



Kenton County School District | It's about ALL kids.

Issue Paper

DATE:

February 20, 2026

AGENDA ITEM (ACTION ITEM):

Consider/Approve the Terms and Conditions for the PaymentWorks online vendor platform.

APPLICABLE BOARD POLICY:

01.11 Powers and Duties of the Board of Education

HISTORY/BACKGROUND:

On September 8, 2025, the Board approved a Community Use Facility contract with Northern Kentucky University (NKU) to use the KCS D Aquatic Center. NKU requires vendors to register through PaymentWorks, an automated, online vendor management system. In order for KCS D to receive payments from NKU, the District must create an account and agree to the PaymentWorks Terms of Service.

FISCAL/BUDGETARY IMPACT:

None

RECOMMENDATION:

Approval to create an account with PaymentWorks to receive payment from NKU.

CONTACT PERSON:

Susan Bentle

Principal/Administrator

Susan Bentle

District Administrator



Superintendent

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda. Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent’s mailbox.



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Serve	Do	Us				

PaymentWorks Terms of Service

This Agreement sets forth the terms and conditions for your access to and use of the PaymentWorks application and website (collectively, together with all features, functionality and services accessible through such application and website, the “Service”). The Service is accessible through the website www.paymentworks.com (the “Site”). If you wish to use the Service, you must indicate your agreement to these terms and conditions. By clicking on the “I agree” button, you are entering into a contract with PaymentWorks, Inc. (“PaymentWorks” or “we”) for access to the Service and with PaymentWorks Acquisition Company LLC (to the extent Section 4 hereof is applicable to you), and you are agreeing, individually and on behalf of the company whose information you provided during the registration process (“Company”), to be bound by the following terms and conditions. If you do not agree, you will not be permitted access to the Service.

By registering as a user of the Service, you represent and warrant that you are accessing the Service on behalf of the Company, that you have the authority to bind Company legally, and that you are duly authorized to enter into this agreement on behalf of the Company. “You” refers to

you both (i) as an individual user and (ii) as an authorized representative of the company you represent.

1. USE OF THE SERVICE

1.1. Grant. Subject to Company's compliance with the terms of this Agreement, PaymentWorks hereby grants Company a non-exclusive, non-transferable, limited right to access and use the Site and the Service. Such access and use shall be exercised only by users authorized by Company to access and use the Service on behalf of Company who have agreed to these Terms of Service (collectively, "Authorized Users"). Company may access and use the Service as a purchaser of goods or services from a supplier thereof, that uses the Services to, among other things, make payments to such supplier (a "Payer"), or as a supplier of goods or services to a Payer, that accesses the Services in connection with its collection and receipt of payments from a Payer (a "Payee"). Through the Service, Company may share information about Company ("Company Data") and information about transactions, invoices, invoice payment status, and related information (collectively, "Transaction Data") with its Payers or Payees, as the case may be. Company will decide which Payers or Payees have access to specific Company Data and Transaction Data through elections and criteria established by Company through the Service. PaymentWorks may from time to time modify the Service, features of the Service, or the Site in its sole discretion.

1.2. User Names and Passwords. PaymentWorks shall provide you and each Authorized User a unique login credential ("User Name" and "Password") to be used to access the Service. You are responsible for maintaining the confidentiality of the User Name and Password. You shall immediately notify PaymentWorks of any unauthorized use of your User Name or Password and PaymentWorks shall issue you a new User Name and/or Password. You and Company will be solely responsible and liable for all activities that occur under your User Name and Password. Company shall be liable for any participation in the Service for any persons who accesses the Site and the Services using the User Name and Password of an Authorized User.

1.3 Company Responsibilities. Company will (a) be responsible for Authorized Users' compliance with these Terms of Service, (b) be responsible for the accuracy, completeness, quality and legality of Company Data and Transaction Data provided by Company, including the means by which Company Data and Transaction Data were acquired, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Service and any Transaction Data, and notify PaymentWorks promptly of any such unauthorized access or use, and (d) use the Service and Transaction Data only in accordance with any applicable documentation provided by PaymentWorks and applicable laws and government regulations. PaymentWorks shall have no liability for the accuracy, completeness, quality or legality of any Company Data or Transaction Data provided through the Service, whether provided by Company or its Payer or Payee. You, each Authorized User, and Company agree to access the Site and Service in a

secure manner in compliance with PaymentWorks' reasonable standards established from time to time. PaymentWorks, in its sole discretion, may specify connectivity standards to access the Site and the Service from time to time.

