

## PAYMENT GATEWAY MERCHANT SERVICE AGREEMENT

**Cornerstone Payment Systems**, hereinafter referred to as “Payment Gateway”, offers merchants various products and services relating to payment processing and other value-added services directly and through Third Party Service Providers. In order for you, on behalf of your company, to obtain or continue using the transaction processing services, payment gateway services and other value-added products and services, more fully described at [cornerstonepaymentsystems.com](http://cornerstonepaymentsystems.com) as such descriptions may be changed from time to time (the “Payment Gateway Services”), you must agree to and accept the terms and conditions of this agreement (the “Agreement”). This Agreement sets out the terms and conditions under which you may utilize the Payment Gateway Services. Please read this Agreement carefully. It is important that you understand that upon your acceptance of this Agreement, by continuing to use any of the Payment Gateway Services and/or by clicking on the “I AGREE” button at the end of this Agreement, it becomes a legally binding contract.

By continuing to use any of the Payment Gateway Services and/or by clicking on the “I AGREE” button you represent that you have reviewed and understand the Agreement and agree to be legally bound by all its terms and conditions (including the terms and conditions stated on web pages incorporated by reference herein). If you do not agree or are not willing to be bound by the terms and conditions of this Agreement, please do not click on the “I AGREE” button and do not seek to obtain or continue using the Payment Gateway Services.

NOW THEREFORE, you and/or your company, (“You” or “Your”) agree as follows:

1.

### DEFINITIONS:

**“Acquirer” or “Acquiring Bank” or “Acquiring Institution”** means the financial institution supplying You with the ability to accept credit cards for payments. The financial institution will charge You fees for providing these services.

**“ACH” or “Automated Clearing House”** means an electronic network that allows the exchange and settlement of electronic payments between financial institutions.

**“Affiliate Partner”** means any third party through whom Payment Gateway may offer the Payment Gateway Services to You, including but not limited to an “ISO” or “Independent Sales Organization”, Merchant Service Provider (“MSP”), Value Added Reseller (“VAR”), Application Service Provider (“ASP”), Acquiring Bank and Financial Institution.

**“API” or “Application Programming Interface”** means an interface allowing integration with a programmable software package or platform.

**“AVS” or “Address Verification Service”** for the purposes of this agreement shall mean a response generated by the Issuing Bank to indicate the level of accuracy of a given address based on the billing address of the customer's credit card.

**“Batch”** means any bulk processing of Transactions, or a bulk settlement submitted to a Processor by Payment Gateway including credit card, ACH, or other related transactions.

**“Card Association”** for the purposes of this Agreement means a network of Issuing Banks and Acquiring Banks that process payment cards of a specific brand. Without limiting the foregoing definition, American Express, Discover Financial Services, JCB International, MasterCard International Inc., Visa Inc., Visa International Inc., and any other payment card company belong

to the Card Association.

**“Close Batch”** means the process of sending a batch of transactions for settlement.

**“Confidential Information”** means any information, data, trade secrets, know-how, directly, or indirectly, in writing or orally or by inspection of samples, equipment or facilities, including but not limited to past, present and future research, products, product plans, services, services documentation (in whatever form or media provided) customers, customer lists, user data, revenue, markets, software developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration, marketing, marketing materials, financial or other business information, or the financial terms of this Agreement.

**“Discount Rate”** means the fee charged by Your financial institution to You for services associated with processing card transactions or fees charged by Payment Gateway to You for ACH or other payment methods.

**“Effective Date”** means the earlier of the date You agree to the terms and conditions of the Agreement by (i) clicking the “I AGREE” button associated with the Agreement; or (ii) by using Payment Gateway Services or (iii) acknowledging Your acceptance of the Agreement by any other method, including without limitation execution of a Merchant Account Application that incorporates the Agreement by reference.

**“Fee Schedule”** means a list of fees and charges that is accepted by You and paid by you to Payment Gateway.

**“Interchange Fee”** means the fee set by and collected by the Card Association from Your financial institution (Acquiring Bank) and paid to the issuing financial institution (Issuing Bank) to cover expenses incurred in billing the cardholder.

**“IP Address”** means an internet address usually represented in dotted decimal, e.g. “127.0.0.1”.

**“Issuing Bank”** means the financial institution that issues Card Association branded Payment Cards directly to consumers.

**“PCI DSS”** means Payment Card Industry Data Security Standard.

**“Privacy Policy”** means the then current Payment Gateway Privacy Policy which can be found on the internet at [cornerstonepaymentsystems.com](http://cornerstonepaymentsystems.com)

**“Return Payment Fee”** is a fee charged to You by Payment Gateway on each occurrence when Payment Gateway is unable to collect fees on Your Account for any reason, including but not limited to insufficient funds, closed account, or any other negative response.

**“Third Party Service Provider”** for purposes of this Agreement means an entity that provides bank and/or merchant payment services including, but not limited to billing, reporting, customer service, authorization, and settlement services.

**“Trademark(s)”** means all common law or registered trademark(s), service mark(s), trade name(s) and trade dress rights and/or similar or related rights under any laws of any country or jurisdiction, including but not limited to the United States of America whether existing now or hereafter adopted.

**“Transaction(s)”** means any billable occurrence completed or submitted under Your Account including but not limited to sale, void, refund, credit, offline force, capture, authorization, validate, update or settlement regardless of whether approved or declined.

**“VAR” or “Value Added Reseller”** means any third-party vendor that enhances or modifies existing hardware or software, adding value to the services provided by the processor or acquirer.

**“Value Added Service(s)”** means the following Payment Gateway Services, including but not limited to: Customer Vault™, iSpyFraud™, CertifyPCI™, Advanced Transaction Routing

Interface™ (ATRI™), and /or any other service or product offered by Payment Gateway now or in the future.

2.

**TERM:**

The term of the Agreement shall commence on the Effective Date and shall remain in full force and effect until terminated pursuant to Section 10.

3.

**LEGAL:**

By accepting the terms and conditions of this Agreement, You represent and warrant that (i) You have the legal authority to accept the terms and conditions of this Agreement on behalf of Your company and that such acceptance will be binding on Your company, (ii) all information You have provided to Payment Gateway is true and correct in all respects, and (iii) You will update Payment Gateway in writing with any changes to information You have previously supplied. In furtherance of Your representations, Payment Gateway reserves its right to refuse to provide You with any Payment Gateway Service and terminate this Agreement, with or without notice, if You have supplied any information which is misleading, untrue, inaccurate or incomplete.

4.

**USE OF PAYMENT GATEWAY SERVICES**

4.1

**Payment Gateway Grant**

(a)

You are hereby granted a non-exclusive right to use the Payment Gateway Services during the Term hereof so long as You are current in paying all applicable fees as referenced in Section 8 and Section 9 hereof, subject to the restrictions contained herein and restrictions communicated to You in the future by Payment Gateway. Payment Gateway shall provide the Payment Gateway Services to You in all material respects in accordance with the terms and conditions of this Agreement and Your rights are granted solely for the purposes contained herein and for no other purpose.

(b)

Your use of the Payment Gateway Services shall be restricted to You. You shall not submit Data or Transaction data to Payment Gateway or otherwise process orders on behalf of any other entity or individual. Any attempt by You to use the Payment Gateway Services on behalf of another entity or individual may result in Your obligation to pay to Payment Gateway additional fees and charges and/or Payment Gateway may revoke Your right to use the Payment Gateway Services and terminate this Agreement.

