



## **RE: CONTRACT RESOLUTION WITH PAYMENTECH, LLC; PAYPAL, AND INVOICECLOUD ON BEHALF OF AMEX**

### **Background:**

As part of our ERP conversion, we are going to be using a new payment processor, InvoiceCloud. We have already entered into a contract with InvoiceCloud; however, some the specific merchant payment service providers require a direct agreement with the City.

### **Analysis:**

The use of InvoiceCloud's platform will allow consolidation of payment processors as well as giving our customers a variety of payment options that will integrate with our new ERP system to be implemented in June.

### **Recommendation:**

Staff recommends passage of this resolution.

### **MEMO SUBMITTED BY:**

**Jennifer Evans** | Director of Finance

jevans@nixa.com | 417-724-5625

**RESOLUTION NO. 2023-19**

1 **A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY**  
2 **ADMINISTRATOR TO EXECUTE CONTRACTS WITH PAYMENTECH LLC, PAYPAL,**  
3 **AND INVOICECLOUD FOR PAYMENT PROCESSING SERVICES RELATED TO THE**  
4 **ENTERPRISE RESOURCE PLANNING CONVERSION.**

5  
6  
7 **WHEREAS** as part of the City’s ongoing Enterprise Resource Planning  
8 conversion, the City will be utilizing InvoiceCloud as payment processor; and  
9

10 **WHEREAS** the City has entered into a contract with InvoiceCloud for payment  
11 processing services (See Resolution 2022-95, adopted on September 26, 2022); and  
12

13 **WHEREAS** additional contracts are required for some specific merchant payment  
14 service providers; and  
15

16 **WHEREAS** City Council desires to authorize the execution of the contracts,  
17 attached hereto as “Resolution Exhibit A,” “Resolution Exhibit B,” and “Resolution Exhibit  
18 C.” for the purposes described therein.  
19

20 **NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF**  
21 **NIXA, AS FOLLOWS, THAT:**  
22

23 **SECTION 1:** The City Administrator, or designee, is hereby authorized to execute  
24 the Contract attached hereto, and incorporated herein by this reference, as “Resolution  
25 Exhibit A,” with Paymentech, LLC. Said Contract shall be in substantially similar form as  
26 the document attached hereto as “Resolution Exhibit A.”  
27

28 **SECTION 2:** The City Administrator, or designee, is hereby authorized to execute  
29 the Contract attached hereto, and incorporated herein by this reference, as “Resolution  
30 Exhibit B,” with PayPal. Said Contract shall be in substantially similar form as the  
31 document attached hereto as “Resolution Exhibit B.”  
32

33 **SECTION 3:** The City Administrator, or designee, is hereby authorized to execute  
34 the Contract attached hereto, and incorporated herein by this reference, as “Resolution  
35 Exhibit C,” with InvoiceCloud. Said Contract shall be in substantially similar form as the  
36 document attached hereto as “Resolution Exhibit C.”  
37

38 **SECTION 4:** The City Administrator and the officers of the City are hereby  
39 authorized to do all things necessary or convenient to carry out the terms and intent of  
40 this Resolution.  
41

42 **SECTION 5:** This Resolution shall be in full force and effect from and after its final  
43 passage by the City Council and after its approval by the Mayor, subject to the provisions  
44 of section 3.11(g) of the City Charter.  
45  
46

**RESOLUTION NO. 2023-19**

47 **ADOPTED BY THE COUNCIL THIS 24<sup>th</sup> DAY OF APRIL 2022.**

48

49

ATTEST:

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\_\_\_\_\_  
PRESIDING OFFICER

\_\_\_\_\_  
CITY CLERK

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54

55 **APPROVED BY THE MAYOR THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2022.**

56

57

ATTEST:

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\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

61

62 APPROVED AS TO FORM:

63

64

\_\_\_\_\_  
CITY ATTORNEY

65



J.P.Morgan

**SUBMITTER MERCHANT  
PAYMENT PROCESSING INSTRUCTIONS AND GUIDELINES**

These terms and conditions, the application, forms, and other documents provided by you herewith constitute the Agreement between Paymentech, LLC, JPMorgan Chase Bank, NA, and Merchant

Paymentech, LLC, also known as Chase Merchant Services (“CMS”, “we”, or “us”), for itself and on behalf of JPMorgan Chase Bank, N.A. (“Chase”), is excited about the opportunity to join **Invoice Cloud Inc.** (referred to herein as “Submitter”) in providing you, the Merchant signing below (hereinafter referred to as “you” or “Merchant”) with state-of-the-art payment processing services.

