carried by the County;
2. The insurance company(s) issuing the policy(s) shall have no recourse against the County for subrogation (policy endorsed written waiver), premiums, deductibles, or assessments under any form. All policies shall be endorsed to provide a written waiver of subrogation in favor of the County;
3. Any and all deductibles or self-insured retentions shall be assumed by and be at the sole risk of the Contractor;
4. Contractors shall be responsible for their own property insurance for all equipment and personal property used and/or stored on County property;
5. The Commercial General Liability and Commercial Automobile Liability policies along with any required supplemental coverages shall be endorsed to name the "County of Oakland" and its officers, directors, employees, appointees and commissioners as additional insured where permitted by law and policy form;
6. If the Contractor's insurance policy has higher limits than the minimum coverage requirements stated in this document the higher limits shall apply and in no way shall limit the overall liability assumed by the Contractor under contract.
7. The Contractor shall require its contractors or sub-contractors, not protected under the Contractor's insurance policies, to procure and maintain insurance with coverages, limits, provisions, and/or clauses equal to those required in this Contract;
8. Certificates of insurance must be provided no less than ten (10) Business Days prior to the County's execution of the Contract and must bear evidence of all required terms, conditions and endorsements; and provide thirty (30) days' written notice of cancellation/material change endorsement to the insurance coverages required by this Exhibit.
9. All insurance carriers must be licensed and approved to do business in the State of Michigan along with the Contractor's state of domicile and shall have and maintain a minimum A.M. Best's rating of A- unless otherwise approved by the County Risk Management Department.

### EXHIBIT III

#### REQUIREMENTS FOR CONTRACTORS WITH ACCESS TO COUNTY PII

##### (Personally Identifiable Information)

Exhibit III governs the requirements for Contractors with Access to Personally Identifiable Information (PII).

#### 1. **DEFINITIONS**

- 1.1 **Security Breach** means the unauthorized access, acquisition, theft, or disclosure of PII by or from Contractor.
- 1.2 **PII** (Personally Identifiable Information) means information that can be used to identify an individual, either alone or when combined with other personal or identifying information. PII includes, but is not limited to, a name, number, or other information that is used for the purpose of identifying a specific person or providing access to a person's financial accounts, including, but not limited to, a person's name, address, telephone number, driver's license or state personal identification card number, social security number, place of employment, employee identification number, employer or taxpayer identification number, government passport number, health insurance identification number, mother's maiden name, demand deposit account number, savings account number, financial transaction device account number or the person's account password, any other account password in combination with sufficient information to identify and access the account, automated or electronic signature, biometrics, stock or other security certificate or account number, credit card number, vital record, or medical records or information as well as the first name or first initial and last name linked to a social security number, driver's license or state personal identification card or financial account number in combination with a code or password that would permit access to a person's financial account(s) and as otherwise may be defined by state or federal laws governing the unauthorized access to personal information, or other information that is used for the purpose of identifying a specific person or providing access to a person's financial accounts.

#### 2. **OBLIGATIONS**

- 2.1 Contractor shall not use or disclose PII other than as permitted or required by this Contract or as required by law.
- 2.2 Contractor shall implement administrative, physical, and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of PII that it creates, receives, maintains or transmits on behalf of the County.
- 2.3 Contractor shall mitigate, to the extent practicable, any harmful effect known to Contractor of the use or disclosure of PII in violation of law or this Contract.

- 2.4 If Contractor or Contractor Employees discover a Security Breach, Contractor shall notify the County without unreasonable delay, but no later than within forty-eight (48) hours of discovery. For this purpose, “discovery” means the first day on which the Security Breach is known to Contractor or Contractor Employees. The notification to the County shall include the following: (a) describe the Security Breach in general terms; (b) describe the type of personal information that is the subject of the Security Breach; (c) identify each individual whose PII has been breached or has reasonably believed to have been breached; (d) describe in general terms, what Contractor has done to prevent additional Security Breaches; and (e) provide any other available information in Contractor or subcontractor’s possession that may be necessary to comply with Security Breach notification laws.
- 2.5 If a Claim (as defined in the Agreement) is made as the result of a Security Breach and the County determines it will provide notice of the Security Breach to the affected individuals and/or to governmental authorities, Contractor shall reimburse the County for: (a) its costs in notifying the affected individuals; (b) the cost of third-party credit and identify monitoring services to each of the affected individuals with compromised PII for no less than twenty-four (24) months following the date of notification to each individual; and (c) costs associated with the Security Breach, including but not limited to any costs incurred by the County in investigating and resolving the Security Breach, including reasonable fees associated with such investigation and resolution. In all such instances, County shall use commercially reasonable efforts to use the most cost efficient means set forth in this Section. Without limiting Contractor’s obligations of indemnification as described in the Contract, Contractor shall indemnify, defend, and hold harmless the County for any and all claims, including reasonable attorneys’ fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the County in connection with the Security Breach that is not caused by the County. Contractor shall reimburse County for the applicable costs described above within thirty (30) days of receipt of an itemization of costs incurred by the County because of the Security Breach.
- 2.6 Within ten (10) calendar days of its discovery of the Security Breach, Contractor shall provide the County with a detailed plan describing the measures Contractor will undertake to prevent a future Security Breach. The County shall have the right to audit, inspect and test Contractor’s new safeguards put in place because of the Security Breach. Contractor shall be responsible for recreating lost County Data in the manner and on the schedule set by the County without charge to the County.

## EXHIBIT VI

### MASTER LICENSE AGREEMENT

THIS Master License Agreement (“Agreement”), made and entered into by and between Wonderware Inc. d/b/a CORE Business Technologies, (hereinafter called “CORE”), a corporation duly authorized and existing under the laws of the State of Rhode Island and having its principal offices at 950 Warren Avenue, 4<sup>th</sup> Floor, East Providence, RI 02914, and County (hereinafter “Customer” or “County”).

## SECTION 1 - DEFINITIONS

The definition of terms set forth in this section shall apply when such terms are used in this Agreement, its exhibits, and any amendments:

- 1.1 “Agreement Term.”** The period commencing on the Effective Date and continuing through last date of the Subscription Term including any subsequent renewals.
- 1.2 “CORE ASP”.** The PCI-DSS level-1 certified environment managed by CORE from where the Licensed Program is hosted.
- 1.3 “Enhancements.”** Changes or additions, other than Error Corrections, to the Licensed Program that add significant new functions or substantially improved performance thereto by changes in system design or coding.
- 1.4 “Error.”** A problem caused by incorrect operation of the computer code of the Licensed Program or other issue that produces incorrect results or causes incorrect actions to occur.
- 1.5 “Error Correction.”** Either a software modification or addition that, when made or added to the Licensed Program, establishes material conformity of the Licensed Program, or a procedure or routine that, when observed in the regular operation of the Licensed Program, eliminates the practical adverse effect on Customer of such non-conformity.
- 1.6 “Effective Date.”** The last date Contract is signed by a party.
- 1.7 “Final Project Specification”:** The project functionality specification developed by CORE as a result of the design meetings in cooperation with the Customer that is agreed to in writing by the parties.
- 1.8 “Licensed Program.”** The computer program specifically identified within the Exhibits herein as applications within the *iPayment Enterprise* product line, including object code, written and electronic documentation as well as related procedural code, Enhancements, Error Corrections, and Custom Modification.
- 1.9 “Normal Working Hours.”** The hours between 8:30 AM and 5:00 PM Eastern Time. Monday through Friday, excluding regularly scheduled holidays of CORE.



- 1.10 “Privacy Laws.”** All present and future laws and regulations relating to the privacy of individually identifiable medical, financial or other information including, the Health Insurance Portability and Accountability Act of 1996 and rules and regulations promulgated thereunder (HIPAA).
- 1.11 “Proprietary Information and Intellectual Property.”** Unpublished and published “know-how” and “trade secrets” which shall include, without limitation, the Licensed Program, computer programs, program designs, algorithms, subroutines, system specifications, test data, charts, graphs, operation sheets, and all other technical information, owned by CORE or under its control, relating to the development and production or use of the Licensed Program and the design, configuration, programming, and protocol of the Licensed Program.
- 1.12 “Specifications.”** The functional performance parameters of the Licensed Program as developed by CORE.
- 1.13 “Transaction”** The creation of a record in the system transaction table with a uniquely assigned transaction reference number. Examples: (i) the posting of a single transaction to a receipt tendered by one or more payment types (tenders) will result in a single transaction record, (ii) the posting of more than one transactions to a receipt tendered by one or more tenders will result in transactions equal to the number of items, (iii) the posting of a parent transaction (i.e. customer lookup) containing child transactions (i.e. invoices) will result in the creation of transactions equal to the number of items plus the number of child transactions.
- 1.14 “Users.”** The designated Customer employee(s) including contracted staff for whom a unique identifier and password have been assigned by Customer to access and operate the Licensed Software.

## SECTION 2 – GRANT OF LICENSE, USE OF LICENSED PROGRAM

**2.1 Scope of License.** Subject to compliance by Customer with the terms hereof, CORE hereby grants to Customer, for the Agreement Term, unless terminated as provided herein, a personal, non-exclusive, non-transferable license (without the right of sublicense), to: access the Licensed Program and use it only in object code form solely on computers owned or leased and used by Customer at its facilities, for up to the number of Transactions specified in this Agreement in **Exhibit A**, for the sole and express purpose of supporting the internal business activities of Customer.

**2.2 Testing and Acceptance.** Customer shall have 30 days from the first date the development system is available to Customer (the “Test Period”) to test the Licensed Program to determine whether it functions materially in accordance with the Specifications. The Licensed Program will be deemed satisfactory to Customer and accepted by Customer unless Customer provides notice to CORE within the Test Period describing in detail any Errors in the Licensed Program. If Customer delivers a timely notice to CORE of any such Errors during the Test Period, CORE will correct those identified Errors that can be repeated by CORE within a reasonable time. If CORE is unable to correct said Errors within a reasonable time after receiving notice, Customer may elect to terminate this Agreement and CORE shall refund to Customer any License fees paid to CORE.

**2.3 Minimum Hardware and Software Requirements and Connection.** Customer acknowledges that in order for the Licensed Program to be executed, Customer’s computers must meet or exceed the minimum published hardware, software (including third-party software) and communication requirements for the

Licensed Program as set forth in the CORE minimum hardware and software requirements document (the “Minimum Requirements”) set forth in **Exhibit D**. Customer agrees such requirements are subject to change, and that future versions of the Licensed Program may have different hardware and software requirements than those presently in effect. The acquisition of necessary hardware and software meeting the requirements then in effect shall be the sole responsibility of Customer. Any hardware Customer purchases from CORE shall be subject to a separate hardware purchase agreement to be mutually agreed by the parties.

#### **2.4 Reserved.**

**2.5 Custom Modifications.** The Customer acknowledges that the Licensed Program does not include customization (“Custom Modifications”), such as software interfaces to the Customer’s host systems, check digit routines, interest computations, OCR edits, etc. Development by CORE of Custom Modifications during the Subscription Term is chargeable by CORE at the rates set forth in Exhibit A or as otherwise agreed in writing by the Parties. **Exhibit C** provides the scope of custom modifications, if any. If further definition is needed, it will be agreed to by the parties in a Final Project Specification.

**2.7 Availability of CORE Enhancements.** CORE will incorporate periodic updates and upgrades into the Licensed Program. CORE will schedule the implementation of major upgrades in cooperation with Customer.

**2.8 Service Level Agreement.** During the Agreement Term, CORE will provide Customer the level of support and service levels for the Service specified the CORE Support and Escalation policy set forth in **Exhibit E**.

**2.9 Permitted Uses.** The rights granted under this Agreement permit the Customer: (1) to have access to and to use the Licensed Program during the Agreement Term; and (2) to install and use at Customer’s facilities such additional components of the Licensed Program as CORE may supply for purposes of enabling Customer to access the Licensed Program and to perform ancillary functions on-site, all as specified in the system specifications, guides and Final Project Specifications. Customer and Customer’s authorized Users may use the Licensed Program only to access Customer’s Data for Customer’s internal information processing needs. Customer agrees to abide by all applicable laws and regulations in connection with its use of the Licensed Program. Customer may not sublicense, resell, publish, transmit, broadcast or otherwise distribute all or any portion of the Licensed Program to any person or entity, or uses it to process the data of a third party. Customer shall take reasonable measures to restrict access to the Licensed Program to its authorized employees and agents. Customer shall be responsible for ensuring that all individuals having access to the Licensed Program through Customer’s account will observe and perform all the terms and conditions of this Agreement. Customer agrees to immediately notify CORE in writing of any misuse, misappropriation or unauthorized disclosure of the Licensed Program that may come to Customer’s attention

## **SECTION 3 – TITLE TO MATERIALS**

**3.1 Title to Licensed Program and Licensed Documentation.** Customer acknowledges that all right, title, and interest in and to the Licensed Program (including but not limited to all Enhancements and Custom Modifications) is and shall remain at all times the sole and exclusive property of CORE. Customer

acknowledges that no such rights, title, or interest in or to the Licensed Program (including but not limited to all Enhancements and Custom Modifications) is granted under this Agreement, and no such assertion shall be made by Customer. The Licensed Program is and shall remain the sole property of CORE, regardless of whether Customer, its employees, or contractors may have contributed to the conception of such work, joined in the effort of its development, or paid CORE for the use of Licensed Program or Custom Modifications. Customer is granted only a limited right of use of the Licensed Program as set forth herein, which right of use is not coupled with an interest and is revocable in accordance with the terms of this Agreement.

## SECTION 4 – FEES AND PAYMENTS

**4.1 License Fees.** Customer shall pay CORE the Subscription Fees for the Licensed Program set forth in **Exhibit A and B**. CORE shall bill and Customer shall pay the Subscription Fees annually pursuant to the payment terms in the Contract during the Agreement Term.

**4.2 Reserved.**

**4.3 Reserved.**

**4.4 Interest Fee.** CORE shall have the right to charge Customer a monthly interest fee of 1.5% (18% annually) for all undisputed invoices which are over sixty (60) days past due

**4.5 Reserved.**

## SECTION 5 PROTECTION OF PROPRIETRY INFORMATION AND MATERIALS

**5.1 Acknowledgement of Proprietary Information and Materials; Limitations on Use.** Customer acknowledges that the Licensed Program and all other Proprietary Information and Intellectual Property are unpublished works for purposes of federal copyright law and embody valuable confidential and secret information of CORE, the development of which required the expenditure of considerable time and money by CORE. Except as otherwise provided in the Contract, Customer shall treat the Licensed Program and all other Proprietary Information and Intellectual Property as confidential and shall not use, copy, or disclose, nor permit any of its personnel to use, copy, or disclose the same for any purpose that is not specifically authorized under this Agreement.

**5.2 Rights in Customer Data.** As between the parties, Customer or its licensors retain all right, title and interest (including any and all intellectual property rights) in and to Customer's data and information ("Customer Data"). Subject to the terms of this Agreement, Customer hereby grants to CORE a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, create derivative works of, and display the Customer Data solely to the extent necessary to provide the Licensed Program to Customer, or to prevent or address service or technical problems under this Agreement, or as may be required by law. Customer will be provided with a periodic backup of data in accordance with the schedule and methods delineated in the Specification. Upon termination of this Agreement for any cause or reason (including Customer's breach), and upon payment of CORE's then standard charges for time and materials, CORE will provide Customer in an XML formatted file of Customer's data.

**5.3 Secure Handling.** Customer shall require that access to the Licensed Program shall be maintained in a manner so as to reasonably preclude unauthorized persons from gaining access thereto, and Customer shall permit access only as necessary for either party's use thereof in accordance with the terms of this Agreement.

**5.5 Customer assurance with respect to reverse engineering.** Customer is prohibited from taking any steps to reverse assemble, reverse compile or otherwise derive a source code version of the Licensed Program.

**5.5 Proprietary Legends.** Customer shall not remove any proprietary or other legend or restrictive notice contained or included in the Licensed Program or any material provided by CORE.

**5.6 Customer assurance with respect to Users.** Customer shall assure that all Users comply with the terms and conditions of this Agreement.

## **SECTION 6 – LIMITED WARRANTY, LIMITATION OF LIABILITY, AND INDEMNITY**

### **6.1 Limited Warranty.**

a. CORE warrants that the Licensed Program will perform substantially and materially in accordance with the Specification during the Agreement Term. CORE further represents and warrants that (1) it has the right to grant the licenses and access granted to Customer under this Agreement for the Software; (2) the Software shall be free of any defect or any virus or other program routine designed to erase or otherwise harm Customer's hardware, Customer Data, or other programs; and (3) the services shall be performed in a professional and workmanlike manner, according to industry standards, and performed by competent personnel. CORE's entire liability and Customer's remedy for any breach of this warranty shall be for CORE, at CORE's option, to repair the Licensed Program within a reasonable time so that it complies with the warranty or provide notification to the customer of the inability to provide a repair. Upon such notification, the Customer will notify CORE within 30 days that (1) the Customer wishes to continue to use the affected module(s) or (2) the Customer will discontinue use of the affected module(s) and in such event CORE will issue a pro-rata refund all subscription fees paid from the date of warranted issue report to the date of discontinuation.

