

REQUEST FOR PROPOSALS (RFP)

SANDOVAL COUNTY

Credit Card Processing Services



RFP# FY24-SCTO-01

Release Date: March 17, 2024

Due Date: April 16, 2024 at 3:00 p.m. MDT

NIGP CODES: 94635, 96338

I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The Sandoval County Board of County Commissioners is accepting sealed proposals on behalf of the Sandoval County Treasurer's Office from prospective offerors to provide Credit Card Processing Services (NIGP Commodity Codes 94635, 96338). Responses will be accepted in the Finance Department, Attn: Leslie Olivas, Sandoval County Administrative Bldg, 1500 Idalia Road, Bldg. D 2nd Floor, P.O. Box 40, Bernalillo, New Mexico up to 3:00 p.m. (Mountain Daylight Time) on April 16, 2024. Late submissions will not be considered. The Sandoval County Board of Commissioners reserves the right to reject any and all responses.

B. SANDOVAL COUNTY BACKGROUND

Sandoval County is a Class A county located in central New Mexico. It covers over 3,700 square miles of both urban and rural areas with a population of approximately 148,800 people according to the 2020 census. Sandoval County has a commission/manager form of government. The Board of County Commissioners consist of five members elected by voters within their respective districts. The County Manager is appointed by the Commission to carry out policy and serve as chief administrative officer.

C. SCOPE OF PROCUREMENT

The Sandoval County Treasurer's Office processes payments online and by IVR/telephone acceptance of electronic checks, debit cards, online credit card processing and Point of Sale (POS) payments for the collection of property taxes or other required services by the county. Sandoval County's intent is to contract with a 3rd party credit card processing company for any county department that needs processing payment by Point of Sale, Online or by IVR/Telephone.

D. TERM OF CONTRACT

This Request for Proposal is to contract on a yearly basis with the option to renew the contract annually for a maximum of four (4) years upon satisfactory completion of the Scope of Services. This contract may be terminated in writing by either party 90 days prior to the expiration of the initial contract or the current renewal term.

E. PROCUREMENT MANAGER

1. Sandoval County has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name: Leslie Olivas, Senior Procurement Specialist
Address: Sandoval County
1500 Idalia Road Bldg. D 2nd Floor
PO Box 40
Bernalillo, NM 87004

Telephone: (505) 404-5873
Fax: (505) 867-7605
Email: ldolivas@sandovalcountynm.gov

2. All deliveries of responses via express carrier must be addressed as follows. All potential offerors are responsible for ensuring their complete proposal is received on or before the stated deadline, regardless of courier utilized. Late proposals will not be considered for award.

Name: Leslie Olivas, Senior Procurement Specialist
RFP Name: Credit Card Processing Services
RFP# FY24-SCTO-01
Address: Sandoval County
1500 Idalia Road Bldg. D
PO Box 40
Bernalillo, NM 87004

3. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Procurement Manager. Offerors may **ONLY** contact the Procurement Manager regarding this procurement. Other state employees or Evaluation Committee members do not have the authority to respond on behalf of the County. **Protests of the solicitation or award must be delivered by mail to the Protest Manager.** A Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, § 13-1-172, **ONLY** protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. Emailed protests will not be considered as properly submitted.

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule, description and conditions governing the procurement.

A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule:

Action	Responsible Party	Due Dates
1. Issue RFP	Sandoval County	MARCH 17, 2024
2. Pre-Proposal Conference	Sandoval County	NONE
3. Return of Acknowledgement of Receipt Form	Potential Offerors	MARCH 22, 2024
4. Deadline to submit Questions	Potential Offerors	MARCH 28, 2024
5. Response to Written Questions	Procurement Manager	APRIL 4, 2024
6. Submission of Proposal	Potential Offerors	APRIL 16, 2024 AT 3:00 PM MDT.
7. Proposal Evaluation	Evaluation Committee	TBD
8. Selection of Finalists	Evaluation Committee	TBD
9. Contract Awards	Sandoval County	TBD
10. Protest Deadline		+15 days

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section II. A., above.

1. Issuance of RFP

This RFP is being issued on behalf of the Sandoval County Treasurer's Office.

2. Acknowledgement of Receipt

Potential Offerors may e-mail, hand deliver, return by facsimile or registered or certified mail the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document, APPENDIX A, to have the offeror placed on the procurement distribution list. The form should be signed by an authorized representative of the offeror, dated and returned to the Procurement Manager.

The procurement distribution list will be used for the distribution of written responses to questions.

3. Deadline to Submit Written Questions

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP as indicated in the sequence of events. All written questions must be addressed to the Procurement Manager as declared in Section I, Paragraph E. Questions shall be clearly labeled and shall cite the section(s) in the RFP or other document which form the basis of the question.

4. Response to Written Questions

Responses to written questions will be distributed as indicated in the sequence of events to all potential Offerors whose name appears on the procurement distribution list. An e-mail copy will be sent to all Offeror's that provide Acknowledgement of Receipt Forms.

5. Submission of Proposals

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 3:00 PM MOUNTAIN DAYLIGHT TIME (MDT) ON **APRIL 16, 2024**. **Proposals received after this deadline will not be accepted.** The date and time of receipt will be recorded on each proposal.

Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph E2. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to **Credit Card Processing Services** and **RFP# FY24-SCTO-01**. Proposals submitted by facsimile or other electronic means will not be accepted.

A public log will be kept of the names of all Offerors that submitted proposals. Pursuant to NMSA 1978, § 13-1-116, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposals.

6. Proposal Evaluation

An Evaluation Committee will perform the evaluation of proposals. This process will take place as indicated in the sequence of events, depending upon the number of proposals received. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

7. Finalize Contractual Agreements

Any Contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s) as per schedule, Sequence of Events or as soon thereafter as possible. This date is subject to change at the discretion of the Sandoval County. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the County reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

8. Contract Awards

The contract shall be awarded to the Offeror (or Offerors) whose proposals are most advantageous to Sandoval County taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points. The award is subject to appropriate Sandoval County Commission approval.

9. Protest Deadline

Any protest by an Offeror must be timely and in conformance with NMSA 1978, § 13-1-172 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, § 13-1-172, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. The 15-calendar day protest period shall begin on the day following the award of contracts and will end at 5:00 pm Mountain Standard Time/Daylight Time on the 15th day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be delivered to:

Leslie Olivas, Senior Procurement Specialist
Sandoval County
1500 Idalia Road Bldg. D 2nd Floor
PO Box 40
Bernalillo, NM 87004

Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

Potential Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal (Appendix C). Submission of a proposal constitutes acceptance of the Evaluation Factors.

2. Incurring Cost

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror. Any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

3. Prime Contractor Responsibility

Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement which may derive from this RFP.

4. Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The County personnel will not merge, collate, or assemble proposal materials.

5. Offeror's Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request addressed to the Procurement Manager and signed by the Offeror's duly authorized representative.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

6. Proposal Offer Firm

Responses to this RFP, including proposal prices for services, will be considered firm for one hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

7. Disclosure of Proposal Contents

- A. Proposals will be kept confidential until negotiations and the award are completed by the County. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:
- B. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.
- C. Confidential data is restricted to:
 - 1. Confidential financial information concerning the Offeror's organization.
 - 2. and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978 § 57-3A-1 to 57-3A-7.
 - 3. PLEASE NOTE: The price of products offered or the cost of services proposed **shall not be designated** as proprietary or confidential information.

8. No Obligation

This RFP in no manner obligates Sandoval County to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.

9. Termination

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the agency determines such action to be in the best interest of Sandoval County.

10. Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such terminations will be affected by sending written notice to the contractor. The County's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

11. Legal Review

The County requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror's concerns must be promptly submitted in writing to the attention of the Procurement Manager.

12. Governing Law

This RFP and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.

13. Basis for Proposal

Only information supplied, in writing, by Sandoval County through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

14. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any potential Offeror who is not a Responsible Offeror or fails to submit a responsive offer as defined in NMSA 1978, § 13-1-83 and 13-1-85.

15. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

16. Change in Contractor Representatives

The County reserves the right to require a change in contractor representatives if the assigned representative(s) is (are) not, in the opinion of the County, adequately meeting the needs of the County.

17. Notice of Penalties

The Procurement Code, NMSA 1978, § 13-1-28 through 13-1-199, imposes civil, misdemeanor and felony criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

18. Right to Publish

Throughout the duration of this procurement process and contract term, Offerors and contractors must secure from the County written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or County contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or removal from the contract.

19. Ownership of Proposals

All documents submitted in response to the RFP shall become property of Sandoval County.

20. Confidentiality

Any confidential information provided to, or developed by, the contractor in the performance of the contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the contractor without the prior written approval of the County.

The Contractor(s) agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the procuring County's written permission.

21. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the agency, the Offeror acknowledges that the version maintained by the County shall govern.

22. Campaign Contribution Disclosure Form

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form (Appendix B) as a part of their proposal. Failure to complete and return the signed unaltered form will result in disqualification.

23. Letter of Transmittal

Offeror's proposal must be accompanied by the Letter of Transmittal Form (Appendix C) which must be completed and signed by an individual person authorized to obligate the company. The letter of transmittal MUST:

1. Identify the submitting business entity.
2. Identify the name, title, telephone, and e-mail address of the person authorized by the Offeror organization to contractually obligate the business entity providing the Offer.
3. Identify the name, title, telephone, and e-mail address of the person authorized to negotiate the contract on behalf of the organization (if different than (2) above).
4. Identify the names, titles, telephone, and e-mail addresses of persons to be contacted for clarification/questions regarding proposal content.
5. Sub-contractor will not be authorized for this procurement.
6. Identify the following with a check mark and signature where required:
 - a. indicate acceptance of the Conditions Governing the Procurement indicate acceptance of this RFP; and
 - b. Acknowledge receipt of any and all amendments to this RFP.
7. Be signed by the person identified in #2 above.

24. Disclosure Regarding Responsibility

- A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:
1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.
 2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
 - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or sub-contract.
 - b. violation of Federal or state antitrust statutes related to the submission of offers; or
 - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property.
 3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure.
 4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply:
 - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
 - c. Have within a three-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Contractor shall provide immediate written notice to the State Purchasing Agent or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became

erroneous by reason of changed circumstances.

- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.
- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.
- F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the State Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

25. Use by Other Government Agencies

By submitting a bid or proposal, the Bidder or offeror indicates that they understand and agree that other local public bodies and state agencies with the State of New Mexico, if allowed by their governing directives, may contact for the goods and services included in this procurement document with the awarded Contractor(s). Contractual engagements accomplished under this provision shall be solely between the awarded Contractor and the contracting government entity with no obligation or liability by Sandoval County.

