

INFORMATION NETWORK OF KANSAS

Electronic Government Service Contract with City of Phillipsburg PHI-001-000

This Contract is between Information Network of Kansas, (INK), by and through its agent for the purposes of this contract, Kansas Information Consortium, LLC, a Kansas corporation (KIC, or Manager), which serves as the INK Network Manager, and City of Phillipsburg, State of Kansas (Partner).

Recitals

Partner desires to obtain a service for electronic commerce transactions, including online and counter payments (Payment Service), for collecting payment for its chargeable services to Kansas residents and businesses (collectively, Customers). The Payment Service agreed upon in this Contract will allow Customers to pay for Partner services (as described in Section 20) by credit card, electronic check or Automated Clearing House (ACH), (collectively, Electronic Payments).

INK agrees to make available and maintain services (as described in Section 20) to conduct Electronic Payments for Partner, through KIC, its Manager.

In consideration of the mutual covenants and agreements of the parties stated below, the parties agree as follows:

- 1) **INTERFACE AND DATABASE DEVELOPMENT** - Manager will provide a Partner-friendly interface to successfully accept and complete Partner services (as described in Section 20). Manager will establish a secure database to properly store the Electronic Payment Information (EPI). Manager will provide online access to view transactions for any particular day or cumulative timeframe and their subsequent status via the Internet.
- 2) **SERVICE SUPPORT** - Manager agrees to provide Level One support to designated Partner staff users who require access to the Payment Service. Level One support includes: i) answering Partner staff user questions; ii) resolving problems related to screen or report formats, codes, abbreviations, billing policy, error messages, and other access problems.
 - a) Partner accepts responsibility for Level Two support. Level Two support includes: Partner staff user and Customer questions relating to its operational processes, as well as Partner rules, regulations, policies and procedures applicable to the Payment Service.
 - b) Manager will participate in all meetings that the Partner identifies as necessary in order for Manager to provide Level One Support to the Partner. The Partner will supply Manager with all information necessary within Partner's control that will aid Manager to assist Partner staff users to the applicable level of support.
- 3) **SERVICE HARDWARE SUPPORT** (if applicable)

- a) Manager shall provide hardware support for the Payment Service’s card and/or swipe hardware, if such hardware is used by Partner and if it has been obtained through Manager. Such support shall be directed to answering Partner questions and resolving problems related to installation, use of the check/card swipe hardware, codes, abbreviations, and error messages.
 - b) Manager shall repair or replace any defective card swipe hardware furnished through Manager to Partner. If required, replacement card swipe hardware will be shipped to arrive within two business days.
 - c) Manager agrees to participate in all meetings that the Partner identifies as necessary in order for Manager to provide hardware Service support. Partner agrees to supply Manager with all information necessary (within Partner’s control) to aid Manager to assist Partner staff users at the Service hardware support level agreed above.
- 4) **HARDWARE OWNER** – Partner agrees that the card and/or check swipe hardware and all related equipment, supplies, or materials supplied to the Partner under this agreement are owned by KIC.
- 5) **CHANGES IN NETWORK OR SERVICES**-- Manager and Partner will each provide 30 days written advance notice of any planned, material changes in Network operations affecting the Partner’s online services.. The parties may mutually agree on a case-by-case basis to a lesser period of notice. A “material change” is defined as a change that adds to the complexity of the Partner services or diminishes services provided. A “planned” change is one that does not need to be performed on an immediate, emergency basis. Such changes include, but are not limited to, file format changes, changes in data transfer procedures, application coding changes, URL migrations and interface content changes.
- 6) **LIABILITY FOR PARTNER FEES** – Neither INK nor Manager assume any liability for any Partner fee miscalculations.
- 7) **COSTS AND COMPUTER PROGRAMS** – Manager shall be responsible for all costs in supplying electronic payment reports and payment transaction confirmation numbers to Partner through the Payment Service required under this Section 7. This includes any cost for purchasing, developing, maintaining and enhancing programs used to provide such payment reports and Customer payment transaction confirmation numbers. The Payment Service shall:
- a) Protect records and transaction payment details from unauthorized access;
 - b) Supply the payment confirmation number to Partner in an understandable and logical format; and
 - c) Supply online reports in an understandable and logical format.
- 8) **ONLINE SECURITY** – Manager is responsible for online security consistent with online payment industry standards.