PCI Compliance. CORE will maintain compliance with PCI Security Standards throughout the term of this agreement, validated annually to meet or exceed the PCI Data Security Standards.

b. The warranty will not apply to the if there is an Error or other deficiency in the Licensed Program which is attributable to inappropriate or unauthorized use of the Licensed Program, or neglect, misuse or abuse by the Customer or any agent or User of the Customer.

c. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, CORE MAKES NO WARRANTIES, IMPLIED, REGARDING THE LICENSED PROGRAM, OR SUPPORT OF THE LICENSED PROGRAM. CORE EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS PROVIDED IN THE CONTRACT, CORE DOES NOT WARRANT THAT THE LICENSED PROGRAM WILL MEET CUSTOMER'S REQUIREMENTS THAT ARE NOT INCLUDED IN THE CONTRACT OR WILL BE ERROR-FREE, OR ALL DEFECTS WILL BE CORRECTED. CORE ALSO DOES NOT WARRANT THAT THE LICENSED PROGRAM WILL FUNCTION PROPERLY IN COMBINATION WITH EQUIPMENT OTHER THAN EQUIPMENT SOLD BY CORE TO CUSTOMER, SOFTWARE MADE ACCESSIBLE TO CUSTOMER BY CORE, AND/OR IN ACCORDANCE WITH THE SYSTEM CONFIGURATION REQUIREMENTS.

d. The Licensed Program is provided over the Internet. Customer recognizes that the Internet consists of multiple participating networks which are separately owned and therefore are not subject to the control of CORE. Customer also recognizes that CORE's ability to provide the Licensed Program depends on Internet services provided to CORE. Malfunction of or cessation of Internet services by Internet service providers or of any of the networks which form the Internet may make the Licensed Program temporarily or permanently unavailable. WITHOUT LIMITING THE PROVISIONS OF THIS AGREEMENT, CUSTOMER AGREES THAT CORE SHALL NOT BE LIABLE FOR DAMAGES INCURRED WHEN INTERNET SERVICES ARE UNAVAILABLE DUE TO MALFUNCTION OF, OR CESSATION OF INTERNET SERVICES BY, NETWORK (S) OR INTERNET SERVICE PROVIDERS, OR DUE TO ANY MISUSE, ACCIDENT OR ABUSE BY CUSTOMER OR ITS USER(S).

e. CORE will not be liable to County for unauthorized access to or alteration, theft or destruction of Customer's Data, files, programs, procedures, or information from or by CORE through accident, illegal or fraudulent means or devices, or any other method, to the extent such access, alteration, theft, or destruction is caused by County. It is Customer's responsibility to validate for correctness all output and reports. CORE will protect Customer's Data and programs from loss by performing nightly backup procedures.

f. **LIMITATION OF LIABILITY.** THE OBLIGATIONS OF CORE AND THE RIGHTS AND REMEDIES OF CUSTOMER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND ARE GIVEN IN SUBSTITUTION FOR ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES OF CORE. **EXCEPT AS OTHERWISE PROVIDED**, IN NO EVENT SHALL CORE BE LIABLE HEREUNDER, WHETHER IN AN ACTION IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, IN AN AGGREGATE AMOUNT IN EXCESS OF THE COVERAGE LIMITS IN CONTRACTOR'S INSURANCE POLICIES AS PROVIDED IN EXHIBIT I -CONTRACTOR INSURANCE REQUIREMENTS. **EXCEPT FOR** ANY INDEMNIFICATION OBLIGATIONS REQUIRED BY THIS CONTRACT, INSURANCE RIGHTS/POLICIES REQUIRED BY THIS CONTRACT, INTENTIONAL TORTS, OR FRAUD AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL CORE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE LICENSED PROGRAM, EVEN IF CORE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**6.2 Exclusive Remedy.** As the exclusive remedy of Customer for any nonconformity or defect constituting an Error in the Licensed Program for which CORE is responsible, CORE shall use reasonable efforts to provide Error Corrections with respect to such Error. However, CORE shall not be obligated to correct, cure, or otherwise remedy any Error in the Licensed Program resulting from any (1) modification of the Licensed Program by Customer, or (2) failure of Customer to notify CORE of the existence and nature of such nonconformity or defect upon its discovery.

**6.3 Reserved.**

**6.4 CORE Indemnification.** In addition to and without limiting any of CORE'S indemnification obligations in the Contract, CORE shall and does hereby agree to indemnify, hold harmless, and save Customer from liability against any third-party claim, demand, loss, or action alleging that the Licensed Program, Error Corrections, or made by CORE infringe any third-party rights in the United States respecting copyright, trade secret, or patent resulting from Customer's use of the Licensed Program in compliance with this Agreement



## SECTION 7 – TERM, TERMINATION AND CANCELLATION

### 7.1 Intentionally left blank

## SECTION 8 – MISCELLANEOUS

### 8.1 RESERVED

**8.2 Incorporation of Exhibits.** Any Exhibit referred to herein or referring to this Agreement, shall be incorporated into this Agreement. In the event of a conflict between the documents comprising this Agreement or the provisions of any Exhibit to this Agreement only, the terms of such Exhibit shall take precedence over the terms in this Agreement.

**8.3 New Platform Protection.** As long as Customer maintains a continuous software support Agreement with CORE for each of the modules included herein, Customer shall have the right to transfer the licenses for any and all modules to any new hardware/platform environment (hardware and system software as defined herein) then currently marketed and supported by CORE. Customer agrees to pay for reasonable required services and out-of-pocket costs associated with the migration to the new platform pursuant to a mutually agreed written amendment.

**8.4 Compliance with Privacy Laws.** Each party shall also be responsible for ensuring that performance of its obligations and exercise of its rights under this Agreement comply with all applicable Privacy Laws. If this Agreement or any practices which could be, or are, employed in performance of this Agreement are inconsistent with or do not satisfy the requirements of any Privacy Laws, (i) the parties shall agree in good faith upon an appropriate amendment to this Agreement to comply with such laws and regulations and (ii) the parties shall execute and deliver any documents required to comply with such Privacy Laws including, without limitation, any business associate agreements required under HIPAA.

**SUB-MERCHANT SERVICES AGREEMENT**

**BANK DISCLOSURE**

**Member Bank Information:** Member Bank, Fifth Third Bank, located in Cincinnati, OH, is responsible for the credit and debit card processing services provided hereunder.

**1. IMPORTANT MEMBER BANK RESPONSIBILITIES:**

1. Member Bank, and not Provider, is the entity approved to extend acceptance of Card Brand products directly to you.
2. Member Bank must be a principal (signer) to this Agreement.
3. Subject to this Agreement, Member Bank is responsible for and must provide settlement funds to you.
4. Member Bank is responsible for all funds held in reserve.
5. Member Bank is responsible for educating you on pertinent Operating Regulations with which you must comply; but this information maybe provided to you by Provider.

**2. IMPORTANT MERCHANT RESPONSIBILITIES:**

1. Ensure compliance with cardholder data security and storage requirements.
2. Maintain fraud and chargebacks below Card Brand thresholds.
3. Review and understand the terms of this Agreement.
4. Comply with applicable Operating Regulations.
5. Retain a signed copy of this Disclosure Page.

**3. MERCHANT RESOURCES**

- (a) You may download "Visa Regulations" from Visa's website at:  
[http://usa.visa.com/merchants/operations/op\\_regulations.html](http://usa.visa.com/merchants/operations/op_regulations.html)
- (b) You may download "Mastercard Rules" from Mastercard's website at:  
<http://www.mastercard.com/us/merchant/support/rules.html>
- (c) You may download "Discover Network Rules" from Discover's website at:  
<http://www.discovernetwork.com/merchants/>
- (d) You may download "American Express Merchant Operating Guide" from American Express' website at:  
<https://www.americanexpress.com/merchanttopguide>

The responsibilities listed above do not replace the terms of the Sub-Merchant Agreement, and are provided to ensure you understand some important obligations of each party and that the Member Bank is the ultimate authority should you experience any problems.

**SUB-MERCHANT NAME:**

Oakland County

Address: 2100 Pontiac Lake Rd., Waterford, mMi. 48328

Authorized Signature: 

Scott N. Guzy (Apr 29, 2022 16:08 EDT)

Name: Scott N. Guzy

Title: Purchasing Administrator

Date: Apr 29, 2022

## INTRODUCTION

This SUB-MERCHANT SERVICES AGREEMENT (this “Sub-Merchant Agreement”) governs the payment processing and other related services (the “Acquirer Services”) provided by Worldpay, LLC (“Worldpay”) and its designated Member Bank (collectively, “Acquirers”) to you (“Sub-Merchant”) pursuant to this Sub-Merchant Agreement. The Acquirer Services are being provided in conjunction with the Sub-Merchant Agreement entered into between Sub-Merchant and Wonderware Inc. d/b/a CORE Business Technologies (“Provider”). In consideration of Sub-Merchant’s receipt of credit or debit card (“Card”) funded payments, and participation in programs affiliated with Mastercard International Inc. (“Mastercard”), VISA U.S.A. Inc. (“VISA”), Discover (“Discover”), American Express Travel Related Services Company, Inc. (“American Express”), and certain similar entities (collectively, “Card Brands”), Sub-Merchant is required to (i) enter into a direct relationship with an entity that is a member of the Card Brands, and (ii) agree to comply with Card Brand rules as they pertain to applicable Card payments. By entering into this Sub-Merchant Agreement, Sub-Merchant is fulfilling the Card Brand rule of entering into a direct relationship with a Member of the Card Brands; however, Acquirers understand that Sub-Merchant has contracted with Provider to obtain certain processing services.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises contained herein, the parties agree as follows:

### 1. THE ACQUIRER SERVICES.

#### 1.1 PROVISION AND USE OF ACQUIRER SERVICES

Sub-Merchant acknowledges that even though Sub-Merchant signs up for the payment processing feature of the Services, Sub-Merchant is not guaranteed use of that feature of the Services. The payment processing feature will not be available to Sub-Merchant unless and until Provider and/or Acquirers have confirmed that Sub-Merchant is eligible to use the Acquirer Services and this Sub-Merchant Agreement has become binding on all parties as provided herein. If that occurs, the Acquirer Services will be provided to Sub-Merchant subject to and in accordance with this Sub-Merchant Agreement. Sub-Merchant will only use the Acquirer Services for business purposes and not for personal, family, or household use.

#### 1.2 REQUIRED INFORMATION

Sub-Merchant agrees to provide Provider and/or Acquirers with such information (including financial statements and other financial information) as they may reasonably request in order to confirm that Sub-Merchant is eligible to receive the Acquirer Services. In addition, Sub-Merchant will furnish to Provider and/or Acquirers from time to time, promptly upon their request, (i) a list of the current addresses of all Sub-Merchant’s offices, (ii) a list of all assumed business names (d/b/a’s) used by Sub-Merchant, and (iii) a list of all products and services provided by Sub-Merchant. Sub-Merchant agrees that all information Sub-Merchant provides to Provider and/or Acquirers will be accurate and complete and Sub-Merchant agrees to keep such information up-to-date. Sub-Merchant agrees to provide Provider with at least 30 days’ prior written notice of Sub-Merchant’s intent to change the scope or nature of its business or its current type of products or services. If Acquirers determine such a change is material to its relationship with Sub-Merchant, Acquirers may refuse to process Card transactions made subsequent to the change or terminate this Sub-Merchant Agreement. Sub-Merchant further agrees to provide Provider with prompt written notice if it is the subject of any voluntary or involuntary bankruptcy or insolvency petition or proceeding. Sub-Merchant will also provide Provider with prompt written notice of (i) any adverse change in Sub-Merchant’s financial condition, (ii) any planned or anticipated liquidation or substantial change the basic nature of its business, (iii) any transfer or sale of any substantial part (25% or more in value) of its total assets, or (iv) if Sub-Merchant or its parent is not a corporation whose shares are listed on a national securities exchange or on the over-the-counter market, any change in the control or

ownership of Sub-Merchant or its parent. Sub-Merchant will also notify Provider if the State of Michigan appoints an Emergency Financial Manager to control and manage the County's financial operations.

### 1.3 VERIFICATION

Sub-Merchant authorizes Provider and/or Acquirers to make, from time to time, any business credit inquiries identity-verification inquiries, transaction-verification inquiries (including, but not limited to, with customers), and any other inquiries considered necessary relating to this Sub-Merchant Agreement, and to provide any information and documentation to Member and/or the Card Brands as may be required by them. Sub-Merchant also authorizes any person or credit reporting agency to compile information to answer those inquiries and to furnish that information to Provider and/or Acquirers.

### 1.4 AUDIT RIGHT

In the event Acquirers reasonably suspect that Sub-Merchant's materially breached this Agreement, Sub-Merchant authorizes Acquirers to perform an audit or inspection of Sub-Merchant's operations to confirm compliance with this Sub-Merchant Agreement upon reasonable advance notice and at Acquirers' expense. Sub-Merchant agrees to cooperate, in good faith, with any such audit conducted by Acquirers. Further, Sub-Merchant acknowledges and agrees that the Card Brands have the right to audit Sub-Merchant's business to confirm compliance with the Operating Regulations.

### 1.5 DATA OWNERSHIP

Acquirers will own all data associated with Sub-Merchant's use of the Acquirer Services. Sub-Merchant acknowledges that this data may be used by Acquirers to perform their services and obligations as set forth in this Agreement and including the following purposes: (a) providing and improving the Acquirer Services; (b) internal usage, including but not limited to, data analytics provided that such data is anonymous and aggregated with other customer data; and (c) complying with applicable legal requirements and assisting law enforcement agencies.

## 2. [CARD ACCEPTANCE.](#)

### 2.1 ACCEPTANCE

Sub-Merchant will honor, without discrimination, any valid Card properly tendered by a person asserting to be the person in whose name the Card is issued ("Cardholder"). Sub-Merchant will not accept any payments from a Cardholder relating to previous charges for merchandise or services. For clarification purposes, if a Card is declined, Sub-Merchant is not prohibited from accepting a different form of payment or a different Card from cardholder.

### 2.2 SUB-MERCHANT IDENTITY AND RETURNS

Sub-Merchant will properly disclose to the Cardholder, at the time of the Card transaction, Sub-Merchant's name, return policy, and other limitations Sub-Merchant may have on accepting returned merchandise. Sub-Merchant's refund policies for purchases made with a Card must be at least as favorable as Sub-Merchant's refund policy for purchases made with any other form of payment.

### 2.3 REQUEST AT TIME OF PAYMENT

When accepting payment, Sub-Merchant will request the Card expiration date and ZIP code or postal code from the Cardholder's billing address. It is also highly recommended that Sub-Merchant obtain the security code from each Card, but Sub-Merchant must not store this information permanently (subject to record retention laws).

### 2.4 CARD AUTHORIZATION

Sub-Merchant is required to obtain an authorization through the Services, in accordance with this Sub-Merchant Agreement, for each Card transaction. Acquirers reserve the right to refuse to process any Card transaction presented by Sub-Merchant unless it includes a proper authorization. Authorizations are not a guarantee of acceptance or payment of a transaction and do not waive any provision of this Sub-Merchant Agreement, or otherwise validate a fraudulent transaction or a transaction involving the use of an expired Card. Acquirers may refuse to authorize any transaction.

### 2.5 ADJUSTMENTS

All transactions and deposits are subject to audit and final verification by Provider and/or Acquirers, and may be adjusted for inaccuracies. All credits provided to Sub-Merchant are provisional and subject to chargebacks and adjustments in accordance with the Operating Regulations, whether or not a transaction is charged back by the Card issuer.

### 2.6 SALES TRANSMITTALS

Sub-Merchant will retain a copy of the sales transmittal for the completed transaction in accordance with the Operating Regulations. Within three (3) business days of Provider's and/or Acquirers' request, Sub-Merchant will produce copies of sales transmittals and other transaction evidence. Acquirers will have chargeback rights with respect to such transactions for sales transmittals not so produced.

## 3. [COMPLIANCE WITH RULES AND LAWS.](#)

### 3.1 COMPLIANCE WITH OPERATING REGULATIONS AND LAWS

Sub-Merchant agrees to participate in, and to cause third parties acting as Sub-Merchant's agent ("Agents") to participate in, the Card Brands in compliance with, and subject to, the by-laws, operating regulations and/or all other rules, policies and procedures of the Card Brands (collectively, the "Operating Regulations"). In the event of any conflict between the terms of this Sub-Merchant Agreement and the terms of the Operating Regulations, the terms of the Operating Regulations shall prevail.

Sub-Merchant further agrees to comply with the terms of this Sub-Merchant Agreement, all applicable federal, state, and local laws, rules, and regulations (collectively, the "Laws") and such other policies and procedures as Acquirers may from time to time prescribe relating to Sub-Merchant's acceptance of Cards ("Policies"). Without limiting the foregoing, Sub-Merchant agrees that it will fully comply with any and all confidentiality and security requirements of the USA Patriot Act (or similar law, rule or regulation), VISA, Mastercard, Discover, American Express and/or other networks, 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 Card Brands ("Security Requirements"). For purposes of this section, Agents include, but are not limited to, Sub-Merchant's software providers and/or equipment providers.

Sub-Merchant agrees to assist Provider and/or Acquirers regarding Sub-Merchant's compliance with the Operating Regulations, the Laws, Security Requirements or the Policies. Acquirers may, within their sole discretion, suspend the Acquirer Services for a reasonable period of time required to investigate suspicious or unusual activity, and Acquirers

shall have no liability for any Sub-Merchant losses arising from any suspension of funds disbursement. Acquirers may reverse Card transactions which they believe, in their sole discretion, to violate this Sub-Merchant Agreement, Operating Regulations, the Laws, Security Requirements or the Policies, and Sub-Merchant agrees to reimburse Acquirers for any such reversal.

### 3.2 DATA SECURITY

Sub-Merchant agrees to keep secure all systems and media containing account, Cardholder, or transaction information (physical or electronic) and destroy in a manner that will render the data unreadable all such media that is no longer necessary or appropriate to store. If Sub-Merchant stores Cardholder account numbers, expiration dates, and other personal Cardholder data in a database, Sub-Merchant agrees to follow Card Brand guidelines and the Operating Regulations (including Security Requirements) on securing such data. Sub-Merchant may not retain or store magnetic stripe or CVV2, CVC2, or CID data after authorization. Sub-Merchant shall maintain industry "best practices" regarding continuity procedures and systems to ensure security of Cardholder account information in the event of a disruption, disaster, or failure of Sub-Merchant's data storage system and/or facility. Sub-Merchant agrees to display its consumer privacy policy on its website as well as its security method for transmission of Cardholder data.

### 3.3 PROHIBITED PRACTICES

Sub-Merchant must not (i) require a cardholder to complete a postcard or similar document 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, TravelMoney cards, or foreign currency (in such case, the transaction amount is limited to the value of the travelers checks, TravelMoney 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 acquirers 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 debit that has been deemed uncollectable by Sub-Merchant, 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.

### 3.4 RECURRING TRANSACTIONS

For any recurring transaction, Sub-Merchant must (i) obtain the Cardholder's prior written consent to periodically charge the Cardholder on a recurring basis for the goods or services purchased, (ii) retain this permission for the duration of the recurring services and provide it upon request to Provider and/or Acquirers or the issuing bank of the Cardholder's Card, (iii) retain written documentation specifying the frequency of the recurring charge, and the duration of time during which such charges may be made, and the amount or range of amounts that may be charged, and (iv) notify the Cardholder that he or she may cancel recurring billing charges at any time. Cardholder must retain evidence of such written consent for at least 24 months from the date Sub-Merchant submits the last recurring billing charge. Sub-Merchant will honor any Cardholder cancellation, and if this Sub-Merchant Agreement is terminated for any reason, Sub-Merchant will, at its own cost, advise all Cardholders to whom Sub-Merchant submits recurring billing charges that Sub-Merchant no longer accepts the Card for amounts owed.



### 3.5 BONA FIDE TRANSACTIONS

Sub-Merchant shall only complete sales transactions produced as the direct result of bona fide sales made by Sub-Merchant to cardholders in the ordinary course of business in accordance with this Sub-Merchant Agreement, the Operating Regulations and the Laws, and is expressly prohibited from processing, factoring, laundering, offering, and/or presenting sales transactions which are produced as a result of sales made by any person or entity other than Sub-Merchant.

### 3.6 MINIMUM/MAXIMUM TRANSACTIONS

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 Card 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 Card Brand.

