

# MASTER SUBSCRIPTION AGREEMENT

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**SUBSCRIBER INFORMATION****EFFECTIVE DATE:**

**Name:** Town of East Montpelier  
**Address:** 40 Kelton Road, East Montpelier, VT 05651  
**Contact Name:** Don Welch **Title:** Town Treasurer

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**AGREEMENT:** This Master Subscription Agreement is made and entered into as of the Effective Date set forth above by and between NIC Services, LLC, a Colorado limited liability company ("NICS"), and the subscriber identified above ("Subscriber"). Pursuant to this Agreement, Subscriber will be provided a subscription to certain Services as set forth in this Agreement and any Schedules or Statements of Work agreed to by NICS and the Subscriber. (The General Terms and Conditions and all Schedules and Statements of Work hereto are collectively referred to as the "Agreement"). If there is a conflict between a Schedule or Statement of Work and the General Terms and Conditions, the provisions of the General Terms and Conditions shall take precedence.

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**SCHEDULES:**

- A. Services and Fee Schedule
- B. Third Party End User Agreement Clauses

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**SIGNATURES:**

By signing this Agreement, the undersigned certify that they have read and understand, and agree to be legally bound by, this Agreement.

**SUBSCRIBER****NICS**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Mukesh Patel

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

Title: President

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**GENERAL TERMS AND CONDITIONS**

1. **DEFINITIONS.** The following are definitions applying to this Agreement. Additional definitions applying solely to a particular Schedule to this Agreement will be set forth in that Schedule.

1.1 **"Affiliate"** means with respect to a Party, any entity that controls, is controlled by, or is under common control with, a Party.

1.2 **"Confidential Information"** means:

- (i) With regard to NICS, all NICS Information, Software, and Intellectual Property Rights related to, connected with or arising out of the Services;
- (ii) With regard to Subscriber, Subscriber Information; and
- (iii) With regard to either Party, the terms, conditions, pricing and other contents of this Agreement, any non-public information regarding the business or business partners of such Party, and any other information, technical data, or know-how, including, but not limited to, that which relates to research, product plans, products, services, customers, markets, software, software code, software documentation, developments, inventions, lists, trade secrets, data compilations, processes, designs, drawings, engineering, hardware configuration information, marketing or finances.

Notwithstanding the foregoing, Confidential Information does not include information, data or know-how which:

- (i) Is in the public domain at the time of the disclosure or becomes available to the public thereafter without restriction, and not as a result of the act or omission of the receiving Party;
- (ii) Is rightfully obtained by the receiving Party from a third party without restriction as to disclosure;
- (iii) Is lawfully in the possession of the receiving Party at the time of the disclosure;
- (iv) Is approved for release by written authorization of the disclosing Party;
- (v) Is developed independently and separately by the receiving Party without use of the disclosing Party's Confidential Information; or
- (vi) Is required to be disclosed by the receiving Party pursuant to law or legally enforceable order of court or judicial body.

1.3 **"End User"** means a third party person or entity who has agreed to use one or more Services offered by NICS for the offering and sale of Products by Subscriber.

1.4 **"Fees"** means all fees payable by Subscriber to NICS or charged to End User by Subscriber pursuant to this Agreement.

1.5 **"Force Majeure"** means events or conditions beyond a Party's reasonable control, including, without limitation, acts of common enemy, earthquakes, floods, fires, epidemics, terrorist attacks, embargoes, strike, fire, governmental acts or orders or restrictions, acts of God, lack of internet availability, inability to secure products or services from third parties, or any other reason where failure to perform is not caused by the negligence of the nonperforming Party.

1.6 **"Information"** means any technical, or business information in written, graphical, oral, or other tangible or intangible forms, including but not limited to specifications, drawings, tools, samples, reports, compilations, records, data, computer programs, drawings, models, and secrets.

1.7 **“Intellectual Property Rights”** means any patent rights, copyrights, trade secrets, trade names, service marks, trademarks, moral rights, know-how and any other similar rights or intangible assets recognized under any applicable laws or international conventions or treaties, and in any country or jurisdiction in the world, as intellectual creations to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations or reissues of the foregoing now or hereafter in force.

1.8 **“Party” or “Parties”** means, either individually or collectively, as the case may be, NICS and Subscriber and any and all permitted successors and assigns.

1.9 **“Products”** means the Transaction Documents, goods and/or services that may be ordered or used by End Users from Subscriber through its subscription to the Services.

