

Billers Agreement

1. License Grant & Restrictions. Subject to execution by Biller of the Invoice Cloud Biller Order Form incorporating this Agreement, Invoice Cloud hereby grants Biller a non-exclusive, non-transferable, worldwide right to use the Service described on the Biller Order Form until termination as provided herein, solely for the following purposes, and specifically to bill and receive payment from Biller's own customers, for Services that are referenced in the Biller Order Form. All rights not expressly granted to Biller are reserved by Invoice Cloud and its licensors.

Biller will provide to Invoice Cloud all Biller Data generated for Biller's Customers. Unless otherwise expressly agreed to in writing by Invoice Cloud to the contrary, Invoice Cloud will process all of Biller's Customers' Payment Instrument Transactions requirements related to the Biller Data and will do so via electronic data transmission according to our formats and procedures for each electronic payment type selected in the Biller Order Form. In addition, subject to Biller's approval at its sole and absolute discretion, Biller will execute all third-party applications and enter into all agreements required for the Service without unreasonable delay, including without limitation Payment Processing Agreements and merchant agreements that may be required upon implementation, or later at such time as the Service operates with different or multiple payment processors. Biller's approval of such applications and agreements shall not be unreasonably withheld, however, should the terms of such applications or agreements be unacceptable to Biller, the parties will collaborate to negotiate acceptable terms. If acceptable terms cannot be agreed upon within thirty (30) days of the commencement of such negotiations, Biller may immediately terminate the services of Invoice Cloud. Throughout the Term of this Agreement, for "Invoice Types" listed on the Biller Order Form (e.g., real estate taxes, utility bills, parking tickets, insurance premium, loans, etc.), Biller will not use the credit card processing, ACH or check processing of any bank, payment processor, entity, or person, other than Invoice Cloud via electronic data transmission or the authorization for processing of Biller's Customers' Payment Instrument Transactions, for each electronic payment method selected in the Biller Order Form.

Biller shall not: (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service in any way; (ii) modify or make derivative works based upon the Service; (iii) Recreate, "frame" or "mirror" any portion of the Service on any other server or wireless or Internet-based device; (iv) reverse engineer or access the Service; or (v) copy any features, functions or graphics of the Service.

2. Privacy & Security. Invoice Cloud's privacy and security policies may be viewed at <http://www.invoicecloud.com/privacy.html>. Invoice Cloud reserves the right to modify its privacy and security policies in its reasonable discretion from time to time which modification shall not materially adversely impact such policies. Invoice Cloud will maintain compliance with current required Payment Card Industry (PCI) standards and Cardholder Information Security standards.

3. Account Information and Data. Invoice Cloud does not and will not own any Customer Data in the course of providing the Service. Biller, not Invoice Cloud, shall have sole responsibility for the accuracy, quality, integrity, legality, and reliability of, and obtaining the intellectual property rights to use and process all Customer Data. In the event this Agreement is terminated, Invoice Cloud will make available to Biller a file of the Customer Data (to the extent that Invoice Cloud is permitted to provide pursuant to applicable law and PCI-DSS standards), within 30 days of termination of this Agreement (or at a later time if required by applicable law), if Biller so requests at the time of termination. Invoice Cloud will retain Customer Data for a period from its creation for the time frame that is listed in the Biller Order under "Data Retention", and reserves the right to remove and/or delete remaining Customer Data no less than 60 days after termination or expiration except as prohibited by applicable law or in the event of exigent circumstances.

4. Confidentiality / Intellectual Property Ownership. Invoice Cloud agrees that it may be furnished with or otherwise have access to Customer Data that the Biller's customers consider confidential. Invoice Cloud agrees to secure and protect the Customer Data in a manner consistent with the maintenance of Invoice Cloud's own Confidential Information, using at least as great a degree of care as it uses to maintain the confidentiality of its own confidential information, but in no event use less than commercially reasonable measures. Invoice Cloud will not sell, transfer, publish, disclose, or otherwise make available any portion of the Customer Data to third parties, except as permitted under this Agreement or required to perform the Service or otherwise required by applicable law. All ideas, memoranda, specifications, plans, procedures, drawings, photographs, descriptions, computer program data, input record data, written information, and other documents and data either created by or provided to Invoice Cloud in connection with the performance of this Agreement shall be held confidential by Invoice Cloud. Such materials shall not, without prior written consent of the Biller, be used by Invoice Cloud for any purposes other than the performance of the Service under this Agreement, nor shall such materials be disclosed to any person or entity not connected with the performance of the Services under this Agreement; provided, however, nothing herein shall be interpreted to prevent Invoice Cloud from disclosing such information as may be required by applicable law or by a court or agency of competent jurisdiction. Nothing furnished to Invoice Cloud which is otherwise known to Invoice Cloud or is generally known, or has become known absent breach of this Agreement, to the related industry shall be deemed confidential. Moreover, Invoice Cloud shall not use Biller's insignia or photographs relating to the project for which the services hereunder are rendered, or any publicity pertaining to such services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the Biller.

Invoice Cloud (and its licensors, where applicable) owns all right, title and interest, including all related Intellectual Property Rights, in and to the Invoice Cloud Technology, the Content and the Service and any enhancement requests, feedback, integration components, suggestions, ideas, and application programming interfaces, recommendations or other information provided by Biller or any other party relating to the Service. In the event any such intellectual property rights in the Invoice Cloud Technology, the Content or the Service do not fall within the

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specifically enumerated works that constitute works made for hire under applicable copyright laws or are deemed to be owned by Invoice Cloud, Biller hereby irrevocably, expressly and automatically assigns all right, title and interest worldwide in and to such intellectual property rights to Invoice Cloud. The Invoice Cloud name, the Invoice Cloud logo, and the product names associated with the Service are trademarks of Invoice Cloud or third parties, and no right or license is granted to use them.

Biller agrees that during the course of using or gaining access to the Service (or components thereof) it may be furnished with or otherwise have access to information that Invoice Cloud considers to be confidential including but not limited to Invoice Cloud Technology, the Agreement, customer and/or prospective customer information, product features and plans, the marketing/sales collateral, pricing and financial information of the parties which are hereby deemed to be Invoice Cloud Confidential Information, or any other information that by its very nature constitutes information of a type that any reasonable business person would conclude was intended by Invoice Cloud to be treated as proprietary, confidential, or private (the "Confidential Information"). Biller agrees to secure and protect the Confidential Information in a manner consistent with the maintenance of Invoice Cloud's rights therein, using at least as great a degree of care as it uses to maintain the confidentiality of its own confidential information, but in no event use less than reasonable efforts. Biller will not sell, transfer, publish, disclose, or otherwise make available any portion of the Confidential Information of the other party to third parties (and will ensure that its employee and agents abide by the requirements hereof), except as expressly authorized in this Agreement or otherwise required by applicable law, including, without limitation, the California Public Records Act. In the event that records required to be disclosed by Biller under applicable public records law contain Invoice Cloud's Confidential Information or trade secrets, Biller shall afford Invoice Cloud a reasonable opportunity to seek protective legal treatment for such Confidential Information or trade secrets as necessary prior to the disclosure of the requested records.

5. Billing. Invoice Cloud fees for the Service are provided on the Biller Order Form. Invoice Cloud's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities. Invoice Cloud may assess and/or collect such taxes, levies, or duties against Biller and Biller shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on Invoice Cloud's income. All payment obligations are payable on receipt of invoice from Invoice Cloud, and are non-cancellable, and all amounts or fees paid are non-refundable. Unless Invoice Cloud in its reasonable discretion determines otherwise, all fees will be billed in U.S. dollars. If Biller believes Biller's bill or payment is incorrect, Biller must provide written notice to Invoice Cloud within 90 days of the later of the invoice date, or the date of payment, with respect to the amount in question to be eligible to receive an adjustment or credit; otherwise such bill or payment is deemed correct. Invoice Cloud reserves the right to modify pricing with respect to applicable fees to be paid under this Agreement, at any time upon thirty days written notice to Biller: a) based on increases incurred by Invoice Cloud on Network Fees from credit card processors, bank card issuers, payment associations, ACH and check processors; or b) if, during the Term, the average credit card payment processed by Invoice Cloud for any three (3) consecutive month period exceeds 110% of the Average Credit Card Transaction \$ specified on the corresponding Invoice Parameter Sheet(s), to the extent that Invoice Cloud incurs increases in Network Fees. Invoice Cloud, on at least 30 days written notice to Biller, may also increase any or all fees referenced in the Biller Order Form (including any Invoice Parameter Sheets), by no more than 5%, provided, however, that such increase may not apply prior to three (3) years from the Effective Date and may not occur more than once per Renewal Term.