### 3.7 ILLEGAL TRANSACTIONS

Sub-Merchant may not submit or knowingly permit any cardholder to submit any transaction that is illegal or that Sub-Merchant should have known is illegal, including but not limited to transactions involving pornography, money laundering, or financing terrorist activities. Sub-Merchant agrees to comply with any and all instructions Provider gives Sub-Merchant from time to time regarding payment processing provided hereunder. Sub-merchant agrees that Provider may investigate and audit Sub-Merchant's compliance with this Sub-Merchant Agreement from time to time, and Sub-Merchant agrees to cooperate fully with Provider in any investigation or audit.

### 3.8 USE OF TRADEMARKS

The Card Brands are the sole and exclusive owners of their marks and Sub-Merchant's use of their marks must comply with the Operating Regulations. Acquirers are the sole and exclusive owner of their respective marks and Sub-Merchant's use of Acquirer marks will fully comply with Acquirer policies and instructions. At any time Acquirers may prohibit Sub-Merchant's use of the marks or require changes to Sub-Merchant's use of the marks as Acquirers deem necessary or appropriate. Sub-Merchant's right to use Acquirer marks or the Card Brand marks will cease upon termination of this Sub-Merchant Agreement and Sub-Merchant agrees not to contest the ownership of the marks for any reason.

### 3.9 THIRD PARTY SERVICE PROVIDERS

Sub-Merchant must provide Provider written notification regarding Sub-Merchant's use of any Agents. Sub-Merchant will be liable for any breach of the Operating Regulations by an Agent. If there is unauthorized access to Cardholder data in the possession of Sub-Merchant or its Agents, Sub-Merchant must immediately notify Provider and cooperate with Provider and/or Acquirers regarding reasonable requests for information regarding the security breach.

### 3.10 CONFIDENTIALITY

Sub-Merchant agrees to retain in strictest confidence all information and data belonging to or relating to Acquirer's business, and will safeguard such information and data by using the same degree of care, but no less than a reasonable amount of care, that Sub-Merchant uses to protect its own confidential information.

### 3.11 DISPUTES

#### a. SUB-MERCHANT'S DUTY TO MONITOR

Acquirers will not, and have no obligation to, confirm the validity of the recipient or the underlying transaction pursuant to which funds are transferred. Acquirers assume no liability for any unauthorized transfer request and the attendant transfer of funds, unless and until Sub-Merchant provides appropriate and timely notice of the unauthorized transfer requests to Provider. It is Sub-Merchant's sole obligation and responsibility to promptly and consistently inspect Sub-Merchant's transaction history and must immediately report any possible errors to Provider.

#### b. DISPUTES, INQUIRIES, AND CHARGEBACKS

Working with Provider, Acquirers will handle Card Brand inquiries about Sub-Merchant's Card transactions, in addition to disputes between Sub-Merchant and a customer involving Card payment transactions. Based on customer disputes, Acquirers may reverse Card transactions ("chargebacks"), and Provider and/or Acquirers will offset the value of such chargebacks from monies owed to Sub-Merchant. Sub-Merchant must not reenter or reprocess any Card transaction that has been charged back, but instead will allow the chargeback process to proceed to its conclusion as described in the Operating Regulations. If Sub-Merchant disagrees with a chargeback, Sub-Merchant may request a chargeback reversal within the applicable Card Brand's timeline in the Operating Regulations. "Excessive Activity" means: chargebacks in excess of .50% of the transaction ratio of Sub-Merchant's Card transactions; or, chargebacks in excess of .50% of the transaction ratio of the dollar amount of Sub-Merchant's Card transactions; or, returns in excess of 3% of the transaction ratio of Sub-Merchant's Card transactions; or, denied transactions in excess of 5% of the transaction ratio of Sub-Merchant's Card transactions. The existence of Excessive Activity will be a breach of this Sub-Merchant Agreement and may result in action as Acquirers deem necessary, including, but not limited to, termination or suspension of processing privileges or creation or maintenance of a reserve. Acquirers may revoke or reverse any credit given to Sub-Merchant where: (i) the Card transaction was not made in compliance with this Sub-Merchant Agreement and the Operating Regulations, the Laws, or the Policies; (ii) the Cardholder disputes liability to Provider and/or Acquirers for any reason, including but not limited to those chargeback rights enumerated in the Operating Regulations; (iii) the Card transaction was not directly between Sub-Merchant and the Cardholder; or (iv) a deposit to Sub-Merchant was made erroneously.

#### c. REFUND CREDITS

Sub-Merchant will issue a credit memorandum instead of making a cash advance, a disbursement, or a refund on any Card transaction. Provider and/or Acquirers will debit from amounts owing Sub-Merchant for the total face amount of each credit memorandum submitted. Sub-Merchant will not submit a credit relating to any Card transaction not originally submitted to Provider, nor will it submit a credit that exceeds the amount of the original Card transaction. Sub-Merchant will, within the time period specified by the Operating Regulations, provide Provider and/or Acquirers with a credit memorandum or credit statement for every return of goods or forgiveness of debt for services that were the subject of a Card transaction.

### 3.12 SPECIAL MASTERCARD TERMS

As used in this Section 3.12: (i) "Corporation" means Mastercard International Incorporated, Maestro International Inc., and their subsidiaries and affiliates; (ii) "Interchange System" means the computer hardware and software operated by and on behalf of the Corporation for the routing, processing, and settlement of transactions (iii) "Marks" means the names, logos, trade names, logotypes, trademarks, service marks, trade designations, and other designations, symbols, and marks that the Corporation owns, manages, licenses, or otherwise controls and makes available for use by authorized entities in accordance with the Standards, and "Mark" means any one of the Marks; and (iv) "Standards" means the Amended and Restated Certificate of Incorporation and the bylaws, operating rules,

regulations, policies, and procedures of the Corporation, including but not limited to any manuals, guides or bulletins, as may be amended from time to time.

Sub-Merchant acknowledges and agrees: (i) Sub-Merchant will comply at all times with all applicable Standards, as amended from time to time; (ii) the Corporation is the sole and exclusive owner of the Marks, and Sub-Merchant will not contest the ownership of the Marks for any reason; (iii) the Corporation may at any time, immediately and without advance notice, prohibit the Sub-Merchant from using any of the Marks for any reason; and (iv) the Corporation has the right to enforce any provision of the Standards and to prohibit the Sub-Merchant and/or Provider from engaging in any conduct the Corporation deems could injure or could create a risk of injury to the Corporation, including injury to reputation, or that could adversely affect the integrity of the Interchange System, the Corporation's "confidential information" (as defined in the Standards), or both; and Sub-Merchant will not take any action that could interfere with or prevent the exercise of this right by the Corporation.

Sub-Merchant agrees that Provider may require any changes to Sub-Merchant's website or otherwise that Provider deems necessary or appropriate to ensure that Sub-Merchant remains in compliance with the Standards governing the use of the Marks.

In addition to the termination provisions set forth in Section 5, this Sub-Merchant Agreement will automatically and immediately terminate if the Corporation de-registers Provider or if an Acquirer ceases to be approved by the Corporation for any reason or if such Acquirer fails to have a valid license with the Corporation to use any Mark accepted by Sub-Merchant. Further, Provider, at its discretion or at the direction of an Acquirer or the Corporation, may terminate this Sub-Merchant Agreement immediately for activity reasonably deemed to be fraudulent or otherwise wrongful by Provider, an Acquirer, or the Corporation. In the event of any conflict or inconsistency between any provision of this Sub-Merchant Agreement and the Standards, the Standards will govern as to any transaction involving the Corporation or its Cards.

#### **4. FEES, SETTLEMENT, TAXES & IRS REPORTING.**

##### **4.1 FEES**

Sub-Merchant agrees to pay to Provider on demand (i) any and all service or processing fees, taxes, or other charges associated with payment transactions processed through the Service, as specified in Provider's Fee Schedule as in effect from time to time, or in another applicable document (e.g., an order form), (ii) any adjustments, fees, penalties, or costs incurred by Provider as a result of any dispute related to a User Payment (as defined below) or to any payment transaction alleged to have processed through the Service; and (iii) any fees or charges imposed by third parties (including Card Brands and Acquirers) related to disputed, returned, or cancelled transactions or User Payments. Sub-Merchant authorizes and directs Provider to deduct the amounts Sub-Merchant owes under this paragraph from User Payments, and Sub-Merchant understands that User Payments Provider remits to Sub-Merchant will be net of these amounts.

Sub-Merchant further agrees that Provider may withhold the following amounts from User Payments, and Sub-Merchant understands that User Payments Provider remits to Sub-Merchant will be net of these amounts: (i) the amount of any User Payment that is subject to dispute or reasonably anticipated to be subject to dispute as determined in Provider's sole discretion (such as in the case of Card charge backs) and any related adjustments, fees, penalties, or costs Provider incurs or reasonably anticipates Provider will incur as a result of the dispute; (ii) any third-party fees or charges Provider incurs or reasonably anticipates Provider will incur as a result of a disputed, returned, or cancelled User Payments, including any imposed on Provider by Acquirers; (iii) any taxes or other amounts as required by law; and (iv) any other amounts Sub-Merchant owes to Provider under the Sub-Merchant Agreement, including any amounts that are owed to Provider as a result of any breach by Sub-Merchant of this Sub-Merchant Agreement or

pursuant to Sub-Merchant's indemnification obligations under the Sub-Merchant Agreement. Sub-Merchant authorizes Provider to use the funds so withheld to satisfy Sub-Merchant's obligations in respect of any matters described in this paragraph.

To the extent the funds so withheld exceed the amount(s) actually required to satisfy Sub-Merchant's obligations, the remaining funds will be treated as User Payments received by Provider during the calendar month in which Provider determines (in Provider's sole and reasonable discretion) that Sub-Merchant's obligations have been satisfied, and remitted to Sub-Merchant in accordance with the paragraphs above. In the event amounts deducted or withheld from User Payments are insufficient to pay all amounts Sub-Merchant owes to Provider hereunder, Sub-Merchant agrees to pay such amounts on demand, and to pay all attorneys' fees and costs and expenses of collection Provider incurs in collecting amounts Sub-Merchant owes.

#### **4.2 SETTLEMENT**

Upon receipt of Sub-Merchant's sales data for Card transactions through the Services, Acquirers will process Sub-Merchant's sales data to facilitate the funds transfer between the various Card Brands and Sub-Merchant. After Acquirers receive credit for such sales data, Acquirers will either fund Sub-Merchant directly or through Provider to an account designated by Provider ("Provider Designated Account"), for such Card transactions. Sub-Merchant agrees that Acquirers' deposit of funds to the Provider Designated Account shall discharge Acquirers of their settlement obligation to Sub-Merchant. Any dispute concerning the amount or receipt of settlement shall be between Provider and Sub-Merchant. Acquirers will debit the Provider Designated Account for funds owed to Acquirers as a result of the Acquirer Services provided hereunder. Further, if a cardholder disputes a transaction, if a transaction is charged back for any reason, or if Acquirers reasonably believe a transaction is unauthorized or otherwise unacceptable, the amount of such transaction may be charged back and debited from Sub-Merchant or Provider.

#### **4.3 REMITTANCE BY PROVIDER**

Unless Sub-Merchant and Provider otherwise agree in writing, funds received by Provider in respect of payments by Cardholders to Sub-Merchant that are processed through the Service ("User Payments") will be remitted to Sub-Merchant (net of amounts Acquirers and/or Provider is authorized to deduct or withhold, as described above and in this Sub-Merchant Agreement) not later than thirty (30) days after the end of the calendar month in which such User Payments are received by Provider. Funds will be remitted in the form Sub-Merchant selects when Sub-Merchant registers for payment processing services, or as subsequently updated as permitted by the Service.

If Sub-Merchant believes that Provider has failed to remit User Payments owed to Sub-Merchant, Sub-Merchant must notify Provider in writing within ninety (90) days of the date of such remittance or from the date when Sub-Merchant purports such remittance would have been due, specifying in reasonable detail the amounts Sub-Merchant believes are owed. Sub-Merchant's failure to so notify Provider shall result in Sub-Merchant's waiver of any claim relating to such disputed remittance. Amounts owed to Sub-Merchant shall be calculated solely based on records maintained by Provider, which shall be presumed correct absent manifest error. Sub-Merchant shall have no audit rights hereunder.

#### **4.4 SUB-MERCHANT ACCOUNT**

To ensure proper remittance of User Payments, Sub-Merchant is solely responsible for providing and maintaining accurate contact and payment information associated with Sub-Merchant's account, which may include without limitation applicable tax information. If Provider believes that Provider is obligated to obtain tax information and Sub-Merchant does not provide this information to Provider after Provider has requested it, Provider may refuse to remit User Payments to Sub-Merchant until Sub-Merchant provides this information or otherwise satisfies Provider that Sub-Merchant is not a person or entity from whom Provider is required to obtain tax information. Sub-Merchant agrees to

pay all applicable taxes or charges imposed by any government entity in connection with Sub-Merchant's participation in the Service.

#### 4.5 RESERVE

Sub-Merchant agrees that Provider and/or Acquirers may require Sub-Merchant to fund and maintain a minimum cash balance in the Sub-Merchant's Reserve Account (the "Reserve") in an amount that reasonably reflects Provider and/or Acquirers reasonable assessment of the risk related to Merchant's financial and performance obligations, under this Agreement and so that sufficient funds are maintained to cover reasonably likely chargebacks and returns. Provider and/or Acquirers may require a Reserve only if one of the following is met (collectively, the "Reserve Triggers"): (i) analysis of Sub-Merchant's financials (which such financials will be reasonably provided to Provider and/or Acquirers upon request) show a minimum cash balance of less than 1.5 times its current liabilities, (ii) Merchant's rate of Card Chargebacks in any given month is greater than 1.5% of all Card Transactions in that month, (iii) Sub-Merchant declares bankruptcy, or (iv) the governor of the State of Michigan determines that Sub-Merchant is in a "financial emergency" under Michigan Public Act 436 of 2012 (Local Financial Stability and Choice Act). If a Reserve is required, such Reserve shall not exceed the cumulative amount of fees paid or still owed to Provider and/or Acquirers pursuant to this Agreement in the previous four (4) calendar months prior to the establishment or modification of the Reserve (the "Reserve Cap"). If Sub-Merchant no longer meets any of the Reserve Triggers for six (6) consecutive months, Sub-Merchant may request Provider and/or Acquirers to return Sub-Merchant's Reserve funds to Sub-Merchant and upon said request by Sub-Merchant, Provider and/or Acquirers shall promptly return Sub-Merchant's Reserve funds to Sub-Merchant. The initial required reserve balance is zero (\$0), and Provider and/or Acquirers will notify Sub-Merchant in advance if a Reserve is established (including its amount) or if the amount of the Reserve is modified. Provider and/or Acquirers reserves the right to so adjust an existing reserve balance if Sub-Merchant's average payment amount or chargeback or return rate is higher than anticipated, but not more frequently than once every calendar quarter and shall not exceed the Reserve Cap.

#### 4.6 TAXES & IRS REPORTING

To comply with IRS 1099-K reporting requirements, either Provider or Acquirers may be required to file a form 1099-K with the U.S. Internal Revenue Service (IRS). Provider and/or Acquirers may collect federal backup withholding upon transaction settlement, on behalf of the IRS, from Sub-Merchant if Sub-Merchant does not supply its legal name and Federal ID number, or if it fails to respond to a request from Provider and/or Acquirers to verify the same.

### 5. TERM AND TERMINATION.

#### 5.1 TERM

This Sub-Merchant Agreement shall be deemed accepted and binding upon Sub-Merchant, Acquirers and Provider upon its execution by both Parties (the "Effective Date"). This Sub-Merchant Agreement shall commence on the Effective Date (and shall continue for the term/duration stated above in the Contract.

#### 5.2 TERMINATION/SUSPENSION.

Notwithstanding the foregoing, Acquirers may immediately suspend providing Acquirer Services upon written notice if Sub-Merchant fails to pay any amount to Acquirers when due under this Agreement. Notwithstanding the foregoing, Acquirers may immediately cease providing Acquirer Services and/or terminate this Sub-Merchant Agreement without notice, but will provide written notice as soon as possible and no later than twenty-four (24) hours after it ceases providing Acquirer Services and/or terminate, if: (i) Sub-Merchant or Provider fails to pay any amount to Acquirers when due and Sub-Merchant fails to cure such breach of the Agreement within thirty (30) days following notice from Acquirers, (ii) in Acquirers' reasonable opinion provision of a service to Sub-Merchant or Provider is likely to be a violation of the Operating Regulations or any applicable Laws, (iii) Acquirer reasonably believe that Sub-Merchant has violated or is likely to violate the Operating Regulations or the Laws, or (iv) Acquirers or Providers are required to do so by any of the



Card Brands. Notwithstanding the foregoing, to the extent that Sub-Merchant's violations can be cured, Acquirers shall provide Sub-Merchant with a reasonable time to cure such violations.

If this Sub-Merchant Agreement is terminated by any party hereto, the provisions of Section 4 above will continue to apply until Sub-Merchant has paid all amounts owed to Provider in respect of the Services provided by Provider prior to termination.

### **5.3 FAILURE OF ACQUIRER SERVICES**

Sub-Merchant agrees to provide Acquirers, via a communication with Provider, with written notice, specifically detailing any alleged failure of Acquirer Services, within thirty (30) days of the date on which the alleged failure or error 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 failure or error. Acquirers shall bear no liability and have no obligations to correct any errors resulting from Sub-merchant's failure to comply with the duties and obligations of the preceding sentence.