26. Electronic Mail Address Required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence. **E-mail address will be provided on Appendix A which will be submitted in a timely manner.**

27. New Mexico Preferences

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended). Offerors **MUST** include a copy of their preference certificate with their proposal.

Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue:

<http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

- A. **New Mexico Resident Business Preference**
A copy of the certification must accompany Offeror's proposal.
- B. **New Mexico Native American Resident Business Preference**
A copy of the certification must accompany Offeror's proposal.
- C. **New Mexico Resident Veterans Business Preference**
A copy of the certification must accompany Offeror's proposal.
- D. **New Mexico Native American Resident Veterans Business Preference**
A copy of the certification must accompany Offeror's proposal

An agency shall not award a business for more than one preference.

The New Mexico Preferences shall not apply when the expenditures for this RFP includes federal funds.

III. RESPONSE FORMAT AND ORGANIZATION

This section describes the format and organization of the Offeror's responses. Failure to conform to these guidelines may result in the disqualification of the proposal.

1. NUMBER OF RESPONSES

Offerors shall submit only one proposal in response to this RFP.

2. NUMBER OF COPIES

A. Hard Copy Responses

Offeror's proposal must be clearly **labeled and numbered and indexed**. Proposals must be submitted as outlined below. The original copy shall be clearly marked as such on the front of the binder. Envelopes, packages or boxes containing the original and the copies must be clearly labeled and submitted in a sealed envelope, package, or box bearing the following information:

Offerors must deliver:

- **Technical Proposals** – One (1) ORIGINAL and three (3) HARD COPIES (4 TOTAL).
- **Cost Proposals** – One (1) ORIGINAL and three (3) HARD COPIES (4 TOTAL).
- **Please include an electronic copy (flash drive) of the Technical and Cost Proposal.**

The original hard copy information **must** be identical. In the event of a conflict between versions of the submitted proposal, the original hard copy shall govern.

Any proposal that does not adhere to these requirements, may be deemed non-responsive and rejected on that basis.

Sandoval County cannot provide materials such as boxes, envelopes, or tape to a potential Offeror who brings in an unsealed proposal. Unsealed proposals will not be accepted and are considered to be non-responsive to the requirements laid out in this RFP.

3. PROPOSAL FORMAT

All proposals must be submitted as follows:

Hard copies must be typewritten on standard 8 ½” x 11” paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within binders with tabs delineating each section.

Organization of folders/envelopes for hard copy proposals:

1. TECHNICAL PROPOSAL – Binder 1 - Proposal Content and Organization

Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. The proposal **must be organized and indexed** in the following format and must contain, at a minimum, all listed items in the sequence indicated. Promotional material should be **minimal**.

- A. Signed Letter of Transmittal (Appendix C)
- B. Table of Contents
- C. Proposal Summary (Optional)
- D. Response to Contract Terms and Conditions
- E. Offeror’s Additional Terms and Conditions
- F. Response to Specifications
 1. Organizational Experience
 2. Organizational References
 3. Mandatory Specification
 4. Conflict of Interest Affidavit (Appendix E)
 5. Signed Campaign Contribution Form (Appendix B)
 6. New Mexico Preferences (if applicable)
 7. Financial Stability
 8. Proof of Insurance and/or Surety Bonds
 9. Other Supporting Material (if applicable)

2. COST PROPOSAL – Binder 2 MUST BE IN A SEPARATE SEALED ENVELOPE

- A. All costs to be incurred and billed to the county shall be described in detail. The Offeror should understand that the costs of insurance

maintained by the organization in connection with the general conduct of its operation are allowable provided: that the types and content of coverage is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances. Liability for that item remains with the Offeror. The proposed price quoted must include all applicable costs and applicable taxes.

- B. Offeror should submit a proposal with a detailed schedule of total costs per task. Offeror should also provide unit cost estimated (hourly, etc.) and time schedule for each task with in each task. The Offeror shall quote hourly rates for additional consulting beyond the scope of the described tasks.

Within each section of the proposal, Offerors should address the items in the order indicated above. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal.

The proposal summary may be included by potential Offerors to provide the Evaluation Committee with an overview of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal.

IV. SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each specification, unless otherwise instructed. The narratives, including required supporting materials, will be evaluated and awarded points accordingly.

A. DETAILED SCOPE OF WORK

This specification describes credit card transaction processing services to include, but not limited to: the processing of on-line Visa, MasterCard, Discover and American Express card transactions, check/debit card processing, ATM cards and e-check transactions. It describes the need for timely deposits of the funds generated from the acceptance of the above-mentioned cards and checks, the means by which these services will be billed and the specific integration and coordination requirements. The anticipated methods of use are on-line and telephone, telephone payments shall be accepted by a live agent, and may include the acceptance of secure credit card transactions over mobile devices. Credit card processing services will be required for any county department that needs processing payment by Point of Sale, Online or by IVR/Telephone.

SERVICE REQUIREMENTS: Services shall include, but not limited to, the following:

A. Debit/Credit Card and Check/E-Check Authorization: Provide 24 hour, 7 days a week service to include:

1. Authorization of the following credit cards: Visa, MasterCard, Discover and American Express.
2. On-line debit card, ATM card and check processing.

3. Provide an approval (confirmation) number for all transactions approved.
4. Provide an authorization code for all transactions.

B. Internet payment capability: Dedicated, secure website to accept online payments.

1. Site must be accessible from the Sandoval County website via link.
2. Acceptance for Visa, MasterCard, Discover, American Express credit card transactions, check/debit card processing, ATM card and e-check transactions.
3. Inclusion of a “**shopping cart**” for online payment with **multiple accounts**.
4. User friendly access with minimal entry requirements to access account information.
5. Ability for taxpayer to schedule automatic/reoccurring payments.
6. No user sign in requirement.
7. Ability for Sandoval County Staff to void same day transactions.
8. Clear and full disclosure of any and all convenience fees prior to acceptance of payment.
9. Complete confirmation for all payments received, including but not limited to, account number, amount paid, confirmation and authorization.
10. Update every business day from uploaded tax information files or similar means.
11. Provide account information, including but not limited to, basic identifying information (account number, name and property identification), amount due, payment due dates and account balance.

C. IVR / telephone payment capability: Dedicated toll-free number in English and Spanish for acceptance of credit card payments.

1. Acceptance for Visa, MasterCard, Discover, American Express credit card transactions, check/debit card processing, ATM card and e-check transactions.
2. Live customer care agents.
3. Inclusion of a “**shopping cart**” for online payment with **multiple accounts**.
4. Clear and full disclosure of any and all convenience fees prior to acceptance of payment.
5. Complete confirmation for all payments received, including but not limited to, account number, amount paid, confirmation and authorization.
6. Update every business day from uploaded tax information files or similar means.
7. Provide account information, including but not limited to, basic identifying information (account number, name and property identification), amount due, payment due dates and account balance.
8. Text messaging features shall be offered to tax payers with updated account information to be inclusive.

D. Point of Sale (POS) capability: Credit card swipe machines and pin pads shall be provided for each of the four teller windows, two in the Clerk’s Office, two in Planning and Zoning, one in the Sheriff’s Office, one for our Landfill, and for any other Office or Department upon request or need of this service.

Technical Support:

1. Provide a toll-free number for technical support and live support staff for technical calls during standard County business hours (6:30 a.m. – 7 p.m. Mountain Standard Time (MST)).
2. Provide online submittal of technical support issues.
3. Must have a **direct service representative** that works directly with the County Treasurer or designee on any issues or concerns with any department within the county of Sandoval.
4. Must provide emergency support for any technical or system errors that would need to be resolved immediately.
5. Must provide technical assistance and training during the implantation process.

Reporting: The County shall approve the format for required reports.

1. Provide a daily report consisting of: transaction date, approval number, transaction type, authorization code, amount of transaction and convenience fee.
2. Must provide a required daily posting file to update county records. The format of this file must comply with County requirements to assure compatibility with the County's payment system.
3. Must provide a monthly report of all transaction totals for the month. The report will include total funds and transactions by card type and include e-check posting transactions. Must also be able to provide all transactions from each Point of Sale (POS) machine.
4. Must be able to provide an online resource for retrieving, reviewing, printing, issuing refunds, and/or downloading all transactions.
5. Convenience fee shall be returned when requested.
6. Provide a file that will interact with the County Treasurer's current payment system to update taxpayer records.

The County utilizes a "User Pay Model" and expects services to be provided at no cost to the County. The County acknowledges the application of a nominal user, or "Convenience Fee", to the taxpayer for the use of these services. This fee should be as low and competitive as possible, and clearly disclosed to the taxpayer/customer/user for every transaction. During national emergencies (i.e. COVID), when internet payment capability and IVR/telephone capability have an increase in utilization, we shall have the ability to negotiate fees and/or the contract. Under no circumstances shall the Vendor be allowed to assess or deduct any fee or cost from, or otherwise reduce, the principal payment to the County in any transaction.

VENDOR REQUIREMENTS: Vendor shall:

- A. Be a firm or corporation regularly engaged in the acceptance and processing of credit cards, debit cards, ATM cards and on-line check processing while providing online reporting services and licensed to do business in the State of New Mexico.

- B. Acknowledge full compliance with Payment Card Industry (PCI) Data Security Standards (DDS) and provide verifying documentation of PCI/DDS Level One (1) validation.
- C. Must agree to comply with all other credit card issuer rules and regulations.
- D. Provide the County with a single point of contact for all customer relations.
- E. Must settle all accounts daily.
- F. Make payments in a timely manner into any account specified by the County.
- G. Provide the County with all correspondence for chargebacks and contested charges.
- H. Chargebacks and disputes are at processor's expense.
- I. Capability of integrating with the Tyler Software within a timely manner.
- J. Must have a main point of contact for our County to have direct communication.
- K. Must be notified immediately of any staff/management/direct contact changes and breaches to security.
- L. Must be able to assist in English and Spanish.
- M. Provide receipt on 3" x 150" (or similar) thermal paper.
- N. Cost must be equal or less than what Sandoval County is currently paying.
 - 1. Debit Card Transactions: \$3.50
 - 2. Credit Card Transaction: 2.35% of the transaction amount; minimum amount of \$1.49
 - 3. Checking account transaction: \$1.00

The County requires the payment servicer to provide full customer service and technical support for the entire term of the contract. Offerors should demonstrate prior experience with tax collection for local government entities, especially in regards to collecting property taxes for County Government.

B. TECHNICAL SPECIFICATIONS

1. Organizational Experience:

- a. Provide a description of all relevant experience as required in the scope of work with state, county or municipal government and/or the private sector. The narrative **must** thoroughly describe how the Offeror has supplied expertise for similar contracts and must include the extent of their experience, expertise and knowledge as a company who is capable of processing credit card payments.