1.4. Restrictions on Use. You, Company and its Authorized User's shall not: (a) make the Service or any Transaction Data obtained through the Service from any Payer or Payee available to, or use the Service or any Transaction Data obtained through the Service from any Payer or Payee for the benefit of, anyone other than Company, (b) sell, resell, license, sublicense, distribute, rent or lease the Service or any Transaction Data obtained through the Service from any Payer or Payee, or include the Service or any Transaction Data obtained through the Service from any Payer or Payee in a service bureau or outsourcing offering, (c) use the Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy or confidentiality rights, (d) use the Service to store or transmit Trojan horses, worms, time bombs, cancel bots or other similar harmful or deleterious programming routines, (e) interfere with or disrupt the integrity or performance of the Service or third-party data contained therein, (f) attempt to gain unauthorized access to the Service or any Transaction Data or its related systems or networks, (g) permit direct or indirect access to or use of the Service or any Transaction Data in a way that circumvents a contractual usage limit, (h) copy the Service or any part, feature, function or user interface thereof, (i) copy any Transaction Data obtained through the Service from any Payer or Payee except as permitted herein, (j) frame or mirror any part of any Service or Transaction Data, other than framing on Company's own intranets or otherwise for Company's own internal business purposes, (k) access the Service or any Transaction Data obtained through the Service from any Payer or Payee in order to build a competitive product or service, or (l) reverse engineer the Service or any element thereof (to the extent such restriction is permitted by law), or (m) access or use the Service or any Transaction Data obtained through the Service from any Payer or Payee in violation of any applicable, Federal, State or local law, rule or regulation.

1.5. Reservation of Rights. All rights in and to the Site and the Service, including without limitation proprietary schema, tools, methodologies, methods of the Services and software; and any patent rights, copyrights, trade secrets, trade names, service marks, trademarks, moral rights, know-how related to the Site or the Service (collectively, "PaymentWorks Intellectual Property Rights"), not expressly granted to Company hereunder are reserved by PaymentWorks.

2. PAYMENTWORKS RESPONSIBILITIES

2.1. Service and Support. PaymentWorks will, subject to Company's compliance with these Terms of Service, use commercially reasonable efforts to: (a) make the Service and Transaction Data of Company's Payers or Payees, as the case may be (to the extent authorized by such Payers or Payees), available to Company pursuant to these Terms of Service, (b) provide standard support for the Service at no additional charge, and/or upgraded support if purchased,

and (c) make the Service available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which we shall give at least 8 hours electronic notice and which we shall schedule to the extent practicable during the weekend hours between 6:00 p.m. Friday and 3:00 a.m. Monday Eastern time), and (ii) any unavailability caused by circumstances beyond our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem, Internet service provider failure or delay, or denial of service attack.

2.2. Protection of Company Data and Transaction Data. PaymentWorks will use commercially reasonable efforts to maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Company Data and Transaction Data provided by the Company. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Company Data and Transaction Data by PaymentWorks personnel except (a) to address service or technical problems, (b) as compelled by law, (c) as Company designates through elections made through the service or (d) as Company expressly permits in writing. Company expressly acknowledges and agrees that Company Data and Transaction Data will be made available to its Payers or Payees, as the case may be, through the Service in accordance with elections and criteria established by Company Authorized Users.

3. [Reserved]

4. ADDITIONAL SERVICE FOR PAYEES

This Section 4 applies with respect to Company if Company at any time elects to participate in the PaymentWorks EarlyPay Program (defined below) as a Payee (*i.e.*, a supplier of goods or services to one or more Payers).

4.1. Definitions. As used in this Section 4, the following terms shall have the meanings indicated below:

4.1.1. "Adverse Claim" means any lien, security interest, pledge, title retention, charge, set-off right, offset, reduction, recovery, claw-back, abatement, deferral, withholding, reduction or other encumbrance or claim of any kind by any Person with respect to any Receivable, or any restriction on assignment of any Receivable.