(c)

In connection with the exercise of Your rights and obligations under this Agreement including, without limitation, any related to individual privacy, You will comply, at Your own expense, with all applicable laws, regulations, rules, ordinances and orders of governmental authorities having jurisdiction. You shall not use the Payment Gateway Services in any manner, or in furtherance of any activity that may cause Payment Gateway to be subject to investigation, prosecution, or legal action.

(d)

Payment Gateway reserves the right to amend, modify or change its policies, procedures, and guidelines and You shall comply with all then current policies, procedures, and guidelines of Payment Gateway governing the Payment Gateway Services.

5.

## DATA SECURITY, COLLECTION, TRANSFER AND RETENTION

5.1

### Payment Gateway's Duties

a.

You understand Payment Gateway will collect, retain, use and share information and data collected from You and your customers in accordance with Payment Gateway's then current Privacy Policies. You hereby consent, as a condition of Your enrollment in and use of the Payment Gateway Services, to the collection, use, processing and transfer of personal data as described in Section 5 and Payment Gateway's Privacy Policies.

(b)

You understand that Payment Gateway may collect and hold personal or non-public information about You and Your customers, including but not limited to: Your name, address, telephone number, e-mail address, social security number and/or tax identification number and payment data as well as Your customers' names, mailing & shipping addresses, email addresses, phone number, types of purchases and descriptions of purchases ("Data") for the purpose of considering eligibility for the Payment Gateway Services and for the purpose of providing You and your customers with the Payment Gateway Services. You also understand and agree that Payment Gateway, its subsidiaries, Affiliate Partners, Third Party Service Providers, suppliers and/or their agents and/or contractors may transfer Data among themselves as necessary for the purpose of the provision and management of the Payment Gateway Services and that Payment Gateway may further transfer Data (i) with non-affiliated entities that assist Payment Gateway in providing products and services that You have requested; (ii) with companies that provide support services to Payment Gateway; (iii) with companies that provide marketing services on behalf of Payment Gateway; or (iv) as otherwise provided by law.

(c)

You further understand that in evaluating Your eligibility for, provision of, administration and management of the Payment Gateway Services, as well as under circumstances described in the Privacy Policy that may be changed from time to time, that Payment Gateway may obtain various consumer reports regarding You from third parties, run a credit check or obtain other personal or credit information about You.

(d)

You further understand that while Payment Gateway uses commercially reasonable efforts to safeguard Data and Transaction data transmitted while using Payment Gateway Services, Payment Gateway does not warrant that Data and Transaction data will be transported without unauthorized interception or modification or that Data or Transaction data will not be accessed or compromised by any unauthorized third parties.

(e)

With respect to the Payment Gateway Services, at all times while this Agreement is in effect, Payment Gateway will maintain compliance with the Payment Card Industry Data Security Standard (PCI DSS).

5.2

### Your Duties

(a)

You agree that you will comply at all times with all applicable and then-current legal obligations and security measures including without limitation those issued by the United States

Government, Federal, State and Municipal laws and ordinances, Card Association, the Federal Trade Commission, PCI DSS and any other governing body. You agree that you will comply with all Payment Gateway security protocols, notices and safeguards in effect during the term of this Agreement. You warrant that You have taken such precautions as are necessary to ensure that Your data and Your customer data is protected and that Your electronic systems are secure from breach, intrusion or compromise by any unauthorized third parties. In the event that Your system is breached and an unauthorized third party has access to or has accessed Data or Transaction data, You shall notify the designated parties as required under any applicable laws or industry guidelines and shall immediately notify Payment Gateway of such breach and take such prompt action and precautions as necessary to prevent any continuous or additional breach.

(b)

You are solely responsible for the security of data residing on server(s) owned or operated by You, Third Party Service Provider, or a third party designated by You (e.g., a web hosting company, processor, or other service provider), including credit card numbers and any other personal data. You shall comply with all applicable laws and regulations governing the collection, retention and use by You of credit card and other financial information and agree to provide notice to your customers on Your web site that discloses how and why personal and financial information is collected and used, including uses governed by this Agreement.

(c)

You agree that You are solely responsible for verifying the accuracy and completeness of all Transactions submitted and processed by Payment Gateway associated with Your account and verifying that all corresponding funds are accurately processed. You acknowledge that the fees associated with any and all transactions processed through Your account are earned by Payment Gateway and shall not be reimbursed. You acknowledge that Payment Gateway shall not be liable for any improperly processed or unauthorized Transactions or illegal or fraudulent access to Your account, Data or Transaction data. Payment Gateway's liability for unauthorized Transactions or improperly processed Transactions solely attributable to the negligence of Payment Gateway is limited pursuant to Section 13.

(d)

You agree not to use, disclose, sell or disseminate any card, cardholder or ACH information obtained in connection with a Transaction except for purposes of completing or settlement of a Transaction and/or resolving chargebacks, retrievals or similar issues involving a Transaction unless required to do so by court order or governmental agency request, subpoena or order.

(e)

You agree that You are solely responsible for compiling and retaining permanent records of all Data and Transaction data for Your reference. Except as otherwise provided herein, Payment Gateway shall have no obligation to store, retain, report or otherwise provide any copies of or access to any records of Transactions or other Data collected or processed by Payment Gateway. You acknowledge that upon termination of this Agreement, Payment Gateway shall have no obligation to provide You with any Data or Transaction data. You agree that You shall use proper controls for and limit access to all Data or Transaction data. Prior to discard You shall render all Data or Transaction data unreadable and abide by any laws or regulations imposed on You for Data or Transaction data destruction and/or disposal.

5.3

Your User Name and Password

(a)

In connection with Your rights described in Section 4.1, Payment Gateway or Affiliate Partner will issue to You, or permit You to use a user name and password, to enable You and/or Your employees and agents to access Your gateway account and use the Payment Gateway Services. You will restrict access to such user name, password, and account to Your employees and agents as may be reasonably necessary and consistent with the purposes of this Agreement and will ensure that each such employee and agent accessing and using the account is aware of and otherwise complies with all applicable provisions of this Agreement and any recommendations and notices regarding such use and access.

(b)

You are solely responsible for maintaining adequate security and control of any and all user names, passwords, or any other codes that are issued to You by Payment Gateway or Affiliate Partner or selected by You, for purposes of giving You access to the Payment Gateway Services. Payment Gateway shall be entitled to rely on information it receives from You and may assume that all such information was transmitted by or on behalf of You.

6.

## TRADEMARKS

6.1

### Trademark Use

(a)

Payment Gateway hereby grants to You the right to use, reproduce, publish, perform and display the Payment Gateway Marks as follows: **(a)** on Your web site in connection with Your offering of Payment Gateway Services to Your customers; and **(b)** in promotional and marketing materials and electronic and printed advertising, publicity, press releases, newsletters and mailings about or related to any of the Payment Gateway Services.

(b)

You hereby grant to Payment Gateway, its Third Party Service Provider and its Affiliate Partners the right to use, reproduce, publish, perform and display Your Marks as follows: **(a)** in connection with the development, use, reproduction, modification, adaptation, publication, display and performance of the Payment Gateway Services offered and/or accessible through Your web site; and **(b)** in promotional and marketing materials and electronic and printed advertising, publicity, press releases, newsletters and mailings about or related to any of the Payment Gateway Services.

