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TULSA COUNTY



PURCHASING  
DEPARTMENT

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# MEMO

DATE: January 16, 2019

FROM: Matney M. Ellis  
Purchasing Director

TO: Board of County Commissioners

SUBJECT: Master Agreement- R P Solutions, Inc.

Submitted for your approval and execution is the attached Master Agreement between the Board of County Commissioners on behalf of the Tulsa County Treasurer's Office and R P Solutions, Inc. for TPS services including software that allows scanning, capture and processing of payment documents and checks.

MME / arh

ORIGINAL: Michael Willis, County Clerk, for the January 22, 2019 agenda.



## MASTER SERVICES AGREEMENT FOR RP SOLUTIONS TRANSACTION PROCESSING SERVICES (TPS)

This Master Services Agreement ("**Agreement**") is entered into as of the effective date set forth on the signature page below ("**Effective Date**"), by and between RP Solutions Inc., a New York corporation located at 99 Eastlake Road, Ithaca, NY, 14850 ("**RPS**") and the undersigned customer ("**Customer**"). RPS and Customer are hereby, individually, a "**Party**" and collectively, the "**Parties**". The terms and conditions set forth herein, together with all addendums, exhibits and amendments, contain all of the promises, agreements, conditions and understandings between the parties.

### Background

RPS offers innovative software and services designed to automate document workflows, streamline receivables processing, accelerate funds availability and reduce risk. Transaction Processing Services™ ("**TPS**") Platform, offered as a cloud-based service, enables integrated payment processing, document processing and workflow management functions. Customer desires to access and utilize the RPS software and services, and RPS desires to provide access to such software and services. In consideration of the foregoing and the mutual covenants and agreements contained in this Agreement, the parties hereby agree as follows:

### 1. DEFINITIONS

**1.1 "Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**1.2 "Customer Data"** means electronic data and information submitted by or for Customer to the TPS Services or collected and processed by or for Customer using the TPS Services.

**1.3 "Documentation"** means the user guides, documentation, application help and training materials with regard to the TPS Services generally made available by RPS to its customers, as updated from time to time.

**1.4 "Malicious Code"** means code, files, scripts, agents or programs intended to do harm,

including, for example, viruses, worms, time bombs and Trojan horses.

**1.5 "Regulatory Requirement"** means a rule, regulation, law, or other order issued by a governmental or industry regulatory body, which has the effect of canceling, changing, or superseding any material term or provision of this Agreement.

**1.6 "Services"** means the RPS software products and services.

**1.7 "Service Issue"** means a functional or performance problem with the TPS Services.

**1.8 "Schedule"** means an ancillary document to this Agreement entered into between Customer and RPS or any of RPS' Affiliates, including any addenda and supplements thereto, that specifies the Services to be provided hereunder.

**1.9 "Subscription Contract"** is a Schedule that describes TPS Services licensed and the subscription term and fees.

**1.10 "Statement of Work" or "SOW"** is a Schedule that describes professional services to be provided by RPS to Customer.

**1.11 "Test System"** means a Cloud Hosted system with the TPS Services that is provided by RPS as a convenience and that may be used by the customer for testing or training purposes only.

**1.12 "Third Party Product"** means products and services of a third party that are purchased by Customer that supplement or integrate with the TPS Services.

**1.13 "TPS Production Platform"** means the secure Cloud Hosted system provided by RPS with the TPS Services for production processing.

**1.14 "TPS Service(s)"** means the TPS Platform software and services.

**1.15 "User(s)"** means an individual(s) authorized by Customer to access and use a TPS Service to whom Customer (or RPS at Customer's request) has supplied a user identification and password. Users may include, for example, Customer's employees, consultants, contractors and agents, and third parties which require access to the TPS Services for the internal business purposes of Customer.

**1.16 "We", "us", "our", "RPS", and "RP Solutions"** all refer to RP Solutions Incorporated.

## **2. ENGAGEMENT**

**2.1** RPS agrees to grant to Customer subject to the terms and conditions contained in this Agreement a limited, non-assignable and non-exclusive license for TPS Services as set forth in a Subscription Contract or SOW. Each Subscription Contract or SOW shall incorporate and include the terms and conditions of this Agreement.

**2.2** Customer agrees to license the TPS Services under the terms and conditions hereinafter contained.

**2.3 Future Functionality.** Customer agrees that Customer's purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments

made by RPS regarding future functionality or features.

## **3. RPS RESPONSIBILITIES**

**3.1 Provision of TPS Services.** Subject to the terms and conditions of this Agreement and any Schedules, RPS will (a) make the TPS Services available to Customer (b) provide Support Services to Customer as described and attached hereto as **Standard Support Services Schedule**, and (c) use commercially reasonable efforts to make the online TPS Services available as set forth in the Service Level Agreement attached hereto.

**3.2 Protection of Customer's Data.** RPS will use commercially reasonable efforts to maintain administrative, physical, and technical safeguards designed to protect the security, confidentiality and integrity of Customer Data, including, without limitation, measures for preventing access, use, modification or disclosure of Customer's Data by RPS' personnel except (a) to provide the TPS Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 7.3 (Compelled Disclosure) below, or (c) as Customer expressly permits in writing.

