



ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

July 9, 2018

To: Margaret A. Murphy, Attorney

CC: Robert J. Lichtenthal, Jr, Deputy Director
Karen A. Prendergast, Comptroller

From: Susan L. Rinaldo, Cash Manager *SLR*

Subject: Addendum to Prior Contract for Collection Agent

The Authority entered into a contract with Princeton eCom in 2005 to enable Princeton eCom to combine water bill payments made by our customers on-line at all banks registered with them. M&T is one of the banks registered with them. Princeton eCom sends us a daily transmission of these payments and deposits the funds directly into the Authority's bank account via an ACH transaction. I have attached the Board Resolution and the contract documents for your review.

Princeton eCom was later taken over by Online Resources Corporation. It is now changing to Official Payments Corporation (OPAY). OPAY has sent us an addendum to the original contract. It specifically states that OPAY is our agent. I have attached the addendum for your review.

I believe the addendum will need to go through the Board. After it is approved they would like the name and title of the person authorized to sign the addendum, which would be the Chairman. They use DocuSign so they would also need his e-mail address and phone number. He would then have to sign it on-line.



LockboxPlus Processing Authorization

Client Name: Erie County Water Authority
Address: 350 Ellicott Square Building 295 Main Street

City, State, Zip: Buffalo, NY 14203-2494

Client hereby selects Princeton eCom Corporation's LockboxPlus product as a means to receive consumer payment information. Client selects the member Bank listed below as the institution to receive the payment funds associated with said information from Princeton eCom. Princeton eCom will forward said information in the file format provided by Erie County Water Authority on (insert date).

Cash Settlement:

Client's Bank to be credited: M&T BANK
Bank Routing Transit Number: 022000046
Client's Account Number at Bank: 581959

Implementation Fee: Waived per MMalloy@eCom
Implementation Fee is payable to Princeton eCom upon execution of this Agreement.

Princeton eCom will initiate (originate) a credit to Client's account referenced above on the next business day following Princeton eCom's receipt of payment transactions. Each credit so posted is subject only to receipt by Client of good and available funds.

Client agrees that in the event Client receives a non-postable item from Princeton eCom, then Client shall inform eCom of any such item(s) and shall return funds to Princeton eCom within two (2) Business Days of receipt of such payment. A non-postable item is a payment that (a) is initiated by a customer of Client, (b) is processed by Princeton eCom, and (c) Client is unable to post to its accounting system. "Business Days" are any days other than a Saturday, Sunday or day on which federally insured commercial banks in Princeton, New Jersey are authorized or required by law to close.

Princeton eCom Corporation

By: Lisa Basora
Name: Lisa Basora
Title: Account Executive
Date: 12/06/05

Client: Erie County Water Authority

By: [Signature]
Name: Frank E. Swiatek
Title: Chairman
Date: 12/15/05



CONFIDENTIALITY AND MUTUAL NON-DISCLOSURE AGREEMENT

This Confidentiality and Mutual Non-Disclosure Agreement ("Agreement"), dated as of the 12th of December, 2005, is entered into by and between Princeton eCom Corporation, a Delaware corporation ("eCom"), with an address at 650 College Road East, Princeton, New Jersey 08540, and the undersigned other party identified below ("Other Party").

WHEREAS, Other Party and eCom are interested in investigating the advisability of entering into a business transaction or relationship on terms and of such scope which have yet to be defined (the "Transaction"); and

WHEREAS, in order to evaluate the Transaction, the parties may from time to time provide each other with certain Confidential Material (as hereinafter defined); and

WHEREAS, the parties desire to enter into this Agreement and have this Agreement be incorporated by reference into any Transaction documentation that they may enter into.

NOW, THEREFORE, in consideration of the mutual premises and covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. As used in this Agreement, the following terms shall have the following meanings:

(a) "Affiliate" of a party hereto means any entity or person which directly or indirectly controls, is controlled by, or is under common control with, such party. The term "control" for this purpose means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of 50% or more of the voting securities of the entity, by contract, or otherwise.

