

**SOFTWARE LICENSE AND SUPPORT SERVICES AGREEMENT
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
POINT & PAY, LLC
FOR FISCAL YEARS 2021-2022 THROUGH 2023-2024**

This Agreement, entered into this ____ day of _____, 2021, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and Point and Pay, LLC, a Delaware limited liability company, hereinafter referred to as "CONTRACTOR," is made upon the following considerations:

WHEREAS, COUNTY, by and through its Treasurer-Tax Collector's Office, desires to retain a qualified professional to provide electronic payment services; and

WHEREAS, such work involves the performance of professional, expert and technical services of a temporary and occasional character; and

WHEREAS, COUNTY has no employees available to perform such services and is unable to hire employees for the performance thereof for the temporary period; and

WHEREAS, CONTRACTOR represents that it is adequately trained, skilled, experienced and qualified to perform the electronic payment services required by COUNTY.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. DEFINITIONS:

- A. ACH Entry. As used herein, the term "ACH Entry" means any electronic funds transfer initiated through the Automated Clearing House ("ACH") System resulting in a credit to a Designated Account ("Debit Entry") or a debit to a designated account ("Credit Entry").
- B. ACH System. As used herein, the term "ACH System" means the automated clearinghouse or other system used for bulk file transfers.
- C. Affiliates. As used herein, the term "Affiliates" means any and all offices, bureaus, agencies or departments affiliated with COUNTY.
- D. Client Application. As used herein, the term "Client Application" means the Services order form that is attached hereto as Exhibit A – Client Application and incorporated herein by reference as if set forth in full.
- E. County Marks. As used herein, the term "County Marks" means any and all applicable logos, copyrighted works and trademarks provided by COUNTY to CONTRACTOR pursuant to the terms and conditions of this Agreement.
- F. Credit Card. As used herein, the term "Credit Card" means a valid payment card authorizing the cardholder to buy goods or Services on credit and bearing the service mark of MasterCard International, Inc., ("MasterCard"), Visa International ("VISA"), Discover Network ("Discover") or American Express ("AXP").

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- G. Customers. As used herein, the term “Customers” refers to individuals who make payments to COUNTY using a Payment Device.
- H. Debit Card. As used herein, the term “Debit Card” means a valid payment card with a VISA, Mastercard or Discover Network mark that is tied to a cardholder’s bank account or a prepaid account and which is processed with or without the use of a personal identification number.
- I. Intellectual Property Rights. As used herein, the term “Intellectual Property Rights” means any and all intellectual property, industrial and other proprietary rights, protected or protectable, under any applicable local, state, federal or laws, regulations or standards, including, without limitation: any and all trade names, trade dress, trademarks, service marks, logos, brand names and other identifiers; any and all copyrights, moral rights, including, but not limited to, rights of attribution and rights of integrity; any and all trade secrets, inventions, discoveries, devices, processes, designs, techniques, ideas, know-how and other confidential or Proprietary Information, whether or not reduced to practice; any and all domestic and foreign patents and the registrations, applications, renewals, extensions and continuations, in whole or in part, thereof; any and all goodwill associated with any of the foregoing intellectual property and proprietary rights; and any and all rights and causes of action for infringement, misappropriation, misuse, dilution or unfair trade practices associated with any of the foregoing intellectual property and proprietary rights.
- J. Modules. As used herein, the term “Module” means the payment modules chosen by COUNTY in Exhibit A – Client Application, which is attached hereto and incorporated herein by reference as if set forth in full.
- K. Payment Device. As used herein, the term “Payment Device” means payment methods chosen by COUNTY in the Client Application.
- L. Proprietary Information. As used herein, the term “Proprietary Information” means any information that is not generally known to the public, including, without limitation, technical, development, marketing, sales, operating, performances, cost, know-how, business and process information, computer programs and programming techniques, security features, including, but not limited to, multi-level access and log-in features, audit trail setup, interfaces between the Software, all record bearing media containing or disclosing such information and techniques, and anything marked confidential, that is disclosed by either party pursuant to the terms and conditions of this Agreement.
- M. Services. As used herein, the term “Services” means any and all electronic payment and technical support services set forth in Exhibit B – Scope of Services, which is attached hereto and incorporated herein by reference as if set forth in full.
- N. Software. As used herein, the term “Software” means the proprietary software products provided by CONTRACTOR to COUNTY pursuant to the terms and conditions of this Agreement.
- O. Trademarks. As used herein, the term “Trademarks” means any and all trademarks, service marks and logos provided by CONTRACTOR to COUNTY pursuant to the terms and conditions of this Agreement.

materials related to the Services, including, without limitation, webinars and manuals, provided by CONTRACTOR to COUNTY pursuant to the terms and conditions of this Agreement.