1.10 **“Services”** means the hosted subscription services provided by NICS and Affiliates to Subscriber pursuant to this Agreement and as described in the Schedule A attached hereto, including any successor or replacement services offering the same or more functionality than its predecessor.

1.11 **“Software”** means the proprietary computer software programs utilized or provided by NICS in the delivery of Services.

1.12 **“Transaction Documents”** means any electronic business documents transmitted to the End User through the use of the Services.

1.13 **“Transaction Information”** means the data, information, pricing, quantities, parties and terms and conditions of any End User purchase or order of Products provided to or stored by NICS through use of the Services by an End User, but shall not include Transaction Documents or any portion of the Software.

## 2. LIMITED SUBSCRIPTION TO SERVICES

2.1 **Use.** Subject to payment of the applicable Fees and Subscriber’s compliance with the terms of this Agreement, NICS hereby agrees to make the Service available to Subscriber through a monthly, limited subscription. Subscriber’s subscription allows Subscriber to utilize the Services to manage the purchase and sale of Products, pursuant to the terms of this Agreement and any associated schedules, and further subject to the following restrictions: (i) Subscriber may use the Services and the Software solely for Subscriber’s own internal business purposes; (ii) Subscriber may allow End Users to access the Services to enable transactions for the provision of Products by Subscriber [pursuant to Section 2.3], and (iii) Subscriber shall not (A) make any copies of all or any portion of the Software or the Services, (B) sell, sublicense, distribute, rent, lease or assign the subscription authorized herein, or the Services or the Software to any other person or entity, (C) modify, reverse engineer, decompile, disassemble, translate, alter or create derivative works based on the Services or the Software, (D) except for End Users, permit any non-Subscriber or other third party to use the Services, (E) create Internet “links” to or from the Services, or “frame” or “mirror” any content forming part of the Services, other than on Subscriber’s own intranets or otherwise for its own internal business purposes, (G) send spam or other duplicative or unsolicited messages in violation of applicable laws, (H) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights, (I) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs, (J) interfere with or disrupt the integrity or performance of the Services or the data contained therein; (K) attempt to gain unauthorized access to the Services or its related systems or networks; or (L) access, or allow access to, the Services in order to (1) build, or assist a third party in building, a competitive product or service, (2) build, or assist a third party in building, a product or service using similar ideas, features, functions or graphics of the Service, or (3) copy, or assist a third party in copying, any ideas, features, functions or graphics of the Service. Subscriber agrees that its purchase of the subscription described herein is not contingent upon any future functionality or features not expressly stated in this Agreement.

2.2 **User IDs and Passwords.** As part of the subscription, NICS shall provide to Subscriber user IDs and passcodes or other secured means to access the Services, as applicable. Subscriber is responsible for maintaining the confidentiality of its user IDs and passcodes and will be solely liable for all activities that occur under Subscriber’s user IDs. Subscriber shall immediately notify NICS of any unauthorized use of Subscriber’s user IDs and change any affected passcodes. Subscriber agrees to access, and require End Users to access, the Services in a secure manner in compliance with NICS’s reasonable standards established from time to time, which currently require, to the extent applicable, Subscriber’s use of web browsers utilizing 128 bit SSL encryption. Subscriber shall have sole responsibility and shall be liable to NICS for, the accuracy, quality, integrity, legality, reliability and appropriateness of all End User data and Transaction Documents, and shall use commercially reasonable efforts to prevent the unauthorized access or use of the Services.

2.3 **Third Party End User Agreement.** During the Term, as a part of its subscription, Subscriber may permit End Users to access the Software; provided, that Subscriber shall secure such third party’s consent to an End User agreement that includes terms and conditions at least as protective of NICS and its Licensors as those set forth on **Schedule B and use and intellectual property ownership provisions consistent with and no less protective of NICS than the terms in the Agreement.** Notwithstanding any other term to the contrary, Subscriber shall indemnify and hold harmless NICS, its licensors and affiliates and their directors, shareholders, agents and employees, of, from and against any costs, losses, liabilities and expenses (including reasonable attorneys’ fees) that would not have been incurred but for Subscriber’s failure to adhere to the requirements of this Section 2.3.

## 3. SCOPE, AVAILABILITY AND MODIFICATIONS

3.1 **Scope of Subscribed Services.** The Services accessible through the subscription are intended to enable transactions between Subscriber and End Users. NICS is not a party to, third party beneficiary of, or a guarantor of performance with respect to, any subsequent agreement between Subscriber and any End User and/or third party. Specifically, (i) NICS does not control the quality, safety, legality or availability of Products accessed through the Services, the terms and conditions on which those Products are offered or purchased, or the End User’s and/ or third party’s compliance with an agreement that it may execute with Subscriber; (ii) NICS undertakes no duties to distribute or ship the Products; and (iii) under no circumstances shall NICS take title to, or in any manner obtain an interest in, or otherwise be deemed to be within the chain of title of, any Products. Subscriber acknowledges that NICS takes no responsibility for the terms and conditions governing the purchase, sale and delivery of Products.

