

**VILLAGE OF DOWNERS GROVE**  
**Report for the Village**  
**5/10/2022**

<b>SUBJECT:</b>	<b>SUBMITTED BY:</b>
ERP Contracts - Invoice Cloud	Stan Popovich, AICP Community Development Director

**SYNOPSIS**

A resolution has been prepared to authorize a three-year agreement with Invoice Cloud, Inc. to provide third party payment processing for the Community Development Department's CityView Enterprise Resource Planning (ERP) system.

**STRATEGIC PLAN ALIGNMENT**

The goals for 2021-2023 include *Steward of Financial, Environmental and Neighborhood Sustainability, Exceptional Municipal Services, Top Quality Infrastructure and Continual Innovation.*

**FISCAL IMPACT**

Based on projected permit revenue, the estimated annual cost is \$40,000. These costs will be offset by permit revenue.

**RECOMMENDATION**

Approval on the May 10, 2022 Village Council consent agenda.

**BACKGROUND**

The Village began a multi-year project in the summer of 2019 to replace its ERP system and in 2021 selected the N. Harris Computer Corporation (CityView) to provide the Community Development Department's Enterprise Resource Planning system. The CityView system allows users to apply, process, pay for and receive permits on-line. To facilitate payments, the Village has selected Invoice Cloud, Inc. as a third party payment processor. Invoice Cloud will allow residents to pay with credit cards, debit cards or ECheck via a variety of means including online, SMS text messaging, interactive voice response system or in-person.

Invoice Cloud, Inc. is a preferred CityView vendor and has successfully integrated with CityView for other municipal clients.

**ATTACHMENTS**

Resolution  
Contract

**RESOLUTION NO. \_\_\_\_****A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT  
BETWEEN THE VILLAGE OF DOWNERS GROVE  
AND INVOICE CLOUD**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Biller Agreement (the "Agreement"), between the Village of Downers Grove (the "Biller") and Invoice Cloud ("Invoice Cloud"), for third party payment processing for the Village's CityView Enterprise Resource Planning (ERP) system, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

\_\_\_\_\_  
Mayor

Passed:

Attest: \_\_\_\_\_

Village Clerk

## 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, 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. 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 shall 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.

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 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, customer and/or prospective customer information, product features and plans, 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"). Notwithstanding the foregoing, this Agreement and the pricing and financial information contained directly therein shall not constitute Confidential Information as defined herein. 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. Except as otherwise required by applicable Illinois law or as expressly authorized in this Agreement, 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). In the event that records required to be disclosed by Biller under applicable public records law (i) are conspicuously labeled or marked as Invoice Cloud Confidential Information or trade secrets, or (ii) contain sensitive Customer personal information, *i.e.*, credit/debit card numbers, bank account numbers, social security numbers, and taxpayer IDs, Biller shall provide Invoice Cloud with prompt written notice of the disclosure request and afford Invoice Cloud a reasonable opportunity to seek protective legal treatment for such Confidential Information, trade secrets, or sensitive Customer personal information as necessary prior to the disclosure of the requested records. Moreover, Biller agrees not to disclose any records containing Invoice Cloud Confidential Information or trade secrets: (i) that are otherwise exempt from Illinois public/open records law; or (ii) in contravention of its internal rules or procedures governing the disclosure of third party trade secrets and/or confidential information in Biller's possession.

**5. Billing and Renewal.** 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 either auto debited from the Biller Bank Account or 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 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 60 days of the earlier 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 2%, provided, however, that such increase may not apply during the first year after the execution date of the Biller Order Form and may not occur more than once per year thereafter.

