



Optimal Payments Corp. Direct Debit Application and Agreement

Optimal Payments Corp. prefers application forms to be typed.

Merchant Information

Legal Name of Business

DBA

(Doing Business As)

Street Address

(P.O. Boxes not permitted)

City

State

ZIP

Years at Location

Mailing Address

(If different from Street Address)

City

State

ZIP

Telephone Number

Business Fax Number

Tax ID Number

(Required – 9 digits)

Business Contact Person

Business Contact Email

Merchant Customer Service Email

Merchant URL

Age of Business

Years

Months

Number of Full-Time Employees

Ownership

Ownership Type

Please account for 100% of ownership on the application.

Principal's Name

Title

Ownership %

Date of Birth (mm/dd/yyyy)

(Required)

Social Security Number

(Required)

Street Address

(P.O. Boxes not permitted)

City

State

ZIP

Home Telephone Number

Second Principal's Name

Title

Ownership %

Date of Birth (mm/dd/yyyy)

(Required)

Social Security Number

(Required)

Street Address

(P.O. Boxes not permitted)

City

State

ZIP

Home Telephone Number

Please attach a copy of a driver's license or government ID for both principals.

Please attach a voided business check to designate the account to which your funds will settle.

Bank Name

ABA Routing Number

Account Number

Telephone

Contact Person

Marketing

Merchant Marketing Method %

(Enter all that apply; must equal 100%)

| | | | |
|-------------------------|---|--------------------------|---|
| Storefront | % | Service | % |
| Trade Show | % | Internet | % |
| Inbound Telephone Order | % | Outbound Telephone Order | % |
| Mail Order | % | Other | % |

ACH Processing

Do you have or have you ever had ACH processing?

(If Yes, please attach 1 years' previous processing.)

Name of ACH processor

Have you ever had your ACH processing terminated?

If Yes, please explain in detail.

What is the highest percentage of returns you have had in any given month? %

What is the highest percentage of R10s you have had in any given month? %

Products and Services

Please provide a clear description of your products/services.

(In addition, please attach marketing materials, brochures, etc.)

Is this product fulfilled at the time of sale?

Does your company fulfill orders directly?

If No, provide fulfillment company details.

Please describe your company's refund policy.

What is the highest percentage of chargeback items you have had in the past 2 years in any month?

Visa %

MasterCard %

Other %

Has your company ever been investigated by the U.S. FTC, State Attorney's Office, or Consumer Affairs concerning its business practices?

If yes, please explain in detail.



Service Fees and Setup Information

| | | | | |
|--|---|----------------------|-------------------------|------------------|
| Rate | % | Monthly Minimum | Monthly Admin Fee | |
| Transaction Fee | | Returned Items | Setup Fee | Wire Fee |
| Security Deposit | % | Rolling Reserves | % | Reserve Duration |
| # Times Paid Weekly | | Weekdays Paid | Banking Days in Arrears | |
| Transactions/Month | | Average Check Amount | Maximum Check Amount | |
| Representments of Returned Checks | | <u>First Only</u> | | |
| Description to print on customer's bank statement (max. 10 characters) | | | | |
| Phone number to print on customer's bank statement | | | | |

BY SIGNING BELOW, I CERTIFY THAT I HAVE READ AND DO FULLY UNDERSTAND THE TERMS AND CONDITIONS SET FORTH BELOW AND ON THE FOLLOWING PAGES, AND I ACCEPT THE TERMS AND CONDITIONS AS STATED:

By:
SIGNING OFFICER

Print Name:

Date:

By:
GUARANTOR 1

Print Name:

Date:

By:
GUARANTOR 2 (if required)

Title:

Date:

By:
OPTIMAL PAYMENTS CORPS MANAGEMENT: (NOT VALID UNTIL SIGNED BY MANAGEMENT OF OPTIMAL PAYMENTS CORP)

Title:

Date:

Important notice before signing this application

The signer hereby authorizes Optimal Payments Corporation ("OPC" or "us") to verify any information herein provided by the Applicant in response to the questions contained in this document and all exhibits and supporting documents provided. OPC specifically is authorized to use personal information provided to obtain credit reports from authorized credit reporting agencies. You hereby authorize us to record any conversation between us and you without further notice. Investigations, consumer credit reports, and reference checking, or other reasonable and legal means of investigation, may require verification by third parties to confirm information provided by Applicant and Applicant hereby authorizes OPC to undertake such verifications without further notice to the Applicant. The results of such investigation remain the sole property of OPC. OPC will notify you if and when such costs will be incurred and you will be given the option of withdrawing the application. BY SUBMITTING THIS APPLICATION, APPLICANT CONSENTS TO INQUIRIES BY OPC OF CREDIT REPORTING AGENCIES AND OTHER THIRD PARTIES REGARDING CLIENT, GUARANTOR(S), AND ANY PRINCIPALS OF SAME FOR PURPOSES OF THIS AGREEMENT AND EVALUATION OF WHETHER TO OFFER APPLICANT PROCESSING AND RELATED SERVICES.