3.2 **Availability of Services.** Notwithstanding anything to the contrary stated herein, Subscriber acknowledges and agrees that the availability of the Services is subject to the availability of connection services to and within the Internet and to other network functions within and around the Internet and that the Internet, by its nature, is not fault-tolerant, and events of Force Majeure could occur; NICS shall not have

any liability for any breach of any representation, warranty or covenant of this Agreement that arises out of or relates to the unavailability of such connection services and other network functions. In addition, Subscriber understands and agrees that the availability of the Services is subject to planned and emergency downtime to address maintenance, security and other issues, and that NICS shall not have any liability for any claim that arises out of or related to such unavailability.

3.3 Modification of Services. Subscriber understands and agrees that NICS may unilaterally modify the Services, their names, or the manner in which the Services are made available, and that those modifications may create differences in how Subscriber accesses the Services. Subscriber further understands and agrees that, upon reasonable advance written notice to Subscriber, NICS reserves the right to replace any of the Services with services offering the same or more functionality than its predecessor.

#### 4. PAYMENT

4.1 Payment Terms; Suspension of Subscription. During the term of this Agreement, Subscriber agrees to compensate NICS for Services as set forth in Schedule A attached hereto or in any Statement of Work. Unless otherwise noted in Schedule A or in any Statement of Work, NICS shall send invoices to Subscriber and all amounts due NICS shall be paid within thirty (30) days of the invoice date. Any amounts due under this Agreement not received by NICS by the due date shall be subject to a service charge of one and one half percent (1½%) per month, or the maximum charge permitted by law, whichever is less. If Subscriber's account is more than thirty (30) days' or more overdue, then in addition to any other remedy NICS has available to it in law or in equity, NICS reserves the right to suspend the subscription and Subscriber's access to the Services, without liability to Subscriber, and without notice to Subscriber, until such amounts are paid in full. The foregoing shall not apply to amounts, if any, that are the subject of a good faith dispute between Subscriber and NICS.

4.2 Taxes. Subscriber shall calculate and pay all taxes, duties or charges of any kind (including withholding or value added taxes) imposed by any federal, state, or local governmental entity for the Services provided under this Agreement, excluding only taxes based solely on NICS's net income. Subscriber shall hold NICS harmless from all claims and liability arising from Subscriber's failure to support or pay any such taxes, including duties, tariffs or charges.

#### 5. PROPRIETARY RIGHTS

5.1 Title to Technology. All Intellectual Property Rights pertaining to NICS, the Software and the Services, in whole or in part, shall be, vest with and remain the exclusive property of NICS and its third party licensors. If all or part of any Software or Services provided by NICS becomes the subject of an actual or threatened lawsuit or if NICS believes such Software or Services may violate a third party's Intellectual Property Rights or applicable law, NICS will immediately be entitled to remove such content without incurring any liability to Subscriber.

5.2 Title to Transaction Information. As between the Parties, all Intellectual Property Rights in Transaction Information supplied by Subscriber and/or its End Users in connection with the Services are and shall remain the exclusive property of Subscriber and/or its End Users, as applicable. NICS makes no claims, warranties or representations with regard to the ownership of Transaction Information. NICS shall be entitled to keep a copy of such Transaction Information for archival and defense purposes only.

5.3 Suggestions. NICS shall have a royalty-free, worldwide, perpetual license to use or incorporate into the Service any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Subscriber or its End Users relating to the Services which shall, upon incorporation by NICS, become the non-exclusive property of NICS.

#### 6. CONFIDENTIALITY

6.1 Nondisclosure of Confidential Information. Each Party shall retain the other Party's Confidential Information in the strictest confidence (need to know basis) and shall not disclose such Confidential Information to any third party. Each Party agrees: (i) to use the Confidential Information only for the purposes of this Agreement; (ii) not to make copies of or store Confidential Information or any part thereof except as expressly permitted by this Agreement; (iii) to reproduce and maintain on any copies of any Confidential Information such proprietary legends or notices (whether of disclosing Party or a third party) as are contained in or on the original or as the disclosing Party may otherwise reasonably request in writing; and (iv) to treat this Agreement as Confidential Information. The receiving Party shall notify the disclosing Party in writing of any known unauthorized use, possession or disclosure of Confidential Information of the disclosing Party. The disclosing Party shall have the sole right (but shall be under no obligation) to take legal or other action against any third party with respect to any such unauthorized use, possession or disclosure of Confidential Information of the disclosing Party, and the receiving Party shall cooperate with Licensor in such effort.