**6. Term and Termination.** The initial term of this Agreement shall commence as of the execution date of the Biller Order Form and continue for a period of three (3) years after the Go Live Date ("Initial Term") and will automatically renew for each of additional successive one (1) year terms ("Renewal Term") unless terminated as set forth herein. "Term" as used herein shall mean the Initial Term and any Renewal Term. Prior to the automatic renewal of this Agreement for a Renewal Term as described above, Invoice Cloud shall provide Biller with written notice (email is sufficient) of the upcoming renewal no less than sixty (60) days prior to the start date of the applicable Renewal Term. Upon receipt of such notice from Invoice Cloud, Biller shall have thirty (30) days to elect to cancel the automatic renewal at Biller's discretion by providing Invoice Cloud with written notice of Biller's cancellation (email is sufficient). In the event that Biller elects to cancel an automatic renewal within such 30-day period in accordance with the immediately preceding sentence, this Agreement shall terminate at the end of the then-current term ("Renewal Cancellation"). If Biller does not exercise its right to cancel the automatic renewal within the 30-day period, this Agreement will automatically renew for a Renewal Term as set forth in this Section 6. Apart from a Renewal Cancellation as set forth above, this Agreement may be terminated by either party effective at the end of the Initial or any Renewal Term by such party providing written notice to the other party of its intent not to renew no less than ninety (90) days prior to the expiration of the then-current term. Additionally, 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. Upon any early termination of this Agreement by Invoice Cloud as a result of breach, Biller shall remain liable for all fees and charges incurred, and all periodic fees owed through the end of the calendar month following the effective date of termination. Upon any termination or expiration of this Agreement, Biller's password and access will be disabled and Biller will be obligated to pay the balance due on Biller's account computed in accordance with the Charges and Payment of Fees section above. Biller agrees that Invoice Cloud may invoice Biller for such unpaid fees.

**7. Invoice Cloud Responsibilities.** Invoice Cloud represents and warrants that it has the legal power and authority to enter into this Agreement. 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, correct any Transaction Data to the extent that such errors have been caused by Invoice Cloud or by malfunctions of Invoice Cloud's processing systems.

**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, (B) THAT THE SERVICE WILL NOT EXPERIENCE DELAYS IN PROCESSING OR PAYING, OR (C) THE SERVICE WILL MEET REQUIREMENTS WITH RESPECT TO

SIZE OR VOLUME. Invoice Cloud's service may be subject to 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.

**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 and shall abide by all applicable laws, and regulations in connection with Biller's and/or its customers' and/or any payers' 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;

## Biller Agreement

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 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 and hold Biller, employees, attorneys, and agents, harmless from any losses, liabilities, and damages (including, without limitation, Biller's costs, and reasonable attorneys' fees) arising out of: (i) failure by Invoice Cloud to implement commercially reasonable measures against the theft of the Customer Data; or (ii) its total failure to deliver funds processed by Invoice Cloud as required hereunder (which relates to payments due from Invoice Cloud for Transaction Data). This indemnification does not apply to any claim or complaint relating to Biller's failure to resolve a payment dispute concerning debts owed to Biller or Biller's negligence or willful misconduct or violation of any applicable agreement or law.

### 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 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.** 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 may give notice by electronic mail to the other party's email address (for Biller, that address on record on the Biller Order Form) or by written communication sent by first class mail or pre-paid post to the other party's address on record in Invoice Cloud's

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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 or [helpdesk@invoicecloud.com](mailto:helpdesk@invoicecloud.com). 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) or 12 hours after sending (if sent by email).

**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 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.
- 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. Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than One Million (\$1,000,000) for any one occurrence, with respect to each of the Invoice Cloud's owned, hired or non-owned vehicles assigned to or used in performance of the Services.
- d. Errors and Omissions Insurance (Professional Liability and Cyber Insurance) with limits of liability of at least Two Million Dollars (\$2,000,000) per claim and in the aggregate.

**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. With respect to Billers who are not with municipalities, localities or governmental authorities, this Agreement shall be governed by Massachusetts law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction. No text or information set forth on any other purchase order, preprinted form or document (other than a Biller Order Form and any add on Biller Order Form, if applicable), and no documentation (including any implementation planning documents) except as specifically referenced 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, 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 are attached hereto as Exhibit A and are agreed to by Invoice Cloud and Biller (the "Biller T+C"). The terms and conditions and definitions set forth in Exhibit A are incorporated herein and made a part hereof by this reference.

# Invoice Cloud

## Statement of Work

### *Village of Downers Grove*

#### Overview

The Invoice Cloud (IC) suite of services (The Service) will give the *Village of Downers Grove* (Biller) and its customers the ability to accept online payments for invoiced and non-invoiced items. The Service will allow the *Village of Downers Grove* to offer online payment processing in a securely hosted real-time environment. Customers will be able to locate, view and print bills or invoices and payment records online and pay using credit cards, debit cards, and electronic checks.

