



THE COUNTY OF GALVESTON

VERONICA VAN HORN
INTERIM PURCHASING AGENT

COUNTY COURTHOUSE

722 Moody (21st Street)
Fifth (5th) Floor, Purchasing
GALVESTON, TEXAS 77550
(409) 770-5371

ERIN S. QUIROGA, MBA, CPPB
ASST. PURCHASING AGENT

August 29, 2025

Honorable County Judge
Honorable County Commissioners' Court
Galveston County Courthouse
Galveston, Texas 77550

Re: Request to Utilize Cooperative Purchasing Agreement DIR-CPO-5687

Gentlemen:

The Commissioners' Court is respectfully requested to grant authorization for the Purchasing Agent to utilize a state of Texas-approved cooperative purchasing program as referenced in Texas Local Government Code, Section 271.102, Cooperative Purchasing Program. This authorization would allow the procurement of PaymentWorks, a digital supplier of onboarding for secure and compliant business payments for Galveston County, without adhering to the competitive bidding requirements specified in Chapter 262.023-Competitive Requirements.

The Purchasing Department has reviewed this request and recommends approval. Your consideration in this matter will be greatly appreciated.

Respectfully submitted,

Veronica Van Horn
Interim Purchasing Agent

PRICE QUOTATION
CARAHSOFT TECHNOLOGY CORP

11493 SUNSET HILLS ROAD | SUITE 100 | RESTON, VIRGINIA 20190
PHONE (703) 871-8500 | FAX (703) 871-8505 | TOLL FREE (888) 66CARAH
WWW.CARAHSOFT.COM | SALES@CARAHSOFT.COM



TO: Annaya Nigrelle
County of Galveston, TX
600 59th St
Room 4001
Galveston, TX 77551 USA

FROM: Jacob Vinzant
Carahsoft Technology Corp.
11493 Sunset Hills Road
Suite 100
Reston, Virginia 20190

EMAIL: annaya.nigrelle@galvestoncountytexas.gov

EMAIL: Jacob.Vinzant@carahsoft.com

PHONE: (409) 770-5428

PHONE: (571) 662-3317

TERMS: DIR Contract No. DIR-CPO-5687
Expiration Date: 5/19/27
FTIN: 52-2189693
Shipping Point: FOB Destination
Credit Cards: VISA/MasterCard/AMEX
Remit To: Same as Above
Payment Terms: Net 30 (On Approved Credit)
Texas VID#: 1522189693700
Sales Tax May Apply

QUOTE NO:	59411659
QUOTE DATE:	08/06/2025
QUOTE EXPIRES:	09/30/2025
RFQ NO:	
SHIPPING:	ESD
TOTAL PRICE:	\$130,830.00
TOTAL QUOTE:	\$130,830.00

LINE NO.	PART NO.	DESCRIPTION	LIST PRICE	QUOTE PRICE	QTY	EXTENDED PRICE
YEAR 1 OF 3						
1	PaymentWorks	SIM Advanced Government Edition, USD per month PaymentWorks, Inc. - X-SIM-ADVANCED-TIER16R	\$500,000.00	\$38,710.00	TX DIR	\$38,710.00
2	PaymentWorks	State Onboarding Services excludes ERP integration, USD one-time fee PaymentWorks, Inc. - X-SERVICES-ONBOARDING-TIER16R	\$100,000.00	\$14,700.00	TX DIR	\$14,700.00
YEAR 1 OF 3 SUBTOTAL:						\$53,410.00
YEAR 2 OF 3						
3	PaymentWorks	SIM Advanced Government Edition, USD per month PaymentWorks, Inc. - X-SIM-ADVANCED-TIER16R	\$500,000.00	\$38,710.00	TX DIR	\$38,710.00
YEAR 2 OF 3 SUBTOTAL:						\$38,710.00
YEAR 3 OF 3						
4	PaymentWorks	SIM Advanced Government Edition, USD per month PaymentWorks, Inc. - X-SIM-ADVANCED-TIER16R	\$500,000.00	\$38,710.00	TX DIR	\$38,710.00
YEAR 3 OF 3 SUBTOTAL:						\$38,710.00
SUBTOTAL:						\$130,830.00
TOTAL PRICE:						\$130,830.00
TOTAL QUOTE:						\$130,830.00

TX DIR-CPO-5687

By issuing a Purchase Order, you are agreeing to the terms set forth in this Quote [#59411659] and all attachments hereto, including the PaymentWorks Standard Terms and Conditions, attached hereto as Exhibit A and incorporated herein by reference. To the extent of any inconsistency between the GPO Terms and Conditions and the contract language on the following pages, the GPO Terms and Conditions will apply.