6.2 Disclosures to Governmental Entities. If the receiving Party becomes legally obligated to disclose Confidential Information by any governmental entity with jurisdiction over it pursuant to law or as a result of court order, subpoena or similar legal action ("Process"), the receiving Party will give the disclosing Party written notice as promptly as possible, with the intention that it be sufficient to allow the disclosing Party to seek a protective order or other appropriate remedy. The receiving Party will cooperate with the disclosing Party's efforts to quash, modify or challenge the required disclosure. In the event that such disclosure is required, the receiving Party will disclose only such information as is legally required and only to the extent necessary to comply with the Process. Nothing in this section shall impair the right of either party to disclose information necessary, in the sole judgment of the Party or the Party's affiliate, to comply with securities laws or public trading reporting obligations under laws of the United States or any state in the Union.

6.3 Remedies. The Parties agree that, notwithstanding any other section of this Agreement, the non-breaching Party shall be entitled to seek equitable relief to protect its interests, including but not limited to preliminary and permanent injunctive relief, as well as money damages. Nothing stated herein shall be construed to limit any other remedies available to the Parties.

#### 7. TERM AND TERMINATION

7.1 Term. This Agreement shall become effective on the Effective Date and shall continue in force for a period of five (5) years, with automatic one (1) year renewals unless either party gives written sixty (60) day notice of termination.

7.2 Termination for Cause. NICS may, by written notice to Subscriber, terminate this Agreement if any of the events described under

(i), (ii) or (iii) below occurs, and Subscriber may, by written notice to NICS, terminate this Agreement if either of the events described under (ii) or (iii) below occurs (in each case, "Cause"). In the event Subscriber terminates this Agreement for Cause, NICS will refund the pro-rated portion of any pre-paid Fees covering the period of time during which Services were to be provided by NICS. In the event NICS terminates this Agreement for Cause, the Subscriber will forfeit any pre-paid Fees paid to NICS.

- (i) Subscriber fails to pay any amount due to NICS within ten (10) days after NICS gives Subscriber written notice of such non-payment;
- (ii) The other Party is in breach of any material, non-monetary term, condition or provision of this Agreement, which breach, if capable of being cured, is not cured within thirty (30) days after the non-breaching Party gives the breaching Party written notice of such breach; or
- (iii) The other Party (a) terminates or suspends its business activities, (b) becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority, or (c) becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes which is not rescinded within sixty (60) days.

7.3 **Acceleration of Payments.** In the event Subscriber is in default in making any payment to NICS when due, NICS may suspend Subscriber's access to, and NICS's performance of, the Services until Subscriber has cured such default and made the required payments, and arrangements have been made reasonably satisfactory to NICS that ensure the payment of future invoices. At NICS's sole option, at any time Subscriber is in default of any payment due under this Agreement, and regardless of whether NICS terminates this Agreement for Cause, NICS shall have the right to declare all amounts payable hereunder, under **Schedule A**, any Statement of Work or otherwise, and including, without limitation, all costs, expenses, interest charges and fees, to be immediately due and payable without notice to Subscriber and NICS shall have all remedies available to it at law or in equity for collection of such amounts payable. NICS's failure to exercise such option to accelerate shall not constitute a waiver of such right to accelerate at any subsequent time or waive any future right to accelerate. In addition, Subscriber agrees that if it is in default, and regardless of whether NICS terminates this Agreement for Cause, damages will be difficult to ascertain such that NICS shall be entitled to: (i) all amounts due and owing under all uncompleted Services hereunder, and; (ii) all amounts which would have become due hereunder had this Agreement continued for the entire Initial Term or any Renewal Term, as applicable, including, without limitation, all costs, expenses, interest charges and fees, to compensate NICS for lost opportunities, as liquidated damages, and not as a penalty, in addition to all other rights and remedies available to NICS.

7.4 **Return Of Materials.** Upon termination of this Agreement consistent with the terms herein, NICS may immediately discontinue Subscriber's access and use of the Services. Subscriber shall promptly discontinue use of any Services, and return any Software and Confidential Information that Subscriber has received from NICS.