- 9) STANDARD USE MESSAGES – Manager shall comply with the STANDARD USE MESSAGES section of the INK Contract for Network Manager between INK and KIC and any amendments thereto.
- 10) CONFIDENTIALITY - EPI consists of Customer payment and account information regarding transactions with Partner, which is maintained and protected by Manager. Details of EPI shall be protected as confidential by Manager unless specifically not excepted by provisions of the Kansas Open Records Act K.S.A. 45-215 et seq. Payment details shall not be used for offering for sale property or services to anyone listed in the records or to anyone at any address listed in the records, as prohibited by K.S.A. 45-230 and K.S.A. 45-220(c).
- 11) NOTICES - All notices permitted or required by this Contract shall be directed to the following persons. These designations may be changed following written notice from each party to the other party to this contract.

Partner Mailing address: Brenda Chance
<<Insert Contact Street Address>>
<<Insert Contact CSZ>>
Phone: <<Insert Contact Phone>>
Fax: <<Insert Contact Fax>>
Email: bchance@cityofphillipsburg.com

INK Mailing Address: INK Executive Director
623 SW Van Buren
Topeka, Kansas 66603
Phone: (785) 296-4277
Fax: (785) 296-1463
Email:

Manager Mailing Address: General Manager/Network Manager
Kansas.gov
534 South Kansas Avenue, Suite 1210
Topeka, KS 66603-3406
Phone: (785) 296-5275
Fax: (785) 296-5563
Email: generalmanager@ink.org

- 12) TERMINATION OF CONTRACT - Any party shall have the right to terminate this Contract for cause, subject to cure, by providing written notice of termination, to the other party. Such notice shall specify the “for cause” reason, including citation to any specific provision of this Contract, which gives rise to the notice and shall specify action that can be taken by the other party to avoid termination of the Contract. A reasonable period of time of up to sixty (60) days shall be given, unless another length of time is specified in this Contract, to cure breaches and deficiencies in the performance of obligations under this Contract. Substantial cessation of Network services by Manager shall be cause for immediate termination of this Contract.

a) For the purposes of this contract, the phrase “for cause” shall mean:

- i) Any material breach by either party of the terms or conditions of this Contract and its amendments if any.
 - ii) Fraud, misappropriation, embezzlement, malfeasance, negligence, illegal conduct by INK, or the Manager, its officers or directors.
 - iii) Failure of Manager to pay Kansas taxes due.
 - iv) Violation by the Manager of any of the termination for cause statements specified in the INK Contract for Network Manager, if such are not timely cured.
 - b) The Partner may terminate this contract at any time and without cause, if directed to do so by statute or other state, federal or governmental agency with appropriate authority.
- 13) **TERM OF CONTRACT** - This Contract shall commence on date of the last signature necessary to make it effective, and shall be co-terminal with the INK Contract for Network Manager and any extensions or renewals thereof, unless earlier terminated in accordance with the terms of this Agreement.
- 14) **RELATIONSHIP OF PARTIES** - Notwithstanding any other provisions contained herein, it is expressly agreed that INK is an independent contractor in the performance of this contract and has delegated its duties and responsibilities hereunder to KIC which is solely liable for any and all damages which may occur on account of its performance hereunder, in accordance with the INK Contract for Network Manager. INK may become an agent of the Partner only by express written consent of the Partner.
- 15) **AMENDMENTS** - This Contract may be amended at any time by an instrument in writing signed by duly authorized representatives of INK, KIC and the Partner.
- 16) **MARKETING** - Partner may provide reasonable marketing space in its publications (if and/or when such exists) at no charge, to allow promotion of INK or its services. Additionally, KIC will, on behalf of Partner, issue a media release to drive awareness of the service launch (Exhibit B). Partner also agrees to allow KIC to promote the service on KIC's social media channels.
- 17) **EXHIBIT SPACE** - The Partner may provide INK or Manager complimentary exhibit space and/or speaker time at any appropriate conventions and/or seminars, which Partner may host (if and/or when such exist).
- 18) **PAYMENT OF FEES** - Customers of the Payment Service will have one or more payment options provided by Manager, as outlined below.
- a) **Electronic Check Payments**—Manager, acting as the payment processor, will send the entire amount collected from the user on Partner's behalf to the designated Partner bank account: Manager will send the entire portal processing fee amount to an account designated by INK. The portal processing fee to the Manager is outlined in Fee and Payment Schedule A. Funds will be disbursed to the appropriate Partner bank account within two (2) business days of Manager receiving such funds. Manager shall provide

Partner and INK a detailed accounting report (with sensitive identifying information removed) showing all receipts and disbursements described in this Section 18 a.

