



Monterey County Board of Supervisors

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1st Floor
Salinas, CA 93901
831.755.5066
www.co.monterey.ca.us

Board Order

A motion was made by Supervisor Wendy Root Askew, seconded by Supervisor John M. Phillips to:

Agreement No.: A-15902

- a. Approve and Authorize the Library Director or her Designee, to sign a Professional Services Agreement (PSA) with Envisionware, Inc., for library automation software and purchase of hardware equipment (self-check machines), in the amount not to exceed \$130,000, for the period of three years beginning July 1, 2022, through June 30, 2025; and
- b. Approve non-standard risk provisions in PSA and in End User License Agreement, Exhibit B to PSA, as recommended by the Library Director; and
- c. Authorize the Library Director or his/or her Designee, to execute up to one future Amendment to this agreement that does not significantly change the scope of work and does not cause an increase of more than 10% (\$13,000) of the original contract amount.

PASSED AND ADOPTED on this 21st day of June 2022, by roll call vote:

AYES: Supervisors Alejo, Phillips, Lopez, Askew and Adams
NOES: None
ABSENT: None
(Government Code 54953)

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting June 21, 2022.

Dated: June 24, 2022
File ID: 22-035
Agenda Item No.: 68

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California

Julian Lorenzana, Deputy

COUNTY OF MONTEREY STANDARD AGREEMENT

This **Agreement** is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:
ENVISIONWARE, Inc.

_____ ,
(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1.0 GENERAL DESCRIPTION:

The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The goods and/or services are generally described as follows:

Provide: provide self-check machines and Coin and Bill Receptors and software subscriptions for self-check stations.

~~**2.0 PAYMENT PROVISIONS:**~~

~~County shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibit A, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of: \$ 130,000~~

[Handwritten initials: ds, SLK]

3.0 TERM OF AGREEMENT:

~~**3.01** The term of this Agreement is from July 1, 2022 to June 30, 2025, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and CONTRACTOR may not commence work before County signs this Agreement.~~

[Handwritten initials: ds, SLK]

3.02 The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

4.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS:

The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A Scope of Services/Payment Provisions

Exhibit B Other: Addendum No. 1
EnvisionWare's End User License Agreement

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5.0 PERFORMANCE STANDARDS:

- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.02 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.03 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6.0 PAYMENT CONDITIONS:

- 6.01 Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided in this paragraph. The County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.02 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County and the CONTRACTOR.
- 6.03 Invoice amounts shall be billed directly to the ordering department.
- 6.04 CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

7.0 TERMINATION:

- 7.01 During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

7.02 The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

7.03 The County's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

8.0 INDEMNIFICATION:

~~CONTRACTOR shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the ^{bs}action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.~~

9.0 INSURANCE REQUIREMENTS:

9.01 **Evidence of Coverage:** Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.02 **Qualifying Insurers:** All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

9.03 **Insurance Coverage Requirements:** Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance: including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Requestor must check the appropriate Automobile Insurance Threshold:

Requestor must check the appropriate box.

Agreement Under \$100,000 Business Automobile Liability Insurance: covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

Agreement Over \$100,000 Business Automobile Liability Insurance: covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit or Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Workers' Compensation Insurance: if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

(Note: any proposed modifications to these workers' compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Professional Liability Insurance: if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail

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coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

(Note: any proposed modifications to these insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

9.04 Other Requirements:

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, **and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance.** The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect. CONTRACTOR shall always during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of

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this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10.0 RECORDS AND CONFIDENTIALITY:

- 10.1 **Confidentiality:** CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.
- 10.2 **County Records:** When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.3 **Maintenance of Records:** CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three-year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.4 **Access to and Audit of Records:** The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.5 **Royalties and Inventions:** County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

11.0 NON-DISCRIMINATION:

- 11.1 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sexual orientation, or any other characteristic set forth in California Government code § 12940(a), either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and

treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS:

If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13.0 COMPLIANCE WITH APPLICABLE LAWS:

13.1 CONTRACTOR shall keep itself informed of and in compliance with all federal, state, and local laws, ordinances, regulations, and orders, including but not limited to all state and federal tax laws that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this AGREEMENT as well as any privacy laws including, if applicable, HIPAA. CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices require by law in the performance of the Services.

13.2 CONTRACTOR shall report immediately to County's Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the Project of the performance of the Services.

13.3 All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations, and guidelines that are in force at the time such documentation is prepared.

14.0 INDEPENDENT CONTRACTOR:

In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is always acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

15.0 NOTICES:

Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR’S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
Jacqueline C. Bleisch Library Administration Manager	ENVISIONWARE, Inc. Michael J. Monk, CEO
Name and Title	Name and Title
188 Seaside Circle Marina, CA 93933	1960 Satellite Blvd. Suite 4100 Duluth, GA 30097
Address	Address
(831)883-7569	678-382-6590 mmonk@envisionware.com
Phone:	Phone:

16.0 MISCELLANEOUS PROVISIONS.

- 16.01 **Conflict of Interest:** CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.
- 16.02 **Amendment:** This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 16.03 **Waiver:** Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 16.04 **Contractor:** The term “CONTRACTOR” as used in this Agreement includes CONTRACTOR’s officers, agents, and employees acting on CONTRACTOR’s behalf in the performance of this Agreement.
- 16.05 **Disputes:** CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 16.06 **Assignment and Subcontracting:** The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

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- 16.07 **Successors and Assigns:** This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 16.08 **Headings:** The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- ~~16.09 **Time is of the Essence:** Time is of the essence in each and all of the provisions of this Agreement.~~
- 16.10 **Governing Law:** This Agreement shall be governed by and interpreted under the laws of the State of California; venue shall be Monterey County.
- 16.11 **Non-exclusive Agreement:** This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 16.12 **Construction of Agreement:** The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 16.13 **Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 16.14 **Authority:** Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 16.15 **Integration:** This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 16.16 **Interpretation of Conflicting Provisions:** In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

Michael J. Monk
2784E1271E47443...

17.0 **CONSENT TO USE OF ELECTRONIC SIGNATURES.**

- 17.1 The parties to this Agreement consent to the use of electronic signatures via DocuSign to execute this Agreement. The parties understand and agree that the legality of electronic signatures is governed by state and federal law, 15 U.S.C. Section 7001 et seq.; California Government Code Section 16.5; and, California Civil Code Section 1633.1 et. seq. Pursuant to said state and federal law as may be amended from time to time, the parties to this Agreement hereby authenticate and execute this Agreement, and any and all Exhibits to this

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Agreement, with their respective electronic signatures, including any and all scanned signatures in portable document format (PDF).

17.2 Counterparts.

The parties to this Agreement understand and agree that this Agreement can be executed in two (2) or more counterparts and transmitted electronically via facsimile transmission or by delivery of a scanned counterpart in portable document format (PDF) via email transmittal.

17.3 Form: Delivery by E-Mail or Facsimile.

Executed counterparts of this Agreement may be delivered by facsimile transmission or by delivery of a scanned counterpart in portable document format (PDF) by e-mail transmittal, in either case with delivery confirmed. On such confirmed delivery, the signatures in the facsimile or PDF data file shall be deemed to have the same force and effect as if the manually signed counterpart or counterparts had been delivered to the other party in person.

***** THIS SECTION INTENTIONALLY LEFT BLANK *****

18.0 SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

CONTRACTOR

ENVISIONWARE, Inc.

By:

DocuSigned by: Debra R. Wilson
7B741937AA0D41B...

Contracts/Purchasing Officer
6/28/2022 | 12:14 PM PDT

Date:

By:

Department Head (if applicable)

Date:

Approved as to Form
Office of the County Counsel
Leslie J. Girard, County Counsel

By:

DocuSigned by: Stacy Saetta
E0FC5199F444A9...

County Counsel

6/27/2022 | 11:46 AM PDT

Date:

Approved as to Fiscal Provisions

By:

DocuSigned by: Jennifer Forsyth
0E7E857811454AE...

Auditor/Controller

6/28/2022 | 11:05 AM PDT

Date:

Approved as to Liability Provisions
Office of the County Counsel-Risk Manager
Leslie J. Girard, County Counsel-Risk Manager

By:

DocuSigned by: Danielle Mancuso
3AFDE800C3741CC...

Risk Management

6/27/2022 | 3:29 PM PDT

Date:

By:

DocuSigned by: Michael J. Monk
3784E1371E47413...

(Signature of Chair, President, or Vice-President)

Michael J. Monk, President

Name and Title

Date:

6/9/2022 | 2:52 PM PDT

By:

DocuSigned by: Scott L. Fothergill
1AE05AF78B09472...

(Signature of Secretary, Asst. Secretary, CFO, Treasurer, or Asst. Treasurer)

Scott L. Fothergill, Chief Operating Officer

Name and Title

Date:

6/13/2022 | 5:47 AM PDT

County Board of Supervisors' Agreement No. _____ approved on _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.