6. Term and Termination. The initial term of this Agreement shall commence as of the execution date of the Biller Order Form and continue until December 31, 2024 ("Initial Term"). The term will automatically renew for two (2) successive one (1) year terms, unless either party provides notice of intent to not renew at least thirty (30) calendar days prior to the expiration of the then-current term (each, a "Renewal Term"). The Term shall consist of the Initial Term and any subsequent Renewal Term. This Agreement may be terminated by either party with cause in the event of a material breach of the terms of this Agreement by the other party and the breach remains uncured for a period of 30 days following receipt of written notice by the breaching party. Biller may terminate this Agreement without cause upon thirty (30) days written notice of termination, except during the Initial Term. Upon termination of this Agreement, Biller shall remain liable for all fees and charges incurred for (i) transactions processed through the Service up to the effective date of termination, (ii) any periodic or recurring fees owed through the end of the calendar month following the effective date of termination, and (iii) any other services performed by Invoice Cloud up to the effective date of termination, provided such services are performed to the reasonable satisfaction of Biller. Upon termination or expiration of this Agreement, Biller agrees that Invoice Cloud may invoice Biller for such unpaid fees. For purposes of this section, the City Manager shall have authority to take action on behalf of Biller. Upon any termination or expiration of this Agreement, Biller's password and access will be disabled.

7. Invoice Cloud Responsibilities. Invoice Cloud represents and warrants that it has the legal power and authority to enter into this Agreement and grant the license(s) referenced herein. Invoice Cloud further warrants that the Service provided by Invoice Cloud does not contain any libelous material; *provided, however*, Invoice Cloud makes no warranty or representation with respect to any materials or portion of the Service which Invoice Cloud does not provide or is otherwise not in control of. By way of example, Invoice Cloud shall not be held liable under this provision for any data, content or materials provided by Biller or any other Invoice Cloud customer. Invoice Cloud warrants that the Service will materially perform the functions that the Biller has selected on the Biller Order Form and the Statement of Work, attached and incorporated by reference (the "Statement of Work"), under normal use and circumstances, and that Invoice Cloud shall use commercially reasonable measures with respect to Customer Data to the extent that it retains such, in the operation of the Service; provided, that the Biller shall maintain immediately accessible backups of the Customer Data (to the extent that Biller is permitted pursuant to applicable law and PCI-DSS standards). In addition, Invoice Cloud will, at its own expense, as the sole and exclusive remedy with respect to any deficiencies in the Transaction Data, correct any Transaction Data to the extent that such errors have been caused by Invoice Cloud or by malfunctions of Invoice Cloud's processing

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systems. Invoice Cloud hereby represents and warrants that it will use industry standard anti-virus software to prevent the introduction and/or spread of any viruses or other malicious code by the Services.

8. Limited Warranty EXCEPT AS PROVIDED IN SECTION 7, THE SERVICE AND ALL CONTENT AND TRANSACTION DATA IS PROVIDED WITHOUT ANY EXPRESS, OR IMPLIED WARRANTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER WARRANTIES ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY INVOICE CLOUD AND ITS LICENSORS AND PAYMENT PROCESSORS. INVOICE CLOUD AND ITS LICENSORS AND PAYMENT PROCESSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, OR (B) THAT THE SERVICE WILL NOT EXPERIENCE DELAYS IN PROCESSING OR PAYING, WHERE SUCH DELAYS ARE BEYOND THE REASONABLE CONTROL OF INVOICE CLOUD, ITS LICENSORS AND PAYMENT PROCESSORS. Invoice Cloud's service may be subject to commercially reasonable limitations, delays, and other problems inherent in the use of the internet and electronic communications. Invoice Cloud is not responsible for any delays, delivery failures, or other damage resulting from such problems beyond their reasonable control, and any excuse from performance shall be limited only to those delays, delivery failures or other problems that are beyond Invoice Cloud's reasonable control; and provided Invoice Cloud promptly provides notice to Biller of such delay and its continuation thereof.

9. Biller's Responsibilities. Biller represents and warrants that it has the legal power and authority to enter into this Agreement. Biller is responsible for all activity occurring under Biller's accounts under Biller's control or resulting from Biller's negligence or willful misconduct, and shall abide by all applicable laws, and regulations in connection with Biller's use of the Service, including those related to data privacy, communications, export or import of data and the transmission of technical, personal or other data. Biller represents and warrants that Biller has not falsely identified itself nor provided any false information to gain access to the Service and that Biller's billing information is correct. Biller shall: (i) notify Invoice Cloud immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Invoice Cloud and immediately stop any copying or distribution of Content that is known or suspected to be unauthorized by Biller or Biller's Users; and (iii) obtain consent from Biller's customers and payers to receive notifications and invoices from Invoice Cloud. Invoice Cloud is not responsible for any Biller postings in error due to delayed notification from credit card processors, ACH, bank and other related circumstances. Biller agrees and acknowledges that in the event that Biller has access to, receives from, creates, or receives protected health information, or Biller has access to, creates, receives, maintains or transmits on behalf of electronic protected health information (as those terms are defined under the privacy or security regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009 ("ARRA"), during the performance under this Agreement, it will comply with all such applicable law, regulations and rules related thereto.

Biller is required to ensure that it maintains a fair policy with regard to the refund, return or cancellation of payment for services and adjustment of Transactions. Biller is also required to disclose all refund, return and cancellation policies to Invoice Cloud and any applicable payment processors and Biller's Customers, as requested. Any change in a return/cancellation policy must be submitted to Invoice Cloud, in writing, not less than 21 days prior to the effective date of such change. If Biller allows or is required to provide a price adjustment, or cancellation of services in connection with a Transaction previously processed, Biller will prepare and deliver to Invoice Cloud Transaction Data reflecting such refund/adjustment within 2 days of resolution of the request resulting in such refund/adjustment. The amount of the refund/adjustment cannot exceed the amount shown as the total on the original Transaction Data. Biller may not accept cash or any other payment or consideration from a Customer in return for preparing a refund to be deposited to the Customer's account; nor may Biller give cash/check refunds to a Customer in connection with a Transaction previously processed by credit card, debit card, ACH, or other electronic payment method, unless required by applicable law. Biller shall cooperate with Invoice Cloud to effect a timely Implementation by Biller allocating sufficient and properly trained personnel to support the implementation process and fully cooperating with Invoice Cloud and by securing the cooperation of Biller's software and service providers and providing to Invoice Cloud the information required to integrate with Biller's billing, CIS and other applicable systems.

10. Indemnification. Invoice Cloud shall indemnify, defend and hold Biller, its officials, officers, employees, attorneys, and agents, harmless from any claims, actions, demands, losses, injuries, liabilities (direct or indirect), and damages (including, without limitation, Biller's costs, expenses and reasonable attorneys' fees) (collective, "Claims") arising out of: (i) Invoice Cloud's alleged gross negligence, recklessness, or willful misconduct; (ii) failure by Invoice Cloud to implement commercially reasonable measures against the theft of the Customer Data; (iii) Invoice Cloud's total failure to deliver funds processed by Invoice Cloud as required hereunder (which relates to payments due from Invoice Cloud for Transaction Data); or (iv) the Services' infringement or misappropriation of a patent, trademark, copyright, trade secret, or other intellectual property right of a third party. Invoice Cloud shall not be obligated to indemnify Biller hereunder where such Claim or complaint is preponderantly attributable to the negligence or willful misconduct of Biller, its officers, agents, or employees.

11. Fees.

Invoice Cloud will charge the Biller and/or payer, payment transaction and other fees as provided in the Biller Order Form. In addition, Invoice Cloud will charge the fees set forth on the Biller Order Form for the initial platform setup, configuration, implementation and integration with Biller system(s) of its standard Service as set forth in the Statement of Work (the "Implementation"). Invoice Cloud reserves the right to also

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charge for changes and additions to the Implementation, and for any requests by Biller following the implementation which are agreed in writing by the parties, including without limitation for the following services, at its then standard rates:

- Custom development and features which are not stated on the SOW and Biller Order Form change requests and modifications to existing platform functionality not stated in the SOW and Biller Order Form;
- Additional integrations or integration modifications after Go Live Date, not provided for in the Biller Order Form or Statement of Work;
- Changes to bill presentment (web and PDF templates), billing system integrations, and other Service components coded or configured to Biller's specifications after Biller has signed off on the relevant specification or Service is live;
- Custom data extracts and file requests that are not part of the Implementation signed off on by both parties;
- Data conversion not listed in the SOW, or repetitive re-loading of data due to Biller error.