**3.3 RPS' Personnel.** RPS will be responsible for its personnel (including employees and contractors) while performing the services hereunder and their compliance with RPS' obligations under this Agreement, except as otherwise specified herein.

## **4. CUSTOMER RESPONSIBILITIES**

**4.1 Use of TPS Services.** Customer will (a) be responsible for Users' compliance with this Agreement, (b) prevent unauthorized access to or use of TPS Services, and notify RPS promptly of any such unauthorized access or use, (c) use the TPS Services only in accordance with the Documentation and applicable laws and government regulations, and (d) be solely responsible for, at its own expense, acquiring, installing and maintaining all connectivity equipment, internet and network connections, hardware, software and other equipment as may be necessary for its Users to connect to, access and

use the TPS Services. With respect to those software elements that are to be installed locally on the premises of Customer, users are licensed to use the object code version of such software solely for Customer's internal business purposes.

**4.2 Security.** Customer will ensure that any computer(s) or mobile devices used by Users to create, view, edit, transmit or receive on-line transactions or batch data files are secured against tampering prior to accessing the TPS Services by implementing commercially reasonable (a) physical security, (b) personnel and access controls to protect against unauthorized access and use, (c) network security to ensure secure storage and distribution of the data, and (d) anti-virus software.

**4.3 User.** Access to the TPS Services requires the use of a valid user ID, password, and other identifiers and Customer shall be responsible for maintaining the confidentiality of all such user credentials. Customer is responsible for any individuals that it has made a User (including, without limitation, former employees, contractors or agents), and any act or omission of such individual while a User shall be deemed to be Customer's act or omission. User credentials are intended to be for a single user but may be reassigned if the original individual will no longer be accessing the TPS Services. User credentials may not be shared by multiple users. Customer acknowledges that, as a condition to use of certain TPS Services each User must agree to the pertinent Terms of Service ("TOS") or End User License Agreement ("EULA").

**4.4 Usage Restrictions.** Customer will not (a) use a TPS Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (b) use a TPS Service to store or transmit Malicious Code, (c) interfere with or disrupt the integrity or performance of any TPS Service or third-party data contained therein, (d) attempt to gain unauthorized access to any TPS Service or its related systems or networks, (e) permit direct or indirect access to or use of any TPS Service in a way

that circumvents a contractual usage limit, (f) copy a TPS Service or any part, feature, function or user interface thereof, (g) frame or mirror any part of any TPS Service, other than as permitted in the Documentation, (h) access any TPS Service in order to build a competitive product or service, (i) decompile, disassemble, translate, reverse engineer or otherwise attempt to derive source code from any TPS Service or encourage or permit others to do so (except and only to the extent applicable law prohibits or restricts reverse engineering restrictions), (j) provide product documentation, screen shots or product demonstrations to a competitor of RPS or to a third party with the intent of creating a similar product, or (k) copy, reproduce or print the Documentation without retaining any copyright, trademark or other proprietary notices.

**4.5 Unauthorized Transactions.** Customer is strictly responsible to establish and maintain the procedures necessary to safeguard against unauthorized transaction creation, data access, and data transmissions. Customer warrants that no User will be allowed to initiate transactions or data transfers, or access data, in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the security procedures and any User credentials, passwords, codes, security devices and related instructions provided by RPS in connection with the security procedures. Customer is solely responsible for all data access and activity that occurs using valid Customer User credentials. If Customer believes or suspects that any such information or instructions have been known or accessed by unauthorized users, or that unauthorized data access or transaction creation has occurred, Customer agrees to notify RPS immediately, followed by written confirmation.

**4.6 Test System Usage.** Customer will use the test system only for non-confidential, non-secure test data. Customer will not use the test system for production work and acknowledges that the system uptime and performance guarantees and SLA commitments are not applicable to the Test System. Customer acknowledges that the test and

configuration data on the Test System may be lost without warning.

**4.7 Cooperation.** Customer shall provide to RPS access to Customer's location site, equipment, data and employees and shall otherwise cooperate with RPS in its performance hereunder, in each case to the extent reasonably necessary for RPS to perform its obligations under this Agreement.

## **5. THIRD PARTY PRODUCTS & SERVICES**

**5.1 Third Party Products.** RPS may offer Third Party Products such as check verification services, check fraud services, bank deposits, and deposit settlement. The performance of such third-party products and services is solely dependent upon the third-party provider and RPS is not responsible for the performance of any Third Party Products. RPS does not submit Customer's data to a Third Party without Customer's written approval. RPS is not responsible for any disclosure of Customer's data arising from use of a Third-Party Product. Licensor's sole responsibility as to Third Party Products is to pass through any warranties, indemnification and replacement provisions that RPS receives from the vendors or suppliers of such Third-Party Products and which RPS is allowed to pass on.