¹Approval by County Counsel is required

²Approval by Auditor-Controller is required

³Approval by Risk Management is necessary only if changes are made in paragraphs 8 or 9

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EXHIBIT-A

To Agreement by and between
County of Monterey, on behalf of Monterey County Free Libraries, hereinafter referred to
as "County"

AND

ENVISIONWARE, Inc., hereinafter referred to as "CONTRACTOR"

Scope of Services / Payment Provisions

A. SCOPE OF SERVICES

A.1 CONTRACTOR shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

Provide 10 more self-check machines and 5 Coin and Bill Receptors in order that patrons can put money on their library cards to pay for print jobs, and software subscriptions that will be put on the self-check stations that will allow the Library to have a station where patrons can check out material, release print jobs, reserve a computer, pay their fines, release mobile print jobs, and reserve a meeting room or library equipment.

A.2 CONTRACTOR'S SCOPE OF WORK

Project Scope:

- Project Planning
- Installation of Product(s)
- Product Configuration
- Staff Training
- System Administrator Training

Project Milestones:

- Completion of Project Planning Phase
- Completion of Installation and Training
- Project Sign-off
- Transition to Support

Product Scope:

This project will consist of installing the following modules:

- CloudNine
 - Cloud Setup
 - Staff

- Self-service Reservation Station(s)
 - Web Module
 - Reporting Module
 - Clients
- LPT:One Print Management
 - Job Queue Engine
 - Administrator
 - Staff Print Release Terminal(s)
 - Self-service Print Release Terminal(s)
 - MobilePrint Service
 - Quick Reporter
 - Clients
- Launch Command
 - Kiosk menu
- Authentication and Accounting Module
 - MySQL backend
 - AAM Components (including Database Administrator)
 - AAM Web Query
 - Staff User Account Manager(s)
 - Self-service User Account Manager(s)
- Coin & Bill Acceptor
 - Integration with LPT:One Print Release Terminal
 - Integration with AAM User Account Manager

Assumptions about Customer Environment

The following existing configuration and setup is assumed as a prerequisite for the commencement of this project:

- ILS configuration of SIP2 or Patron API access for patron validation
- Host PC(s) for the above components
- Static IP address for any PCs hosting admin components listed above
- Network printers with static IP addresses

Step By Step Outline of the Project and Responsibilities:

PLANNING PHASE

In this initial phase we will work together to identify your objectives, discuss your environment, and plan the project. We will also be updating this SOW at the conclusion of the Planning Phase to reflect the exact criteria by which we measure success for the implementation services.

1. **GOALS:** The library will describe your goals for the outcome of this project. How will you use the software provided in this project and by what measure will you determine success?
2. **REQUIREMENTS:** The Consultant will introduce all requirements that must be met before this project can proceed to the installation, configuration and training phase.
3. **PREPARING FOR INSTALLATION:**
 - During an initial meeting I will provide an introduction to the Customer Center via GoToMeeting. I will demonstrate the resources and actions available and introduce product information as well as promotional materials that may assist you in planning your deployment.
 - The library will be asked to use Customer Center credentials (new users may be added) in order to access the EnvisionWare Customer Center, accept the EULA, and download the software to the appropriate PC hardware.
 - The library agrees to the use of EnvisionWare Quick Support remote access software activated on demand to facilitate remote configuration and support assistance. For projects traversing multiple, remote setup days the software may be installed permanently.

When the library and the consultant believe that all advance preparation is completed this planning phase will conclude at which time we will reconfirm the remote installation date and the training date.

IMPLEMENTATION PHASE

1. EnvisionWare will assist the library with the remote installation of the solution purchased.
2. EnvisionWare will train the library staff in the use of the system:
 - CloudNine
 - How the system delivers fair and equitable access
 - How the system protects patron privacy
 - The patron experience
 - @client sign up
 - Making a reservation at a self-service station
 - Signing into a session
 - Changing session options
 - Ending a session
 - Staff-managed reservations

- Scheduling an Area for recurring reservations
 - Viewing reservations
 - Marking a computer out of service
 - Manually extending patron time
 - LPT:One
 - The patron experience
 - Submitting a print job at the client
 - Selecting and releasing print jobs at the Print Release Terminal
 - Using each of the enabled payment methods
 - Staff-managed print release including override, cash over the counter
 - Running print reports with LPT:One Quick Reporter
 - Authentication & Accounting Module
 - Running an enterprise PC Use report with AAM Web Query
 - Adding funds via self service using AAM User Account Manager and a CBA
 - Managing users' AAM accounts with changed barcodes
3. EnvisionWare will train the administrator as follows:
- CloudNine
 - Changing preferences
 - Configuring computer access rules
 - Changing the schedule for a branch and for an Area
 - Customizing the text
 - LPT:One
 - Using the LPT:One Administrator
 - Assigning printers to printer families and Print Release Terminals
 - Changing print management general preferences
 - Customizing the text
 - System Administration

- How to stay abreast of changes (Release Notes, Twitter and the Forum)
 - How to download and update software
 - What files to backup and when
 - How to replicate your settings for migration to a new computer or for deployment of a new location
 - How to use System Monitor to create a new case (or update an existing case) with a diagnostic capture
- Customer Center
 - How to access the Customer Center
 - Signing up new users for the Customer Center
 - Viewing Release Notes
 - Review of the Customer Center Support Tab including:
 - Support and Maintenance Policy overview
 - Logging into Chat
 - Signing up for the Forum
 - Obtaining your account info, sales contact and other details
 - Downloading software and manuals

B. PAYMENT PROVISIONS

B.1 COMPENSATION/ PAYMENT

County shall pay an amount not to exceed \$130,000 for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following terms:

QTY	ITEM/DESCRIPTION	UNIT PRICE	AMOUNT
1	ACCELERATED DEVELOPMENT ENVISIONWARE		

	ACCELERATED DEVELOPMENT SERVICE for EnvisionWare Software as follows: Library on Koha, Windows only.		
1	CN:RS 0250K EnvisionWare Reservation Service - Service Population 250,000 to <500,000 INCLUDES: Reservation Service with unlimited Reservation Types, Branches, Groups, Users and Client installations, basic grid data reporting		\$8,750.00
1	CN:EML 0100K Annual email delivery of receipts, reports (based on Analytics licensing) from libraryinfo.net Service Population 100,000 to <500,000		\$50.00
1	CN:SMS 100K 100,000 SMS/Text messages per year. Overages billed annually at .01 per message		\$799.00
	1 CN:RS PS 100K Professional Services one- time remote consultation for setup, installation and training for the Reservation Service for Service population 100,000 to <1 million.		\$1,295.00
	Subtotal		\$10,894.00
	Freight		\$ 0.00
	Total Tax		\$ 1,007.70
INVOICE #1	TOTAL		\$11,901.70
10	SSC – COM – PLB#U Proline Component Self Service Station – Barcode with Software Barcode based self service	\$3,025	\$30,250

	including software *1D/2D Smartphone multidirection Barcode scanner 21.5"touch display *OneStop Self Service Circulation Software *Windows 10 Pro, 1 year part and labor, high speed Receipt printer *Delivery 21 days ARO		
	PS-PM-BLDG ENVISIONWARE COLLABORATIVE PROJECT SERVICES – PER BUILDING Includes installation of all products ordered or guidance to install items as part of a single project/trip on a per building basis. Envisionware generally installs management or host components and trains customers in the deployment of Client modules.	\$1,000.00	\$1,000.00
1	PS-EXPPF-U 1st day ENVISIONWARE PROFESSIONAL SERVICES- FLAT FEE FOR EXPENSES – First of Every Five days Onsite. No partial days.	\$975.00	\$975.00
3	PS-EXPPF-U Additional Day ENVISIONWARE PROFESSIONAL SERVICES-FLAT FEE FOR EXPENSES – Additional days after first. Maximum (4) additional days before an additional First day is required.	\$250.00	\$750.00
Annual Maintenance and subscription starting in year 2: \$3,630.00			
	Subtotal:		\$32,975.00
	Freight(estimated, actual charges to be billed)		\$ 476.99
	Total Tax(actual charges to billed)		\$ 3,050.19

INVOICE #2	TOTAL		\$36,502.18
1	LPT-ENT Building Bundle LPT One Enterprise – First Building Bundle – provides an unlimited number of license for the following components installed in a single library building: **Job Queue Engine (JQE), Print Release Terminals (PRT), LPT: One Administrator and LPT: One Quick Reporter		\$795.00
15	LPT_ENT Building Bundle (Additional) – Extends the functions of the First Building License for additional locations in library system	\$295.00	\$4,425.00
193	LPT-ENT Clients (250) LPT: ONE CLIENT LICENSE – TIER 250-749 Print Management software installed on each public computer	\$22.95	\$5,737.50