#### Definitions:

1. Biller – Merchant / *Village of Downers Grove*
2. Payer – Client customer, resident, person paying a bill or invoice
3. EBPP – Electronic Bill Presentment & Payment
4. Bill – Bill and Invoice are used synonymously throughout this document
5. RTDR - Real-Time Data Refresh – collects and aggregates the data as soon as a user accesses a specific function
6. NTDR – Near-Time Data Refresh – integration that happens periodically; the data is collected immediately but it is not aggregated until later – data can be processed every day, every hour or even every few minutes

#### 1. Security and Industry Compliance

Invoice Cloud maintains full compliance with current applicable Payment Card Industry (PCI) standards, Cardholder Information Security Program (CISP) regulations and National Automated Clearinghouse Association (NACHA) rules and guidelines. Invoice Cloud will abide by such guidelines for the security of all cardholder data that Invoice Cloud possesses.

- a. **PCI** - Invoice Cloud will provide compliant storage of Biller's customer payment information that is certified by Visa/MasterCard. Data security measures are addressed during collection and transmission via SSL with our patent pending encryption technology. All confidential information will be treated in accordance with the PCI standards.
- b. **Software as a Service (SaaS) Architecture** – All Biller customer financial and payment information and the invoice presentment and payment processing application is housed offsite from Biller.
- c. **Browser Compatibility** - Invoice Cloud supports the most current version of the industry's most common browsers.

#### 2. Data Integration

Invoice Cloud does maintain an integration with *Harris CityView*. The integration for the *Village of Downers Grove* will include the functionality found in Appendix B.

#### 3. Payer Portal

The Payer Portal is an electronic bill presentment and online payment portal where a Biller's customer (Payer) can view a bill and then proceed, within the same user interface, to make an online payment.

- a. Invoice Cloud will present bills electronically through a payer portal that is branded for Biller or via an email notification, if the Payer provides an email address.
- b. The electronic invoice presentment will simulate the paper invoice Biller uses and will be available in PDF and/or html format.
- c. The Service may provide the Payer the option of making a payment via credit card (Visa, MasterCard, American Express and Discover) or electronic check (also referred to as ACH, e-check, EFT).



- d. The Service provides the Payer a one-time online payment option without registration, and the capability to register to access Payer's account history, schedule a payment, or set up AutoPay payments.
- e. A Payer will have the ability to choose their payment date (also known as scheduled payments).
- f. The system will accept partial, full, or overpayments as defined by the Biller.
- g. The Payer will register with the Service using the authentication method designated by Biller.
- h. Linking Accounts - After registering with the Service, the Payer will be able to login to their account(s). If the Payer has multiple accounts and uses the same authentication information for all accounts, the Payer will be able to link their account and view from a single registration. The Payer will then have the option to choose which account they would like to pay or view in further detail.
- i. The Payer will receive an email confirmation of payment after any payment process.
- j. The Payer will have the ability to search and access historical bills once they register with the Service. The Service will store twenty-four (24) months of rolling history from the point of Biller's first invoice file upload to the Service. This includes invoice history and account history.
- k. Biller has the option of allowing the Payer to pay via different payment methods which include online, IVR, IC Biller Portal, Pay by Text, CloudCSRConnect and CloudPOSConnect.
- l. Payers who have scheduled a payment or registered for AutoPay will receive email notification from the Service of pending payments.
- m. The Service includes shopping cart functionality.
- n. The Service will allow the Payer the option to elect paperless billing.
- o. A Payer registered for paperless billing will be automatically placed back on paper billing if their email address is undeliverable; notification of the Payer's undeliverable email address will be sent to Biller via email.
- p. The Service complies with Federal E-Signature Act for paperless billing and AutoPay by providing a system in which a Payer must confirm enrollment in paperless billing and/or AutoPay by responding to an email sent after the Payer registers for paperless billing and/or AutoPay through online self- service.

#### 4. **Biller Portal**

The Biller Portal is an administrative portal where Biller staff will have access to reporting, search customers, search invoices, search payments, initiate payments or credits, login as a Payer, modify email templates, etc.