## **6. PROPRIETARY RIGHTS AND LICENSES**

**6.1 Reservation of Rights.** Subject to the limited rights expressly granted hereunder, RPS shall retain all right, title and interest in and to the TPS Services (including all related intellectual property and proprietary rights therein) and all copies, modifications and derivative works thereof. Customer acknowledges that it is obtaining only a limited right to access and use the TPS Services as contemplated herein, and that irrespective of any use of the words "purchase," "sale," or like terms hereunder no ownership rights are being conveyed to Customer or its Users under this Agreement or otherwise. No rights are granted to Customer or its Users hereunder other than as expressly set forth herein.

**6.2 License by Customer to Host Customer's Data and Applications.** Customer grants RPS a limited- term license to host, copy, transmit and

display Customer's Data, and any third-party applications and program code created by or for Customer, as necessary for RPS to provide the services in accordance with this Agreement. Subject to the limited licenses granted herein, RPS acquires no right, title or interest from Customer or Customer's licensors under this Agreement in or to Customer's Data.

**6.3 License by Customer to Use Feedback.** Customer (a) grants to RPS a perpetual, irrevocable, worldwide, royalty-free license to use and incorporate into the TPS Services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Users relating to the operation of the TPS Services ("Feedback"), and (b) agrees and acknowledges that Feedback is not confidential information of Customer or its Users and may be disseminated for any purpose, commercial or otherwise, without acknowledgment or compensation.

## **7. CONFIDENTIALITY**

**7.1 Definition of Confidential Information.** "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's Confidential Information includes Customer's Data; RPS' Confidential Information includes the TPS Services; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product documentation, plans, and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from

a third party without breach of any obligation owed to the Disclosing Party, (iv) was independently developed by the Receiving Party, or (v) is disclosed as per applicable law.

**7.2 Protection of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any Schedule to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this Section 7.2.

**7.3 Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

**7.4 Blind Data.** Notwithstanding any other provision of this Agreement, in connection with the

development, improvement and promotion of its products and offerings, RPS may utilize data analysis tools, and other similar tools, to compile, synthesize, analyze, and use any aggregated and de-identified data among users of the TPS Services, including without limitation Customer Data ("**Blind Data**"). To the extent that any Blind Data is collected or compiled by RPS, such Blind Data shall be solely owned by RPS.

## **8. REPRESENTATIONS, WARRANTIES, AND DISCLAIMERS**

**8.1 Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so and upon execution by its authorized signatory this Agreement shall be binding and enforceable against such party.

**8.2 RPS' Warranties.** RPS warrants that (a) the TPS Services will perform in accordance with the applicable Documentation, in all material respects, and (b) it will use a recent version of a reputable software product, to the extent commercially available, to check the TPS Services for Malicious Code and upon discovery will use commercially reasonable efforts to eliminate such Malicious Code from its systems, and (c) all support services will be performed in a professional manner by qualified personnel using reasonable skill and care. For any breach of an above warranty, Customer's exclusive remedies are those described in Section 11 (Termination).

**8.3 Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE TPS SERVICES AND DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, MERCHANTABILITY, OR NON-INFRINGEMENT. CUSTOMER AGREES AND ACKNOWLEDGES THAT: (I) USE OF TPS SERVICES AND DOCUMENTATION MAY NOT BE UNINTERRUPTED OR ERROR-FREE, (II) ACCESS TO THE TPS SERVICES MAY, FROM TIME TO TIME, BE TEMPORARILY SHUT DOWN DUE TO MAINTENANCE OR RESOLUTION OF ERRORS, AND (III) RPS IS NOT RESPONSIBLE FOR THE ACCURACY OR INTEGRITY OF ANY DATA, THIRD PARTY

INFORMATION OR REPORTS GENERATED BY CUSTOMER OR ITS USERS USING THE TPS SERVICES. THE ENTIRE RISK AS TO THE SERVICE IS ASSUMED BY YOU. NO ORAL OR WRITTEN INFORMATION OR ADVICE PROVIDED BY RPS SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY.

## **9. INDEMNIFICATION**

**9.1 Indemnification by RPS.** RPS will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that the use of a TPS Service in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights (a "Claim Against Customer"), and will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a court-approved settlement of, a Claim Against You, provided Customer (a) promptly gives RPS written notice of the Claim Against You, (b) gives RPS sole control of the defense and settlement of the Claim Against Customer (except that RPS may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), and (c) gives RPS all reasonable assistance, at RPS' expense. If RPS receives information about an infringement or misappropriation claim related to the TPS Service, RPS may in RPS' discretion and at no cost to Customer (i) modify the TPS Service so that it no longer infringes or misappropriates, without breaching RPS' warranties under Section 8.2 (RPS' Warranties), (ii) obtain a license for Customer's continued use of that TPS Service in accordance with this Agreement, or (iii) terminate Customer's subscriptions for that TPS Service upon 30 days' written notice and refund Customer any prepaid fees covering the remainder of the term of the terminated subscriptions.

**9.2 Exclusions.** RPS will have no obligation for claims of infringement resulting from (i) use of the TPS Service in breach of this Agreement, (ii) any combination, operation, or use of the TPS Service with any products, equipment, software, hardware, data, or business processes not supplied

by RPS or set forth in the Documentation, if such infringement would not have occurred without the combination or modification of the Software by a party other than RPS if such infringement would have been avoided in the absence of such modifications; (iii) use for a purpose or in a manner for which the TPS Services were not designed, (iv) any intellectual property right owned or licensed by Customer (v) RPS' compliance with any materials, designs, specifications or instructions provided by Customer, or (viii) third party open source software.