(c)

For purposes of this Agreement, “Your Marks” means Your customary name and logo, and such other trademarks as You may from time to time notify Payment Gateway to be “Your Marks” within the meaning of this Agreement. For purposes of this Agreement, “Payment Gateway Marks” means Payment Gateway customary name and logo, and such other trademarks as Payment Gateway may from time to time notify You to be “Payment Gateway Marks” within the meaning of this Agreement.

6.2

### Trademark Restrictions

(a)

Each party shall comply with all standards with respect to the other party's Trademarks which may be furnished by such party from time to time and all uses of the other party's Trademarks in proximity to the trade name, trademark, service name or service mark of any other person or entity shall be consistent with the standards furnished by the other party from time to time.

Neither party shall create a combination mark consisting of one or more Trademarks of each party. All uses of the other party's Trademarks shall inure to the benefit of the party owning such Trademark. Each party hereby acknowledges and agrees that, as between the parties, the other party is the owner of the Trademarks identified as its Trademarks in any written notice provided to the other party pursuant to this Agreement. Either party may update or change the list of Trademarks usable by the other party hereunder at any time by written notice to the other party.

(b)

Either party must include a statement of ownership when displaying or reproducing either parties trademark. The following statement is acceptable and shall be placed contiguous to the Trademark: "The trademark is the property of its respective owner."

(c)

Except as otherwise provided herein, You shall not use, register or attempt to register any Payment Gateway Trademarks or marks or domain names that are confusingly similar to any of the Payment Gateway Trademarks, marks or Domain Name(s). Except as authorized in this agreement, You shall not take any actions inconsistent with Payment Gateway's ownership of Payment Gateway's Trademarks and any associated registrations or attack the validity thereof. You shall not use Payment Gateway's Trademarks in any manner that would indicate You are using such Payment Gateway Trademarks other than as a licensee nor assist any third party do any of the same.

7.

#### INTELLECTUAL PROPERTY AND PROHIBITION AGAINST REVERSE ENGINEERING

The parties agree that Payment Gateway owns and retains all right, title and interest in and to the Payment Gateway Services, Trademarks, copyrights, technology and any related technology utilized under or in connection with this Agreement, including but not limited to all intellectual property rights associated therewith. No title to or ownership of any of the foregoing is granted or otherwise transferred to You or any other entity or person under this Agreement. You shall not reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or trade secrets for any of Payment Gateway Services or related technology.

8.

#### PAYMENT TERMS

8.1

##### Due Date and ACH Authorization

(a)

Payment Gateway fees shall begin on the Effective Date and You will be billed on the first business day of each month following the Effective Date for any and all amounts owing under this Agreement. If fees accrue to more than \$50.00 USD at anytime in any given month, Payment Gateway will bill You the full amount due on a more frequent basis at Payment Gateway's discretion.

(b)

You must authorize Payment Gateway to initiate transaction entries to Your depositories account through ACH. This authority is to remain in full force and effect until i) Payment Gateway has received written notification from You of Your request for termination in such time as to afford Payment Gateway and Your depository institution a commercially reasonable opportunity to acknowledge and respond to the request and ii) Payment Gateway has collected all fees due and owing under this agreement. If Payment Gateway is unable to collect amounts owing from your depository account, You hereby authorize Payment Gateway to charge Your credit card for any

and all amounts owing to Payment Gateway under this Agreement. Entries initiated to or from Your depository account will be in accordance with the rules of the National Automated Clearing House Association (NACHA) and/or any other regulatory body or agency having jurisdiction over the subject matter hereof.

(c)

You must promptly update Your account information with Payment Gateway or Affiliate Partner with current and accurate information. If You fail to provide Payment Gateway or Affiliate Partner with current and accurate depository account or credit card account information, Payment Gateway may immediately discontinue providing Payment Gateway Services to You, without liability, until such information is provided to Payment Gateway and/or terminate this Agreement. You acknowledge that any change in account information may not be effective until the month following the month in which Payment Gateway receives such notice. Termination of Your authorization shall result in termination of any and all Payment Gateway Services.

8.2

Affiliate Partner Bills You

In furtherance of Section 8.1, if You are billed by an Affiliate Partner for some or all of the Fees, You shall pay the Affiliate Partner in such manner as mutually agreed upon between You and such Affiliate Partner.

9.

FEES

9.1

Payment Gateway Service Fees

(a)

You shall pay to Payment Gateway the fees as set forth in the Fee Schedule provided to You by Payment Gateway and/or, if applicable Affiliate Partner. The Fee Schedule is hereby incorporated into the terms of this Agreement by reference.

(b)

Notwithstanding the foregoing, if Your relationship with the Affiliate Partner that offered you the Payment Gateway Services expires or terminates and such Affiliate Partner was billing You for certain Fees, then You may continue using the Payment Gateway Services. If You elect to continue using the Payment Gateway Services, You acknowledge and agree that Payment Gateway may begin to bill You for such Fees in the amounts that the Affiliate Partner had been charging You. In accordance with Section 15.5 Payment Gateway may amend the Fee schedule after providing You with thirty (30) days notice.

9.2

Other Fees and Charges

(a)

You shall incur a late fee in the amount set forth in the fee schedule if any amounts due to Payment Gateway under this Agreement are not paid on or before the tenth (10<sup>th</sup>) day following the date when due. In addition, You shall be subject to a finance charge equal to one and one-half percent (1.5%) per month or the highest rate allowable by law, whichever is less, determined and compounded daily from the date due until the date paid. Payment of such late fee(s) and finance charge(s) will not excuse or cure any breach or default for late payment. Payment Gateway may accept any check or payment from You without prejudice to its rights to recover the balance due or to pursue any other right or remedy. No endorsement or statement on any check or payment or



any correspondence accompanying any check or payment or elsewhere will be construed as an accord or satisfaction.

(b)

On each occurrence when Payment Gateway is unable to collect fees on Your Account for any reason, including but not limited to insufficient funds, closed account, or any other negative response, Payment Gateway may charge You a Return Payment Fee in the amount of \$25.00 USD, or as set forth in the fee schedule.

(c)

If You have not paid all owing amounts after two (2) days when due, Payment Gateway may, in its sole discretion, discontinue providing You with Payment Gateway Services. If You have still not paid all owing amounts after thirty (30) days following the date the payment was due, then Payment Gateway may, in its sole discretion, immediately terminate this Agreement.

Notwithstanding, if You subsequently pay in full all owing fees, including but not limited to late fees, finance charges and Return Payment Fees, and if Payment Gateway has not already terminated this Agreement, then Payment Gateway may elect to reactivate the Payment Gateway Services and charge You a Service Reactivation Fee in the amount set forth in the fee schedule.

(d)

You agree to pay all costs and expenses of whatever nature, including attorneys' fees, incurred by or on behalf of Payment Gateway in connection with the collection of any unpaid charges and fees.

10.

## TERMINATION

10.1

### Termination by You

(a)

You may terminate this Agreement with or without cause, and for any reason, by providing Payment Gateway with at least thirty (30) days written notice of Your intent to terminate this Agreement.

(b)

In the event You are billed by an Affiliate Partner in furtherance of Section 8.2 of this Agreement, you hereby authorize Affiliate Partner to terminate this Agreement on your behalf.

10.2

### Termination by Payment Gateway

(a)

Payment Gateway may terminate this Agreement and/or terminate Your use of Payment Gateway Services immediately, or at anytime, without advance notice and with or without cause, for any reason including without limitation to Your breach or default of any obligation set forth in this Agreement or if Payment Gateway determines, in its sole discretion, that Your business practices are detrimental to the achievement of Payment Gateway's business objectives.