Automation & Fraud Protection Services Annual Pricing:

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Year 1 Price: \$53,410:
Usage Fee (\$14,700)
One-time Implementation Setup Fee (\$38,710)

Year 2 Price: \$38,710 (Usage Fee)

Year 3 Price: \$38,710 (Usage Fee)

This pricing is valid with a PO on or before September 30, 2025

Pricing in this Agreement covers the value of the Customer's usage of the PaymentWorks digital supplier onboarding platform and Payment Warranty, based on the Customer's estimated annual usage metrics as supplied to PaymentWorks below:

Annual Payees Paid: 1,673
Annual New Payees Onboarded: 133
Annual AP Spend: \$148MM
* Usage exceeding these thresholds may incur additional charges as outlined below in the excess usage threshold table.

Usage exceeding these thresholds may incur additional charges as outlined below.

Current Annual Pricing for Automation+Protection: \$38,710
Customer Usage Includes Up to 2,000 Annual Payee Registrations
Customer Usage Includes Up to \$150MM in Annual AP Spend Threshold

If Customer Usage Exceeds 2,000 Annual Payee Registrations the annual price will increase by \$10,290 for a total of \$49,000 annually and up to 3,000 Annual Payee Registrations.

If Customer Usage Exceeds \$150MM in Annual AP Spend, the annual price will increase an additional \$5K for a total of \$43,710 annually and up to \$200MM in Annual AP Spend.

Term:
Service Term - The Service Term will begin on the date of PO Issuance Date and continue for a period of three (3) years (the "Term").
Renewal Term - At the conclusion of the Term or any Renewal Term, the Agreement will automatically renew for an additional one (1) year unless either party gives written notice to the other party sixty (60) days prior to the expiration of the current term.

Invoicing:
Invoicing - Customer will be invoiced for the first year of the Term upon the date of PO Issuance of this Agreement and, for each subsequent year of the Term, one month prior to such year.
Renewal invoicing - Customer will be invoiced one month prior to the commencement of each Renewal Term.

Implementation Services:

PaymentWorks Implementation services are outlined in the Implementation Guide and include the process of provisioning, configuring, training, and testing the PaymentWorks platform.

Implementation services include up to 75 hours. If the Customer requests additional service hours (beyond the initial 75 hours), they may be purchased at a rate of \$200/hour for a minimum of 10 hours and are subject to resource availability.

If the Customer wishes to reschedule the target-start date for Implementation Services and notifies PaymentWorks at least two weeks in advance of the kick-off (as presented in the project plan), the parties will mutually agree upon a rescheduled start date, subject to the availability of PaymentWorks' resources. A Rescheduling Fee of \$5,000 will be charged.

ERP Integration:

Automating data flows between PaymentWorks and the Customer ERP can be executed via the following method:

Customer-Managed Integration (or Partner-Managed):

PaymentWorks will provide integration (SFTP and/or API) documentation at no cost so the Customer can manage the PaymentWorks/ERP integration in-house with the customer's own IT resources or their preferred partner. The coding or customization of any middleware or ERP import functionality is the Customer's (or Partner's) responsibility. The PaymentWorks Support Team is available for Q&A during the project.

EarlyPay Program:

PaymentWorks, via one or more of its wholly-owned subsidiaries, offers a service known as its "EarlyPay Program," pursuant to which PaymentWorks can accelerate payment:

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to certain vendors of Customer prior to the respective due dates of invoices submitted by those vendors. If Customer at any time elects to participate in the EarlyPay Program and meets the qualifications for such EarlyPay Program (including, as applicable, any approvals required by the Transferee under such EarlyPay Program), Section 9 of the attached Standard Terms and Conditions shall govern Customer's participation.

Payment Files:

If Customer elects not to send payment instruction files through the PaymentWorks Service, the annual subscription will revert to a separate fee table to reflect the additional risk and cost incurred by PaymentWorks caused by Customer's failure to submit payment instruction files.

In the event the Customer and/or the Customer's bank requires manual upload of payment files to the bank's portal, the Customer shall either: (i) pay PaymentWorks an additional \$5,000 annual fee (non-refundable) to upload the payment files to the bank's portal. The \$5,000 (non-refundable) fee will be charged annually during the Term and each renewal term if the Customer and/or the Customer's bank continues to require manual upload services.

A standard payments implementation project includes one (1) SFTP bank connection. A one-time fee of \$1,000.00 per connection beyond one (1) will apply. Additionally, if Customer elects to change their originating bank, a one-time fee of \$1,000.00 will apply per change.

