



## Nayax Service Agreement

The "Customer": **Effingham County BOC** ("The Customer")

- 1. Parties and Purpose.** Nayax LLC ("**NAYAX**") hereby agrees to sell to the Customer the NAYAX Unit (as defined below) and to provide to the Customer, network services ("**NAYAX Service**") utilizing NAYAX unique telemetry and cellular activated communications network solely in connection with the Customer's automated machine equipment that is equipped with a NAYAX unit or NAYAX API (such unit, a "**NAYAX Unit**") enabled to connect to NAYAX's Central Server. This Service Agreement covers the sale of the NAYAX Unit (if applicable) and the provision of the NAYAX Service. This Service Agreement shall not govern credit card clearing services which are optional and may be provided subject to Customer' execution of a separate clearing agreement, a copy of which is attached as **Exhibit A** hereto, and for an additional fee. If the Customer has purchased the NAYAX Unit from either a reseller or other agent of NAYAX or from NAYAX directly, the terms and conditions of this Agreement will apply and govern regarding this NAYAX Unit.
- 2. The NAYAX Services.** NAYAX hereby grants the Customer, during the term of this Agreement, a non-exclusive, personal, non-transferable and non-sub licensable right and license to access and use the NAYAX Service solely in connection with and together with the NAYAX Unit. The NAYAX Service (through the NAYAX system and the NAYAXvend web management tools) provides both (a) information and management abilities, including: machine status, malfunctions and inventory management, on line transactions, alerts, pricing updates, web marketing tool and (b) detailed reports regarding sales by machine operation, by machine, information regarding total sales and break down for periods, detailed transaction report and cumulative transactions reports, including DEX counters reports (all the reports are based on machine level of software and protocol) and cash accountability.
- 3. Fees and Payments.** In consideration for the NAYAX Unit and the NAYAX Service, the Customer shall pay Nayax the fees set forth in Schedule 1 according to the payment terms set forth therein. NAYAX may offset any amount from the net amounts due to the Customer for any reason including but not limited to any amounts due to the Customer if NAYAX also handles clearing services for the Customer.
- 4. Due Payment** – If the Customer fails to pay NAYAX any payment by such date on which it is due, it shall pay interest on any overdue amount from the due date until payment is made in full at a rate of 6% per year compounded monthly, or if less, the greatest amount allowed by law. Unless otherwise agreed by the parties in writing, all payments under this Agreement shall be made in US Dollars. NAYAX reserves the right to offset any such amounts due to it from the Customer from any amounts due by it to the Customer, if any, and to charge the credit card on file, which is listed on the **Schedule 1**.
- 5. Availability of Service.** Customer acknowledges that NAYAX relies on third party providers in the delivery of its services, including, but not limited to, processing service providers wireless data network providers. Cellular radio service provided by third parties is available only when within the operating range of cellular systems, and cellular service is subject to transmissions limitations and dropped or interrupted transmissions. Cellular service may be temporarily refused, limited, interrupted, or curtailed due to government regulations or orders, atmospheric and/or topographical conditions and cellular system modifications, repairs and upgrades. In addition, the Customer acknowledges that provision of the NAYAX Services may depend on factors beyond NAYAX's control, including but not limited to factors affecting the operation of Public Systems (i.e. telecommunication systems run by public telecommunication operators or internet service providers which may be accessed by cellular data network, ISDN, IP, analogue line or other transmission types) and Banking Systems (i.e. banking, financial institution or other similar bodies). NAYAX is and shall not be obliged to provide the NAYAX Services where such factors prevent it. Furthermore, the Customer agrees that from time to time, NAYAX, the third party provider for the network, and/or other third parties may perform routine maintenance or emergency maintenance which could cause some NAYAX Services not to function partially or entirely, during the performance of such maintenance. NAYAX shall not be liable for any such failure to function. The Customer agrees that NAYAX shall not be liable for, and to defend, indemnify and hold NAYAX, its affiliates, directors, officers, employees, agents, and assigns harmless for any losses, damages, or business interruptions sustained as a result of factors outside of NAYAX's control and interruptions caused routine or emergency maintenance or by third party providers, including, but not limited to its wireless data network providers and processing service providers.