**9.3 Exclusive Remedy.** This Section 9 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 9.

## **10. LIMITATION OF LIABILITY**

**10.1 Limitation of Liability.** IN NO EVENT SHALL RPS, ITS OWNERS, ITS DIRECTORS, ITS EMPLOYEES, ITS CONTRACTORS, ITS AGENTS, ITS VENDORS, OR ITS PARTNERS BE LIABLE FOR DAMAGES OF ANY KIND, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR OUR TPS SERVICES, INCLUDING BUT NOT LIMITED TO ANY DIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INDIRECT LOSS OR DAMAGE WHICH CUSTOMER MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, LOST REVENUE, LOST PROFITS, LOST DATA, INTERRUPTION OF TPS SERVICE, OR DATA RECONSTRUCTION, REGARDLESS OF WHETHER IT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL RPS' LIABILITY UNDER THIS AGREEMENT (WHETHER ARISING IN TORT, CONTRACT OR OTHERWISE) EXCEED ACTUAL DAMAGES IN THE AGGREGATE AMOUNT PAID FOR THE TPS SERVICES DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO A CLAIM ARISING HEREUNDER.

**10.2 Errors.** RPS will not be responsible for any error, delay or loss of information caused by any other person or entity not a party to this Agreement. In the event of any errors or delays by RPS, RPS will only be responsible to use its commercially reasonable efforts to correct any

such errors or resume transmissions of information required to be made by RPS as soon as reasonably possible.

## **11. TERM AND TERMINATION**

**11.1 Term of Agreement.** This Agreement commences on the Effective Date and continues until all subscriptions hereunder have permanently expired or have been terminated.

**11.2 Term of Purchased Subscriptions.** The term of each subscription shall be as specified in a Subscription Contract. Except as otherwise specified in a Subscription Contract, subscriptions may be renewed by mutual, written agreement of the Parties for additional periods equal to the expiring subscription term or one (1) year (whichever is shorter), unless either party gives the other notice of non-renewal at least sixty (60) days before the end of the relevant subscription term. The pricing increase during any renewal term will not exceed 5% of the pricing for the applicable TPS Service in the immediately prior subscription term unless the pricing in the prior term was designated in the relevant Subscription Contract as promotional or one-time pricing. RPS will give Customer written notice of any pricing increase that exceeds 5% at least 90 days before the end of that prior term, in which case the pricing increase will be effective upon renewal and thereafter.

**11.3 Termination for Cause.** Either party may terminate this Agreement (i) for cause upon 60 days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. RPS may terminate this Agreement immediately without prior notice to the Customer in the event of fraud, suspected fraud, illegal or suspicious activity, merger, regulatory compliance, administrative order, or judicial order.

**11.4 Payment upon Termination.** If this Agreement is terminated in accordance with Section 11.3, Customer will pay any unpaid fees

payable to RPS for the period prior to the effective date of termination.

**11.5 Customer Data Portability and Deletion.** Upon written request by Customer made within 30 days after the effective date of termination or expiration of this Agreement, RPS will make the Customer's Data available to Customer for export or download as provided in the Documentation. After that 30-day period, RPS will have no obligation to maintain or provide Customer's Data and will thereafter delete or destroy all copies of Customer's Data in RPS' systems or otherwise in RPS' possession or control as provided in the Documentation, unless legally prohibited. Any applicable data download fees defined in the Subscription Contract will apply and must be prepaid prior to downloading the data.

**11.6 Suspension of TPS Services.** In addition to its other rights under this Section 11, RPS may immediately suspend or terminate access to the TPS Services by Customer or its Users (a) in order to prevent damage to or degradation of, the TPS Services caused by Customer or its Users; or (b) in the event of fraud, suspected fraud, illegal or suspicious activity, regulatory compliance, administrative order, or judicial order. If suspended, RPS will promptly restore use of the TPS Services to Customer as soon as the event giving rise to the suspension has been resolved to RPS' satisfaction.

**11.7 Surviving Provisions.** The Sections titled "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Payment upon Termination," "Customer Data Portability and Deletion," "Notices, Governing Law and Jurisdiction, Dispute Resolution" and "General Provisions" will survive any termination or expiration if this Agreement.

## **12. NOTICES, GOVERNING LAW AND JURISDICTION, DISPUTE RESOLUTION**

**12.1 Notices.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the first



business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to Customer shall be addressed to the relevant billing contact designated by Customer. All other notices to Customer shall be addressed to the relevant TPS Services system administrator designated by Customer.

**12.2 Governing Law and Jurisdiction.** This Agreement shall be construed in accordance with and governed by the laws of the State of Oklahoma, without regard to conflict of laws principles. All disputes relating to this Agreement will be instituted and prosecuted solely within the State of Oklahoma, and the parties hereby irrevocably consent to the exclusive personal jurisdiction of the state courts and federal courts located within such state with respect to any dispute or other matter arising out of this Agreement.