PaymentWorks Standard Terms and Conditions

1. USE OF THE SERVICE

1.1. Grant. Subject to Customer's compliance with the terms of this Agreement, PaymentWorks hereby grants Customer a non-exclusive, non-transferable, limited right to access and use the PaymentWorks website (the "Site") and PaymentWorks application (collectively, the "Service"). Such access and use shall be exercised only by users authorized by Customer to access and use the Service on behalf of Customer who have agreed to these Terms of Service (collectively, "Authorized Users"). Customer may access and use the Service to share information about Customer ("Customer Data") and about transactions, invoices, invoice payment status, and related information (collectively, "Transaction Data") with Customer Authorized Users and/or Customer payees ("Payees"). Customer will decide which Authorized Users and/or Payees have access to specific Customer Data and Transaction Data through elections and criteria established by Customer through the Service. PaymentWorks may from time to time modify the Service, features of the Service, or the Site in its sole discretion.

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

1.3 Customer Responsibilities. Customer will (a) be responsible for Authorized Users' compliance with these Terms of Service, (b) be responsible for the accuracy, completeness, quality and legality of Customer Data and Transaction Data provided by Customer, including the means by which Customer Data and Transaction Data were acquired, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Service and any Transaction Data, and notify PaymentWorks promptly of any such unauthorized access or use, and (d) use the Service and Transaction Data only in accordance with any applicable documentation provided by PaymentWorks and all applicable laws and regulations, including, but not limited to, the rules and regulations of any payment network or other

electronic payment processing entity (collectively, "Applicable Laws and Regulations") and (e) comply with the terms applicable to data validation services referenced in Section 6.4. Customer makes, with respect to each payment instruction submitted to Payees utilizing the Site or the Service initiated hereunder ("Payment Instruction"), the representations and warranties, and agrees to assume the responsibilities, of an "Originator" under the Applicable Laws and Regulations. Customer acknowledges that Payment Instructions that violate any Applicable Laws and Regulations shall not be initiated and that it is the Customer's responsibility to ensure that the original Payment Instructions and retention of the related records complies with all Applicable Laws and Regulations. PaymentWorks shall have no liability for the accuracy, completeness, quality or legality of any Customer Data or Transaction Data provided through the Service, whether provided by Customer, Third-Party Service Providers, or any Authorized User or Payee. Authorized Users, and Customer agree to access the Site and Services in a secure manner in compliance with PaymentWorks' reasonable standards established from time to time. PaymentWorks, in its sole discretion, may specify connectivity standards to access the Site and the Services from time to time. If Customer wishes to submit Payment Instructions through the Service, Customer must agree to designate PaymentWorks as its Agent for submitting payment instructions in accordance with the requirements of Customer's designated bank. For transactions that Customer has elected to submit Payment Instructions through the Service, Customer will transmit the Payment Instructions to PaymentWorks. Customer is solely responsible for the content of the Payment Instructions, including the accuracy and completeness of the payment amount and the intended recipient entity.

1.4. Restrictions on Use. Customer and its Authorized User's shall not: (a) make the Service or any Transaction Data obtained through the Service from any Authorized User or Payee available to, or use the Service or any Transaction Data obtained through the Service from any Authorized User or Payee for the benefit of, anyone other than Customer, (b) sell, resell, license, sublicense, distribute, rent or lease the Service or any Transaction Data obtained through the Service from any Authorized User or Payee, or include the Service or any Transaction Data obtained through the Service from any Authorized User or Payee in a service bureau or outsourcing offering, (c) use the Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy or confidentiality rights, (d) use the Service to store or transmit Trojan horses, worms, time bombs, cancel bots or other similar harmful or deleterious programming routines, (e) interfere with or disrupt the integrity or performance of the Service or third-party data contained therein, (f) attempt to gain unauthorized access to the Service or any Transaction

Data or its related systems or networks, (g) permit direct or indirect access to or use of the Service or any Transaction Data in a way that circumvents a contractual usage limit, (h) copy the Service or any part, feature, function or user interface thereof, (i) copy any Transaction Data obtained through the Service from any Authorized User or Payee except as permitted herein, (j) frame or mirror any part of any Service or Transaction Data, other than framing on Customer's own intranets or otherwise for Customer's own internal business purposes, (k) access the Service or any Transaction Data obtained through the Service from any Authorized User or Payee in order to build a competitive product or service, or (l) reverse engineer the Service or any element thereof (to the extent such restriction is permitted by Applicable Laws and Regulations), or (m) access or use the Service or any Transaction Data obtained through the Service from any Authorized User or Payee in violation of any Applicable Laws and Regulations.