2. Organizational References

Offerors must provide a minimum of three (3) references from similar projects performed for state or local government clients within the last three (3) years.

The Evaluation Committee may contact any or all references for validation of information submitted. If this step is taken, the Procurement Manager and the Evaluation Committee must all be together on a conference call with the submitted reference so that the Procurement Manager and all members of the Evaluation Committee receive the same information.

Additionally, the County reserves the right to consider any and all information available to it.

Offerors shall submit the following Business Reference information as part of the Offer:

- a. Client name;
- b. Project description;
- c. Project dates (starting and ending);
- d. Technical environment (i.e. similar background experience performed); and
- e. Client project manager name, telephone number, fax number and email address.

Offeror is required to submit APPENDIX D, Organizational Reference Questionnaire (“Questionnaire”), to the business references it lists. **The business references must submit the Questionnaire directly to the designee identified in APPENDIX D. The business references must not return the completed Questionnaire to the Offeror. It is the Offeror’s responsibility to ensure the completed forms are submitted on or before the date indicated in the Sequence of Events for inclusion in the evaluation process.**

3. Mandatory Specifications

A brief explanation is required for of each mandatory specification listed below. Offerors are encouraged to fully address each category, as points are assigned:

- a. Provide a detailed narrative of your qualifications and your proposed approach to quality assurance, quality improvement, continuing educations and the rationale underlying that approach.
- b. Provide the leadership of your organization and cite accomplishments of individuals who will provide direct oversight of services for this contract. Provided resume of each of those individuals with the years of experience and training in credit card processing, Point of Sale, customer service and telephone reporting and other services.
- c. Provide examples of receipts, spreadsheets and reporting documents that will be used for all services with Sandoval County.
- d. Provide a time table of how long it will take to implement each service and also provide us an explanation of how IT work tickets are resolved and the time frame in which they are resolved.
- e. Describe your knowledge and experience in writing how you maintain and update your system; the direct relationship or organizational structure of any entities involved and where you may fit into that work group.
- f. Provide a brief history and description of the Company, including a copy of the most recent annual report, the size of the business, the number of employees, annualized dollars of payroll, and number of years in existence.
- g. Provide documentation of compliance with Payment Card Industry (PCI) Data Security Standards (DSS) and Level One (1) validation.

4. Business Specifications

Financial Stability

Offeror's must submit copies of the most recent years independently audited financial statements and the most current 10k, as well as financial statements for the proceeding three years if they exist. The submission must include the audit opinion, the balance sheet, statements of income, retained earnings, cash flows and the notes to the financial statements. If independently audited financial statements do not exist, Offeror must state the reason, and instead submit sufficient information (e.g., D & B report) to enable the Evaluation Committee to assess the financial stability of the Offeror.

Insurance

ALL RESPONDENTS MUST submit with their proposal, proof of insurance for Professional Liability in the amount of \$1,000,000. Proof shall be by submission of copies of current policies or current Certificates of Insurance, including the effective dates of coverage. Sandoval County requires the following provisions awarded by vendor:

- Sandoval County to be named as additional insured or an insured on all required policies.
- Sandoval County shall be provided with an unconditional thirty (30) days advance written notice of cancellation or material change (i.e. no limit on the notice of cancellation) on all policies.
- Prior to the execution of the resulting contract, the Sandoval County Purchasing Office shall be supplied with an original certificate of insurance evidencing the stated requirements. This insurance shall be effective for the contract duration and renewal certificates shall also be supplied upon expiration.

V. EVALUATION

A. EVALUATION POINT SUMMARY

The following is a summary of evaluation factors with point values assigned to each. These weighted factors will be used in the evaluation of individual potential Offeror proposals by sub-category.

Factors	Points Available
Organizational Experience	30 points
Organizational References	15 points
Mandatory Specifications	30 points
POSSIBLE TOTAL COST POINTS	25 points
Lowest Responsive offer Cost ----- X Available Award Points	

This Offeror's Cost	
GRAND TOTAL POSSIBLE POINTS	100 POINTS
Letter of Transmittal	Pass/Fail
Signed Campaign Contribution Disclosure Form	Pass/Fail
Conflict of Interest Affidavit	Pass/Fail
Financial Stability	Pass/Fail
Proof of Insurance	Pass/Fail
New Mexico Preferences:	
Resident Business Vendor Points	
Native American Resident Business Points	
Resident Veteran Points	
Native American Resident Business Points	

Table 1: Evaluation Point Summary

B. EVALUATION FACTORS

Points will be awarded based on the thoroughness and clarity of the response of the engagements cited and the perceived validity of the response.

a. Organizational Experience

Points will be awarded based on the thoroughness and clarity of Offeror's response in this Section. The Evaluation Committee will also weigh the relevancy and extent of Offeror's experience, expertise and knowledge; and of personnel education, experience and certifications/licenses. In addition, points will be awarded based on Offeror's candid and well-thought-out response to successes and failures, as well as the ability of the Offeror to learn from its failures and grow from its successes.

b. Organizational References

Points will be awarded based upon an evaluation of the responses to a series of questions on the Organizational Reference Questionnaire (Appendix D). Offeror will be evaluated on references that show positive service history, successful execution of services and evidence of satisfaction by each reference. References indicating significantly similar services/scopes of work and comments provided by a submitted reference will add weight and value to a recommendation during the evaluation process. Points will be awarded for each individual response up to 1/3 of the total points for this category. Lack of a response will receive zero (0) points.

The Evaluation Committee may contact any or all business references for validation of information submitted. If this step is taken, the Procurement Manager and the Evaluation Committee must all be together on a conference call with the submitted reference so that the Procurement Manager and all members of the Evaluation Committee receive the same information. Additionally, the Agency reserves the right to consider any and all information available to it.

c. Mandatory Specifications

Points will be awarded based on the thoroughness and clarity of Offeror's response in this section.

d. Cost

Cost scoring is determined by the following formula:

$$\frac{\text{Lowest Responsive Offeror's Cost}}{\text{Each Offeror's Cost}} \times \text{X Available Points}$$

e. Pass/Fail Section

A "fail" for any item(s) below will result in a non-responsive proposal and the proposal will *not* be evaluated.

- Letter of Transmittal
- Signed Campaign Contribution Disclosure Form
- Conflict of Interest Affidavit Form
- Proof of Financial Stability
- Proof of Insurance

f. New Mexico Preferences

Percentages will be determined based upon the point-based system outlined in NMSA 1978, § 13-1-21 (as amended).

- **New Mexico Resident Business Preference**
If the Offeror has provided their Preference Certificate the Preference Points for a New Mexico Business is 8% of the total points available in this RFP.
- **New Mexico Native American Resident Business Preference**
If the Offeror has provided their Preference Certificate the Preference Points for a New Mexico Resident Native American Owned Business Preference is 8% of the total points available in this RFP.
- **New Mexico Resident Veterans Business Preference**
If the Offeror has provided a copy of their Preference Certificate the Preference Points for a New Mexico Resident Veteran Business is 10% of the total points available in this RFP.
- **New Mexico Native American Resident Veterans Business Preference**
If the Offeror has provided a copy of their Preference Certificate the Preference Points for a New Mexico Resident Veteran Business is 10% of the total points available in this RFP.

g. Interview

If an interview is held, the Purchasing Manager will distribute questions and instructions to the finalists prior to the scheduled interview. A maximum of 100 points are possible in scoring each interview for this RFP. The Evaluation Committee may, at their discretion,

request additional clarification as to the contents of the RFP submittal from any of the Offeror's.

EVALUATION PROCESS

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response.
3. The Evaluation Committee may use other sources of to perform the evaluation.
4. Responsive proposals will be evaluated on the factors set forth in the RFP, which have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors, based upon the proposals submitted. The responsible Offerors whose proposals are most advantageous to the County taking into consideration the evaluation factors will be recommended for award. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

- **APPENDICES-A through E must be completed and submitted**

APPENDIX A

ACKNOWLEDGEMENT OF RECEIPT FORM

APPENDIX A

REQUEST FOR PROPOSAL

Credit Card Processing Services

RFP# FY24-SCTO-01

ACKNOWLEDGEMENT OF RECEIPT FORM

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that s/he has received a complete copy, beginning with the title page and table of contents, and ending with APPENDIX E.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than **March 22, 2024** by 5:00 pm (Mountain Daylight Time). Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the written responses to those questions as well as RFP amendments, if any are issued.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

This name and address will be used for all correspondence related to the Request for Proposal.

Firm does/does not (circle one) intend to respond to this Request for Proposal.

Leslie Olivas, Senior Procurement Specialist
Sandoval County
1500 Idalia Road Bldg. D, PO Box 40
Bernalillo, NM 87004
Fax: 505-404-5873
E-mail: ldolivas@sandovalcountynm.gov

APPENDIX B

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Campaign Contribution Disclosure Form

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds one hundred dollars (\$100) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

—OR—

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER ONE HUNDRED DOLLARS (\$100) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (Position)

SANDOVAL COUNTY’S CURRENT ELECTED OFFICIALS

Katherine A. Bruch, Commission District 1

Jay C. Block, Commission District 2

Michael Meek, Commission District 3

David J. Heil, Commission District 4

Joshua Jones, Commission District 5

Linda P. Gallegos, Assessor

Anne Brady-Romero, Clerk

Edward W. Lovato, Probate Judge

Jesse James Casaus, Sheriff

Jennifer A. Taylor, Treasurer

APPENDIX C

LETTER OF TRANSMITTAL FORM

APPENDIX C
Letter of Transmittal Form

RFP #: FY24-SCTO-01

Bidder Name: _____ **FED ID#:** _____

Items #1 - #7 EACH MUST BE COMPLETED IN FULL

1. **Identity (Name) and Mailing Address** of the submitting organization:

2. For the person authorized by the organization to contractually obligate on behalf of this Offer:

Name _____
Title _____
E-mail Address _____
Telephone Number _____

3. For the person authorized by the organization to negotiate on behalf of this Offer:

Name _____
Title _____
E-mail Address _____
Telephone Number _____

4. For the person authorized by the organization to clarify/respond to queries regarding this Offer:

Name _____
Title _____
E-mail Address _____
Telephone Number _____

5. Use of Sub-Contractors (Select one)

No sub-contractors will be used in the performance of any resultant contract **OR**
 The following sub-contractors will be used in the performance of any resultant contract:

(Attach extra sheets, as needed)

6. Please describe any relationship with any entity (other than Sub-contractors list in #5 above) which will be used in the performance of any resultant contract.

(Attach extra sheets, as needed)

7. _____ On behalf of the submitting organization named in item #1, above I accept the Conditions Governing the Procurement.