16	<p>LPT-MPS-3YR-U SUBSCRIPTION (3 year Prepaid)Mobile Print Service™ - Print from virtually any patron device via App. Email or Custom Webb Portal. Pick up at LPT: One print Release Terminals. No additional hardware required. -Licensed by the number of Buildings or Job Queue Engines, whichever is greater. **REQUIRES LPT: One Envisionware Print Management v4.9+- Licensed by the number of Buildings or Job Queue Engines, whichever is greater.</p>	\$1,875.00	\$30,000.00
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1	<p>AAM-ENT Bundle ENVISIONWARE AUTHENTICATION AND ACCOUNTING MODULE (AAM)ENTERPRISE EDITION LICENSE – The AAM is a collection of added services that extend the functionality of many EnvisionWare products with the use of an external datasource. AAM provides online accounting (credit, debit, and allocation (free pages) accounts for use with Print Management, Fine Payment, ECS Staff Transaction, BCP Copier payment and PCR multi branch use limits and time charging. AAM is a feature set that uses a database (MySQL and/or ILS Deposit Account) to store and maintain balances and values. Enterprise Edition is for a multi-location library system or a campus.</p> <p>-Includes AAM Web Query for centralized reports +Required for use with Envisionware Enterprise Reporter.</p>	\$3,895.00	\$3,895.00
5	<p>CBA-VIN *USD-3T PC ENVISIONWARE COIN/BILL ACCEPTOR – US dollar Network- connected system. 3- tube system supports .05/.10/.25/.50 coin 1/5/10/20 dollar bills. Color. Putty.</p>	\$2,875.00	\$14,375.00

26	PS-HR-CF-U ENVISIONWARE PROFESSIONAL SERVICES – Consulting services at the hourly rate for customers under maintenance. -Quotations provide an estimate – actual time is billed. -The minimum charge is one hour. -The minimum for an onsite hourly project is 8 hours per day plus the actual first and additional flat fee expense charges.	\$150.00	\$3,900.00
1	LPY-MPS-PS ENVISIONWARE PROFESSIONAL SERVICES FOR MOBILEPRINT SERVICE ™ A consultant will set up your MobilePrint spots. Basic training will be provided. The consultant will also explain the marketing materials available in the Customer Center.	\$0.00	\$0.00
	Subtotal		\$63,127.50
	Discount		
	Freight (estimated, actual charges to be billed)		\$388.48
	Total Tax (actual charges to billed)		\$5,839.29
INVOICE 3	TOTAL :		\$69,355.27
	GRANT TOTAL OF 3 INVOICES:		\$117,759.15

There shall be no travel reimbursement allowed during this Agreement.

CONTRACTOR warrants that the cost charged for services under the terms of this contract are not in excess of those charged any other client for the same services performed by the same individuals.

B.2 CONTRACTORS BILLING PROCEDURES

NOTE: Payment may be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the Agreement, payment at conclusion of the Agreement, etc.

County may, in its sole discretion, terminate the contract or withhold payments claimed by CONTRACTOR for services rendered if CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by County.

County shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were completed.

DISALLOWED COSTS: CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

ENVISIONWARE, INC.

END USER LICENSE AGREEMENT AND LIMITED WARRANTY (“EULA”)

IMPORTANT: PLEASE READ THE TERMS AND CONDITIONS OF THIS EULA CAREFULLY BEFORE USING THE SOFTWARE. ENVISIONWARE, INC. (“ENVISIONWARE”) IS WILLING TO LICENSE THE SOFTWARE TO YOU AS THE INDIVIDUAL, THE ORGANIZATION, OR THE LEGAL ENTITY THAT WILL BE UTILIZING THE SOFTWARE (REFERRED TO AS “YOU” OR “YOUR”) ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS OF THIS EULA.

UPON AND AS OF THE DATE ENVISIONWARE SENDS AN EMAIL TO YOU (THE “EFFECTIVE DATE”) ISSUING CREDENTIALS TO LOG INTO ENVISIONWARE’S WEBSITE FROM WHERE THE SOFTWARE MAY BE DOWNLOADED, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS EULA.

IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS EULA, DO NOT ATTEMPT TO DOWNLOAD OR INSTALL THE SOFTWARE, OR, IF INSTALLED, MAKE NO FURTHER USE OF THE SOFTWARE, AND NOTIFY IN WRITING ENVISIONWARE OR THE RESELLER FROM WHOM IT WAS ACQUIRED WITHIN THIRTY (30) DAYS OF PURCHASE, AND THE PURCHASE PRICE WILL BE REFUNDED.

1. License: The software and documentation (collectively the “Software”) are owned by and are the property of EnvisionWare or its licensors and are protected by copyright and other intellectual property laws. Some licensors may be express or intended beneficiaries of this EULA. Subject to all of the terms and conditions of this Agreement, EnvisionWare grants you a limited, non-exclusive, worldwide, non-transferable, non-sublicensable license to use the Software for which you have been issued a Product Key by EnvisionWare or an authorized distributor or reseller, but only in accordance with the documentation, (ii) the restrictions contained herein and any restrictions on the applicable invoice, and (iii) the number of authorized users. Portions of some Software modules are licensed from Artifex Software, Inc. Portions of some modules may contain MySQL connector (under the GNU GPL v2 license at <http://www.gnu.org/licenses/gpl-2.0.html>). Portions of some modules may contain the MS access driver, licensed from Microsoft Corporation. Portions of some modules may be licensed under the Microsoft Reciprocal License (MS-RL) <http://opensource.org/licenses/ms-rl>. Portions of some Software modules are licensed under the Apache License, Version 2.0; you may not use these files except in compliance with the Apache License. The Apache License is available at <http://www.apache.org/licenses/LICENSE-2.0>. Unless required by applicable law or agreed to in writing, software distributed under the Apache License is distributed on an “AS IS” BASIS, WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, either express or implied. See the Apache License for the specific language governing permissions and limitations under the Apache License. Portions of some Software modules are licensed under the MIT Expat License. This EULA also incorporates the terms of the Verifone Pass Through Terms of Use and Windcave End User License Agreement attached hereto, as applicable to your purchase. This EULA also governs any future releases, revisions, or enhancements to the Software that EnvisionWare may furnish to you. Your rights and obligations with respect to the use of this Software are as follows:

A. You may:

- i. use the Software on the quantity and type of computers indicated on EnvisionWare

invoice. You may make that number of copies of the Software licensed to you by EnvisionWare.

- ii. make one copy of the Software for archival purposes, or copy the Software onto the hard disk of your computer and retain the original for archival purposes;
- iii. use the Software on a network, provided that you have a licensed copy of the Software for each computer that can access the Software over that network; and,
- iv. make printed copies of electronic documentation for your internal use.

B. You may not:

- i. transfer, assign, convey, sublicense, rent or lease the Software (or any portion thereof) to another person or entity or unlicensed division, subsidiary, or affiliate (or to anyone other than the entity named as licensee as appearing on the software splash screen), other than to a successor agency, and any transfer in violation hereof shall be of no power or effect;
- ii. distribute, sell, sublicense, rent, lease or use the Software (or any portion thereof) for time sharing, hosting, service provider or like purposes, except as expressly permitted under this Agreement;
- iii. reverse engineer, decompile, disassemble, modify, translate, make any attempt to discover, modify or use the source code, underlying ideas, algorithms, file formats or programming interfaces of the Software by any means whatsoever (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions), or create derivative works from the Software (any such modifications shall automatically be owned by EnvisionWare upon creation);
- iv. utilize any equipment, device, software, or other means designed to circumvent or remove any form of product key or copy protection used by EnvisionWare in connection with the Software, or use the Software together with any authorization code, product key, serial number, or other copy protection device not supplied by EnvisionWare or through an authorized distributor or reseller;
- v. use the Software to develop or facilitate development of a product which is competitive with any EnvisionWare product offerings;
- vi. post or otherwise publish electronic documentation of the Software for access outside the licensed organization;
- vii. use a previous version or copy of the Software after you have installed a replacement set or an upgraded version and, upon upgrading the Software, all copies of the prior version must be uninstalled or rendered unusable;
- viii. use a later version of the Software than is provided in the email with the login credentials except as provided under the Software Product Warranty, unless you have purchased maintenance and update service or have otherwise separately acquired the right to use such later version;
- ix. remove any product identification, proprietary, copyright or other notices contained in the Software;
- x. provide any product key or login information to a third party; or
- xi. use the Software or product keys in any manner not expressly authorized by this EULA.

2. Thirty Day Money Back Guarantee; Termination for Insufficient Funding:

A. If you are the original licensee of the Software and are dissatisfied with it for any reason, and if at any time during the thirty (30) day period following the Effective Date you

email EnvisionWare confirming your complete removal and deletion of the complete product and provide a signed statement to EnvisionWare attesting to removal of all software components, then EnvisionWare will provide a full refund, subject to the provisions of the Hardware Return Policy below.