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

2. PAYMENTWORKS RESPONSIBILITIES

2.1. Service and Support. PaymentWorks will, subject to Customer's payment of applicable fees and compliance with these Terms of Service, use commercially reasonable efforts to: (a) make the Services and Transaction Data (to the extent authorized by the applicable Authorized User or Payee) available to Customer pursuant to these Terms of Service, (b) provide standard support for the Service, at no additional charge, and/or upgraded support if purchased, and (c) make the Service available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which we shall give at least 8 hours electronic notice and which we shall schedule to the extent practicable during the weekend hours between 6:00 p.m. Friday and 3:00 a.m. Monday Eastern time), and (ii) any unavailability caused by circumstances beyond our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, pandemic, civil unrest, act of terror, strike or other labor problem, Internet service provider failure or delay, or denial of service attack. For transactions that Customer has elected to submit for electronic (EFT) payment, PaymentWorks will transmit Customer's Payment Instruction to the Customer's designated bank for processing; provided, however, that PaymentWorks reserves the right to refuse to transmit any Payment Instructions submitted through the Service with respect to a transaction for a specific Payee in its sole

discretion, in which case the warranty set forth in Section 6.2 (ii) will not apply to such transaction. In the event that any information supplied by PaymentWorks is changed after submission to Customer's designated bank, the warranty set forth in Section 6.2 (ii) will not apply. In the event that Customer changes Payment Instructions after submission by PaymentWorks, Customer must notify PaymentWorks in writing of such change within two business days or the warranty set forth in Section 6.2(ii) will not apply.

2.2. Protection of Customer Data and Transaction Data. PaymentWorks will use commercially reasonable efforts to maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data and Transaction Data provided by the Customer. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Customer Data and Transaction Data by PaymentWorks personnel except (a) to address service or technical problems, (b) as compelled by Applicable Laws and Regulations, (c) as Customer designates through elections made through the service or (d) as Customer expressly permits in writing. Customer expressly acknowledges and agrees that Customer Data and Transaction Data will be made available to Authorized Users and processors, including without limitation the Customer's bank, Partners (as defined in Section 10.8), and Payees through the Service in accordance with elections and criteria established by Customer Authorized Users.

3. [RESERVED]

4. PROPRIETARY RIGHTS

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

4.2. Title to Customer Data and Transaction Data. All Customer Data is and shall remain the property of Customer. All Transaction Data is and shall remain the property of its lawful owner. PaymentWorks makes no claims, warranties or representations with regard to the ownership of Transaction Data or Customer Data. PaymentWorks may share Transaction Data, in the singular or aggregate, by providing reports or otherwise, to Authorized Users and Payees involved in a transaction and may identify the parties as being involved in the transaction in connection therewith, all in accordance with elections and criteria established by Customer Authorized Users through the Service; and

Customer hereby grants PaymentWorks a world-wide license to host, copy, transmit, display and otherwise use Customer Data and Transaction Data as necessary to do so. In addition, Customer hereby grants PaymentWorks a perpetual, world-wide, limited license to de-personalize (remove any Customer identifying information) and aggregate any and all Transaction Data to determine usage trends, perform analytics, improve the Service, promote and market the effectiveness of the Service, sell such aggregated de-personalized Transaction Data to any third party, or for any other internal-business purpose.

4.3. Customer's license to PaymentWorks. Customer hereby grants a limited, non-transferable license to PaymentWorks for PaymentWorks to use Customer's name and logos to identify Customer as a user of the Site, during the Term of this Agreement, in accordance with elections and criteria established by Customer, including without limitation to display Customer Data and Transaction Data on the Site and to display Transaction Data and Payment Instructions to processors. PaymentWorks shall obtain Customer's prior written consent for any other uses of Customer's name, logos, and trademarks.

5. TERMINATION

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

5.2. Survival. Notwithstanding any termination of this Agreement, Section 4 ("Proprietary Rights"), Section 6 ("Warranties"), Section 7 ("Indemnification"), Section 8 ("Disclaimer and Limitation of Liability") Section 9 ("EarlyPay Program") and Section 10 ("Additional Terms and Conditions") shall survive termination of this Agreement. All other rights and licenses granted hereunder will cease upon termination.