When you use the services of Submitter to receive payments for Transactions initiated by Card or by ECP, those Transactions are processed by us through systems and networks owned by the Networks, each of which maintains its own set of Network Rules governing Transactions processed over such Network.

The Network Rules, generally require that we have a direct contract with each merchant for which we process payment transactions through the Network, and this agreement (this “Agreement”) contains certain contractual commitments required by the Network Rules to be contained in each such contract.

**1. Compliance with Network Rules, Applicable Law and User Guide; Network Liabilities.**

You agree to comply with the Network Rules (including the Security Standards) of each Network, as they pertain to the Transactions you submit to us (directly or via Submitter) for processing through Submitter. You shall not, through act or omission, cause CMS or Chase to violate any Network Rules. You shall perform your obligations under this Agreement in compliance with all applicable federal, state and local laws and regulations and shall not submit any Transaction that it knows to be illegal. CMS reserves the right to temporarily suspend funding or refuse to process any Transaction if we reasonably suspect that it was prepared in violation of any provision of this Agreement, applicable law, or the Network Rules. You agree to pay any and all fines, fees, penalties, liabilities, charges and other amounts which may be imposed or assessed by the Networks on you, Chase or CMS as a result of your actions, omissions, Transactions, Chargebacks or Returns, including without limitation, your failure to comply with the Network Rules, this Agreement or any Security Standards (the “Network Liabilities”).

**2. Your Transactions; Chargebacks and Returns.**

You represent and warrant that you will only use our services and submit Transactions for processing which represent the sale or lease of goods or the provision of services by you to a Customer and not on behalf of any third-party seller. You shall have full liability for all Chargebacks (with respect to Card Transactions) and all Returns (with respect to ECP Transactions), as may be assessed in accordance with the applicable Network Rules, provided, however, that in the event that any Chargeback or Return is ultimately reversed by the applicable Network in your favor, CMS shall refund you for the amount thereof.

**3. Settlement and Funding.**

- (a) CMS will submit your Transactions to the applicable Network for processing, and thereafter will provisionally fund the Settlement Account (as defined below).
- (b) You must designate at least one bank account for the deposit and settlement of funds and the debit of any fees and costs associated with CMS’s processing of the Transactions (all such designated bank accounts shall be collectively referred to herein as the “Settlement Account”). You authorize CMS to initiate electronic credit entries, debit entries, and adjustments to your Settlement Account for amounts due to or from you in connection with this Agreement. CMS will not be liable for any delays in receipt of funds or errors in Settlement Account entries caused by third parties, including but not limited to delays or errors by Submitter, the Networks, or your bank.
- (c) Unless otherwise agreed, the dollar amount payable to you for your Transactions will be equal to the amount submitted by you in connection with your sale Transactions, minus the sum of amounts due from you, including Refunds, Chargebacks, Returns, Network Liabilities, and all applicable charges and adjustments; provided, however, that in the event we fail to withhold any such amounts from

your Transaction proceeds, we may debit your Settlement Account for such amounts ;

(d) If we fail to withhold any Refunds, Returns, Chargebacks, Network Liabilities or other charges or amounts due from the proceeds payable to the Settlement Account (including where such proceeds are insufficient to cover such obligations), or if the Settlement Account does not have a sufficient balance to pay amounts due from you under these guidelines, we may pursue one or more of the following options: (i) demand and receive immediate payment for such amounts; (ii) debit the Settlement Account for the amount of the negative balance; (iii) withhold settlement payments to the Settlement Account until all amounts are paid, (iv) delay presentation of refunds until a payment is made to us of a sufficient amount to cover the negative balance; and (v) pursue any remedies we may have at law or in equity.