B. In the event sufficient funds for the performance of this Agreement are not appropriated by you in any fiscal year covered by this Agreement, you may terminate this Agreement by providing thirty (30) days' prior written notice, provided that you shall pay all undisputed amounts owed up to the effective date of such termination. EnvisionWare will not be reimbursed any costs amortized beyond the initial term of the Agreement.

3. Hardware Return Policy: Custom printed RFID tags, manufactured, built-to-order or custom-configured Hardware as designated on a Quotation, such as but not limited to, kiosks or sorters, may not be returned or canceled for any reason. Custom items include any item listed in an EnvisionWare quotation, product description or order form as being a custom item, or any item which is modified by EnvisionWare after installation. Standard Hardware products may be accepted for return within ninety (90) days of the date of invoice subject to advance, written approval expressed in the form of an EnvisionWare Return Merchandise Authorization ("RMA"). EnvisionWare, at its sole discretion, may grant the right to return standard Hardware products during this return period. Any such returns are subject to a 20% restocking fee unless EnvisionWare determines that the cause of the return is a result of an error on the part of EnvisionWare, in which case EnvisionWare may waive all or part of the restocking fee. No Hardware product will be accepted for return for ANY reason without a Return Merchandise Authorization issued by EnvisionWare. The RMA number must be clearly displayed on any packaging shipped to EnvisionWare. Products returned without an RMA number on the package will be refused. Any return for any reason, whether for an authorized RMA or for warranty support must be shipped to EnvisionWare freight prepaid. Equipment serviced under warranty will be returned freight prepaid.

4. Limited Warranty; Disclaimer:

A. Software Product Warranty: EnvisionWare warrants that the Software as distributed operate in substantial conformity with the documentation (the "Software Product Warranty") for a period of one (1) year from the delivery of the Software to you (the "Software Warranty Period"). This is the sole warranty EnvisionWare provides for all Software supplied by EnvisionWare, unless specifically stated otherwise in EnvisionWare's quotation. EnvisionWare does not warrant that your use of the Software will be uninterrupted or error-free. EnvisionWare's sole liability (and your sole remedy) in the event of a breach of this Product Warranty will be that EnvisionWare will, in EnvisionWare's sole discretion, (A) use commercially reasonable efforts to provide you with an error correction or a work-around which corrects the reported non-conformity or (B) if EnvisionWare determines such remedies to be impracticable within a reasonable period of time, refund the money you paid for the Software being returned. EnvisionWare does not warrant that the Software will meet your requirements or that operation of the Software will be uninterrupted or that the Software will be error-free. EnvisionWare provides Software product support through the reseller from whom you purchased the Software or directly from EnvisionWare for a period of twelve (12) months from date of delivery of the Software.

B. Hardware Product Warranty: EnvisionWare warrants that EnvisionWare-branded hardware as distributed will be free from material defects (the "Hardware Product Warranty") for a period of one (1) year from the date of delivery of the EnvisionWare-brand hardware to you (the "Hardware Warranty Period"). Other Hardware components supplied to you by EnvisionWare that are not manufactured or branded by EnvisionWare are covered by the warranties provided by the product manufacturer. EnvisionWare shall have no obligation with

respect to a warranty claim unless notified of such claim within the applicable Software or Hardware Warranty Period. The term “delivery” in this Section 4 means, with respect to Software, the date of invoice, and, with respect to Hardware, “delivery” means the date that the Hardware is delivered to your facility.

C. Exclusions: The above warranties shall not apply: (i) to the extent of issues or problems if the Software or Hardware is used with hardware or software not specified in the documentation; (ii) if any modifications are made to the Software or Hardware by you or any third party; (iii) to defects in the Software or Hardware that are due to accident, abuse or improper use by you or your contractors; or (iv) to any evaluation version or other Software or Hardware provided on a no-charge or evaluation basis. Any replacement Software or Hardware will be warranted for the remainder of the original applicable Software Warranty Period or Hardware Warranty Period.

D. Professional Services Warranty. For any Professional Services provided pursuant to Section 13 below, EnvisionWare warrants that the services will be performed in a workmanlike manner, and that if any Professional Services are not so performed and if you notify EnvisionWare in writing within thirty (30) days after the provision of the particular Professional Service that the services are not performed properly, EnvisionWare will re-perform such services at no charge to you (the “Professional Services Warranty”). Your sole and exclusive remedy of any breach of this Professional Services Warranty is for EnvisionWare to re-perform such services.

E. THE ABOVE SOFTWARE PRODUCT WARRANTY AND HARDWARE PRODUCT WARRANTY ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, ALL OF WHICH ARE SPECIFICALLY DISCLAIMED. THE SOFTWARE PRODUCT WARRANTY AND THE HARDWARE PRODUCT WARRANTY GIVE YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHER RIGHTS, WHICH VARY FROM STATE TO STATE AND COUNTRY TO COUNTRY.

F. EnvisionWare uses virus protection scanning software to scan the Software prior to installation and to the best of EnvisionWare’s knowledge as of the installation date, the Software, when installed, does not contain or otherwise introduce any computer virus or any harmful or destructive code which could damage or harm your computers; however, EnvisionWare cannot guarantee that benign or harmful viruses or other malware will not enter your computers or systems.

5. Personal Information:

A. In the event that your (or your users’) use of the Software currently or in the future involves the transmitting, uploading, downloading, storage, management, manipulation or other use of personal information (as defined by the Gramm-Leach-Bliley Act, Payment Card Industry Security Standards Council or other applicable standards or rules relating to electronic transaction processing and personal information, such information referred to herein as “Personal Information”), you agree to the following provisions:

i. You shall maintain as confidential any Personal Information.

ii. You covenant that you have, as of the Installation Date become and currently are PCI and HIPAA (as applicable) compliant and shall maintain compliance and/or certification under the PCI (Payment Card Industry), PCI-DSS, HIPAA and other relevant and applicable standards relating to electronic transaction processing and personal healthcare information existing as of the Effective Date and as promulgated thereafter.

iii. If you are de-certified, have your compliance proof expire or are threatened with de-certification, you shall notify EnvisionWare in writing within ten (10) days of such de-certification or threat thereof.

B. EnvisionWare shall use commercially reasonable technical, organizational, and administrative data security measures designed to maintain the security and confidentiality of your Personal Information entered into the Software, but EnvisionWare is not liable for the confidentiality of any Personal Information in the event of unauthorized access, theft or use of such Personal Information, either by you, your users, or by third parties who access such Personal Information through your systems or unauthorized use of your login credentials, other than to the extent due to the negligence of EnvisionWare or its representatives, agents, or contractors, in breach of EnvisionWare's obligations under this Agreement.

C. EnvisionWare acknowledges that you may be required to periodically demonstrate to third parties your compliance and that of your applicable vendors with the PCI-DSS standards (Payment Card Industry Data Security Standard) of all the system components used to process, store or transmit "PCI cardholder data" (as that term is defined by PCI-DSS), and any other component that resides on the same network segment that those system components, hereafter known as "System Components in Scope." Some of those system components and/or processes have been outsourced to EnvisionWare's service providers (e.g., Verifone, Windcave, Chase Exact, SecurePay, or the like) ("Service Providers"). Those portions of the system hardware and software developed by EnvisionWare are out of scope for PCI compliance since no PCI cardholder data passes through any EnvisionWare-developed component. Accordingly, EnvisionWare is not required to be PCI compliant. All System Components in Scope are provided by Service Providers.

Service Providers will achieve and maintain PCI DSS compliance against the current version of PCI DSS published on the PCI SSC (PCI Security Standards Council) website. EnvisionWare's Service Providers with System Components in Scope have represented to EnvisionWare that they are compliant. As evidence of compliance, Service Providers will provide, when requested, a current attestation of compliance ("AOC") signed by a PCI QSA (Qualified Security Assessor). AOCs are available for download from EnvisionWare's Customer Center on EnvisionWare's website at <http://support.envisionware.com>. Service Providers have represented to EnvisionWare that they will create and maintain reasonably detailed, complete and accurate documentation describing the systems, processes, network segments, security controls, and dataflow used to receive, transmit, store and secure Customer's PCI cardholder data. Such documentation will conform to the most current version of PCI DSS. Service Providers have represented to EnvisionWare that they will, upon written request by you, make such documentation and the individuals responsible for implementing, maintaining and monitoring those system components and processes available to: a) QSAs, forensic investigators, consultants or attorneys retained by you to facilitate audit and review of your PCI-DSS compliance and b) your IT Audit Staff.

EnvisionWare maintains protective coverage for PCI breach protection in the United States in the amount of \$100,000.00 per breach incident (not per individual affected), which will cover the costs of responding to a breach or a suspected breach caused by the eCommerce system.