6. WARRANTIES.

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

6.2. PaymentWorks Warranty. PaymentWorks represents and warrants that: (i) the Service will be provided in accordance with the terms and conditions of Section 2; and (ii) with respect to any transaction processed through the Service that (a) PaymentWorks has initiated to a Participating Vendor relating to an Approved Invoice (to the extent Section 9 hereof is applicable; and as such terms are defined in Section 9), or (b) Customer has both elected to submit through the Service for EFT payment to a U.S. Bank account and provided Payment Instructions in accordance with

Section 1.3, and for which the EFT credentials have been collected from the recipient entity through the Service, except as set forth below, the bank account to which the funds are transferred will be owned by the entity associated with the Tax ID provided to Customer by PaymentWorks. In the event of a breach of the warranty set forth in Section 6.2 (ii), PaymentWorks will either remedy the breach or reimburse Customer for the amount of the payment directed to the incorrect account, up to \$2,000,000 per occurrence, notwithstanding any limitation on liability set forth in Section 8 of this Agreement. Customer acknowledges that the Warranty set forth in Section 6.2 (ii) will not apply to any transaction in which the Customer or any employee or agent of the Customer has engaged in fraud. Customer acknowledges that the Warranty set forth in Section 6.2 (ii) will not apply, and no EFT credential verification will be attempted, for any transaction made through the Service to an EFT credential and associated Tax ID collected by Customer outside of the Service and uploaded to the Service by the Customer. Customer further acknowledges that the Warranty set forth in Section 6.2 (ii) shall not apply until the Customer has elected to send Payment Instructions through the Service and begins sending Payment Instructions in a live production environment.

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

6.4. DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6, THE SERVICE AND THE SITE AND ANY OTHER SERVICES OFFERED ON OR THROUGH THE SITE AND ANY REFERENCED THIRD-PARTY SITES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6, PAYMENTWORKS DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES TO THE FULLEST EXTENT OF THE APPLICABLE LAWS AND REGULATIONS, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. PAYMENTWORKS DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SITE OR SERVICES, CUSTOMER DATA, TRANSACTION

DATA OR MATERIAL ON THE SITE OR THE SERVICE IN TERMS OF THEIR CORRECTNESS, ACCURACY, COMPLETENESS, QUALITY, LEGALITY, TIMELINESS, RELIABILITY OR OTHERWISE.

PAYMENTWORKS PROVIDES NO WARRANTY OF ANY KIND RELATED TO ANY THIRD-PARTY DATA OR SOFTWARE THAT MAY BE INCORPORATED, DISPLAYED OR INCLUDED IN THE SERVICE, INCLUDING WITHOUT LIMITATION ANY DATA VALIDATION PROVIDED BY OR THROUGH THE SERVICE.

7. INDEMNIFICATION.

7.1. Infringement. PaymentWorks agrees to defend or, at its option, to settle, any claim brought against Customer for infringement of any United States patent, copyright, trade secret or trademark by the Service as delivered, but excluding any such claim to the extent it is based on the content of any Customer Data or Transaction Data, and to indemnify Customer against all damages and costs finally assessed by a court of competent jurisdiction against Customer under any such claim or action. Customer agrees that PaymentWorks shall be released from the foregoing obligation unless Customer has taken reasonable steps to mitigate any potential expenses and provides PaymentWorks with: (i) prompt written notice of any such claim or action, or possibility thereof; (ii) sole control and authority over the defense or settlement of such claim or action; and (iii) proper and full information and assistance to settle and/or defend any such claim or action. Customer shall have the right to employ separate counsel and participate in the defense at its own expense; provided that PaymentWorks shall remain in control of the defense. In addition, PaymentWorks may, at its sole option and expense, either: (a) procure for Customer the right to use the allegedly infringing elements of the Service; (b) replace the allegedly infringing elements of the Service with non-infringing, functionally equivalent services; (c) modify the allegedly infringing elements of the Service so that they are not infringing; or (d) cease to provide the allegedly infringing elements of the Service, refund any fees paid by Customer covering any future period of time during which such allegedly infringing elements Services were to be provided. Upon exercise of option (d) in the previous sentence, PaymentWorks shall have no further obligations or liability to Customer with respect to the allegedly infringing elements of the Service. Except as specified above, PaymentWorks will not be liable for any costs or expenses incurred without its prior written authorization. THE FOREGOING PROVISIONS OF THIS SECTION 7 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF PAYMENTWORKS TO CUSTOMER WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET,

TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT BY THE SITE, THE SERVICE, OR ANY PART THEREOF.

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

8. LIMITATION OF LIABILITY.

8.1. Limitation of Liability. PAYMENTWORKS' LIABILITY TO CUSTOMER FOR DAMAGES WITH RESPECT TO THE SITE OR THE SERVICE SHALL NOT EXCEED THE FEES ACTUALLY PAID BY CUSTOMER TO PAYMENTWORKS FOR THE SERVICE DURING THE TWELVE (12) MONTHS PRIOR TO THE OCCURRENCE OF THE BREACH OR INCIDENT ASSERTED AS CAUSING HARM.