(b)

In such event, Payment Gateway shall provide You with a written or electronic notice of termination.

10.3

### Termination by Affiliate Partner or Third Party Service Provider

(a)

In the event You are billed by an Affiliate Partner in furtherance of Section 8.2, and if Payment Gateway receives notice from such Affiliate Partner that it has terminated or suspended its relationship with You, Payment Gateway may suspend and/or terminate Your right to use Payment Gateway Services and/or terminate this Agreement without notice and without liability.

(b)

In the event Payment Gateway is notified by a Third Party Service Provider, court of competent jurisdiction, governmental body or authority, Acquiring Bank or the Card Association that You are no longer entitled to receive payment data for any reason whatsoever, Payment Gateway may suspend and/or terminate Payment Gateway Services and/or this Agreement without notice and without liability.

10.4

Effect of Termination and Survival

Upon termination of this Agreement for any reason whatsoever, all rights and interests under this Agreement shall be extinguished and shall be given no further force nor effect except that i) all accrued payment obligations hereunder shall survive such expiration or termination; and (ii) the rights and obligations of the parties under Sections 7, 10.4, 11, 12, 13, 14 and 15 shall survive termination.

11.

CONFIDENTIALITY AND NONDISCLOSURE

11.1

Use of Confidential Information

(a)

Each party that receives information (the "Receiving Party") from the other party (the "Disclosing Party") agrees to use reasonable best efforts to protect all non-public information, trade secrets and know-how of the Disclosing Party that is either designated as proprietary and/or confidential or that, by the nature of the circumstances surrounding disclosure, ought in good faith to be treated as proprietary and/or confidential ("Confidential Information"), and in any event, to take precautions at least as great as those taken to protect its own Confidential Information of a similar nature. Each party agrees that the terms and conditions of this Agreement will be Confidential Information, provided that each party may disclose the terms and conditions of this Agreement to its immediate legal and financial consultants in the ordinary course of its business.

(b)

Each Party agrees not to divulge any confidential information, trade secrets or know how or any information derived therefrom to any third person or entity and shall only disclose Confidential Information to employees on a "need to know" basis who have executed a nondisclosure agreement with similar terms and obligations to this Agreement.

(c)

Each Party shall not make any use whatsoever at anytime of such Confidential Information except as contemplated by this Agreement.

(d)

Each Party shall not copy or reverse engineer any such Confidential Information.

11.2

Exclusions

The foregoing restrictions will not apply to any information that: (i) the Receiving Party can document it had in its possession prior to disclosure by the Disclosing Party, (ii) was in or

entered the public domain through no fault of the Receiving Party, (iii) is disclosed to the Receiving Party by a third party legally entitled to make such disclosure without violation of any obligation of confidentiality, (iv) is required to be disclosed by applicable laws or regulations (but in such event, only to the extent required to be disclosed), or (v) is independently developed by the Receiving Party without reference to any Confidential Information of the Disclosing Party. Upon request of the other party, or in any event upon any termination or expiration of the Term, each party will return to the other all materials, in any medium, that contain, embody, reflect or reference all or any part of any Confidential Information of the other party. Each party acknowledges that breach of this provision by it would result in irreparable harm to the other party, for which money damages would be an insufficient remedy, and therefore that the other party will be entitled to seek injunctive relief to enforce the provisions of this Section 11.

12.

## REPRESENTATIONS AND WARRANTIES

12.1

### Mutual Representations and Warranties

Each party represents and warrants to the other that (i) this Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms; (ii) the party's obligations under this Agreement do not violate any law or breach any other agreement to which such party is bound; (iii) it has all necessary right, power and ability to execute this Agreement and to perform its obligations therein; and (iv) no authorization or approval from any third party is required in connection with such party's execution, delivery or performance of this Agreement.

12.2

### Your Representations and Warranties

a.

You represent and warrant that You are engaged in a lawful business that includes the sale of products and/or services, and are duly licensed to conduct such business under the laws of all jurisdictions in which You conduct business. You further represent and warrant that all statements made by You in this Agreement, or in any other document relating hereto by You or on Your behalf, are true, accurate and complete in all material respects. You hereby authorize Payment Gateway to investigate and confirm the information submitted by You herein. For this purpose, Payment Gateway may utilize credit bureau / reporting agencies and / or its own agents.

(b)

You will comply with all applicable laws, regulations, rules, ordinances and orders of governmental authorities having jurisdiction. You will further comply with the Payment Card Industry Data Security Standard (PCI DSS), the Gramm-Leach-Bliley Act, the National Automated Clearing House Association (NACHA) and any other regulatory body or agency having jurisdiction over the subject matter hereof.

(c)

You will abide with all material terms of the then current policies, procedures, and guidelines of Payment Gateway governing the Payment Gateway Services.

12.3

### Payment Gateway Representations and Warranties

(a)

Payment Gateway represents and warrants that the Payment Gateway Services provide to you hereunder will substantially conform to the specifications as set forth in the applicable Payment Gateway Service Level Agreement (SLA) as contained in Appendix A hereof and as may be

amended from time to time in Payment Gateway's sole discretion. In addition to the exclusions contained in Appendix A, the SLA will not apply if (i) a defect has been caused by Your malfunctioning equipment or software, (ii) the Payment Gateway Services are used in material variation with this Agreement or the applicable documentation, or (iii) any of the Payment Gateway Services have been modified by any individual or entity other than Payment Gateway.

(b)

You acknowledge that Payment Gateway Services are designed for use with certain third-party programs, including, without limitation, certain Internet browser software programs. You will look solely to the developers and manufacturers of such programs with regard to warranty, maintenance or other support regarding the same. Payment Gateway makes no warranty, express or implied, with regard to any such third-party software.

(c)

You may not rely on the representation or warranty regarding Payment Gateway Services by any third party in contravention of the foregoing statements, including representations or warranties of any Third Party Service Provider or Affiliate Partner. In the event of a breach of the foregoing warranty, Payment Gateway shall use commercially reasonable efforts to repair, or at its option replace, the Payment Gateway Services. You acknowledge that Payment Gateway does not warrant that such efforts will be successful. If Payment Gateway's efforts are not successful, You may terminate this Agreement in accordance with Section 10.1. **THE FOREGOING SHALL CONSTITUTE YOUR SOLE REMEDY, AND PAYMENT GATEWAY'S SOLE LIABILITY, FOR INTERRUPTIONS, OUTAGES OR OTHER DELAYS IN PAYMENT GATEWAY'S SERVICES AND/OR VALUE-ADDED SERVICES.** Payment Gateway does not warrant the services of any third party, including without limitation Third Party Service Providers, Affiliate Partners, VARS or the Card Association.