### **5.4 EVENTS OF DEFAULT**

An "Event of Default" shall mean the occurrence or existence of one or more of the following events or conditions, whatever the reason for such Event of Default and whether voluntary, involuntary or effected by operation of law: (a) Sub-Merchant fails to pay any obligation under this Sub-Merchant Agreement to Acquirers or Provider when due; (b) any representation or warranty made by Sub-Merchant under this Sub-Merchant Agreement, the Sub-Merchant Application or any financial statement, certificate, report, exhibit or document required to be furnished by Sub-Merchant to Acquirers or Provider pursuant to this Sub-Merchant Agreement shall prove false or misleading in any material respect as of the time when made, including any omission of material information necessary to make such representation, warranty or statement not misleading or the failure to provide required information; (c) Sub-Merchant shall default in the performance or observance of any covenant, agreement or duty under this Sub-Merchant Agreement or any Card Brand Regulation; (d) Sub-Merchant is no longer allowed by a Card Brand to accept such Card Brand's Cards as payment or Sub-Merchant's name appears on a Card Brand's terminated merchant file; (e) Acquirers or Provider reasonably conclude that any criminal, fraudulent, unauthorized or suspicious activity has occurred or is imminent with respect to Sub-Merchant's acceptance of Cards or Sub-Merchant's performance under this Sub-Merchant Agreement; (f) there is a material change in Sub-Merchant's processed volume, average ticket size or mode of sale in which Sub-Merchant either does not provide an explanation or such explanation is commercially unreasonable; (g) Sub-Merchant's rate of Card chargebacks in a month is greater than one and one half percent (1.5%) of all Card Transactions or that Sub-Merchant cannot fund Fees, Third-Party Costs for which Sub-Merchant is responsible hereunder, dispute items, or penalties as they occur; (h) Sub-Merchant has defaulted on any obligation for borrowed money and the effect thereof may permit the holder of such indebtedness to accelerate the time when repayment is due; (i) there is an adverse material change in Sub-Merchant's business, operations, financial condition, properties, assets or prospects; (j) one or more judgments against Sub-Merchant for the payment of money remain undischarged, unsatisfied or unstayed for a period of forty five (45) consecutive days; (k) Sub-Merchant's lender takes possession of Sub-Merchant's inventory; (l) a writ or warrant of attachment, garnishment, execution, or similar process shall have been issued against Sub-Merchant or any of Sub-Merchant's assets; (m) a proceeding shall have been instituted with respect to Sub-Merchant (1) seeking an order for relief or a declaration entailing a finding that Sub-Merchant is insolvent or seeking a similar declaration or finding, or seeking dissolution, winding up, charter revocation or forfeiture, liquidation, reorganization, arrangement, adjustment, composition or other similar relief with respect to Sub-Merchant, Sub-Merchant's assets or Sub-Merchant's debts under any law relating to bankruptcy, insolvency, relief of debtors or protection of creditors, termination of legal entities or any other similar law now or hereafter in effect, or (2) seeking appointment of a receiver, trustee, custodian, liquidator, assignee, sequestrator or other similar official for Sub-Merchant or for all or any substantial part of Sub-Merchant's assets; or (n) Sub-Merchant shall become



insolvent, shall become generally unable to pay Sub-Merchant's debts as they become due, shall voluntarily suspend transaction of Sub-Merchant's business, shall make a general assignment for the benefit of creditors, shall institute a proceeding described in subsection (m)(1) above, or shall consent to any such order for relief, declaration, finding or relief described therein, shall institute a proceeding described in subsection (m)(2) above, or shall consent to any such appointment or to the taking of possession by any such official of all or any substantial part of Sub-Merchant's assets, shall dissolve, windup, revoke or forfeit Sub-Merchant's charter (or other constituent documents) or liquidate Sub-Merchant or any substantial part of Sub-Merchant's assets, or shall take any action in furtherance of any of the foregoing; (o) accept a Card for an unlawful Internet gambling transaction; or (p) Sub-Merchant fails to become or remain "PCI compliant" (as required under applicable Card Brand Regulations) and/or Sub-Merchant fails to certify such compliance to Provider upon request. You shall notify Acquirers and Provider in writing immediately upon becoming aware of an Event of Default, or an event which, with the passing of time or the giving of notice, or both, would constitute an Event of Default.

#### **5.5 REMEDIES UPON EVENT OF DEFAULT**

Upon the occurrence of any Event of Default, Acquirers and Provider may employ any or all of the following remedies it deems appropriate: (a) terminate this Sub-Merchant Agreement immediately upon written notice to Sub-Merchant (b) without prior notice to Sub-Merchant, but will provide notice as soon as possible and no later than twenty-four (24) hours after Acquirers and Provider terminates this Agreement, refuse to accept or revoke acceptance of any sales or credit, or the electronic transmission thereof if applicable, received by Acquirers or Provider on or at any time after the occurrence of any Event of Default; (c) without prior notice to Sub-Merchant, but will provide notice as soon as possible and no later than twenty-four (24) hours after Acquirers or Provider takes action, Acquirers or Provider may debit Sub-Merchant's accounts in an amount equal to any amount then owed to Acquirers or Provider; (d) establish a reasonable reserve as described above using Sub-Merchant's funds in Acquirers' possession to cover foreseeable Fees, Third-Party Costs for which Sub-Merchant is responsible hereunder, dispute items, penalties, and Cardholder credits; I reserved; (f) reserved; (g) report to one or more credit reporting agencies any outstanding indebtedness to Acquirers or Provider; or (h) take such other action as may be permitted by law.

#### **5.6 EARLY TERMINATION**

For purposes of this Section 5.6, an "Early Termination" shall mean: (i) a termination of this Sub-Merchant Agreement by Acquirers or Provider following an Event of Default specified in Section 5.4 above (ii); a termination of this Sub-Merchant Agreement by Sub-Merchant for any reason whatsoever, other than following written termination notice given by Sub-Merchant pursuant to Section 1.2 or Section 5; or (iii) for all merchant accounts established under this Agreement, Sub-Merchant's deposit or submission of any of Sub-Merchant's Card Branded transactions with any entity other than Acquirers. Your payment of the monthly minimum Fees shall not fulfill Sub-Merchant's obligation to Provider. The parties agree that the actual damages which will result to Provider from an Early Termination are not readily ascertainable as of the effective date of this Sub-Merchant Agreement. In addition, Sub-Merchant acknowledges and agrees that in reliance on this Sub-Merchant Agreement and other long-term agreements, Provider will incur additional long-term costs, including without limitation, computer hardware, software, and labor.

#### **6. SUB-MERCHANT WARRANTIES.**

Sub-Merchant represents and warrants the following: (1) that all information submitted by Sub-Merchant to Provider and/or Acquirers relating to Sub-Merchant Application, which is incorporated into the Sub-Merchant Agreement by reference, to use the Acquirer Services is correct, complete, and fully describes and details the nature, type, and scope of the business in which Sub-Merchant is engaged; (2) that Sub-Merchant has never been placed on the Mastercard MATCH system or the Combined Terminated Merchant File, and if so, Merchant has disclosed this to Provider and/or Acquirers; and (3) that all transactions are bona fide and no transaction involves the use of a Card for any purpose other

than the purchase of goods or services from Sub-Merchant and does not involve a Cardholder obtaining cash from Sub-Merchant unless allowed by the Operating Regulations.

**7. LIABILITY.**

As between Sub-Merchant and Acquirers, Sub-Merchant will be responsible for, and at its own expense, defend itself against any suits, claims, losses, demands or damages arising out of in connection with (A) any dispute that Sub-Merchant has with a Cardholder or any third party relating to any Card transaction, or (B) any breach by Sub-Merchant of any obligation under this Sub-Merchant Agreement. Sub-Merchant will not make any claims against Acquirers for any liabilities, claims, losses, costs, expenses and demands of any kind or nature, arising out of or in connection with any of the foregoing suits, claims, losses, demands or damages. Further, Sub-Merchant will not make any claims against Acquirers for any actions they take against the settlement account or the reserve account in accordance with this Sub-Merchant Agreement, except to the extent such actions are attributable to Acquirers' negligence, willful misconduct or their breach of this Sub-Merchant Agreement.

Acquirers will be responsible for and will at their own expense defend themselves against any suits, claims, losses, demands or damages arising solely out of (A) Acquirers' breach of this Sub-Merchant Agreement, or (B) Acquirers' negligence or willful misconduct.

**8. LIMITATION OF LIABILITY.**

Sub-Merchant's sole and exclusive remedy for any and all claims against Acquirers arising out of or in any way related to the transactions contemplated herein shall be termination of this Sub-Merchant Agreement. In the event that Sub-Merchant has any claim arising in connection with the Acquirer Services, rights, and/or obligations defined in this Sub-Merchant Agreement, Sub-Merchant shall proceed against Provider and not against Acquirers, unless otherwise specifically set forth in the Operating Regulations. In no event shall Acquirers have any liability to Sub-Merchant with respect to this Sub-Merchant Agreement or the Acquirer Services. Sub-Merchant acknowledges Acquirers are only providing this Sub-Merchant Agreement to assist in Provider's processing relationship with Sub-Merchant, that Acquirers are not liable for any action or failure to act by Provider, and that Acquirers shall have no liability whatsoever in connection with any products or services provided to Sub-Merchant by Provider.

Acquirers' total liability under this Sub-Merchant Agreement for any reason will not exceed in the aggregate the amount of \$5,000. In no event will Acquirers be liable for indirect, special, or consequential damages.

**9. DISCLAIMER OF WARRANTIES.**

THE ACQUIRER SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT AS EXPRESSLY STATED IN THIS SUB-MERCHANT AGREEMENT, ACQUIRERS SPECIFICALLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND/OR NON-INFRINGEMENT, ARISING OUT OF OR RELATED TO THIS SUB-MERCHANT AGREEMENT.

SOME STATES DO NOT ALLOW EXCLUSIONS AND LIMITATIONS OF CERTAIN IMPLIED WARRANTIES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO SUB-MERCHANT. EACH PARTY ACKNOWLEDGES THAT IT HAS NOT ENTERED INTO THIS SUB-MERCHANT AGREEMENT IN RELIANCE UPON ANY WARRANTY OR REPRESENTATION EXCEPT THOSE SPECIFICALLY SET FORTH HEREIN.

**10. INTELLECTUAL PROPERTY RESTRICTIONS.**

All materials or intellectual property provided by Acquirers to Sub-Merchant in connection with the Acquirer Services ("Materials") are owned by Acquirers or their third party licensors. Sub-Merchant shall not (and shall not permit any agent or third party) to: (a) copy all or any portion of any Materials; (b) decompile, disassemble, or otherwise reverse

engineer (except to the extent expressly permitted by applicable Law, notwithstanding a contractual obligation to the contrary) the Acquirer Services or Materials, or any portion thereof, or determine or attempt to determine any source code, algorithms, methods, or techniques used or embodied in the Acquirer Services or any Materials or any portion thereof; (c) modify, translate, or otherwise create any derivative works based upon the Acquirer Services or any Materials; (d) distribute, disclose, market, rent, lease, assign, sublicense, pledge, or otherwise transfer the Acquirer Services or any Materials, in whole or in part, to any third party; or (e) remove or alter any copyright, trademark, or other proprietary notices, legends, symbols, or labels appearing on the Acquirer Services or in any Materials.

## **11. MISCELLANEOUS.**

### **11.1 SEVERABILITY AND WAIVER**

If any provision of this Sub-Merchant Agreement is held invalid, illegal, void, or unenforceable by reason of any judicial decision, all other provisions of this Sub-Merchant Agreement shall nevertheless remain in full force and effect. No course of dealing, delay, or failure to enforce any provision or exercise any right under this Sub-Merchant Agreement by Acquirers shall be construed as a waiver or estoppel of such provision or right, nor shall it amend this Sub-Merchant Agreement or affect the validity of this Sub-Merchant Agreement or curtail Acquirers' ability to enforce such provision or exercise such right in the future. All waivers must be in writing and signed by Acquirers.

### **11.2 RIGHTS AND REMEDIES CUMULATIVE**

The rights conferred upon Acquirers in this Sub-Merchant Agreement are not intended to be exclusive of each other or of any other rights and remedies Acquirers have under this Sub-Merchant Agreement, at law or in equity. Rather, each right Acquirers have at law or in equity will be cumulative and concurrent and in addition to every other right.

### **11.3 ENTIRE AGREEMENT**

This Sub-Merchant Agreement, Sub-Merchant Application, including the Operating Regulations and the Policies, and any amendment or supplement to this Sub-Merchant Agreement, all of which are incorporated into this Sub-Merchant Agreement, constitutes the entire agreement between Sub-Merchant and Acquirers with respect to services provided by Provider, and all prior or other agreements or representations, written or oral, are superseded by this Sub-Merchant Agreement. Sub-Merchant agrees that in entering into this Sub-Merchant Agreement Sub-Merchant has not relied on any statement of Acquirers or its representatives. The parties acknowledge and agree (i) that this Sub-Merchant Agreement applies only to Card transaction generated within the United States; and (ii) that this is a contract for commercial services.

### **11.4 ASSIGNABILITY**

This Sub-Merchant Agreement may not be assigned by Sub-Merchant, directly or by operation of law, without the prior written consent of Acquirers and Provider. This Sub-Merchant Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees and assignees.

### **11.5 AMENDMENTS**

Acquirers and/or Provider may amend this Sub-Merchant Agreement for the sole purpose of changing the amounts of processing fees, and for no other purpose. Notwithstanding the foregoing, Provider will give Sub-Merchant not fewer than thirty (30) days advance notice of any new or increased fees imposed on Sub-Merchant in connection with payment processing under this Sub-Merchant Agreement

### **11.6 CONSENT TO DO BUSINESS ELECTRONICALLY, ELECTRONIC COMMUNICATION, AND NOTICES**

Sub-Merchant consents to do business electronically, which means that Sub-Merchant agrees that all notices, instructions, or any other communications regarding transactions under this Sub-Merchant Agreement (all of which

are referred to herein as the "Communications") may be presented, delivered, stored, retrieved, and transmitted to Sub-Merchant electronically. Sub-Merchant agrees to notify Provider of any change in its electronic or mailing address or other contact information.

#### 11.7 EXECUTION OF AGREEMENT

The parties agree that this Sub-Merchant Agreement may be executed (a) in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement; and (b) by using an electronic or handwritten signature, which are of equal effect, whether on original or electronic copies. Member Bank is a party to this Sub-Merchant Agreement. Member Bank may be changed, and its rights and obligations assigned to another party by Acquirers at any time without notice to Merchant. As of the commencement of this Sub-Merchant Agreement, Member Bank shall be Fifth Third Bank, located at Cincinnati, OH.

#### 11.8 CHOICE OF LAW; JURISDICTION; WAIVER

THIS SUB-MERCHANT AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF IN WHICH SUB-MERCHANT IS LOCATED. SUB-MERCHANT, ACQUIRERS AND PROVIDER HEREBY IRREVOCABLY AND UNCONDITIONALLY: (A) AGREE THAT ANY ACTION, SUIT OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THIS AGREEMENT OR ANY STATEMENT, COURSE OF CONDUCT, ACT, OMISSION OR EVENT OCCURRING IN CONNECTION WITH THIS AGREEMENT (COLLECTIVELY, "RELATED LITIGATION") MUST BE BROUGHT IN A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE COUNTY AND STATE IN WHICH SUB-MERCHANT ARE LOCATED;

(B) SUBMIT TO THE JURISDICTION OF SUCH COURTS; (C) WAIVE ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY RELATED LITIGATION BROUGHT IN ANY SUCH COURT; (D) WAIVE ANY CLAIM THAT ANY SUCH RELATED LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM, AND WAIVE ANY RIGHT TO OBJECT, WITH RESPECT TO ANY RELATED LITIGATION BROUGHT IN ANY SUCH COURT, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUB-MERCHANT OR ACQUIRERS AND PROVIDER;

### AGREED AND ACCEPTED


**SUB-MERCHANT:**

Oakland County

**BY:** Scott N. Guzy

**TITLE:** Purchasing Administrator

**AUTHORIZED SIGNATURE:**

  
Scott N. Guzy (Apr 29, 2022 16:08 EDT)

**DATE:** Apr 29, 2022

**WONDERWARE INC. D/B/A CORE BUSINESS TECHNOLOGIES**

**BY:** Dan Paulus

**TITLE:** CEO

**AUTHORIZED SIGNATURE:**

  
Dan Paulus (Apr 28, 2022 12:11 CDT)

**DATE:** Apr 28, 2022

## SUB-MERCHANT ACCOUNT FEE SCHEDULE

### ABSORBED FEE PROGRAM

Sub-Merchant agrees to pay all Card Brand fees, transaction processing costs and other processing fees on all transactions as set forth herein. Sub-Merchant authorizes and directs Provider to charge such fees and costs to Sub-Merchant by monthly debit through the ACH system to Sub-Merchant's designated DDA account. For a current list of Card Brand Interchange Rates, refer to each respective Card Brand website provided in the Bank Disclosure herein. Nothing in this Fee Schedule shall be deemed to alleviate or reduce any of Sub-Merchant's other obligations under the Sub-Merchant Agreement, including, but not limited to, Sub-Merchant's responsibilities with regard to Fees or interchange fees, assessments and other third-party charges charged to, directly or indirectly incurred or otherwise paid by Provider and/or Acquirers which are attributable to Sub-Merchant's Card transactions other than penalties (collectively, "Third-Party Costs").

### SERVICE FEE PROGRAM

Sub-Merchant understands and acknowledges that Sub-Merchant has elected to participate in the Government and Education Program provided by the Card Brands (the "Program"). The Program allows registered and approved merchants (approved Merchant IDs or MIDs) to assess a variable service fee (a "Service Fee") on certain debit and credit Card transactions. Registration and participation in the Program are subject to approval by the applicable Card Brands and Sub-Merchant acknowledges that Sub-Merchant may not be eligible to participate in the Program. If registration and Card Brand approval is obtained, Sub-Merchant agrees to comply with all Program requirements. Provider may terminate, amend, modify or otherwise alter this Sub-Merchant Agreement, the Program, or the structure, nature or amount of the Service Fee at any time with written notice to Sub-Merchant. Sub-Merchant authorizes and directs Acquirers to settle the proceeds received for Service Fees into the Provider's bank account. In the event that Sub-Merchant receives any portion of the Service Fees, Sub-Merchant agrees to promptly pay such amounts to Provider.

**Service Fees collected by Provider will be retained by Provider and Sub-Merchant will not be responsible for the payment of any Fees or interchange fees, assessments and other third-party charges charged to, directly or indirectly incurred or otherwise paid by Provider and/or Acquirers which are attributable to Sub-Merchant's Card transactions other than penalties (collectively, "Third-Party Costs") with the exception of the Fees listed below.** Nothing in this Section shall be deemed to alleviate or reduce any of Sub-Merchant's other obligations under the Sub-Merchant Agreement, including, but not limited to, Sub-Merchant's responsibilities with regard to penalties and dispute items and Sub-Merchant's obligation to pay any early termination fees, if applicable, pursuant to Section 5.6 of the Sub-Merchant Agreement. In the event a customer disputes, refuses to pay and/or charges back the Service Fee amount to Provider, Sub-Merchant is responsible for collecting and paying the Service Fee and the Chargeback Fee to Provider.



## SPECIAL PROVISIONS FOR AMERICAN EXPRESS ADDENDUM

This SPECIAL PROVISIONS FOR AMERICAN EXPRESS ADDENDUM (this “Addendum”) is made a part of the terms and conditions of the SUB-MERCHANT SERVICES AGREEMENT between \_\_\_ (“Customer”) and Wonderware Inc. d/b/a CORE Business Technologies (“CORE”) (the “Sub-Merchant Agreement”), and applies to American Express Card acceptance (capitalized terms herein not defined elsewhere in the Sub-Merchant Agreement shall have the meanings assigned in the American Express Operating Regulations). Customer’s participation in American Express Card acceptance is subject to the approval of American Express. With respect to participation in an American Express acceptance program, in the event of a conflict between the terms of this Addendum and other terms of the Sub-Merchant Agreement, the terms below shall control.