**12.3 Dispute Resolution.** RPS and Customer will seek to resolve between them, or their employees, agents, or Affiliated businesses, any controversy or dispute, whether arising under this Agreement or otherwise, whether based on agreement, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to the subject matter of this Agreement, whenever brought, first by negotiating with each other and escalating issues to senior management in good faith. If County does not agree to arbitration.

### **13. GENERAL PROVISIONS**

**13.1 Export Compliance.** The TPS Services and software that RPS makes available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list.

**13.2 Entire Agreement and Order of Precedence.** This Agreement, and its corresponding schedules, is the entire agreement between Customer and RPS regarding Customer's use of TPS Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any

provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be:

- (1) Any Agreement Addendums
- (2) The Master Services Agreement
- (3) Any Agreement Schedules
- (4) The Privacy Policy posted at <http://www.rpsolutions.com/rp-solutions-privacy>
- (5) the Documentation and on-line Help

It is expressly agreed that any terms and conditions of any purchase order or similar instrument of Customer shall be superseded by the terms and conditions of this Agreement to the extent that such terms may be in conflict.

**13.3 Force Majeure.** Without limiting the generality of the provisions under this Agreement, RPS will not be liable nor responsible for any damage, cost, loss or liability, loss of information or errors, delays in transmission and/ or processing of Customer transactions or entries arising out of causes beyond RPS' reasonable control, including, without limitation, legal constraint, interruption of transmission or communications facilities, equipment failure, emergency condition, accident, strike, fire, flood, war, riot, equipment breakdown, electrical or mechanical failure, Internet service provider failure or delay, denial of service attack, labor lockouts, acts of nature or any cause which is attributable to a third party, acts of God, or the enactment, issuance or operation of any adverse governmental law, ruling, regulation, order or decree (a "Force Majeure Event").

**13.4 Regulatory Changes.** Subject to notice being provided, RPS shall have the right to modify this Agreement as necessary to comply with any Regulatory Requirement imposed. Any such modification shall not constitute a basis for the termination of this Agreement unless said modification has a significant negative material

impact on the value of this Agreement to Customer.

**13.5 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

BY ACCEPTING THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE TPS SERVICES.

EFFECTIVE DATE: \_\_\_\_\_

Tulsa Board of County Commissioners on behalf of the  
TULSA COUNTY TREASURER (CUSTOMER)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Address for Notice:

500 South Denver Ave W., #323  
Tulsa, OK 74103

**13.6 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, and fiduciary or employment relationship between the parties.

**13.7 Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

**13.8 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

**13.9 Headings.** Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

RP SOLUTIONS (SERVICE PROVIDER)

By: David B. Johnson  
Name: David B. Johnson  
Title: PRESIDENT  
Date: 1-11-2019

Address for Notice:

99 Eastlake Road  
Ithaca, NY 14850

Approved as to form:

Nolan M. Franks II 1-15-19  
Asst. Dist. Atty



## TPS Platform Addendum

This TPS Platform Addendum sets forth additional terms and conditions for use of the Transaction Processing Services™ (TPS) Platform ("TPS Service"). This Addendum is in addition to and amends the Master Services Agreement ("MSA") between you ("Customer") and RP Solutions Inc. ("RPS"). This Addendum is made effective as of the date that a TPS Subscription Contract is signed by Customer.

### Addendum Purpose

The Parties are mutually interested in entering into a business relationship whereby the Customer may use the TPS Services to process remittance payments and deposits. RPS and Customer hereby agree as follows:

#### **1. CUSTOMER RESPONSIBILITIES**

**1.1 Usage Restrictions.** Customer will not (a) make the TPS Services available to, provide access to the TPS Services to, or use any TPS Service for the benefit of, anyone other than Customer or Users, (b) sell, resell, license, sublicense, distribute, rent or lease any TPS Services, or include any TPS Service in a service bureau or outsourcing offering.

**1.2 Source Documents and Data Security.** Customer shall employ commercially reasonable methods to (a) securely store all source documents, such as the original checks, until the time of destruction, (b) securely destroy source documents at the scheduled time, and (c) securely store all payment and banking information related to payment transactions. Customer is solely responsible for any liability arising from the loss of source documents or payment information stored by the Customer or an agent of the Customer other than RPS. Customer agrees and acknowledges that Customer is solely responsible for complying with, and covenants to comply with, all laws applicable to Customer and to use of the TPS Services by Customer and its Users, including without limitation all laws and regulations relating to the protection and non-disclosure of Customer Data.

#### **2. RPS RESPONSIBILITIES**

**2.1 Support Services.** Subject to the terms and conditions of the MSA, RPS will provide Support Services to Customer as described and attached hereto as Standard Support Services Schedule.

#### **3. FEES AND PAYMENT FOR SERVICES**

**3.1 Fees.** Customer agrees to pay RPS all fees as specified in one or more Subscription Contract(s) and/or Statement(s) of Work. Except as otherwise specified herein (i) Subscription fees are based on a combination of services and actual usage, (ii) Professional Service fees are specified in a Statement of Work, (iii) payment obligations are non- cancelable and fees paid are non-refundable.