#### 4. Specific Requirements, Representations and Warranties Relating to ACH Transactions.

(a) The NACHA Operating Rules (“NACHA Rules”) are the applicable Network Rules governing your ECP Transactions that utilize the ACH network, including, without limitation, ACH, ARC, TEL and WEB Transactions (“ACH Transactions”). You are responsible for complying with the NACHA Rules as set forth in Section 1 of this Agreement. The originating depository financial institution which CMS uses (currently Chase) to originate and process your ACH Transactions (the “ODFI”, as that term is further defined in the NACHA Rules) retains the right to reject or delay any ACH Transaction, to execute an ACH Transaction through any clearing house or channel it deems appropriate, to terminate or suspend your right to originate ACH Transactions, or to audit your compliance with the NACHA Rules.

(b) Any credit made to your Customer’s account as a result of an ACH Transaction originated by you (e.g., an issuance of a refund) is provisional until your Customer’s receiving depository financial institution (the “RDFI”, as further defined in the NACHA Rules) receives final settlement for such entry through a Federal Reserve Bank. If final settlement is not received by the RDFI, the RDFI will receive a refund from your Customer, and your Customer will not be deemed to have been paid by you.

(c) You represent and warrant that: (i) each ACH Transaction you originate will comply with all applicable laws and NACHA Rules; (ii) you will not originate any ACH Transaction as a Third Party Sender (as that term is defined in the NACHA Rules) and will not allow any third party to originate an ACH Transaction through your account under this Agreement; (iii) all ACH Transactions resulting in a debit to the Customer will be authorized by the Customer in writing and signed or similarly authenticated in a manner that complies with the NACHA Rules; (iv) you will obtain and retain proper authorization, in accordance with all applicable laws and the NACHA Rules, for each initiation of an ACH debit or credit to a Customer’s account, and will make copies thereof available to us upon request; and (v) you hereby make to us, and certify compliance with, all warranties that we or the ODFI make, or are deemed to make, under the NACHA Rules, in connection with any ACH Transaction you originate.

#### 5. Safeguarding Account Information; Security Standards.

(a) By accepting Card and ECP payments from your Customers, you acknowledge and understand the importance of protecting Transactions and Account Information and complying with the applicable Network Rules, Security Standards, and applicable law. You also acknowledges the heightened risk associated with access to Transactions and Account Information, and, to the extent you do have access to Transactions and Account Information, you must establish policies and procedures to protect such information in conformity with the Network Rules, Security Standards, and applicable law, including the storage and disclosure of such information. You shall exercise reasonable care to prevent use or disclosure of Transactions, Account Information, other than as necessary to complete a Transaction or as otherwise specifically permitted by the Network Rules or required by applicable law. If at any time you determine or suspect that Transactions or Account Information have been compromised, you must notify CMS immediately and assist in providing notification to such parties as may be required by law or Network Rules, or as CMS otherwise reasonably deems necessary. You further agree to provide CMS, upon its request, with information related to your compliance with the Network Rules and Security Standards as may from time to time be required by the Networks or reasonably requested by us.

(b) You acknowledge that failure to comply with the Network Rules, including the Security Standards, or the occurrence of a Data Compromise Event, may result in assessments, fines and/or penalties by the Networks. In the event CMS or Chase incurs any damage, loss, liability or expense as a result of any such failure or occurrence, including, without limitation, any Network Liability, you shall reimburse CMS and Chase, as applicable, immediately for all such amounts. Furthermore, if any Network requires a forensic examination of you or any of your agents, business partners, contractors, or subcontractors due to a Data Compromise Event, you agree to cooperate with such forensic examination until it is completed, including, without limitation, the engagement of an examiner acceptable to the relevant Network. Notwithstanding the foregoing, the Networks may directly, or demand that CMS, engage an examiner on your behalf in order to expedite the investigation of the Data Compromise Event.