12. Limitation of Liability. EXCEPT FOR INDEMNITY OBLIGATIONS UNDER SECTION 10, SUBCLAUSE (iv) ABOVE, INVOICE CLOUD'S AGGREGATE LIABILITY SHALL BE UP TO AND NOT EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM BILLER IN THE TWENTY-FOUR (24) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL INVOICE CLOUD AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) DAMAGES ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICE, EVEN IF THE PARTY FROM WHICH SUCH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to Biller.

13. Export Control. The Biller agrees to comply with United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies.

14. Notice. Either party shall give notice by written communication sent by first class mail or pre-paid post to the other party's address on record in Invoice Cloud's account information for Biller, and for Invoice Cloud, to Invoice Cloud, Inc., 30 Braintree Hill Office Park, Suite 101, Braintree, MA 02184 Attention: Client Services. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post)

15. Assignment. This Agreement may not be assigned by either party without the prior written approval of the other party, but may be assigned without such party's consent to (i) a parent or subsidiary, (ii) an acquirer of substantially all assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void.

16. Insurance.

Invoice Cloud agrees to maintain in full force and effect during the Term of the Agreement, at its own cost, the following coverages:

- a. Commercial General or Business Liability Insurance with minimum combined single limits of One Million (\$1,000,000) each occurrence and Two Million (\$2,000,000) general aggregate, for bodily injury, personal injury and property damage. Invoice Cloud shall provide insurance on an occurrence, not claims-made basis.
- b. Umbrella Liability Insurance with minimum combined single limits of Five Million (\$5,000,000) each occurrence and Five Million (\$5,000,000) general aggregate.
- c. Commercial automobile liability insurance covering bodily injury, personal injury and property damage for all activities of Invoice Cloud arising out of or in connection with the work to be performed under this Agreement, including coverage for hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit per occurrence, and two million dollars (\$2,000,000) in the aggregate. Invoice Cloud represents and warrants it does not own any vehicles. In the event after execution of this Agreement, Invoice Cloud owns vehicles which are used in implementation of the Services, such insurance coverage shall include coverage for owned vehicles, and Invoice Cloud shall provide evidence of such coverage upon request of Biller, to the reasonable satisfaction of Biller.
- d. Professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Invoice Cloud's Services, whether such Services are performed by Invoice Cloud or by its employees, subcontractors, or sub-consultants. The amount of this insurance shall not be less than one million dollars (\$1,000,000) per claim, and two million dollars (\$2,000,000) in the aggregate.

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- e. Cyber Liability insurance with limits of not less than one million dollars (\$1,000,000) per occurrence and an annual aggregate of two million dollars (\$2,000,000). Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Invoice Cloud in this Agreement. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties.
- f. General Requirements. Unless otherwise specified hereunder, each insurance policy required herein shall be with insurers possessing a Best's rating of no less than A-VII.
 - (1) With respect to Invoice Cloud's Commercial General Liability and Commercial Automobile Liability policies only, such policies shall be considered primary insurance and include the City, its elected or appointed officers, officials, employees, agents and volunteers as additional insureds. Coverage provided to additional insureds shall be provided on a primary basis and any insurance maintained by the City, including any self-insured retention the City may have shall be considered excess insurance only and shall not contribute with it.
 - a. Certificates of Insurance. Invoice Cloud shall provide certificates of insurance to the City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. Invoice Cloud will endeavor to ensure that the most current certification of insurance is on file with the City at all times during the term of this Agreement.
 - (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.
 - (3) Invoice Cloud shall endeavor to provide Biller with thirty (30) days written notice in advance of any cancellation of a policy required hereunder.
- g. Deductibles and Self-Insured Retentions. Invoice Cloud shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and shall also be responsible for payment of any self-insured retentions.
- h. Imposition of Insurance Requirements. Provided the City gives its written consent for any persons other than Invoice Cloud to perform any part of the Services, Invoice Cloud agrees to require that all parties, including but not limited to subcontractors, architects, engineers or others with whom Invoice Cloud enters into contracts or whom Invoice Cloud hires or retains pursuant to or in any way related to the performance of this Agreement, provide the insurance coverage required herein, at minimum. Invoice Cloud agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Section.
- i. Failure to Obtain Coverages. Without limiting the generality of the forgoing, Invoice Cloud agrees and acknowledges that if it fails to obtain all of the insurance required in this Agreement in accordance with the requirements herein, or to obtain and ensure that the coverage required herein is maintained by any subcontractors or others involved in any way with the performance of Services, to the extent such is permissible under this Agreement, Invoice Cloud shall be responsible for any losses, claims, suits, damages, defense obligations, or liability of any kind or nature attributable to the City or its officers, employees, servants, volunteers, agents and independent contractors; and all Services under this Agreement shall be discontinued immediately until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefor have been paid for a period satisfactory to City. Any failure to maintain the required insurance, including insurance required of any subcontractors or others involved in any way with the Services, shall be sufficient cause for City to terminate this Agreement if such failure is not cured by Invoice Cloud within thirty (30) days of receipt of written notification from Biller specifying such failure.
- j. Separate Obligation from Indemnity. The fact that insurance is obtained by Invoice Cloud shall not be deemed to release or diminish the liability of Invoice Cloud, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify and hold the City harmless as set forth in Section 10 above shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Invoice Cloud. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Invoice Cloud, its principals, officers, agents, employees, persons under the supervision of Invoice Cloud, vendors, suppliers, invitees, sub-contractors, or anyone employed directly or indirectly by any of them.
- k. Worker's Compensation Coverage. Invoice Cloud shall maintain Worker's Compensation Insurance and Employer's Liability Insurance for its employees in accordance with applicable law. In addition, Invoice Cloud shall require each subcontractor to similarly maintain Worker's Compensation Insurance and Employer's Liability Insurance in accordance with applicable law for all of the subcontractor's employees. If any class of employees employed by Invoice Cloud pursuant to this Agreement is not protected by the California State Worker's Compensation Law, Invoice Cloud shall provide adequate insurance for the protection of such employees to the satisfaction of the City. This provision shall not apply if Invoice Cloud has no employees performing work under this Agreement. If Invoice Cloud has no employees for the purposes of this Agreement, Invoice Cloud shall sign and attach the Certificate of Exemption from Worker's Compensation Insurance, attached hereto and incorporated herein by this reference as Exhibit "B."

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1. Survival. The requirements set forth in this Section 16 shall survive termination of this Agreement.

17. Immigration Laws. Invoice Cloud represents and warrants that it has complied and will comply with all applicable immigration laws with respect to the personnel assigned to the Biller.

18. Beta Products. In the event that there is any functionality labelled “Beta” on the Biller Order Form, such functionality is provided “AS IS” WITHOUT ANY EXPRESS, OR IMPLIED WARRANTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER WARRANTIES ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY INVOICE CLOUD AND ITS LICENSORS AND PAYMENT PROCESSORS. INVOICE CLOUD’S AGGREGATE LIABILITY WITH RESPECT TO SUCH FUNCTIONALITY SHALL BE UP TO AND NOT EXCEED \$10.

19. General.

(a) With respect to agreements with municipalities, localities or governmental authorities, this Agreement shall be governed by the law of the state wherein such municipality, locality or governmental authority is established, without regard to the choice or conflicts of law provisions of any jurisdiction. All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in Riverside County, California. No text or information set forth on any other purchase order, preprinted form or document, and no documentation (including any implementation planning documents) except as specifically referenced or incorporated in this Biller Agreement, shall modify, add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between Biller and Invoice Cloud as a result of this agreement or use of the Service. The failure of either party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Invoice Cloud in writing. All rights and obligations of the parties in Sections 4, 6, 10, 12, 14, 16, 18 and 19(a) and (b) shall survive termination of this Agreement. This Agreement, together with any applicable Biller Order Form, comprises the entire agreement between Biller and Invoice Cloud and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral between the parties regarding the subject matter contained herein. Biller agrees that Invoice Cloud can disclose the fact that Biller is a paying customer and the version of the Service that Biller is using.

(b) Additional terms and conditions and definitions applicable to this Agreement and the Biller Order Form (the “Biller T+C”) are attached hereto as Exhibit A and are agreed to by Invoice Cloud and Biller. The terms and conditions and definitions of Exhibit A are incorporated herein and made a part hereof by this reference.