12.4

Payment Gateway Services "As Is" Disclaimer

**PAYMENT GATEWAY SERVICES ARE PROVIDED ON AN "AS IS" "AS AVAILABLE" BASIS WITHOUT ANY REPRESENTATIONS OR WARRANTIES. PAYMENT GATEWAY DOES NOT REPRESENT OR WARRANT THAT THE PAYMENT GATEWAY SERVICES WILL BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ENTIRELY ERROR FREE. YOU MAY NOT RELY UPON ANY REPRESENTATION OR WARRANTY REGARDING THE PAYMENT GATEWAY SERVICES BY ANY THIRD PARTY IN CONTRAVENTION OF THE FOREGOING STATEMENTS, INCLUDING, BUT NOT LIMITED TO REPRESENTATIONS BY THIRD PARTY SERVICE PROVIDERS OR AFFILIATE PARTNERS, EXCEPT AS SET FORTH IN THE SERVICE LEVEL AGREEMENT CONTAINED IN APPENDIX A OF THIS AGREEMENT. PAYMENT GATEWAY SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS WHETHER EXPRESS OR IMPLIED ARISING BY STATUTE, OPERATION OF LAW, USAGE OF TRADE, COURSE OF DEALING, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR TITLE WITH RESPECT TO THE PAYMENT GATEWAY SERVICES, OR OTHER SERVICES OR GOODS PROVIDED UNDER THIS AGREEMENT. YOU UNDERSTAND AND AGREE THAT PAYMENT GATEWAY SHALL BEAR NO RISK WITH RESPECT TO YOUR SALE OF PRODUCTS OR SERVICES, INCLUDING**

WITHOUT LIMITATION, ANY RISK ASSOCIATED WITH CREDIT CARD FRAUD, ACH FRAUD, CHECK FRAUD OR CHARGEBACKS.

12.5

#### Disputes

The parties shall promptly investigate any disputes under this Agreement. If the disputed amount is less than five percent (5%) of the total fees invoiced by Payment Gateway for the relevant billing statement, the total amount invoiced shall be due and payable on or before the due date. If the amount in dispute is greater than five percent (5%) of the total fees invoiced by Payment Gateway for the relevant billing statement, the disputed amount may be withheld until the dispute is resolved. All disputes must be made in good faith and in writing within thirty (30) days of the billing statement date. Fees billed shall be deemed accepted where written objections are not lodged within thirty (30) days from the billing statement date.

13.

### LIMITATION OF LIABILITY

13.1

#### Payment Gateway Disclaimers

(a)

GATEWAY EXPRESSLY DISCLAIMS ANY LIABILITY OR LOSS, HOWEVER OCCURRING INCLUDING NEGLIGENCE, WHICH ARISES FROM OR RELATED TO ANY UNAUTHORIZED ACCESS TO YOUR FACILITIES OR TO YOUR DATA OR PROGRAMS DUE TO ACCIDENT, ILLEGAL OR FRAUDULENT MEANS OR DEVICES USED BY ANY THIRD PARTY, OR OTHER CAUSES BEYOND PAYMENT GATEWAY'S REASONABLE CONTROL.

(b)

PAYMENT GATEWAY EXPRESSLY DISCLAIMS ANY LIABILITY OR LOSS, HOWEVER OCCURRING INCLUDING NEGLIGENCE, ARISING FROM OR RELATED TO: (I) YOUR FAILURE TO PROPERLY ACTIVATE, INTEGRATE OR SECURE YOUR ACCOUNT(S); (II) FRAUDULENT TRANSACTIONS PROCESSED THROUGH YOUR ACCOUNT(S); (III) DISRUPTION OF PAYMENT GATEWAY SERVICES, SYSTEMS, SERVER OR WEB SITE BY ANY MEANS, INCLUDING WITHOUT LIMITATION, DDOS ATTACKS, SOFTWARE VIRUSES, TROJAN HORSES, WORMS, TIME BOMBS, OR ANY OTHER TECHNOLOGY; (IV) ACTIONS OR INACTIONS BY ANY THIRD PARTY, INCLUDING WITHOUT LIMITATION, A THIRD PARTY SERVICE PROVIDER OR AFFILIATE PARTNER, OR ACQUIRING BANK; OR (V) UNAUTHORIZED ACCESS TO DATA, CUSTOMER DATA INCLUDING BUT NOT LIMITED TO, CREDIT CARD NUMBERS AND OTHER PERSONALLY IDENTIFIABLE INFORMATION, TRANSACTION DATA OR PERSONAL INFORMATION BELONGING TO PAYMENT GATEWAY, YOU OR ANY THIRD PARTY.

(c)

PAYMENT GATEWAY EXPRESSLY DISCLAIMS ANY LIABILITY OR LOSS FOR THE LEGITIMACY OF ORDERS FORWARDED FROM YOU AND FOR ANY AND ALL CLAIMS OF LOSS AND/OR FRAUD INCURRED RESULTING FROM CONCLUSIONS DRAWN FROM THE DATA PROVIDED BY ANY SERVICES PROVIDED BY PAYMENT GATEWAY, OR ANY SYSTEM OR PROGRAM ASSOCIATED THEREWITH OR THE LIMITATION OF THE FUNCTIONING OF ANY PAYMENT GATEWAY SERVICES OR SOFTWARE, HARDWARE, OR EQUIPMENT ASSOCIATED THEREWITH WHETHER IT

IS OWNED BY PAYMENT GATEWAY OR OFFERED THROUGH A THIRD PARTY SERVICE PROVIDER OR OTHER ENTITY.

13.2.

#### Payment Gateway Limitation of Liability

(a)

UNDER NO CIRCUMSTANCES WILL PAYMENT GATEWAY OR ANY OF ITS PARENTS, AFFILIATES OR VENDORS, OR ANY OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS OF THE PARTIES, OR ITS PARENTS, AFFILIATES OR VENDORS, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES HOWEVER OR WHENEVER ARISING, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST REVENUE, LOST PROFITS, ANTICIPATED PROFITS, LOST BUSINESS OR INJURY TO BUSINESS REPUTATION, COST OF PROCUREMENT OF SUBSTITUTE SERVICES, UNDER ANY THEORY OF LIABILITY OR CAUSE OF ACTION WHETHER IN TORT, INCLUDING NEGLIGENCE, CONTRACT OR OTHERWISE, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b)

PAYMENT GATEWAY'S TOTAL LIABILITY TO YOU, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR OTHERWISE, UNDER THIS AGREEMENT OR WITH REGARD TO ANY PAYMENT GATEWAY PRODUCTS OR SERVICES, SHALL NOT EXCEED THE AGGREGATE COMPENSATION PAYMENT GATEWAY RECEIVED FOR PROVIDING THE PAYMENT GATEWAY SERVICES TO YOU DURING THE THIRTY (30) DAYS PRECEDING THE DATE ON WHICH THE CLAIM AROSE OR \$1,500.00 USD, WHICHEVER IS LESS.

14.

#### INDEMNIFICATION

14.1

##### Indemnification

(a)

Payment Gateway shall defend, indemnify and hold You and any of Your officers, directors, agents and employees harmless from and against any and all third party claims, actions, proceedings, and suits and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including reasonable attorneys' fees and other litigation expenses) incurred by You, arising out of or relating to any alleged infringement of a U.S. patent of any other entity or person by Payment Gateway.