## 6. Merchant Taxpayer Certification and CMS Reporting Obligations.

Upon request from time to time, Merchant shall provide CMS with the appropriate taxpayer certification documentation, via Internal Revenue Service (IRS) Form W-9 (or the appropriate versions of Form W-8, if applicable). Merchant shall promptly notify CMS if there are any changes in this information. CMS may deduct withholding taxes, if any, from proceeds payable to Merchant or any entity that is a party to this agreement where required under applicable law. CMS may, in accordance with applicable law and from time to time during the term of this Agreement, request Merchant to recertify its taxpayer certification hereunder. Furthermore, Merchant shall be responsible for any penalties related to the reporting obligations of CMS hereunder to the extent such penalties accrue based on the actions or inactions of Merchant despite reasonable notice from CMS.

## 7. Amendments and Updates.

We reserve the right to update or amend this Agreement from time to time, including as may be required to ensure compliance with the Network Rules, applicable law, or the policies, procedures or requirements of the ODFI. In such event, we will provide you with the changes, or with an updated copy of this Agreement, and your continued use of our processing services after your receipt of such changes shall constitute your agreement to comply with the Agreement as so amended.

## 8. Data Security and Privacy

By signing below, you represent to us that you **do not** have access to any Account Information (such as the Customer's primary account number, expiration date, security code or personal identification number) and you will not request access to such Account Information from Submitter. In the event that you do happen to receive Account Information in connection with the processing services provided by Submitter or CMS under these guidelines, you agree that you will not use it for any fraudulent purpose or in violation of any Network or applicable law and you will comply with all applicable Network Rules and Security Standards. If at any time you believe that Account Information has been compromised, you must notify us promptly and assist in providing notification to the proper parties. You must insure compliance with all Security Standards that are applicable to you and which may be published from time to time by the Network. If any Network requires an audit of you due to a Data Compromise Event or suspected event, you agree to cooperate with such audit. You may not use Account Information other than for the sole purpose of completing the Transaction authorized by the Customer for which the information as provided to you, or as specifically allowed by Network Rules, or required by law. In the event of your failure, including bankruptcy, insolvency or other suspension of business operations, you shall not sell, transfer or disclose any materials that contain Transaction information or Account Information to third parties.

## 9. Definitions.

- (a) "**Card**" means a physical or virtual credit, debit card, pre-paid card, or stored value card, or any evidence thereof (e.g. account number, access number, token, code, payment credential, or other form factor or access device), or any device, mobile application, digital wallet or other technology, medium or method (regardless of form) used to access an account or account number associated therewith and through which Network payment services are delivered, authorized and established between a Customer and a Network, or representatives or members of a Card Network that Merchant accepts from Customers as payment for goods or services.
- (b) "**Account Information**" is information related to a Customer or the Customer's Card or any bank account, depository account, or other account maintained by the Customer, and that is obtained by you or Submitter from the Customer's Card or any check provided by the Customer, or that is otherwise obtained by you from the Customer in connection with a Transaction (for example, an account number, a security code, a PIN number, or the customer's zip code when provided as part of an address verification system). Without limiting the foregoing, such information may include a the Card account number, a bank account number, a card expiration date, the Customer's name or date of birth, PIN data, security code data (such as CVV2 and CVC2) and any data read, scanned, imprinted, or otherwise obtained from the Card or any check printed thereon, or magnetically, electronically or otherwise stored thereon.
- (c) "**ACH**" means Automated Clearing House.
- (d) "**Chargeback**" is a rejection, reversal or return of a Transaction you previously presented to CMS, as permitted and governed by the applicable Network Rules. The term Chargeback shall include any Return of an ECP Transaction.
- (e) "**Customer**" is the person or entity to whom a Card is issued or who is otherwise authorized to use a Card and who initiates a payment with you relating to a Transaction.
- (f) "**Data Compromise Event**" means an occurrence that results, or could result, directly or indirectly, in the unauthorized access to or disclosure of Transactions and/or Account Information.
- (g) "**ECP**" means electronic check processing as a means of receiving or making payment in connection with a Transaction or

Refund. ECP includes various products of a type supported by CMS, including, without limitation, ACH, ARC, CCD, EFT, POP, PPD, TEL, WEB and Facsimile Draft.