EXHIBIT A TO THE BILLER AGREEMENT

BILLER TERMS AND CONDITIONS

1. Definitions.

The following definitions apply as used in the Agreement and in any Biller Order Form and add on Biller Order Form, now or hereafter:

"Agreement" or "Biller Agreement" means these terms and conditions, the Biller Agreement, any Biller Order Form, add on Biller Order Form, whether written or submitted online and any materials available on the Invoice Cloud website specifically incorporated by reference herein;

"Biller", "you", or "your" means the Invoice Cloud customer that has executed or agreed to the Biller Agreement, Biller Order Form and Billers Terms and Conditions whether written or submitted online;

"Biller Data" means invoices and bills of the Biller as well as the Content of such invoices and bills;

"Biller Order Form" means the order form referencing the service to be performed by Invoice Cloud and any add on services under any add on Biller Order Form;

"Chargeback" is a reversal of a Transaction initiated by a credit card company, processor, bank or other financial institution including chargebacks, ACH rejects or reversals, disputes and other refunds or credits, that Biller previously presented to Invoice Cloud under this Agreement and includes, but is not limited to: (i) failure to issue a refund to a Customer as required; (ii) Invoice Cloud did not receive Biller's response to a Retrieval Request within 7 days or any shorter time period required by the Payment Brand Rules; (iii) a Customer disputes the Transaction or claims that the Transaction is subject to a set-off, defense or counterclaim, or (iv) the Biller Bank Account designated by the Customer for an ACH transaction is invalid, or has insufficient funds to complete a Transaction;

"Content" means the information and documents contained or made available to Biller by Invoice Cloud in the course of using the Service;

"Customer" shall include customers, payers, taxpayers and users of services of Biller;

"Customer Data" means name, address and contact information of Customers and associated credit card numbers and bank account numbers, excluding any data that Invoice Cloud acquired other than from the Biller or Customers;

"Effective Date" means the date this Agreement is accepted by executing a Biller Order Form;

"Go Live Date" means the date on which those invoice types listed on the Biller Order Form are publicly available to Customers for online payment;

"Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives, integration components and application programming interfaces thereof, and forms of protection of a similar nature anywhere in the world;

"Integration Components" means software, which integrates the Service with third party software, and any updates or revisions thereto;

"Invoice Cloud" or "we" means Invoice Cloud, Inc., a Delaware corporation;

"Invoice Cloud Technology" means all of Invoice Cloud's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to Biller or otherwise developed by Invoice Cloud in providing the Service;

"IVR" means the software as a service which provides interactive voice and communication response functionality, automated payments by voice and text, text (SMS) messaging, and related functionality, including inbound and outbound communications;

"Network" is any Payment Method provider whose payment method is accepted by Biller from Customers and which is accepted by Invoice Cloud for processing, including, but not limited to, Visa, Inc., MasterCard International, Inc., American Express, PayPal (including Pay Pal, Venmo, Pay In 4 and PayPal Credit), Discover Financial Services, LLC, and any other Payment Methods, digital wallets, credit and debit card providers, debit network providers. Network also includes the National Automated Clearing House Association ("NACHA"), with respect to Transactions involving any credit or debit entry processed over the ACH network, and any other network or clearinghouse over which any electronic check processing Transactions may be processed;

"Network Fees" means all pass-through costs including interchange, PayPal brand fees, dues, assessment fees, processing fees, and similar fees, assessed by any Network, credit card or payment processors, bank card issuers, payment associations, ACH and check processors;

"Network Liabilities" means any and all fines, fees, penalties, liabilities, charges and other amounts which may be imposed or assessed by the Networks or payment processors as a result of Biller's actions, omissions, Transactions or Chargebacks, including without limitation, Biller's failure to comply with the Network Rules, or this Agreement and/or any agreement with any payment processor;

"Order Form" or "Biller Order Form" means the form evidencing the initial subscription for the Service and any subsequent Biller Order Form, specifying, among other things, the services contracted for, the applicable Biller Pricing fees and Transactional Fees and Service Fees by Invoice Type (as listed on one or more Invoice Parameter Sheets which are part of the Biller Order Form), the billing period, and other charges, terms and conditions as agreed to between the parties, each such Biller Order Form to be incorporated into and to become a part of this Agreement;

"Payment Instrument Transaction(s)" or "Transaction(s)" means a transaction conducted between Biller and its Customers with respect to an account, or evidence of an account, utilizing Payment Methods for payment in connection with the sale, lease, financing or provision of goods

and/or services by Biller and/or payment of taxes (either directly or through Invoice Cloud). "Payment Instrument Transaction(s)" or "Transaction(s)" may also be used to refer to the written or electronic record of such a transaction, including, without limitation, an authorization code, settlement record, ECP file, or a credit or debit entry pursuant to and consistent with NACHA Rules or card association rules which is submitted to a processor to initiate or evidence a Transaction;

"Payment Processing Agreements" means the payment and card processing agreements and merchant agreements which Invoice Cloud has directed the Biller to enter into to enable Invoice Cloud to provide the Service;

"Payment Methods" means credit and debit cards, ACH, EFT and Check 21 transactions, digital wallets including but not limited to Visa, MasterCard, Amex and Discover, PayPal, Venmo, Apple Pay, Google Pay, credit instruments including PayPal Credit and PayPal Pay in 4, stored value cards, loyalty cards, electronic gift cards, authorized account or access numbers, paper certificates and credit accounts that are used for Payment Instrument Transactions and listed on the Biller Order Form. From time to time Invoice Cloud may offer Biller new Payment Methods, and, in such event, Invoice Cloud will provide Biller with notice by email disclosing the pricing under which the added Payment Methods are made available. Biller will have at least thirty (30) days after the date of the notice to opt-out of the additional Payment Methods in the manner provided in the notice. If Biller does not opt-out in such time frame, then on introduction of the additional Payment Methods, Biller will be bound by the additional terms as disclosed in the notice, and the Biller Order Form will be deemed amended to reflect the changes;

"Reserve Account" means a Biller account which is maintained in order to protect Invoice Cloud against the risk of, among other things, existing, potential, or anticipated Chargebacks and to satisfy the other obligations under the Agreement;

"Service(s)" means Invoice Cloud's billing and payment service, the Content, the Invoice Cloud Technology and other services identified on the Biller Order Form, developed, operated, provided, and/or maintained by Invoice Cloud, accessible via www.invoicecloud.com or another designated website or IP address, or ancillary online and/or offline products and services provided to Biller by Invoice Cloud, to which Biller is being granted access under this Agreement.

2. Biller's Responsibilities.

- (a) Biller shall abide by all applicable card association rules, NACHA rules and Payment Processing Agreements, in connection with Biller's and/or its customers' use of the Service. Biller shall not: (i) impersonate another Invoice Cloud user or provide false identity information to gain access to or use the Service; (ii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iii) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (iv) attempt to gain unauthorized access to the Service or its related systems or networks.
- (b) Biller must designate on the Biller Order Form (and/or subsequent to execution of the Biller Order Form as requested by Invoice Cloud), at least one bank account for the deposit and settlement of funds and the debit of any Chargebacks, fees and costs, including, but not limited to Network Fees and Network liabilities, associated with the Service or the Transactions (all such designated bank accounts and all bank accounts substituted for accounts listed on the Biller Order Form shall be collectively referred to herein as the "Biller Bank Account"). You authorize Invoice Cloud to instruct its processors to initiate electronic credit entries, debit entries, and adjustments to a Biller Bank Account for amounts due to or from you in connection with this Agreement. Invoice Cloud will not be liable for any delays in receipt of funds or errors in Biller Bank Account entries caused by third parties, including but not limited to delays or errors by the Networks, payment processors, merchant acquirors or the bank.
- (c) The dollar amount payable to Biller for Biller's Transactions will be equal to the amount submitted by Biller in connection with your sale Transactions, minus the sum of amounts due from Biller or debited from a Biller Bank Account, including Chargebacks, Network Fees, Network Liabilities, other fees and charges referenced on the Biller Order Form and all applicable charges and adjustments. If, however, Invoice Cloud or the processor fails to withhold Chargebacks, Network Fees or other charges or amounts due from the proceeds payable to a Biller Bank Account (including where such proceeds are insufficient to cover such obligations), or if a Biller Bank Account does not have a sufficient balance to pay amounts due from Biller under these guidelines, Invoice Cloud may pursue one or more of the following options: (i) demand and receive immediate payment from Biller for such amounts; (ii) debit the Biller Bank Account for the amount of the negative balance; (iii) reduce future settlement payments by the amount owed, (iv) withhold settlement payments to the Biller Bank Account until all amounts are paid, (v) delay presentation of refunds until a payment is made to Invoice Cloud of a sufficient amount to cover the negative balance; and (vi) pursue any remedies we may have at law or in equity.
- (d) To enable Invoice Cloud to process transactions for the Biller, Biller authorizes and directs Invoice Cloud, its affiliates, the Payment Method providers, and the payment processors: (1) that, with respect to any Payment Instrument Transactions processed by the payment processor, the payment processor will disburse funds to and collect funds from the Biller in accordance with instructions provided to the payment processor by Invoice Cloud, and as otherwise permitted pursuant to any applicable Payment Processing Agreement that Biller has entered into; (2) that outstanding sums due and owing to Invoice Cloud, including, but not limited to Chargebacks and Network Fees, will automatically be debited from the Biller Bank Account for such purpose on a daily or monthly basis at Invoice Cloud's sole discretion. Biller shall maintain sufficient funds in the Biller Bank Accounts to pay all periodic fees, Chargebacks, Network Fees and other fees due hereunder; and non-sufficient funds for these debits, or blocking or otherwise rendering inaccessible any Biller Bank Account, are grounds for an increase in fees, suspension of the Service, and/or termination of this Agreement.
- (e) Invoice Cloud is not responsible for any Biller postings in error due to delayed notification from credit card processor, ACH bank, and/or other related circumstances. Biller agrees to provide Invoice Cloud with timely, complete, and accurate billing and contact information. This information includes Biller's legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and License Administrator. Biller agrees to update this information within 30 days of any change to it.
- (f) Individual users, when they initially log in, may be asked whether or not they wish to receive marketing and other non-critical Service-related communications from Invoice Cloud from time to time. They may opt out of receiving such communications at that time or at any subsequent time by changing their preference at <http://www.invoicecloud.com/privacy.html>. Note that because the Service is a hosted, online application, Invoice Cloud occasionally may need to notify all users of the Service (whether or not they have opted out as described above) of important announcements regarding the operation of the Service.
- (g) As to all Transactions that Biller submits to Invoice Cloud for processing, Biller represents and warrants that:

- (1) The Transactions represent payment or refund of payment, for a bona fide transaction.
- (2) The Transactions represent an obligation of the Customer for the amount of the Transaction, and that the Transaction is valid and accurate.
- (3) The Transactions do not involve any element of credit for payment of a previously dishonored payment or for any other purpose than payment for a current transaction and future payments as agreed upon by the Customer.
- (4) The Transactions are free from any material alteration not authorized by the Customer.
- (5) The amount charged for the Transaction is not subject to any dispute, setoff, or counterclaim.
- (6) Neither Biller nor its employees has advanced any cash to the Customer in connection with the Transaction, nor have you accepted payment for effecting credits to a Customer.
- (7) Biller has made no representation or agreement for the issuance of refunds except as it states in your return/cancellation policy, which has been previously submitted to Invoice Cloud in writing, and which is available to the Customer.
- (8) Any Transaction submitted to Invoice Cloud to credit a Customer's account represents a valid refund or adjustment to a Transaction previously submitted to Invoice Cloud.
- (9) Biller has no knowledge or notice of information that would lead it to believe that the enforceability or collectability of the subject Transaction is in any manner impaired. The Transactions, including but not limited to total due fields, are complete, accurate and in compliance with all Network rules, applicable laws, ordinances, and regulations. The Transactions are originated in compliance with this Agreement and any applicable agreements.
- (10) For a Transaction in which the Customer pays in installments or on a deferred payment plan, a Transaction record has been prepared separately for each installment transaction or deferred payment on the date(s) the Customer agreed to be charged. All installments and deferred payments, whether or not they have been submitted to Invoice Cloud for processing, shall be deemed to be a part of the original Transaction.
- (11) Biller has not submitted any Transaction that it knows or should have known to be unauthorized, fraudulent, illegal, or otherwise in violation of any provision of this Agreement or other applicable agreements.

(h) Communications with Customers and Biller Website.

Biller hereby grants to Invoice Cloud and its providers a worldwide, non-exclusive, assignable, perpetual, and royalty-free license and right to copy, use, publish and distribute Customer names, physical addresses, and email addresses as well as obtain email addresses of Biller's Customers by using data Biller has provided or made accessible to Invoice Cloud or any of its affiliates, solely for the purposes of: (i) communicating or sending to Customers (and/or their agents) information designed to inform, promote, and encourage Customers (and/or their agents) to use the Service including, without limitation, paying bills online, enrolling in autopay, and enrolling in paperless billing, and (ii) in conjunction with information relating to feedback and response regarding such communications, creating and using aggregated and anonymized data and analysis for purposes of improving the Service. Biller hereby grants to Invoice Cloud and its providers a worldwide, non-exclusive, assignable, and royalty-free license and right during the Term, to copy, use, modify, and publish the Biller's name, logos, trade dress, photographs, website materials, and other works of authorship for the purpose of implementing and providing the Service and performing their obligations under this Agreement. Biller represents and warrants it has all necessary rights, permissions, and licenses to grant and provide to Invoice Cloud and its service providers the license, rights, and permissions described in this Section and will comply with all applicable laws and regulations with respect to any personal information of any of its Customers. For purposes of clarity, the license, rights, and permission grants described in this Section are part of the "Service" under the Biller Agreement.

(i) American Express Compliance only.

- (1) Biller agrees to comply with all applicable laws, rules and regulations, including the American Express Merchant Operating Guide requirements, which are incorporated into this Agreement by reference as if they were fully set forth in the Agreement. The American Express Merchant Operating Guide may be viewed at: www.americanexpress.com/merchantopguide.
- (2) Processing Restrictions. Biller is prohibited from processing Transactions or receiving payments on behalf of, or (unless required by law) re-directing payments to any other party.
- (3) Third Party Beneficiary Rights.
 - Biller confers on American Express the third-party beneficiary rights, but not obligations, to the Biller Agreement and subsequent addenda (collectively the "Agreement") between Biller and Invoice Cloud and, as such, American Express has the express right to enforce the terms of the Agreement against the Biller.
 - Biller agrees and warrants that it does not hold third party beneficiary rights to any agreements between Invoice Cloud and American Express and at no time will attempt to enforce any such agreements against American Express.
- (4) American Express Limitation of Liability. BILLER ACKNOWLEDGES AND AGREES THAT IN NO EVENT SHALL AMERICAN EXPRESS, ITS AFFILIATES, AGENTS, SUCCESSORS, OR ASSIGNS BE LIABLE TO BILLER FOR ANY DAMAGES, LOSSES, OR COSTS INCURRED, INCLUDING INCIDENTAL, INDIRECT, SPECULATIVE, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (WHETHER BASED ON CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, FRAUD, OR OTHERWISE, OR STATUTES, REGULATIONS, OR ANY OTHER THEORY), ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT.

3. Chargebacks, Fees, Reserve Account, Etc. If Biller incurs excessive Chargebacks, in Invoice Cloud's sole determination, or otherwise fails to pay fees or charges, or there are insufficient funds for Invoice Cloud to debit amounts for which Biller is responsible hereunder, in addition to other remedies under this Agreement, Invoice Cloud (or the payment processor) may take the following actions: (i) notify Biller of a new rate that will be charged to process Chargebacks; (ii) collect from Biller an amount reasonably determined by Invoice Cloud (or the payment processor) to be sufficient to cover anticipated Chargebacks and all related fees, penalties, expenses, and fines, or increase a reserve amount; (iii) require Biller to promptly establish a Reserve Account as determined by Invoice Cloud, or (iv) terminate the Agreement. Biller shall be responsible to Invoice Cloud for and shall promptly pay to Invoice Cloud such charges required to be paid by Biller; and any Chargebacks, by any party, including without limitation Chargebacks claimed by any payment and credit card processors, bank, or other financial services

organization.

To the extent permitted by applicable law, Biller shall indemnify, defend, and hold Invoice Cloud, its licensors and Invoice Cloud's subsidiaries, affiliates, officers, directors, employees, attorneys, agents, and payment processors harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with any claim, cause of action, lawsuit, administrative or criminal investigation, charge, action or claim alleging: (i) any charge against any reserves required by payment or credit card processors; (ii) Chargebacks, Network Fees and insufficiency of funds in any Biller Bank Account, by any party, including without limitation Chargebacks claimed by any payment and credit card processors, bank, or other financial services organization; (iii) that use of any Customer Data infringes the rights of a third party; (iv) a violation by Biller of Biller's representations and warranties or the breach by Biller or Biller's users or Customers of this Agreement including without limitation incomplete or inaccurate Transactions; (v) Biller's violation of any third party payment and credit card processing agreement and merchant agreement, or (vi) relating directly or indirectly to Biller's or its authorized users' use of the Service. Biller represents and warrants that the Biller Bank Account(s) will contain sufficient funds to cover any estimated financial exposure based on reasonable criteria for Chargebacks, ACH rejects or reversals, credits, returns, and all additional liabilities anticipated under this Agreement, including, but not limited to Chargebacks, fines, fees and penalties. Invoice Cloud may, at its sole discretion, collect fees related to Chargebacks and ACH rejects and reversals, or other refunds or credits from Biller's customers.