8.2. No Consequential Damages. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AND IRRESPECTIVE OF ANY FAULT OR NEGLIGENCE, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SALES, LOST SAVINGS, LOST PROFITS (ANTICIPATED OR ACTUAL), LOSS OF USE, DOWNTIME, INJURY TO PERSONS OR DAMAGE TO PROPERTY AND CLAIMS OF THIRD PARTIES), HOWSOEVER CAUSED, ARISING OUT OF OR RELATED TO THIS SITE OR THE SERVICE, WHETHER OR NOT SUCH PARTY HAS BEEN APPRISED OR NOTIFIED THAT ANY SUCH DAMAGES OR LOSSES ARE POSSIBLE OR LIKELY, AND WHETHER OR NOT ANY PERMITTED REMEDY HAS FAILED ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAWS AND REGULATIONS.

8.3. Conditions. The Parties agree that the above limitations of liability of Section 8 shall apply regardless of the form of action, whether in contract, warranty, strict liability or tort (including, without limitation, negligence of any kind,

whether active or passive) or any other legal or equitable theory, but shall not apply to fees owed to PaymentWorks by Customer.

9. EARLYPAY PROGRAM

9.1. Applicability of This Section 9. This Section 9 applies with respect to Customer if Customer at any time participates in the PaymentWorks EarlyPay Program (as defined below). In such case, the EarlyPay Program shall be treated as a component of, and included in, the Service.

9.2. Definitions. As used in this Section 9, the following terms shall have the meanings indicated below:

(a) “Approved Amount” means the full amount of an Approved Invoice as communicated by Customer to PaymentWorks via the Service, including all taxes, gross-ups, duties and levies, but net of any discounts, credits or other allowances which may have been applied by Customer. The Approved Amount shall be determined without regard to any discount the Participating Vendor shall have agreed to accept from the Transferee as part of the EarlyPay Program.

(b) “Approved Invoice” means an Invoice that Customer has indicated to PaymentWorks via the Service is “approved” for payment by the Customer.

(c) “Due Date” means the due date for payment indicated on an Approved Invoice, as communicated by Customer to PaymentWorks via the Service.

(d) “EarlyPay Program” means the program operated by PaymentWorks, via one or more of its wholly-owned subsidiaries, which provides Participating Vendors with the opportunity to receive early payment with respect to Approved Invoices.

(e) “Initial Transferee” means a wholly-owned subsidiary of PaymentWorks that initially purchases a Receivable under the EarlyPay Program and to which a Participating Vendor has transferred its entire right, title and interest in such a Receivable. As of the date of this Agreement, “Initial Transferee” includes PaymentWorks Acquisition Company LLC, a Delaware limited liability company (“PW Acquisition”), and any successor thereof named by PaymentWorks in connection with the EarlyPay Program.

(f) “Invoice” means an electronic or paper invoice submitted by a Participating Vendor to Customer, for goods or services purchased from such Participating Vendor by Customer.

(g) “Participating Vendor” means a Vendor that has a Receivables Purchase Agreement with a Transferee, together with such Vendor’s successors and permitted assigns.

(h) “Receivable” means an account (as defined under the UCC) owned by a Participating Vendor representing such Participating Vendor’s right to receive payment from Customer of the Approved Amount of an Approved Invoice on the Due Date, resulting from a business relationship between Customer and such Participating Vendor.

(i) “Receivables Purchase Agreement” means written terms agreed to between a Transferee and a Participating Vendor as part of the EarlyPay Program, pursuant to which such Participating Vendor agrees to sell its Receivables to such Transferee for a discounted amount consistent with this Agreement.

(j) “Subsequent Transferee” means any subsequent purchaser, assignee, or transferee of any Receivable from an Initial Transferee.

(k) “Transfer” and “Transferred,” with respect to any Receivable, means the sale and transfer of the corresponding Participating Vendor’s entire right, title and interest in such Receivable.

(l) “Transferee” means, as appropriate, any Initial Transferee and/or Subsequent Transferee.

(m) “Vendor” means a supplier of goods or services to Customer.

(n) “UCC” means the Uniform Commercial Code as adopted in the State of New York. All terms defined in the UCC have the same definitions herein as specified therein, with Article 9 prevailing in the case of any internal conflicts therein.