2. GRANT OF LICENSES:

- A. Grant of Software License. Subject to the terms and conditions of this Agreement, CONTRACTOR hereby grants to COUNTY a limited, non-exclusive, non-transferable and terminable license to use the Services and Modules for the purpose of Customers to make payments to COUNTY using a Payment Device.
- B. Grant of Training Material License. Subject to the terms and conditions of this Agreement, CONTRACTOR grants to COUNTY a limited, non-exclusive, non-transferrable and terminable license to use, and to make copies of, the Training Materials for COUNTY personnel solely in connection with the Services.
- C. Grant of Trademark License. Subject to the terms and conditions of this Agreement, CONTRACTOR hereby grants COUNTY a limited, non-exclusive, non-transferable and terminable license to use CONTRACTOR's Trademarks solely in connection with COUNTY's promotion of the Services to Customers. CONTRACTOR represents that it has all intellectual property rights required for CONTRACTOR's and COUNTY's use of the Trademarks, and shall indemnify COUNTY against any third party claims that the Trademarks infringe the Intellectual Property Rights of a third party.
- D. Grant of COUNTY Logo License. Subject to the terms and conditions of this Agreement, COUNTY hereby grants to CONTRACTOR a limited, non-exclusive, non-transferable and terminable license to use COUNTY's Client Marks solely in connection with the Services provided pursuant to the terms and conditions of this Agreement. COUNTY shall provide the Client Marks to CONTRACTOR for use with the Services. COUNTY represents that it has all intellectual property rights required for COUNTY's and CONTRACTOR's use of the Client Marks, and shall indemnify CONTRACTOR against any third party claims that the Client Marks infringe the intellectual property rights of a third party.

3. SCOPE OF LICENSES:

- A. Use of Services. CONTRACTOR will provide COUNTY's authorized representatives and Affiliates with a logon and password to access the Services. Each Affiliate that uses the Services shall complete a Client Application prior to commencement of the Services after which CONTRACTOR will recognize such Affiliate as the COUNTY pursuant to all of the terms and conditions of the Agreement. COUNTY shall be solely responsible for maintaining the confidentiality and security of the logons and passwords provided by CONTRACTOR. COUNTY will cause each of its representatives to change the initial password, keep the passwords confidential, refrain from sharing passwords and/or logon information with any unauthorized user, and use no other password to access the Counter Module. CONTRACTOR shall be entitled to rely on any communications it receives under COUNTY's passwords, logon information, and/or account number as having been sent by COUNTY, without conducting any further checks as to the identity of the user of such information. CONTRACTOR will not be responsible for the operability or functionality of any of COUNTY's computer equipment, system, browser or Internet connectivity.
- B. Payment Types. Payment types are Debit Cards, Credit Cards or electronic checks.

Discover, AXP and National Automated Clearing House Association (“NACHA”) rules and regulations, all as may be amended from time to time. COUNTY also agrees to comply with any and all guidelines, policies and procedures for Services provided to COUNTY by CONTRACTOR from time to time.

C. Payment Transactions. Any and all Payment Device transactions using the Services will be processed through a secured link. The parties to each Payment Device transaction will be the Customer cardholder or checking account owner and the COUNTY; provided that, with respect to applicable service or convenience fees charges, such portion of the transaction will be between Customer and CONTRACTOR. Electronic check transactions are executed by creating or originating authorized ACH Entries using checking account information provided by a Customer. CONTRACTOR will provide ACH origination Services to COUNTY relating to ACH Entries, pursuant to the terms of this Agreement and any applicable rules and regulations promulgated by the National Automated Clearing House Association, with CONTRACTOR’s designated financial institution acting as an Originating Depository Financial Institution (“ODFI”) with respect to such ACH Entries. COUNTY authorizes CONTRACTOR and its designated ODFI to originate ACH Entries on behalf of COUNTY. COUNTY agrees to any restrictions on the types of ACH Entries that may be originated.

D. No Transfer or License of Intellectual Property Rights. Except for the rights expressly granted to COUNTY in this Agreement, no CONTRACTOR Intellectual Property Right is transferred or licensed to COUNTY pursuant to the terms and conditions of this Agreement, by implication or otherwise. CONTRACTOR reserves and retains all rights, title and interests in and to the CONTRACTOR Intellectual Property Rights, and all copies, revisions, modifications, updates, and upgrades thereof. COUNTY agrees not to remove, alter or destroy any copyright, patent notice, trademark or other proprietary markings or confidential legends placed on or within any portion of the CONTRACTOR Intellectual Property Rights.

E. Ownership and Use of Software and Training Materials. Any Software and Training Materials developed by, or on behalf of, CONTRACTOR for use in connection with the Services remains the exclusive property of CONTRACTOR. COUNTY will not sell, transfer, barter, trade, license, modify or copy any such Software. Web pages accessible through use of the Services are the copyrighted intellectual property of CONTRACTOR and may not be copied in whole or part by anyone. Training materials may not be modified by COUNTY or its personnel or disclosed to any third party, including COUNTY’s end-user Customers. COUNTY shall ensure all personnel shall complete and review all training materials prior to using the Services.

F. Use of Trademarks and Client Marks. Neither party shall alter any Trademarks or Client Marks nor use such Trademarks or Client Marks in any way which is disparaging, dilutive or otherwise adversely affects the reputation of the other party.

G. Reverse Engineering. COUNTY will not reverse engineer, reverse assemble, decompile or disassemble any of CONTRACTOR’s intellectual property, nor will COUNTY attempt to do so or enable any third party to do so or otherwise attempt to discover any source code, modify the Services in any manner or form, or use unauthorized modified versions of the Services, including, without limitation, for the purpose of building a similar or competitive product or service or for the purpose of obtaining unauthorized access to the Services. COUNTY is expressly prohibited from sublicensing use of the Services to any third parties. If COUNTY becomes aware that any person has engaged or is likely to have engaged in any of the activities described in this provision, COUNTY will promptly notify CONTRACTOR.