- (h) “**Chase**” is JPMorgan Chase Bank, N.A. or other entity providing sponsorship to CMS as required by all applicable Networks. Your acceptance of Network products is extended by the Chase.
- (i) “**Network**” is any payment method provider whose payment method is accepted by you from your Customers and which is accepted by CMS for processing, including, but not limited to, Visa, Inc., MasterCard International, Inc., Discover Financial Services, LLC and other credit and debit card providers, debit network providers. Network also includes the National Automated Clearing House Association (“NACHA”), with respect to Transactions involving any credit or debit entry processed over the ACH network, and any other network or clearing house over which any ECP Transactions may be processed.
- (j) “**Network Rules**” are the standards, bylaws, rules, and operating regulations, as they exist from time to time, of the various Networks, and includes the Security Standards.
- (k) “**CMS**”, “**we**”, “**our**”, and “**us**” is Paymentech, LLC, a Delaware limited liability company, having its principal office at 8181 Communications Parkway, Plano, Texas 75024.
- (l) “**Refund**” means any refund or credit issued for any reason, including, without limitation, for a return of merchandise or cancellation of services, and any adjustment of a Transaction.
- (m) “**Return**” means any rejection, reversal or return of an ECP Transaction or ACH debit entry you previously presented to CMS, as permitted and governed by the applicable Network Rules.
- (n) “**Security Standards**” are all rules, regulations, standards or guidelines adopted or required by the Networks or the Payment Card Industry Security Standards Council relating to privacy, data security and the safeguarding, disclosure and handling of Account Information, including but not limited to the Payment Card Industry Data Security Standards (“PCI DSS”), Visa’s Cardholder Information Security Program, Discover’s Information Security & Compliance Program, American Express’s Data Security Operating Policy, MasterCard’s Site Data Protection Program, MasterCard’s POS Terminal Security program and the Payment Card Industry PIN Entry Device Standard, in each case as they may be amended from time to time.
- (o) “**Transaction**” is a transaction conducted between a Customer and you utilizing a Card or ECP for payment in connection with the sale of goods or the lease or provision of services by you (either directly or through Submitter). Transaction may also be used to refer to the written or electronic record of such a transaction, including, without limitation, an authorization code, settlement record, ECP file, or a credit or debit entry pursuant to and consistent with NACHA Rules which is submitted to CMS to initiate or evidence a Transaction.
- (p) “**Transaction Receipt**” means an electronic or paper record of a Transaction generated upon completion of a sale or Refund, a copy of which is presented to the Customer.

**I, the undersigned, individually and on behalf of Merchant, certify, represent and warrant that:**

- I am an owner, officer, partner or other authorized representative of the Merchant (“Authorized Representative”), duly authorized to:
  - enter into legally binding agreements on behalf of the Merchant;
  - execute and submit this document on behalf of Merchant;
  - provide all information contained herein (including, as applicable, banking or financial information, and personal information relating to owners, officers, partners or Merchant contacts), on behalf of the Merchant;
- all information contained within this document or submitted in connection herewith is true, complete and not misleading.
- to the extent any bank account information is being provided in connection with this document, Merchant owns such bank account, and such account is being maintained solely for business purposes and not for personal, family, or household purposes
- Chase Paymentech and Member may:
  - investigate and verify the credit and financial information of Merchant, and
  - obtain credit reports on Merchant from time to time in connection with establishing Merchant’s account and maintaining the Agreement.

**If I have identified myself as an Owner of Merchant in this document, by signing below I authorize and instruct Chase Paymentech, Member, or their designee(s) to conduct the following in connection with establishing Merchant’s account and maintaining the Agreement:**

- obtain and use consumer credit reports (or other information derived therefrom) on me from time to time; and

- investigate and verify personal credit and financial information about me or any other owner identified herein or in the Application, the Agreement, or any other document provided by me or Merchant in connection with any of the foregoing.

**Merchant, intending to be legally bound, hereby agrees to the terms and conditions of the above Payment Processing Instructions and Guidelines.**

**Agreed and Accepted by:**

City of Nixa  
MERCHANT LEGAL NAME

715 W. Mt. Vernon St., Nixa, MO 65714  
Legal Address

**By (authorized signature)**

Jimmy Liles, City Administrator  
By, Name, Title

**Date**

**Agreed and Accepted by:**

PAYMENTECH, LLC, for itself and on behalf of  
JPMORGAN CHASE BANK, N.A.