7.5 **Effect of Termination.** Notwithstanding any termination of this Agreement, Section 6 ("Confidentiality") shall survive for a period of five (5) years, Section 10.3 ("Employee Solicitation") shall survive for a period of one (1) year, while Sections 5 ("Proprietary Rights"), 7.3 ("Acceleration of Payments"), 8 ("Disclaimer; Limitation of Liability"), 9 ("Indemnification") and 10.5 ("Governing Law and Enforcement of Agreement") shall survive termination of this Agreement indefinitely. All other rights granted hereunder will cease upon termination.

## 8. DISCLAIMER; LIMITATION OF LIABILITY

8.1 **Disclaimer.** TO THE MAXIMUM EXTENT ALLOWED BY LAW AND EXCEPT AS UNAMBIGUOUSLY AND EXPRESSLY SET FORTH IN ANY EXHIBIT, SCHEDULE OR ATTACHMENT, THE SERVICES ARE PROVIDED "AS IS" AND NICS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES CONNECTED WITH, RELATED TO OR ARISING OUT OF THIS AGREEMENT. NICS EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT ACCESS OR USE OF THE SERVICES WILL BE ERROR-FREE, SECURE OR UNINTERRUPTED, OR THAT INFORMATION OR CONTENT WILL BE ACCURATE OR TIMELY.

8.2 **Limitation of Liability.** TO THE MAXIMUM EXTENT ALLOWED BY LAW, IN NO EVENT WILL NICS BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGIES OR SERVICES, COST OF COVER OR PUNITIVE OR EXEMPLARY, OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE SERVICES PERFORMED HEREUNDER, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF SUBSCRIBER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, NICS WILL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY DELAY IN DELIVERY OR FURNISHING THE SERVICES. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, NICS'S LIABILITY UNDER THIS AGREEMENT WILL NOT, IN ANY EVENT, EXCEED THE FEES ACTUALLY PAID BY SUBSCRIBER TO NICS PURSUANT TO THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRIOR TO THE OCCURRENCE OF THE BREACH OR DAMAGE.

## 9. INDEMNIFICATION

9.1 **By NICS.** NICS agrees to defend or, at its option, to settle, any claim brought against Subscriber for infringement of any United States copyright, trade secret or trademark by the Services as delivered, and to indemnify Subscriber against all damages and costs assessed against Subscriber under any such claim or action. Subscriber agrees that NICS shall be released from the foregoing obligation unless Subscriber has taken all reasonable steps to mitigate any potential expenses and provides NICS with: (i) prompt written notice of any such claim or action, or possibility thereof; (ii) sole control and authority over the defense or settlement of such claim or action; and (iii) proper and full information and assistance to settle and/or defend any such claim or action. Subscriber shall have the right to employ separate counsel and participate in the defense at its own expense; provided that NICS shall remain in control of the defense. In addition, NICS may, at its sole option and expense, either: (a) procure for Subscriber the right to use the infringing Services; (b) replace the infringing Services with non-infringing, functionally equivalent services; (c) modify the infringing Services so that they are not infringing; or if (a), (b), and (c) are not commercially feasible, then (d) cease to provide the infringing Services, pay as liquidated damages an amount equal to any pre-paid Fees covering any period of time during which such infringing Services were to be provided and terminate this Agreement as it relates to such infringing Services. Upon exercise of option (d) in the previous sentence, NICS shall have no further obligations or liability to Subscriber with respect to the infringing Services. Except as specified above, NICS will not be liable for any costs or expenses incurred without its prior written authorization. The foregoing obligations do not apply with respect to Services or Software or portions or components thereof (i) not supplied

by NICS, (ii) made in whole or in part in accordance with Subscriber specifications, (iii) that are modified after delivery by NICS, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Subscriber continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Subscriber's use of such Services or Software is not strictly in accordance with this Agreement. Subscriber will indemnify NICS from all damages, settlements, attorneys' fees and expenses related to any claim of infringement or misappropriation excluded from NICS's indemnity obligation by the preceding sentence.

9.2 By Subscriber. Subscriber shall indemnify and hold harmless NICS and its Affiliates, and their directors, shareholders, members, agents and employees from and against any fine, penalty, costs, losses, liabilities and expenses (including reasonable attorneys fees) arising out of or relating to (a) the Subscriber's and any End User's use of the Software or Services under this Agreement, or (b) Subscriber's negligence or willful/intentional misconduct or breach of any of its obligations set forth in this Agreement.