Warranties of Signing Parties. The signing party above warrants that each of the principal owners, who collectively have majority voting control of shareholdings of the merchant company, and the chief executive officer or managing director of the merchant company have reviewed the responses in this Application and its exhibits and supporting documents and have found no erroneous or misleading information. The signing party hereby makes the above warranties on all pages and documents submitted and in all oral statements made to OPC and attests the information submitted to OPC is accurate to the best of his or her knowledge as of the date of signature(s).

ACH Processing Services Agreement

BETWEEN: **OPTIMAL PAYMENTS CORP.**, a legal person having a place of business at 1800 West Loop South, Suite 1440, Houston, TX 77027 (hereinafter referred to as **"OPC"**)

AND: **CLIENT**, whose name and address are as stated on the attached Application
(hereinafter referred to as the **"Client"**)

1. PREAMBLE

- 1.1 WHEREAS the Client wishes to engage the services of OPC to process, verify, settle, confirm, report and perform related Processing Services relating to the business operations of the Client;
- 1.2 WHEREAS the Client has completed an Application and OPC in reliance on the Information furnished therein has approved the opening of an account by the Client with OPC;
- 1.3 WHEREAS OPC wishes to provide Processing Services to the Client subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

2. DEFINITIONS

- 2.1 **"ACH"** means the Automated Clearing House.
- 2.2 **"Application"** means an application to open an account for ACH Processing Services with OPC in the form attached hereto.
- 2.3 **"Clearing Houses"** means a member or members of the National Automated Clearing House Association designated by OPC to process and settle Electronic Check Transactions.
- 2.4 **"Clearing Period"** means the 6th business day following the submission of a transaction to the Clearing Houses.
- 2.5 **"Client Designated Account"** means the Client's bank account at a financial institution as indicated by Client in the Application, or as otherwise amended by Client with the prior written consent of OPC.
- 2.6 **"Confidential Information"** shall mean OPC's programs, procedures, proprietary or other software (including transaction software) and other intellectual property.
- 2.7 **"Data"** means: (i) the data about transactions and related instructions and information provided by Client to OPC in the form as indicated by OPC in documentation provided to Client, and as amended from time to time; and (ii) any other information requested by OPC.
- 2.8 **"Effective date"** means the date of this agreement as it appears above the signatures of the parties below.
- 2.9 **"Electronic Check(s)"** means an electronic debit to a United States bank account, initiated directly or indirectly via the ACH.
- 2.10 **"Electronic Check Transaction(s)"** means transactions involving Electronic Checks that have been approved based on positive credit information and positive credit availability (following the Clearing Period) and where available, positive address verification, as more fully described in Section 3.
- 2.11 **"Fee"** means the amounts specified the Application.
- 2.12 **"Fine"** means (i) any fine imposed on OPC by any party as a result of any activity related directly or indirectly to Client; (ii) any amount which may reasonably be imposed as a fine or other penalty by a third party as a result of any activity related directly or indirectly to Client; (iii) any fine which may be imposed by OPC for excessive Returned Items or breach of the terms of this Agreement.
- 2.13 **"Information"** means all the information supplied by the Client to OPC in the Application.
- 2.14 **"Issuing Institution"** means the financial institution issuing Credit Cards or Debit Cards.
- 2.15 **"NACHA"** means the National Automated Clearinghouse Association.
- 2.16 **"NACHA Operating Rules"** means the standards, rules, regulations and procedures established by NACHA that enable depository financial institutions to exchange payments on a national basis.
- 2.17 **"NSF"** means an approved and settled Electronic Check Transaction that returns with an error code of R01.
- 2.18 **"Obligations"** has the meaning ascribed thereto in Section 4.6.
- 2.19 **"ODFI"** means the Originating Depository Financial Institution, or OPC's bank.
- 2.20 **"Processing Services"** has the meaning ascribed thereto in Section 3.1.
- 2.21 **"RDFI" or "Consumer's Bank"** means the Receiving Depository Financial Institution, or the consumer's bank.
- 2.22 **"Remittances"** has the meaning ascribed thereto in Section 3.1.2.
- 2.23 **"Reserve Amount"** has the meaning ascribed thereto in Section 4.4.
- 2.24 **"Reserve Amount Expense"** means all liabilities in respect of actual or potential post-termination Obligations, and other charges, indemnifications and expenses due or reasonably anticipated to be due.
- 2.25 **"Returned Items"** means all approved and settled Electronic Check Transactions which are at any time refused or debited by the RDFI against the ODFI, including but not limited to the following return codes; R01 (insufficient funds), R02 (account closed), R03 (unable to locate account), R04 (invalid account number), R08 (stop payment), R09 (uncollected funds), R16 (account frozen) R20 (non-transaction account), and R29 (Corporate Customer Not Authorized).
- 2.26 **"Security Deposit"** has the meaning ascribed thereto in Section 4.5.1.
- 2.27 **"Security Deposit Account"** has the meaning ascribed thereto in Section 4.5