By:

Name:

Title:

Address: 8181 Communications Pkwy, Plano, TX 75024

Date:



# PayPal Processing Services Agreement

This PayPal Processing Services Agreement (this “Agreement”) is between PayPal, a Delaware corporation whose address is 2211 North First Street, San Jose, CA 95131 and you, the entity who enters into this Agreement, and governs your use of the services provided by PayPal on or through Invoice Cloud (“Invoice Cloud”) to enable you to accept bill payments from your customers. This Agreement is effective as of the date you accept this Agreement in writing or online. You agree to the terms and conditions of this Agreement. You agree that PayPal may amend this agreement by arranging with Invoice Cloud to provide you with notice of amended terms and by posting a revised version on our website. You appoint Invoice Cloud as your agent for purposes of receiving notice of amendments to this Agreement and your use of the Services after the effective date of the posted amendment shall constitute acceptance of such amendment.

This Agreement includes and incorporates by reference the Commercial Entity Agreements which are required by the card networks so that you may accept [Visa and MasterCard](#) and Discover card payments.

**1. PayPal Processing Services.** “PayPal Processing Services” or the “Services” means the payment processing services offered by PayPal and solely through Invoice Cloud which provide you with the ability to accept PayPal payments, ACH/E-Check, credit cards, debit cards and other payment types for bill payments from your customers, as applicable per your agreement with Invoice Cloud.

**2. Invoice Cloud Services.** Invoice Cloud may provide certain services to you in relation to the PayPal Processing Services, including pricing for the services. The services provided by Invoice Cloud are governed by your agreement with Invoice Cloud and are not provided by PayPal.

**3. Indirect Processing Transaction Volume.** “Indirect Processing Transaction Volume” refers to funds from payments processed by payment processing services other than PayPal, in each case under a direct agreement you and Invoice Cloud have with each such third party payment processing service provider and which you have instructed to settle funds to PayPal on your behalf.

**4. Settlement Account and Payouts.** PayPal will arrange to settle payment processing funds including Indirect Processing Transaction Volume to the bank account that you designate to Invoice Cloud and as provided to us by Invoice Cloud (the “Settlement Account”) and on a schedule communicated to us by Invoice Cloud, net of any amounts owed to Invoice Cloud (including for fees and/or invalidated payments (described below)). You agree that we may debit your Settlement Account for the applicable amounts, and/or setoff the applicable amounts against future payouts. Payouts to your Settlement Account,

including timing thereof, will be in accordance with terms and conditions established by, and communicated to you by, Invoice Cloud.

**5. Compliance with Applicable Laws.** You must use the Services in a lawful manner, and must obey all laws, rules, and regulations (“Laws”) applicable to your use of the Services and to transactions and comply with any rule, guideline, or bylaw of any of the card networks (e.g., Visa, Mastercard, American Express and Discover) or of the Platform.

**6. Liability for Invalidated Payments.** You are liable for all claims, expenses, fines and liabilities we incur arising out of: a. a chargeback, refund, over-payment, payment error, or other invalidated payment you cause (“Invalidated Payment”); b. any error, negligence, misconduct or fraud by you, your employees, or someone acting on your behalf; and c. any losses resulting from your failure to comply with the terms of this Agreement, or your usage of the PayPal Processing Services. Notwithstanding any other provision in this Agreement, PayPal is not liable for any losses resulting from the settlement and payout of the Indirect Processing Transaction Volume in accordance with Invoice Cloud’s direction.

**7. Taxes.** You are solely responsible for and obligated to pay any and all taxes, fees and other charges imposed by any governmental authority (“Taxes”), including any value added tax, goods and services tax, provincial sales tax and/or harmonized sales tax on the Services provided under this Agreement. If you are tax-exempt, you may be asked to provide us with an original certificate, or other evidence of tax exemption, that satisfies applicable legal requirements attesting to your tax-exempt status

**8. Term and Termination.** The term of this Agreement shall commence as of the earlier of the date you accept this Agreement online or you begin using the PayPal Processing Services through Invoice Cloud and shall continue for as long as you are enabled to use the PayPal Processing Services through Invoice Cloud. After permitted termination by either party, you shall no longer have access to, and shall cease all use of the PayPal Processing Services. Any termination of this Agreement does not relieve you of any obligations to pay any fees, costs, penalties, chargebacks or any other amounts owed by you to us as provided under this Agreement, whether accrued prior to or after termination.