4. [Intentionally Omitted]

5. Encrypted Card Readers (Applicable where Card Readers as designated on the Biller Order Form).

Encrypted Card Readers (or Card Readers as described in the Biller Order Form) are provided to the Biller for their use under license fees provided in the Biller Order Form. Invoice Cloud provides to Biller all products on a license basis. Biller will be fully responsible for all products including without limitation all risk of loss and damage to products while in its possession or control, save normal wear and tear.

Where Invoice Cloud provides encrypted card readers, the following additional terms apply (with "products" or "device" in this Section 5 referring to the encrypted card readers):

a. Invoice Cloud and the manufacturer warrants that the products provided pursuant to this Agreement will perform in accordance with the manufacturer's published specifications. Should a product fail to conform to applicable manufacturer's specifications, repair parts and replacement products will be furnished on an exchange basis and will be either reconditioned or new as specified below. This limited warranty does not include service to repair damage to the product resulting from accident, disaster, unreasonable use, misuse, abuse, customer's, Reseller's, or any other third party's negligence, or non-manufacturer modification of the product. Invoice Cloud reserves the right to examine the alleged defective product to determine whether the warranty is applicable. Without limiting the generality of the foregoing, Invoice Cloud and the product manufacturer specifically disclaim any liability or warranty for any product resold in other than manufacturer's original packages, and for products modified, altered, repaired, maintained, or treated by Biller, its customers, and/or any third party. Service on a defective product may be obtained by delivering the product during the warranty period as instructed by Invoice Cloud.

b. The following is the repair and replacement policy for a defective product:

Replacement Requests – Biller shall promptly notify Invoice Cloud that the device is not working, via email, phone call or help desk ticket. Invoice Cloud will update and/or open a new help desk ticket for the product swap replacement request. Biller must provide the serial number of the device that is not working.

Replacement device will be shipped to the Biller as noted on the help desk ticket issued by Invoice Cloud.

Shipping Method: Replacement devices will be shipped via a commercial shipping service at no charge to the Biller. If Biller needs the device sent via overnight shipping there is an additional cost of \$35.00 per device.

Biller has 14 business days to return a device that is not working to an address specified by Invoice Cloud on the return help desk ticket, delivery or postage pre-paid. Failure to return the non-working device may result in additional fees and charges to Biller.

Invoice Cloud shall use reasonable efforts to provide the encrypted card reader service in an uninterrupted, continuous manner. Biller understands and agrees that services may be periodically off line or otherwise inoperable in order for Invoice Cloud to perform maintenance, install or test software, or for other commercially reasonable business purposes and that during such time card reader service services may not be provided. Biller further understands and agrees that from time to time card reader service services may be off line or otherwise inoperable as a result of the failure of equipment or services provided to the manufacturer by third parties (for example, public or private telecommunications services or internet nodes or facilities, overall Internet congestion, unavailability of internet services, such as DNS services), and that during such time Services may not be provided. Furthermore, Biller understands and agrees that the provisions of any services and other performances hereunder will be excused for any of the reasons set forth herein. In the event of unforeseen network or equipment failure, manufacturer will use commercially reasonable efforts to restore the Services in a reasonable prompt fashion. Manufacturer may from time to time, in its sole discretion, modify the manner in which it provides services, and modify its software and systems, all of which may result in a change in the manner in which manufacturer provides the software and systems provided, however, that such modifications and/or changes do not degrade the level of, or have a material adverse impact upon the features and functionality of the Services.

c. EXCEPT AS PROVIDED IN THIS SECTION 5, INVOICE CLOUD AND THE DEVICE MANUFACTURER MAKE NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND INVOICE CLOUD AND THE DEVICE MANUFACTURER DISCLAIM ANY WARRANTY OF ANY OTHER KIND INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BILLER AGREES AND ACKNOWLEDGES THAT ALL PRODUCTS AND DEVICES ARE OFFERED AND PROVIDED ON AN "AS IS" BASIS.

d. Responsibilities of Biller. Biller is responsible for the following: (i) providing Invoice Cloud with a static IP address or a specific range of static IP addresses, (ii) confidentiality of each End User's Data. Biller is solely responsible for ensuring the secure transmission of any data that Biller transmits to Invoice Cloud ("Biller Transmitted Information"), and Invoice Cloud and the manufacturer will have no liability therefore (provided that the manufacturer will use Biller Information only for purposes of this Agreement). Biller is solely responsible for adopting, implementing, and maintaining appropriate and effective security measures, procedures, policies, and standards and any other best practices available to protect the confidentiality of Biller Data, (iii) protecting the confidentiality of any information stored on

Billers' servers, and (iv) using the Services in the manner instructed by Invoice Cloud and the manufacturer and otherwise in the manner intended.

e. **Network Security.** Biller shall be solely responsible for ensuring that authorized Biller employees and contractors are not security risks. Upon Invoice Cloud's request, Biller will promptly provide Invoice Cloud with any information reasonably necessary for Invoice Cloud to evaluate security issues and/or concerns relating to any authorized Biller employee and/or contractor. Each party will be solely responsible for the selection, implementation, and maintenance of security procedures and policies that are sufficient to ensure that (a) such party's use of any network or internet connection is secure and is used only for authorized purposes, and (b) such party's business records and data are protected against improper access, use, loss, alteration, and/or destruction.

f. Biller shall provide Invoice Cloud with physical access to the devices upon request after reasonable advance notice. Biller shall not, nor allow any Third Party to, modify, repair, replace, relocate, sell, lease, assign, encumber, or otherwise tamper with any of the devices without Invoice Cloud's express written consent. Any change of the location of any device may warrant that Biller pay Invoice Cloud any additional installation and related charges associated with such relocation, charged by Invoice Cloud's third-party vendors. At the end of the term, Biller shall be responsible to promptly return all devices, freight prepaid by Invoice Cloud, to Invoice Cloud at the place from which devices was shipped (or as otherwise designated by Invoice Cloud) in as good condition as exists at the commencement of the term, reasonable wear and tear, and casualty, in respect thereto excepted. Biller shall use each device at all times in a proper, diligent, and workmanlike manner and in such manner as will not damage or injure the device except by the ordinary wear and tear of such device. In the event of damage to any device, Biller shall notify Invoice Cloud who shall replace or repair the device at Biller's expense.

g. Devices and all parts and components thereof shall retain their character as personal property and all right, title and interest in and to shall not pass to Biller or any third party, but title and ownership shall remain exclusively with Invoice Cloud. Biller shall be and shall have the duties of a bailee of the devices. Biller shall not remove, conceal, or otherwise interfere with the title or ownership plate of Invoice Cloud affixed to any device until and unless such device is purchased, and full payment is made as herein provided. If Biller sells, assigns, pledges, or attempts to sell or assign devices or any interest therein, or if Biller defaults in any of the covenants, conditions or provisions of this Agreement, it is agreed that Invoice Cloud may immediately and without notice take possession of the devices where found and remove and keep or dispose of the same and any unpaid fees shall at once become due and payable by Biller. If any step is taken by legal action or otherwise by Invoice Cloud to recover possession of any device(s) or otherwise enforce this Agreement or to collect moneys due hereunder, Biller shall promptly reimburse Invoice Cloud for all expenses and charges incurred by Invoice Cloud, including reasonable attorney's fees.

6. Kiosks (applicable where kiosks that are provided by Invoice Cloud as designated on the Biller Order Form).

Kiosks (as described in the Biller Order Form) are provided to Biller for use by Invoice Cloud under a license fee provided in the Biller Order Form. Invoice Cloud provides to Biller the products (as defined below) on a license basis. Biller will be fully responsible for all kiosks including without limitation all risk of loss and damage to products while in its possession or control, save normal wear and tear.