1. **Rules.** Customer shall be bound by the American Express Operating Regulations, including the Merchant Operating Guide which is located at: [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide) (“MOG”). The provisions of the MOG are incorporated herein by reference.
2. **Transaction Data.** Customer authorizes CORE and/or its affiliates to submit American Express transactions to, and receive settlement on such transactions from, American Express on behalf of Customer.
3. **Data Security Requirements.** Customer shall comply with the data security requirements of protecting Cardholder information set forth in Section 8 of the MOG.
4. **Treatment of American Express Cardholder Information.** Customer shall treat acknowledges that any and all American Express Cardholder information is confidential and the sole property of the Card issuer, American Express or any of its affiliates. Except as otherwise specified, Customer must not disclose Cardholder information, nor use nor store it, other than to facilitate transactions at Customer’s establishments in accordance with the Sub-Merchant Agreement.
5. **Disclosure and Use of Data Collected Under the Sub-Merchant Agreement.** CORE may disclose to American Express data and information that CORE collects as part of performing American Express payment processing services or transaction related services including information about Customer, as further set forth in Section 2.7 of the MOG. American Express may use such information for purposes set forth in Sections 2.7 and 2.8 of the MOG.
6. **Conversion to American Express Direct Customer.** Customer acknowledges that it may be converted from the American Express Card acceptance program to a direct relationship with American Express if and when its transaction volumes exceed the eligibility thresholds for the program. If this occurs, upon such conversion, (i) Customer will be bound by American Express’ then-current Card acceptance agreement; and (ii) American Express will set pricing and other fees payable by Customer.
7. **Assignment of Transactions.** Customer shall not process transactions or receive payments on behalf of, or (unless required by applicable law) re-direct payments to, any third party.
8. **American Express as Third Party Beneficiary.** Notwithstanding anything in the Sub-Merchant Agreement to the contrary, American Express shall have third-party beneficiary rights, but not obligations, to the terms of the Sub-Merchant Agreement applicable to American Express Card acceptance to enforce such terms against Customer. Customer acknowledges that it is not a third party beneficiary under the agreement between American Express and CORE for the provision of American Express payment processing services or transaction related services to Customer (the “AMEX TPSP Agreement”).
9. **Termination of American Express Card Acceptance.** You acknowledge that CORE shall be required to terminate Customer’s participation in American Express Card acceptance if the TPSP Agreement terminates



for any reason or American Express terminates CORE's authorization to provide the payment processing services. In the event Customer's participation in the program is terminated for any reason, Customer must immediately remove all American Express branding and marks from Customer's website and wherever else they are displayed.

10. **Billing and Refund Policies.** Customer's billing and refund policies for American Express purchases must comply with Sections 4.11 and 7.4 of the MOG.

11. **Acceptance of American Express.** Customer must accept American Express as payment for goods and services in accordance with Section 3.1 of the MOG, the Sub-Merchant Agreement and this Addendum. Customer covenants not to engage in the activities listed in the second paragraph of Section 3.2 of the MOG.

12. **Inquiries and Chargebacks.** Customer must comply with the requirements set forth in Section 11 of the MOG relating to the processes for chargebacks and inquiries.

13. **Specific Industries.** Customer must comply with the industry-specific requirements of Section 12 of the MOG.

14. **Discounts or In-Kind Incentives.** Customer may offer discounts or in-kind incentives from Customer's regular prices for payments in cash, ACH funds transfer, check, debit card or credit/charge card, provided that Customer complies with the requirements of the third paragraph of Section 3.2 of the MOG.

15. **Display of American Express Marks.** Whenever payment methods are communicated to customers, or when customers ask what payments are accepted, Customer must indicate Customer's acceptance of American Express Cards and display American Express' marks as prominently and in the same manner as any other Card networks. Customer's use of the American Express marks shall be in accordance with the third paragraph of Section 3.2.1 of the MOG.

16. **Confidentiality of Cardholder Information.** Any and all Cardholder information is confidential and the sole property of the applicable Card issuer, American Express or its affiliates. Except as otherwise specified, Customer must not disclose Cardholder information, nor use nor store it, other than to facilitate transactions at Customer's business locations and websites in accordance with the Sub-Merchant Agreement.

17. **Website Information Display.** Customer's business website must display the following: (a) an accurate description of the goods/services offered, including the currency type for the transaction (e.g., U.S. Dollars) (note: transaction currency must be in U.S. Dollars); (b) Customer's physical address in the U.S.; (c) an email address or telephone number for customer service disputes; (d) return/refund policy; (e) a description of Customer's delivery policy (e.g., no overnight

delivery); (f) a description of Customer's security practices (e.g., information highlighting security practices the Customer uses to secure transactions on its systems, including transactions conducted on the Internet); (g) a statement of known export restrictions, tariffs, and any other regulations; and (h) a privacy statement regarding the type of personal information collected and how the information is used. Additionally, Customer must provide to its customers the option to decline being included in marketing campaigns or having their personal information included on lists sold to third parties.

18. **Customer Service Information.** Customer will maintain customer service information that is readily available for review by Cardholders transacting with Customer. The customer service information will provide clear instructions on how to contact CORE or Customer, including an active customer service email address and telephone number.

19. **Compliance with Laws.** Customer will at all times comply with applicable laws, rules and

regulations related to the conduct of Customer's business.

20. **Claims.** A claim against American Express, or a claim against CORE or any other entity that American Express has a right to join in resolving a claim, will be resolved through arbitration in accordance with Section 13 of the MOG.

21. **American Express Limitation of Liability.** IN NO EVENT SHALL AMERICAN EXPRESS OR ITS AFFILIATES, SUCCESSORS, OR PERMITTED ASSIGNS BE LIABLE TO CUSTOMER OR ANY OTHER THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECULATIVE, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (WHETHER BASED IN CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, FRAUD, OR OTHERWISE, OR STATUTES, REGULATIONS, OR ANY OTHER THEORY) ARISING OUT OF OR IN CONNECTION WITH CUSTOMER'S PARTICIPATION IN THE PROGRAM, EVEN IF ADVISED OF SUCH POTENTIAL DAMAGES. AMERICAN EXPRESS WILL NOT BE RESPONSIBLE TO CUSTOMER FOR DAMAGES ARISING FROM DELAYS OR PROBLEMS CAUSED BY TELECOMMUNICATIONS CARRIERS, INTERNET SERVICE PROVIDERS, OTHER COMMUNICATIONS NETWORKS OR THE BANKING SYSTEM, EXCEPT THAT ITS RIGHTS TO CREATE RESERVES AND EXERCISE CHARGEBACKS WILL NOT BE IMPAIRED BY SUCH EVENTS. CUSTOMER FURTHER AGREES TO ABIDE BY THE LIMITATION OF LIABILITY PROVISIONS IN THE AMEX TPSP AGREEMENT.

22. **American Express Right to Modify or Terminate Agreement.** American Express has to the right to modify the Sub-Merchant Agreement with respect to American Express transactions or to terminate Customer's acceptance of American Express transactions and to require CORE to investigate Customer's activities with respect to American Express transactions.

Except as otherwise amended pursuant to this Addendum, the Sub-Merchant Agreement remains in full force and effect in accordance with its terms. This Addendum may be executed in one or more counterparts (including by means of signature pages transmitted via PDF or other electronic means), each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

**4. CUSTOMER AND CORE HAVE ENTERED INTO THIS ADDENDUM AS OF THE LAST DATE SIGNED BELOW**

**Customer:**

**Wonderware Inc. d/b/a CORE Business Technologies**

By:   
Scott N. Guzzey (Apr 28, 2022 16:08 EDT)

By:   
Dan Paulus (Apr 28, 2022 12:11 CDT)

Name: Scott N. Guzzey

Name: Dan Paulus

Title: Purchasing Administrator

Title: CEO

Date: Apr 29, 2022

Date: Apr 28, 2022

**Exhibit J-2**

**Pass Through Terms for Services Only Bundles**

All Reseller merchant agreements for services only shall include the following provisions. All capitalized terms shall have the meaning as set forth in the Reseller Agreement.

1. Subject to Reseller's payment of the applicable fees, Verifone hereby grants to merchant a limited, non-exclusive, non-transferable, non-sublicensable right and license during the Service Term, to (i) access and use those Point Services hosted by Verifone ("Hosted Point Services"); (ii) execute, download and display the features, functions and graphical interface components of the Hosted Point Services to communicate, transfer and collect data; and  
  
(iii) display, download, print and reproduce any documentation provided by Verifone as reasonably required for the use of the Hosted Services. Verifone may modify the Hosted Point Service from time to time in its reasonable discretion, provided that such modifications shall not materially diminish the functionality thereof.
2. The merchant shall acknowledge that ownership of all patents, copyrights, mask work rights, trademarks, trade names and other intellectual property rights relating to or residing in the Point Service shall remain with Verifone.
3. Merchant acknowledge that Verifone may collect and share with its partners data from merchant transactions (for statistical and other purposes); however, such data shall not include any "cardholder data" under Payment Card Industry Security Standard's Council rules, any of Merchant's or a customer's personally identifiable information, Merchant's or a customer's personal financial information or any other data that Verifone may be prohibited from collecting or sharing under applicable privacy laws. Merchant agrees that Verifone may use such data for purposes of data analytics and optimizing or otherwise enhancing its products and services. Verifone will comply with all applicable laws and regulations with respect to any use, sharing and dissemination of this data. In accordance with Verifone's use of derived data, Verifone reserves the right to anonymously track and report merchant's activity inside of the Point Service. This paragraph shall survive any expiration or termination of this merchant agreement.
4. Verifone conducts routine maintenance to the Hosted Point Services. Maintenance is generally scheduled during time periods when overall end user online activity is limited. Verifone reserves the right to shut down the Hosted Point Services with no notice should emergency maintenance become necessary. Verifone reserves the right to remove any user from the Hosted Point Services should Verifone determine, in its sole discretion, that the Hosted Point Services have been compromised or in any way used inappropriately. In extreme cases, removal may occur immediately without prior notification.

VERIFONE DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE POINT SERVICE, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. VERIFONE DOES NOT WARRANT THAT THE OPERATION OF THE POINT SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. VERIFONE SHALL NOT BE RESPONSIBLE FOR ANY SERVICE INTERRUPTIONS, INCLUDING, WITHOUT LIMITATION POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS. NO ADVICE OR INFORMATION OBTAINED BY MERCHANT FROM VERIFONE OR FROM ANY THIRD PARTY ABOUT THE POINT SERVICE SHALL CREATE ANY WARRANTY.

#### **SPECIAL PROVISIONS FOR ACH ADDENDUM**

This SPECIAL PROVISIONS FOR ACH ADDENDUM (this "Addendum") is made a part of the terms and conditions of the SUB-MERCHANT SERVICES AGREEMENT between County ("Customer") and Wonderware Inc. d/b/a CORE Business Technologies ("CORE") (the "Sub-Merchant Agreement"), and applies to ACH Payment acceptance (capitalized terms herein not defined elsewhere in the Sub-Merchant Agreement shall have the meanings assigned in the ACH Rules). With respect to participation in an ACH Payment program, in the event of a conflict between the terms of this Addendum and other terms of the Sub-Merchant Agreement, the terms below shall control.

**SERVICES:** CORE agrees to provide the services selected by Merchant on the front side hereof. All such services shall be provided by CORE in accordance with laws applicable to the services and subject to the terms and conditions of this Agreement.

**UNITED STATES LAWS AND REGULATIONS:** Merchant acknowledges that it will not generate transactions that violate the laws or regulations of the United States. This includes, but is not limited to; sanction laws administered by the Office of Foreign Assets Control (OFAC). It shall be the responsibility of Company to obtain information regarding such OFAC enforced sanctions. (This information may be obtained directly from the OFAC Compliance Hotline at 800-540-OFAC or from the OFAC's home page site at [www.ustreas.gov/ofac](http://www.ustreas.gov/ofac)). All references to "transactions" in this Agreement shall be deemed to refer to ACH transactions, which are defined as electronic payment transactions originated by Merchant and processed through the ACH Network in the Federal Reserve System.

**REQUIREMENTS FOR ACH ITEMS:** Without limiting the generality of the foregoing: (i) you agree to comply with and be bound by the rules of the National Automated Clearing House Association ("NACHA") in effect from time to time with respect to all automated clearing house ("ACH") transactions conducted in conjunction with the Service ("ACH Rules")

Checks that may not be converted into ACH entries:

- Corporate or Business checks (except for WEB)
- Third-party checks,
- Credit card checks (equity line / line of credit checks),
- Obligations of a financial institution (e.g. cashier's checks, money orders, etc),
- Checks drawn on the Treasury of the United States, A Federal Reserve Bank, or a Federal Home Loan Bank,
- Checks drawn on a state or local government, or
- Checks payable in a medium other than United States currency.

## **PREAUTHORIZED PAYMENT AND DEPOSIT SALES PROCEDURES**

**PPD ENTRY:** A PPD entry is a customer initiated ACH debit entry to a Customer DDA Account initiated by the customer to a Business, for goods or services provided by said merchant.

### **AUTHORIZATION REQUIREMENTS FOR PPD ACH ITEMS**

Merchants originating PPD entries being submitted into the ACH Network for electronic settlement must obtain the customer's written authorization prior to initiating a debit entry under this application. The language for the PPD authorization must conform to the requirements of the NACHA Operating Rules, which require that the authorization (1) be in a writing (2) be readily identifiable as an ACH debit authorization, (3) clearly and conspicuously state its terms, and (4) must (for recurring payments only) provide the Customer with a method to revoke their authorization by notifying the Merchant in the manner prescribed. (5) Merchant must provide each Customer with an electronic or hard copy of the Customer's authorization for all Debit Entries to be initiated to a Customer Account.

## **GENERAL REQUIREMENTS FOR CHECKS**

The original paper check will not be deposited through the Services more than once. All checks will conform to the requirements of Merchant's deposit agreement with its financial institution. All checks will conform to the requirements of the applicable ACH Rules. Merchant, as applicable, shall review and validate the accuracy and completeness of the check data being captured including but not limited to the amount of the check and the legibility of the check image generated from use of the services.

## **HARDWARE**

Merchant is solely responsible for the selection, use and operation of the Hardware used to capture the electronic image of the paper checks using the services, including the quality of the scanned check image results generated from the hardware. Hardware utilized must be certified for use with the services in order to be deemed compatible with the services.

## **SETTLEMENT**

In the event that CORE' or the CORE processing partner's ODFI is acting as the ODFI for Merchant, the following provisions shall apply: Merchant shall immediately reimburse CORE, as applicable, for any shortfalls that occur due to non-sufficient funds in the settlement account. CORE reserves the right to delay the availability of funds for deposit without prior written notices to Merchant if in its sole discretion CORE deems itself at financial or relative risk for any and all services performed under this Agreement. Merchant hereby acknowledges and agrees that CORE shall have a right of setoff against any and all fees, returns and refunds owed CORE or its processing partner by Merchant under this Agreement. "

## **WEB SALES PROCEDURES:**

**WEB ENTRY:** A WEB entry is defined as an ACH debit entry to a Customer Account (personal DDA number) initiated by the customer to a Merchant-Business, via the Internet, for goods or services provided by said merchant.

### **AUTHORIZATION REQUIREMENTS FOR WEB ACH ITEMS**

Merchants originating WEB entries being submitted into the ACH Network for electronic settlement must obtain the customer's authorization prior to initiating a debit entry under this application. The NACHA Operating Rules require that the authorization (1) be in a writing that is signed or similarly authenticated by the Customer, (2) be readily identifiable as an ACH debit authorization, (3) clearly and conspicuously state its

terms, and (4) must (for recurring payments only) provide the Customer with a method to revoke their authorization by notifying the Merchant in the manner prescribed.

The Merchant should prompt the customer to print the authorization and retain a copy. The Merchant must be able to provide the customer with a hard copy of the authorization if requested to do so. Only the customer may authorize the WEB transaction, and not a Third-Party Service Provider on behalf of the customer. The NACHA Operating Rules include the use of a digital signature or code to similarly authenticate a written authorization. This does not exclude other methods of similarly authenticating an authorization, such as shared secret passwords, biometrics, etc.

**“WEB” CHECK CONVERSION OBLIGATIONS:** Merchant agrees to comply with all NACHA Operating Rules (the “Rules”). The Rules are incorporated herein by reference. The authorization shall conform to the requirements of the Rules for WEB based transactions as stated above. Merchant shall retain a copy of such authorization for a period of two (2) years following the date the authorization is initiated. Merchant agrees and acknowledges that it will assist in resolving all customer disputes in a timely manner, and will allow CORE to refer inquiring Financial Institutions directly to Merchant, or to Merchant’s supporting vendors, for information regarding the nature and conditions of each transaction initiated to the customer’s account.

#### **TEL SALES PROCEDURES:**

**TEL ENTRY:** A TEL entry is defined as a Single-Entry ACH debit entry to a Customer Account (personal DDA number) initiated in response to a customer’s oral authorization to a Merchant-Business, captured via the telephone, for goods or services provided by said merchant.

#### **AUTHORIZATION REQUIREMENTS FOR TEL ACH ITEMS**

Merchants originating TEL entries being submitted into the ACH Network for electronic settlement must adhere to the following requirement. A TEL entry may be transmitted only in circumstances in which (1) there is an existing relationship between the Merchant and the customer, or (2) there is not an existing relationship between the Merchant and the customer, but the customer has initiated the telephone call to the Merchant.

**A TEL entry may not be used when the Merchant has initiated the telephone call.** The Merchant and the customer are considered to have an existing relationship when either (1) there is a written agreement in place between the Merchant and the customer for the provision of goods or services, or (2) the customer has purchased goods or services from the Merchant within the past two years. For purposes of these “Rules”, an affiliate of a Merchant that has an existing relationship is not deemed to have an existing relationship with respect to TEL items.

#### **TEL TRANSACTION OBLIGATIONS:**

Merchant agrees to comply with all NACHA Operating Rules (the “Rules”). The Rules are incorporated herein by reference. Merchant agrees to obtain the customer’s explicit authorization prior to initiating a debit entry to a customer’s account. Merchant need not provide the customer with a written authorization for the customer to sign or similarly authenticate. Instead, the Merchant may obtain the customer’s authorization for a TEL entry orally via the telephone. Merchant is obligated either to tape record the customer’s oral authorization or to provide, in advance of the Settlement Date of the entry, written notice to the customer that confirms the oral authorization. The customer must be provided, and must acknowledge, the following terms of the transaction:

- The date on or after which the customer’s account will be debited:
- The amount of the debit entry to the customer’s account:
- The customer’s name;



- A telephone number that is available to the customer and answered during normal business hours for customer inquiries;
- The date of the customer's oral authorization; and
- A statement by the customer that the authorization obtained from the customer will be used to originate an ACH debit entry to the customer's account.