- a. Biller can log in as the Payer on either the Biller or Payer Portal and make a payment on behalf of the Payer. There is an audit trail for who made the payment, and the source of every payment (CSR, Pay by Text, AutoPay, Web, IVR, etc.).
- b. Biller will have the capability of blocking future payments by specific Payer and payment method type (i.e. Credit Card or E-Check (ACH)).
- c. **Permissions** – The Biller Portal includes a table of role based permissions, determined by the Biller's System Administrator. Each permission is applied to a user ID on an individual basis to maximize flexibility. The system administrator can allow or disallow access to functions such as viewing data, creating reports, resending email notices, processing payments, credits or refunds, editing email templates and more. Since it is controlled by Biller administrator, changes can be made quickly on an as needed basis.
- d. **Administrative Email Notifications** - Biller may set up the system to send several administrative notifications and request system notifications be sent to multiple staff members. This allows different departments to get the information they need in a timely manner. The notifications include:
  - ACH Reject Notifications
  - Batch Close Notifications
  - Daily Management Report
  - File Processing Notifications
  - Month End Billing Invoice
  - Paperless Customer Email Bounce Daily Report

- Request System Notifications (this is the ticketing system available in the Invoice Cloud payer portal).
  - Status Notifications (notifications of planned outages, new features, etc.)
- e. **Biller Controlled Configuration Options** – The Biller Portal includes several Biller controlled configurable options to customize the way payments and customer accounts are handled. The Biller will be able to configure for:
- allowing Auto-Pay and scheduled payments
  - allowing customers to update their phone or mailing address through the payer portal
  - allowing customers to pay less than, or more than the balance due based on receivable type
  - updating Refund Policy description
  - updating customer service phone number

## 5. **Biller Portal - Reporting**

Biller can access a selection of pre-configured reports. Biller can request reports for daily, monthly, or date range activity. Most reports can be exported to excel files or scheduled for download as a custom report, as indicated by asterisk (\*) in the report name. All stored payment data is truncated, and this is reflected in all reports.

- a. Reports:
- b. Search Customers\*
- c. Search Invoices
- d. Search Payment Transactions\*
- e. Monthly Summary
- f. Registration Report\*
- g. Autopay Report\*
- h. Paperless Report\*
- i. Data Synchronization History
- j. EFT/ACH Rejects\*
- k. View Scheduled Payments\*
- l. Invoice File History
- m. Import Errors
- n. Daily Payments Received\*
- o. Total Outstanding Invoices
- p. Email Notification Summary
- q. Email Statistics
- r. Email Tracking
- s. Bounced Email Report
  - Email Statistics
  - Email Tracking
  - Bounced Email Report

## 6. **Payer Email Notifications**

Invoice Cloud provides a set of customizable email notification templates for each invoice type that are delivered for numerous events surrounding electronic invoice presentment and payment activity. Email notifications may be customized through the Biller Portal using a Word style editor and options to insert secure hyperlinks to website, links to electronic documents such as newsletter or bill inserts, and/or variable fields selected from the Biller's data file.

- a. Three (3) email notifications can be scheduled. The first notification is based on the number of days from the invoice due date. Second and third notifications will only be sent to Payers with an outstanding balance, not those with a scheduled payment, or Payers who have signed up for Auto- Pay.

- b. At the discretion of Biller, Payer email notifications can be delivered for each of the following events.
- First Invoice Email Notification
  - Second Invoice Email Notification
  - Third Invoice Email Notification
  - Payment Transaction Receipt
  - Declined Auto Pay Transaction
  - Late Fee Email Notification
  - Declined Scheduled Payment Notification
  - Registered Customer Welcome Email
  - AutoPay Registration Notification
  - Paperless Registration Notification
  - ACH Reject/Chargeback Notices (with reason codes and descriptors)
  - Credit Card Expiration Notification
  - Scheduled Payment Confirmation
  - AutoPay Reminder Notification
  - FlexPay Confirmation Notification
  - Scheduled Payment Reminder
  - Paperless Off Confirmation
  - Online Bank Direct Payment Receipt
  - Check 21 Payment Receipt
  - Linked Accounts First Notice Notification
  - Linked Accounts Second Notice Notification
  - Linked Accounts Third Notice Notification
  - AutoPay Off Confirmation
  - Conveyed Customer Notification
  - Multiple Registered Customers Welcome Email
  - Recurring Scheduled Payment Confirmation
  - Recurring Scheduled Payment Canceled

## 7. **Business Rules**

The Invoice Cloud solution is designed for flexibility for customers and Billers. There are many rules currently available and we will also undertake the creation of new business rules as we both agree. Each bill type operates independently and can accept different payment types as well as other business rules. At Biller's option, multiple business rules can be applied to each bill type. Invoice Cloud provides flexibility regarding business rules to support specific needs, including:

- a. Ability to allow partial payments, over payments, full balance only, or late fees.
- b. Ability to allow payments beyond the due date - The service is designed to accommodate Biller specific business rules like allowing payments beyond their due date.
- c. Ability to allow for multiple payment types for one customer for the same bill - The service allows multiple payment types from one customer for the same bill when partial payments are allowed. Credit/debit card and e-check (ACH) can be run separately and an unlimited number of remittance types can be used. For example, a customer can pay part of a bill with a checking account, another part with a credit card and the remainder with a second credit card of a different type.