_____ I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

_____ I acknowledge receipt of any and all amendments to this RFP.

_____, 2024

Authorized Signature
(Must be signed by the person identified in item #2, above)

Date

APPENDIX D
ORGANIZATIONAL REFERENCE QUESTIONNAIRE

**ORGANIZATIONAL REFERENCE QUESTIONNAIRE
FOR:**

(Name of the company you're submitting reference for)

This form is being submitted to your company for completion as a business reference for the company listed above. This form is to be returned for **RFP# FY24-SCTO-01 Credit Card Processing Services** via **facsimile** or **e-mail** at:

Name: Leslie Olivas, Senior Procurement Specialist
Sandoval County Finance Department
Address: 1500 Idalia Road, Building D
Bernalillo, NM 87004

Telephone: 505-404-5873
Fax: 505-867-7605
Email: ldolivas@sandovalcountynm.gov

Please return no later than July 22, 2022 @ 3:00 p.m. Mountain Daylight Time and **must not** be returned to the individual/company requesting the reference. Late submissions will not be considered.

Please enter **detailed** answers in the “comments” section of each question.

For questions or concerns regarding this form, please contact the Sandoval County Procurement Officer listed above. When contacting us, please be sure to include the Request for Proposal number listed at the top of this page.

CONFIDENTIAL INFORMATION WHEN COMPLETED

Company providing reference:	
Contact name and title/position	
Contact telephone number	
Contact e-mail address	

QUESTIONS:

1. In what capacity have you worked with this vendor in the past?

COMMENTS:

2. How would you rate this firm's knowledge and expertise?

____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

3. How would you rate the vendor's flexibility relative to changes in the project scope and timelines?

____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

4. What is your level of satisfaction with hard-copy materials produced by the vendor?

____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

5. How would you rate the dynamics/interaction between the vendor and your staff?

____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

6. Who were the vendor's principal representatives involved in your project and how would you rate them individually? Would you comment on the skills, knowledge, behaviors or other factors on which you based the rating?

(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

Name: _____ Rating:

Name: _____ Rating:

Name: _____ Rating:

Name: _____ Rating:

COMMENTS:

7. How satisfied are you with the products developed by the vendor?
_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

8. With which aspect(s) of this vendor's services are you most satisfied?

COMMENTS:

9. With which aspect(s) of this vendor's services are you least satisfied?

COMMENTS:

10. Would you recommend this vendor's services to your organization again?

COMMENTS:

APPENDIX E
CONFLICT OF INTEREST AFFIDAVIT FORM

APPENDIX E

CONFLICT OF INTEREST AFFIDAVIT

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANDOVAL)

I, _____ (name), being first duly sworn upon my oath, depose and state the following:

I am a former employee of _____ (name of Department/Agency), having separated/retired from state employment as of _____ (date).

I am a current employee of _____ (name of Department/Agency), or a legislator with the state, or the family member (spouse, parent, child, sibling by consanguinity or affinity) of a current employee or legislator with the state. Being a current employee or legislator or family member of a current employee or legislator of the state, I hereby certify that I obtained this Agreement pursuant to Sections 10-16-7 or 10-16-9 NMSA 1978, that is, in accordance with the Procurement Code except that this Agreement has NOT been awarded via the sole source or small purchase procurement methods.

The Department/Agency and I have entered into an agreement in the amount of \$_____.

Section 10-16-8.A(1) NMSA 1978 of the Governmental Conduct Act does not apply to this Agreement because I neither sought a contract with the Department/Agency, nor engaged in any official act which directly resulted in the formation of the Professional Services Agreement while an employee of the Department/Agency.

To the best of my knowledge, this Agreement was awarded in compliance with all relevant provisions of the New Mexico Procurement Code (13-1-28, et. seq., NMSA 1978).

FURTHER, AFFIANT SAYETH NOT.

NAME

Subscribed and sworn to before me by _____ (name of former employee) this _____ day of _____, 20____.

NOTARY PUBLIC

My Commission Expires:

Terms of the Conflict of Interest Affidavit are inapplicable.

APPENDIX F
SAMPLE CREDIT CARD SERVICES AGREEMENT

CREDIT CARD SERVICES AGREEMENT

This **Credit Card Services** Agreement (the "Agreement") is made as of (the "Effective Date"), and is by and between **Name of Corporation**, a corporation with offices located at **address**, and **Sandoval County**, a New Mexico municipal corporation located at 1500 Idalia Road, Building D, Bernalillo, New Mexico 87004 ("Client").

In consideration of the payments to be made and services to be performed hereunder, upon the terms and subject to the conditions set forth in this Agreement and intending to be legally bound, the parties hereto agree as follows:

1. Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein and deemed part of this Agreement. As of the Effective Date, the parties acknowledge that this Agreement includes the following Schedules:

 - Products and Services Schedule (also referred to as "Pricing Attachment")
2. Term and Commencement Date. **Name of Corporation** shall provide to Client, and Client shall receive from **Name of Corporation**, all upon the terms and conditions set forth in this Agreement, the Services specified in this Agreement. The term of this Agreement shall commence on the Effective Date and end on the third (3rd) anniversary of the last day of the month in which the Commencement Date occurs (the "Initial Term"). Upon expiration of the Initial Term, the Services shall automatically be renewed for successive one (1)-year periods (each a "Renewal Term") unless terminated by either party in writing at least ninety (90) days prior to the expiration of the Initial Term or the then-current Renewal Term.
3. Additional Services. Additional Services may be added from time to time by amending this Agreement in accordance with its terms.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on their behalf as of the date first above written.

<p>Name of Corporation</p> <p>Address</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date Signed: _____</p>	<p>Client</p> <p>Street Address _____</p> <p>City State Zip _____ 1.</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date Signed: _____</p> <p>Approved as to form:</p> <p>By: _____</p> <p>Date Signed: _____</p>
--	--

1.Introduction- This **Credit Card Services** Agreement dated as of the Effective Date (as set forth on the signature page) describes the Services to be provided to Client. Client engages **Name of Corporation** to provide one or more of the following: online, point-of-sale, and/or telephonic payment processing services ("Services") using **Name of Corporation**. Software

(as defined below) and systems ("System") as described in this Agreement for Client's credit card, debit card, electronic benefits transfer and/or electronic check transactions ("Transactions") throughout the Initial Term and any Renewal Terms. **Name of Corporation** will provide the Services to Client either directly or through one or more of its affiliated companies or subcontractors, in accordance with the corresponding Specifications. References to **Name of Corporation** in this Agreement include such entities.

2. Commencement-

Unless otherwise set forth, the "Commencement Date" of the Services not in effect as of the Effective Date is the earlier of: (i) the date the Services is first installed and available for Client's use in production; (ii) Client's first production use of the Services; or (iii) the commencement date agreed upon by the parties in writing. In the event that the parties are unable after a reasonable period of time to reach mutual agreement upon a Commencement Date, the Commencement Date shall be deemed to be the three (3)-month anniversary of the Effective Date. If commencement of a Service is delayed for more than ninety (90) days after the agreed upon Commencement Date and such delay is not due to **Name of Corporation** failure to meet its obligations hereunder, **Name of Corporation** may suspend delivery of the Services and Client shall pay any one-time fees and minimum fees through the balance of the Initial Term. Upon the request of either party, the Commencement Date may be rescheduled to a new date that is mutually agreed upon in writing by both parties.

2.2 Each party shall dedicate sufficient resources, including the assignment of adequate personnel, to commence the Services as soon as practical following the Effective Date.

2.3 **Name of Corporation** may postpone implementation of the Services if Client fails to timely provide required information or a circumstance arises that might jeopardize timely processing of transactions for other clients of **Name of Corporation**.

3. Responsibilities-

3.1 Name of Corporation Responsibilities

3.1.2 If Client pays all applicable fees when due, **Name of Corporation** shall provide (i) Client and Client's customers ("Customers") with access to and use of the Services in accordance with this Agreement, the applicable Schedules, and **Name of Corporation** then current standard user operating instructions and requirements made available to Client from time to time ("Specifications"), and (ii) Client with standard reporting, if any, associated with use of the Services. **Name of Corporation** shall perform the Services in compliance with all Laws applicable to **Name of Corporation** as a provider of that Service. "Law" means any law, rule, regulation, ordinance, code or order to which a party may be subject or under which a party may exercise rights.

3.1.3 **Name of Corporation** shall perform an on-going review of federal Laws applicable to the provision of the Services and any Software. **Name of Corporation** shall maintain the features and functions for the Services and Software in accordance with all federal Laws applicable to such features and functions, including new or amended federal Laws (as applicable and necessary to support compliance obligations), in a non-custom environment. In addition, **Name of Corporation** shall work with Client in developing and implementing a suitable and commercially reasonable

procedure or direction to enable Client to comply with state and local Laws applicable to the Services and Software being provided to Client, and, to the extent commercially possible, modify the manner in which **Name of Corporation** provides the Services prior to the regulatory deadline for such compliance. Any modification in the Services or Software necessitated by such a change in state or local Laws shall be paid for by Client. The term "Software" means, individually or collectively, any software and/or interfaces licensed to Client by **Name of Corporation** or its affiliates pursuant to this agreement.

3.2 Client Responsibilities.

3.2.1 Client shall: (i) provide Customer information to **Name of Corporation** in accordance with the Specifications; (ii) except to the extent due to **Name of Corporation** material breach of this Agreement, assume all risk and liability associated with transactions, including any risk of counterfeit, charged-back or fraudulent transactions; (iii) use each Services in accordance with the Specifications; (iv) timely deliver any Data (defined below) or other information necessary for the provision of the Services in an electronic form and format approved by **Name of Corporation**; (v) be solely responsible for timely procuring any information or cooperation required from its Customers and suppliers or other third party in order to commence the Services; (vi) have sole responsibility for verifying the accuracy, completeness or authenticity of any Data furnished by Client or a third party; (vii) be solely responsible for training its employees and representatives to comply with all Laws applicable to Client and the procedures set forth in the Specifications or any manual or other literature provided to Client by **Name of Corporation**; (viii) comply with all Laws applicable to Client's business and its use of the Services, including but not limited to those Laws relating to usury, truth-in-lending, fair credit reporting, equal credit opportunity, automated clearing house transfers, networks associations, electronic funds transfer, privacy and direct marketing, regardless of whether Client uses any forms or other Materials supplied by **Name of Corporation**; and (ix) be responsible for providing **Name of Corporation** with notice of any changes in state or local Law that impact Client's use of the Services.