For an oral authorization obtained over the telephone to be in accordance with the requirements of the NACHA Rules, (1) the Merchant must state clearly during the telephone conversation that the customer is authorizing an ACH debit entry to his account, (2) the Merchant must express the terms of the authorization in a clear manner, and (3) the customer must unambiguously express consent. Silence is not express consent. The Merchant must retain either the original or a duplicate tape recording of the customer's oral authorization OR a copy of the written notice confirming the customer's oral authorization for two (2) years from the date of the authorization. Merchant must provide a copy of the customer's authorization when requested. A Merchant using a voice response unit (VRU) to capture a customer's authorization for a TEL entry must understand that key-entry responses by the customer to input data and to respond to questions does not qualify as an oral authorization. A VRU may be used by the customer to key enter data and to respond to questions, provided that the actual authorization by the customer is provided orally. A Merchant that chooses the option to provide the customer with written notice confirming the customer's oral authorization must disclose to the customer during the telephone call the method by which such notice will be provided. The written notice must include, at a minimum, the six pieces of information required to be disclosed during the telephone call, as described above. Merchant understands that the term 'provide' is intended to mean that the merchant has utilized a medium such as US mail, fax, or other mail delivery, to send the written notice to the customer. Disclosure in electronic form, including e-mail, can be used however; state and or federal laws may require customer consent before using electronic notices/disclosures. The term "provide" does not imply receipt of such notice by the customer. Merchant also understands that when written notice is used to confirm the authorization, the customer must be afforded the right to contact the Merchant, using the telephone number provide, to correct any erroneous information contained within the notice. In order to minimize the risk of entry errors, Merchant agrees to use a commercially reasonable system, technology, practice, or procedure to verify, (A) that the routing numbers are valid, and (B) the identity of the customer. Merchant agrees and acknowledges that it will assist in resolving all customer disputes in a timely manner, and will allow CORE to refer inquiring Financial Institutions directly to Merchant, or to Merchant's supporting vendors, for information regarding the nature and conditions of each transaction initiated to the customer's account.

#### **POP SALES PROCEDURES**

**POP ENTRY:** A POP entry is defined as a Single-Entry ACH debit entry to a Customer Account (personal DDA number) initiated directly to a Merchant-Business, for goods or services provided by said merchant, and purchased in person. Written authorization (signed sales receipt) by customer must be kept and retained by merchant for two years, as evidence and understanding of the nature of the POP transaction.

**CHECK VERIFICATION:** Each check tendered at the point of sale will be processed through CORE's national positive and negative database to help Merchant decide whether to accept or decline the customer's check. Merchant agrees to use the check verification service solely for legitimate Merchant business purposes at Merchant's business location(s) in connection with the presentment of customers' checks for the purchase of goods or services from Merchant.

**POINT OF SALES PROCEDURES:** Merchant agrees that in order for check data provided at the point of sale to be accurately compared with the CORE database, Merchant must use a properly programmed and functioning check reader. As a result of information obtained through CORE, Merchant shall immediately advise the customer whose check was declined, via a CORE referral card and/or copy of the printed receipt. Customer inquiries concerning the reasons for decline and requests for assistance to correct the problem shall be directed to the reporting agency that communicated the fact that the customer's check should be declined (i.e., not CORE).

account. The authorization shall conform to the requirements of the Rules which require that the authorization (1) be in writing and signed or similarly authenticated by the customer using a digital signature or other code, (2) be readily identifiable as an EFT debit authorization, and (3) clearly and conspicuously state its terms. Merchant shall provide the customer with a copy of the authorization at the time the authorization is obtained and shall retain a copy of such authorization for a period of two (2) years following the date the authorization is signed. Merchant shall provide to the customer a copy of his authorization, along with a receipt containing specific information relating to the transaction. Merchant shall not accept a check from a customer as a source document for point-of-purchase entries unless the check is drawn on a customer account, has a pre-printed serial number, has not been previously voided, and has not been previously negotiated by the customer. Merchant shall provide each customer with a transaction receipt at the time and place of purchase. The receipt shall contain, at a minimum, the following information regarding each debit entry to be initiated to the customer's account: (a) Merchant's name; (b) Merchant's telephone number; (c) the date of the transaction; (d) the amount of the transaction; (e) the check serial number captured from the source document; and (f) the Merchant number or other unique number that identifies the location of the transaction. Merchant shall void the check presented to Merchant by the customer in connection with each point-of-purchase transaction (i.e., the check that has been used as the source document for information relating to the transaction), and return it to the customer. Merchant will return the check to the customer voided after use by the Merchant to obtain the customer's routing number, account number and check serial number for the initiation of the point-of-purchase entry. Merchant agrees to verify that the check presented by the customer has not been provided by the customer for use in any prior point-of-purchase entry.

**ARC SALES PROCEDURES:**

**ARC ENTRY:** An ARC entry is a Single-Entry debit initiated by a Merchant-Business for the conversion of a customer check received via the US mail or at a drop box location for the payment of goods or services provided by said merchant.

**AUTHORIZATION REQUIREMENTS FOR ARC ACH ITEMS:** Merchants originating ARC entries being submitted into the ACH Network for electronic settlement must follow and adhere to the terms and conditions of this Agreement. The ARC entry is a single entry debit to a customer's account, initiated by a merchant for payment of purchases made, where the customer mailed a check (used as a source document) to the merchant via the U.S. mail or by placing the check in a drop box. The Merchant is required to use a reading device to capture the MICR line (routing number, account number, and check serial number) of the source document (check) but may key enter the amount of the transaction. This application requires the Merchant to provide, prior to the receipt of each check, notice to the customer that receipt of his check will be authorization for the check to be used as a source document for an ACH debit transaction to the check writer's account at his financial institution.

**ARC CHECK CONVERSION OBLIGATIONS:** Merchant agrees to comply with all NACHA Operating Rules (the "Rules"). The Rules are incorporated herein by reference. Merchant agrees to retain, or have retained on

their behalf by an outside vendor, an image, microfilm, or other copy of the front of the customer's source document for a period of two years from the Settlement Date of the entry. The original source document to which the ARC entry relates must be destroyed by the Merchant within fourteen (14) days of the Settlement Date of the Entry. This requirement is to protect against the risk that, by error, the source document might subsequently be entered into the check processing system for payment as a check.

Merchant agrees to notify the customer each time a bill is mailed that receipt of the customer's check will be deemed to be the customer's authorization for an ACH debit entry to their account. So together the Biller's (merchant) provision of notice and the customer's mailed in check, allow for the ARC entry. The notice must be on the individual customer's statement,

**ADDITIONAL ARC CHECK CONVERSION OBLIGATIONS:** All ARC entries must be originated so that the amount of the entry, the routing number, the account number, and the check serial number accurately reflect the source document. No fees may be added to the amount of the source document when it is transmitted as an ARC entry. Merchant shall accept responsibility for all items incorrectly entered into the settlement system which may return as being unable to process, such items could be but are not limited to the earlier listed items not to be used as source documents. Merchant shall strictly comply with all guidelines and rules established by CORE regarding the quality of data submitted to CORE, input schedules and deadlines and all other matters pertinent to the processing and delivery of ACH entry data. Merchant agrees to perform a settlement (or Deposit) on each terminal/software device used for ARC entries on a daily basis.

**RETURN OF ARC ENTRY:** Merchants assumes all responsibilities for returned items/ARC entries. While most ARC entries will be returned typically within two to three banking days following the Settlement Date of the original ARC entry, there are situations in which entries can be returned by the customer's financial institution for 60 days from the settlement date. One such scenario is when a customer places a stop payment on the source document, instead of the ACH stop payment system. Other scenarios could be: 1) improper source document 2) no notice provided to customer that check was going to be converted 3) source document was presented for payment as a check and 4) ARC entry was initiated in an amount other than that indicated on the source document. Further merchant is aware that the NACHA Operation Rules restrict the number of times that any entry, including ARC entries, returned for insufficient or uncollected funds may be reinitiated to no more than two times following the return of the original entry.

#### **CHECK GUARANTEE SERVICE**

CORE agrees to indemnify Merchant from losses on bad check returns for checks that were accepted through our electronic check conversion services. Merchant agrees to accept checks for the sale of goods or services only, and not for cash advances or cash back transactions.

Checks to be covered must meet criteria (See Check Verification & Conversion Obligations) for electronic check acceptance, which means that the check is received from the customer at the point of sale. The check writer's valid driver's license/photo ID must

- (a) Must be presented to verify the signature on the check & receipt
- (b) Must be keyed into the terminal to compare against the database and receive an authorization approval

The printed receipt must be signed by the customer to authorize the electronic collection of the check.

Checks excluded from the check guarantee program include, but are not limited to:

- Third Party Checks, credit card convenience checks, traveler's checks

- Blank Checks, Checks made out to “Cash”, or where cash was disbursed; i.e. all checks must be made out to your business name as the Payee
- Checks without preprinted customer name and street address
- Checks without a current phone number of the check writer
- Checks where the signature on the check does not match the preprinted name on the face of the check
- The merchant has made a repeated attempt to process a check after a “Decline “response
- All “Warning – Manager Needed” messages which are overridden by the merchant. I.E. checks exceeding the dollar limits agreed upon between CORE and the merchant while executing the agreement for the check guarantee program.
- Checks returned due to merchant fraud or lack of due care when...
  - Check processed electronically AND paper check deposited
  - Check processed electronically without the signed authorization of the customer
- Customer Disputes: Reg E claim and/or any Stop Payment of item

Merchant agrees that once enrolled they will receive NO DIRECT PAYMENTS from the check writer for all merchant accounts established under this Agreement on outstanding items and shall direct the check writer to CORE. Merchant will allow its returned items to be sent directly to CORE for processing. Merchant agrees all approved checks assigned under this agreement shall become the property of CORE.

#### **ADDITIONAL ITEMS**

**AGGREGATE LIMITS:** In our discretion we may limit the aggregate dollar amount of your Entries for which final settlement is pending at any given time (“Aggregate Limits”). We will advise you when you enroll in the Service of your Aggregate Limits, and you agree not to exceed them. We may, in our sole discretion, suspend the processing of, any Entries that exceed the Aggregate Limits, and will have no liability to you or any other party for doing so. We will periodically review your Aggregate Limits and may, in our sole discretion, change them at any time. We will notify you of changes. At our request from time to time, you agree to provide to us such information as we may reasonably require regarding your financial status, including, without limitation, copies of your most recent financial statements.

**NO LIABILITY FOR LOSSES:** Merchant enrolled in CORE’s Program, as indicated on the front section of this form, agrees and understands that CORE is not guaranteeing or insuring any customer transactions. CORE has no liability for any losses the Merchant may incur as the result of a customer transaction that has been authorized by the Merchant using CORE’s service. CORE is not guaranteeing or insuring against bad-check losses. CORE will not be liable to Merchant, customers or any third party for any failure, error or delay in performance. Except for CORE’s indemnification obligations, in no event shall CORE be liable for any special, incidental, indirect or consequential damages whatsoever by Merchant or any other person or entity. Merchant shall be solely liable and responsible for all damages, losses, expenses and claims arising from the Merchant causing any of the following: (i) Duplication of images of deposited checks using the services; (ii) Alteration of scanned images of deposited checks; (iii) Inaccurate or incomplete data captured from the deposited checks; (iv) Deposit of checks on accounts with insufficient funds, counterfeit checks, fraudulent checks, or checks bearing unauthorized or forged endorsements; (v) Acts of fraud, negligence or willful misconduct committed by employees, agents or subcontractors of Merchant in depositing checks using the services; (vi) Hardware failure or use of scanner hardware not certified by CORE; or (vi) Failure to properly store or destroy original checks once the scanned image has been captured.

**CUSTOMER INQUIRY ASSISTANCE:** Merchant agrees to provide to CORE, or other requesting Financial Institutions or Government Agencies, all supporting documents or materials (as required by merchant to keep as prior reference within this Agreement) being held in connection to customer transactions generated under the terms of this agreement. Merchant further agrees to provide said records within 5 business days of being notified by CORE or other Institution. Merchant will supply records in the manner that will provide the fastest and clearest copy. This could be but is not limited to the following: Fax, Email, or some other expedited postal-package delivery (i.e. USPS, FedEx or UPS); All expenses related to providing these items will be the merchant's responsibility. Merchant agrees to take additional reasonable efforts to provide information supporting the transactions involving their customer which the accuracy or question of its validity is being questioned.

**ASSISTANCE IN REMEDYING ERRORS OR CUSTOMER ISSUES:** In the event an error or apparent error exists in the CORE data which has been supplied to Merchant, Merchant agrees to fully cooperate with CORE and its third-party service providers in an effort to clarify and if necessary rectify the accuracy of the data in question.

**TERMINATION:** CORE may immediately suspend providing check processing to Merchant in the event Merchant fails to comply with or otherwise breaches the terms of this Agreement. Notwithstanding the foregoing, CORE may immediately cease providing check processing and/or terminate this Addendum without notice, but will provide written notice as soon as possible and no later than twenty-four (24) hours after it ceases providing check processing and/or terminate, if (i) the Merchant has transaction returns that exceed 8% of their monthly volume, or (ii) the Merchant stops conducting business in the normal course, becomes insolvent, or becomes subject to proceedings under the Federal Bankruptcy Act. . In the event Merchant provides written notice to cancel, or verbal notice to cancel CORE services and Merchant continues to utilize CORE services, Merchant will continue to be charged for transaction activity.

**Liability:** Merchant will be responsible for, and at its own expense, defend itself against any suits, claims, losses, demands, or damages arising out of or in connection to Merchant's negligence or Merchant's misuse of the CORE services.

**PRICING:** Merchant agrees to pay CORE, according to the "Fee Schedule" set forth herein and pursuant to CORE's usual fee schedule for any other services, CORE's fees for services performed under this Agreement. CORE reserves the right to change the service or the service fees with 30 days written notice to Merchant. Further, merchant agrees to pay CORE for any fees, fines, or penalties that result, or could result, from violations or sanctions assessed or levied by the NACHA Organization due to merchant not following these stated rules or from any improper compliance of these rules by merchant.

**REPRESENTATIONS:** Merchant represents and warrants with respect to all entries we process for you that: (a) EACH Customer has authorized the debiting and/or crediting of his, her, or its account and also for the collection of any returned check or transaction check fees, (b) EACH entry is for an amount agreed to by the Customer, (c) EACH entry is in accordance with the rules and properly authorized in all other respects. Merchant shall cease initiating Entries immediately upon receiving actual or constructive notice of the termination or revocation by the Receiver of authority. Merchant may use Processors system to block accounts from being processed, but processor bears not responsibility in the event that processors system fails to filter blocked transactions on behalf of Merchant.

**THIRD PARTY PROCESSING SERVICES:** CORE third party processing services partners are providing some of the services specified in this Agreement, and as a result, these third party services partners shall be an intended third party beneficiary of this Agreement between CORE and Merchant. Each third party services partner shall have the right to enforce directly against Merchant, the terms of this Agreement which relate to



the provision of the third party services partner's processing services to Merchant and the ownership and protection of the intellectual property rights of the third party services partner and its licensors in and to its processing services. Merchant acknowledges that the third party services partners shall have no responsibility or liability with regard to Reseller's obligations to Merchant under this Agreement.

The third party processor used to provide this service is: TTEC.

**GOVERNING LAW AND VENUE:** THIS SUB-MERCHANT AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH SUB-MERCHANT IS LOCATED AND DISPUTES INVOLVING THIS SUB-MERCHANT AGREEMENT SHALL BE FILED IN THE MICHIGAN STATE OR FEDERAL COURT THAT IS APPLICABLE TO THE LOCATION OF SUB-MERCHANT.

**ENTIRE AGREEMENT:** This Agreement makes up the entire agreement between the parties concerning CORE's ACH services. If any provision of this Agreement is deemed unenforceable, the remaining provisions shall remain enforceable. If there is more than one Merchant named on the Processing Agreement each and every so named Merchant is bound by the signing thereof.

**Merchant acknowledges that they have read and understands the Terms and Conditions of this Agreement, including the provisions contained on all pages hereof, and the information provided is accurate. Customer and CORE have entered into this Addendum as of the last date signed below:**

**Customer:**

**Wonderware Inc. d/b/a CORE Business Technologies**

By:   
By: Scott N. Guzy (Apr 29, 2022 16:08 EDT)

By:   
By: Dan Paulus (Apr 28, 2022 12:11 CDT)

Name: Scott N. Guzy

Name: Dan Paulus

Title: Purchasing Administrator

Title: CEO

Title: \_\_\_\_\_

Title: \_\_\_\_\_



## EXHIBIT VII

### LICENSE FOR USE OF COUNTY SERVICEMARK

County grants to Contractor the non-exclusive right to use its Servicemark (hereinafter "Mark"), described and listed in the Servicemark Guidelines (below), for programs and activities that are directly related to the Deliverables and governmental services provided by the County.

The Mark may be used on: (Applicable if Checked):

- ☒ Printed materials
- ☒ Electronic materials
- ☒ Contractor's website: [insert website www.corebt.com]

Contractor shall not use the Mark for any other purpose.

The Mark must be used by Contractor as shown in the Servicemark Guidelines, with no variations of color, font or proportion. Contractor acknowledges that the County has intellectual property rights in the Mark. Nothing in this Contract gives Contractor any right, title, or interest in the Mark. Contractor may not take any action that will interfere with County's rights in the Mark.

The County may terminate Contractor's rights under this Exhibit if County notifies Contractor it has breached the terms of this Exhibit and Contractor fails to cure the breach within ten (10) business days of notice of breach. Following termination of this Exhibit, Contractor shall have ten (10) business days to remove the Mark from the materials and/or website authorized for use above. Contractor shall provide County with written confirmation that such actions have been taken. Upon termination of the Contract, Contractor shall cease all use of the Mark.

## OAKLAND COUNTY SERVICEMARK GUIDELINES

The Guidelines for proper use of the Mark provided to the Contractor are as follows:

# OAKLAND COUNTY, MICHIGAN LOGO BRAND STANDARDS

## PRIMARY LOGO

Oakland County has two logos that can be used interchangeably. Use the Horizontal Two Trees logo as your default choice. This is our primary logo. The Stacked Logo can be used whenever space or size is a consideration in your publication. Either logo is acceptable for all Oakland County publications.

However, **only one style of logo may be used per publication.** For instance, if you have the horizontal logo on the front of a publication, you can't use the stacked logo elsewhere in the document.

Pick one logo style for each publication and use it throughout, do not mixed styles.

### HORIZONTAL "TWO TREES" LOGO



### STACKED LOGO



## LOGO VARIATIONS

Logos should appear in full color when used in a full color design, whenever possible. However, if the publication requires a single color version of the logo, choose either all-black or all-white. No other color is acceptable.



## BRAND COLORS

The primary Oakland County logos use the following brand colors.

PMS 347  
CMYK 84.15.78.2  
RGB 0.154.102  
HEX #009A66

PMS Black C  
CMYK 0.0.0.100  
RGB 0.0.0  
HEX #000000

Accent colors for the brand are pulled from two other major servicemarks for Oakland County. These colors may be used as secondary colors in publications.

Destination Oakland Blue  
PMS 2825 | CMYK 56.21.0.0 | RGB 0.156.222

OAKLAND  
COUNTY PARKS

Prosper Orange  
PMS 715 | CMYK 0.54.87.0 | RGB 246.141.46

PROSPER  
Oakland County Michigan

## WHITE SPACE

A prescribed amount of space around the logo must be maintained at all times.