## 8. Implementation Process

Invoice Cloud assigns an Implementations Manager (IM) to each Biller. The IM will be the Biller's primary contact during the implementation process and coordinates all necessary resources from Biller, Biller software company, Invoice Cloud, and any sub-contractors. The IM will provide the Biller with the following documents to facilitate the project:

- a. **New Biller Questionnaire & Questionnaire Key** – Documents critical information needed to setup and initiate the service including information on business rules and feature selection.
- b. **Project Timeline** – Details project schedule and milestones.
- c. **Testing & Training Plan** – This plan walks the Biller through a set of user acceptance testing criteria and facilitates training on the service.

## 9. Support & Training

- a. **Business Hours** – The business hours will be Monday through Friday from 8 a.m. to 8 p.m. Eastern Standard Time. Note: Biller Support hours are 8 a.m. to 8 p.m. EST. Payer Support hours are currently 8 a.m. to 4 p.m. EST.
- b. **Help Desk** - The Service will provide a helpdesk ticketing system for Biller within the Biller Portal to get help from Invoice Cloud client support team. This tool will allow Biller to track and retain resolutions for historical reference.
- c. **Payer Support** – The Payer Support is two tiered with Biller staff as the first line of support regarding account, registration and billing questions. Issues with the Invoice Cloud service operation or incorrect credit card charges will be routed to Invoice Cloud Client Support via telephone or a Biller helpdesk ticket.
- d. **Biller Support** - If Biller encounters an inquiry which they cannot resolve Biller will create a helpdesk support ticket. Invoice Cloud Customer Support will address the issue and if applicable provide training to Biller to allow the address of tickets in a timely manner; often within twenty-four (24) business hours. Biller and technical support is available during business hours.
  - i. **Routine Technical Support** - Technical Support is available during business hours. Biller may call customer support directly; however, the use of the helpdesk ticketing system is encouraged as the preferred method of contact. Invoice Cloud staff views all tickets as they are submitted and routes them to the appropriate person for resolution.
  - ii. **Emergency After-Hours Support** – The helpdesk service is monitored after business hours and emergency support issues are addressed within one (1) hour. An emergency support issue is defined as an issue involving the system being down and inoperable and does not include Payer payment issues. Biller may request email notification be provided in the event the system is down and inoperable.
- e. **Service Enhancements** - Most enhancements do not require action on the part of Biller. Upgrades as agreed are done at the Invoice Cloud server level, so there are no mandatory actions for Biller to take. Support levels are not affected by enhancements.
- f. **Biller Training**- Biller staff will be guided in how to use the system through in-house training, documentation, remote live sessions, and access to our client support team.
  - All standard training will be done remotely. Invoice Cloud's training personnel will provide sessions for both Payer and Biller portals for Biller's staff.
  - Separate training is conducted for Biller's technical staff regarding the uploading of bill files and any other applicable processes.
  - Ongoing phone and Go-To-Meeting training will be provided during the first *month of use at no additional cost to Biller*.

## 10. **Marketing**

Invoice Cloud provides free marketing resources that billers can use to promote EBPP payment solutions to their payers. Billers will receive a comprehensive document outlining proven marketing best practices. In addition, billers will be granted access to Invoice Cloud's proprietary Marketing Resource Center. This online tool allows billers to easily and simply download and/or customize marketing materials on demand. These materials include:

- Bill inserts
- Envelope teasers
- Onsite posters
- Counter displays and clear acrylic stands
- Social media and website graphics
- Content for newsletters and press releases
- Pay buttons
- Email content and layout suggestions
- Communications plans
- and more

Billers also have access to weekly live training sessions where they will learn about our recommended best practices for effectively communicating the many benefits of making payments electronically and have the ability to ask questions. We'll outline simple steps to help improve online payment adoption among their customers. We'll also review the Marketing Resource Center which will enable billers to create many of the materials mentioned above.