3.2.2 Client shall be responsible for monitoring and interpreting (and for complying with, to the extent such compliance requires no action by **Name of Corporation**), the applicable Laws pertaining to Client's business ("Legal Requirements"). Based on Client's instructions, **Name of Corporation** shall implement the processing parameter settings, features and options (collectively, the "Parameters") within **Name of Corporation**'s Services and Systems that shall apply to Client, subject to the change request process in place between **Name of Corporation** and Client to establish requirements, development arrangements and deployment timelines. Client shall be responsible for determining that such selections are consistent with the Legal Requirements and with the terms and conditions of any agreements between Client and its Customers. In making such determinations, Client may rely upon the written descriptions of such Parameters contained in the Specifications. **Name of Corporation** shall perform the Services in accordance with the Parameters.

3.3 Data.

3.3.1 Client shall be solely responsible for the transmission of any information, data, records or

documents (collectively, "Data") necessary for **Name of Corporation** to perform the Services at Client's expense, and shall bear any risk of loss resulting from that transmission until **Name of Corporation** confirms receipt. **Name of Corporation** shall bear the risk of loss resulting from Data transmitted to Client until Client confirms receipt. If Client directs **Name of Corporation** to disclose Data to a third party, Client shall provide **Name of Corporation** with written authorization to do so and bear any risk of loss or liability associated with that disclosure. In addition, **Name of Corporation** shall be held harmless from any claim resulting from the third party's use of that Data, and may, in its discretion, require the third party to enter into a written agreement with **Name of Corporation** governing disclosure of that Data.

3.3.2 **Name of Corporation** shall not be responsible for the accuracy, completeness or authenticity of any Data furnished by Client or a third party, and shall have no obligation to audit, check or verify that Data. If any Data submitted by Client or a third party to **Name of Corporation** is incorrect, incomplete or not in the required format, **Name of Corporation** may require Client to resubmit the Data or **Name of Corporation** may correct the Data and bill Client its then-current rates for performing those corrections. **Name of Corporation** shall attempt to notify Client prior to Client incurring such expense.

3.3.3 Client shall maintain a copy of all Data submitted to **Name of Corporation** (whether directly or through a third party) to permit reconstruction if ever required. Client assumes all risk and expense associated with Data reconstruction, except for those expenses incurred as a direct consequence of **Name of Corporation's** breach of this Agreement. If Data reconstruction is ever required, the parties shall mutually agree on a schedule for that reconstruction.

3.4 Disaster Recovery. In accordance with FFIEC business continuity guidelines, **Name of Corporation** has put in place a disaster recovery plan designed to minimize the risks associated with a disaster affecting **Name of Corporation** ability to provide the Services under this Agreement. **Name of Corporation's** recovery time objective (RTO) under such plan is as set forth in the continuity program summary document made available to Client. **Name of Corporation** will maintain adequate backup procedures in order to recover Client's Data to the point of the last available good backup, with a recovery point objective (RPO) as set forth in the continuity program summary document made available to Client. **Name of Corporation** will test its disaster recovery plan annually. Upon request, **Name of Corporation** will provide a summary of its disaster recovery plan and test results, excluding any proprietary information or NPI. Client authorizes **Name of Corporation** to provide Client's Data to external suppliers in order to test and prepare for disaster recovery, as well as provide replacement services in the event of a disaster. Client is responsible for adopting a disaster recovery plan relating to disasters affecting Client's facilities and for securing business interruption insurance or other insurance necessary for Client's protection.

3.5 Changes to Services. **Name of Corporation** may change any features, functions, brand, third party provider, or attributes of the Services, or any element of its systems or processes, from time to time, provided that such changes do not have a material adverse impact on the performance or cost of the Services. Client shall not rely on identification of specific brands associated with or names of third-party providers of a service as an obligation of **Name of Corporation** to use any particular brand or third-party provider. If Client requests a change to the Services, the parties shall negotiate the terms for such change, which terms will be set forth in a mutually agreed upon statement of work

("SOW").

3.6 Transition Assistance. Upon termination of this Agreement, **Name of Corporation** shall cooperate in the transition of the Services to Client or a replacement service provider and, if requested by Client, perform ancillary services for additional fees. However, no master files, transaction data, test data, record layouts or other similar information shall be provided by **Name of Corporation** until: (i) Client and, if applicable, the replacement service provider, have executed **Name of Corporation's** deconversion confidentiality agreement; (ii) Client has fully paid all outstanding amounts; (iii) Client has completely prepaid **Name of Corporation's** fees for deconversion assistance; and (iv) the parties mutually agree on a date for deconversion that is at least one hundred eighty (180) days following **Name of Corporation's** receipt of Client's notice of deconversion. If the one hundred eighty (180)-day period ends between the third week of November and the third week of January, the time period for completing deconversion may be extended until the first week of February. In addition, upon termination of this Agreement, **Name of Corporation** may, at Client's request and expense, continue to provide the corresponding Services(s) until the deconversion is completed, provided the parties agree to such continuation in writing.

3.7 Problem Reporting and Resolution. Client shall timely report any problems encountered with the Services. **Name of Corporation** shall provide a toll-free telephone number for problem reporting. **Name of Corporation** shall promptly respond to each reported problem based on its severity, the impact on Client's operations and the effect on the Services. **Name of Corporation** shall use reasonable commercial efforts to either resolve each problem or provide Client with information to enable Client's personnel to resolve it.

4.Services-

4.1 Payment Processing. **Name of Corporation** shall transmit Transaction files for authorization and settlement through **Name of Corporation** certified payment processor(s) (an "Approved Processor"). Funds for Transactions processed by **Name of Corporation** hereunder shall be submitted to Client's designated bank account as follows: (i) no more than two (2) business banking days after all Transactions that are successfully processed **Name of Corporation** makes no representation or warranty as to when funds will be made available by Client's bank.

4.2 Support. **Name of Corporation** shall provide Client with level three Client service support, twenty-four (24) hours per day, seven (7) days per week, subject to commercially reasonable downtime, with toll-free voice communications lines and representatives to address Client service requests. The Client will provide support for their end users.

4.3 Electronic Check Authorization. If Client has elected to accept electronic checks as a form of payment, the following subsections apply:

4.3.1 **Name of Corporation** shall provide check authorization services to assist Client with its decision whether to accept a check, and shall process those check Transactions requested by Client, subject to the terms of this Agreement. Client shall select those risk management controls available

from time to time for use with the Services and assumes sole responsibility for the controls it selects. **Name of Corporation** shall provide Client with all standard risk management reports associated with the Services and the risk management controls selected by Client.

4.3.2 **Name of Corporation** shall use reasonable efforts to provide Client with accurate and reliable information; however, **Name of Corporation** does not guarantee the accuracy or availability of that information. In addition, **Name of Corporation** may decline to authorize a Check for reasons other than derogatory information relating to the check writer based on the risk management controls selected by Client referenced above. Accordingly, Client should exercise its own judgment in determining whether or not to (i) accept a check, and should not draw any adverse conclusions about the creditworthiness of a check writer if the check is not authorized and (ii) assess a service charge on a dishonored check. If Client elects to collect a service charge for a dishonored check, it must do so in compliance with all applicable Laws, including Regulation E and state Laws regarding service charges. **Name of Corporation** disclaims all liability and responsibility for Client's assessment of any service charges on dishonored checks. Client acknowledges that **Name of Corporation** will not provide collection services.

4.4 Convenience Fee Option. If Client elects to charge a convenience fee to Customers, the amount of such fee(s) shall be specified in the Pricing Schedule, Client authorizes **Name of Corporation** to collect each convenience fee.

4.5 Transaction Errors. **Name of Corporation's** sole responsibility for any Transaction error or reversed Transaction is to determine whether any mechanical, procedural, or processing problems occurred at **Name of Corporation** during the preparation of the Transaction file (including but not limited to rejection of files) and, if necessary, reprocess and resubmit the Transaction file without additional charge.

4.6 Implementation/Professional Services. **Name of Corporation** shall perform the professional services for Client as set forth in the Pricing Attachment and the Implementation Plan and shall perform additional Professional Services as mutually agreed upon by the parties from time to time under this Agreement, provided that either party may require execution of a separate mutually acceptable professional services agreement prior to **Name of Corporation's** performance of Professional Services other than those set forth in the Pricing Attachment or the implementation plan.

5. Optional Features

- Client may purchase the following optional feature of the Services (the "Optional Feature") at any time. If **Name of Corporation** provides an Optional Feature, Client shall pay **Name of Corporation** the then-current fees. The Optional Feature shall be provided by **Name of Corporation** in accordance with this Agreement and the then-current version of the applicable Specifications.

5.1 If Client purchases the "User Interface" Optional Feature, the following subsections apply:

5.1.1 **Name of Corporation** shall provide a user interface to the Services in the form of a Virtual Terminal, a telephony based payment system developed by **Name of Corporation** or its designee

through which a User may perform a Transaction ("IVR System"), or Internet Private Label Site (the "UIServices").

5.2 Domain Names; Client Brand Features.

5.2.1 Unless otherwise agreed by **Name of Corporation** and Client, **Name of Corporation** shall own all of the unique addresses that identify the location of a website(s) on the Internet ("Domain Name(s)") used to provide the UI Services, provided that Client shall own any and all Domain Names used for the Internet Private Label Site or Private Label Virtual Terminal. For purposes of this Agreement, "Internet Private Label Site" means a secure payment website on the Internet that presents the Look and Feel of Client's existing website, and is developed, hosted and maintained by **Name of Corporation** pursuant to this Agreement, and at which a User may perform a Transaction; "Look and Feel" means the elements of graphics, design, organization, presentation, layout, user interface, navigation and stylistic convention (including the digital implementations thereof) which are provided by, and unique to, Client; "User" means any person or entity who processes, or for whom Client processes, a Transaction using the UI Services; "Virtual Terminal" means a secure payment site on the Internet that is developed, hosted and maintained by **Name of Corporation** pursuant to this Agreement, at which Client may process Transactions made by Users; and "Private Label Virtual Terminal" is a Virtual Terminal that presents the Look and Feel of Client and may include certain of the Client Brand Features, defined below.

5.2.2 **Name of Corporation** has the right to reject and remove any information made available to Users via the UI Services, which may include, without limitation, text, graphics, data and other similar materials ("Content") and/or trademarks, service marks, Look and Feel, logos and other distinctive brand features of Client supplied to **Name of Corporation** by Client ("Client Brand Features") at any time if **Name of Corporation** reasonably believes that any such materials infringe any third party Intellectual Property Right, are libelous or invade the privacy or violate other rights of any person, violate applicable Laws or regulations, jeopardize the health or safety of any person, or are otherwise detrimental to the goodwill of **Name of Corporation**.

5.2.3 **Name of Corporation** shall correct or cause to be corrected, with reasonable promptness and at its own cost, any errors in the UI Services that are caused by **Name of Corporation's** failure to perform according to the terms of this Agreement. In no event shall **Name of Corporation** be liable for any costs of corrections in excess of its own costs incurred to correct an error that **Name of Corporation** is solely responsible for correcting.