- b) Credit Card Payments - - Manager will act as the payment processor. Manager's credit card processing software will split the collected fee into two transactions: 1) the portal processing fee and 2) the Partner amount due. Manager will send the entire amount of the Partner amount due collected from the user to the designated Partner bank account, and will send the entire portal processing fee amount to an account designated by INK. The portal processing fee to Manager is outlined in Fee and Payment Schedule A. Funds will be disbursed to the appropriate Partner bank account within two (2) business days of INK receiving such funds. Manager shall provide Partner and INK a detailed accounting report (with sensitive identifying information removed) showing all receipts and disbursements described in this Section 18 b.
- c) Chargebacks, check returns and refunds--Manager will provide the Partner online access to a report detailing all chargebacks, check returns and refunds. All successful chargebacks, check returns and refunds will be deducted from partner disbursements based on the transaction date.
 - i) Refunds --Refunds (funds credited back to the customer) will be initiated by the Partner via the method provided by the Manager. Refunds will be deducted from future Partner disbursements based on the transaction date of the refund.
 - ii) Credit Card Chargebacks--Manager will be responsible for the initial handling and recovery of all monies associated with chargebacks. In the event the Manager is unable to collect funds within sixty (60) days from receipt of notice, Manager will deduct chargeback from a future Partner disbursement. Partner will then be responsible for any business process needed to recover funds for chargebacks.
 - ii) Check Returns--Returned checks will be deducted from Partner Disbursement at the time the return is processed. The Partner will be responsible for collection of any returned checks due to insufficient funds, closed accounts, etc.
- d) Manager will be responsible for all credit card merchant account fees and chargeback account fees for the Manager's merchant ID and for the Partner merchant ID. Partner and Manager agree that Manager has the right to increase its portal processing fee if merchant fees charged to Manager increase, and/or if Partner increases its statutory/assessed fee, which will result in increased merchant fees to Manager. INK may request a fee increase to cover other costs as needed to support the service, which will be mutually agreed upon with Partner.
- e) Partner will be responsible for collection of any dishonored paper or electronic checks, using Partner's usual collections process. Partner agrees to accept electronic check payments and ACH payments tendered by Customers through the Payment Service. Partner will be able to view daily the list of dishonored paper or electronic checks, and ACH returns, via the Payment Service's online access for Partner.

19) RECORDS AND FINANCES – All Manager’s documents and records relating to Electronic Payment transactions made via the Payment Service shall be available for inspection and auditing by the Partner or its authorized representatives. Any party authorized to inspect or audit records under this Section shall agree in writing to keep the same standards of confidentiality required under Section 10 of this Contract. Parties, other than INK, KIC or Partner must use any records or copies thereof as permitted by law and shall return or destroy any copies of records upon completing their inspection/audit.

(the remainder of this page is intentionally left blank)

FEE AND PAYMENT SCHEDULE A

The following fee schedule outlines the amount due the Partner, the portal processing fee due to INK, and the total amount collected.

Service	Amount to Partner	Portal Processing Fee to INK	User Fee (total amount collected)
Over the Counter e-Check	Full statutory/assessed fee charged by Partner	\$1.50/transaction	Full statutory/assessed fee + \$1.50
Over the Counter Credit Card	Full statutory/assessed fee charged by Partner	2.5% of full statutory/assessed fee	Full statutory/assessed fee + 2.5% processing fee

State of Kansas
Department of Administration
DA-146a (Rev. 06-12)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1 1 **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

Electronic Government Service Contract
City of Phillipsburg– Page 10

10. **Insurance**: The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information**: **No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.**
12. **The Eleventh Amendment**: "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying**: Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.