## 11. **CloudIVRConnect™**

The IC CloudIVRConnect allows Billers to accept payments via our interactive voice response system. It provides customers with 24-hour access to account status and billing information (total balance due, past due amount, last payment made, next billing date etc.). The following options are available:

- Provides for a toll-free call and a caller ID number set by the Biller
- Supports messaging in both English and Spanish
- Provides for a customizable initial greeting (includes City/County/Company name) – all remaining prompts are standard
- Ability to pay with credit card (Visa, MasterCard, Discover, American Express), debit card, or eCheck (ACH)
- Replays information with Invoice Cloud generated confirmation #

## 12. **CloudSMSConnect™**

The IC CloudSMSConnect allows Billers to accept payments via SMS text messaging. The following options are available:

- Provides interactive registration and service sign-up confirmation
- Sends notification when new bills are available for payment
- Ability to pay with credit card (Visa, MasterCard, Discover, American Express), debit card, or eCheck (ACH)
- Allows for payment utilizing a stored-payment method

## 13. **AgentConnect™**

The IC AgentConnect allows Billers (Agent/CSR/Other) to login to the Customer Portal and perform actions on behalf of a specific customer/account. The following options are available:

- Ability to pay with credit card (Visa, MasterCard, Discover, American Express), debit card, or eCheck (ACH)
- Ability to enroll customer in AutoPay

- Ability to enroll customer in Paperless
- Ability to enroll customer in Pay by Text
- Option to require authorization/disclosure statement before Customer Portal entry
- Option to enable card swipe functionality at point of sale
- Provides built-in auditing to track Agent/CSR activity in the Biller Portal

#### 14. CloudStore™

The IC CloudStore allows Billers to accept payments for non-invoiced services like books, t-shirts, etc., fire, police, building permits, or activity programs. The following options are available:

- Accept electronic check and or credit/debit cards.
- Customer receives immediate email confirmation of payment.
- Department receives email notification of purchase event for instant fulfillment services.
- Ability to apply convenience fees, if required.
- Reporting by service type.
- Linked to Biller branded payment portal.
- Each service type can have its own online registration form.
- Can be setup to accept payments over the counter.

#### 15. Online Bank Direct™

The IC Online Bank Direct (OBD) allows Billers to electronically import echeck (ACH) payments initiated from consumer bank bill sites. The following options are available:

- Auto-matching of payments with open invoices
- Email consumer a payment notification for those customers with an email address on file
- Ability to apply a single payment to multiple invoices
- Custom search capabilities to locate matching invoice(s)
- Electronic deposit of corresponding echecks

This SOW contains many products, services and payment methods. Only the specific products, services and payment methods selected by the **Village of Downers Grove**, as outlined in the Biller Order Form, are included in the delivery of products, services and payment methods.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement.

**Village of Downers Grove**

**Invoice Cloud, Inc.**

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

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

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

Printed Name: Robert Autor

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

Title: COO

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

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

## Appendix A: System Modifications

As outlined below, Invoice Cloud has agreed to make the following changes to the setup and functionality of our platform:

**NONE**

## Appendix B: Integration Supported Features

Modules & Features	Harris Cityview
<b>PRODUCTS</b>	
Invoice Types	Click or tap here to enter text.
Cloud Payments	Supported
Cloud IVR Connect	Not Supported
Pay by Text	Not Supported
Cloud POS Connect	Supported
Cloud CSR Connect	Not Supported
KIOSK	Not Supported
<b>BATCH CLOSE</b>	
Standard or Custom	Standard
<b>CUSTOM OPTIONS</b>	
Branded Biller Portal	Supported
Branded Payer Portal	Supported