5.3 Ownership.

5.3.1 All Client Brand Features shall be owned exclusively by Client. To the extent **Name of Corporation** possesses any ownership rights in the Client Brand Features, **Name of Corporation** hereby irrevocably assigns to Client all right, title and interest in and to all such Client Brand Features, which includes, without limitation, all of Client's Intellectual Property Rights therein. For purposes of this Agreement, "Intellectual Property Rights" means any and all

now known or hereafter known tangible and intangible: (i) rights associated with works of authorship throughout the world, including, without limitation, copyrights, moral rights, and mask-works; (ii) trademark and trade name rights and similar rights; (iv) trade secret rights; (v) patents, designs, algorithms and other industrial property rights; (vi) other intellectual property rights, whether arising by operation of law, contract, license, or otherwise; and (vii) registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing). If **Name of Corporation** has any such rights that cannot be assigned to Client, **Name of Corporation** waives the enforcement of such rights, and if **Name of Corporation** has any rights that cannot be assigned or waived, **Name of Corporation** hereby grants to Client an exclusive, irrevocable, perpetual, worldwide, fully paid license to such rights (which includes the right to sublicense). Client represents and warrants that it owns the Client Brand Features and all Intellectual Property Rights therein and that such Client Brand Features do not infringe upon any other material or violate or infringe upon the Intellectual Property Rights of any other party.

5.3.2 Subject only to Section 5.3.1 herein, all Intellectual Property Rights directly or indirectly related to the UI Services (which may include Software) shall be owned exclusively by **Name of Corporation** (collectively, the "**Name of Corporation Property**"). To the extent Client possesses any ownership rights in the **Name of Corporation** Property, Client hereby irrevocably assigns to **Name of Corporation** all right, title and interest in and to all such **Name of Corporation** Property, which includes, without limitation, all applicable Intellectual Property Rights thereto. If Client has any such rights that cannot be assigned to **Name of Corporation**, Client waives the enforcement of such rights, and if Client has any rights that cannot be assigned or waived, Client hereby grants to **Name of Corporation** an exclusive, irrevocable, perpetual, worldwide, fully paid license to such rights (which includes the right to sublicense). **Name of Corporation** represents and warrants that It owns or has rights to the **Name of Corporation** Property and all Intellectual Property rights therein and that such **Name of Corporation** Property does not infringe upon any other material or violate or infringe upon the Intellectual Property Rights of any other party.

5.3.3 Client hereby grants **Name of Corporation** a non-exclusive, worldwide license to use the Client Brand Features for **Name of Corporation** to perform its obligations hereunder. The scope of the foregoing license shall be limited as specified herein, and shall not include any right to use, copy, modify, publish, license, sublicense, sell, market or distribute such Client Brand Features, unless expressly authorized herein. Client is not hereby granted any right or license to use any trademarks, trade names, or service marks of **Name of Corporation** or its affiliates and subsidiaries.

6. Software-

Nothing herein shall give Client any right, title, or interest in any **Name of Corporation** Software or any modifications and enhancements thereto. As between **Name of Corporation** and Client, the Software Is the sole and exclusive property of **Name of Corporation**, and **Name of Corporation** expressly reserves all rights to the Software not expressly granted to Client herein. Client shall not directly or indirectly decompile, reverse compile, reverse engineer, reverse assemble or otherwise derive a source code equivalent for the Software.

7. Client Warranties-

7.1 As a condition to its receipt of the Services, Client represents and warrants that Client shall execute and deliver any and all applications, agreements, certifications or other documents required by Networks or other third parties whose consent or approval is necessary for the processing of Transactions. "Network" is an entity or association that operates, under a common service mark, a system which permits participants to authorize, route, and settle transactions among themselves, including, for example, networks operated by VISA USA and MasterCard, Inc., NYCE Corporation, American Express, and Discover.

7.2 Client represents, warrants and agrees that it does and will comply with applicable Laws and regulations and Network rules, regulations or operating guidelines. Client shall notify **Name of Corporation** in writing as soon as possible in the event a claim is either threatened or filed against Client by any governmental organization having jurisdiction over the Client related to the Processing Services. Client shall also notify **Name of Corporation** in writing as soon as possible in the event a claim is either threatened or filed against Client relating to Transactions or the Services or a fine or other penalty is assessed or threatened against Client relating to Transactions or the Services.

7.3 Client represents, warrants and agrees that it is and will continue to be in full compliance with all applicable requirements of the Client Information Security Program of VISA, the Site Data Protection Program of MasterCard, and similar programs of other Networks, and any modifications to such programs that may occur from time to time. Upon the request of **Name of Corporation**, Client shall provide **Name of Corporation** with documentation reasonably satisfactory to **Name of Corporation** verifying compliance with this Section.

7.4 Client hereby grants **Name of Corporation** the full right, power and authority to request, receive and review any data or records reflected in a Transaction report. Client represents and warrants that it has the full right and authority to grant the rights set forth in the preceding sentence.

8. Use of Services, Third Party Services-

Except as otherwise permitted in this Agreement or in writing by **Name of Corporation**, Client agrees to use the Services and/or Third-Party Services only for its own internal business purposes to service its U.S.-based accounts for its Customers and will not sell or otherwise provide, directly or indirectly, any of the Services or any portion thereof to any third party. Once purchased, Optional Features shall fall within the definition of the Services provided hereunder. Client agrees that **Name of Corporation** may use all suggestions for improvement and comments regarding the Services or Third-Party Services that are furnished by Client to **Name of Corporation** in connection with this Agreement, without accounting or reservation. Except as otherwise may be set forth herein or in writing between the parties, Client shall be responsible for handling all Customer inquiries relating to the Services or Third-Party Services. A "Third Party Service" refers to the provision of a product or service by a third party whether such product or service is requested or required by Client or is otherwise specified in this Agreement as a service or product that is provided by a third party.

9. **Materials-** As a convenience, **Name of Corporation** may provide Client with sample forms, procedures, scripts, marketing materials or other similar information (collectively, "Materials"). Client shall have a license to use Materials, if any, solely in connection with its use of the Services or Deliverables during the Initial Term and any Renewal Term and solely in a manner that is consistent

with the Specifications. Client's license to use the Materials shall expire immediately upon termination of this Agreement. Client is responsible for its use of Materials and bears sole liability for any such use.

10. Training- Except as may be otherwise agreed in writing, **Name of Corporation** will provide its standard initial train-the-trainer training regarding the use and operation of the Services or Third Party Services to Client by web-based training or in person at a **Name of Corporation** training location (in which case, travel would be at the Client's expense) at **Name of Corporation's** then-current rates and on a mutually-agreed date and time. Following such initial training, Client is responsible for its trainer(s) training Client's employees on the use and operation of the Services or Third Party Services. Additional training may be provided by **Name of Corporation** upon Client's request, including onsite training at Client's location, as mutually agreed to by the parties regarding topics, duration and fees and expenses.

11. Fees and Other Charges-

11.1 Should Client choose to add functionality not included in standard applications, Client shall pay all fees and charges set forth in the Pricing Attachment(s). Fifty percent (50%) of the one-time fees shall be paid upon execution of this Agreement (or an applicable Amendment), and the remaining fifty percent (50%) shall be paid upon the applicable Commencement Date, unless otherwise set forth in this Agreement. Recurring fees shall be paid beginning on the Commencement Date. **Name of Corporation** may increase any pass-through fees (including, without limitation, postage, supplies, courier, data transmission, and telecommunications expenses) outside of its control as its cost for such items increases. **Name of Corporation** may adjust recurring fees annually by an amount not exceeding, in aggregate effect, the percentage change in the U.S. Employment Cost Index ("ECI") - Civilian: All Workers total compensation, calculated by averaging the annual percentage change reported for the four fiscal quarters immediately preceding each anniversary of the Effective Date, as published by the U.S. Bureau of Labor Statistics (www.bls.gov). These adjustments will be effective for each product or Service on the first day of the calendar month of each anniversary of the Effective Date of the Schedule or agreement that relates to the product or service. If the ECI is unavailable or materially changes in content and scope, then **Name of Corporation** may in good faith select another U.S. Government index as a substitute in order to obtain substantially the same result. Fees, costs and expenses owed by Client are exclusive of charges for materials, work, hardware, software or travel not otherwise detailed in this Agreement, a SOW, or Pricing Attachment. Travel time, if required, will be charged at **Name of Corporation's** standard hourly rates, but will not exceed eight (8) hours per day per resource.

11.2 **Name of Corporation** shall electronically debit the account specified in this Agreement ("Settlement Account") to settle: (i) any fees, charges or other amounts owed to **Name of Corporation**; (ii) transactions; (iii) third party fees, charges, fines, or assessments, including, but not limited to, interchange fees or other payment system or network fees or charges); and (iv) any payments or deposits received from or on behalf of Customers. Client shall maintain sufficient funds in the Settlement Account to cover any amounts owed to **Name of Corporation**, and is solely responsible for properly applying all credits and debits made to the Settlement Account by **Name of Corporation**. Client shall notify **Name of Corporation** in writing of any change in Settlement Account information within three (3) business days of occurrence. In the event **Name of Corporation** does not collect amounts owed from the Settlement Account, Client must pay such amounts within thirty (30) days of the invoice date, together with the twenty-five dollar (25.00) non-ACH processing fee. For any amount that is not paid within thirty (30) days after its due date, Client shall pay a late fee equal to the lesser of one and one-half percent (1 ½%) per month of the unpaid amount or the maximum interest rate allowed by Law.

11.3 In the event of over-billing, **Name of Corporation** will correct the error by credit to Client. If Client was under-billed, **Name of Corporation** will add the under-billed amount to a future invoice. **Name of**

Corporation may utilize any amounts owed to Client under this Agreement to pay or reimburse **Name of Corporation** for amounts owed by Client.

11.4 All charges and fees to be paid by Client under this Agreement are exclusive of any applicable withholding, sales, use, excise, value added or other taxes. Any such taxes for which **Name of Corporation** is legally or contractually responsible to collect from Client shall be billed by **Name of Corporation** and paid by Client. Client agrees to reimburse or indemnify **Name of Corporation** for any taxes, penalties and interest assessed by any taxing authority arising out of this Agreement. **Name of Corporation** shall pay and hold Client harmless for any taxes on **Name of Corporation** property, income or payroll. Client agrees to hold **Name of Corporation** harmless for any sales, use, excise, value added or other taxes assessed by a taxing authority arising out of this Agreement. In the event of any assessment by a taxing authority, both parties agree to cooperate with each other to resolve issues in order to minimize such assessment.