D. The obligations of the parties under this Section 5 shall survive any expiration or termination of this EULA.

6. Data:

A. CUSTOMER DATA. In connection with the Software and any related hardware or services provided by EnvisionWare, EnvisionWare may collect and maintain data and information provided by you, your patrons and users (collectively, "Customer Data"). As

between EnvisionWare and you, all Customer Data shall be and remain owned by you and be your property. EnvisionWare shall maintain the aspects of all Customer Data that identify an individual as confidential. All third parties authorized by EnvisionWare which may have access to the Customer Data shall be under obligations of confidentiality to maintain the Customer Data as confidential.

B. USE OF CUSTOMER DATA.

- i. EnvisionWare shall have the right to use Customer Data solely for the purposes of support, maintenance, testing, correction, development, and improvement of EnvisionWare's products and services ("Approved Purposes"). EnvisionWare shall maintain Customer Data as confidential. EnvisionWare shall maintain the security and confidentiality of Customer Data in compliance with all applicable laws and regulations regarding the use, confidentiality and security of nonpublic personal information.
- ii. "Anonymize" means to irreversibly process Personal Information in such a way that the data can no longer be attributed to a specific individual. All Anonymized Data shall be the sole property of EnvisionWare. EnvisionWare may use, disseminate, share, or transfer the Anonymized Data or any portion thereof in any way EnvisionWare chooses, so long as these uses are for the Approved Purposes as defined in this Section 6.
- iii. EnvisionWare's rights and obligations under this Section 6B shall survive any expiration or termination of this Agreement.

C. ENVISIONWARE DATA. EnvisionWare may also collect data and information in connection with the service that EnvisionWare provides generally (but not including Customer Data) through its services ("EnvisionWare Data"). You acknowledge and consent that the Software may communicate (e.g., via an outbound or inbound call using SSL) with EnvisionWare's servers (which may be hosted by a third-party service provider) and support personnel, or vice versa, to communicate diagnostic, event logs, support, licensing, compliance, and other information (which is included in the definition of EnvisionWare Data). Some communication may be done automatically by the Software without your needing to be involved, other communication may be at your initiation (e.g., uploading logs) or initiated by EnvisionWare. All such EnvisionWare Data shall be the sole property of EnvisionWare.

7. Confidential Information: Each party agrees that all code, inventions, know-how, business, technical and financial information it obtains ("Receiving Party") from the disclosing party ("Disclosing Party") constitute the confidential property of the Disclosing Party ("Confidential Information"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any software, documentation or technical information provided by EnvisionWare (or its agents), and performance information relating to the Software, shall be deemed Confidential Information of EnvisionWare without any marking or further designation except as such disclosure is required by California Public Records Act requirements. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Receiving Party who had no access to such information; or (e) is required to be disclosed

pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law. The obligations under this Section 7 shall, with respect to Confidential Information, continue for a period of two (2) years after disclosure and, with respect to any information considered by and treated as a trade secret by the Disclosing Party, continue until the trade secret status has been lost.

8. Indemnification:

A. Infringement. Subject to the terms of this EULA, EnvisionWare shall indemnify and hold harmless you and your officers, directors, employees and agents from and against all third party actions, suits, proceedings, claims, losses, liabilities, damages, and expenses (including attorneys' and experts' fees and sums reasonably expended in investigation and settlement of litigation, pending or threatened), to the extent such claim alleges that the Software (in each case as provided by EnvisionWare) infringes any copyright, U.S. patent right, trade secret right, or other intellectual property right provided, however, that you must comply with the following terms: EnvisionWare must have received from you: (i) prompt written notice of such claim (but in any event notice in sufficient time for EnvisionWare to respond without prejudice); (ii) subject to the provisions of this Section 8A with respect to settlement, the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of such claim; and (iii) all reasonable necessary cooperation by you. Notwithstanding the foregoing, any settlement offer relating to a claim described herein for which you would have liability must be presented to the Monterey County Board of Supervisors (the "Board"), and the Board must consent to any settlement offers proposed by EnvisionWare. The Board's consent to such offers shall not be unreasonably withheld, delayed, or conditioned. In the event that the Software is, or in EnvisionWare's sole opinion is likely to be, enjoined or subject to a claim due to the type of infringement described in this Section 8, EnvisionWare, at its option and expense, may (a) replace the Software with functionally equivalent non-infringing Software or (b) obtain a license for your continued use of the Software, or, if the foregoing alternatives are not reasonably available to EnvisionWare, (c) terminate this EULA and refund a pro rata amount, as determined by EnvisionWare, of the purchase price of the Software and Hardware. Notwithstanding the above, EnvisionWare shall have no liability for any infringement claim which: (i) pertains to any Software that has been altered or modified without EnvisionWare's prior written approval; (ii) is based on use of the Software in conjunction with any item not provided by EnvisionWare, unless such use is shown to constitute the infringement when not used in conjunction with the item not provided by EnvisionWare; (iii) pertains to any unauthorized use of the Software; (iv) pertains to an unsupported release of the Software; or, (v) pertains to any Open Source Software or other third party code provided with the Software. THIS SECTION 8 SETS FORTH ENVISIONWARE'S SOLE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

B. EnvisionWare shall indemnify, defend and hold you harmless from any losses (including, but not limited to, damage awards, reasonable attorneys' fees and costs, cost of notification, remediation, and penalties) you incur due to any third party claim or action directly resulting from any Data Breach of your (or your patrons') Personal Information to the extent that such losses are due to the direct act or omission of EnvisionWare or its representatives, agents, or contractors. This Section 8B shall apply only for so long as you are under a written annual support agreement with EnvisionWare (for which you have fully paid) for the Software and applies only to the Software covered by such support agreement. Furthermore, if you allow such

support agreement to expire and subsequently purchase a support agreement, the obligations under Section 8B shall not apply to any third party claims arising from or during the period for which no support agreement was active.

9. Limitation of Liability: SOME STATES AND COUNTRIES, INCLUDING MEMBER COUNTRIES OF THE EUROPEAN ECONOMIC AREA, DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE LIMITATION OR EXCLUSION BELOW MAY NOT APPLY TO YOU. NOTHING IN THIS AGREEMENT SHALL BE TAKEN TO EXCLUDE OR LIMIT EITHER PARTY'S LIABILITY (A) FOR FRAUD OR FRAUDULENT MISREPRESENTATION; (B) FOR GROSS NEGLIGENCE, INTENTIONAL, WILLFUL, OR CRIMINAL MISCONDUCT; (C) FOR DEATH, PERSONAL INJURY, OR TANGIBLE PROPERTY DAMAGE CAUSED BY ITS GROSS NEGLIGENCE; (D) BREACH OF CONFIDENTIALITY; (E) BREACH OF THE SECURITY OF CUSTOMER DATA; (F) ANY INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT; OR (G) TO THE EXTENT THAT SUCH EXCLUSION OR LIMITATION IS NOT OTHERWISE PERMITTED BY LAW. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL ENVISIONWARE OR ITS LICENSORS BE LIABLE TO YOU FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS (OTHER THAN THOSE CONTAINED IN THE SOFTWARE), INTERRUPTION OF BUSINESS OR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY OR SIMILAR DAMAGES, INCLUDING ANY LOST PROFITS ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE OR HARDWARE, EVEN IF ENVISIONWARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO CASE SHALL ENVISIONWARE'S OR ITS LICENSORS' TOTAL LIABILITY (A) FOR ANY SOFTWARE AND HARDWARE PRODUCTS COVERED UNDER THIS EULA, EXCEED TWO (2) TIMES THE PURCHASE PRICE FOR THE SOFTWARE AND HARDWARE OR (B) FOR ANY SERVICES, EXCEED TWO (2) TIMES THE FEES PAID BY YOU FOR THE SERVICES (EXCLUDING MAINTENANCE AND SUPPORT SERVICES) WHICH DIRECTLY CAUSED THE DAMAGES ALLEGED.

The disclaimers and limitations set forth above in this Section 9 will apply regardless of whether you accept the Software or Hardware or Professional Services. The parties agree that the limitations specified in this Section 9 will survive any expiration or termination of this EULA and apply even if any limited remedy specified in this EULA is found to have failed of its essential purpose.

10. U.S. Government Restricted Rights: RESTRICTED RIGHTS LEGEND. All EnvisionWare Software and documentation are commercial in nature. The Software and documentation are "Commercial Items", as that term is defined in 48 C.F.R. section 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are defined in 48 C.F.R. section 252.227-7014(a)(5) and 48 C.F.R. section 252.227-7014(a)(1), and used in 48 C.F.R. section 12.212 and 48 C.F.R. section 227.7202, as applicable. Consistent with 48 C.F.R. section 12.212, 48 C.F.R. section 252.227-7015, 48 C.F.R. section 27.7202 through 227.7202-4, 48 C.F.R. section 52.227-14, and other relevant sections of the Code of Federal Regulations, as applicable. EnvisionWare's computer Software and software documentation are licensed to United States Government end users with only those rights as granted to all other end users, according to the terms and conditions contained in this EULA. The manufacturer is EnvisionWare, Inc., 1960 Satellite Blvd., Suite

4100, Duluth, GA 30097-4127 USA.