## Appendix C: Biller Deliverables

Deliverable
N/A





## Biller Order Form

SALES INFORMATION						
IC Sales Rep	Jason Stinnett			Vertical	Local Gov (Util, Tax, Misc)	
Order Date	2/8/2022		Billing Software	Harris - CityView		
BILLER INFORMATION						
Ownership Type	Government		Phone	(630) 434-5500	Fax	
Legal Name	Village of Downers Grove		Website URL	http://www.downers.us/		
Address 1	801 Burlington Avenue		Bus. Open Date			
Address 2			Federal Tax ID			
City	Downers Grove		*Federal Tax ID and Legal Name must match on all documents			
State	IL	ZIP	60515			
BILLER CONTACT						
Primary Contact Name	Matt Timmerberg					
Phone	630-493-8875					
Email Address	mtimmerberg@downers.us					
SIGNING AUTHORITY						
Name	David Fieldman			Title	Village Manager	
Phone		Fax		Email Address		
BILLER BANK ACCOUNT (FOR INVOICE CLOUD AND NETWORK FEES, AND AS PROVIDED IN THE BILLER AGREEMENT)						
Note: Must include voided business check or bank letter for each unique account						
Billing Method	Direct Debit					
Routing #			Last 4 Acct #			
PAYMENT METHODS ACCEPTED						
Payment Methods	[American Express] [VISA/Mastercard/Discover] [PayPal] [ACH/EFT]					
BILLER PRICING (see Invoice Type Parameter Sheet(s) for invoice-type-specific pricing)*						
Description	Interval	Cost Type	Cost			
Invoicing - Biller Portal Access Fee	Monthly	Fixed (\$)	\$150.00			
Credit Card - Chargeback Fee Non-Submitter	Per Transaction	Fixed (\$)	\$15.00			
EFT - ACH Reject Fee Non-Submitter	Per Transaction	Fixed (\$)	\$15.00			
PayPal Brands - Chargeback Fee (PayPal Brands)	Per Transaction	Fixed (\$)	\$15.00			
HARDWARE						
Card Reader Type	EMV	Quantity	2	Cost per Reader	15.00	
Card Reader	IDTech SREDKey			Billing Interval	Monthly	
Shipping Address (if different than location address)						

DATA RETENTION			
Months to Keep	24	*Additional Fees apply if greater than 24 months	

  

IMPLEMENTATION CHARGES			
Description	Interval	Cost	
Implementation (per SOW)	One-Time	\$0.00 (WAIVED)	

  

NOTES/SPECIAL HANDLING			

[signature page follows]

**CERTIFICATION AND AGREEMENT**

- A. By signing below, the Biller hereby ratifies its authorization for Invoice Cloud, Inc. ("Invoice Cloud") to execute debit/credit entries to the Biller Bank Account(s) indicated above at the depository financial institution(s) named above and to debit/credit the same such account(s). The Biller acknowledges that the origination of ACH transactions to its account(s) must comply with the provisions of U.S. law. This authority is to remain in full force and effect until (i) Invoice Cloud has received written notification (by electronic or U.S. mail) from the Biller of its revocation in such time and manner as to allow Invoice Cloud a reasonable opportunity to act on it, but not less than 10 business days' notice; and (ii) all obligations of the Biller to Invoice Cloud that have arisen under this Agreement and all other agreements have been paid in full. The Biller must also notify Invoice Cloud, in writing, (by electronic or U.S. mail) when a change in Biller Bank Account account number(s) or bank has occurred at which time this authorization shall apply to such new/changed Biller Bank Account. This notification must be received no less than 10 business days in advance of any change. A fee will be charged for any returned or rejected ACH debits.
- B. By signing below, the Biller named: (1) has read, agreed to, ratifies the Biller Agreement, Biller T+Cs (referenced in the Biller Agreement) and other Order Forms previously executed by the Biller; (2) certifies to Invoice Cloud that he/she is authorized to sign this Order Form; (3) certifies that all information and documents submitted in connection with this Order Form are true and complete; (4) authorizes Invoice Cloud or its agent to verify any of the information given, including credit references, and to obtain credit reports; (5) agrees to pay the Monthly Access Fee through the last day of the month following the effective date of termination as provided in the Billing Agreement; (6) agrees that Biller and each transaction submitted will continue to be bound by the Order Form and the Biller Agreement in its entirety and any new agreement forms executed herewith; and (7) agrees that Biller will submit transactions only in accordance with the information in this Biller Order Form and Biller Agreement and will immediately inform Invoice Cloud, by email (contracts@invoicecloud.com) if any information in this Order Form changes.
- C. Pay by Text: Standard data rates and text messaging rates may apply based on the payer's plan with their mobile phone carrier. Payer can opt out of text messaging at any time with Invoice Cloud. Partial payment or overpayment is not supported. Biller may not use the service for activities that violate any law, statute, ordinance or regulation.
- D. This Biller Order Form will become effective only when signed by Invoice Cloud.