6. **NAYAX Unit Warranty.** NAYAX warrants that for a period of twelve (12) months from delivery (the “**Warranty Period**”), the NAYAX Unit shall be free from defects in material and workmanship. NAYAX does not warrant that the use of the NAYAX Unit will be uninterrupted or error-free. NAYAX’s sole obligation towards the Customer and Customer’s exclusive remedy for any failure of the NAYAX Unit to perform as warranted, is the correction or replacement, at NAYAX’s option, of the nonconforming NAYAX Unit; provided, that the Customer informs NAYAX in writing, within the Warranty Period of the defect, malfunction or nonconformity. The foregoing warranty shall not apply to disposal materials and to repair, damages, malfunction or failures, resulting from/ to NAYAX Unit: (i) use of the NAYAX Unit in a manner for which it was not intended; (ii) the defects or malfunctions caused by alteration or modification to the NAYAX Unit without NAYAX’s prior written approval; (iii) defects or malfunctions caused by improper service or repair of the NAYAX Unit, by anyone other than NAYAX; (iv) defects or malfunctions which do not adversely affect the ability of the NAYAX Unit to perform its usual designated function; (v) abuse or negligence by the Customer; or (vi) any other cause beyond NAYAX’s control. The warranties contained in this section 6, are exclusive, and are in lieu of all other warranties, express or implied, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, title, or arising by a course of dealing or usage of trade. This section does not limit, and is without prejudice to, the provisions of Section 7 below.
7. **Data Protection.** NAYAX complies and will comply with the PCI (Payment Card Industry) Data Security standard. NAYAX may use the data from the Customer’s NAYAX service, which does not identify the Customer or the specific location of the machine, solely for internal statistical purposes.
8. **Intellectual Property.** The Customer acknowledges that NAYAX, its affiliated parties, and/or licensors, and third party suppliers own the intellectual property rights in the services being provided hereunder and in and to the NAYAX Units, the NAYAX cashless payment platform and all hardware and software in or associated with any of the aforesaid, including but not limited to any and all trade and service marks, inventions, patents, copyrights, design rights (whether registered or unregistered), data base rights, and all other intellectual property rights subsisting anywhere in the world. The Customer shall take no action nor allow any action to be taken in contravention of any such rights.
9. **Limitation on Liability.** In no event shall NAYAX, its affiliates and agents be liable for any punitive, incidental, or consequential damages or any damages for loss of profits, business interruption, loss of information, or pecuniary loss, even if NAYAX, its affiliates or agents has been advised of the possibility of such damages. The total liability of NAYAX to the Customer in any calendar year shall not exceed the payments made to NAYAX by the Customer under this Agreement in the calendar year in which such liability arose.
10. **Indemnification.** The Customer shall defend, indemnify and hold harmless NAYAX its affiliates, officers, directors, agents, suppliers, and employees from and against any and all claims, demands, causes of action, obligations, liabilities, expenses (including reasonable attorney’s fees), damages, or suits whatsoever, in connection with, arising out of, or relating to, in whole or in part, any act or omission of the Customer, including, but not limited to, the operation and management of the NAYAX Unit and the NAYAX service.
11. **Term and Termination.** The term of this Agreement and the NAYAX Services shall be for a period of twelve (12) months from the later of the date of signature of this Agreement by NAYAX or the Customer (the “**Initial Term**”), and shall renew automatically for successive twelve (12) month periods (each a “**Renewal Term**”) unless either party provides notice of not less than thirty (30) days prior to any such Renewal Term. Notwithstanding the above, and without derogating from any other of its rights hereunder or pursuant to law, NAYAX may terminate this Agreement and the NAYAX Services at any time, without liability therefor by providing no less than 30 days written notice, and either party may terminate this Agreement and the NAYAX Services by notice in writing not less than fifteen (15) days after notice of a material breach which has not been remedied during such fifteen (15) day period. Without derogating from the above, in the event of any breach by the Customer of any of its obligations hereunder, or in the event of any requirement of relevant law, or in the event of any force majeure or other event due to which NAYAX, in its sole discretion determines the necessity of doing so, NAYAX may suspend providing the NAYAX Services hereunder for such period as may be necessary in NAYAX’s sole opinion. In the event that NAYAX has suspended the provision of the NAYAX Services for more than thirty (30) days, other than due to breach of this Agreement by the Customer or due to any other fault of the Customer, Customer may terminate this Agreement on written notice.
12. **No Warranties.** Except to the extent as may be otherwise expressly provided herein, all warranties, conditions, terms, undertakings and representations of any kind whatsoever, express or implied, whether by statute, common law or otherwise, in respect of the services being provided hereunder, are hereby excluded by NAYAX to the fullest extent permitted by law and NAYAX shall have no other obligation, duty or liability whatsoever in contract, tort, statute or otherwise to the Customer. Without prejudice to the generality of the aforesaid, NAYAX specifically disclaims the implied warranties of merchantability, satisfactory quality and fitness for a particular purpose.
13. **Validity, Choice of Law and Venue.** Should any part of this Agreement, for any reason, be declared invalid, then only such portion shall be invalid without invalidating or affecting the remaining provisions of the Agreement. This Agreement shall be constructed in accordance with the laws of the State of New York without regard to the conflict of law’s provisions thereof. Any dispute hereunder shall, (a) in the case such dispute is filed by the Customer, be adjudicated solely by the courts of New York, NY and (b) in the case