4.1.2. "Approved Amount" means the full amount of an Approved Invoice as communicated by the corresponding Payer to PaymentWorks, including all taxes, gross-ups, duties and levies, but net of any discounts, credits or other allowances which may have been applied by such Payer. The Approved Amount shall be determined without regard to any discount Company shall have agreed to accept as part of the PaymentWorks EarlyPay Program.

4.1.3. "Approved Invoice" means an Invoice that the corresponding Payer has indicated to PaymentWorks is "approved" for payment to Company.

4.1.4. "Confidential Information" means the terms of this Agreement, the EarlyPay Fee or Purchase Price with respect to any Receivable, the amount or terms of any Receivable, or any other information of a party or such party's business that the other parties know or reasonably should know to be confidential to such first party.

4.1.5. "Due Date" means the due date for payment of a Receivable, as communicated to PaymentWorks by the corresponding Payer or indicated on an Approved Invoice.

4.1.6 "EarlyPay Fee" means a fee, expressed in US Dollars. The EarlyPay Fee, with respect to each Purchase, shall be determined by multiplying (a) the Approved Amount by (b) the EarlyPay Fee Percentage.

4.1.7. "EarlyPay Fee Percentage" means a percentage of the Approved Amount, with respect to an Approved Invoice. The EarlyPay Fee Percentage with respect to each Purchase shall be determined in accordance with a fee schedule agreed to by Company upon Company's election to participate in the PaymentWorks EarlyPay Program.

4.1.8. "Invoice" means an electronic or paper invoice submitted by Company to its Payer, for goods or services purchased from Company by such Payer.

4.1.9. "PaymentWorks EarlyPay Program" means the program operated by PaymentWorks, which provides certain Payees with the opportunity to receive early payment with respect to Approved Invoices.

4.1.10. "Person" means an individual, business (in any form), government, agency or political subdivision.

4.1.11. "Proceeds" means "proceeds" as defined in the Uniform Commercial Code, as in effect in the relevant jurisdiction from time to time.

4.1.12. "Purchase" means the purchase by Purchaser of a Receivable in advance of the Due Date, at a discount to the Approved Amount of such Receivable.

4.1.13. "Purchase Price" means the amount to be paid by Purchaser to Company for the purchase of a Receivable, determined by subtracting (1) the EarlyPay Fee, from (2) the Approved Amount with respect to the Approved Invoice evidencing the Receivable.

4.1.14. "Purchaser" means (a) PaymentWorks Acquisition Company LLC; or (b) any other Person, of which PaymentWorks gives notice to Company, that enters into a Servicing Agreement with PaymentWorks relating to Receivables acquired by such Person through the PaymentWorks EarlyPay Program; together with its permitted successors and assigns. Any

Purchaser described in clause (b) above (together with any subsequently agreed upon Purchaser) shall be deemed to be a party to this Agreement.

4.1.15. "Receivable" means Company's right to receive payment from a Payer of the Approved Amount of an Approved Invoice on the Due Date, resulting from a business relationship between such Payer and Company.

4.1.16. "Servicing Agreement" means an agreement between PaymentWorks and Purchaser, acknowledging that Purchaser will purchase Receivables and providing that PaymentWorks will perform certain servicing functions, as such agreement may be renewed, modified, extended or supplemented from time to time.

4.2. Sale of Receivables.

4.2.1. Subject to the terms and conditions of this Agreement, (a) Company agrees to sell all of its right, title and interest in and to all Receivables to Purchaser, and (b) Purchaser shall purchase all Receivables from Company.

4.2.2. On the date of each Purchase, Purchaser shall pay Company the Purchase Price for the corresponding Receivable. Upon Purchaser's payment of such Purchase Price, Company shall convey to Purchaser the Receivable, including, without limitation, all of its claims and rights with respect thereto and to any and all amounts owing by the corresponding Payer with respect to the Receivable.