Where Invoice Cloud provides kiosks, the following additional terms apply (with "Products" and "kiosks" in this Section 6 referring to the kiosks and any firmware and software and applicable documentation included with the kiosks and/or Product, as the same may be upgraded, modified, and enhanced from time to time):

a. **License.** Invoice Cloud grants to Biller a non-exclusive, non-transferrable, non-sublicensable right to use the Products for its Customers during the term of this Agreement, and subject to the terms hereof. The foregoing right includes, without limitation, the right to install and use the Products for purposes reasonably related to the subject matter of this Agreement, including, but not limited to, testing, and staging of the Products. All rights not specifically granted to Biller hereunder are reserved by Invoice Cloud and the kiosk manufacturer. Any and all intellectual property rights to the Products shall belong solely to Invoice Cloud and the manufacturer. Without limiting the generality of the foregoing, delivered Products shall not be (a) copied, distributed, modified, translated, adapted or altered, in part or in whole, in any way or (b) decompiled, disassembled or reverse engineered or unbundled from any product nor may Biller seek, in any manner, to discover, disclose or use any source code, proprietary algorithms, techniques or other Confidential Information contained therein. In addition, Biller may not produce, copy, alter, or modify any of the Products or Product packaging or labeling, or combine Products with any other product or services for sale without prior written consent of Invoice Cloud; such consent may be given or withheld in the sole discretion of Invoice Cloud. Biller shall not erase, remove, cover, deface, obscure, or alter any copyright, trademark, or patent notice, guarantee, or other statement or marking, affixed or applied by Invoice Cloud or the manufacturer on or to either the Products or any other technical or promotional material related to the Products.

b. **Manufacturer Limited Warranty.** Where Invoice Cloud provides kiosks to Biller (as opposed to Biller contracting directly with a third party for the provision of a kiosk), the manufacturer warrants that the Products provided pursuant to this Agreement will materially perform in accordance with the manufacturer's published specifications. Warranty service is detailed in Section 6(d) below. Should the Product fail to conform to manufacturer's specifications, repair parts and replacement Products will be furnished on an exchange basis and will be either reconditioned or new as specified below. This limited warranty does not include service to repair damage to the Product resulting from accident, disaster, unreasonable use, misuse, abuse, the negligence of Biller or any third party, or non-manufacturer modification of the Product. Invoice Cloud and the manufacturer reserve the right to examine the alleged defective Product to determine whether the warranty is applicable. **THE PRODUCTS FROM INVOICE CLOUD ARE PROVIDED STRICTLY "AS IS" AND INVOICE CLOUD AND KIOSK.COM SPECIFICALLY DISCLAIM ALL WARRANTIES AND CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR WARRANTIES ARISING FROM USAGE OF TRADE, COURSE OF PERFORMANCE OR DEALING.**

c. **Term and Effect of Termination.** Minimum fee charges as provided in the Biller Order Form shall apply from the earlier of four weeks from date of delivery to Biller of each applicable kiosk or the date that the kiosk is operational. Notwithstanding anything to the contrary in the Biller Agreement, and notwithstanding anything to the contrary in any limitation of liability provision in the Biller Agreement, in the event that the Biller Agreement or other agreement between Invoice Cloud and the Biller permits Biller to terminate the Agreement or any order relating to kiosks for the Biller's convenience, Biller shall pay on the effective date of such termination: (a) all amounts due for the use of and all transaction fees due for use of the kiosks as of the effective date of termination; (b) all amounts that would have been due to Invoice Cloud through the end of the later of the term referenced in the Biller Agreement or the term of the kiosks referenced in the Biller Order Form, notwithstanding the termination, based on the minimum transaction fees on the Biller Order Form times the number of months remaining in the term in the Biller Order Form immediately prior to the effective date of termination, (c) all amounts due from Biller to the manufacturer for services or parts procured, and (d) any committed and non-cancellable amounts for equipment, Products or kiosks, purchased by Invoice Cloud as a result of Biller's order of kiosks.

d. **Warranty Service.** Service may be obtained as follows under the Advanced Exchange and Field Service Warranty from

Kiosk.com:

Advanced Exchange and Field Service Warranty provides a factory parts stocking plan with overnight shipping designed to minimize business disruption. The bundled warranty covers replacement of any failed part or workmanship, as well as the Field Service Technician site visit expense to implement the replacement part swap.

Expectations surrounding the scope of the Kiosk.com Advanced Exchange & Field Service Warranty are as follows:

i. Advanced Exchange & Field Service Description

- **Phone and Warranty Parts Shipment Support.** In the event that there is a warranty or support issue with any Kiosk, please contact Invoice Cloud support. The Exchange Warranty outlined below applies.
- If replacement part and/or Field Service Technician is required, Invoice Cloud (through the manufacturer) arranges for overnight shipment of replacement parts and schedules the Kiosk.com Field Technician Visit to arrive (typically within 24 hours of call receipt).
- Service will be provided pursuant to service level provided in the SLA addendum at www.invoicecloud.net/sla
- No charge for replacement components to the extent warranted hereunder and subject to the terms and conditions herein.
- Kiosk.com covers inbound and outbound shipping costs for failed/replacement parts except as provided herein. The manufacturer provides the Biller with an RMA number and a pre-paid return shipping label with each replacement component. When the Biller receives the replacement, the failed part is then returned with the Kiosk.com pre-paid label.

ii. Exchange Warranty – Out of Scope Items

- The warranty and support commitments include the original kiosk enclosure and all components as shipped from the manufacturer's factory but does not include consigned components, any Biller or customer software application, network connectivity service, custom modifications, or changes made to the system, cleaning, installation, or repositioning of any system.
- Returned parts with No Defect Found (following the manufacturer failure analysis) will be billed back to the Biller. No Defect Found fees include reversal of any component credit, any applicable shipping and handling fees, and an hourly RMA diagnostic fee of \$125 /hour.
- The most common source of No Defect Found parts is component maintenance and cleaning neglect in the field. Biller is responsible for keeping each kiosk clean through occasional wiping down with damp cloth, dusting, etc.
- Warranty does not include any customer application software, drivers, or special interface equipment and configuration unless specifically noted in the purchase contract.
- The warranty does not apply to expendable items (i.e., normal wear and tear of external graphics, etc.). Paint damage due to normal wear and tear is not covered under this warranty. Paint damage resulting from manufacturing defects will be covered by this warranty.
- Damage caused by cleaning, neglect, vandalism, physical abuse, or environmental acts of God are not covered under this warranty.

iii. Additional Exchange & Field Service Warranty Terms and Conditions

- Warranty service is guaranteed for 30 days for workmanship after the service is complete.
- Replacement components are not guaranteed to be new components and may come from the manufacturer refurbished and tested stock (at the discretion of the manufacturer).
- The three-year warranty on part defects is not extended if replacement parts are provided in a maintenance action.
- This warranty is voided by misuse, accident, modification, and unsuitable physical or operating environment, improper maintenance by Biller, a Customer or any other third party, or customer's other service organizations, removal or alteration of part identification, or failure caused by a product or component not supplied by Invoice Cloud or manufacturer, or for which Invoice Cloud or the manufacturer is not responsible, or any modifications or changes to components or to the kiosk without Invoice Cloud's written approval.
- Requests for optional Hourly Field Service Technician service calls must be received by 1:00 pm MST, Monday through Friday (except national holidays), to be eligible for the next business day site arrival (24-hour) service metric. Technician request calls received after 1:00 pm MST will be scheduled on the following business day. Field service charge is \$175 /hour.
- Biller will provide onsite contacts for each location. Exceptions to fulfillment of onsite service can include holidays or events that prohibit access to the location.
- Keys must be on-site and available prior to the dispatch of a Field Technician.
- Payment of out-of-scope service fees is due upon invoice. Invoice Cloud reserves the right to suspend service and support until delinquent account payments are settled in full. Invoice Cloud and the manufacturer shall use reasonable efforts to provide the kiosks in an uninterrupted, continuous fashion. Biller understands and agrees that services may be periodically off line or otherwise inoperable in order for Invoice Cloud or the manufacturer to perform maintenance, install or test software, or for other commercially reasonable business purposes and that during such time services may not be provided. Biller further understands and agrees that from time to time services may be off line or otherwise inoperable as a result of the failure of products, equipment or services provided to manufacturer by third parties (e.g. public or private telecommunications services or internet nodes or facilities, overall internet congestion, unavailability of internet services, such as DNS services), and that during such time Services may not

be provided. Furthermore, Biller understands and agrees that the provisions of services and other performances hereunder will be excused for any of the reasons set forth herein. In the event of unforeseen network or equipment failure, the manufacturer will use commercially reasonable efforts to restore the services in a reasonably prompt fashion. The manufacturer may from time to time, in its sole discretion, modify the manner in which it provides services and modify its software and systems, all of which may result in a change in the manner in which the manufacturer provides the software and systems; provided, however, that such modifications and/or changes will not degrade the level of, or have a material adverse impact upon, the features and functionality of the product or services.

e. Responsibilities of Biller.