such dispute is filed by NAYAX, be adjudicated, at NAYAX's option, either by the courts of New York or by the courts of the jurisdiction in which the Customer is incorporated or otherwise operates.

14. **Notice.** Any notice required or permitted to be given by either party hereto pursuant to this Agreement shall be in writing and addressed to the other party at its registered office or place of business, or such other address as may have been notified by one party to the other. Without derogating from the above, NAYAX may provide notice to such person who has signed the Customer Declaration attached to this Agreement.
15. **General.** This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and shall supersede any and all other communications, understandings, representations and agreements. Except as otherwise expressly stated herein, nothing in this Agreement confers any rights on any third parties. The Customer may not assign, novate, transfer, charge or otherwise deal with the benefit or the burden of this Agreement. NAYAX may assign, novate, transfer, sub-contract, charge or otherwise deal this Agreement and/or any of its rights and/or obligations hereunder at any time without consent of the Customer.

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Schedule 1

FEE AGREEMENT FORM

Contact information

Company Name:		Effingham County BOC					
TIN:		586000821					
Customer # (internal use):		US323068					
SHIP TO							
Contact Name:		Tim Callanan					
Address:		804 South Laurel Street					
City:	Springfield	State:	Georgia	Zip Code:	31329		
Phone Number:	+19127542111	Fax Number:					
Email:		tcallanan@effinghamcounty.org					
BILL TO (if different)							
Contact Name:		Mark Barnes					
Address:		804 South Laurel Street					
City:	Springfield	State:	Georgia	Zip Code:	31329		
Phone Number:	+19127542111	Fax Number:					
Email:		mbarnes@effinghamcounty.org					
**Type of Product/Service Being Sold from your Machine:		food and soft drinks					

Fees and Terms

Payment Terms**:	CCR/CC
Card present processing fee (if applicable)	\$ + 5.95% of the gross amount*
Processing fee - Ali pay	5.95% of the gross amount*
Processing Fee - Monyx	5.00% of the gross amount*
Activation Fee:	
Activation Fee (per device):	
Billing Plan:	Monthly Fee (per device): 9.95 \$

\* Payment Term descriptions for customers not reimbursed by Nayax: CC- all invoices (for hardware, activation fees and monthly service fees) are automatically paid by credit card, kept on file, on date of invoice (credit card service fee may apply)

\*\* Payment Term descriptions for customers reimbursed weekly by Nayax (must also complete the attached Schedule2- Direct Deposit Agreement Form and include a voided check); Offset/CC- activation and monthly service fee invoices are automatically offset from weekly reimbursements once a month and all hardware invoices are automatically paid by credit card, kept on file, on date of invoice (credit card service fee may apply)

Effingham County Board of Commissioners

Acceptance By: Wesley Corbitt, Chairman

Signature: \_\_\_\_\_

Date: \_\_\_\_\_