11. Export Compliance: You acknowledge that the Software is subject to export restrictions by the United States government and import restrictions by certain foreign governments. You shall not, and shall not allow any third-party hired or under contract by you, to, remove or export from the United States or allow the export or re-export of any part of the Software or any direct product thereof: (i) into (or to a national or resident of) any embargoed or terrorist- supporting country; (ii) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (iii) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or

(iv) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority.

12. Third-Party Code: The Software may contain or be provided with components subject to the terms and conditions of "open source" or freeware software licenses ("Open-Source Software"). Licenses for open source are identified in Section 1. To the extent required by the license that accompanies the Open-Source Software, the terms of such license will apply in lieu of the terms of this EULA with respect to such Open Source Software, including, without limitation, any provisions governing access to source code, modification or reverse engineering.

13. Professional Services: Upon request and agreement between the parties, EnvisionWare may provide consulting, training, installation, development, customization, report creation or other services ("Professional Services"). You may order Professional Services under a Statement of Work ("SOW") describing the work to be performed, fees and any applicable milestones, dependencies and other technical specifications or related information. Each SOW must be signed by both parties before EnvisionWare shall commence work under such SOW. If the parties do not execute a separate SOW, the Services shall be provided as stated on the invoice. EnvisionWare shall be deemed the sole owner of any work product created and deliverables (including any documentation, code, Software, training materials or other work product) (collectively referred to as the "Deliverables") delivered pursuant to the Professional Services, whether created solely by EnvisionWare or jointly with you or your contractors. Subject to your full payment of any and all fees pursuant to the applicable SOW, EnvisionWare grants to you the limited, nontransferable right to use any Deliverables delivered as part of the Professional Services solely in connection with your permitted use of the Software, subject to all the same terms and conditions as apply to your Software license (including the restrictions set forth in Section 1B), and subject to any additional terms and conditions provided with the Deliverables. EnvisionWare provides the Professional Services Warranty as stated in Section 4D above.

14. Governing Law; Jurisdiction and Venue: This Agreement shall be governed by the laws of the State of California and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act, as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction.

15. Software Escrow: At your request, EnvisionWare is willing to set up and maintain the Software with EnvisionWare's independent U.S. escrow agent and make ongoing escrow deposits for significant updates. You would be responsible for additional fees for this service. Please contact EnvisionWare to for more information and pricing.

16. Insurance: EnvisionWare shall comply with the insurance requirements set forth in the customer agreement between the parties.

17. Purchase in Australia: If you purchase Software, Hardware, or services from EnvisionWare Pty Ltd or its partners, the laws of South Australia, Australia govern all warranty and service claims. EnvisionWare Pty Ltd is authorized to convey and effect all of the rights expressed in this EULA for its direct and indirect customers.

18. Contact Us: Should you have any questions concerning this EULA, or if you desire to contact EnvisionWare for any reason, please email info@envisionware.com or write to: EnvisionWare, Inc., 1960 Satellite Blvd., Suite 4100, Duluth, GA 30097-4127 USA, unless you purchase from an Asia Pacific country in which case, please write EnvisionWare Pty Ltd, 258 Payneham Road, Payneham, SA 5070 Australia. Revised Jan 2022 © 2002-2022 EnvisionWare, Inc. All Rights Reserved.

WINDCAVE, INC. END USER LICENSE AGREEMENT (EULA)

Windcave was formerly known as Payment Express (PX).

This WINDCAVE END USER LICENSE AGREEMENT (this "Agreement") is made as of the Effective Date (the date Customer signs this Agreement), by and between WINDCAVE INC., a California corporation ("PX"), and the party set forth on the signature page hereto ("Customer").

1. Definitions and Interpretation

1.1 **Definitions:** In this Agreement, unless the context indicates otherwise:

"Acquirer" means a bank or any financial institution or a card issuer of financial or non-financial transactions which receives and transmits Transactions via Windcave;

"Agreement" means this Agreement, and any attachments that may be agreed between the parties, as each may be amended in writing from time to time;

"Business Day" means any day of the week except Saturday, Sunday or a day on which banks are authorized or required to be closed in California;

"Chargeback" means the procedure by which a sales record or other indicia of a card transaction (or disputed portion thereof) is denied or returned to Bank or the card issuer after it was entered into the appropriate settlement network for payment, in accordance with the rules of Visa, MasterCard or a similar card association ("**Rules**"), for failing to comply with the Rules, including, without limitation by reason of cardholder disputes, the liability for which is Customer's responsibility and Customer agrees to pay.

"Confidential Information" means, in relation to either party, any information:

- a) relating to the terms of this Agreement;
- b) relating directly or indirectly to research or development by, accounting for, or the marketing of, the business of that party or its suppliers or customers;
- c) disclosed by that party to the other party on the express basis that such information is confidential; or
- d) which might reasonably be expected by the other party to be confidential in nature;

"Customer" means the customer specified on the first page of this Agreement and where applicable includes its employees, contractors and agents.

"Documentation" means any user, training or system manuals for Windcave (whether in printed or electronic form) which describes and provides guidance on the use of Windcave (or any aspect of Windcave);

"Goods" means electronic devices produced by PX or sold by PX to Customer, Reseller, or a third party;

"Intellectual Property" means registered and unregistered trade marks (including logos and trade files), domain names, copyright, patents, petty patents, utility models, registered and unregistered designs, circuit layouts, rights in computer software, databases and lists, Confidential Information, software (whether in object code or source code), and all other rights anywhere in the world resulting from intellectual activity;

"Windcave" means the Windcave solution provided by PX for the transmission of data relating to Windcave Supported Transactions between a Customer and an Acquirer, incorporating the Software and including access (via the internet) to the Windcave Host;

"Windcave Host" means the PX host server known as Windcave Host to which Customer may be connected using the Software and which is in turn linked to an Acquirer to enable Windcave Supported Transactions to be processed in real time;

“Windcave Supported Transactions “ means transactions from Customers:

- a) accepting payment for goods and services by means of credit card, debit card, prepaid card, gift card or any other means of payment which PX agrees to support through Windcave from time to time;
- b) accepting loyalty cards, rewards cards, points cards, discount cards or club cards; or
- c) providing services in relation to the sale and use of any of the cards referred to in paragraphs (a) and (b) above including the issue of such cards and the crediting or debiting of value to such cards;

“Payment Manager “ means Windcave Merchant Portal which Customer is able to access by logging onto the PX Website with an assigned username and password;

“PCI Standards “ means the Payment Card Industry standards, requirements and guidelines issued by the Payment Card Industry Data Security Council from time to time including the Payment Card Industry Data Security Standard PIN Entry Device requirements and guidelines, and the Payment Application Data Security Standard;

“Permitted Use “ means the transmission to, and receipt from, an Acquirer of data relating to Windcave Supported Transactions and expressly excludes, without limitation, use for the processing of transactions of, or for the benefit of, any person other than Customer;

“Reseller “ means the party with whom Customer has entered into an agreement for the purchase of a license to Windcave;

“Reseller Agreement “ means the agreement between the Customer and the Reseller;

“PX “ means Windcave Inc., a corporation duly formed in California with offices in Los Angeles, California.

PX Logo means the PX logo supplied (in electronic format) by PX to Customer (as may be updated from time to time by PX);

“PX Website “ means the website maintained by PX and accessible by Customer for viewing transactions, data entry, refunding, report generating and other features related to Transactions;

“Software “ means the software and other related PX products which:

- a) form part of Windcave; and
- b) is owned or licensed by or developed by, or on behalf of, PX and supplied to Customer, including all upgrades, updates, alterations and modifications and other changes to such software by or on behalf of PX from time to time, but excluding any third party software and firmware forming part of, or supplied with, the Windcave solution;

“Transaction “ means a message pair consisting of a message relating to a Windcave Supported Transaction transmitted by Customer to an Acquirer through Windcave and a response to that message from the Acquirer to Customer through Windcave;

“Tokenized Data “ means data for which PX has substituted a sensitive data element with a non-sensitive equivalent that has no extrinsic or exploitable meaning or value.

1.2 **Interpretation:** In this Agreement, unless the context indicates otherwise:

- a) the singular includes the plural and vice versa;
- b) clause and other headings are for ease of reference only and will not affect this Agreement's interpretation;
- c) the term **“includes “** or **“including “** (or any similar expression) is deemed to be followed by the words without limitation;
- d) references to a **“person “** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental

or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;

- e) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done; and
- f) in the event of any inconsistency between the terms this Agreement and the terms of the Reseller Agreement, the terms of this Agreement will control.

2. Term

2.1 **Term:** This Agreement commences on the Effective Date and will continue until terminated under Clause 9 (the “Term”).