9.3 Exclusive Remedy. THE FOREGOING PROVISIONS OF THIS SECTION 9 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF NICS AND ANY OF ITS LICENSORS, AND THE EXCLUSIVE REMEDY OF SUBSCRIBER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT BY THE SERVICES, ANY SOFTWARE, OR ANY PART THEREOF.

## 10. GENERAL

10.1 Notices. Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be: (i) delivered in person; (ii) sent by first class registered mail, or air mail, as appropriate; or (iii) sent by nationally recognized overnight or two (2) days air courier service.

Notice to Subscriber shall be sent to:

Notice to NICS shall be sent to:           NIC Services, LLC ("LEGAL NOTICE")  
25501 West Valley Parkway, Suite 300  
Olathe, KS 66061  
Attention: Mukesh Patel

With a copy to:                               NICUSA, Inc. ("LEGAL NOTICE")  
25501 West Valley Parkway, Suite 300  
Olathe, KS 66061  
Attention: General Counsel

Either Party may change its address for notice by notice to the other Party given in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, three (3) business days after deposit in the mail as set forth above, or one (1) day after delivery to a nationally recognized overnight or two (2) days air courier service.

10.2 Representations. Each Party represents and warrants that: (i) It is duly organized, validly existing and in good standing under the laws of its state of domicile; (ii) It has the power and authority to execute, deliver and perform under this Agreement; and (iii) This Agreement constitutes a valid and binding obligation enforceable in accordance with its terms.

10.3 Employee Solicitation. Subscriber acknowledges that NICS's business is dependent upon being able to adequately staff projects with qualified persons and adequately utilize its employees and independent contractors. Subscriber shall not, directly or indirectly, for itself, or on behalf of any other person, firm, corporation or other entity, whether as principal, agent, employee, stockholder, partner, member, officer, director, sole proprietor, or otherwise, solicit, participate in or promote the solicitation of NICS's employees or independent contractors to leave the employ or service of NICS or hire an NICS employee, during the period such employee or independent contractor is working for NICS and for one (1) year immediately following the period for which such employee or independent contractor last performed services for NICS.

10.4 Assignment. Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by Subscriber, in whole or in part, whether voluntarily or by operation of law, except that Subscriber may assign this Agreement in connection with a sale of its assets, merger or consolidation or other transaction commonly known as a business combination. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding anything to the contrary, NICS shall have the right to subcontract any of its obligations hereunder to third parties, provided that NICS shall remain primarily responsible for the performance of any such obligations.

10.5 Governing Law and Enforcement of Agreement. This Agreement shall be governed in accordance with the laws of the State of Kansas, without reference to conflict of laws principles. The Parties consent and submit exclusively to the jurisdiction and service of process of the courts of the State of Kansas or the courts of the United States located in Johnson County, Kansas. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. To the extent permissible by law, the Uniform Computer Information Transaction Act will not apply to this Agreement. In the event either party brings an action to enforce this Agreement (including any attachments or schedules), the prevailing party shall be entitled to recover from the losing party all reasonable attorneys' fees and costs associated with the enforcement proceeding, including fees and costs incurred in any appellate proceeding.

10.6 Independent Contractors. The relationship of NICS and Subscriber established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed or implied to give either Party the power to direct or control the day-to-day activities of the other or constitute the Parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.

10.7 Publicity. The Parties agree that any press release, public announcement, confirmation or other information regarding this Agreement or the transactions contemplated hereby shall be made only after each Party has approved in writing the time, form and content of any such information to be disseminated to third parties or the public. Subscriber acknowledges that NICS may desire to use Subscriber's

name in client listings, on its web site, in a client profile, and in future press releases, product brochures and financial reports indicating that Subscriber is a customer of NICS and Subscriber agrees that NICS may use its name in such a manner and in accordance with NICS's then current marketing policies and programs. Nothing in this section shall impair the right of either party to disclose information necessary, in the sole judgment of the Party or the Party's affiliate, to comply with securities laws or public trading reporting obligations under laws of the United States or any state in the Union.

10.8 Miscellaneous. In the event that any provision of this Agreement conflicts with governing law or if any provision is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction: (i) such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law; and (ii) the remaining terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect. The failure of either Party to enforce at any time any of the provisions of this Agreement shall not be deemed to be a waiver of the right of either Party thereafter to enforce any such provisions. No waiver, amendment or variation to this Agreement shall be valid unless in writing and signed by both Parties. Except for the obligation to make payments, nonperformance of either Party shall be excused to the extent that performance is rendered impossible by Force Majeure. This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same Agreement. Section and Schedule headings are for ease of reference only and do not form part of this Agreement. This is an integrated Agreement and all exhibits, schedules and attachments hereto and incorporated herein constitute the entire, final, complete and exclusive agreement between the Parties and supersede all previous agreements, intentions, or representations, oral or written, relating to this Agreement. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each Party. Both Parties acknowledge having read the terms and conditions set forth in this Agreement and all attachments hereto, understand all terms and conditions, and agree to be bound thereby. No employee, agent, representative, or affiliate of NICS has authority to bind NICS to any oral representations or warranty concerning the Software or the Services. Any written representation or warranty not expressly contained in this Agreement (including any Schedules) will not be enforceable.