4.2.3. Company shall do all things reasonably requested or required by Purchaser to document any Purchase, including changes to its books and records and if applicable, notifying and/or obtaining the consent of the corresponding Payer. Each Purchase is intended to constitute a bona fide, true sale of a Receivable. Without limiting the foregoing, upon the purchase of a Receivable as provided in this Agreement, Company shall cause its financial records to reflect the satisfaction of the corresponding Payer's obligation to pay such Receivable. If contrary to their intentions, any Receivable is not treated as fully sold to Purchaser, then Company shall be deemed to have granted (and does hereby grant) to Purchaser a perfected first priority security interest in all of its right, title and interest in and to such Receivable and all other rights of Company and obligations of the corresponding Payer with respect to such Receivable and all the Proceeds thereof. Company hereby authorizes Purchaser to file such Uniform Commercial Code financing statements or similar filings or send (or cause to be sent) such notices of assignment or obtain such Payer acknowledgements, as Purchaser may deem necessary to perfect or protect the Purchases or any such grant of a security interest, so that Purchaser possesses a perfected interest with first priority over all other claimants in the Receivables.

4.2.4. Company retains all performance and other obligations to the corresponding Payers in the commercial transactions underlying all purchased Receivables.

4.2.5. Subject to the terms of this Agreement, Purchaser agrees that it bears the risk of nonpayment by the corresponding Payer of any Receivable purchased hereunder, such assumption of credit risk being effective on the day of the Purchase of such Receivable in accordance with this Agreement.

4.2.6. Notwithstanding any contrary provision contained in this Agreement, Purchaser may at any time decline to purchase any Receivable if any portion of the corresponding Invoice is in dispute, the Invoice is subject to any credit or refund, or for any other reason whatsoever, all Purchases being at Purchaser's sole discretion. Additionally, the parties acknowledge that any Payer participating in the PaymentWorks EarlyPay Program may elect at any time to cease its participation, whereupon Company shall not sell, and Purchaser shall not purchase, any further Receivables on which such Payer is obligated.

4.2.7. Company hereby authorizes Purchaser to electronically credit Company's Bank Account (and, if necessary, to electronically debit such account to correct any erroneous credits), to effect purchases pursuant to this Section 4. As used herein, "Company's Bank Account" shall mean the bank account of Company previously provided by Company to PaymentWorks as part of PaymentWorks' supplier onboarding process, or such other bank account of which Company may give written notice to PaymentWorks.

4.2.8. Company agrees that ACH transactions hereby authorized comply with applicable law. Such credits will occur upon each Purchase as provided above and shall be in the amounts of such Purchases. This authorization will remain in full force and effect until Company gives written notice to PaymentWorks that it wishes to revoke this authorization.

4.2.9. Purchaser shall have the right at any time to demand, sue for, collect and receive payment for any and all Receivables that have been purchased hereunder (each such action, an "Enforcement Action"). In furtherance of such rights and other rights of Purchaser with respect to such Receivables, Company hereby irrevocably appoints Purchaser, and any Person designated by Purchaser in writing from time to time, as its true and lawful attorney with full power of substitution for it and in its name, place and stead, at any time, to take or refrain from taking any Enforcement Action and to endorse the name of Company on all checks, collections, receipts or instruments given in payment or part payment of such Receivables. Company furthermore agrees to follow any written instruction from Purchaser directing it to take or refrain from taking any Enforcement Action at Purchaser's expense.

4.2.10. Company hereby irrevocably appoints Purchaser as the agent of Company to execute and deliver in Company's name such agreements and documents, to complete or endorse such checks and other instruments, to institute or defend such proceedings and to perform such other acts as Purchaser may consider necessary to secure the performance of any of Company's obligations under this Agreement. Purchaser may at their discretion, but shall not be obligated to, take any such actions.

4.3. Collection of Receivables. Upon the request of Purchaser at any time, Company shall instruct (or cooperate with Purchaser to instruct) the corresponding Payers to pay all amounts owing on purchased Receivables directly to Purchaser. In the event any such amounts are paid to Company or to any third party acting as collection agent on Company's behalf, Company shall pay such amounts to Purchaser within 2 business days of receipt. Until so paid, Company shall hold such funds in trust as the exclusive property of Purchaser and segregated from Company's and such third party's other property. Company irrevocably grants Purchaser full power of attorney and appoints Purchaser as its agent to execute and deliver in Company's name, such documents, including any notices of assignment; to complete or endorse such checks and other instruments; to institute or defend such proceedings; and to perform such other acts as Purchaser may consider necessary, to collect amounts due under the purchased Receivables or to otherwise secure the performance of any of Company's or the corresponding Payers' obligations in connection with this Agreement or the purchased Receivables.