3. Customer Responsibilities

Customer represents and agrees that it:

- 3.1 **Power and Authority:** that it has full power and authority necessary to validly enter into and perform all its obligations under this Agreement
- 3.2 **Requirements:** to comply with the other party's reasonable security, confidentiality and operational requirements of which it has been given reasonable notice
- 3.3 **Suitability:** has made, and will continue to make, its own assessment of the suitability, adequacy, compatibility and appropriateness of Windcave for its purposes;
- 3.4 **Comply with Instructions:** will comply with PX's restrictions, instructions and Documentation in relation to the use of Windcave, including those set out in this Agreement;
- 3.5 **Use by Others:** will ensure that only authorized persons use Windcave and that Windcave is used only for the Permitted Use and as expressly authorized under this Agreement;
- 3.6 **Responsibility for Use:** will accept all responsibility for the reliance on and use of Windcave by Customer and its employees, contractors and agents;
- 3.7 **Obtain Equipment Etc.:** will obtain and maintain all equipment, software and services needed to enable it to receive and use Windcave;
- 3.8 **Accurate Customer Information:** warrants that all information provided by Customer to PX in the Application Form is accurate and correct, and that Customer will notify PX in writing if such information changes or ceases to be accurate in any way;
- 3.9 **Provide Sufficient Information:** will ensure that sufficient information is given to PX to enable PX to comply with its obligations under this Agreement and that such information is timely, complete and accurate;
- 3.10 **Personal Information:** acknowledges that any personal information concerning Customer or its personnel which is provided to PX by or on behalf of Customer may be:
 - a) used by PX for the purpose of providing Windcave, the Support Services and any other services to Customer; and
 - b) disclosed by PX to its affiliates and other services providers to enable PX to provide Windcave, the Support Services and any other services to Customer;
- 3.11 **Notify of Third Party Infringement:** will immediately notify PX upon becoming aware of any third party infringing PX's Intellectual Property rights in any manner;
- 3.12 **Responsible for Connecting to Windcave Host:** is responsible for all charges and costs associated with connecting to the Windcave Host to operate Windcave. PX will provide Customer with reasonable technical information and Software necessary to enable Customer to connect to the Windcave Host; and
- 3.13 **Comply with Law Generally:** will comply with all relevant laws in its use of Windcave and carrying out its obligations under this Agreement.

3.14 Requisite Review of Payline Portal: will review Customer's Payline portal, established by PX, with due care on a daily basis for transaction errors. If an error is discovered by Customer, Customer will notify PX in writing within three (3) Business Days of the date such error occurs; provided that PX will have no liability or obligations of any kind with respect to errors that are not reported to PX within such three (3) Business Day period. In addition, Customer shall be required to review with due care its bank settlement files on a daily basis to ensure deposits occur without error. If an error is discovered by Customer in the course of such review, Customer will notify PX in writing within three (3) Business Days of the date of such error occurring; provided that PX will have no liability or obligations of any kind with respect to errors that are not reported to PX within such three (3) Business Day period. PX's liability under this Section 3.14 (Requisite Review of Payline Portal) of the Agreement is governed by, and fully subject to, the terms of Section 9 of this Agreement.

3.15 Improperly Deposited Funds: will return funds that PX deposits in Customer's bank account(s) that do not rightfully belong to Customer ("Improperly Deposited Funds") without offset or delay. Customer will return all Improperly Deposited Funds to PX within five (5) calendar days of a written request to do so by PX. If Customer fails to comply with the terms of this Section, PX may immediately suspend services to Customer until Customer returns the Improperly Deposited Funds. Customer will be liable to PX for the Improperly Deposited Funds, and all costs (including legal costs on an attorney-client basis) incurred by PX in recovering the Improperly Deposited Funds.

3.16 Return of Old Goods: For Goods that Customer ceases using for the Permitted Use ("Unused Goods"), Customer will return such Unused Goods to PX within 30 calendar days. Unused Goods include, but are not limited to, Goods Customer has ceased using due to the Goods becoming obsolete, Goods that no longer operate, and Goods that are replaced per warranty. Customer will pay all shipping fees and costs associated with returning the Unused Goods to PX. Alternatively, instead of returning Unused Goods to PX, Customer may provide PX a secure destruction certificate evidencing that the Unused Goods were destroyed in compliance with the Security Standards within the same 30 calendar day period.

4. Disclaimer of Warranties

4.1 Limitations on Warranties: To the fullest extent permitted by law, except as expressly set out in this Agreement, PX disclaims and excludes all warranties, conditions, terms, representations or undertakings, whether express, implied, statutory or otherwise, including any condition or warranty of merchantability or fitness for a particular purpose. PX does not warrant that:

- a) Windcave, the Software or the Documentation will meet Customer's requirements; or
- b) Windcave, the Software and the Documentation will be uninterrupted or error free, or that all errors will be corrected.

Customer understands and acknowledges that an authorization obtained through Windcave only confirms the availability of the cardholder's credit at the time of the authorization. It does not warrant that the person presenting the card is the rightful cardholder, nor is it an unconditional promise, guarantee or representation by Bank, processor or PX that a transaction is or will be deemed valid and not subject to dispute, debit or chargeback.

4.2 No Requirement to Decrypt Tokenized Data: PX will at no time be obligated to decrypt and transmit Tokenized Data to Customer or any third party.

5. Intellectual Property

All Intellectual Property rights in Windcave, the Software, the Documentation and any work or thing developed or created by or on behalf of PX under or in connection with this

Agreement (such work or thing being **Developed Works**), are exclusively owned by PX (or PX's licensors or suppliers). Customer acknowledges that there is no transfer of title, Intellectual Property rights or ownership of:

- a) Windcave, the Software, the Documentation or any part thereof; or
- b) any Developed Works; to Customer under this Agreement and Customer will not dispute PX's (or PX's licensors or suppliers) ownership of the property referred to in this clause 5.

6. Indemnity

Customer shall indemnify PX (and at PX's sole discretion, defend PX) at all times against any liability, loss, damage or cost (including attorney's fees) suffered or incurred by PX and all actions, proceedings, claims or demands made against PX as a result of any negligent act or omission or any breach of this Agreement by Customer, its personnel or agents.

7. Liability

7.1 **Remedy:** Subject to clauses 7.2 and 7.3, Customer's sole and exclusive remedy for breach of any warranty or of any of PX's obligations under this Agreement is (at PX's option) the supply or re-supply of Windcave, the Goods, the Software, or the Documentation or the refund or waiver of Fees for the relevant part of Windcave the Goods, the Software, or the Documentation which is the subject matter of, or directly related to, the breach.

7.2 **Limitation:** In no event will PX's total liability to Customer under this Agreement for any reason exceed the amount of \$1,000.

7.3 **Exclusion:** In no event will PX be liable to Customer whether in contract, tort (including negligence) or otherwise in respect of any:

- a) **punitive, incidental, indirect or consequential damages, damages for loss of profits, business interruption, loss of data, loss of goodwill, arising out of, or in connection with, this Agreement, in each case even if such party has been advised of the possibility of such damages;**
- b) **loss, damage, cost or expense suffered or incurred by Customer, to the extent this results from any act or omission by Customer; or any event described in part B, clause 11 (Force Majeure).**

8. Commercial Purpose

It is expressly acknowledged and agreed by Customer that Windcave, the Software and the Documentation are supplied to Customer for business and commercial purposes.

9. Termination

9.1 **PX Termination Upon Notice:** PX may terminate this Agreement without liability or obligation to Customer of any kind upon written notice to Customer if the Reseller Agreement expires or is terminated by Customer and/or Reseller for any reason.

9.2 **PX Termination for Cause:** PX may terminate this Agreement without liability or obligation to Customer of any kind at any time and with immediate effect by written notice to Customer:

- a) if Customer breaches any of its obligations under this Agreement; or
- b) if Customer fails to pay any amounts due to Reseller pursuant to the Reseller Agreement; or
- c) goes into voluntary or involuntary bankruptcy or liquidation or has a receiver appointed.

9.3 **Customer Termination:** Customer may terminate this Agreement if PX breaches any of its obligations under this Agreement and fails to cure such breach within 10 Business Days after receipt of written notice of such breach.

9.4 **Consequences:** Termination of this Agreement will not affect the rights or obligations of the parties which have accrued prior to or accrue on termination or which by their nature are intended to survive termination (including clauses 3-7, 10, 13, and 14, together with those clauses which are incidental to, and required in order to give effect to, those clauses). Upon termination of this Agreement, Customer must immediately cease use of Windcave, the Software and the Documentation.