(b) "Confidential Material" shall mean all information, regardless of the form in which it is communicated or maintained, concerning the Disclosing Party (and/or any Affiliate of Disclosing Party) or their respective products, services or operations that either constitutes a Trade Secret of the Disclosing Party (and/or its Affiliate) or is of value to the Disclosing Party (and/or its Affiliate) and indicated or treated as confidential information by the Disclosing Party, including, but not limited to, any and all business plans, product plans, technical and non-technical data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial data, financial plans, products plans, or lists of actual or potential customers or suppliers, the terms and conditions of any agreements between the parties. The term "Confidential Material" shall also include all reports, analyses, notes, or other information prepared by the Recipient Party or its Representatives that are based on, contain, or reflect any Confidential Material. Notwithstanding the foregoing, the term "Confidential Material" shall not include information which (i) is or becomes generally available to the public other than as a result of disclosure by the Recipient Party or any of its Representatives in violation of this Agreement, (ii) was available to the Recipient Party on a non-confidential basis prior to the disclosure of such Confidential Material to Recipient Party pursuant to this Agreement, *provided* that the source of such information was not known by Recipient Party or any of its Representatives to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Disclosing Party with respect to such material, (iii) becomes available to Recipient Party on a non-confidential basis from a source other than the Disclosing Party or its agents, advisors or representatives, *provided* that the source of such information was not known by Recipient Party or any of its Representatives to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Disclosing Party with respect to such material, or (iv) is or was independently developed by the Recipient Party without use of any Confidential Material received from the Disclosing Party.

(c) "Disclosing Party" means the party disclosing Confidential Material, whether such party is eCom or the Other Party.



(d) "Recipient Party" means the party receiving any Confidential Material hereunder, whether such party is eCom or the Other Party.

(e) "Representatives" means officers, employees, partners, attorneys, Affiliates or other professional representatives of a Recipient Party.

(f) "Trade Secrets" means information which derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and includes any source code for software and software design documentation delivered hereunder, if any, in all forms.

2. All Confidential Material of a Disclosing Party obtained, reviewed, or accessed by a Recipient Party in connection with its discussions or other dealings with the Disclosing Party shall remain the property of the Disclosing Party and shall be used by the Recipient Party solely for the purposes of evaluating or executing a possible business transaction between the Disclosing Party and the Recipient Party. Recipient Party acknowledges and agrees that the disclosure of Confidential Material of Disclosing Party to Recipient Party does not confer upon Recipient Party any license, interest, or rights of any kind in or to the Confidential Material.

3. Except as otherwise expressly set forth in this Agreement, Recipient Party shall hold in confidence and shall not disclose, reproduce, publish, distribute, transmit, reverse engineer, decompile, disassemble, or transfer, directly or indirectly, in any form, by any means, or for any purpose, the Confidential Material of the Disclosing Party or any portion thereof. Notwithstanding the foregoing, Recipient Party may disclose the Confidential Material to those of its Representatives who are involved in the confidential discussions to, and only to the extent necessary to, permit such Representatives to assist Recipient Party in evaluating or executing the potential business transaction between the Recipient Party and the Disclosing Party or otherwise participate in the confidential discussions between the parties, and provided that Recipient Party shall have instructed each such Representative as a condition to the receipt of such Confidential Material to be bound by the terms of this Agreement to the same extent as if they were parties hereto, or in the case of any professional Representative, that such Representative shall either be legally bound to comply with the terms and conditions of this Agreement or shall have so obligated itself in writing to be bound by the terms hereof. Recipient Party shall be responsible for any breach of this Agreement by any of its Representatives. Any such responsibility shall be in addition to and not in any way in limitation of any right or remedy that the Disclosing Party may have against such Representative with respect to such breach. In addition, neither party hereto will make any disclosure, without the written consent of the other, that it (i) is having or has had discussions concerning a possible Transaction with the other party or (ii) has requested, received, or furnished any Confidential Material; *provided* that either party may make such disclosure if it has been advised by its counsel that such disclosure must be made by it in order that it not commit a violation of law and, prior to such disclosure, such party promptly advises and consults with the other party and its legal counsel concerning the information such party proposes to disclose.

4. Recipient Party's obligations under this Agreement with regard to (i) Trade Secrets shall remain in effect for as long as such information shall remain a trade secret under applicable law, (ii) Confidential Material other than Trade Secrets and consumer non-public information shall remain in effect for three (3) years after the execution of this Agreement, and (iii) consumer non-public information shall remain in effect indefinitely. If a definitive written agreement between the parties regarding a Transaction that is the subject of the parties' confidential discussions is reached, Recipient Party's obligations with regard to Trade Secrets and consumer non-public information shall continue to remain in effect as set forth above, and Recipient Party's obligations with regard to other Confidential Material shall continue to remain in effect for the term of any such definitive agreement and three (3) years after the expiration or termination of such definitive agreement.