12. Intellectual Property-

12.1 Client is not acquiring a copyright, patent or other intellectual property right in any Services, Third Party Services, Software, Deliverable, Specifications or Materials or in any data, modifications, customizations, enhancements, changes or work product related thereto. "Deliverable" means any work product or other item (whether tangible or intangible) created by **Name of Corporation** or provided by **Name of Corporation** to Client pursuant to the Services, Third Party Services, or Software, and which may be described more particularly in a SOW or other document signed by the parties.

12.2 Any intellectual property rights that existed prior to the Effective Date shall belong solely to the party owning them at that time. Neither party shall be entitled to any copyright, trademark, trade name, trade secret or patent of the other party.

12.3 Client shall not alter, obscure or revise any proprietary, restrictive, trademark or copyright notice included with, affixed to, or displayed in, on or by the Services, Software, or Specifications.

13. Confidentiality-

13.1 Each party shall treat information received from the other that is designated as "confidential" at or prior to disclosure ("Confidential Information") as strictly confidential. **Name of Corporation** designates the Services, Third Party Services, Software, Deliverables, Specifications and the terms of this Agreement, and all information related to the foregoing, as its Confidential Information. Client designates non-public financial information that is personally identifiable to a Customer (referenced in the Gramm-Leach-Bliley Act of 1999, or its equivalent under the applicable state Laws, as "Non-public Personal Information" or "NPI") as its Confidential Information.

13.2 Each party shall: (i) restrict disclosure of the other party's Confidential Information to employees, agents and Affiliates solely on a "need to know" basis in accordance with this Agreement; (ii) advise its employees and agents of their confidentiality obligations; (iii) require agents to protect and restrict the use of the other party's Confidential Information;

(iv) use the same degree of care to protect the other party's Confidential Information as it uses to safeguard its own Confidential Information of similar importance, but in no event less than a reasonable degree of care; (v) establish procedural, physical and electronic safeguards, designed to meet the objectives of the FFIEC interagency Guidelines, to prevent the compromise or unauthorized disclosure of Confidential Information; and (vi) notify the other party of any unauthorized possession or use of its Confidential Information as soon as possible following notice of that unauthorized use or possession. **Name of Corporation** shall promptly notify Client of any incident that has resulted or is likely to result

in the misuse of NPI, and shall comply with all federal and state Laws, rules and regulations regarding NPI that are applicable to it as a third party processor.

13.3 Confidential Information shall remain the property of the party from or through whom it was provided. Except for NPI, neither party shall be obligated to preserve the confidentiality of any information that: (i) was previously known; (ii) is a matter of public knowledge; (iii) was or is independently developed; (iv) is released for disclosure with written consent; or (v) is received from a third party to whom it was disclosed without restriction. Disclosure of Confidential Information shall be permitted if it is: (a) required by Law; (b) in connection with the tax treatment or tax structure of this Agreement; or (c) in response to a valid order of a U.S. court or other governmental body, provided the owner receives written notice and is afforded a reasonable opportunity to obtain a protective order. Upon termination of this Agreement, each party shall destroy the other party's Confidential Information relating to this Agreement in a manner designed to preserve its confidentiality, or, at the other party's written request and expense, return it to the disclosing party. Upon termination of this Agreement, each party shall destroy any remaining Confidential Information of the other party in the same manner or, if so requested, return it to the disclosing party at its expense.

13.4 Notwithstanding other provisions in this Agreement to the contrary, the parties acknowledge and agree that Client may be required to disclose certain documents associated with this Agreement pursuant to the New Mexico Inspection of Public Records Act. Client will provide **Name of Corporation** with prior written notification of the disclosure of such documents.

14. Indemnification-

14.1 The Section is left blank intentionally.

14.2 **Name of Corporation** shall defend Client and its officers, employees, directors, agents and shareholders, in their individual capacities or otherwise, from and against any and all Claims (as defined in this Section 14.2) asserted by a third party (other than an Affiliate of Client or **Name of Corporation**) against Client, and shall indemnify and hold harmless Client from and against any damages, costs, and expenses of such third party awarded against Client by a final court judgment or an agreement settling such Claims in accordance with this Section 14.2. As used in this Section 14.2, the term "Claim" means any action, litigation, or claim by a third party alleging (i) personal injury or property damage caused by **Name of Corporation's** gross negligence or willful misconduct in connection with this Agreement; (ii) **Name of Corporation's** failure to comply with all federal Laws, rules and regulations applicable to **Name of Corporation** as a provider of Services; or (iii) that the Services or Software infringes an effective U.S. Patent or a registered trademark or copyright; provided, however, that **Name of Corporation** shall not be liable for (and Client shall indemnify **Name of Corporation** against) any infringement or alleged infringement that results, in whole or in part, from: (a) use of the Services, Software or Deliverable in a manner or for a purpose not specifically described in this Agreement or Specifications; (b) use of the Services, Software or Deliverable in combination with computer programs, processes, hardware, software, data, systems, or services owned, licensed or provided by someone other than **Name of Corporation**; (c) Client's products or services; (d) modification, change, amendment, customization, or adaptation of any Services, Software or Deliverable not made wholly by **Name of Corporation**; or (e) Client's failure to implement corrections or changes provided by **Name of Corporation**. If a claim of infringement has been asserted, or in **Name of Corporation's** opinion is about or likely to be asserted, **Name of Corporation** may, at its option either: (1) procure for Client the right to continue using the Services, Software or Deliverable; (2) replace or modify the Services, Software or Deliverable so that it becomes non-infringing; (3) terminate an applicable Schedule or SOW and refund all

pre-paid fees covering future use of the Services, Software or Deliverable; or (4) defend the action on Client's behalf and pay any associated costs or damages.

14.3 The obligation to indemnify under this Section 14 Is contingent upon: (i) the indemnified party's promptly notifying the indemnifying party in writing of any claim subject to such indemnity obligation; (ii) the indemnifying party's having sole control over the defense and settlement of the claim; (iii) the indemnified party's reasonably cooperating during defense and settlement efforts; (iv) the claim's not arising, in whole or in part, out of the action or inaction of the indemnified party; and (v) the indemnified party's not making any admission, concession, consent judgment, default judgment or settlement of the claim or any part thereof.

15. Limitation of Liability, Disclaimer of Warranties, and Certain Losses-

15.1 Limitation of Liability. NAME OF CORPORATION 'S TOTAL LIABILITY FOR A SERVICE IS LIMITED IN ALL CASES AND IN THE AGGREGATE TO THE AMOUNT OF FEES ACTUALLY PAID BY CLIENT FOR THE CORRESPONDING SERVICES DURING THE SIX (6) MONTHS PRECEDING THE DATE OF THE EVENT THAT IS THE BASIS FOR THE FIRST CLAIM. NOTWITHSTANDING THE FOREGOING, NAME OF CORPORATION SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, DELAY OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF BUSINESS PROFITS OR REVENUE, BUSINESS INTERRUPTION, LOSS OF INFORMATION, OR OTHER PECUNIARY LOSS), EVEN IF NAME OF CORPORATION WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

15.2 Disclaimer of Liability for Certain Losses. Notwithstanding anything to the contrary contained in Section 13.1 above, under no circumstances shall **Name of Corporation** be liable for any losses, claims, demands, penalties, actions, causes of action, suits, obligations, liabilities, damages, delays, costs or expenses, including reasonable attorney's fees (collectively, "Losses") caused, directly or indirectly, in whole or in part, by: (i) Client; (ii) a third party, other than **Name of Corporation's** authorized agents; (iii) use of attachments, features, or devices not authorized by the Specifications; (iv) improper or inadequate conditions at a non-**Name of Corporation** site; (v) improper or incomplete installation not caused by **Name of Corporation** or its authorized agents; (vi) equipment changes, reconfigurations, upgrades or relocations performed by one other than **Name of Corporation** or its authorized agents; (vii) abuse, misuse, alteration or use that is inconsistent with the terms of this Agreement or Specifications; (viii) incorrect or incomplete Data supplied by Client or its agents; (ix) software, hardware or systems not supplied by **Name of Corporation**; (x) a Force Majeure Event; or (xi) a failure that is not directly attributable to **Name of Corporation** or under **Name of Corporation's** direct control. In the event of any error by **Name of Corporation** in processing any Data or preparing any report or file hereunder, **Name of Corporation's** sole obligation shall be to correct the error by reprocessing the affected Data or preparing and issuing a new file or report at no additional cost to Client; provided, however, **Name of Corporation's** obligation herein is contingent upon Client notifying **Name of Corporation** of the error within two (2) business days or two (2) processing cycles after Client receives the improperly processed Data, report or file.

15.3 Performance Warranty and Disclaimer of Warranties.

15.3.1 Performance Warranty. **Name of Corporation** warrants that it will provide all Services in a commercially reasonable manner in material conformance with this Agreement and the applicable Specifications (the "Performance Warranty"). Except as may be expressly agreed in writing by **Name of Corporation**, the Performance Warranty does not apply to:

(a) defects, problems, or failures caused by the Client's nonperformance of obligations essential to **Name of Corporation's** performance of its obligations; (b) those aspects of the Services for which the parties have agreed up on services levels; and/or (c) defects, problems, or failures caused by an event of Force Majeure.

15.3.2 **DISCLAIMER OF ALL OTHER WARRANTIES.** THE PERFORMANCE WARRANTY IS IN LIEU OF AND NAME OF CORPORATION DISCLAIMS ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THE SERVICES, THIRD PARTY SERVICES, SOFTWARE, DELIVERABLES, EQUIPMENT, AND MATERIALS PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE, OR ERROR FREE OPERATION (EVEN IF CREATED BY THE INTERNATIONAL SALE OF GOODS CONVENTION, AND WHETHER OR NOT NAME OF CORPORATION KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. IN ADDITION, NAME OF CORPORATION DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN CLIENT WITH RESPECT TO THE SERVICES, THIRD PARTY SERVICES, SOFTWARE, DELIVERABLES, EQUIPMENT, AND MATERIALS PROVIDED UNDER THIS AGREEMENT.

16. **Audits-**

16.1 Upon at least five (5) business days prior written notice, **Name of Corporation,** its representatives and/or vendors may visit Client's facilities, during normal business hours, for the purpose of: (i) inspecting the location and use of Deliverables and any third party software; and (ii) auditing, monitoring and ensuring compliance with the terms of this Agreement. In addition, each party shall have the right, upon reasonable prior written notice (and no more than once each year}, to visit the other party's facilities during normal business hours for the purpose of determining the adequacy of procedures for complying with its obligations relating to Confidential Information under this Agreement.

16.2 Notice for any audit must specify the scope of the information sought and the purpose of the audit. All audits must be reasonable in scope and duration, and conducted at the expense of the auditing party. Client and its representatives may be required to sign **Name of Corporation's** nondisclosure and confidentiality agreement in advance of performing any audit. **Name of Corporation** shall have the right to receive and comment on any report prepared by or on behalf of Client prior to that report being published or disseminated, which publication or dissemination shall be done only pursuant to the confidentiality provisions of this Agreement.