**3.2 Invoicing and Payment.** Invoices will be generated as outlined in a Subscription Contract or a Statement of Work. The initial billing will include all (i) non-recurring charges for installation and setup, (ii) annual pre-paid subscription and transaction fees, (iii) prorated recurring monthly fees for the initial month of service, and (iv) the recurring monthly fees for the first full month of service. Thereafter, all recurring monthly fees will be billed one month in advance. Installation, Setup, and annual pre-paid fees must be paid in full prior to RPS enabling live production processing. Other than the prorated initial month, TPS Services are provided in minimum increments of one (1) month and shall not be prorated

upon suspension, termination, or discontinuation of the TPS Service. Non-prepaid transaction fees will be billed based on the actual usage in the preceding month. RPS reserves the right to back-bill the Customer for TPS Services or other professional services provided but not previously billed due to billing errors.

**3.3 Payment Terms.** Unless otherwise stated in a Subscription Contract or a Statement of Work, invoiced charges are due net 30 days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to RPS and notifying RPS of any changes to such information.

**3.4 Overdue Charges.** If any invoiced amount is not received by RPS by the due date, then without limiting RPS' rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) RPS may condition future subscription renewals on payment terms shorter than those specified in Section 3.3 (Payment Terms). If a payment tendered or authorized by Customer is declined by Customer's financial institution, Customer agrees to pay all costs and fees associated with that transaction, including but not limited to a service charge imposed by RPS not to exceed the highest amount authorized by law, and any attorney fees and court costs RPS incurs: (a) for overdraft/non-sufficient funds charges imposed on RPS because of Customer, and (b) to collect any unpaid balance owed by Customer.

**3.5 Suspension of TPS Service and Acceleration.** If any amount owed by Customer under this or any other agreement for TPS Services is 30 or more days overdue RPS may, without limiting RPS' other rights and remedies, accelerate Customer's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend TPS Services to Customer until such amounts are paid in full. RPS will give Customer at least 10 days' prior notice that Customer's account is overdue, before suspending TPS Services to Customer.

**3.6 Payment Disputes.** RPS shall not exercise its rights to charge late payment fees or suspend access to the TPS Services, if Customer is disputing the applicable charges reasonably and in good faith and cooperating diligently to resolve the dispute, but only to the extent of the charges Customer is disputing. Any other undisputed charges must continue to be paid in accordance with the terms set forth herein. Customer agrees and acknowledges that its right to dispute any charge(s) expires 90 days from the date of invoice. Upon expiration of Customer's right to dispute, RPS shall deem the charge(s) as undisputed and in default.

**3.7 Taxes.** RPS collects sales tax for Customer's located in the state of CA, NC, NY, and WA, unless Customer provides RPS with a valid tax exemption certificate authorized by the appropriate taxing authority. Otherwise, RPS' fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Customer is responsible for paying all taxes associated with Customer's purchases hereunder.

#### **4. CUSTOMER REPRESENTATIONS AND WARRANTIES**

**4.1 Prohibited Business Activities.** The following types of business are prohibited from utilizing the TPS Services. Customer represents and warrants that they are not using the TPS Services to process documents, payments, or deposits related to any of the following business activities:

- 4.1.1. Cash Advance services, including Payday loan services, merchant cash advance, or receivables factoring.
- 4.1.2. Gambling, Sweepstakes, or Lotteries.
- 4.1.3. Debt Relief services.
- 4.1.4. Sales of Cannabis related products or drug paraphernalia.
- 4.1.5. Internet or mail-order sales of Tobacco or Tobacco products.

4.1.6. Any business related to "Adult" activity, "Adult" entertainment, or pornography.

Tulsa Board of County Commissioners on behalf of the  
TULSA COUNTY TREASURER'S OFFICE (CUSTOMER)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

RP SOLUTIONS (SERVICE PROVIDER)

By: David B Johnson  
Name: David B Johnson  
Title: PRESIDENT  
Date: 1-11-2019

Approved as to form:

Nolan M. Fields IV 1-15-19  
Asst. Dist. Atty.



## Subscription Contract Schedule

Subscription Contract number ONE to the Master Customer Agreement between RP Solutions Inc. ("RPS") and the undersigned customer ("Customer"), dated January 11, 2018 (the "Subscription Contract").

<sup>^</sup> 2019

NMFIV  
1-15-19

Customer Name: Tulsa Board of County Commissioners on behalf of the  
Tulsa County Treasurer's Office

Street Address: 500 South Denver Ave W, # 323

City, State, ZIP: Tulsa, OK 74103

Contact Name: Steve Blue Phone: (918) 596-5058 Email: sblue@tulsacounty.org

### Description of Services

TPS Services includes software that allows scanning, capture and processing of payment documents and checks.