H. Service Promotion. COUNTY will use reasonable efforts to promote the Services and build awareness of the Services with its Customers through various media including, without limitation, bill inserts, counter displays, public announcements, one-click link to payments page on COUNTY's website, pre-recorded phone message with the ability to transfer to CONTRACTOR's Interactive Voice Response Module.

G. Service Modification. CONTRACTOR hereby reserves the right to modify, temporarily or permanently, the Services, or any part thereof, at any time, and from time to time. In addition, CONTRACTOR shall have the right to discontinue accepting any payment method by providing not less than ten (10) days advance written notice to COUNTY. In the event that CONTRACTOR modifies the Services in a manner which removes or disables a feature or functionality on which COUNTY materially relies, CONTRACTOR, at COUNTY's request, shall use commercially reasonable efforts to substantially restore such functionality to COUNTY.

4. TERM:

This Agreement shall begin upon execution by both parties and shall remain in full force and effect until June 30, 2023, unless sooner terminated as provided herein.

5. TERMINATION:

A. Termination for Cause. Either party may terminate this Agreement, in the event the other party materially defaults in performing any obligation under this Agreement including, but not limited to, violations of confidentiality or misuse of intellectual property, or violates any local, state or federal laws, regulations or standards applicable to its performance hereunder, and such default or violation continues uncured for a period of sixty (60) days following written notice thereof.

B. Termination without Cause. COUNTY may terminate this Agreement without cause upon thirty (30) days advance written notice which states the effective date of the termination. CONTRACTOR may terminate this Agreement immediately in the event of an irreconcilable obligation requiring CONTRACTOR to amend this Agreement pursuant to Section 27 (Amendment) below.

C. Termination due to Insufficient Funding. COUNTY's obligations under this Agreement are contingent upon the availability of local, state and/or federal funds. In the event such funding is reduced or eliminated, COUNTY shall, at its sole discretion, determine whether this Agreement shall be terminated. COUNTY shall provide CONTRACTOR seven (7) days advance written notice of its intent to terminate this Agreement due to insufficient funding.

D. Compensation upon Termination. In the event this Agreement is terminated, CONTRACTOR shall be entitled to compensation for uncompensated Services provided pursuant to the terms and conditions set forth herein through and including the effective date of such termination. However, this provision shall not limit or reduce any damages owed to COUNTY due to a breach of this Agreement by CONTRACTOR.

E. Effect of Termination. Upon termination of this Agreement, COUNTY and its Affiliates shall have no rights to continue use of the Services. CONTRACTOR may terminate this Agreement solely with respect to an individual Affiliate without affecting the rights and obligations of COUNTY and other Affiliates under the Agreement.

6. PAYMENT:

A. Service Transaction Fee. CONTRACTOR will charge Customers the per-transaction fee set forth in the Client Application to use the Services. CONTRACTOR will provide Customers with notice each time they use the Services stating that the Services are provided by CONTRACTOR and that a convenience or service fee has been charged for use of the Services. CONTRACTOR may change the amount of such fee by notifying COUNTY of such new amount at least thirty (3) days prior to such change.

B. Charge-backs and Returns. COUNTY will not be responsible for any fees or charges associated with charge-backs, refusals to pay, non-sufficient funds, returns, or any other such rejected payment or transaction associated with this Agreement. Any and all charge-backs and other refusals of payment will be refunded by CONTRACTOR to the Customer, and COUNTY will mark, and otherwise treat, the related Customer account as unpaid.

C. Debit of Fees. COUNTY hereby authorizes CONTRACTOR, and any subsidiary or successor thereof, solely with respect to amounts due pursuant to this Agreement, including, without limitation, convenience or service fees, transaction fees, charge-backs and returns as set forth above, to initiate ACH authorizations to credit and debit COUNTY's bank account as set forth in the Client Application.

D. Payment Device Transaction Deposits. The exact amount of each approved transaction under this Agreement will be electronically deposited into COUNTY's bank account identified in the Client Application. CONTRACTOR shall initiate such deposits as specified in the Client Application. CONTRACTOR will provide COUNTY's authorized employees with access to CONTRACTOR's online transaction reports for reconciliation purposes.

7. NOTICES:

Any and all notices required to be given pursuant to the terms and conditions of this Agreement shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: Humboldt County Treasurer-Tax Collector's Office
Attention: Shannon Wilson, [Job Title]
825 Fifth Street, Room 125
Eureka, California 95501

CONTRACTOR: Point & Pay, LLC
Attention: [Name of Contact Person], [Job Title]
110 State Street E, Suite D
Oldsmar, Florida 34677

8. REPORTS:

CONTRACTOR agrees to provide COUNTY with any and all reports that may be required by any local, state and/or federal agencies for compliance with this Agreement. CONTRACTOR shall submit one (1) hard copy and one (1) electronic copy of any and all reports required hereunder in a

format that complies with the Americans with Disabilities Act and any other applicable local, state and federal accessibility laws, regulations and standards. Any and all reports required hereunder shall be submitted in accordance with any and all applicable timeframes using the format required by the State of California as appropriate.