4.4. Representations and Warranties. Company represents and warrants to Purchaser, upon electing to participate in the PaymentWorks EarlyPay Program and as of the date of each Purchase that: (a) it is not insolvent, nor will it be rendered insolvent by its performance of this Agreement; (b) this Agreement and each Purchase represents a legal, valid and binding obligation of Company enforceable in accordance with its terms, and the execution, delivery and performance of this Agreement by Company have been duly authorized by all necessary corporate or other action required for Company; (c) nothing in the transactions between Company and its Payers that give rise to Receivables, and no Purchase, violates any applicable sanctions, anti-money laundering, anti-corruption or any other applicable law or regulation, and the goods or services provided to such Payers by Company do not include arms, weapons, weapon components, or any goods or services the supply of which is contrary to export controls or other applicable law; (d) the goods and/or services the sale of which gave rise to each Receivable have been fully delivered and/or performed by Company, and each Receivable is a binding obligation of the corresponding Payer that is payable in full without any further performance by Company; (e) Company will do nothing to adversely affect the amount to be paid by its Payer; (f) each Receivable is sold to Purchaser free of any Adverse Claim; (g) with respect to each Receivable, Company holds one hundred percent (100%) of the legal and beneficial right, title and interest in and to such Receivable; (h) except for the Purchase by Purchaser hereunder, Company shall not sell, assign or otherwise dispose of any Receivable that has been purchased; and (i) no Payer or any of its affiliates is an affiliate of Company. If any of the foregoing representations and warranties made by Company with respect to any Receivable sold to Purchaser proves to have been incorrect or untrue as of the date made, Company shall promptly repurchase such Receivables upon demand by Purchaser.

4.5. Indemnification. Company shall indemnify, defend and hold harmless Purchaser and its directors, officers, members, managers and employees from and against all claims, actions,

liabilities, losses, expenses, damages and costs (including reasonable attorneys' fees), that may at any time be incurred by reason of any third party claim arising out of or relating to (a) any breach by Company of its obligations under this Section 4; (b) any representation or warranty made by Company hereunder proving to have been inaccurate or untrue when made; (c) any dispute or defect with respect to any Receivable or the commercial transaction giving rise to any Receivable; or (d) taxes of any kind applied to any payment made under or in connection with this Agreement. Purchaser shall have the right to employ separate counsel and participate in the defense at its own expense.

4.6. Multiple Payers. In the event PaymentWorks has two or more customers that purchase goods or services from Company and participate in the PaymentWorks EarlyPay Program (each a "Mutual EarlyPay Customer"), then all references in this Agreement to Company's "Payer" shall be interpreted to refer to each Mutual EarlyPay Customer independently and all provisions of this Agreement shall likewise be interpreted, and shall apply, with respect to each Mutual EarlyPay Customer independently. Company and PaymentWorks agree to exchange relevant information from time to time for the purpose of identifying Mutual EarlyPay Customers, and Company and PaymentWorks shall agree upon and maintain at all times a current list of Mutual EarlyPay Customers.

4.7. Third Party Rights. This Agreement shall inure to the benefit of PaymentWorks, Purchaser and any current and future Persons that are or become Purchasers; and all Purchasers that, for any reason are determined not to be parties to this Agreement shall be third party beneficiaries of this Agreement. Any such Purchaser may exercise its rights as a third party beneficiary of this Agreement in such Purchaser's own name, without PaymentWorks', any other Purchaser's, or Company's consent, and without joinder of PaymentWorks, any other Purchaser, or Company in any proceeding. The rights of Purchasers pursuant to this Section 4.7 are irrevocable and shall survive any expiration or termination of this Agreement.

5. PROPRIETARY RIGHTS

5.1. Title to Technology. All interest, title and right in and to PaymentWorks Intellectual Property, including without limitation, all computer software programs or applications, or programs or applications of PaymentWorks' third party licensors, utilized by PaymentWorks in the establishment, operation, and/or the provision of Service, in whole or in part, shall be, vest with and remain the exclusive property of PaymentWorks and its third party licensors.