**9. Notices.** Any notices required by this Agreement will be provided to you by Invoice Cloud on our behalf. Electronic notices and disclosures will have the same meaning and effect as if we had provided you with a paper copy. Any notices to PayPal shall be considered valid only if sent by postal mail to PayPal, Inc., Attn: Legal Department, 2211 North First Street, San Jose, CA 95131.

**10. Governing Law and Venue.** The laws of the State of California, without regard to principles of conflict of laws, will govern this Agreement and any claim or dispute that has arisen or may arise between

the parties. The parties agree that any dispute arising from this Agreement will be resolved in a court of competent jurisdiction in (a) Santa Clara County, California if PayPal is the defendant, or (b) the county where your business is headquartered if you are the defendant.

**11. Entire Agreement.** This Agreement sets forth the entire agreement and understanding of the parties in respect to the subject matter contained herein, and supersedes all prior agreements, promises, arrangements, communications, representations or warranties, whether oral or written, by any officer, partner, employee or representative of any party. This Agreement shall be binding upon and shall inure only to the benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement is intended to confer or shall be deemed to confer upon any persons or entities not parties to this Agreement, any rights or remedies under or by reason of this Agreement.

**PARTNER BILLER**

**By:** \_\_\_\_\_ City of Nixa

**Name:** Jimmy Liles \_\_\_\_\_

**Title:** City Administrator \_\_\_\_\_

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



## Annex to Biller Terms and Conditions for American Express Processing (“AMEX”) (Annex”)

By executing this Annex, **Biller** (the “Biller”), is agreeing to comply with the AMEX Rules as they pertain to Transactions you submit for processing through the Invoice Cloud Services. The Biller has contracted with Invoice Cloud, to obtain AMEX card processing services on the Biller’s behalf. This Annex supplements the Biller Agreement Terms and Conditions. All capitalized terms used in this Annex have the same meaning as ascribed in the Biller Agreement Terms and Conditions, unless otherwise defined herein.

### 1) Settlement

- a. Upon receipt of the Biller’s Transactions, AMEX will process the Transactions and facilitate the funds transfer between American Express, the Biller, and Invoice Cloud.
- b. AMEX will provide provisional credit to the Bank Account you designate hereunder under the Funding Schedule.

### 2) Processing and Payment.

The Biller and Invoice Cloud agree that all Convenience Fee Transactions will be submitted to AMEX under the Biller Agreement, all Transactions will be submitted by Invoice Cloud, Inc. on behalf of the Biller to AMEX, all AMEX processing fees that may apply associated with Transaction shall be paid by Invoice Cloud, all Chargebacks, returns and similar charges will be paid by the Biller, and all fees, for the Convenience Fee Transactions shall be paid by Invoice Cloud. Convenience Fee Transactions will be transferred directly to the bank account designated by Invoice Cloud and settlement funding for Transactions will be transferred to the bank account designated by the biller.

### 3) Reduction of Payments to Biller

Unless otherwise agreed to by the parties, the proceeds payable to the Biller shall be reduced by all Chargebacks, customer refunds and other applicable charges. Invoice Cloud is hereby authorized to draw from Biller’s account for this purpose. If the proceeds payable to the Biller do not represent sufficient credits, or the those proceeds or such account does not have a sufficient balance to pay amounts due from you under these guidelines, Invoice Cloud may pursue one or more of the following options: (i) demand and receive immediate payment for such amounts; (ii) debit a Biller bank account for the amount of the negative balance; (iii) withhold settlement payments to the Biller until all amounts are paid, (iv) delay presentation of refunds until a payment is made to us of a sufficient amount to cover the negative balance; and (v) pursue any remedies we may have at law or in equity.