9. RECORD RETENTION AND INSPECTION:

1. A. Maintenance and Preservation of Records. CONTRACTOR agrees to timely prepare accurate and complete financial, performance and payroll records, documents and other evidence relating to the Services provided pursuant to the terms and conditions of this Agreement, and to maintain and preserve said records for at least three (3) years after the expiration or termination of this Agreement, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom. Such records shall be original entry books with a general ledger itemizing all debits and credits for the Services provided pursuant to the terms and conditions of this Agreement.
- B. Inspection of Records. CONTRACTOR hereby agrees to make any and all records, documents, conditions and activities related to the Services provided pursuant to the terms and conditions of this Agreement available during normal business hours to inspection, audit and reproduction by COUNTY, the California State Auditor and any other duly authorized local, state and/or federal agencies for a period of three (3) years after the expiration or termination of this Agreement. CONTRACTOR further agrees to allow interviews of any of its employees who might reasonably have information related to such records by COUNTY, the California State Auditor and any other duly authorized local, state and/or federal agencies. Any and all examinations and audits conducted hereunder shall be strictly confined to those matters connected with the performance of this Agreement, including, without limitation, the costs associated with the administration of this Agreement. COUNTY acknowledges and agrees to the right of CONTRACTOR and the ODFI to audit COUNTY'S compliance with the Agreement, including compliance with NACHA rules.
- C. Audit Costs. In the event of an audit exception or exceptions related to the Services provided pursuant to the terms and conditions of this Agreement, the party responsible for not meeting the requirements set forth herein shall be responsible for the deficiency and for the cost of the audit. If the allowable expenditures cannot be determined because CONTRACTOR'S documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by COUNTY.

10. MONITORING:

CONTRACTOR hereby agrees that COUNTY has the right to monitor activities directly related to this Agreement, including, without limitation, the right to review and monitor CONTRACTOR'S records, policies, procedures and overall business operations, at any time, in order to ensure compliance with the terms and conditions of this Agreement. CONTRACTOR shall, where reasonable, cooperate with a corrective action plan, if deficiencies in CONTRACTOR'S records, policies, procedures or business operations are identified by COUNTY. However, COUNTY is not responsible, and shall not be held accountable, for overseeing, evaluating, assessing or determining the adequacy of CONTRACTOR'S performance hereunder.

11. CONFIDENTIAL INFORMATION:

- A. Disclosure of Proprietary Information. In the performance of this Agreement, each party may receive Proprietary Information of the other party. Each party shall use and disclose only the minimum amount of Proprietary Information necessary to accomplish the intended purpose of this Agreement. Each party further agrees to protect any and all Proprietary Information obtained pursuant to the terms and conditions of this Agreement in accordance with any and all applicable local, state and federal laws, regulations, policies, procedures and standards.
- B. Disclosure of Personally Identifiable Information. In the performance of this Agreement, CONTRACTOR may receive personally identifiable information that is confidential under local, state or federal law. CONTRACTOR hereby agrees to protect any and all personally identifiable information obtained pursuant to the terms and conditions of this Agreement in accordance with any and all applicable local, state and federal laws, regulations, policies, procedures and standards, including, without limitation: Division 19 of the California Department of Social Services Manual of Policies and Procedures – Confidentiality of Information; California Welfare and Institutions Code Sections 827, 5328, 10850 and 14100.2; California Health and Safety Code Sections 1280.15 and 1280.18; the California Information Practices Act of 1977; the California Confidentiality of Medical Information Act (“CMIA”); the United States Health Information Technology for Economic and Clinical Health Act (“HITECH Act”); the United States Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and any current and future implementing regulations promulgated thereunder, including, but not limited to, the Federal Privacy Regulations contained in Title 45 of the Code of Federal Regulations (“C.F.R.”) Parts 160 and 164, the Federal Security Standards contained in 45 C.F.R. Parts 160, 162 and 164 and the Federal Standards for Electronic Transactions contained in 45 C.F.R. Parts 160 and 162, all as may be amended from time to time.
- C. Disclosure of Unrestricted Information. The prohibitions contained in this provision shall not apply to information which:
1. Is known by the recipient prior to its receipt from the disclosing party or is, or becomes, public knowledge without the fault of the recipient.
 2. Is received from a source other than a party to this Agreement without causing a breach of the terms and conditions of this Agreement.
 3. Is independently developed by a party without causing a breach of the terms and conditions of this Agreement.
 4. Is required to be disclosed by court order or applicable law, including, without limitation, the California Public Records Act, provided that advance notice of the disclosure is provided to other party.
- D. Continuing Compliance with Confidentiality Requirements. Each party hereby acknowledges that local, state and federal laws, regulations, policies, procedures and standards pertaining to confidentiality, electronic data security and privacy are rapidly evolving, and that amendment of this Agreement may be required to ensure compliance with such developments. Each party agrees to enter into negotiations concerning an amendment to this Agreement embodying written assurances consistent with the requirements of HIPAA, the HITECH Act, the CMIA and any other applicable local, state and federal laws, regulations, policies, procedures or standards.