10. Confidentiality

10.1 **Confidential Information:** Each party will maintain as confidential at all times, and will not at any time, directly or indirectly:

- a) disclose or permit to be disclosed to any person;
- b) use for itself or to the detriment of the other party; any Confidential Information of the other party except as, and then only to the extent:
 - i) required by law;
 - ii) that the information is already or becomes public knowledge, otherwise than as a result of a breach, by the receiving party, of any provision of this Agreement;
 - iii) that the information is disclosed to the receiving party, without restriction, by a third party and without any breach of confidentiality by the third party;
 - iv) that the information is developed independently by the receiving party without reliance on any of the Confidential Information of the other party;
 - v) authorized in writing by the other party; or
 - vi) reasonably required by this Agreement (and, without limiting the effect of this clause, a party may disclose Confidential Information of the other party only to those of its officers, employees or professional advisers on a "need to know" basis, as is reasonably required for the implementation of this Agreement).

10.2 **PX's Intellectual Property:** Customer acknowledges and agrees that the computer programs, computer software, specifications, data, images, designs, codes, and configurations contained in or utilized by the equipment and PX's network are proprietary and confidential to PX and protected under United States copyright law. Customer shall not copy, modify, adopt, translate, merge, reverse engineer, decompile, or disassemble, the equipment or Software, or create any derivative works based on the equipment, PX network or Software. Without limiting the effect of clause 10.1, Customer will treat information about PX's Intellectual Property as Confidential Information of PX.

11. Force Majeure

11.1 Customer acknowledges that PX relies on third-party providers in the delivery of its services, including, but not limited to, wireless data network providers, cellular radio service provided by third parties that is available only when within the operating range of cellular systems, and cellular service is subject to transmissions limitations and dropped or interrupted transmissions. Cellular service may be temporarily refused, limited, interrupted, or curtailed because of government regulations or orders, atmospheric and/or topographical conditions, and cellular system modifications, repairs, and upgrades. Customer agrees that PX shall not be liable for, and to hold PX harmless for any losses, damages, or business interruptions sustained as a result of interruptions caused by its wireless data network providers or any other third-party provider.

11.2 Neither party (the "**Affected Party**") shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by

- a) fire, flood, elements of nature or other acts of God

- b) any outbreak or escalation of hostilities, war, riots or civil disorders in any country;
- c) any act or omission of the other party or any government authority;
- d) any labor disputes (whether or not employees' demands are reasonable or within the party's power to satisfy); or
- e) the nonperformance by a third party for any similar cause beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications or other equipment such as described in clause 11 (Force Majeure).

11.3 In any such event, the Affected Party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable, provided that:

- a) **Notice:** whenever the Affected Party becomes aware that such a result has occurred or is likely to occur, the Affected Party will, as soon as practicable, notify the other party by written notice accordingly;
- b) **Continued Performance:** each party will continue to use commercially reasonable efforts to perform its obligations as required under this Agreement; and
- c) **No Deemed Acceptance of Extra Costs:** neither party will be deemed to have accepted any liability to pay or share any extra costs which may be incurred by the other party in complying with this clause or otherwise resulting from such act, omission or failure; and
- d) **Charges:** this clause 11.3 will not apply in respect of Customer's obligation to pay any charges or Fees payable under this Agreement.

12. License

12.1 **Grant of License:** PX grants to Customer a limited, non-exclusive, non-transferable, non-assignable, revocable license to use Windcave, the Software and the Documentation for the Term of this Agreement solely for the Permitted Use. Any other use or dealings with Windcave, the Software or the Documentation without the prior written consent of PX will be a material breach of this Agreement. Except to the extent specifically authorized under this Agreement, Customer must not sub-license, transfer, assign, rent or sell any of Windcave, the Software or the Documentation or the right to use Windcave, the Software or the Documentation.

12.2 **PX Warranty:** PX warrants that PX has the right and authority to grant to Customer the license set out in clause 12.1, in accordance with the terms of this Agreement.

13. Terms of Use

13.1 **Adequacy:** Customer must satisfy itself as to the adequacy, appropriateness and compatibility of Windcave for its requirements. Without limiting the foregoing, Customer acknowledges that it has not relied on any statements or representations on the part of PX as to performance or functionality, verbal or otherwise, except as expressly recorded in this Agreement.

13.2 **PX Logo:** If Customer uses a capture method for credit or debit card processing using a system which is not hosted by PX, Customer agrees to display the PX Logo in a readily visible position on the user interface of Customer's system where the credit or debit card data is captured. The PX Logo must not be altered or used for any other purpose without the prior written consent of PX.

13.3 **Compliance:** If Customer is not compliant with one or more of the Security Standards, Customer must not capture or store any credit or debit card number or expiry date locally on Customer's or a non-compliant third party's system.

13.4 **No Right to Copy, Alter or Modify:** Customer may make a reasonable number of

copies of the Software for backup and disaster recovery purposes only. Except for such back-up copies, Customer must not, and must not permit any other person to, copy, reproduce, translate, adapt, vary, repair or modify all or any part of Windcave, the Software or the Documentation by any means or in any form without PX's prior written consent.

13.5 **Permitted Use:** Customer may not:

- a) use Windcave, the Software or the Documentation for any purpose other than the Permitted Use; or
- b) use the Software independently of the other components of Windcave unless PX has given prior written consent to do so.

If this Agreement is terminated, Customer's right to use Windcave, the Software and the Documentation will automatically terminate and Customer must immediately remove all copies of the Software from its system(s) and return Windcave, the Software and the Documentation to PX

13.6 **Reverse Engineering:** Customer must not, and must not permit any other person to, reverse assemble or decompile the whole or any part of the Software.

13.7 **No Third Party Use:** Except as expressly provided for in this Agreement, the Customer must not provide, or otherwise make available, Windcave, the Software or the Documentation or any component thereof in any form to any person (a "Third Party") without the prior written consent of PX. If PX grants such consent, Customer must ensure that the Third Party complies with the provisions of clauses 5, 10, 12, and 13 (so far as those provisions relate to Customer) as if the Third Party were a party to this Agreement. Customer will be liable to PX for all acts or omissions of any Third Party in contravention of the provisions of clauses 5, 10, 12, and 13.

14. General

14.1 **Entire Agreement:** This Agreement including all schedules hereto records the entire arrangement between the parties relating to all matters dealt with in this Agreement and supersedes all previous arrangements, whether written, oral or both, relating to such matters.

14.2 **Disputes:** The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within 15 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within 30 days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place. If the parties fail to negotiate a resolution to a dispute within a reasonable time (not exceeding 20 Business Days from formal notice of the dispute being given by one party to the other), either party may require that the dispute be submitted to mediation through JAMS, such mediation to take place in Los Angeles, California. A mediator shall be selected by mutual agreement or through procedures provided by JAMS. In such case:

- a) the mediator will not be acting as an expert or as an arbitrator;
- b) the mediator will determine the procedure and timetable for the mediation; and
- c) the parties will share equally the cost of the mediation.

All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or

discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

Neither party may issue any legal proceedings (other than for urgent interlocutory relief) relating to any dispute, unless that party has first taken all reasonable steps to comply with the dispute resolution process above. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this clause 14.2 above are pending and for 15 calendar days thereafter. The parties will take such action, if any, required to effectuate such tolling.

14.3 **Waiver:** No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by either party shall in any way limit or waive the right of such party to subsequently enforce and compel strict compliance with the provisions of this Agreement.

14.4 **Severance:** Any provision in this Agreement which is or becomes unenforceable, illegal or invalid for any reason shall be severed and shall not affect the enforceability, legality, validity or application of any other provision which shall remain in full force and effect.

14.5 **Assignment:** PX may assign all or any of its rights and obligations under this Agreement to any person without Customer's consent. Customer may not transfer or assign any of its liabilities or rights under this Agreement to any other person without PX's prior written consent.

14.6 **Amendment:** Except as expressly provided for in this Agreement, no amendment to this Agreement will be valid unless recorded in writing and signed by a duly authorized senior representative of each party.

14.7 **Governing Law and Jurisdiction:** This Agreement is governed by the laws of California. Subject to the terms of clause 14.2, the parties submit to the jurisdiction of the courts of the State of California in respect of all matters relating to this Agreement.

14.8 **Remedies:** The rights, powers and remedies provided in this Agreement are not exclusive of any rights, powers or remedies provided by law.

14.9 **Subcontracting:** PX may appoint subcontractors to perform any of its obligations under this Agreement.

14.10 **Notices:** Any notice or other communication to be given under this Agreement must be in writing and must be served by one of the following means and in respect of each is deemed to have been served as described:

- a) By personal delivery – when received by the party.
- b) By post by registered or ordinary mail – on the second working day following the date of posting in the United States mail to the addressee's registered office.
- c) By email – when acknowledged by the party orally or by return email or otherwise in writing.
- d) By facsimile – when sent to the correct facsimile number (with written transmission confirmation).

The addresses for the parties for Notices shall be as set out on Page 1 of this Agreement or such other address as either party specifies by notice in writing to the other given in accordance with this clause 14.10.

14.11 In the event of any conflict or inconsistency between this Agreement and the terms of a purchase order made by Customer to PX or a reseller of PX goods or services, this Agreement shall govern and control.