5.2. Title to Company Data and Transaction Data. All Company Data is and shall remain the property of Company. All Transaction Data is and shall remain the property of its lawful owner. PaymentWorks makes no claims, warranties or representations with regard to the ownership of Transaction Data or Company Data. PaymentWorks may share Transaction Data, in the singular or aggregate, by providing reports or otherwise, to Payer and Payees involved in a transaction

and may identify the parties as being involved in the transaction in connection therewith, all in accordance with elections and criteria established by Company Authorized Users through the Service; and Company hereby grants PaymentWorks a world-wide license to host, copy, transmit, display and otherwise use Company Data and Transaction Data as necessary to do so. In addition, Company hereby grants PaymentWorks a perpetual, world-wide, limited license to de-personalize (remove any Company identifying information) and aggregate any and all Transaction Data to determine usage trends, perform analytics, improve the Service, promote and market the effectiveness of the Service, sell such aggregated de-personalized Transaction Data to any third party, or for any other internal-business purpose.

5.3. Company's license to PaymentWorks. Company hereby grants a limited, non-transferable license to PaymentWorks for PaymentWorks to use Company's name and logos to identify Company as a user of the Site, including without limitation to display Company Data and Transaction Data through the Service, all consistent with elections and criteria established by Company, during the Term of this Agreement. PaymentWorks shall obtain Company's prior written consent for any other uses of Company's name, logos, and trademarks.

6. TERM AND TERMINATION

6.1. Term. This Agreement shall commence on the Effective Date and shall continue in effect until terminated by a party in accordance provisions below ("Term").

6.2. Termination for Cause. Either Party may terminate this Agreement by providing the other no less than five (5) days advance written notice in the event that the other Party (A) is in material breach of any term, condition or provision of this Agreement, which breach, if capable of being cured, is not cured within five (5) days after the non-breaching Party gives the other Party written notice of such breach; or (B) terminates or suspends its business activities, 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 becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes which is not rescinded within sixty (60) days of its commencement.

6.3. Termination for Convenience. Either Party may terminate this Agreement at any time for any reason at its sole discretion by providing the other Party no less than thirty (30) days advance written notice thereof.

6.4. Effect of Termination. Upon termination of this Agreement, Company shall immediately discontinue use of the Site and the Service.

6.5. Survival. Notwithstanding any termination of this Agreement, Sections 4.2.3, 4.2.4, 4.2.5, and 4.2.6 ("Additional Services for Payees," to the extent Company elects to participate in the

PaymentWorks EarlyPay Program as a Payee), Section 5 ("Proprietary Rights"), Section 7 ("Warranties"), Section 8 ("Indemnification"), Section 9 ("Disclaimer and Limitation of Liability") and Section 10 ("Additional Terms and Conditions") shall survive termination of this Agreement. All other rights and licenses granted hereunder will cease upon termination.

7. WARRANTIES

7.1. Mutual Warranty. Each Party represents and warrants that it has the authority to enter into this Agreement.

7.2. Company's Warranty. Company represents and warrants that (i) its Authorized Users have authority to act on behalf of Company; and (ii) all Company Data, Transaction Data and other materials submitted by Company to or through the Site or the Service will not (A) infringe on any third party's rights, including any intellectual property or proprietary rights, (B) violate any obligation of confidentiality, (C) violate any applicable law, statute, ordinance or regulation; or (D) contain viruses, Trojan horses, worms, time bombs, cancel bots or other similar harmful or deleterious programming routines.

7.1. DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 7, THE SERVICE AND THE SITE AND ANY OTHER SERVICES OFFERED ON OR THROUGH THE SITE AND ANY REFERENCED THIRD-PARTY SITES ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 7, PAYMENTWORKS DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES TO THE FULLEST EXTENT OF THE LAW, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. PAYMENTWORKS DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SITE OR SERVICES, COMPANY DATA, TRANSACTION DATA OR MATERIAL ON THE SITE OR THE SERVICE IN TERMS OF THEIR CORRECTNESS, ACCURACY, COMPLETENESS, QUALITY, LEGALITY, TIMELINESS, RELIABILITY OR OTHERWISE.