In WITNESS WHEREOF, the parties have executed this Agreement as of this day

Accepted by Biller:

**X**

Corporate Officer/Authorized Official

David Fieldman

Printed Name

Village Manager

Title

Accepted by Invoice Cloud, Inc.:

**X**

*Robert S. Autor*

Corporate Officer

Robert S. Autor

Printed Name

Chief Operating Officer

Title



## Biller Order Form

**BILLER ORDER FORM  
INVOICE TYPE PARAMETER SHEET**

Invoice Type Parameters must be completed for each invoice type

Invoice Type	Permits	Pricing Model	Non-Submitter
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**CURRENT BILLING DETAILS**

Please indicate how many bills are sent monthly by placing the bill count for each month below:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
192	192	192	192	192	192	192	192	192	192	192	192

Avg CC Transaction \$	950.00	Max Invoice \$	350000.00	Bill Frequency	Monthly	Avg. Bills Per Month	192
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**PRODUCTS AND SERVICES**

Products and Services	[Cloud Pay] [Point of Sale]
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**TRANSACTIONAL PRICING (Paid by Biller)**

Payment Source Description	Payment Method	Fee Rate %	Fee Amount \$	Additional Fee \$	Biller Pays Network Fees
All Payment Sources	Credit/Debit/PayPal	2.95%			No
All Payment Sources	ACH/EFT		\$2.95		No

**TRANSACTIONAL PRICING EXCEPTIONS**
**SERVICE FEES (Paid by Payer)**

Payment Source Description	Payment Method	Fee Amount	Calculation Type	Max Payment \$	Min. Fee (\$) per Transaction
All Payment Sources	Credit/Debit/PayPal	\$0.00	Fixed (\$)	\$400000.00	
All Payment Sources	ACH/EFT	\$0.00	Fixed (\$)	\$125000.00	

**SERVICE FEE EXCEPTIONS**
**BILLER BANK ACCOUNT (FOR DEPOSITS AND CHARGEBACKS)**

*Note: must include voided business check or bank letter for each unique account*

Routing #		Last 4 Acct #	
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**NOTES / SPECIAL HANDLING**

This installation will be for all CityView modules that charge fees.

**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](http://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 is responsible for all activity occurring under Biller's account(s) and shall abide by all applicable laws and regulations as well as card association rules, NACHA rules and Payment Processing Agreements, in connection with Biller's and/or its customers' 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 shall: (i) notify Invoice Cloud immediately in writing 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 Customers; and (iii) not impersonate another Invoice Cloud user or provide false identity information to gain access to or use the Service. Biller shall not: (i) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (ii) interfere with or disrupt the integrity or performance of the Service or the data contained therein; (iii) attempt to gain unauthorized access to the Service or its related systems or networks; (iv) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service in any way; (v) modify or make derivative works based upon the Service; (vi) recreate, "frame" or "mirror" any portion of the Service on any other server or wireless or Internet-based device; (vii) reverse engineer or access the Service; or (viii) copy any features, functions or graphics of the Service.

(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 acquirers 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) Biller is required to ensure that it maintains a fair policy in compliance with applicable laws, regulations, and all Network rules with regard to the refund, return or cancellation of services and adjustment of Transactions. Biller is also required to disclose any refund, return or cancellation policies to Invoice Cloud and any applicable payment processors and Biller's Customers, as requested. Any change in a return or cancellation policy for the transactions underlying the Payment Instrument Transactions 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, Transactions Reflecting such refund/adjustment within 2 days of resolution of the request resulting in such refund/adjustment. The amount of the refund/adjustment with respect to Transactions under the Service cannot exceed the amount shown as the total on the original Transaction. 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, with respect to credit card transactions, may Biller give cash/check refunds to a Customer in connection with a Transaction previously processed, unless required by applicable law.

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 only 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](http://www.americanexpress.com/merchantopguide).
- (2) Processing Restrictions. Biller is prohibited from processing Transactions or receiving payments on behalf of, or (unless required by law) redirecting 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.



Billers 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 prepaid. 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 offline 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 reasonably 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 Biller's 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 with notice to the Biller 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.

## 6. [Intentionally Omitted].

## 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 relating to the IVR. 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.** Biller shall comply with all applicable laws, regulations, or other requirements of any governmental authority which relate to or affect this Agreement and the Biller's performance hereunder. 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 are 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 network rules, ACH requirements or card association or payment processor requirements.