1. Biller will be responsible for the following: (i) providing Invoice Cloud with a static IP address or a specific range of static IP addresses, and (ii) confidentiality of End User's Data. Biller is solely responsible for ensuring the secure transmission of any data that Biller transmits to Invoice Cloud ("Biller Transmitted Information"), and Invoice Cloud and manufacturer will have no liability therefore. Biller is solely responsible for adopting, implementing, and maintaining appropriate and effective security measures, procedures, policies, and standards, and any other best practice available to protect the confidentiality of Biller Transmitted Information, (iii) protecting the confidentiality of any information stored on Biller's servers, and (iv) using the Services in the manner instructed by Invoice Cloud and the manufacturer and otherwise in the manner intended.

2. Biller shall be solely responsible for ensuring that Biller's employees and contractors are not security risks. Biller will be solely responsible for the selection, implementation, and maintenance of security procedures and policies that are sufficient to ensure that (a) Biller's use of the Network Connection is secure and is used only for authorized purposes, and (b) Biller's business records and data are protected against improper access, use, loss, alteration or destruction.

3. Biller shall provide Invoice Cloud or the manufacturer with physical access to the kiosks upon request after reasonable advance notice. Biller shall not, nor allow any third party to, modify, repair, relocate, sell, lease, assign, encumber, or otherwise tamper with any of the kiosks without Invoice Cloud's or the manufacturer's express written consent. Any change of the location of the kiosks may warrant that Biller pay Invoice Cloud any additional installation and related charges associated with such relocation, charged by Invoice Cloud's third-party vendors. At the end of the term, Biller shall be responsible to de-install all kiosks, return all kiosks, freight prepaid by Biller, to Invoice Cloud at the place from which kiosks was shipped (or as otherwise designated by Invoice Cloud) in as good condition as exists at the commencement of the term, reasonable wear and tear, excepted. Biller shall use and ensure that the kiosks are at all times used in a workmanlike manner and in such manner as will not damage or injure the kiosks except by the ordinary wear and tear of such kiosks. In the event of damage to any kiosks, Biller shall promptly notify Invoice Cloud who shall replace or repair the kiosks at Biller's expense.

f. Personal Property of Invoice Cloud. Kiosks and all parts and components thereof shall retain its character as personal property and all right, title and interest thereto shall not pass to Biller, but title and ownership shall remain exclusively with Invoice Cloud. Biller shall be and shall have the duties of a bailee of the kiosks. Biller shall not remove, conceal or otherwise interfere with the title or ownership plate of Invoice Cloud affixed to kiosks. If Biller sells, assigns or attempts to sell or assign kiosks or any interest therein, or if Biller defaults in any of the covenants, conditions or provisions of this Agreement, it is agreed that Invoice Cloud may immediately and without notice take possession of kiosks where found and remove and keep or dispose of the same and any unpaid fees including all fees as provided herein and in the Biller Order Form will be due and payable. If any step is taken by legal action or otherwise by Invoice Cloud to recover possession of kiosks or otherwise enforce this Agreement or to collect moneys due hereunder, Biller shall pay Invoice Cloud the equivalent of the moneys expended or charges incurred by Invoice Cloud in such behalf, including reasonable attorney's fees.

7. **Interactive Voice Response Functionality and Outbound Communications ("IVR")**

a. **License.** For and in consideration for the payment of all fees and charges paid to Invoice Cloud, as provided in the Biller Order Form, Invoice Cloud hereby licenses to Biller, non-exclusive access to its proprietary IVR for Biller's internal use only.

b. **Indemnification.** Biller agrees it will not use the IVR in any manner, shape or form that violates any local, state or federal law or regulation (including without limitation violations of Fair Debt Collection Practices Act, 15 U.S.C. § 1692-1692p) and will defend and hold Invoice Cloud and its licensor harmless from and against any and all claims and will indemnify Invoice Cloud and its licensor against any and all costs, fines, penalties, causes of action, allegations, suits, and claims, including reasonable attorney's fees and expenses as a result of any act by Biller. Likewise, Invoice Cloud agrees it will not use the design or establish service in any manner, shape or form that results in an intellectual property rights infringement claim by any third party and will hold Biller harmless from any and all claims and will indemnify Biller from and against any and all costs and claims, including reasonable attorney's fees as a result of any third party intellectual property rights infringement claim against Invoice Cloud or its licensor.

c. **Legal Compliance.** Notwithstanding anything to the contrary in the Biller Agreement and these terms and conditions or other agreement between the parties, Biller shall be responsible for compliance with all applicable laws and regulations related to the call flows, content, prompts, and data flows and the Biller's benefits and uses of the IVR, and the instructions and directions in the use of the IVR that it has provided. Although neither Invoice Cloud nor its licensor provides legal advice to Biller, Biller understands and acknowledges and shall comply with all laws, rules, and regulations regarding do not call lists, legal calling times, and dialing cellular numbers, and shall abide by all applicable laws, rules, and regulations while implementing or using IVR.

d. **No Warranty.** NEITHER INVOICE CLOUD NOR ITS LICENSOR MAKES ANY WARRANTY OR ANY REPRESENTATION, EXPRESS OR IMPLIED WRITTEN OR ORAL, RELATING TO THE IVR UNDER THIS AGREEMENT OR OTHERWISE INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY THAT THE SERVICES ARE FIT FOR ANY PARTICULAR PURPOSES OR OF MERCHANTABILITY, AS THE IVR IS PROVIDED "AS IS". BILLER AGREES THAT NEITHER INVOICE CLOUD NOR LICENSOR WARRANTS THE IVR OR ITS SERVICES WILL BE ERROR FREE OR OPERATED UNINTERRUPTED, AND THAT NEITHER INVOICE CLOUD NOR LICENSOR WILL BE HELD RESPONSIBLE IN ANY MANNER, SHAPE OR FORM FOR ANY FAILURE OF THE IVR OR ITS SERVICES TO PERFORM ANY PARTICULAR FUNCTION. In the event of a breach of this warranty by Invoice Cloud or any licensor, Invoice Cloud will use reasonable efforts to attempt to resume provision of the IVR. Biller acknowledges IVR or its services is provided through telephone and electronic devices and shall not hold Invoice Cloud or any licensor responsible for any failure due to technical or electronic failures. Further, neither Invoice Cloud nor licensor is responsible for any poor result as a result of judgments and choices made by Biller in using any IVR service.

8. **Incorporation by Reference into Agreement, Modification.** These Biller Terms and Conditions are incorporated by reference into the Agreement and may be modified by Invoice Cloud as a result of changes in applicable law, regulatory requirements, PCI-DSS requirements, card Biller Terms and Conditions v5.1.2

network rules, ACH requirements or card association or payment processor requirements.

9. California Consumer Privacy Act of 2018

All capitalized terms used in this Section 9, not otherwise defined, shall have the meaning established in the California Consumer Privacy Act of 2018, as amended (Cal. Civ. Code §§1798.100 to 1798.199), and any related regulations or guidance provided by the California Attorney General (“CCPA”). Regardless of Biller’s status as a Business, Invoice Cloud is a “Service Provider” pursuant to CCPA. Invoice Cloud’s obligations as a Service Provider include:

- a. Invoice Cloud will not Sell Personal Information.
- b. Invoice Cloud will not retain, use, or disclose Personal Information for any purpose other than for the specific purpose of providing the Service, as set out in the Agreement, or as otherwise permitted by CCPA.
- c. Invoice Cloud will not retain, use, or disclose Personal Information for any commercial purpose other than providing the Service.
- d. Invoice Cloud shall provide reasonable assistance to Biller in facilitating compliance with Consumer rights requests.
- e. Upon direction by Biller, and with a commercially reasonable amount of time, Invoice Cloud shall delete the Personal Information.
- f. Invoice Cloud shall not be required to delete any of the Personal Information to comply with a Consumer’s request directed by the Biller if it is necessary to maintain such information in accordance with Cal. Civ. Code §1798.105(d). Invoice Cloud shall promptly inform Biller of the exceptions relied upon under §1798.105(d) and Invoice Cloud shall not use the Personal Information retained for any other purpose than provided for by the exception or as otherwise permitted by CCPA.
- g. Invoice Cloud certifies it understands the prohibitions in this Section 8 and will comply with them.
- h. If Invoice Cloud, in its sole discretion, uses a Service Provider to provide the Service, Invoice Cloud will enter into written agreements with such Service Providers requiring the Service Provider abide by terms substantially similar to this Section 9.

EXHIBIT "B" TO THE BILLER AGREEMENT

**CERTIFICATE OF EXEMPTION
FROM WORKERS' COMPENSATION INSURANCE**

I certify that, in the performance of the work to be performed by Invoice Cloud, Inc., for the City of Moreno Valley, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that if I should become subject to the workers' compensation provisions of the California Labor Code, I shall forthwith comply with those provisions.

Robert S. Autor

Date: December 28th, 2021