5. In the event the Recipient Party is required or requested by law, judicial order, any third party or governmental agency to disclose any Confidential Material of the Disclosing Party (including without limitation by verbal or written questions, interrogatories, requests for information or documents, subpoenas, or civil investigative demand or similar process), the Recipient Party shall promptly notify the Disclosing Party in writing of such requests or demand in order to provide such Disclosing Party an



opportunity to seek an appropriate protective order or other relief to prevent such disclosure and/or to consent in writing to disclosure of such Confidential Material. The Recipient Party shall reasonably cooperate in all efforts to prevent disclosure of such Confidential Material of the Disclosing Party, at the Disclosing Party's expense. In the event that a protective order or other remedy is not obtained or the Disclosing Party consents in writing to the disclosure of certain Confidential Information, Recipient Party agrees to furnish only that portion of the Confidential Material which, upon the advice of its counsel, is legally required to be disclosed and, upon the Disclosing Party's request, to use reasonable efforts, at the Disclosing Party's expense, to obtain assurances that confidential treatment will be accorded to such information.

6. Upon written notice from the Disclosing Party, Recipient Party shall promptly deliver to Disclosing Party or (if requested by the Disclosing Party) destroy all documents or other matter furnished by the Disclosing Party or its Representatives to Recipient Party and its Representatives constituting Confidential Material, together with all copies thereof in Recipient's possession or the possession of its Representatives without retaining a copy of any such material in any type of media. In the event of such request, all other documents or other matter constituting Confidential Material in the possession of Recipient Party or its Representatives, as well as all reports, analyses, notes, or other information prepared by the Recipient Party or its Representatives that are based on, contain, or reflect any Confidential Material, shall be destroyed, with such destruction (and any destruction requested pursuant to the immediately preceding sentence) confirmed in writing to the Disclosing Party. Notwithstanding the return or destruction of the Confidential Material and related documents, Recipient Party and its Representatives shall continue to be bound by their obligations hereunder in respect of the Confidential Material.

7. The parties hereto understand and agree that neither the Disclosing Party nor any of its agents, advisors or representatives (i) have made or make any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Material or (ii) have any liability whatsoever to the Recipient Party or its Representatives relating to or resulting from the use of the Confidential Material or any errors therein or omissions therefrom.

8. Each party hereto acknowledges and agrees that the other party hereto may design, develop, manufacture, acquire or market products and services competitive with such party's products and services and conduct its business in whatever way it chooses provided there is no conflict with or violation of this Agreement. Other Party expressly acknowledges and agrees that eCom (and/or its Affiliates) may have already engaged and may hereafter engage in discussions with other parties relating to the provision of services or products which are the subject of the confidential discussions between the parties hereto and that nothing contained herein shall be deemed to prohibit or restrict eCom (and/or any of its Affiliate's) right, directly or through others, to develop, use or market products or services, or engage others with respect to the development, use or marketing of products or services, regardless of whether any such products or services are similar to or competitive with those products or services which Other Party renders or offers or otherwise are the subject of the confidential discussions between the parties hereto.

9. No contract or agreement providing for any Transaction being discussed between the parties shall be deemed to exist between Recipient Party and Disclosing Party unless and until a final written definitive agreement has been executed and delivered by the parties. Nothing herein shall be deemed to obligate either party hereto to consummate a business transaction, and either party shall be entitled to terminate discussions with the other party at any time. Further, nothing herein shall constitute or be deemed to constitute a partnership between the parties hereto or constitute or be deemed to constitute one party as agent of the other, for any purpose whatsoever, and neither party shall have the authority or power to bind the other, or to contract in the name of or create a liability against the other, in any way or for any purpose.

10. The parties agree that money damages would not be a sufficient remedy for any breach of this Agreement and that, in addition to all other remedies which may be available to the parties hereto, the parties shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and each of the parties hereto further agrees to waive, and to use its best efforts to



cause its Representatives to waive, any requirement for the securing or posting of any bond in connection with such remedy.

11. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New Jersey without giving effect to its laws governing conflict of laws. Both parties hereto hereby irrevocably and unconditionally submit to the non-exclusive jurisdiction of any State or Federal court sitting in Princeton, New Jersey, over any suit, action or proceeding arising out of or relating to this Agreement. Both parties agree irrevocably and unconditionally to waive any objection to the laying of venue of any such suit, action or proceeding brought in any such court and any claim that any such suit action or proceeding brought in any such court has been brought in an inconvenient forum. Both parties agree that a final judgment in any suit, action or proceeding brought in any such court shall be conclusive and binding upon such party and may be enforced in any other courts to whose jurisdiction such party is or may be subject, by suit upon such judgment.


12. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs, and legal representatives. Neither party may assign its rights or delegate its duties or obligations under this Agreement without the other party's prior written consent. A waiver by either of the parties hereto of any breach by the other party of any of the terms, provisions or conditions of this Agreement or the acquiescence of either party hereto in any act (whether commission or omission) which but for such acquiescence would be a breach as aforesaid, shall not constitute a general waiver of such term, provision or condition of any subsequent act contrary thereto. This Agreement represents the entire understanding between the parties with respect to the subject matter hereof and supersedes all other written or oral agreements heretofore made by or on behalf of the parties hereto with respect to the subject matter hereof and may be changed only by an agreement in writing signed by the authorized representatives of the parties. If any provision of this Agreement is declared invalid by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement will continue in full force and effect. All obligations created by this Agreement shall survive a change or termination of the parties' business relationship.


13. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. This Agreement may be executed in counterparts and facsimile signatures shall be effective as if original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

Princeton eCom Corporation
Address: 650 College Road East
Princeton, NJ 08540-6624

Other Party: Erie County Water Authority
Address: 350 Ellicott Square Building
295 Main Street

By: 
Name: Kathryn B. Wig
Title: Legal Assistant

By: 
Buffalo, NY 14203-2494
Name: Frank E. Swiatek
Title: Chairman

Limited Agency Appointment Addendum

This **Limited Agency Appointment Addendum** ("Addendum") supplements and amends the agreement for Lockbox, Web ACH, and/or other electronic bill payment services between **OFFICIAL PAYMENTS CORPORATION** (successor-in-interest to Online Resources Corporation and Princeton eCom, herein "OPAY") and the undersigned client ("Client") (the foregoing, including the master agreement, and all amendments, exhibits schedules, and addenda thereto, collectively the "Agreement"). This Addendum shall be incorporated into the Agreement and made a material part thereof and is effective as of the last date signed in the signature block below (the "Addendum Effective Date").

SECTION 1. LIMITED AGENCY APPOINTMENT

- 1.1 Except for the limited agency relationship set forth in Section 1.2 of this Addendum below, the Parties are independent contractors. Nothing in the Agreement shall be deemed to create an employment, partnership, fiduciary or joint venture relationship between the Parties.
- 1.2 Notwithstanding Section 1.1 of this Addendum or anything in the Agreement to the contrary, Client hereby acknowledges OPAY has and will continue to operate, and Client hereby appoints OPAY as Client's agent for the limited purpose of processing bill payments from Client's customers, end users, or other like term as used in the Agreement (collectively, "Customer"). Client acknowledges and agrees that payment of an amount by a Customer to OPAY will constitute full and final settlement of such amount payable by such Customer to Client. In the event of a dispute regarding the receipt or amount of any payment, such dispute shall be between OPAY and Client.

SECTION 2. EFFECTIVENESS OF AGREEMENT

- 2.1 Unless defined or modified in this Addendum, all capitalized words or terms used in this Addendum shall have the definitions, if any, ascribed to such words or terms in the Agreement.
- 2.2 Except as expressly amended and modified by this Addendum, all terms and conditions set forth in the Agreement shall remain unmodified, binding, and in full force and effect. In the event of a conflict between the terms of this Addendum and the terms of the Agreement, the terms of this Addendum shall control. This Addendum sets forth the entire agreement and understanding of the parties regarding the particular subject matter of this Addendum, and merges and supersedes all prior or contemporaneous agreements, discussions and correspondence pertaining to the subject matter of this Addendum. This Addendum may be executed in counterpart copies, each of which, and together, shall be effective as original, binding instruments. Facsimile signatures shall be effective as if original.
- 2.3 Any change to this Addendum by or at the direction of Client, following OPAY's signature hereof and prior to receipt by OPAY of a fully-executed identical copy hereof, which is not expressly ratified by OPAY in writing within three (3) calendar days of the date of OPAY's signature shown below, will, at OPAY's sole discretion, render this Addendum null and void ab initio and OPAY shall be relieved automatically of all obligations hereunder and under the Agreement.

IN WITNESS WHEREOF, each of the parties hereto has caused this Addendum to be executed as of the Addendum Effective Date first defined above.

OFFICIAL PAYMENTS CORPORATION
("OPAY")

CLIENT NAME
("Client")

[Upon Client's acceptance, signature blocks to be inserted by OPAY for execution via DocuSign.]