3. PROCESSING SERVICES

- 3.1 Subject to the terms and conditions set forth in this Agreement, OPC hereby agrees to provide the following processing services to the Client (the "Processing Services"):
 - 3.1.1 Submission of debit (withdrawal) and credits (refund) requests by consumers, based on the bank account number and routing number provided by the consumer except where authorization has been revoked. "Submission" of those requests, for purposes of this provision, shall mean the receipt and, after positive verification of the negative database, transmission of such information to the Clearing Houses for confirmations and approvals from the Clearing Houses;
 - 3.1.2 Settlement of funds into Client's account ("Remittances") as described in the Application;
 - 3.1.3 Provision of a Web-based real-time reporting tool to view Electronic Check Transactions, Returned Items, and all associated fees and reserves as per Section 4;
 - 3.1.4 Provision of documentation and application programming interface(s) for use by Client to submit transactions to OPC;
 - 3.1.5 Confirmation of receipt of the Data provided by Client;
 - 3.1.6 Verification of the submitted bank routing number;
 - 3.1.7 Omitted;
 - 3.1.8 Omitted;

- 3.1.9 Prompt notification of Client of any rejected entry from ACH. OPC shall use reasonable efforts to provide such notification within one (1) business day of receipt of the rejected entry;
- 3.1.10 Prompt notification of Client of any Returned Items. OPC shall use reasonable efforts to provide such notification within six (6) business days of receipt of the Returned Item;
- 3.1.11 Omitted; and
- 3.1.12 Issuance of a user name and password to access OPC's Web-based interface.
- 3.2 Notwithstanding the above, OPC maintains the right to decline to process any Data or transactions.
- 3.3 Nothing herein grants the Client any rights whatsoever in any of OPC's transaction or other software other than a limited, non-exclusive, non-transferable license for use subject to the terms and conditions of this Agreement and as OPC otherwise may direct, and any use thereof by the Client beyond the requirements of the Processing Services shall be subject to a separate written agreement.
- 4. FEES AND RESERVES**
 - 4.1 In consideration for Processing Services the Client agrees to pay to OPC the following non-refundable fees:
 - 4.1.1 All fees as indicated in the Application;
 - 4.1.2 For any Returned Items that exceed NACHA thresholds, a Fine of up to \$35 for each such returned transaction may be assessed by OPC, its sponsoring ODFI, or the NACHA governing body;
 - 4.1.3 Should the Client be deemed to have violated the terms of Schedule B, Client shall pay OPC the Fine as indicated therein;
 - 4.1.4 Omitted;
 - 4.1.5 Any other charges or fees imposed from time to time by the Clearing Houses or banks or other third parties for handling Electronic Checks; and
 - 4.1.6 For each wire transfer received from OPC the amount specified in the attached Application.
 - 4.2 The Client shall also be obliged to:
 - 4.2.1 reimburse OPC for all credits issued by OPC on behalf of the Client; and
 - 4.2.2 reimburse OPC for all Returned Items and pay all Fines related to Returned Items.
 - 4.3 Client hereby authorizes OPC to deduct from the Remittances the amounts owing under Sections 4.1 and 4.2 above. In the event that the Remittances are insufficient to pay the amounts owing by the Client to OPC, the Client shall pay the balance thereof within seven (7) business days following receipt of OPC's notice for such amount.
 - 4.4 OPC is authorized to establish a reserve amount (the "Reserve Amount") in connection with the Processing Services provided hereunder. The Reserve Amount shall be maintained in full by OPC for the term of this Agreement and for a period of seven (7) months thereafter. Thereafter, OPC shall pay to the Client any amounts remaining out of the Reserve Amount that were not used to offset any Obligations due to OPC in connection with any account, such Obligations including but not limited to Reserve Amount Expenses.
 - 4.4.1 The Parties agree that the purpose of the Reserve Amount is to ensure OPC's recovery of any liabilities owed it or reasonably anticipated to be owed to it by the Client pursuant to this Agreement including, without limitation, all applicable fees provided for in Section 4 hereof, and Reserve Amount Expenses for any account, transaction or otherwise arising from this Agreement.