- A. Professional Services and Employment. In connection with the execution of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of: race; religion or religious creed; color; age, over forty (40) years of age; sex, including, without limitation, gender identity and expression, pregnancy, childbirth and related medical conditions; sexual orientation, including, without limitation, heterosexuality, homosexuality and bisexuality; national origin; ancestry; marital status; medical condition, including, without limitation, cancer and genetic characteristics; mental or physical disability, including, without limitation, HIV status and AIDS; political affiliation; military service; denial of family care leave; or any other classifications protected by any and all applicable local, state and federal laws, regulations and standards, all as may be amended from time to time. Nothing herein shall be construed to require the employment of unqualified persons.
- B. Compliance with Anti-Discrimination Laws. CONTRACTOR further assures that it, and its subcontractors, shall abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, *et seq.*; California Government Code Sections 4450, *et seq.*; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Executive Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state or federal laws, regulations or standards, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing Commission implementing California Government Code Section 12990, set forth in Sections 8101, *et seq.* of Title 2 of the California Code of Regulations are incorporated herein by reference as if set forth in full.

13. NUCLEAR-FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

By executing this Agreement, CONTRACTOR certifies that it is not a Nuclear Weapons Contractor, in that CONTRACTOR is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components as defined by the Nuclear-Free Humboldt County Ordinance. CONTRACTOR agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if CONTRACTOR subsequently becomes a Nuclear Weapons Contractor.

14. DRUG-FREE WORKPLACE CERTIFICATION:

By executing this Agreement, CONTRACTOR certifies that it will provide a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1990 (California Government Code Sections 8350, *et seq.*), by doing all of the following:

- A. Drug-Free Policy Statement. Publish, as required by California Government Code Section 8355(a)(1), a Drug-Free Policy Statement which notifies employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited, and specifies the actions to be taken against employees for violations.

Section 8355(a)(2), a Drug-Free Awareness Program which informs employees about:

1. The dangers of drug abuse in the workplace;
 2. CONTRACTOR's policy of maintaining a drug-free workplace;
 3. Any available counseling, rehabilitation and employee assistance programs; and
 4. Penalties that may be imposed upon employees for drug abuse violations.
- C. Drug-Free Employment Agreement. Ensure, as required by California Government Code Section 8355(a)(3), that every employee who provides Services pursuant to the terms and conditions of this Agreement will:
1. Receive a copy of CONTRACTOR's Drug-Free Policy Statement; and
 2. Agree to abide by CONTRACTOR's Drug-Free Policy as a condition of employment.
- D. Effect of Non-Compliance. Failure to comply with the requirements set forth herein may result in termination of this Agreement and/or ineligibility for award of future contracts.

15. INDEMNIFICATION:

- A. Hold Harmless, Defense and Indemnification. Each party hereto shall hold harmless, defend and indemnify the other party and its agents, officers, officials and employees from and against any and all claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, the negligent performance of, or failure to comply with, applicable local, state or federal laws, except such loss or damage which was caused by the sole negligence or willful misconduct of the other party or its agents, officers, officials or employees.
- B. Comparative Liability. Notwithstanding anything to the contrary, in the event that both parties are held to be negligently or willfully responsible, each party will bear their proportionate share of liability as determined in any such proceeding. In such cases, each party will bear their own costs and attorney's fees.
- C.

Effect of Insurance. Acceptance of the insurance required by this Agreement shall not relieve CONTRACTOR from liability under this provision. This provision shall apply to all claims for damages related to CONTRACTOR's performance hereunder, regardless of whether any insurance is applicable or not. The insurance policy limits set forth herein shall not act as a limitation upon the amount of indemnification or defense to be provided hereunder.

16. INSURANCE REQUIREMENTS:

This Agreement shall not be executed by COUNTY, and CONTRACTOR is not entitled to any rights hereunder, unless certificates of insurance, or other proof that the following provisions have been complied with, are filed with the Clerk of the Humboldt County Board of Supervisors.

- A. General Insurance Requirements. Without limiting CONTRACTOR's indemnification obligations set forth herein, CONTRACTOR, and its subcontractors hereunder, shall take out

and maintain, throughout the entire term of this Agreement, and any extensions thereof, the following policies of insurance, placed with insurers authorized to do business in the State of California with a current A.M. Bests rating of no less than A: VII or its equivalent against personal injury, death and property damage which may arise from, or in connection with, the activities of CONTRACTOR and its agents, officers, directors, employees, licensees, invitees, assignees or subcontractors:

1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001), in an amount of Two Million Dollars (\$2,000,000.00) per occurrence for any one (1) incident, including, without limitation, personal injury, death and property damage. If a general aggregate limit is used, such limit shall apply separately hereto or shall be twice the required occurrence limit.
2. CONTRACTOR will not drive an automobile in the performance of the Services provided pursuant to the terms and conditions of this Agreement. If CONTRACTOR's responsibilities are changed in such a way that driving will be required during the performance of the Services set forth herein, CONTRACTOR shall take out and maintain Automobile/Motor Liability Insurance with a limit of liability not less than One Million Dollars (\$1,000,000.00) combined single limit coverage. Such insurance shall include coverage of all owned, hired and non-owned vehicles, and be at least as broad as Insurance Service Offices Form Code 1 (any auto).
3. Workers' Compensation Insurance, as required by the California Labor Code, with statutory limits, and Employers Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against COUNTY and its agents, officers, officials, employees and volunteers.
4. Professional Liability Insurance – Error and Omission Coverage including coverage in an amount no less than One Million Dollars (\$1,000,000.00) for each occurrence (Two Million Dollars (\$2,000,000.00) general aggregate). Said insurance shall be maintained for the statutory period during which CONTRACTOR may be exposed to liability regarding the Services provided hereunder. CONTRACTOR shall require that such coverage be incorporated into its professional Services Agreements with any other entities.