1. Licensed Services – TPS Remittance payment processing software made available through the Transaction Processing Services™ (TPS) platform.
2. Licensed Software Product(s) – Software files to be installed at Customer location(s)
  - A. TPS Capture Software for 12 Epson Model M236A 90 DPM Scanners
3. Third Party Software – Silver Bullet Technologies' Ranger Device Driver software – \$1,272 One-time License Fee
4. Standard Support Services
5. Software maintenance and hosting fees

### Subscription Fees

Licensed product is offered as subscription service and includes the following fees:

Fee Description	Amount
Annual Subscription License Fee(s):	
TPS Remittance Services	\$5,940.00 Per Year
ICL Deposit Delivery	\$1,200.00 Per Year
Transaction Fee(s):	
- Monthly Payment Option (Based on a volume of 170,000 checks annually)	\$14,887.00 Per Year
Annual Device Fee(s):	
- Twelve Epson Scanners	\$2,160.00 Per Year

**Term**

The term of the license granted under this Subscription Contract shall commence on the Effective Date and continue for one year ("Initial Term"). Following the Initial Term, the license may be renewed by mutual, written agreement of the Parties for subsequent twelve (12) month periods, unless either party notifies the other in writing of its intent not to renew at least sixty (60) days prior to the end of the then-current term.

**Payment**

The Annual Fee(s) shall be billed on the Effective Date. Thereafter, the Annual License Fee will be due on the anniversary date of the Subscription Contract. Any Monthly Transaction Fees will be billed based on the previous month's actual volume. Invoices are due and payable by Customer within thirty (30) days of Customer's receipt of the invoice.

By signatures below, the duly authorized representatives of the parties hereto have agreed to abide by the terms and conditions of this Subscription Contract.

**Tulsa Board of County Commissioners on behalf of the  
Tulsa County Treasurer's Office**

Customer Acknowledgement: \_\_\_\_\_ Date: \_\_\_\_\_

Approved as to form:

Nolan M. Fields IV 1-15-19

Asst. Dist. Atty.





## Statement of Work Schedule

Statement of Work Number ONE to the Master Customer Agreement between RP Solutions Inc. ("RPS") and the undersigned customer ("Customer"), dated January 11, 2019 (the "Agreement").

Customer Name: Tulsa Board of County Commissioners on behalf of the  
Tulsa County Treasurer's Office

Street Address: 500 South Denver Ave W, # 323

City, State, ZIP: Tulsa, OK 74103

Contact Name: Steve Blue Phone: (918) 596-5058 Email: sblue@tulsacounty.org

**TPS Services Includes:** The TPS Platform includes TPS Capture software that allows scanning and capture of checks.

1. RPS will perform Account Onboarding, and System setup of TPS Capture and TPS Archive. RPS will also provide operator training on the overall use of the TPS Capture and TPS Archive systems.
2. RPS will provide Creation of and Assistance in Testing of an ICL file to comply with Bank of Oklahoma's X9.37 file specifications.
3. RPS will assist Tulsa County with loading the TPS Capture software onto the 12 PC workstations that the Epson scanners will be attached.

### **Fees**

- Monthly Subscription Fee \$495.00
- Professional Services: Fee \$1,900.00 (One-time Charge)
  - TPS Parameter File Setup and download of TPS Capture software
  - ICL Setup and Assistance with Bank Transmission Testing
- Transaction Fees at \$0.0875 Per Check
- Image Cash Letter – Automatic Daily Deposit Fee \$100.00 Per Month
- Device Use Fee for 12 Epson Scanners at \$15.00 Per Scanner Per Month
- Silver Bullet Technologies "Ranger" software license Fee per scanner \$1,272.00 (One-time Charge)

### **Payment**

The Monthly Fee(s) shall be billed on the Effective Date. Thereafter, the Monthly Subscription, Per Transaction Fees and Per Scanner Device Fees will be invoiced and due Monthly. All Monthly Transaction Fees will be billed based on the previous month's actual volume. Invoices are due and payable by Customer within thirty (30) days of Customer's receipt of the invoice. The One-time charges will be due upon invoice.

By signatures below, the duly authorized representatives of the parties hereto have agreed to abide by the terms and conditions of this Statement of Work.

**Tulsa Board of County Commissioners on behalf of the  
Tulsa County Treasurer's Office**

Customer Acknowledgement: \_\_\_\_\_ Date: \_\_\_\_\_

Approved as to form:

Nelson M. Field 1-15-19  
Asst. Dist. Atty.



## Standard Support Services Schedule

During the term of the subscription, RPS will provide the following Support Services to Customer:

### RPS Standard Support Services Overview

- Provide telephone and email support for the period 8:00 AM – 9:00 PM (Eastern Time), on weekdays, excluding holidays (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day)
- Provide telephone support for service issues categorized as Critical on a 24x7x365 basis
- Provide patches, corrections, enhancements, updates and releases to the Product(s) as made available by RPS under Support Services.
- Provide Transaction Processing Services™ (TPS) Production Platform service issue resolution in accordance with the schedule below

Priority Level	Service Issue Description	Response Time	Escalation
1) Critical	TPS Production System is down and inoperable. Work is unable to be processed	2 Hours	Every 2 Hours
2) Major	Customer is experiencing a significant impact due to a feature not working or a performance problem.	4 Hours	Every 8 Hours
3) Minor	Customer is experiencing an inconvenience or product limitation, but is able to work around the problem.	1 Day	N/A
4) Improvement	Cosmetic issues, enhancement requests, documentation errors, configuration changes, or operator training requests.	1 Week	N/A

If RPS' investigation confirms the existence of a TPS Production Platform Service Issue, RPS will exercise commercially reasonable efforts to correct the TPS Service Issue or to provide a reasonable alternative to Customer. For Critical Problems, problem investigation and commercially reasonable efforts for correction will include escalation to provide additional RPS resources, and frequent communication with Customer. If RPS in good faith determines that the TPS Service Issue results from an error in the applicable user-level Documentation, RPS will correct the TPS Service Issue by correcting that Documentation.