(b)

Payment Gateway's obligations in Section 14.1.a do not apply if Payment Gateway Services or portions or components thereof (a) are modified by persons or entities other than Payment Gateway if the alleged infringement relates to such modification; (b) are combined with other products, processes or materials not supplied or recommended by Payment Gateway where the alleged infringement relates to such combination, or (c) continue to be used after Payment Gateway has made a non-infringing version available to You (collectively, "Your Faults"). If Payment Gateway Services or any component thereof becomes, or in Payment Gateway's opinion is likely to become, the subject of a claim of infringement, then You shall permit Payment Gateway, at Payment Gateway's sole option and expense, either to (i) procure for You the right to continue using the Payment Gateway Services as permitted in this Agreement, or (ii)

replace or modify the affected Payment Gateway Services or infringing component so that it becomes non-infringing. If, after using commercially reasonable efforts, Payment Gateway is unable to cure the infringement, either party may terminate this Agreement upon notice to the other, as provided in Section 10. Notwithstanding the above, Payment Gateway's total liability shall not exceed the amount as stated in Section 13.2.b. **THIS SECTION 14.1.b STATES THE ENTIRE LIABILITY OF PAYMENT GATEWAY TO YOU WITH RESPECT TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY PAYMENT GATEWAY SERVICES.**

#### 14.2

##### Indemnification by You

You shall defend, indemnify, and hold harmless Payment Gateway and its Affiliate Partners, Third Party Service Providers, parents, and/or subsidiaries, and any of their officers, directors, agents and employees, from and against any and all claims, actions, proceedings, and suits and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including reasonable attorneys' fees and other litigation expenses) incurred by Payment Gateway, arising out of or relating to **(a)** any breach or alleged breach by You of any representation, warranty, or obligation of You set forth in this Agreement; **(b)** any damage or loss caused by negligence, fraud, dishonesty or willful misconduct by You or any of Your employees, agents or customers; **(c)** the reliability, accuracy, or legitimacy of payment data or purchase orders submitted by You to Payment Gateway; **(d)** payment card transactions submitted by You to Payment Gateway and rejected by Payment Gateway or an issuing bank; **(e)** any alleged infringement of a patent, copyright, trademark or other intellectual property right resulting from Your Fault; **(f)** claims by Your customers, including, without limitation, claims relating to the disclosure of consumer data; **(g)** any alleged or actual violation by You of any applicable laws, regulations or rules of (i) the Credit Card Associations; (ii) the Gramm Leach Bliley Act; (iii) or any regulatory body or agency having jurisdiction over the subject matter hereof; or **(h)** any violation of Payment Gateway's then current policies or guidelines. In the event You cause fines and/or penalties to be charged to Payment Gateway by the Credit Card Associations or any other entity, you agree to immediately reimburse Payment Gateway for said fines and penalties.

#### 14.3

##### Indemnification Procedure

The obligations of each party ("Indemnitor") under this Section 14 to defend, indemnify and hold harmless the other party ("Indemnitee") shall be subject to the following: **(a)** Indemnitee shall provide Indemnitor with prompt notice of the claim giving rise to such obligation; provided, however, that any failure or delay in giving such notice shall only relieve Indemnitor of its obligations under this section to the extent it reasonably demonstrates that its defense or settlement of the claim or suit was adversely affected thereby; **(b)** Indemnitor shall have control of the defense and of all negotiations for settlement of such claim or suit; and **(c)** Indemnitee shall cooperate with Indemnitor in the defense or settlement of any such claim or suit, provided that Indemnitee shall be reimbursed for all reasonable out-of-pocket expenses incurred in providing any cooperation requested by Indemnitor. Subject to clause (b) above, Indemnitee may participate in the defense of any such claim or suit at its own expense. Indemnitor shall not, without the consent of the Indemnitee, enter into any settlement that reasonably can be expected to require a material affirmative obligation of, result in any ongoing material liability to or materially prejudice Indemnitee in any way.

#### 14.4

## Exceptions

If You are an agency or instrumentality of a state of the United States and are precluded by the law of Your state from entering into indemnification obligations, then the obligations under Sections 14.2 and 14.3 shall apply only to the extent permitted by such state law.

15.

## GENERAL PROVISIONS

15.1

### Non-exclusivity

Each party acknowledges and agrees that the rights granted to the other party in this Agreement are non-exclusive, and that, without limiting the generality of the foregoing, nothing in this Agreement shall be deemed or construed to prohibit either party from participating in similar business arrangements as those described herein.

15.2

### Notices

All notices to You shall be given electronically, sent to the electronic mail address provided by or for You during registration for the Payment Gateway Services and/or posted in the Merchant Control Panel of Your Account. Any termination notice to Payment Gateway shall be given electronically by sending an e-mail to [nnlogan@cstonemail.com](mailto:nnlogan@cstonemail.com) from within the Merchant Control panel of Your account. All other notices to Payment Gateway shall be given electronically to [nnlogan@cstonemail.com](mailto:nnlogan@cstonemail.com) with a written copy to Cornerstone Payment Systems Legal Department, 17822 17th Street 412, Tustin, CA 92780 or to (fax), Attention: General Counsel. Such written notice will be deemed given upon personal delivery, upon confirmation of receipt if sent by fax, or three (3) days after the date of mailing if sent by certified or registered mail, postage prepaid.

15.3

### Relationship of the Parties

The parties are independent contractors and nothing in this Agreement shall make them joint venturers, partners, employees, agents or other representatives of the other party. Neither party shall make any representation that suggests otherwise. You further recognize that if you contracted for the Payment Gateway Services with an Affiliate Partner or Third Party Service Provider, such provider is an authorized reseller of Payment Gateway only and is not a joint venturer, partner, or agent of Payment Gateway.

15.4

### Assignment

You will not have the right or the power to assign any of Your rights or delegate the performance of any of Your obligations under this Agreement without the prior written consent of Payment Gateway, including in the case of a merger. Payment Gateway will have the right to assign this Agreement to its successors and/or assigns, subsidiaries, affiliates, Affiliate Partners and/or Third Party Service Providers.

15.5

### Amendment and/or Modifications

No amendment, modification, or change to any provision of this Agreement, nor consent to any departure by either party therefrom, will in any event be effective unless the same will be in writing and signed by the other party, and then such consent will be effective only in the specific instance and for the specific purpose for which given. Notwithstanding the foregoing, Payment Gateway may amend this Agreement at any time upon written or electronic notice or post notice



on its Web site located at [cornerstonepaymentsystems.com](http://cornerstonepaymentsystems.com) to You of not less than ten (10) days prior to the effective date of such amendment; provided that the addition or change of service fees, will become effective upon at least thirty (30) days' notice. If You do not agree to such amendments, your sole remedy is to immediately terminate this Agreement upon written notice to Payment Gateway.

#### 15.6

##### Waiver

The failure of any party to insist on or enforce strict performance of any provision of this Agreement or to exercise any right or remedy under this Agreement or applicable law will not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such provision, right or remedy in that or any other instance; rather, the same will be and remain in full force and effect. Waiver by either party of a breach of any provision contained herein must be in writing, and no such waiver will be construed as a waiver of any other and/or succeeding breach of such provision or a waiver of the provision itself.

#### 15.7

##### Dispute Resolution

Any dispute or claim arising out of or relating to this Agreement, except claims involving intellectual property and claims for indemnification, will be resolved by binding arbitration. The arbitration of any dispute or claim shall be conducted in accordance with the American Arbitration Association ("AAA") rules, as modified by this Agreement, and will take place in Chicago, Illinois, unless the Parties mutually agree to hold the proceedings elsewhere. This Agreement evidences a transaction in interstate commerce and this arbitration provision will be interpreted and enforced in accordance with the Federal Arbitration Act and federal arbitration law. An arbitrator may not award relief in excess of or contrary to what this Agreement provides or order consolidation or arbitration on a class wide or representative basis, except that the arbitrator may award on an individual basis damages required by statute and may order injunctive or declaratory relief pursuant to an applicable consumer protection statute. Any arbitration shall be confidential, and neither Party may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement of the arbitration award. Judgment on any arbitration award may be entered in any court having proper jurisdiction. All administrative fees and expenses will be divided equally between the Parties, but each Party will bear the expense of its own counsel, experts, witnesses and preparation and presentation of evidence at the arbitration. **IF FOR ANY REASON THIS ARBITRATION CLAUSE IS DEEMED INAPPLICABLE OR INVALID, THE PARTIES WAIVE, TO THE FULLEST EXTENT ALLOWED BY LAW, ANY RIGHT TO PURSUE ANY CLAIMS ON A CLASS OR CONSOLIDATED BASIS OR IN A REPRESENTATIVE CAPACITY.** No action, regardless of form, arising out of or in conjunction with the subject matter of this Agreement, except for claims involving intellectual property and claims for indemnification, may be brought by either Party more than one (1) year after the cause of action arose.