B. Special Insurance Requirements. Said policies shall, unless otherwise specified herein, be endorsed with the following provisions:

1. The Comprehensive or Commercial General Liability Policy shall provide that COUNTY, and its agents, officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by, or on behalf of, CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY or its agents, officers, officials, employees and volunteers. Said policy shall also contain a provision stating that such coverage:
 - a. Includes contractual liability.
 - b. Does not contain exclusions as to property damage caused by explosion or collapse of structures or underground damage, commonly referred to as "XCU Hazards."

- c. Is the primary insurance with regard to COUNTY.
 - d. Does not contain a pro-rata, excess only and/or escape clause.
 - e. Contains a cross liability, severability of interest or separation of insureds clause.
2. The above-referenced policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY in accordance with the notice requirements set forth herein. It is further understood that CONTRACTOR shall not terminate such coverage until COUNTY receives adequate proof that equal or better insurance has been secured.
 3. The inclusion of more than one (1) insured shall not operate to impair the rights of one (1) insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one (1) insured shall not operate to increase the limits of the insurer's liability.
 4. For claims related to this Agreement, CONTRACTOR's insurance is the primary coverage to COUNTY, and any insurance or self-insurance programs maintained thereby are excess to CONTRACTOR's insurance and will not be used to contribute therewith.
 5. Any failure to comply with the terms and conditions of this Agreement shall not affect the coverage provided to COUNTY or its agents, officers, officials, employees and volunteers.
 6. CONTRACTOR shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement. The endorsements shall be on forms approved by the Humboldt County Risk Manager. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000.00) shall be disclosed to, and approved by, COUNTY. If CONTRACTOR does not keep all required policies in full force and effect, COUNTY may, in addition to any other available remedies, take out the necessary insurance and deduct the cost of said insurance from the monies owed to CONTRACTOR under this Agreement.
 7. COUNTY is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered, and CONTRACTOR shall be required to purchase additional coverage to meet the above-referenced aggregate limits.
- C. Insurance Notices. Any and all insurance notices required hereunder shall be sent to the addresses set forth below in accordance with the notice requirements contained herein.

COUNTY: County of Humboldt
Attention: Risk Management
825 Fifth Street, Room 131
Eureka, California 95501

CONTRACTOR: Point & Pay, LLC
Attention: [Name of Department]
110 State Street E, Suite D
Oldsmar, Florida 34677

17. LIMITATION OF LIABILITY:

- A. Warranty and Disclaimer. CONTRACTOR hereby represents and warrants that the Services required hereunder will be provided in a professional and workmanlike manner consistent with industry standards. However, CONTRACTOR does not warrant that the Services will be uninterrupted or error free; or that the system which makes the Services available will be free of viruses or other harmful components resulting from the Internet or any third party providers or products outside of CONTRACTOR's control. Except as expressly set forth herein, the Services required hereunder shall be provided on an "as is" basis and CONTRACTOR disclaims any and all warranties, express or implied, including, without limitation, implied warranties of merchantability, fitness for a particular purpose and non-infringement.
- B. Data Errors and Omissions. CONTRACTOR shall not be liable for any errors or omissions in any data provided by COUNTY or Customers. COUNTY will be responsible for the accuracy of data provided to CONTRACTOR for use in providing the Services required hereunder.
- C. Processing Errors, Omissions and Delays. CONTRACTOR shall not be liable for any errors, omissions or delays attributable to the acts or omissions of any bank or other third party involved in the processing of any payment or transaction.
- D. Modification of Services. CONTRACTOR shall not be liable to COUNTY, or any third party, for any modification of the Services as described in this Agreement.
- E. Limitation of Damages. Notwithstanding anything to the contrary, and to the extent permitted by applicable law, neither party shall be responsible or liable, with respect to any terms or conditions of this Agreement, for any indirect, incidental, consequential, reliance, special, exemplary or punitive damages, including, without limitation, damages for lost profits, even if the other party has been advised of the possibility of such damages. In no event shall the total cumulative liability of either party arising from, or in connection with, this Agreement exceed the aggregate compensation received by CONTRACTOR for Services provided hereunder in the six (6) months prior to the event that gave rise to a claim for such liability.

18. RELATIONSHIP OF PARTIES:

It is understood that this Agreement is by and between two (2) independent entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or any other similar association. Both parties further agree that CONTRACTOR shall not be entitled to any benefits to which COUNTY employees are entitled, including, without limitation, overtime, retirement, leave or workers' compensation benefits. CONTRACTOR shall be solely responsible for the acts and omissions of its agents, officers, employees, assignees and subcontractors. Except as otherwise specifically provided in this Agreement, neither party will have, or represent that it has the right, power or authority to bind, contract or commit the other party or to create any obligation on behalf of the other party.