## QUESTIONS

For questions or clarification on these brand standards, please contact:

Pam Tremble  
Graphic Designer  
County Executive Administration  
(248) 858-8964 | tremblep@oakgov.com



Adobe Swatch Exchange  
The official .ase file is available upon request

Do not provide copies to a third party of any artwork provided to you by County and referenced in this Exhibit without the express consent of County.

## G2G MARKET PLACE SERVICEMARK GUIDELINES

The Guidelines for proper use of the Mark provided to the Contractor are as follows:

### G2G MARKET PLACE Standard Logo

The G2G Market Place logo appears to the right. It is the primary element of the G2G Market Place visual identity and must appear on all official documentation or sign involving G2G Market Place.



### LOGO USAGE

A prescribed amount of space around the logo should be maintained at all times. The space should be equal to or greater than the width of 1/4".



### MINIMUM LOGO SIZE



Minimum logo width 3 inches  
and height is 1 inch.

### COLORS

CMYK 82.5.97.0  
RGB 0.169.80  
HEX #00a950

CMYK 0.0.0.100  
RGB 0.0.0  
HEX #000000

### COLOR VARIATIONS

For 1-color print jobs, or when design dictates the logo may be used in all black or all white.



### LOGO VARIATIONS

Below are alternate "stacked" logo options. They are shown in full color, all black, and all white versions.



Do not provide copies to a third party of any artwork provided to you by County and referenced in this Exhibit without the express consent of County.

**EXHIBIT VIII**

**ACKNOWLEDGEMENT OF INDEPENDENT EMPLOYMENT STATUS**

I, \_\_\_\_\_, acknowledge that I am an employee or subcontractor of

(Name of Contractor's Company): \_\_\_\_\_

(hereinafter "Company") under Contract #: \_\_\_\_\_, and

- At all times during my assignment to Oakland County, I will remain an employee or subcontractor of the Company
- I am not an employee of Oakland County; and,
- I may not represent myself as an employee of Oakland County.

**I understand that:**

- Company is responsible for establishing the conditions of my assignment to Oakland County; and
- Company is solely responsible for compensating me for my services; and
- I understand and agree that as an employee or subcontractor of Company, I am not eligible to participate in or accrue any benefits under any of Oakland County's employee benefits or benefit plans, including retirement, deferred compensation, insurance (including without limitation: health, disability dental and life insurance), vacation pay, and any other similar plans and programs. However, if I am a retired County employee, I may receive vested post-employment benefits such as retiree healthcare and pension benefits from Oakland County. I understand that the post-retirement benefits I receive from the County cannot be enhanced by my work for the above Contractor.

**I acknowledge that:**

- I have no copyright, patent, trademark or trade secret rights to any Oakland County Intellectual Property or any work developed by me while providing services to Oakland County; and,
- If I will be given access to the County Network, I will comply with the Oakland County Electronic Communications and Use of Technology Policy.
- I will comply with and sign the FBI Criminal Justice Information Services Security Addendum if I will have access to CJIS Data.

**Signed:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Witness:** \_\_\_\_\_

**Date:** \_\_\_\_\_

(Contractor or Contractor Employee must provide a copy of completed form to the Compliance Office-Purchasing Unit – [Purchasing@oakgov.com](mailto:Purchasing@oakgov.com).)

## EXHIBIT IX

### SCOPE OF CONTRACTOR DELIVERABLES/FINANCIAL OBLIGATIONS

#### 1. Introduction

- 4.1. Wonderware Inc (dba CORE Business Technologies and herein referred to as “Contractor”) shall provide Oakland County (“County”) with professional services for the purpose of implementing CORE’s iPayment Enterprise solution to support an Enterprise Revenue Management System (referred to as “System”).

The System will consist of an application or suite of applications that provide the County’s departments with the capability to perform cashiering, receipting, cash management, and reporting functions.

#### Contractor shall:

- 4.1.1. Implement the System and provide the Deliverables described herein.
- 4.1.2. Support the integration of the System with County’s existing Workday system.
- 4.1.3. Provide onsite training (when/if applicable) and online training.
- 4.1.4. Provide onsite setup, configuration, and implementation support of hardware needed to operate the System, as listed in Section 4 Pricing, One Time Costs.
- 4.1.5. Provide County with their Disaster Recovery Plan.

#### 5. SYSTEM FEATURES

The System provided by Contractor shall include:

- 5.1. iCashiering – enterprise wide Point of Sale (POS) receipting
- 5.2. Admin Center – central repository, reporting, research, configuration
- 5.3. Reconciliation Gateway – automates reconciliation of bank deposits and host system updates
- 5.4. Application Hosting Services (Contractor managed and owned PCI-DSS Level-1 environment through colocations at Iron Mountain. All security and patch updates are maintained by Contractor personnel.)

#### 6. SYSTEM IMPLEMENTATION

Contractor shall use the steps described below to implement the System.

##### 6.1. Initial Planning

##### 6.1.1. Project Kick Off and Testing Scope Review

Contractor’s Project Manager shall conduct a conference call with County to initiate the various activities in the project. The kickoff meeting shall include, at a minimum, the following items for discussion:

- 6.1.1.1. County to confirm the signed contract as authorization to proceed
- 6.1.1.2. County to identify points of contact for technical and administrative activity, email, mobile telephone, as well as after-hours contact guidelines in order for Contractor to create the Project Communication Plan.



- 6.1.1.3. Introduce individuals from the County and Contractor who will be performing the work and review roles and responsibilities. Refer to Contractor document Oakland County Project Team Members.docx
- 6.1.1.4. Review a draft implementation Project Plan provided by Contractor.
- 6.1.1.5. Review this Scope of Services.
- 6.1.1.6. Discuss a tentative timeline for the project.
- 6.1.1.7. Review the change control process for scope and requirement changes and/or additions.
- 6.1.1.8. Identify the information transfer process for data that should remain restricted or confidential. County and Contractor will review the initial project work plan, schedule, and Communications Plan. County and Contractor will refine detailed project plans, schedules, deployment and training strategies, and begin to refine full project planning. The Project Kick Off Meeting will define any critical business schedule or deployment considerations that might impact the project's timeline.  
If it is discovered during the kick-off meeting that modifications to the initial project work plan, schedule, and Communications Plan are required, the Parties will review the Scope of Services and make agreed upon changes through an amendment to the Contract.

**6.1.2. Information Gathering**

Contractor will communicate with County to obtain all necessary information to successfully implement the System. The Information Gathering Phase will define the functional and technical requirements for implementation of the project. This shall include identifying:

- 6.1.2.1. The integrations required with other systems operated by County, including which data, migrated or manually entered, must be integrated into the System.
- 6.1.2.2. Transaction Types, Tender Types, Workgroups and other data elements captured in the Data Collection Worksheet.
- 6.1.2.3. The types and requirements for reports required by County.
- 6.1.2.4. The technical support that will be available during System set-up through post-implementation.
- 6.1.2.5. Potential dates for training, numbers of County staff to train and the County location that will be used for training.

**6.1.3. Contractor Deliverables**

Contractor shall provide County with:

- 6.1.3.1. Access to Contractor's Mavenlink application to facilitate collaboration and real time access for the following deliverables:

A **Detailed Project Plan** including activities, tasks, and milestones including the date System will go live and tasks assigned to each individual that will be used to build a project implementation schedule. The Detailed Project Plan will be used by the County to build a Master Project Schedule with dates and deliverables. The Detailed Project plan will be maintained and updated by Contractor on a continuous basis and provided to County to update the Master Project Schedule.

**Project Management Reports** at agreed upon intervals (e.g. weekly) that summarize the work completed by Contractor. These reports will be used to measure the efficiency, progress, performance and quality of System. Contractor shall conduct interviews with internal County staff and will ensure that any security gaps are detected and documented.



A project **Communications Plan** that will be used by County and Contractor during the term of the Contract.

- 6.1.3.2. **Minutes** from the Project Management Meetings will be provided in an agreed upon format for the life cycle of the project.

A **Closeout Notification** email that will contain a summary of the Deliverables provided by Contractor to County for final acceptance of the iCashiering solution.

- 6.1.3.3. **Draft Estimates and Recommendations** for future phases including anticipated scope, timelines and costs to fully implement all identified County departments

- 6.1.3.4. A business processes focused **Business Requirements Design Document (BRDD)**, that would include system, network, and data flow diagrams.

- 6.1.3.5. A list of **Specifications**, which shall include the hardware specifications, the required licensed software and browser settings.

- 6.1.3.6. A detailed **Checklist** of the tasks County and Contractor need to perform to implement System.

- 6.1.3.7. A **User Training and Transition Plan** on how to train end-users and administrators as well as a plan to transition to County.

#### **County Deliverables**

County shall provide the Contractor with:

- 6.1.3.8. A business requirements focused **Business Requirements Document (BRD)**

- 6.1.3.9. A **User Acceptance Test Plan** that will be used for acceptance of the System solution and integration of each development phase of the project, thus ensuring the **BRD** and **BRDD** requirements are met. The plans will guide unit testing during each phase of the project.

- 6.1.3.10. County will deliver requirements, development and implementation of **Interfaces** into County systems, with Contractor support as needed as part of the System implementation.

After County receives each of the following deliverables throughout the delivery process:

**Detailed Project Plan, Draft Estimates and Recommendations, Business Requirements Design Document, User Training and Transition Plan and Closeout Notification**, County shall have up to ten (10) business days to review the deliverable and notify Contractor if it is acceptable. If the deliverable requires modifications, County shall provide Contractor with a written list of the items in the deliverable that need to be modified. Contractor shall have up to 10 business days to submit the revised deliverable. Upon receipt of the revised deliverable, County shall have ten (10) business days to review the deliverable and notify Contractor if the deliverable is Acceptable. This process will continue until County provides written notice that each individual deliverable is acceptable.

#### **6.2. Configuration Planning**

Contractor and County shall work together to confirm:

- 6.2.1. The Internet and firewall settings necessary for hosting the System are in place.

- 6.2.2. What sample data will be used to test the System.

- 6.2.3. The method that will be used by County to report support issues to Contractor.

#### **6.3. Installation and Configuration**

Contractor shall:

- 6.3.1. Test the installed System.

- 6.3.2. Fine tune and adjust user profiles.

- 6.3.3. Fine tune and adjust for unique departmental configurations, and support of County built interfaces, processes, etc.
- 6.3.4. Test the back-up and recovery systems including how documentation will be retained in the event of a data recovery.
- 6.4. **Implementation**  
Contractor shall:
  - 6.4.1. Provide County with the pre-defined System reports and verify the reports provide the information expected in the reports.
  - 6.4.2. Work with County to determine if customized reports are needed to provide County the reporting information it requires. If so, Contractor shall train County staff on the appropriate preset reports to meet the requirement. In the event customized reports are required, Contractor and County will determine costs and approval for development using the change control process.
  - 6.4.3. Provide County with Quick reference sheets for main functions of System.
  - 6.4.4. Provide County with reference guides that explain all of the features and functions of System, including County specific configurations and customizations.
  - 6.4.5. Provide County with a Quality Assurance (QA) test environment for User Acceptance Testing and Training, and a production environment for System implementation.
- 6.5. **Training**  
Contractor shall:
  - 6.5.1. Provide County with a Training Plan to educating users of the Contractor's System.
  - 6.5.2. Equivalent of 10 business days not to exceed 80 total hours of onsite training will be provided by Contractor for all staff as identified by County to take the training classes.
  - 6.5.3. User training shall cover all user functions as defined by roles, and features of the System solution.
  - 6.5.4. Training materials, to include a Workshop Guide and an Administration Guide, shall be provided in Adobe PDF, MSWord format and any other format as agreed upon by County. The initial set of training materials will be updated by Contractor to include any Country specific changes made to System.
  - 6.5.5. Contractor to provide training, in a "train the trainer" approach for Cashiers, Supervisors, and Administrators. If County needs the Contractor to conduct direct User training, Contractor and County will confirm a schedule and costs per the change request process. Typical training curriculum and scheduling would be as follows:

### Train the Trainer Sample Schedule

Note that class scheduling is provided as an example only; training will be tailored to fit the County's needs.

Day One	Morning Session 8:30-12:00	Afternoon Session 1:00-4:00
	Introduction Payment Processing Overview Workstation Hardware Overview iPayment Demonstration Cashier Guide Review User's Guide Review	Hands On Practice Exercises Questions Answered  Technical Information Training Strategies Practice Sessions
Day Two	Morning Session 8:30-12:00	Afternoon Session 1:00-4:00
	Simulated Cashier Training Common Cashier Questions Preview Trouble Shooting Techniques Upgrade Considerations	Cashier Training Materials Questions and Review  Technical Information Training Strategies Practice Sessions
Day Three	Morning Session 8:30-12:00	Afternoon Session 1:00-4:00
	Training Strategies (cont'd) Common Cashier Questions Trouble Shooting Techniques	Upgrade Considerations Cashier Training Materials Final Questions and Review

### User Training Sample Schedule

Note that class scheduling is provided as an example only; training will be tailored to fit the County's needs.

Cashier	Morning Session 8:30-12:00	Afternoon Session 1:00-4:00
	Introduction Workstation Hardware Overview iPayment Demonstration Posting Screens	Hands On Practice Commonly Asked Questions Ten Payment Exercise System Procedures Review
Supervisor	Morning Session 8:30-12:00	Afternoon Session 1:00-4:00
	Introduction System Configuration Hardware Maintenance Start Up/End of Day	Trouble Shooting Voids Lists Review

### Administrator Training Sample Schedule

Note that class scheduling is provided as an example only; training will be tailored to fit the County's needs.

Administrator	Morning Session 8:30-12:00	Afternoon Session 1:00-4:00
	Introduction Workstation Overview iPayment Demonstration Posting Screens Hardware	Hands On Practice Commonly Asked Questions Ten Payment Exercise System Procedures Review
Administrator	Morning Session 8:30-12:00	Afternoon Session 1:00-4:00
	Introduction System Configuration Hardware Maintenance Start Up/End of Day	Trouble Shooting Voids Lists Review

**6.6. User Acceptance Testing**

Contractor shall, with County support:

- 6.6.1. Meet with County to review the status of the System Implementation and review the User Acceptance Test Plans.
- 6.6.2. Provide User Test and Acceptance Plans that describe data input to be passed to the application modules and integrations, test procedures, expected system performance, and the output or results that should be received if the applications and integrations are functioning properly.
- 6.6.3. The final User Test and Acceptance Plans will be based on configuration and requirements documents approved by County.
- 6.6.4. Use the Test and Acceptance Plans to conduct integration and stress tests. These will demonstrate to County that the configurations were implemented correctly and that the System modules are functioning and performing properly to meet the functional requirements in the Hosted environment and will indicate if there are any outstanding issues that need to be resolved.
- 6.6.5. Review, address, and support requests stemming from User Acceptance testing, to ensure all in-scope issues identified as System bugs are resolved.

**6.7. Deployment**

Contractor shall, as part of Service Requests agreement located in section 8.4, perform all of the following:

- 6.7.1. Monitor system health and performance and provide County response for any issues to address.
- 6.7.2. Respond to the issues reported by County.
- 6.7.3. Have conference calls with County as necessary to resolve outstanding issues.

- 6.8. **Integration Framework and Testing** Contractor shall either interface to, or import (if required), transaction type and user data to System from the existing County POS system prior to the Go-live date. If importation occurs, County shall review the data to ensure it setup accurately. County shall run test reports to verify if the data from the existing POS system is imported correctly.



**Pricing. Contractor will provide the deliverables for the prices stated below:**

**One Time Costs**

Cost Description	Quantity	Unit Cost	Total Cost
Implementation/Professional Services (include all costs to ensure the solution is fully installed and functional for Oakland County)			
<b>iPayment Enterprise - System, Admin Center Base Setup Fee</b> Base system setup and database configuration Design Specification and System Documentation System Configuration QA Testing	1	\$45,000	\$45,000
<b>Project Management</b> Oversight of Contractor project deliverables - \$2,500/month for project duration, estimated 10-month project engagement.	1	\$25,000	\$25,000
<b>Project Kickoff</b> Fit Gap Session: Departmental Meetings Data gathering for Design Specifications Document Based on 80-hour effort Onsite as deemed necessary	1	\$18,000	\$18,000
Training/Go-live Support (onsite)	10-days	\$18,000	\$18,000
Training/Go-live Support (remote or online) and onsite as necessary			
Training documentation and User Guides	Included in Base		Included
Detail all discounts and savings programs	N/A	\$0	\$0
<b>Total Implementation Costs</b>			<b>\$106,000</b>
Hardware (list manufacturer, part number, model and description for each item(s) individually)			
<b>TM-S9000 All-in-One Multi-Functional Device</b> (Supports Receipt Printing, MICR Reader, OCR Scanning, ID Card and Check Imaging (ICL) for Check 21)	14	\$1,795	\$25,130
<b>TM-U295 Slip Printer</b> (Supports the authentication printing on documentation)	11	\$495	\$5,445

<b>TM-T70 Suspended Ticket Printer</b> (Supports the suspended transaction functionality and prints slips usable by other cashier stations)	3	\$425	\$1,275
<b>Integrated Secure Entry EMV &amp; P2PE Compliant Credit Card Terminals</b> – (Requires Monthly EMV/P2PE fees of \$30.00/Terminal)	14	\$925	\$12,950
<b>Integrated Cash Drawer</b>	17	\$395	\$6,715
<b>Touchscreens</b> ( <i>this is a cost estimate, until exact model is known through requirements gathering and discovery</i> )	14	\$695	\$9,730
<b>Peripheral Device implementation Services</b> – based on a 3-day effort. This will require Ethernet drops for all credit card terminals and assistance from County IT resources for network access, power, etc. Additional days are billable at \$1,800.	3	\$1,800	\$5,400
<b>Total Hardware Costs</b>			<b>\$66,645</b>
<b>One Time/Implementation Costs Grand Total</b>			<b>\$172,645</b>

#### Optional One Time Costs

Cost Description	Quantity	Price
Other costs, to be billed if needed		
<b>Travel Expenses</b> – Billed as incurred. Not to exceed \$9,750. Based on 14 days of on-site services, if needed, for training and hardware installation. Inclusive of transportation and per diem costs.	1	\$9,750
<b>Image Cash Letter (ICL) File Creation</b>		\$10,000
<b>Optional Interfaces (Core developed integrations):</b>		Real-Time - \$7,500 per definition Batch - \$5,000 per definition
<b>Reconciliation Services Gateway (OPTIONAL)</b> Supports automated, integrated bank deposit and financial host system reconciliation		\$7,500/bank