10.9 No Third Party Beneficiaries. No parties, entities, or persons other than the Parties hereto may rely on or derive any rights pursuant to or under this Agreement.

10.10 PCI DSS Compliance. The Parties understand and agree to comply with PCI DSS and any amendments thereto. The Parties acknowledge that each Party is responsible for the security of cardholder data in its possession. The Parties agree to maintain a list of which PCI DSS requirements are managed by Subscriber, and which requirements are the responsibility of NICS to include in NICS PCI DSS reviews. Upon request, a Party agrees to provide the other Party (in this case, also a requesting party) with written proof of its compliance with the PCI DSS. If NICS is providing Payment Services Devices (as indicated on Schedule A), Subscriber shall be responsible for compliance with PCI DSS version 3.1 and any more current versions regarding the Payment Service Devices, including, but not limited to, the maintenance, inspection, and training obligations set forth in PCI DSS Requirement 9.9.

## SCHEDULE A

### SERVICES AND FEE SCHEDULE

#### SERVICES

Under this Agreement, NICS will provide Subscriber with a subscription to the following hosted Software and Services.

#### Hosted Software

**Checkout (OTC)** – Checkout (OTC) is the NICS proprietary web-based application that will act as the interface for the Subscriber to input certain data, including name, address, and credit card information, necessary to process a payment.

**TPE** - TPE is the NICS proprietary payment engine that will act as the middleware between Checkout (OTC) and the credit card authorization network to obtain authorization and settlement of funds from the End-Users card issuing bank.

**Web-based Reporting/Administration Tools** – NICS will assign Subscriber secure access to real-time online reporting tools for the purposes of issuing refunds, order research, daily and monthly reporting, and accounts reconciliation.

#### Services

**Payment Processing Services** – NICS will provide Subscriber with credit card payment processing services for any credit or debit card with the Visa™, Discover™ or MasterCard™ logo. Other branded cards can be accepted by written mutual consent of both Parties. However, NICS reserves the right to make Fee changes in order to process other cards.

**Client Technical Support** – NICS will provide a telephone number as well as an email address to the Subscriber for reporting any technical difficulties.

**Chargeback Retrieval/Research** – A chargeback occurs when an End-User disputes the transaction with their card issuing bank. The card issuing bank will contact NICS asking for supporting documentation to verify that the transaction was legitimate and processed with the consent of the End-User. NICS will work with the card issuing bank to resolve chargebacks in a timely manner.

#### Payment Service Devices

NICS will provide Payment Service Devices during the term of this Agreement at Subscriber's cost. "Payment Service Devices" means **First Data FD40**. Subscriber will maintain the Payment Service Devices in its possession and upon Agreement termination or expiration, either return or properly dispose of the devices.

#### FEES

**Set-up fees** – NICS will charge Subscriber a one-time set-up fee of \$500 upon signing the Agreement.

**Enhanced Access Fees** – NICS will charge End-User 3% per transaction added to total payment if paid via a credit card. Subscriber understands that credit card merchant fees, which are included in Enhanced Access Fees, are set outside the control of NICS. NICS reserves the right to increase Enhanced Access Fees after providing written notice to Subscriber.

**eCheck/ACH Fees** – NICS will charge End User \$1.50 per eCheck/ACH transaction.

**Payment Service Device Fee** – NICS will charge Subscriber the market price, which is currently \$250/Payment Service Device; NICS will invoice Subscriber for such one-time Fees on a monthly basis, as applicable.

**Refunds** – NICS understands that from time to time Subscriber may have to refund End-User the transaction amount. Subscriber will coordinate with NICS to verify the refund amount and it will be the responsibility of the Subscriber to issue refunds to End-Users at Subscriber's discretion. However, due to the potential of large transaction payments, NICS may ask Subscriber to remit to NICS the refund amount, before NICS issues the refund. In cases where NICS issues a refund without requesting Subscriber to remit payment prior to issuing the refund, NICS will "net" all refunded amounts from future disbursements.