PAYMENTWORKS PROVIDES NO WARRANTY OF ANY KIND RELATED TO ANY THIRD-PARTY SOFTWARE THAT MAY BE INCORPORATED OR INCLUDED IN THE SERVICE. YOU AND COMPANY SHALL BE BOUND BY THE LICENSE TERMS OF THE THIRD-PARTY LICENSOR.

8. INDEMNIFICATION

8.1. Infringement. PaymentWorks agrees to defend or, at its option, to settle, any claim brought against Company for infringement of any United States patent, copyright, trade secret or trademark by the Service as delivered, but excluding any such claim to the extent it is based on the content of any Company Data or Transaction Data, and to indemnify Company against all damages and costs finally assessed by a court of competent jurisdiction against Company

under any such claim or action. Company agrees that PaymentWorks shall be released from the foregoing obligation unless Company has taken reasonable steps to mitigate any potential expenses and provides PaymentWorks 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. Company shall have the right to employ separate counsel and participate in the defense at its own expense; provided that PaymentWorks shall remain in control of the defense. In addition, PaymentWorks may, at its sole option and expense, either: (a) procure for Company the right to use the allegedly infringing elements of the Service; (b) replace the allegedly infringing elements of the Service with non-infringing, functionally equivalent services; (c) modify the allegedly infringing elements of the Service so that they are not infringing; or (d) cease to provide the allegedly infringing elements of the Service, refund any fees paid by Company covering any future period of time during which such allegedly infringing elements Services were to be provided. Upon exercise of option (d) in the previous sentence, PaymentWorks shall have no further obligations or liability to Company with respect to the allegedly infringing elements of the Service. Except as specified above, PaymentWorks will not be liable for any costs or expenses incurred without its prior written authorization. THE FOREGOING PROVISIONS OF THIS SECTION 8 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF PAYMENTWORKS TO COMPANY WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT BY THE SITE, THE SERVICE, OR ANY PART THEREOF.

8.2. Company shall indemnify, defend and hold harmless PaymentWorks and its directors, officers, members, managers and employees from and against all claims, actions, liabilities, losses, expenses, damages and costs (including reasonable attorneys' fees), that may at any time be incurred by reason of any third party claim arising out of or relating to (i) any Company Data or Transaction Data provided by the Company, (ii) a breach of these Terms of Service by Company, or (ii) any claim that is inconsistent with Company's representations or warranties to PaymentWorks contained herein. PaymentWorks shall have the right to employ separate counsel and participate in the defense at its own expense.

9. LIMITATION OF LIABILITY

9.1. Limitation of Liability. PAYMENTWORKS' LIABILITY TO COMPANY FOR DAMAGES WITH RESPECT TO THE SITE OR THE SERVICE SHALL NOT EXCEED TEN THOUSAND DOLLARS (\$10,000.00).

9.2. No Consequential Damages. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AND IRRESPECTIVE OF ANY FAULT OR NEGLIGENCE, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES,

LOST SALES, LOST SAVINGS, LOST PROFITS (ANTICIPATED OR ACTUAL), LOSS OF USE, DOWNTIME, INJURY TO PERSONS OR DAMAGE TO PROPERTY AND CLAIMS OF THIRD PARTIES), HOWSOEVER CAUSED, ARISING OUT OF OR RELATED TO THIS SITE OR THE SERVICE, WHETHER OR NOT SUCH PARTY HAS BEEN APPRISED OR NOTIFIED THAT ANY SUCH DAMAGES OR LOSSES ARE POSSIBLE OR LIKELY, AND WHETHER OR NOT ANY PERMITTED REMEDY HAS FAILED ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

9.3. Conditions. The Parties agree that the above limitations of liability of this Section 9 shall apply regardless of the form of action, whether in contract, warranty, strict liability or tort (including, without limitation, negligence of any kind, whether active or passive) or any other legal or equitable theory

10. ADDITIONAL TERMS AND CONDITIONS

10.1. Notices. Except as otherwise specified herein, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). All notices to the Company shall be addressed to the address you entered during the registration process or such address thereafter entered for notices by a Company Authorized User.