19. APPLICABLE LAWS, REGULATIONS AND STANDARDS:

- A. General Legal Requirements. Each party hereby agrees to comply with any and all local, state and federal laws, regulations, policies, procedures and standards applicable to the Services provided pursuant to the terms and conditions of this Agreement.

- B. Licensure Requirements. Each party hereby agrees to comply with any and all local, state and federal licensure, certification and accreditation requirements and standards applicable to the Services provided pursuant to the terms and conditions of this Agreement.
- C. Accessibility Requirements. Each party hereby agrees to comply with any and all applicable accessibility requirements set forth in the Americans with Disabilities Act, Section 508 of the Rehabilitation Act of 1973, as amended, California Government Code Section 1135 and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, the federal accessibility standards set forth in 36 C.F.R. Section 1194.1, all as may be amended from time to time.
- D. Conflict of Interest Requirements. Each party hereby agrees to comply with any and all applicable conflict of interest requirements set forth in the California Political Reform Act and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, COUNTY's Conflict of Interest Code, all as may be amended from time to time.

20. PROVISIONS REQUIRED BY LAW:

This Agreement is subject to any additional local, state and federal restrictions, limitations or conditions that may affect the terms, conditions or funding of this Agreement. This Agreement shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or incorrectly stated, the parties agree to amend the pertinent section to make such insertion or correction.

21. REFERENCE TO LAWS, REGULATIONS AND STANDARDS:

In the event any law, regulation or standard referred to herein is amended during the term of this Agreement, the parties agree to comply with the amended provision as of the effective date thereof.

22. ASSIGNMENT:

Neither party shall delegate its duties nor assign its rights hereunder, either in whole or in part, without the other party's prior written consent. Any assignment by either party in violation of this provision shall be void and shall be cause for immediate termination of this Agreement. This provision shall not be applicable to service Agreements or other arrangements usually or customarily entered into by either party to obtain supplies, technical support or professional services.

23. SEVERABILITY:

If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

24. AGREEMENT SHALL BIND SUCCESSORS:

All provisions of this Agreement shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and permitted assigns.

25. WAIVER OF DEFAULT:

The waiver by either party of any breach of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

26. NON-LIABILITY OF COUNTY OFFICIALS AND EMPLOYEES:

No official or employee of COUNTY shall be personally liable for any default or liability under this Agreement.

27. AMENDMENT:

This Agreement may be amended at any time during the term of this Agreement upon the mutual consent of both parties. No addition to, or alteration of, the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

28. STANDARD OF PRACTICE:

CONTRACTOR warrants that it has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. CONTRACTOR's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

29. JURISDICTION AND VENUE:

This Agreement shall be construed in accordance with the laws of the State of California. Any dispute relating hereto shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

30. ADVERTISING AND MEDIA RELEASE:

Any and all informational material related to this Agreement shall receive approval from each of the parties hereto prior to being used as advertising or released to the media, including, without limitation, television, radio, newspapers and internet. Each party shall inform the other party of any and all requests for interviews by the media related to this Agreement before such interviews take place; and each party shall be entitled to have a representative present at such interviews. Any and all notices required by this provision shall be given in accordance with the notice requirements set forth herein.

31. SUBCONTRACTS:

CONTRACTOR shall obtain prior written approval from COUNTY before subcontracting any of the Services to be provided pursuant to the terms and conditions of this Agreement. Any and all subcontracts shall be subject to all applicable terms and conditions of this Agreement, including, without limitation, the licensing, certification and confidentiality requirements set forth herein. CONTRACTOR shall remain legally responsible for the performance of all terms and conditions of this Agreement, including, without limitation, any and all Services provided by third parties under subcontracts, whether approved by COUNTY or not.

32. ATTORNEYS' FEES:

If either party shall commence any legal action, including, without limitation, an action for declaratory relief, against the other by reason of the alleged failure of the other to perform any of its obligations hereunder, the party prevailing in said action shall be entitled to recover court costs and reasonable attorneys' fees, including, but not limited to, the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include court costs and attorneys' fees on appeal, if applicable. As used herein, the term "prevailing party" means the party who dismisses an action in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

33. SURVIVAL OF PROVISIONS:

The duties and obligations of the parties set forth in Section 3 – Scope of Licenses, Section 5(D) – Compensation upon Termination, Section 5(E) – Effect of Termination, Section 9 – Record Retention and Inspection, Section 11 – Confidential Information, Section 15 – Indemnification and Section 17 – Limitation of Liability shall survive the expiration or termination of this Agreement.

34. CONFLICTING TERMS OR CONDITIONS:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in this Agreement, the terms and conditions set forth herein shall have priority.

35. INTERPRETATION:

This Agreement, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one (1) party on the basis that the other party prepared it.

36. INDEPENDENT CONSTRUCTION:

The titles of the sections and subsections set forth herein are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

37. FORCE MAJEURE:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control, and without the fault or negligence, of such party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing. If the provision of Services under this Agreement is delayed by such an event or condition, CONTRACTOR will promptly notify COUNTY thereof. CONTRACTOR will use commercially reasonable efforts to overcome any such cause for delay as soon as is reasonably practicable.