#### **Chargeback Retrieval/Research –**

In the event of End User chargeback upheld in the End User's favor, NICS will invoice Subscriber on a monthly basis for the amount of the chargeback.

**eCheck/ACH Returns/Disputes** – NICS will invoice Subscriber on a monthly basis for any eCheck/ACH return amount. It is the Subscriber's responsibility (rather than NICS) to pursue collection on all ACH returns from the End User.

#### Flow of Funds

As NICS is acting as the Merchant of Record, all funds that are processed through the Payment Engine will be deposited into an account owned by NICS. As settlement of credit card varies by brand and as ACH returns can be initiated up to 72 hours after the transaction, NICS will disburse all settled transactions, net of Fees and Refunds, to Subscriber on the next business day following a transaction.

NICS receives funds as an agent of the Subscriber, and the funds become the property of the Subscriber immediately upon receipt by NICS. The Subscriber shall regard receipt of these funds by NICS as equivalent for all purposes to receipt of the funds by the Subscriber directly. In the unlikely event that NICS fails to disburse the funds to the Subscriber, the Subscriber will nevertheless consider itself to have been paid the funds by the user and will not attempt to recover the funds or withhold Products from the End User. Nothing in this paragraph prejudices any remedies that the Subscriber might have against NICS.

**ASSUMPTIONS**

Subscriber will provide a telephone number to display on End-Users Credit Card Statements.

Subscriber will provide customer service to End-User.

Subscriber will provide NICS with any support and supporting documentation that may be needed to process Chargebacks and Refunds.

Subscriber will work diligently with NICS to help test and implement the Service in a timely manner.

Initials:            Subscriber \_\_\_\_\_ Date \_\_\_\_\_  
                             NICS \_\_\_\_\_ Date \_\_\_\_\_



SCHEDULE B

Third Party End User Agreement Clauses

1. **Third-Party Beneficiary.** NICS shall be a direct and intended third-party beneficiary to this Agreement.
  
2. **No Warranty.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE AND SERVICES TO BE ACCESSED BY THE END USER HEREUNDER IS PROVIDED 'AS IS' WITHOUT ANY CONDITION OR WARRANTY WHATSOEVER. THE ENTIRE RISK ASSOCIATED WITH THE USE OF THE SOFTWARE AND SERVICES RESIDES WITH END USER. ALL OTHER CONDITIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, ARE DISCLAIMED, INCLUDING WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.
  
3. **Limitation Of Liability.** IN NO EVENT WILL SUBSCRIBER, NICS OR THEIR RESPECTIVE COMPANIES, LICENSORS OR SUPPLIERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, OR LOSS OF DATA IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE SOFTWARE OR SERVICES PERFORMED HEREUNDER, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF SUBSCRIBER, NICS OR THEIR RESPECTIVE COMPANIES, LICENSORS OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, SUBSCRIBER, NICS AND THEIR RESPECTIVE COMPANIES, LICENSORS AND SUPPLIERS WILL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY DELAY IN DELIVERY OR FURNISHING THE SOFTWARE OR SAID SERVICES. SUBSCRIBER'S, NICS'S AND THEIR RESPECTIVE COMPANIES', LICENSORS' AND SUPPLIERS' CUMULATIVE LIABILITY UNDER THIS AGREEMENT FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL AND/OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, RESTITUTION, WILL NOT, IN ANY EVENT, EXCEED THE FEES PAID BY END USER TO SUBSCRIBER UNDER THIS AGREEMENT. THE FOREGOING PROVISIONS OF THIS SECTION STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF NICS, SUBSCRIBER AND ITS LICENSORS AND THE EXCLUSIVE REMEDY OF END USER, WITH RESPECT TO THE FURNISHING, PERFORMANCE OR USE OF THE SOFTWARE OR SERVICES PERFORMED HEREUNDER.
  
4. **Indemnity.** To the maximum extent permitted by applicable law, end user shall indemnify, defend, and hold harmless Subscriber and NICS from any suits, losses, claims, demands, liabilities, costs and expenses (including reasonable attorneys' fees) that Subscriber or NICS may sustain or incur from: (i) end user's use of the Software or Services; (ii) end user's failure to comply with applicable laws and regulations or to obtain any licenses or approvals from the appropriate government agencies necessary to purchase or sell the subject goods and services; or (iii) end user's breach of any of its obligations set forth in this Agreement.

Initials:           Subscriber \_\_\_\_\_ Date: \_\_\_\_\_  
                           NICS       \_\_\_\_\_ Date: \_\_\_\_\_