### 4) Chargebacks

- a. The Biller may receive a chargeback for a number of reasons. The following are some of the most common reasons for chargebacks,
  - i. You do not issue a refund to a customer upon return or non-delivery of service
  - ii. An authorization/approval code was required and not obtained
  - iii. The transaction was fraudulent
  - iv. The customer disputes the card sale
  - v. The customer refuses to make payment for a card sale because in the customer’s good faith opinion, a claim or complaint has not been resolved or has been resolved by you but in an unsatisfactory manner.
- b. Chargebacks and the Biller’s Responsibility
  - i. The Biller is fully responsible for any and all chargebacks related to their AMEX account(s).
  - ii. Upon a Chargeback, AMEX will automatically deduct the amount of the chargeback from the Invoice Cloud, Inc’s bank account.
  - iii. The Biller hereby gives permission for Invoice Cloud to withdraw the chargeback amount from the biller’s bank account, described in section 6 of this Annex, within 24 hours of the chargeback being deducted from Invoice Cloud’s bank account by AMEX.

### 5) Data Security and Privacy

By signing below, the Biller represents that they do not have access to any Card Information data and you as the Biller will not request such Card

Information from Invoice Cloud. In the event Card Information in connection with the processing services provided by Invoice Cloud or AMEX under these guidelines, Biller agrees not use it for any fraudulent purpose or in violation of any AMEX or applicable law and the Biller will comply with all applicable AMEX Rules. If at any time you the Biller believe that Card Information has been compromised, you the Biller must notify AMEX and Invoice Cloud promptly and assist in providing notification to the proper parties. You as the Biller must ensure your compliance. You as the Biller may not use any Card Information other than for the sole purpose of completing the Transaction authorized by the payer for which the information was provided to you.

6) Funding Schedule

In order to receive funds from AMEX you must maintain a bank account that is a member of the Automated Clearing House System and the Federal Reserve wire system. You must designate a bank account for the deposit and settlement of funds and the debit of any fees and costs associated with processing of Transactions. The deposits will come from AMEX and any fess and chargebacks drafted by Invoice Cloud. Biller is hereby authorizing AMEX to initiate electronic credit entries to your bank account. The biller is also authorizing Invoice Cloud, to make initiate any necessary debits and adjustments to the said Biller's bank account. In the event of the said Biller's failure you shall not sell, transfer or disclose any transactional or credit card information to third parties.

a. If otherwise agreed to by Amex, the said Biller and Invoice Cloud, the proceeds payable to the bank account shall be equal to the amounts received by AMEX in respect of your Card transactions.

b. Invoice Cloud shall use the bank account listed below to draft account when and if required as outlined in this Annex.

Name of Bank: Southern Bank

Account Name: City of Nixa, General Fund Account

ABA Routing NO: 281573259

Account NO: 590024949

1) Definitions

**"Card"** is an account, or evidence of an account, authorized and established between a customer and AMEX payment for a good or service.

**"Chargeback"** is a reversal of a Transaction you previously presented to Amex and/or Invoice Cloud pursuant to Payment Brand Rules.

**"Transaction"** is a transaction conducted between a customer and Biller and/or Invoice Cloud utilizing a Card in which consideration is exchanged between the customer and Biller and/or Invoice Cloud. hereunder.

**"Convenience Fee Transaction"** is transactions representing a charge to a Customer's Card for the convenience of using the payment channel offered by Biller and Invoice Cloud.

**"Card Information"** is information related to a Customer or a Customer's Card that is obtained by the Biller or Invoice Cloud from the Customer's Card or from the Customer in connection with his or her use of a card. The card information could include, the Card account number, the Card expiration date, the customer's name or date of birth, the PIN data, the security code data and any other data read, scanned imprinted or otherwise obtained from the payment instrument.

Agreed and Accepted By:

Agreed and Accepted By:

Merchant Legal Name: City of Nixa

Invoice Cloud, INC.

Printed Name : Jimmy Liles

Printed Name and Title: Kevin W O'Brien President

Title : City Administrator

Signature : *Kevin W. O'Brien*

Signature: \_\_\_\_\_

Date: 04/05/2023

Email Address: jliles@nixa.com

Phone : 417-725-3785

Address: 30 Braintree Hill Office Park, Suite 303

Address : 715 W. Mt. Vernon St., Nixa, MO 65714

Braintree, MA 02184

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