#### 15.8

##### Severability;Headings

If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision, which most closely approximates the intent and economic effect of the invalid provision. Headings are used

for convenience of reference only and in no way define, limit, construe or describe the scope or extent of any section, or in any way affect this Agreement.

15.9

#### Force Majeure

Neither party will be liable for any losses arising out of the delay or interruption of its performance of obligations under the Agreement due to any acts of God, acts of civil or military authorities, civil disturbances, wars, strikes or other labor disputes, fires, transportation contingencies, interruptions in telecommunications, utility, Internet services or network provider services or other catastrophes or any other occurrences which are beyond such parties' reasonable control (each a "Force Majeure Event"), provided that the party delayed will provide the other party notice of any such delay or interruption as soon as reasonably practicable, will use commercially reasonable efforts to minimize any delays or interruptions resulting from the Force Majeure Event and in no event will any failure to pay any monetary sum due under this Agreement be excused for any Force Majeure Event.

15.10

#### Governing Law; Jurisdiction

This Agreement and performance under it will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Illinois, without reference or giving effect to its conflicts of law principles. You hereby irrevocably consent to the personal jurisdiction of and venue in the state and federal courts located in DuPage County, Illinois with respect to any action, claim or proceeding arising out of or related to this Agreement and agree not to commence or prosecute any such action, claim or proceeding other than in such courts, except as otherwise provided in Section 15.7 above.

15.11

#### Entire Agreement

This Agreement together with all of Payment Gateway's policies referenced herein sets forth the entire understanding and agreement of the parties, and supersedes any and all prior or contemporaneous oral or written agreements or understandings between the parties, as to the subject matter of this Agreement. You acknowledge that this Agreement reflects an informed, voluntary allocation between Payment Gateway and You of all risks (both known and unknown) associated with Payment Gateway Services.

15.12

#### Survival

The provisions of this Agreement relating to any fees or other amounts owed, payment of finance charge on unpaid fees, confidentiality, warranties, limitation of liability, indemnification, governing law, severability, headings and this paragraph shall survive termination or expiration of this Agreement.

#### Appendix A - PAYMENT GATEWAY SERVICE LEVEL AGREEMENT

This Service Level Agreement ("SLA Agreement") sets forth the SLA applicable to the various Payment Gateway Services ordered by You and provided through Payment Gateway. This SLA provides Your sole and exclusive remedies for any Service interruptions, deficiencies, or failures of any kind. If such remedies include service credits, the parties agree that such credits constitute liquidated damages. No otherwise applicable SLA, including any remedies hereunder, shall apply with respect to any Excluded Events.

The following Service Level Targets apply to the Services.

AVAILABILITY Service Level Target

For transaction processing services, this SLA provides that the Payment Gateway Application will be available 99.5% of the time (averaged over the calendar month). You will be eligible for service credits as set forth in the following table if this Availability Target is not met due to Outages.

<b>Cumulative Duration of Outages within a Calendar Month which exceed the Availability Target</b>	<b>Credit</b>
10 minutes through 60 minutes	1/30 <sup>th</sup> of MRFC for Affected Service
Each full hour in excess of 60 minutes	1/30 <sup>th</sup> of MRFC for Affected Service

LATENCY Service Level Target

This SLA provides for monthly average response time Latency as set forth in the following table. If the monthly average Latency through the Payment Gateway Application exceeds the Targets set forth in the following table, You will be eligible for a service credit of 3/30<sup>th</sup> of the applicable MRFC for the Affected Service.

PAYMENT GATEWAY Application Latency	3 seconds
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**Definitions**

“**MRFC**” Monthly Recurring Fixed Charge means any and all fees You are obligated to pay to Payment Gateway including Your monthly commitment and fixed Service charges.

“**Affected Service**” means only the portion of a Service actually impacted by the relevant Service Level Target.

“**Availability**” means the percentage of time during a month in which the Payment Gateway application is not subject to an Outage.

“**Latency**” means the monthly average time it takes for a transaction to travel through the relevant portion of the Payment Gateway Application excluding transaction settlements and any time waiting for a response from a third party.

“**Outage**” means any period of at least one minute during which the Payment Gateway Application is completely unavailable or inaccessible for reasons other than an Excluded Event. An Outage begins when Payment Gateway opens the relevant trouble ticket and ends at the

earlier of the restoration of the Affected Service or when the ticket is closed. All Outage measurements will be rounded to the nearest one minute increment.

**“Payment Gateway Application”** means the components owned and operated by Payment Gateway excluding any components that are not owned and operated directly by Payment Gateway.

**“Excluded Events”** means any event that adversely impacts the Service that is caused by **(a)** the acts or omissions of You, Your employees, customers, contractors or agents; **(b)** the failure or malfunction of equipment, applications or systems not owned or controlled by Payment Gateway; **(c)** Force Majeure events; **(d)** scheduled maintenance, alteration or implementation; **(e)** any suspension of Service pursuant to the Merchant Service Agreement; or **(f)** the unavailability of Your required personnel, including as a result of failure to provide Payment Gateway with accurate, current contact information.

### **Process**

You must request any credit due hereunder within 30 days of the conclusion of the month in which it accrues. You waive any right to credits not requested within this 30 day period. Credits will be issued once validated by Payment Gateway and applied toward the invoice which You receive no later than two months following Your credit request. All performance calculations and applicable service credits are based on Payment Gateway records and data.

### **Limitations**

This SLA does not apply to any Excluded Events, as defined in this SLA. You will not be eligible to accrue any otherwise applicable service credits: **(a)** during any period in which You are in violation of the Payment Gateway Merchant Service Agreement or is past due on any amounts owed in connection with the Payment Gateway Services; and **(b)** before the start of the first full calendar month following the Billing Commencement Date for the Affected Service. You may not carry over to subsequent months any service credits subject to the limits or exclusions of this SLA.

In no event will the credits accrued in a single month exceed, in the aggregate across all service levels and events: thirty percent (30%) of the invoice amount for the Affected Service.

You acknowledge that Payment Gateway manages its throughput in part on the basis of Your utilization of Service and that changes in such utilization may impact Payment Gateway’s ability to manage throughput. Therefore, notwithstanding anything else to the contrary, if You significantly change Your utilization of the Service and such change creates a material and adverse impact on the volume through the Payment Gateway Application, as determined by Payment Gateway, Payment Gateway may either modify the applicable charges or terminate the Affected Services.

### **Appendix B - VALUE-ADDED SERVICES**

In the event You enroll in, and Payment Gateway provides You with, Value-Added Service(s), You agree as follows:

1.

#### Expansion of Services

The terms “Services” and “Payment Gateway Services,” as each is defined in the Agreement, shall include each of the Value-Added Services. Each Value-Added Service is described on the Payment Gateway Web site and in other Services Documentation provided to You from time to time. All terms of the Agreement applicable to the Payment Gateway Services shall be applicable to each Value-Added Service.