### Problem Escalation

When TPS Service Issues are reported, they are addressed first by RPS' professional services front line support staff, then by professional services team senior staff, and finally by the professional services

team leader. Critical Issues, if any, are escalated to the professional services team leader (or to the most senior member of the team available if the team leader is not present) within two (2) hours after RPS is made aware that a Critical Issue has occurred. The professional services team leader will, at his discretion, inform RPS' President and the product development team leader of the Critical Issue, and will marshal additional RPS resources as needed to affect a resolution to the Critical Issue. RPS' policy is to work continuously to resolve any open Critical Issues, so that TPS Service is returned to a usable state as rapidly as possible.

The Support Services do not include, and Customer must provide at its expense: (i) operator training; (ii) documentation of TPS Service Problems; and (iii) backup and restoration of Customer's systems.

RPS offers Upgraded Support Services for additional cost.

RPS Support Services do not include custom software development or software development assistance for Customer to enhance or modify the TPS Services. These services may be made available to Customer under a Statement of Work.

**Tulsa Board of County Commissioners on behalf of the  
Tulsa County Treasurer's Office**

Customer Acknowledgement: \_\_\_\_\_ Date: \_\_\_\_\_

Approved as to form:

Nolan M. Fields II 1-15-19  
Asst. Dist. Atty.



## TPS Production Platform Service Level Agreement Schedule

### **System Availability**

RPS commits to provide **99.5%** uptime ("**Service Level Standard**") with respect to the Customer's Service for the Transaction Processing Services™ (TPS) Production Platform during each calendar quarter of the Term, excluding regularly scheduled maintenance times and Force Majeure Events. For purposes of this Agreement, "**uptime**" shall refer to the amount of time during which an online service is accessible by end users through the Internet.

If in any calendar quarter this uptime commitment is not met by RPS and Customer was negatively impacted (i.e., attempted to log into or access the TPS Service and failed due to the unscheduled downtime of the TPS Service), RPS shall provide, as the sole and exclusive remedy, a TPS Service credit relative to the performance levels outlined below.

Regularly scheduled maintenance for the TPS Production Platform does not count as downtime. Maintenance time is regularly scheduled if it is communicated in accordance with the notice section set forth below at least two full business days in advance of the maintenance time. Regularly scheduled maintenance time typically is communicated at least a week in advance, scheduled to occur at night or on the weekend, and takes less than 10-15 total hours each quarter. RPS in its sole discretion may take the TPS Service down for unscheduled maintenance and in that event, will attempt to notify customer in advance. Such unscheduled maintenance will be counted against the uptime guarantee.

### **Service Level Reporting**

On a quarterly basis, in arrears and no later than the fifteenth (15<sup>th</sup>) calendar day of the subsequent quarter following the reporting quarter, RPS shall provide a report to Customer describing the performance of the TPS Production Platform Services as compared to the Service Level Standards outlined below. The report shall contain the following information: (a) actual performance compared to the Service Level Standard; (b) the cause or basis for not meeting the Service Level Standard; and (c) the specific remedial actions RPS has undertaken or will undertake to ensure that the Service Level Standard will be subsequently achieved.

### **SLA Reporting Schedule**

Reporting Period	SLA Report Due Date
Q1	April 15 <sup>th</sup>
Q2	August 15 <sup>th</sup>
Q3	November 15 <sup>th</sup>
Q4	January 15 <sup>th</sup>

**Failure to Meet Service Level Standards.** In the event RPS does not meet a Service Level Standard for the TPS Production Platform, RPS shall: (a) upon request of customer, no later than 30 days from RPS providing

the quarterly report to Customer, issue to Customer any applicable Performance Credit; and, (b) use commercially reasonable efforts to ensure that any unmet Service Level Standard is subsequently met.

**System Availability Performance Credits**

Uptime Level	Performance Credit Due (% of one month service fee)
≥ 99.5%	0%
< 99.5% and ≥ 98.5%	10%
< 98.5% and ≥ 97.5%	20%
< 97.5% and ≥ 96.5%	30%
< 96.5% and ≥ 95.5%	40%
< 95.5%	50%

**Tulsa Board of County Commissioners on behalf of the  
Tulsa County Treasurer's Office**

Customer Acknowledgement: \_\_\_\_\_ Date: \_\_\_\_\_

Approved as to form:  
Nathan M. Fields 1-15-19  
Asst. Dist. Atty.