 - 4.4.2 The Parties agree that the Remittances shall be used to fund and replenish the Reserve Amount. OPC shall withhold amounts from the Remittances so as to maintain a balance in the Reserve Amount consistent with the Reserve Amount set forth in the Application.
 - 4.4.3 OPC, in its sole discretion, may amend the Reserve Amount at any time following the six (6) month anniversary of the Effective Date. Notwithstanding any provision to the contrary in this Agreement, any new Reserve Amount would take effect immediately upon the Client's receipt of written notice of such new rate from OPC.
 - 4.4.4 On the first business day of the seventh month after the Effective Date, and on that day of every month during the term thereafter, the reserves generated from the first month of operation (and, thereafter, from the first remaining month) will be forwarded to the Client on a rolling basis, net of any amounts in any Account offset pursuant to this Agreement, including without limitation all Reserve Amount Expenses.
 - 4.4.5 For the avoidance of doubt, OPC shall have the right, in its sole discretion and at any time without notice, to withdraw and make use of any and all amounts from the funds comprising the Reserve Amount. Interest that accrues on the amounts comprising the Reserve Amount (if any) shall belong to, and be retained by, OPC.
 - 4.4.6 Client's right in respect of the Reserve Amount is solely a contractual right in a running account to payment of the ultimate balance found due (if any), after any offsets under or in accordance with this Section 4.4 have been made.
 - 4.5 OPC is authorized to establish a security deposit account (the "Security Deposit Account") in connection with the Processing Services hereunder in the name of OPC. The Security Deposit Account shall be maintained by OPC for the term of this agreement and for a period of seven (7) months thereafter. Thereafter, OPC shall pay to the Client any amounts remaining in the Security Deposit Account that were not used to offset amounts due to OPC under any other provision of this Agreement.
 - 4.5.1 As security for the payment of the Obligations by the Client, the Client agrees to provide OPC with a security deposit (the "Security Deposit") for the Security Deposit Account in the form and amount specified in the Application. Any existing Security Deposit and Security Deposit Account shall remain in effect but under the terms of this Section 4.5, 4.5.2 and 4.5.3.
 - 4.5.2 Interest that accrues on the amounts comprising the Security Deposit (if any) shall belong to, and be retained by, OPC.
 - 4.5.3 OPC shall have the right, in its sole discretion, to withdraw from the Security Deposit Account any and all amounts owed to OPC hereunder should the Client fail to pay such amounts within five (5) business days of the Client's receipt of written notice of default from OPC.
 - 4.6 As continuing and collateral security for the due and punctual payment of any and all amounts now owing or which may hereafter become owing to OPC by the Client or for the satisfaction of any amounts disbursed by OPC on behalf of the Client including, but not limited to, credits, Returned Items, Fines, penalties and interest, under this Agreement (the "Obligations"), as same may be amended, renewed, extended or supplemented, the Client hereby charges, mortgages and hypothecates in favour of OPC, with effect as of and from this date, all right, title and interest of the Client in and to the Remittances, Security Deposit and Reserve Amount and all funds therein comprised. The Client undertakes not to grant to any other person any charge, mortgage, hypothecary or other security interest of equal or superior rank to OPC's in the Remittances, Security Deposit or Reserve Amount. The Client further undertakes, upon notice by OPC and at its expense, to execute and register such documents as may be necessary or desirable to perfect OPC's first-ranking security interest therein.
 - 4.7 OPC shall have the right to immediately withdraw from the Reserve Amount any and all amounts owed to it hereunder without notice or demand. OPC shall have the additional right to immediately withdraw from the Security Deposit any and all amounts owed to it hereunder. OPC's rights to sums owed to it by Client pursuant to this Agreement shall in no way be limited by the balance or existence of the Reserve Amount or the Security Deposit. OPC's rights with respect to the Reserve Amount and the Security Deposit shall survive the termination of this Agreement.