10.2. U.S. Government Licenses. PaymentWorks provides the Service, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with PaymentWorks to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

10.3. Export Restrictions. The Site, the Service, other technology PaymentWorks makes available, and derivatives thereof may be subject to export laws and regulations of the United States. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Authorized Users to access or use the Service or any content in a U.S.-embargoed country or in violation of any U.S. export law or regulation.

10.4 Payer and Payee Terms and Conditions. Company acknowledges and agrees that its use of the Services and the Transaction Data, and any use of Transaction Data by its Payers or Payees, shall not modify or supersede the terms and conditions of any purchase agreements, invoices, or other negotiated terms agreed to by and between Company and any Payer or Payee.

10.5. Confidentiality. Each party agrees to maintain the confidentiality of any Confidential Information of the other party to which it has access, and to use such Confidential Information only for the purposes of exercising its rights and performing its obligations under this Agreement. Notwithstanding the foregoing, either party may disclose Confidential Information obtained from the other party (a) to any authority of competent jurisdiction pursuant to legal process or regulatory requirement; and (b) to its subsidiaries, affiliates professional advisors and service providers. Additionally, Purchaser may disclose Confidential Information obtained from PaymentWorks to any Person to whom Purchaser transfers, sells or assigns (or proposes to transfer, sell or assign) all or any of its rights, interests and obligations under this Agreement and in any Receivables, but only to the extent relevant to such transaction.

10.6. Miscellaneous

10.6.1. Neither this agreement nor any rights under this agreement may be transferred or assigned by Company without the prior written consent of PaymentWorks.

10.6.2. This agreement shall be interpreted and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to its internal conflict of laws principles. In connection with any dispute arising hereunder or litigation relating hereto, the parties hereby consent and subject themselves exclusively to, and agree to waive any objections to, the jurisdiction of the federal and state courts located in Boston, Massachusetts.

10.6.3. In the event that any provision of this agreement is held invalid, the remaining terms and conditions of this agreement shall remain in full force and effect.

10.6.4. The failure of either party to enforce 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.

10.6.5. Nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, blackouts, governmental acts or orders or restrictions, failure of Companies or the Internet, or acts of God or terrorism, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.

10.6.6. Neither party shall disclose the terms, conditions or other content of this agreement or any supplement(s) to any third party other than a respective party's officers, directors, members, managers, affiliates, employees, accountants, attorneys, investment bankers, independent contractors, agents or other representatives.

10.6.7. The relationship of PaymentWorks and Company established by this agreement is that of independent contractors, and nothing contained in this agreement will be construed to constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.

10.6.8. These Terms of Service constitute the entire, final, complete and exclusive agreement between the parties regarding the subject matter hereof and supersede all previous agreements, intentions, or representations, oral or written, relating to the subject matter of this agreement. Any representation or warranty not expressly contained in these Terms of Service will not be enforceable.

10.6.9. These Terms of Service may be updated from time to time in PaymentWorks' sole discretion. Each time a representative of the Company clicks "I AGREE" or accesses the Service using an Authorized User's User Name and Password, Company thereby consents to be bound by the terms and provisions of the then-current Terms of Service Agreement as posted on the Site and any supplemental terms or provisions that may otherwise be agreed to in writing by the parties from time to time.

THIS TERMS OF SERVICE AGREEMENT IS A LEGAL CONTRACT THAT WILL BIND YOU AND YOUR COMPANY. YOU MAY ACCESS THE SITE AND USE THE SERVICE ONLY IF YOU AFFIRM THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO ALL OF THE TERMS AND CONDITIONS SET FORTH HEREIN BY CLICKING THE "I AGREE" BUTTON AT SIGNUP OR WHEN PROMPTED. COMPANY AGREES THAT CLICKING SUCH BUTTON CREATES A FULLY BINDING AND ENFORCEABLE CONTRACT UPON ACCEPTANCE BY PAYMENTWORKS (AND BY PURCHASER, AS APPLICABLE PURSUANT TO SECTION 4). YOU MAY NOT ACCESS THE SITE OR USE THE SERVICE IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS.



280 Moody Street,
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Waltham, MA 02453

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