**On-Going Costs**

Description	Total Cost
Recurring Hardware Support & Maintenance	
<b>(14) All-in-One and (14) Credit Card Terminal devices</b>	\$695.00/year
Recurring Software Support & Maintenance	
<b>iPayment Enterprise Subscription License includes:</b>  System – POS, Remote Departments Admin Center – for research, reports, and configuration Enterprise license – Unlimited users, Unlimited number of collection points, Up to an Initial <b>50,000</b> annual transactions, Annual License Maintenance and Support <b>Additional Transaction Volume block options:</b>  Additional 25,000 annual transaction block - \$10,000/year Additional 50,000 annual transaction block - \$17,500/year Additional 100,000 annual transaction block - \$28,000/year Individual transaction overages beyond the purchased block@ \$0.45/transaction	\$22,500/year

<b>CORE ASP (Hosting Service)</b>  PCI-DSS Level 1 Compliant Data Center 24/7 Security Monitoring Hardware Management and Support IIS Server & Licensing dB Server & Licensing Test Instance Production Instance Up to an initial <b>50,000</b> transactions per year  <b>Additional Transaction Volume blocks:</b>  Additional 25,000 annual transaction block - \$7,500/year Additional 50,000 annual transaction block - \$12,500/year Additional 100,000 annual transaction block - \$15,000/year Individual transaction overages beyond the purchased block @ \$0.40/transaction	\$22,500/year
<b>CORE Open API Interface Development Support</b>  Web-service API Tool annual maintenance and support - County develops integration to host systems using CORE's API Toolkit.	\$7,500
Gateway fee (\$0.07/transaction, up to 20,000 transaction/year)	\$1,400
EMV & P2PE Support License per card terminal, (\$360.00/year x 13 devices)(Note this accounts for the 13 ea business owned terminals, and does not include the 1 ea IT terminal for testing purposes)	\$4,680
<b>On-Going Cost – Annual Total</b>	\$59,275
<b>On-Going Cost – 3-year Total</b>	<b>\$177,825</b>
<b>Reconciliation Services Gateway (If required)</b> Supports automated, integrated bank deposit and financial host system reconciliation  Annual recurring License Fee - \$21,600/year	\$21,600/year
<b>On-Going Cost – 3-year total with optional Reconciliation Services Gateway</b>	<b>\$242,625</b>

## Merchant Service Fees

ABSORBED PRICING				
FEE CLASS	FEE TYPE	FEE SCOPE	FEE RATE *	FEE BILLING FREQUENCY & UNIT
SERVICE	Implementation & Set Up Fee	Payment Service Program	\$0.00	Billed Once
	PCI Level 1 Service Fee	Payment Service Program	\$0.00	Billed Monthly
	Location Fee	Payment Service Program	\$0.00	Billed Monthly
CARD	Card Program Fee	All Cards	\$0.00	Billed Monthly
	Interchange, Dues, Assessment and Misc. Processing Fees	Visa	Pass-Through	Billed Monthly
		Mastercard	Pass-Through	Billed Monthly
		Discover	Pass-Through	Billed Monthly
		American Express	Pass-Through	Billed Monthly
	Discount Rate	Visa, Mastercard, Discover	0.25%	Billed Monthly & Per Volume
	Discount Rate	American Express	0.25%	Billed Monthly & Per Volume
	Network Transaction Fee	Visa, Mastercard, Discover	\$0.10	Billed Monthly & Per Transaction
	Network Transaction Fee	American Express	\$0.10	Billed Monthly & Per Transaction
	AVS Processing Fee	All Cards	\$0.03	Billed Monthly & Per Transaction
	Network Settlement Fee	Visa, Mastercard, Discover	\$0.03	Billed Monthly & Per Transaction
	Network Settlement Fee	American Express	\$0.03	Billed Monthly & Per Transaction
	Chargeback Fee	All Cards	\$15.00	Billed Monthly & Per Chargeback
	Retrieval Fee	All Cards	\$10.00	Billed Monthly & Per Retrieval
	Voice Authorization Fee	All Cards	\$1.00	Billed Monthly & Per Transaction
ACH	ACH Program Fee	All ACH	\$10.00	Billed Monthly & Per Department
	ACH Transaction Fee	All ACH	\$0.15	Billed Monthly & Per Transaction
	ACH Settlement Fee	All ACH	\$0.00	Billed Monthly & Per Transaction

SERVICE FEE PRICING				
FEE CLASS	FEE TYPE	FEE SCOPE	FEE RATE *	FEE BILLING FREQUENCY & UNIT
CARD	Service Fee Processing	Visa	2.75%, min \$2.50/trans	Billed to the Payer in real-time
		Mastercard	2.75%, min \$2.50/trans	Billed to the Payer in real-time
		Discover	2.75%, min \$2.50/trans	Billed to the Payer in real-time
		American Express	2.75%, min \$2.50/trans	Billed to the Payer in real-time
ACH	All Departments Service Fee	All ACH	\$2.49	Billed to the Payer in real-time

## **7. PAYMENT**

- 7.1. COUNTY SHALL PROVIDE PAYMENT TO CONTRACTOR IN ACCORDANCE WITH THE CONTRACT AND FOR IMPLEMENTATION COSTS UPON RECEIPT OF INVOICES AS FOLLOWS:
  - 7.1.1. HALF (½) OF THE TOTAL IMPLEMENTATION COSTS (\$53,000.00). CONTRACTOR MAY INVOICE COUNTY UPON EXECUTION OF THE CONTRACT.
  - 7.1.2. ONE-FOURTH (1/4) OF THE TOTAL IMPLEMENTATION COSTS (\$26,500). CONTRACTOR MAY INVOICE COUNTY UPON ACCEPTANCE OF THE BASELINED DETAILED PROJECT PLAN DESCRIBED IN SECTION 3.
  - 7.1.3. ONE-FOURTH (1/4) OF THE TOTAL IMPLEMENTATION COSTS. CONTRACTOR MAY INVOICE COUNTY UPON RECEIVING THE CLOSE OUT NOTIFICATION FROM THE CONTRACTOR, AND WRITTEN SIGN OFF BY THE COUNTY OR FIRST PRODUCTION USE.
- 7.2. COUNTY SHALL PROVIDE PAYMENT IN ACCORDANCE WITH THE CONTRACT TO CONTRACTOR FOR HARDWARE UPON RECEIPT OF INVOICE.
- 7.3. IF FOUND IN DISCOVERY:
  - 7.3.1. ICL FILE IS NEEDED, COST OF \$10,000 WILL BE INVOICED TO THE COUNTY AND ADDED TO THE PAYMENT SCHEDULING ABOVE AS \$5,000 FOR HALF (½) AND ONE-FOURTH (1/4) AS \$2,500
  - 7.3.2. REAL-TIME INTERFACE, COST OF \$7,500 PER DEFINITION, WILL BE INVOICED TO THE COUNTY AND ADDED TO THE PAYMENT SCHEDULING ABOVE AS \$3,750 FOR HALF (½) AND ONE-FOURTH (1/4) AS \$1,875
  - 7.3.3. RECONCILIATION SERVICES GATEWAY, \$7,500/BANK, WILL BE INVOICED TO THE COUNTY AND ADDED TO THE PAYMENT SCHEDULING ABOVE AS \$3,750 FOR HALF (½) AND ONE-FOURTH (1/4) AS \$1,875, WITH AN ANNUAL RECURRING LICENSE FEE OF \$21,600/YEAR
- 7.4. COUNTY SHALL REIMBURSE CONTRACTOR FOR INCURRED TRAVEL EXPENSES THAT ARE COMMERCIALY REASONABLE, IN AN AMOUNT NOT TO EXCEED \$9,750, AS THEY OCCUR. CONTRACTOR SHALL INVOICE COUNTY FOR THE INCURRED TRAVEL EXPENSES AND PROVIDE COUNTY WITH COPIES OF RECEIPTS WITH THE INVOICE FOR ALL INCURRED TRAVEL EXPENSES THAT CONTRACTOR IS REQUESTING REIMBURSEMENT.
- 7.5. COUNTY SHALL PROVIDE PAYMENT TO CONTRACTOR FOR RECURRING LICENSE AND HOSTING FEES AS FOLLOWS:
  - 7.5.1. YEAR ONE SUBSCRIPTION FOR IPAYMENT ENTERPRISE SUBSCRIPTION LICENSE, CORE ASP HOSTING, AND CORE OPEN API INTERFACE DEVELOPMENT SUPPORT FEES, WILL COMMENCE AS OF THE DATE OF THE BRD KICKOFF MEETING.
  - 7.5.2. Gateway and EMV & Point to Point Encryption Support annual fees, upon project delivery into



the Production Environment. The recurring fees associated with this section will be prorated to align with the annual license renewal date.

- 7.5.3. Hardware support and & maintenance annual fees, upon delivery of peripheral equipment.

## **8. ROLES AND RESPONSIBILITIES**

### **8.1. CONTRACTOR RESPONSIBILITIES**

- 8.1.1. Contractor will be responsible for providing the services and deliverables outlined in this document.
- 8.1.2. Contractor shall have appropriate staff available during conference calls.

### **8.2. COUNTY RESPONSIBILITIES. COUNTY SHALL:**

- 8.2.1. Have County personnel available during regular business hours to assist in System implementation.
- 8.2.2. Ensure that the computers and tablets meet the minimum hardware specifications and have the necessary software installed.
- 8.2.3. For any County owned computers, tablets, or other peripheral devices the County will ensure they are properly licensed and the browsers are properly configured. e.g. an auditor role may access the System solution from a desktop PC.
- 8.2.4. Ensure that any County owned ancillary access devices such as signature pads, printers and Wi-Fi cameras are configured.

## **9. Service Level Commitment & Support Deliverables**

- 9.1. Contractor shall provide County with:
- 9.1.1. **Service Level Commitment.** Contractor will use its best efforts to ensure 99.5% Availability (as defined below) of the CORE ASP Service. A failure by Contractor to meet this commitment will entitle County to claim a Service Credit (as defined below subsection 8.3). "99.5% Availability" means that the CORE ASP Service will be unavailable no more than .5% in any calendar month, based on a 24 hour day, 365 days a year, as determined by Contractor (excluding any period of unavailability described in subsection 7.1.2 below). The iPayment ASP and Business Center ASP shall be deemed to be unavailable when Contractor's automated monitoring system is unable to access the associated web or database servers ("Unavailability")
- 9.1.2. **Exceptions.** Contractor's service level commitment does not cover any unavailability attributable to (1) County's use of the CORE ASP Service otherwise than in accordance with user guides from time to time made available to County; (2) any configuration or erroneous data entered into the CORE ASP Service by County; (3) any event beyond the reasonable control of Contractor, including the malfunction or unavailability of any public Internet backbone or network or of any server or service not under the complete control of the Contractor, or (4) Scheduled Maintenance pursuant to subsection 8.1.1 below
- 9.1.3. A live person response to a support request, per the Service Level Agreement in section 8.4;

- 9.1.4. Monitored email support;
- 9.1.5. Remote assistance using Remote Desktop and a Virtual Private Network where available (if applicable under County security protocols)
- 9.1.6. Ongoing security patches and system health check
- 9.1.7. Meet response times associated with service related incidents.
- 9.2. County shall:
  - 9.2.1. Have a representative available to communicate with Contractor when Contractor is working to resolve a service related incident or request; and
  - 9.2.2. Isolate and rectify technical faults within their own Network infrastructure, equipment and software.

## 10. Service Management

### 10.1. Planned Service Outage Notifications

10.1.1. **Scheduled Maintenance.** "Scheduled Maintenance" shall mean any maintenance performed during a standard maintenance window as determined by Contractor (a) of which County is notified 72 hours in advance or (b) the maintenance is performed without advance notice due to urgency of the maintenance in order to maintain the security and integrity of the system. Notice of Scheduled Maintenance will be provided to Customer's nominated point of contact by a method elected by Contractor (telephone or email). Contractor's standard Scheduled Maintenance window occurs on the second Tuesday of the month between the hours of 1AM and 5 AM Eastern Standard Time (EST). Customer shall be provided 24 hours advance notice in the event a change is made to the standard Scheduled Maintenance window. The CORE ASP Service shall not be deemed unavailable during Scheduled Maintenance.

10.1.2. Routine maintenance summary: performed every month in the following schedule:

Region	Window
US / EST	Once per month, usually the second Tuesday of the month, between the hours of 1:00am to 5:00am EST

10.1.3. The above is a planned service outage to conduct necessary maintenance and upgrades to software and any released non-critical updates (e.g. Microsoft windows patches). Contractor will notify the County in a reasonable time frame, not to exceed 72 hours, on all planned service outages.

10.1.4. In circumstances where an emergency service outage is required, the Contractor reserves the right to undertake the service outage without notice. In such cases, the Contractor will endeavor to notify the County prior to any service outage. An example of such case is where a third party has released a security patch that is a critical security concern to be applied as soon as possible.

**10.2. Service Availability and Process**

Support will take affect after basic diagnostic steps have been performed in accordance with the specification document. For system unavailability, system reload must be performed as part of system diagnostics.

Contractor shall provide:

- 10.2.1. **Initiation** – The call or email must be initiated by a County authorized service representative and must be received through Contractor’s 1-800 support line, Tel: 866-567-2673, or at [softwaresupport@corebt.com](mailto:softwaresupport@corebt.com), which will be available 24 x 7
- 10.2.2. **Logging** – The support request is logged and includes time and date received, name of caller, description of problem and action taken
- 10.2.3. **Acknowledgement** – The call is acknowledged and assigned according to the service level table definitions
- 10.2.4. **Service and support** – Production support will be attempted by the helpdesk personnel. If a solution cannot be achieved by the Helpdesk, service and support will be performed in accordance with the definitions stated in the Service Level Table
- 10.2.5. **Escalation** – Escalation occurs in accordance with Service Level Table, subsection 8.4, and utilizing the contact information in subsection 8.2.1 above
- 10.2.6. **Callback** – Response time is as listed in the Service Level Table according to your contracted level of coverage
- 10.2.7. **Peripheral Hardware** – The call or email must be initiated by a County authorized service representative and must be received through Contractor’s 1-800 support line, Tel: 866-567-2673, or at [softwaresupport@corebt.com](mailto:softwaresupport@corebt.com), which will be available 24 x 7. Peripheral hardware will be triaged and if Manufacture repair is required, CORE will initiate the Return Materials Authorization (RMA) process.
- 10.2.7.1. Please refer to the Buyer Protection Services and Extended Care Collateral documentation for expected turnaround times when a device has been returned for repair.
- 10.2.7.2. Only the Verifone Secure Entry device will require a re-pairing process, which will be supported by County and CORE support staff.

**10.3. Service Credits**

If Contractor determines, in its reasonable judgment, that the System did not attain 99.5% availability during any calendar month, Contractor will credit County’s account the pro-rated Subscription Fee for one day’s service for each additional .5% that the server is unavailable during any calendar month, provided that no credit shall exceed the pro-rated charges for one day’s service for any single instance of Unavailability. All service credit requests must be in writing and emailed directly to Contractor’s accounting department within ten (10) days from the date of the server unavailability. Credits cannot be applied to any charges other than the Subscription Fee. Customers with multiple Contractor services will not receive more than one credit for any instance of unavailability. Eligibility for any credits is subject to the County’s account being current and with no outstanding balances due. THIS CREDIT SHALL BE County’S SOLE AND EXCLUSIVE REMEDY FOR ANY SERVICE OUTAGE:

Monthly Uptime Percentage	Service Credit Percentage
Less than 99.5% but equal to or greater than 99.0%	One day's service fee
Less than 99.0%	One day's service fee for each 0.5% under 99.0%

#### 10.4. Service Requests

Contractor will respond to service-related incidents and/or requests submitted by the County within the following time frames:

Priority Level	Definition	Escalation to next point	Response Time	Coverage
1	Product is down. No workarounds are available. Major product functionality is not working according to product specifications. CORE places top priority on the technical issue and all necessary resources are immediately assigned to the issue.	This designation may only be assigned my management.	< 1 coverage hour	24 x 7 x 365
2	; Product functionality is affected but production use continues, and product is not down. CORE places high priority on the technical issue and all necessary resources are assigned to the technical issue, but work is generally performed during normal business hours.	Reviewed daily by support manager. Escalated to senior management for review weekly. Issues which affect downtime are escalated immediately.	< 2 coverage hours	Monday – Friday 7:00am – 9:00pm EST
3	Minor Product functionality is not working according to project specifications, or minor business processes cannot be met. The issue is assigned to the appropriate resources to resolve the technical issue within customer expectations.	Reviewed daily by Software Support Analyst. Escalated to support manager for review weekly.	< 4 coverage hours	Monday – Friday 7:00am – 9:00pm EST
4	Product and Project specific enhancement request or change orders. Change orders are scheduled upon signed acceptance receipt from Customer. Product enhancement requests are reviewed by Product Manager periodically in conjunction with release schedule.	Reviewed weekly based on delivery or release schedule. Delivery will be quoted with response to each specific request.	Delivery will be quoted with response to each specific request.	Monday – Friday 7:00am – 9:00pm EST

## **11. Data Storage, Backup & Security**

### **11.1. Backup, Recovery, Retention and Purge**

- 11.1.1. The System employs High Availability processes along with a real time DR facility. Data back-ups are performed every ten minutes. Recovery from back-ups will be performed upon request. Timing will match the level of data being restored.
- 11.1.2. The Contractor's Recovery Time Objectives (RTO) ranges 1 to 4 hours depending on the level of service failure. This provides the necessary time to convert from our primary to secondary datacenter, restoring the active database and repointing your connection URL's from the primary to secondary DC.
- 11.1.3. The Contractor's Recovery Point Objection (RPO) is 10 minutes. The database is actively backed up every ten minutes to a local appliance and replicated to two offsite cloud locations.
- 11.1.4. The System provides a native data retention approach that includes either the purging or archiving of transaction data after a configured duration. In addition, MS SQL Server archiving capabilities may be used as needed. A 7-year retention is standard within the Contractor's ASP license and can be extended for an additional fee.

### **11.2. Security**

- 11.2.1. **Data Security** – The System uses a combination of solutions to protect data at rest and in transit. The iPayment database, which uses MS SQL Server, is protected through both controlled user access and TDE. The iPayment application uses HTTPS with additional encryption of any sensitive card data as it passes from device through the workstation to the server. VPN can also be used to provide additional protection for server to server connections or even end user connections. The System uses SHA-2 HASH by default.
- 11.2.2. **Data Security** - All communications that travel on a public network are encrypted using SSL/TLS, to prevent unauthorized access during transit. All data-at-rest is encrypted with AES 256 bit encryption. In addition, security profiles are utilized within the System to restrict unauthorized users from accessing sensitive information.

### **11.3. Data Storage**

- 11.3.1. The System application relies on MS SQL database and related tools.

# Oakland County\_Wonderware DBA CORE Business Technologies


Final Audit Report


2022-04-29


Created:	2022-04-28
By:	CHRISTINE KRYWKO (KRYWKOC@OAKGOV.COM)
Status:	Signed
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## "Oakland County\_Wonderware DBA CORE Business Technologies" History


 Document created by CHRISTINE KRYWKO (KRYWKOC@OAKGOV.COM)  
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