- 4.8 All interest which may accrue in respect of the Reserve Amount and Security Deposit shall be for the sole account of OPC.
- 4.9 As amounts become payable to either party under this Agreement, and unless otherwise agreed in writing, the party making the payment shall do so by facilitating a wire transfer to a pre-designated account stipulated by the other party.
- 4.10 Either party may change or modify its pre-designated account(s), except that any change or modification by Client to its pre-designated account(s) requires prior written consent of OPC, which may be withheld in its sole discretion.
- 4.11 The Client shall be responsible, in addition to the amount mentioned above, for the payment of any and all applicable sales or other taxes due upon the Electronic Check Transactions and the fees hereunder.
- 4.12 Notwithstanding Section 3.1.1, OPC shall have the right to limit or cease processing credit requests (i) should in OPC's sole determination the Client's Reserve Amount and Security Deposit not be adequately funded; or (ii) if OPC has a concern about the volume of activity in the account; or (iii) if the Client is in overdraft with OPC; or (iv) for any other valid reason.
- 4.13 OPC reserves the right to amend the fees charged under Section 4.1 at its sole discretion and at any time following the six (6) month anniversary of the execution of this Agreement. The new fees will take effect upon a simple notice to the Client in accordance with Section 11.
- 4.14 OPC reserves the right to increase the Reserve Amount withheld from Remittances under Section 4.4 should OPC in its sole discretion deem the risk of Client's account to have materially increased.
- 5. INDEMNIFICATION AND LIMITATION OF LIABILITY**
- 5.1 The Client and the Guarantor (as hereinafter defined) shall jointly and severally defend and hold harmless OPC against and in respect to any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties and reasonable attorney fees that OPC shall incur or suffer, that arise, result from, or relate to any breach of or failure by the Client to perform any of its representations, warranties, covenants or agreements in this Agreement or in any schedule, supplemental agreement, appendix or other instrument furnished or to be furnished to Client under this Agreement.
- 5.2 OPC's liability to Client with respect to any Electronic Check Transaction shall not exceed the amount represented by the transaction record in connection with such Electronic Check Transaction, less the applicable fees payable to OPC hereunder.
- 5.3 ALL WARRANTIES EXPRESSED OR IMPLIED INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE OF THE PROCESSING SERVICES OR OF ANY OTHER SOFTWARE, HARDWARE OR SERVICES PROVIDED BY OPC HEREUNDER ARE HEREBY DISCLAIMED BY OPC, ITS AFFILIATES, AGENTS AND LICENSORS. IN ADDITION, OPC, ITS AFFILIATES, AGENTS AND LICENSORS SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, LIQUIDATED OR OTHER INDIRECT OR EXTRA-CONTRACTUAL DAMAGES IN ANY WAY CONNECTED WITH OR ARISING OUT OF THE USE OF THE PROCESSING SERVICES OR ANY OTHER SOFTWARE, HARDWARE OR SERVICES PROVIDED BY OPC HEREUNDER.
- 5.4 OPC shall use commercially reasonable efforts to perform the Processing Services provided however, OPC, its affiliates, agents or licensors shall not be liable for any loss resulting from the activities of OPC's service providers, the Client or the Client's consumers, nor from any erroneous statements or errors in transmission, nor for any loss resulting from any delay, interruption or failure to perform hereunder due to any circumstances beyond OPC's reasonable control including, without limitation, acts of god, fire, explosion, earthquake, riot, war, sabotage, accident, embargo, storms, strikes, lockouts, any interruption, failure or defects in Internet, telephone, or other interconnect services or in electronic or mechanical equipment. OPC's obligations hereunder shall be suspended during any of the foregoing circumstances, which suspension shall not be a cause for termination of this Agreement by the Client.
- 6. TERM AND TERMINATION**
- 6.1 This Agreement shall be effective commencing on the Effective Date until the first anniversary of the Effective Date, and thereafter shall be renewed automatically for additional consecutive three (3) month periods, unless earlier terminated in accordance with the terms of Sections 6.2 to 6.4 hereof.
- 6.2 Notwithstanding Section 6.1, OPC shall have the right to terminate this Agreement immediately in the event:
- 6.2.1 of breach by the Client of its representations, warranties, covenants or other obligations under this Agreement;
- 6.2.2 that the Client is delinquent in any payment hereunder ten (10) days after the same has become due;
- 6.2.3 the Client assigns this Agreement to any party without the consent required under Section 14.3; or
- 6.2.4 the Client makes an assignment for the benefit of its creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, files a petition or applies to any tribunal for any receiver, trustee, liquidator or sequestrator of any substantial portion of its property, commences any proceeding under any law or statute of any jurisdiction respecting insolvency, bankruptcy, reorganization, arrangement or readjustment of debt, dissolution, winding-up, composition or liquidation, or otherwise takes advantage of any bankruptcy or insolvency legislation whether now or hereafter in effect, or if any receiver, trustee, liquidator or sequestrator of any substantial portion of its property is appointed.
- 6.3 OPC may also terminate this Agreement without cause upon twenty (20) days' written notice to Client.
- 6.4 Notwithstanding Section 6.1, Client may terminate this Agreement, with or without cause, upon thirty (30) days' written notice to OPC.
- 6.5 Upon any termination of this Agreement, the Client shall immediately discontinue the use of all of the Processing Services and the license granted under Section 3.3 shall terminate. All provisions regarding indemnification, representations, warranties, liability and limits thereon and Confidential Information shall survive indefinitely or until the expiration of any time period specified elsewhere in this Agreement with respect to the provision in question, and termination of this Agreement shall not relieve the Client of its obligations to pay accrued fees.
- 6.6 Upon any termination of this Agreement, OPC shall retain, as security for the payment of the Obligations, each of the Security Deposit and the Reserve Amount as well as any other amounts in the Client's account for a full seven (7) month period from the date of termination.
- 7. CONFIDENTIALITY**
- 7.1 The Client agrees that it will:
- 7.1.1 not use any of the Confidential Information for purposes other than this Agreement;
- 7.1.2 not disclose to any third party any of the Confidential Information; and
- 7.1.3 will retain in strictest confidence all Confidential Information except in the performance of its obligations under this Agreement.
- 7.2 The Client agrees that it will not issue any press releases or similar publicity statement regarding this Agreement without the prior written consent of OPC or as required by law.
- 7.3 Termination of this Agreement shall not release the Client from its obligations under Sections 7.1 and 7.2.
- 7.4 OPC agrees that it will retain in strictest confidence the names and other personal information about the Client's consumers unless such disclosure is required by competent authority.
- 7.5 Termination of this Agreement shall not release OPC from its obligations under Section 7.4.

8. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CLIENT

8.1 The Client hereby covenants to OPC that it will:

- 8.1.1 offer for sale through its Web site only products and services that are available for delivery in the normal course of the Client's business, based upon the type of product or service being offered, which were pre-approved by OPC in the Application;
- 8.1.2 offer products or services for sale only if the Client has legitimate rights to market and sell such products or services;
- 8.1.3 fully comply with the rules imposed by the Issuing Institutions from time to time and as currently specified in Schedule A;
- 8.1.4 submit to OPC in writing, for OPC's written consent, any changes or modifications to the Information, including but not limited to, changes in the products and services available through the Client's Web site or changes to any of Client's policies;
- 8.1.5 only use the Processing Services for transactions for which Client has received full express and proper authorization from the consumer for such transaction, including full express and proper authorization and consent from the consumer for OPC and its affiliates, agents, suppliers, and subcontractors to use personal information provided by consumer to obtain credit reports from authorized credit reporting agencies, in accordance with all applicable laws and regulations and the NACHA Operating Rules;
- 8.1.6 only use the Processing Services for transactions that are in compliance with all federal, state and local laws and regulations, and the NACHA Operating Rules; and
- 8.1.7 only use the Processing Services for transactions with consumers who can form legally binding contracts under applicable laws and regulations. Without limiting the scope of this Section 8.1.7, consumers must be at least 18 years of age or the age of majority in the jurisdiction in which the consumer is domiciled, whichever is greater.
- 8.2 The Client hereby represents and warrants to OPC that:
 - 8.2.1 it will maintain the value and reputation of OPC to the best of its reasonable ability;
 - 8.2.2 it will advise OPC promptly in writing of any errors in the Processing Services;
 - 8.2.3 it will conduct its business affairs in accordance with the terms and intent of this Agreement, and in compliance with all applicable government laws, including but not limited to compliance with Federal Trade Commission Telemarketing Sales Rule (16 C.F.R. Part 310) and the Telephone Consumer Protection Act, and regulations and the NACHA Operating Rules or other rules or guidelines as set out by OPC from time to time;
 - 8.2.4 it will manage its business in such a way as to ensure that Returned Items do not exceed a reasonable amount of the total value of its business;
 - 8.2.5 it will immediately replenish its account at OPC should the balance fall below acceptable levels as determined by OPC;
 - 8.2.6 it will not use the Processing Services in connection with any illegal or fraudulent business activities;
 - 8.2.7 it will not permit or authorize any other person to use the Processing Services;
 - 8.2.8 the Information will not be changed or modified in any way without the prior written consent of OPC;
 - 8.2.9 Omitted;
 - 8.2.10 In respect of every transaction, the consumer shall have accurately provided all required information necessary to authorize and process the transaction;
 - 8.2.11 the date of the Electronic Check shall accurately coincide with the date of the submission of the transaction to OPC for processing and the date the transaction actually occurred;
 - 8.2.12 the amount of the Electronic Check entered into the OPC system for processing and the Electronic Check amount authorized by the consumer shall agree;
 - 8.2.13 in respect of every transaction, Client has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectibility of the consumer's obligation or relieve the consumer from liability for the Electronic Check;
 - 8.2.14 each Electronic Check must be a first party personal or company check for which the consumer has authorized payment to Client drawn by electronic means on a United States financial institution for the purchase of goods or services from Client; and
 - 8.2.15 each Electronic Check represents the obligation of the consumer for goods or services actually sold or rendered by Client for the actual price of such goods or services (including tax and shipping) and does not involve any element of credit for any purpose.
- 8.3 The Client acknowledges to OPC that the parties are independent contractors and that nothing herein shall be construed as creating a joint venture or partnership between them. For greater certainty, the Client acknowledges that OPC is not involved in the Client's business.
- 8.4 The Client agrees that at any time, and from time to time, during the term of this agreement and only with regard to the OPC services, OPC shall have the right to post or to require posting of, without any charge, a banner, graphic or logo of OPC on the application/deposit page of internet Web site(s) incorporating the Processing Services, advertising OPC's and its affiliates' businesses. OPC's obligation to provide Client with the Processing Services are conditional on Client undertaking to:
 - 8.4.1 Identify Client Designated Account;
 - 8.4.2 Provide OPC with the Data in a timely manner and as requested by OPC from time to time;
 - 8.4.3 Co-operate with OPC to permit OPC to provide the Processing Services;
 - 8.4.4 Follow procedures, written or oral, as provided to Client by OPC from time to time;
 - 8.4.5 Adhere to all applicable laws and regulations;
 - 8.4.6 Review all statements issued to Client by OPC and inform OPC in writing of any errors or discrepancies within five (5) days of Client receipt of same;
 - 8.4.7 Omitted.
- 8.5 Client hereby irrevocably pre-authorizes OPC to:
 - 8.5.1 issue debits for payment from any Client Designated Account to OPC for any amount due from Client to OPC in accordance with the terms hereof; and
 - 8.5.2 issue debits for payment from Client Designated Account to pay for Fees, Returned Items, penalties and Fines; such rights to exist during the term of this Agreement and to continue for one hundred and eighty (180) days thereafter.
- 8.6 Upon Client execution of this Agreement Client authorize OPC to undertake the appropriate credit and risk assessments on Client.