38. ENTIRE AGREEMENT:

This Agreement contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto. In addition, this Agreement shall supersede in their entirety any and all prior agreements, promises, representations, understandings and negotiations of

the parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this Agreement are hereby ratified.

39. NON-EXCLUSIVITY:

Each party hereto shall have any and all rights and remedies available to them under any and all applicable local, state and federal laws and regulations. The remedies provided for in this Agreement will be deemed to be non-exclusive and in addition to any other available remedy at law or in equity. All rights and remedies are cumulative and may be exercised singularly or concurrently.

40. COUNTERPART EXECUTION:

This Agreement, and any amendments hereto, may be executed in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same agreement. This Agreement, and any amendments hereto, may be signed by manual or electronic signatures in accordance with any and all applicable local, state and federal laws, regulations and standards, and such signatures shall constitute original signatures for all purposes. A signed copy of this Agreement, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement and any amendments hereto.

41. AUTHORITY TO EXECUTE:

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the first date written above.

TWO SIGNATURES ARE REQUIRED FOR LIMITED LIABILITY COMPANIES PURSUANT TO THE CALIFORNIA CORPORATIONS CODE:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
- (2) SECRETARY, CHIEF FINANCIAL OFFICER OR TREASURER; OR
- (3) ANY OTHER AUTHORIZED OFFICIAL OR EMPLOYEE

POINT & PAY, LLC:

By:  _____

Date: 9/8/21

Name: Kevin Connell

Title: Chief Executive Officer

By:  _____

Date: 9/8/21

Name: Frank Coleman

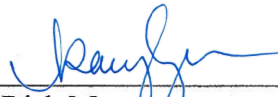
Title: COO

COUNTY OF HUMBOLDT:

By: _____
Virginia Bass, Chair
Humboldt County Board of Supervisors

Date: _____

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: 
Risk Management

Date: 09/13/2021

LIST OF EXHIBITS:

- Exhibit A – Client Application
- Exhibit B – Scope of Services

**EXHIBIT A
CLIENT APPLICATION
Point & Pay, LLC
For Fiscal Years 2021-2022 through 2023-2024**

EXHIBIT B
SCOPE OF SERVICES

Point & Pay, LLC

For Fiscal Years 2021-2022 through 2023-2024

The following is a description of all Services and Modules offered by CONTRACTOR. CONTRACTOR shall provide the Services to COUNTY and its Customers via the specific Modules and Payment Devices chosen by COUNTY in the Client Application. Applicable fees, if any, for COUNTY's elections are set forth on the Client Application. The Services include support and training outlined below at no additional charge to COUNTY.

1. SERVICE MODULES:

A. Counter Module. The Counter Module allows Customers to make payments to COUNTY in a face-to-face environment or over the phone using a Payment Device. CONTRACTOR will issue unique confirmation numbers to Customers who have completed a payment transaction using the Counter Module. The Counter Module also enables COUNTY's staff to access reports via the web. The Counter Module is required to access the CONTRACTOR Services. The Counter Module may be used in conjunction with or independently of point-of-sale terminals.

B. Web Module. The Web Module allows Customers to make payments to COUNTY's online
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using a Payment Device via a secure website hosted by CONTRACTOR. Customers who elect to make payments via the Internet can follow a link from the COUNTY website to the COUNTY-branded, CONTRACTOR-hosted web pages to submit a payment. CONTRACTOR will issue unique confirmation numbers to Customers who have completed a payment transaction using the Web Module. CONTRACTOR shall create the COUNTY-branded, CONTRACTOR-hosted web pages at no additional charge. COUNTY may elect bill presentment and account validation functionality for the one-time set-up fee set forth on the Client Application under “Data File Integration.”

C. Interactive Voice Response Module. The Interactive Voice Response (“IVR”) Module allows Customers to make payments to COUNTYs over the phone using a Payment Device. The Customer calls a toll-free phone number provided and managed by CONTRACTOR to access the COUNTY branded IVR. The IVR system recognizes Customer instructions through making a payment; the phone keypad is used to enter Payment Device numbers. The IVR system is configured and tested by CONTRACTOR. CONTRACTOR will issue unique confirmation numbers to Customers who have completed a payment transaction using the IVR Module. Election of the IVR Module includes a COUNTY-branded IVR environment and, if applicable, COUNTY shall pay the one-time IVR set-up fee for the IVR Module set forth on the Client Application. In addition, COUNTY may elect to have bill presentment and account validation functionality enabled through the IVR for the one-time set-up fee on the Client Application under “Data File Integration.”

2. CUSTOMER PAYMENT DEVICES:

Each of the Modules can provide the Customer with the ability to pay by Credit Card, Debit Card and/or Electronic Check.

3. TRAINING SERVICES:

CONTRACTOR shall provide instruction manuals and up to four (4) hours of webinar training to COUNTY and COUNTY personnel in connection with the Modules chosen by COUNTY.

4. TECHNICAL SUPPORT SERVICES:

CONTRACTOR shall provide technical support to COUNTY via telephone during regular business hours. Support availability shall be exclusive of downtime due to scheduled maintenance or events out of CONTRACTOR’s control. Support for the Products may be modified, suspended or terminated in CONTRACTOR’s sole discretion upon prior written notice.