2.

#### Your Obligations

In addition to Your obligations set forth in the Agreement, You agree to pay the Value-Added Service Fees, in accordance with Section 8 and Section 9 of this Agreement, in the amounts provided in the Fee Schedule provided to You by Payment Gateway and/or, if applicable Affiliate Partner. The Fee Schedule is hereby incorporated into the terms of this Agreement by reference and/or in the Value-Added Service documentation page accessed during enrollment in the applicable Value-Added Service. By checking the “I ACCEPT” button next to a Value-Added Service Fee schedule, You acknowledge Your acceptance of such fees, Your obligation to pay same and the terms and conditions applicable to the Value-Added Service.

3.

#### Your Warranty

You represent, warrant, and covenant to Payment Gateway that Your use of the Value-Added Services and any information gathered by You in connection with use of a Value-Added Service: **(a)** will be fully compliant with all applicable local, state and federal laws, rules, and regulations; **(b)** will be in accordance with all applicable Services Documentation; and **(c)** will not be used for any purpose other than in connection with the Value-Added Service.

4.

#### Acknowledgement

You understand, acknowledge, and agree that **(a)** You will be solely responsible for ALL transactions processed through Your payment gateway account(s), regardless of whether such transactions are monitored by a Value-Added Service; **(b)** You will be solely responsible for Your use of the Value-Added Service including, without limitation (i) configuring, maintaining and updating, as You deem necessary, the applicable settings for Your Value-Added Service account; and (ii) with respect to each Transaction processed via your account(s), and regardless of any data, analysis, or information generated or not generated by the Value-Added Service, as applicable, determining the appropriate action for each such Transaction (i.e., approve, void, decline, reject); **(c)** under certain circumstances, it may be necessary for Payment Gateway to adjust Your Value-Added Service security settings, with or without notice to You, to guard against fraudulent activity and that such actions may inadvertently cause legitimate transactions to expire, be rejected or delayed; and **(d)** Payment Gateway shall not be liable under any theory of law, including negligence, for any loss associated with any of the foregoing.

5.

#### PAYMENT GATEWAY WARRANTY

IN ADDITION TO ANY LIMITATIONS OR DISCLAIMERS SET FORTH IN THE AGREEMENT, YOU UNDERSTAND, ACKNOWLEDGE AND AGREE THAT THE

VALUE-ADDED SERVICES ARE PROVIDED TO YOU BY PAYMENT GATEWAY “AS IS” AND THAT PAYMENT GATEWAY DOES NOT REPRESENT OR WARRANT THAT THE VALUE ADDED SERVICES OR ANY OTHER TECHNOLOGY, CONTENT, INTELLECTUAL PROPERTY, OR ANY OTHER INFORMATION, DATA, PRODUCTS, OR SERVICES, WILL BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ERROR-FREE, AND THAT YOUR SOLE REMEDY FOR ANY ISSUE RELATED TO OR ARISING FROM THE VALUE ADDED SERVICES, AND PAYMENT GATEWAY'S SOLE LIABILITY FOR SAME, WILL BE TO TERMINATE THIS AGREEMENT AND DISCONTINUE YOUR USE OF THE VALUE-ADDED SERVICES.

6.

#### Risk, Security and Disclosure

The risk and security suggestions provided to You in the Services Documentation for any of the Value-Added Services are solely for illustrative purposes to show best industry practices, and You shall be solely responsible for choosing the appropriate settings and parameters for Your account.

7.

#### Termination

If Your Agreement is terminated for any reason, Payment Gateway shall immediately cancel access to Your Value-Added Service account. It is Your responsibility to download all reports prior to the effective date of any such termination as such reports will not be available following the termination date.

8.

#### Incorporation by Reference

The Value-Added Services Fee Schedules are incorporated herein by reference.

9.

#### Third Party Programs

Payment Gateway makes no warranty, express or implied, with regard to any third party services or software.

10.

#### Definitions

All terms and conditions of the Agreement not specifically modified in this Appendix B shall remain unchanged and in full force and effect. Unless separately defined herein, capitalized words used in this Appendix as defined terms shall have the same meanings herein as in the Agreement.

### **Appendix C - Prohibited Activities.**

You agree that You will not at any time conduct Your business in any manner that directly or indirectly offers, sells, leases, licenses or displays, delivers, advertises, recommends, or promotes any product(s), service(s), data, information, image(s), text and/or any content which:

(i) is unlawful or violates any applicable local, state, federal, national or international law, statute, ordinance, or regulation including, without limitation, Credit Card Association rules, consumer protection laws, unfair competition, antidiscrimination or false advertising;

- (ii) is associated with any illegal form of adult, sexually oriented, or obscene materials or services, including without limitation, any material clearly designed to sexually arouse the viewer/reader with images of children less than 18 years old and/or escort services;
- (iii) infringes on any patent, trademark, trade secret, copyright, right of publicity, or other proprietary right of any party, including, but not limited to, the unauthorized copying and posting of trademarks, pictures, logos, software, articles, musical works and videos;
- (iv) is threatening, abusive, harassing, defamatory, obscene, libelous, slanderous, deceptive, fraudulent, invasive of another's privacy, tortuous, or otherwise violate Payment Gateway's rules or policies;
- (v) victimizes harasses, degrades, or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability;
- (vi) impersonates any person or entity;
- (vii) contains harmful content, including, without limitation, software viruses, Trojan horses, worms, time bombs, cancel bots, spy-ware, or any other files, software programs, or technology that is designed or intended to disrupt, damage, surreptitiously intercept or expropriate the Services or any system, program, data or personal information or limit the functioning of any software, hardware, or equipment or to damage or obtain unauthorized access to any data or other information of any third party;
- (viii) violates any U.S. export or import laws, including, without limitation, the Export Administration Act and the Export Administration Regulations maintained by the Department of Commerce;
- (ix) offers or disseminates fraudulent goods, services, schemes, or promotions (i.e., make money fast schemes, chain letters, pyramid schemes) or engage in any unfair deceptive act or practice;
- (x) is associated with any form of illegal gambling or illegal lottery type services;
- (xi) is associated with illegal telecommunications or illegal cable television equipment or illegal satellite equipment;
- (xii) is associated with electronic wallets (i.e., "e-wallets") or any similar payment type; or
- (xiii) is associated with the sale of (a) any controlled drug that requires a prescription from a licensed practitioner unless you are authorized by the National Association of Boards of Pharmacy to offer such products as a Verified Internet Pharmacy Practice Site and only if such a prescription has been issued by the practitioner after a bona fide examination of the patient; or (b) any over-the-counter drug, unless the sale of such product, without a prescription, has been approved by the Food & Drug Administration; or (c) nonprescription drugs that make false or misleading treatment claims or treatment claims that require FDA approval; or (d) any drug or controlled substance that Payment Gateway believes to be or may become harmful, unlawful, or prohibited. Payment Gateway requires sellers of prescription drugs to abide by all laws applicable to both the buyer and seller and may require you to provide evidence of compliance with these requirements. In addition, due to the complexities of current laws regulating the importation of controlled drugs into the United States, you may not use the Services to sell prescription drugs that are imported into the United States from an international location. The foregoing list is a non-exhaustive list of prohibited goods and services.

Payment Gateway Merchant Service Agreement

Last Revised September 12, 2013

CONFIDENTIAL