9. GUARANTORS

- 9.1 As a primary inducement to OPC to enter into this Agreement, the individuals listed as "Guarantor 1" and "Guarantor 2" on the attached Application (the "Guarantors"), being all the registered and beneficial shareholders of the Client or any other party identified as a Guarantor, by signing this Agreement, jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by Client of each of its duties and obligations to OPC pursuant to this Agreement, whether before or after termination or expiration and whether or not any of the Guarantors has received notice of any amendment. If Client breaches this Agreement, OPC may proceed directly against any or all of the Guarantors or any other persons or entity responsible for the performance of this Agreement, without first exhausting its remedies against any other person or entity responsible therefor to it, or any security held by OPC.

10. AMENDMENTS

- 10.1 Except as otherwise expressly stated to the contrary, OPC may amend this Agreement at any time by written notice to Client of any amendment at least thirty (30) days prior to the effective date of the amendment, which amendment shall not (without Client's written consent) retroactively affect or modify the fees, reserves or transactions occurring prior to the effective date of the amendment. The amendment shall become effective on the date specified by OPC unless OPC receives Client's notice of termination of this Agreement pursuant to this Section 10.1 before such effective date.

11. NOTICES

- 11.1 Any notice, demand, request or other communication required or permitted to be given under this Agreement shall be in writing and delivered personally, or sent by prepaid registered mail, return receipt requested, or commercial delivery service with record of receipt, to OPC at 1800 West Loop South, Suite 1440, Houston, TX 77027 and to Client at the address indicated in the attached Application, or to such other address as either party may have previously indicated to the other in writing in accordance with the foregoing. Any such notice, request, demand or communication shall be deemed to have been received on the day it was delivered personally, on the date receipt is recorded (if delivered by commercial delivery service), or on the fifth (5th) day following mailing, unless there is a disruption of any kind of postal service.

12. RETENTION OF ELECTRONIC CHECK AUTHORIZATION RECORDS

- 12.1 Client shall cause the consumer to provide a verbal authorization for each Electronic Check Transaction conducted by telephone ("Telephone Transaction") and an electronic authorization for each transaction conducted over the Internet ("Internet Transaction") submitted to OPC for processing pursuant to this Agreement. In connection with the Telephone Transactions, Client shall either make a tape recording of the consumer's verbal telephone authorization or Client shall provide a written confirmation notice to the consumer of such verbal authorization in OPC's required format within three (3) days of the Electronic Transaction. Client shall maintain a copy of (i) each such tape recording authorization or, alternatively, the written confirmation notice provided to the consumer of the consumer's verbal authorization for Telephone Transactions, and (ii) said electronic authorization for Internet Transactions for a minimum period of two (2) years from the date of the transaction or for the period specified by the NACHA Operating Rules, whichever is longer (collectively the "Authorization Documentation").
- 12.2 Within 7 days of OPC's request therefor, Client shall deliver to OPC a physical or electronic copy of the Authorization Documentation for any Telephone Transaction and/or Internet Transaction.
- 12.3 Client, upon reasonable notice and during normal business hours, shall permit OPC to audit Client for its compliance with this Section 12.
- 12.4 Notwithstanding anything to the contrary herein, if OPC has agreed to provide the written confirmation notice referred to in this Section 12 on behalf of Client to the consumer, Client shall not be responsible for maintaining such records nor shall Client be considered in breach of such requirement.