16.3 In lieu of any audit relating to the Services, other than as provided in Section 16.1 above, **Name of Corporation** shall make available to Client upon request a certified copy of its most recent SAS-70, SSAE 16, AUP, Security, Disaster Recovery, PCI, GLBA, NACHA, PIN, TG3 or similar report regarding the Services. The provision of such report(s) shall satisfy all of **Name of Corporation's** audit obligations to Client with respect to the corresponding Services.

16.4 **Name of Corporation** shall permit governmental agencies that regulate Client in connection with the Services performed by **Name of Corporation** to examine **Name of Corporation's** books and records to the same extent as if that Services was being performed by Client on its own premises, subject to **Name of Corporation's** confidentiality and security policies and procedures.

17. **Notices-** Except as otherwise specified in this Agreement, all notices, requests, approvals, consents and other communications required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by (i) first class U.S. mail, registered or certified, return receipt requested, postage pre-paid; or (ii) U.S. express mail, or other, similar overnight courier service to the address specified below. Notices shall be deemed given on the day actually received by the party to whom the notice is addressed.

In the case of Client:

Name: Sandoval County

Finance Office Street Address:

1500 Idalia Road, Building D

City, State Zip: Bernalillo, New

Mexico 87004 Attn.:

For Billing Purposes:

In the case of

Name of Corporation:

Name of

Corporation

Corporation address

18. **Use of Names and Trademarks-** **Name of Corporation** may use Client's name and logo: (i) in a general listing of users of its products and services; and (ii) as reasonably necessary to perform any Services. Other than the foregoing: (a) neither party shall use the other party's logos, trademarks or stock exchange ticker symbol unless pre-approved in writing; and

(b) the parties shall consult with each other in preparing any press release or other similar communication that mentions or implies a relationship between them.

19. **Relationship-** **Name of Corporation** is an independent contractor. Neither **Name of Corporation** nor any of its representatives are an employee, partner or joint venture of Client. **Name of Corporation** has the sole obligation to supervise, manage and direct the performance of its obligations under this Agreement. **Name of Corporation** reserves the right to determine who will be assigned to perform its obligations, and to make replacements or reassignments as it deems appropriate. Each party shall be solely responsible for payment of compensation to its respective personnel, and assumes full responsibility for payment of all federal, state, local and foreign taxes or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to such personnel. Except as expressly stated in this Agreement, neither party shall be an agent of the other, nor have any authority to represent the other in any matter. To the extent that **Name of Corporation** engages a subcontractor, **Name of Corporation** shall remain solely responsible for the performance of the subcontracted work. Client shall have no recourse, and shall assert no claim, against any subcontractor of **Name of Corporation**.

19. **Insurance-** **Name of Corporation** shall maintain the following minimum insurance coverage and limits: (i) statutory workers' compensation in accordance with all Federal, state, and local requirements; (ii)

employer's liability insurance with limits of coverage of \$1,000,000 (a) per accident, bodily injury (including death) by accident, (b) per bodily injury (including death) by disease, and (c) per employee for bodily injury (including death) by disease as required by the state in which the Services are performed; (iii) commercial general liability with an aggregate of \$2,000,000, and \$1,000,000 per occurrence for bodily injury, property damage and personal injury; (iv) automobile liability insurance, including **Name of Corporation**-owned, leased, and non-owned vehicles with a single limit of \$1,000,000; (v) property insurance, covering the hardware and other equipment used by **Name of Corporation** to provide the Services; (vi) professional and technology errors and omissions, including network security and privacy liability coverage, with limits of \$5,000,000 per claim; (vii) umbrella (excess) liability insurance for the above-referenced commercial general liability and employer's liability coverage in the amount of

\$5,000,000 per occurrence; and (viii) crime insurance, with coverage extended to include property of Client in the care, custody, or control of **Name of Corporation**, or for which **Name of Corporation** is legally liable, with limits of \$5,000,000 per claim.

21. Termination and Additional Remedies-

21.1 **Termination**. In addition to any other remedies, either party may terminate this Agreement on thirty (30) days advance written notice if the other party: (i) fails to cure a material breach within thirty (30) days of receiving written notice to do so; (ii) is the subject of a dissolution, reorganization, insolvency or bankruptcy action that is not dismissed within forty-five (45) days of being filed; (iii) suffers the appointment of a receiver, conservator or trustee; (iv) commits any act related to the Services with the intent to defraud the other party; or (v) discontinues performance under this Agreement because of a binding order of a court or regulatory body. If a breach cannot reasonably be cured within thirty (30) days, the non-breaching party may not terminate this Agreement so long as the breaching party promptly commences work and completes correction within ninety (90) days of receiving written notice of the breach. In addition, **Name of Corporation** may terminate this Agreement if Client (a) fails to maintain required balances in any clearing or settlement account associated with the Services, and fails to remedy that deficiency within forty-eight (48) hours of **Name of Corporation** requesting it to do so, (b) cure any material violation of applicable Law within thirty (30) days of **Name of Corporation** requesting it to do so, or (b) sells, transfers or assigns all or substantially all of its Services-related accounts to a third party that does not agree in writing with **Name of Corporation** to be bound by the terms of this Agreement.

21.2 In addition to the termination rights set forth above, **Name of Corporation** may terminate the Services, in whole or in part, without penalty, if **Name of Corporation's** agreement to use any third-party software or service upon which the Services relies expires or is terminated; provided, however, that prior to any such termination, **Name of Corporation** shall use commercially reasonable efforts to either (i) extend the applicable expiration or termination date so that its provision of the Services hereunder is not interrupted; (ii) procure a third-party software or service similar to the expired or terminated software or service in order to continue to deliver the Services without interruption and without reduction in quality or increase in cost to Client; or (iii) develop another workaround that allows Client to continue to receive the Services without interruption and without reduction in quality or increase in cost.

21.3 **Termination Fee**. If, at any time during the Initial Term, a Service is terminated by **Name of Corporation** prior to the end of its term pursuant to the terms of Section 21.1 above, or if Client terminates a Service prior to the end of its term except as otherwise permitted hereunder, then Client shall pay **Name of Corporation**, in addition to any other amounts owed, a termination fee of \$15,000 ("Termination Fee").

Client shall not be entitled to a refund of any pre-paid amounts. If termination of the obligation to provide such Service occurs prior to the Commencement Date of any such Services, then the amount of the Termination Fee will be calculated based upon actual expenditures made by **Name of Corporation** up to the date of termination.

21.4 Due to the likelihood of irreparable injury, each party shall be entitled to seek an injunction against the other for any breach of confidentiality, indemnification and intellectual property obligations.

22. **Export Restrictions and Unlawful Activity-**

22.1 **Name of Corporation's** Confidential Information is subject to export controls under applicable federal and state Laws, rules and regulations. Accordingly, Client shall: (i) remain in compliance with all requirements associated with such Laws; (ii) cooperate fully with any audit related to such Laws; and (iii) not utilize **Name of Corporation's** Confidential Information in any country that is embargoed by the U.S. government. Client shall be solely responsible for the importation of **Name of Corporation's** Confidential Information, including obtaining any approval or permit necessary for importation or use.

22.2 Neither Client nor any of its directors, officers, agents, employees or other persons associated with or acting on its behalf: (i) have received or will receive any unlawful contribution, gift, entertainment or other payment from **Name of Corporation**; (ii) is a governmental entity; or (iii) is in violation of, or will violate any applicable anti-corruption or anti-bribery laws, rules or regulations. **Name of Corporation** shall have an irrevocable right to immediately terminate this Agreement or any other relationship with Client if this subsection is breached.

23. **Miscellaneous-**

23.1 Client shall not assign, subrogate or transfer any interest, obligation or right arising out of this Agreement without prior written consent from **Name of Corporation**, which shall not be unreasonably withheld. Any dissolution, consolidation, merger, transfer or reorganization of a majority of the assets or stock of Client shall constitute an attempted assignment and shall be void from its inception. Subject to the foregoing, the terms of this Agreement shall be binding upon and inure to the benefit of permitted successors and assigns.

23.2 The Agreement shall be governed by the laws of the state of New Mexico, without regard to internal principles relating to conflict of laws, and the agreed venue shall be in the State District Court of Sandoval County.

23.3 **Name of Corporation** shall not be liable for any loss, damage or failure due to causes beyond its control, including strikes, riots, earthquakes, epidemics, terrorist actions, wars, fires, floods, weather, power failure, telecommunications outage, acts of God or other failures, interruptions or errors not directly caused by **Name of Corporation** ("Force Majeure Event").

23.4 Each party represents and warrants that it has full legal power and authority to enter into and perform its obligations without any additional consent or approval.

23.5 The Agreement (including all Schedules and the Pricing Attachment(s)) together with any attachments thereto, constitute the entire agreement and understanding of the parties with respect to its subject matter. All prior agreements, understandings and representations regarding the same or similar services are superseded in their entirety. In the event of a conflict, ambiguity or contradiction in documents, the documents will take precedence over each other in accordance with the following ranking: (i) Schedules; (ii) exhibits and attachments; (iii) Specifications; and (v) the general terms of this Agreement. The Agreement may only be modified by a written document signed by both parties. The parties do not intend, nor shall there be, any third party beneficiary rights.

23.6 No waiver of any provisions of this Agreement and no consent to any default under this Agreement shall be effective unless in writing and signed by the party against whom such waiver or consent is claimed. No course of dealing or failure to strictly enforce any provision of this Agreement shall be construed as a waiver of such provision for any party's rights. Waiver by a party of any default by the other party shall not be deemed a waiver of any other default.

23.7 If any provision(s) of this Agreement, including any Schedules, attachments and exhibits hereto, is determined to be invalid, illegal, void, or unenforceable by reason of any Law, rule or regulation, administrative order, judicial decision, or public policy, such provision(s) shall not affect any other provision

of this Agreement, and this Agreement shall be interpreted and construed as if the invalid, illegal, void, or unenforceable provision had not been included to the extent necessary to bring this Agreement within the requirements of such Law, rule or regulation, administrative order, judicial decision, or public policy. In addition, in such event, the parties agree to negotiate in good faith to modify this Agreement to carry out the parties' original intent as closely as possible and to the extent lawful. This Agreement shall not be construed more strongly against either party, regardless of who is more responsible for its preparation. The headings that appear in this Agreement are inserted for convenience only and do not limit or extend its scope.

23.8 Termination of this Agreement shall not impact any right or obligation arising prior to termination, and in any event, Sections 12, 13, 14, 15, 23.2, 23.8 of this Agreement shall survive termination of this Agreement.