9.3. Vendors. Customer shall assist PaymentWorks in marketing the EarlyPay Program to Vendors, in such ways as Customer and PaymentWorks shall agree. Such assistance shall include, without limitation, providing data to PaymentWorks and assisting PaymentWorks in identifying and communicating with Vendors. No Vendor shall be required to participate in the EarlyPay Program, and each Vendor’s participation in the EarlyPay Program, and the Receivables that are purchased under the EarlyPay Program, are at the sole discretion of Initial Transferee and such Vendor. Each Vendor that does wish to participate, that has a Receivables Purchase Agreement with the Initial Transferee, and that meets the requirements of the EarlyPay Program, will become a Participating Vendor with respect to all of its eligible Receivables represented by Approved Invoices. The Initial Transferee has the sole right to determine the eligibility under the EarlyPay Program and the discretion to purchase or not purchase any Receivables under the EarlyPay Program.

9.4. EarlyPay Process.

(a) Customer agrees that, upon the Transfer by a Participating Vendor of any Receivable, the Transferee will have succeeded to all the rights and remedies of the Participating Vendor with respect to such Receivable and the amounts due thereunder and Customer will make payment for all Receivables Transferred to such Transferee. In the event any Participating Vendor or any other party other than a Transferee notifies Customer of the Transfer of any Receivable, Customer will immediately give PaymentWorks and the Transferee written notice thereof. Customer agrees that this Agreement is an authenticated notification of assignment by the assignor or assignee pursuant to UCC Section 9-406 (or any successor provision), and Customer agrees that it may receive, and will comply with, subsequent notices with respect to the Receivables purchased by a Transferee pursuant to UCC Section 9-406 (and any successor provisions), and will comply with UCC Section 9-406.

(b) Customer shall deliver a Payment Instruction File requesting an ACH transfer from Customer's bank account specified in the Payment Instruction File, and take such other actions as PaymentWorks may reasonably require, to pay, or cause to be paid, the Approved Amount on or before the Due Date with respect to the corresponding Approved Invoice.

(c) Customer hereby authorizes PaymentWorks, as agent on Customer's behalf, to cause the proceeds of each Receivable purchased by a Transferee hereunder and related ACH transfer to be directed to the bank account of the appropriate Transferee.

(d) In the event Customer fails to timely deliver any Payment Instruction File or to otherwise cause any amount to be timely paid as provided in Section 9.4(b) above, and such failure continues for 45 days after the relevant Due Date, the Transferee may exercise such default remedies with respect thereto as may be available to it under this Agreement or applicable law.

9.5. Representations and Warranties. Customer represents and warrants to PaymentWorks and the applicable Transferee as follows:

(a) All Approved Invoices are in respect of genuine and lawful commercial trade transactions arising in the ordinary course of business, and the goods or services which give rise to each Approved Invoice do not include any goods or services the supply or receipt of which is contrary to applicable law (including without limitation applicable national and international export control, anti-money

laundering, anti-corruption and trade sanction and embargo laws, regulations, treaties and conventions);

(b) No agreement between Customer and any Participating Vendor contains any provision restricting the sale, assignment or transfer of Receivables by such Participating Vendor to PaymentWorks, and if such provision does exist, Customer hereby waives such provision for Receivables purchased by Transferee; and

(c) Each Participating Vendor complies with all applicable laws relating to the supply and receipt of the goods and/or services provided to Customer.

9.6. Compensation to Customer. As compensation to Customer for providing data necessary to support the EarlyPay Program and otherwise providing marketing support, PaymentWorks shall pay to Customer such amounts as PaymentWorks and Customer shall agree at the time Customer elects to participate in the EarlyPay Program.

9.7. Third Party Beneficiaries. The parties hereto agree and acknowledge that each Transferee is an intended third party beneficiary of this Section 9 and is entitled to rely on all representations and warranties made by Customer herein.

9.8. Cancellation of EarlyPay by Customer. Customer may terminate its participation in the EarlyPay Program at any time by giving at least 30 days' advance written notice of cancellation to PaymentWorks and PaymentWorks may terminate or modify the EarlyPay Program at any time by giving at least 30 days' advance written notice to Customer. Invoices approved for payment by Customer after the effective date of cancellation will not be eligible under the EarlyPay Program and shall be processed outside the EarlyPay Program; provided, that the provisions of this Section 9 shall govern the processing and payment of Approved Invoices, and the parties' rights and obligations with respect to Approved Invoices, that Customer approves for payment prior to such cancellation effective date. Notwithstanding cancellation of participation in the EarlyPay Program, the terms of the EarlyPay Program will survive until all Receivables purchased under the EarlyPay Program related to Customer are indefeasibly paid in full.

9.9. Purchaser of Receivables. From time to time, some of the activities of PaymentWorks described in this Section 9 may be performed by one or more third party designees of PaymentWorks or of the Transferee (which may be affiliates of PaymentWorks). Accordingly, for purposes of this Section 9, the term "PaymentWorks" shall be deemed to include PaymentWorks, Inc. and/or such designee(s) as appropriate; and any such designee shall be a third party beneficiary of this Agreement. PaymentWorks and/or the applicable Transferee may designate and appoint another party as the agent of, or

servicer for, such party under this Agreement and such agent may exercise such powers and perform such duties as are expressly delegated by such Transferee, together with such other powers as are reasonably incidental thereto. PaymentWorks will remain responsible for the obligations under this Agreement notwithstanding any appointment of a third party designee.

9.10 Sale of Receivables. Customer is hereby advised that, as part of the EarlyPay Program, Participating Vendors may Transfer Receivables to PaymentWorks or an affiliate of PaymentWorks, including PaymentWorks Acquisition Company LLC, and such Receivables may be Transferred to one or more additional Transferees. Any Transfer does not relieve Customer of its obligations to such Participating Vendor, except as provided under the UCC with respect to the Transfer of the Receivable. Customer consents to each Transfer. Customer agrees to recognize the priority and validity of any security interest or lien held by any such Transferee or its agents.

10. ADDITIONAL TERMS AND CONDITIONS.

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

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

10.3. Terms and Conditions. Customer acknowledges and agrees that its use of the Services and the Transaction Data, and any use of Transaction Data by its Authorized Users or Payees, shall not modify or supersede the terms and

conditions of any purchase agreements, invoices, or other negotiated terms agreed to by and between Customer and any Authorized User or Payee.

10.4. Future Functionality. Customer acknowledges and agrees that its subscription to the Service is not contingent on the delivery of any future functionality or features, or dependent on any oral or written public or private statements made by PaymentWorks regarding future functionality or features.

10.5. Assignment. Neither this Agreement nor any rights under this Agreement may be transferred or assigned by Customer without the prior written consent of PaymentWorks.

10.6. Confidentiality.

10.6.1. In connection with this Agreement each party (a “Disclosing Party”) may disclose or make available Confidential Information to the other party (a “Receiving Party”). Subject to Section 10.6.2, “Confidential Information” means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party’s technology or data, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, including third-party data accessed through the Service (“Third-Party Data”), in each case whether or not marked, designated, or otherwise identified as “confidential.”

10.6.2. Confidential Information does not include information that: (i) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information being disclosed or made available to the Receiving Party in connection with this Agreement; (ii) was or becomes generally known by the public other than by the Receiving Party’s or any of its representatives’ noncompliance with this Agreement; (iii) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; (iv) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information; or (v) is required to be disclosed by law, by any court of competent jurisdiction, or by any regulatory or administrative body.

10.6.3. Each party shall (i) hold the other’s Confidential Information in confidence and, unless required by law, not make the other party’s Confidential Information available to any third party or use the other party’s Confidential Information for any purpose, in each case, other than as

permitted by this Agreement; (ii) disclose the other party's Confidential Information only to those of its officers, employees, agents, and subcontractors to whom and to the extent to which such disclosure is necessary for the purposes contemplated by this Agreement; (iii) require that any person who receives Confidential Information pursuant to Section 10.6.3(ii) comply with the obligations in this Section 10.6 as if they were a party to this Agreement; (iv) adopt reasonable security practices and systems to secure the Confidential Information, and take prompt remedial action (at its own expense), including prompt notice to the other party, in the event of unauthorized access or disclosure; and (v) take all reasonable steps to ensure that the other party's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of this Section 10.6.

10.7. Third-Party Data. PaymentWorks may provide Customer with certain Third-Party Data to assist Customer with assessing and managing risk related to payments made through the Service. Customer acknowledges that Third-Party Data is Confidential Information subject to the requirements set forth in Section 10.6. Third-Party Data shall

be used exclusively for the purposes of detecting or preventing crime, including without limitation money laundering, fraud, sanctions breaches, bribery, and corruption. Customer shall not use Third-Party Data for pre-employment screening, credit referencing, or any other purpose that may constitute a "Consumer Report" under the Fair Credit Reporting Act, 15 U.S.C. § 1681 (as amended from time to time).

10.8. Customer acknowledges that as a part of the PaymentWorks Partner Certification Program (the "Program"), PaymentWorks trains and certifies third-party service providers ("Partners") to implement and integrate the Site and Services; and, in connection therewith, Partners may accompany PaymentWorks in and, in some cases, under PaymentWorks' supervision, lead the implementation and integration of the Site and Services provided hereunder for training purposes; and, after certification, Partners may be subcontracted to perform implementation and integration services hereunder. All Partners will be subject to written confidentiality obligations with respect to information obtained during the Program.