13. CREDIT LAW COMPLIANCE

- 13.1 Client certifies that: (i) it has a legitimate business need in connection with a transaction initiated by or with the consumer for the information provided by OPC under this Agreement regarding such consumer; and (ii) the information provided by OPC will only be used for permissible purposes as defined in the Fair Credit Reporting Act and applicable state and federal laws, with the exception that the information will not be used for employment purposes, and will not be used by Client for any purpose other than one transaction between Client and the consumer occurring on the date of the submission of the transaction to OPC for processing. Neither Client, nor its agents or employees, shall disclose the results of any inquiry made to OPC except to the consumer about whom such inquiry is made and in no case to any other person outside Client's organization. If Client decides to reject any transaction, in whole or in part, because of information obtained from OPC, Client agrees to provide the consumer with all information required by law and OPC.

14. MISCELLANEOUS

- 14.1 Subject to the payment of the minimum monthly fee as indicated in the Application, Client's use of OPC's services hereunder are completely at will and non-exclusive.
- 14.2 This Agreement together with its Schedules and any supplemental agreements, addenda and appendixes constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No waiver of any of the provisions in this Agreement shall be deemed or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- 14.3 The Client may not assign this Agreement, or any rights hereunder, directly or by operation of law, without the prior written consent of OPC which consent may be withheld for any reason in OPC's sole discretion. For purposes of this Agreement, assignment shall include, but not be limited to, transfer of control of the Client, any ownership change which results in a new majority owner and any change in the jurisdiction of incorporation of the Client.
- 14.4 The Client shall be liable for and shall indemnify and reimburse OPC for any and all attorneys' fees and other costs and expenses paid or incurred by OPC in the enforcement of this Agreement, or in collecting any amounts due from the Client hereunder, or resulting from any breach of any of the terms or conditions of this Agreement.
- 14.5 All remedies of either party hereunder are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed to be an election of such remedy and shall not preclude the exercise of any other remedy. No failure on the part of either party to exercise and no delay in exercising any right or remedy hereunder shall operate as a waiver of such right or remedy.
- 14.6 If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable and binding on the parties.
- 14.7 The subject headings of the paragraphs and subparagraphs of this Agreement are included for convenience only and shall not affect the construction or interpretation of any of its provisions.
- 14.8 All disputes arising between the parties hereto in connection with the Agreement, including its existence, validity or termination, shall be resolved through binding arbitration under the Rules of the American Arbitration Association or, if mutually agreed, by another recognized arbitral body, in either case to take place in Montreal, Canada before a single arbitrator with the proceedings to be conducted in English. This Agreement shall be governed by and construed under the laws of the State of New York, without regard to principles of conflict or choice of law of the State of New York or any other jurisdiction.
- 14.9 All amounts referred to in this Agreement are in United States funds.



- 14.10 The Parties hereto intend that this Agreement is not an executory contract and that each Party hereto has fully performed its obligations hereunder. In the event that Client files a petition under the bankruptcy laws of the United States, or the equivalent of another jurisdiction, or that an involuntary petition shall be filed against Client, the parties hereto intend that OPC shall be protected in the continued enjoyment of its rights hereunder to the maximum feasible extent including, without limitation, if it so elects, the protection conferred upon licensees under 11 U.S.C. § 365(n), any successor provision or any similar provision of any applicable law.
- 14.11 Omitted.



Schedules or Addenda included upon execution:

In witness whereof, the Parties have signed on this day of , 20 (the "Effective Date").



OPTIMAL PAYMENTS CORP.

By

Name

Title

Address

Facsimile

E-mail

CLIENT

By

Name

Title

Address

Facsimile

E-mail

Schedule A: Rules of Various Financial Institutions

The Client's Web site shall include the following information:

- Complete and accurate description of the goods or services offered.
- Recommendation to check-writers that they print out (or save to a file) all transaction records, cancellation policies, and client policies.
- Provide rules cancellation or return policies
- Return/refund policy clearly posted.
- Customer service contact, including electronic mail address or telephone number.
- Export restrictions (if applicable).
- Delivery policy.

Schedule B: Compliance Addendum

Client agrees to the following:

- To not process any transactions from third-party Web sites for which Client does not control the payment page or products being sold
- To not process any transactions for which Client does not directly or contractually control the fulfillment of goods or services
- Payment is based on Client providing shipping tracking numbers to OPC, as may be required by OPC, at the time of settlement through OPC's API. Failure to provide tracking numbers will result in payments being held or Fines being imposed by OPC.

Per: