



## Optimal Payments Inc. Direct Debit Application and Agreement

Optimal Payments Inc. prefers application forms to be typed.

### Merchant Information

Legal Name of Business

DBA

(Doing Business As)

Street Address

(P.O. Boxes not permitted)

City

Province

Postal Code

Years at Location

Mailing Address

(If different from Street Address)

City

Province

Postal Code

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 Insurance Number

(Required)

Street Address

(P.O. Boxes not permitted)

City

Province

Postal Code

Home Telephone Number

Second Principal's Name

Title

Ownership %

Date of Birth (mm/dd/yyyy)

(Required)

Social Insurance Number

(Required)

Street Address

(P.O. Boxes not permitted)

City

Province

Postal Code

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

Transit Number

Institution ID

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	%

## Debit Processing

Do you have or have you ever had Pre-authorized Debit (PAD) processing?

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

Name of processor

Have you ever had your 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 customer disputes 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, Canadian Federal or Provincial law enforcement or government 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 Transaction Amount	Maximum Transaction Amount	
Include Representment for NSF Items?				
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 INC. MANAGEMENT: (NOT VALID UNTIL SIGNED BY MANAGEMENT OF OPTIMAL PAYMENTS INC.)

Title:

Date:

Important notice before signing this application

The Applicant hereby authorizes Optimal Payments Inc. ("OPI" 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, and each individual signer consents to use of personal information provided to OPI to obtain credit reports from authorized credit reporting agencies. 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 individual signers and Applicant hereby authorizes and each individual signer consents to OPI undertaking such verifications in relation to the Applicant and each individual signer without further notice. The results of such investigations remain the sole property of OPI. OPI will notify you if and when such costs will be incurred and you will be given the option of withdrawing this Application. BY SUBMITTING THIS APPLICATION, APPLICANT AND INDIVIDUAL SIGNERS CONSENT TO INQUIRIES BY OPI OF CREDIT REPORTING AGENCIES AND OTHER THIRD PARTIES REGARDING APPLICANT, GUARANTOR(S) AND ANY INDIVIDUAL SIGNERS OF THIS APPLICATION 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 OPI and attests the information submitted to OPI is accurate to the best of his or her knowledge as of the date of signature(s).

## ACSS PROCESSING SERVICES AGREEMENT

**BETWEEN:** **OPTIMAL PAYMENTS INC.**, a legal person having a place of business at 2 Place Alexis-Nihon, 3500 de Maisonneuve Blvd. W., Suite 700, Montreal, Quebec, Canada, H3Z 3C1 (hereinafter referred to as **"OPI"**)

**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 OPI 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 OPI in reliance on the Information furnished therein has approved the opening of an account by the Client with OPI;
- 1.3 WHEREAS OPI 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 **"ACSS"** means the Automated Clearing Settlement System.
- 2.2 **"ACSS Rules"** means the rules and standards governing the exchange of payment items between CPA member institutions. as established by the CPA.
- 2.3 **"ACQUIRER FI"** means the CPA member that holds the Acquirer's account, receives the payment information from the Acquirer and the credit payment instruction from the Payor's FI, for the benefit of the Payee, or OPI's bank.
- 2.4 **"Application"** means an application to open an account for ACH Processing Services with OPI in the form attached hereto.
- 2.5 **"CPA"** means the Canadian Payments Association as defined in the Canadian Payments Act.
- 2.6 **"CPA Members"** means a member or members of the Canadian Payments Association designated by OPI to process and settle Pre-authorized Debit Transactions.
- 2.7 **"Clearing Period"** means the 6th business day following the submission of a transaction to the CPA Members.
- 2.8 **"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 OPI.
- 2.9 **"Confidential Information"** shall mean OPI's programs, procedures, proprietary or other software (including transaction software) and other intellectual property.
- 2.10 **"Data"** means: (i) the data about transactions and related instructions and information provided by Client to OPI in the form as indicated by OPI in documentation provided to Client, and as amended from time to time; and (ii) any other information requested by OPI.
- 2.11 **"Effective date"** means the date of this agreement as it appears above the signatures of the parties below.
- 2.12 **"Fee"** means the amounts specified the Application.
- 2.13 **"Fine"** means (i) any fine imposed on OPI 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 OPI for excessive Returned Items or breach of the terms of this Agreement.
- 2.14 **"Information"** means all the information supplied by the Client to OPI in the Application.
- 2.15 **"Issuing Institution"** means the financial institution issuing Credit Cards or Debit Cards.
- 2.16 **"NSF"** means an approved and settled Pre-authorized Debit Transaction that returns for reason(s) of insufficient funds.
- 2.17 **"Obligations"** has the meaning ascribed thereto in Section 4.6.
- 2.18 **"Processing Services"** has the meaning ascribed thereto in Section 3.1.
- 2.19 **"PAYOR FI" or "Consumer's Bank"** means the CPA member that holds the Payor's Account, controls issuance and verification of the Secret Code which is used to access that Payor's Account, and receives and responds to requests for Authentication, Authorization and Approval
- 2.20 **"Pre-authorized Debit"** means a pre-authorized debit (withdrawal) and credits (refund) issued by a Client that is drawn or deposited on an account of a consumer, as permitted by the ACSS Rules from time to time.
- 2.21 **"Pre-authorized Debit Transaction"** means each Pre-authorized Debit transaction, whereby a consumer's bank account is either debited or credited.
- 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 Pre-authorized Debit Transactions which are at any time refused or debited by the PAYOR FI against the Acquirer FI.
- 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 and the ACSS Rules, OPI hereby agrees to provide the following processing services to the Client (the "Processing Services"):
- 3.1.1 Submission of Pre-authorized Debit Transactions requested 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 CPA Members for confirmations and approvals from the CPA Members;
- 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 Pre-authorized Debit 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 OPI;
- 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 a CPA Member. OPI 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. OPI 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 OPI's Web-based interface.
- 3.2 Notwithstanding the above, OPI maintains the right to decline to process any Data or transactions which do not meet OPI's risk parameters designed to limit risk of fraud, financial loss or regulatory non-compliance.
- 3.3 Nothing herein grants the Client any rights whatsoever in any of OPI's transaction or other software other than a limited, non-exclusive, non-transferable license for use in connection with services provided by OPI pursuant to this Agreement, and subject to the terms and conditions of this Agreement and as OPI 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 OPI the following non-refundable fees:
  - 4.1.1 All fees as indicated in the Application;
  - 4.1.2 For any Returned Items **amounting to 20% of the volume of transactions in any month , a Fine of up to \$35 for each returned transaction over such threshold amount may be assessed by OPI or its ACQUIRER FI.;**
  - 4.1.3 Should the Client be deemed to have violated the terms of Schedule B, Client shall pay OPI the Fine as indicated therein;
  - 4.1.4 Omitted;
  - 4.1.5 Any other charges or fees imposed from time to time by the CPA Members or banks or other third parties for handling Pre-authorized Debits; and
  - 4.1.6 For each wire transfer received from OPI the amount specified in the attached Application.
- 4.2 The Client shall also be obliged to:
  - 4.2.1 reimburse OPI for all credits issued by OPI on behalf of the Client; and
  - 4.2.2 reimburse OPI for all Returned Items and pay all Fines related to Returned Items.
- 4.3 Client hereby authorizes OPI 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 OPI, the Client shall pay the balance thereof within seven (7) business days following receipt of OPI's notice for such amount.
- 4.4 OPI 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 OPI for the term of this Agreement and for a period of seven (7) months thereafter. Thereafter, OPI shall pay to the Client any amounts remaining out of the Reserve Amount that were not used to offset any Obligations due to OPI 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 OPI'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. OPI 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 OPI, 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 OPI.
  - 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, OPI 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, OPI.
  - 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 OPI is authorized to establish a security deposit account (the "Security Deposit Account") in connection with the Processing Services hereunder in the name of OPI. The Security Deposit Account shall be maintained by OPI for the term of this agreement and for a period of seven (7) months thereafter. Thereafter, OPI shall pay to the Client any amounts remaining in the Security Deposit Account that were not used to offset amounts due to OPI 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 OPI 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 OPI shall have the right, in its sole discretion, to withdraw from the Security Deposit Account any and all amounts owed to OPI 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 OPI.
- 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 OPI by the Client or for the satisfaction of any amounts disbursed by OPI 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 grants in favour of OPI a lien and security interest, with effect as of and from this date, 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 OPI's in the Remittances, Security Deposit or Reserve Amount. The Client further undertakes, upon notice by OPI and at its expense, to execute such documents, make such filings and registrations at the appropriate offices of public record and seek such consents as may be necessary or desirable to perfect OPI's first-ranking hypothec and security interest therein.

- 4.7 OPI shall have the right to immediately withdraw from the Reserve Amount any and all amounts owed to it hereunder without notice or demand. OPI shall have the additional right to immediately withdraw from the Security Deposit any and all amounts owed to it hereunder. OPI'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. OPI'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 as well as any other amounts in the Client's account shall be for the sole account of OPI.
- 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 OPI, 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 Pre-authorized Debit Transactions and the fees hereunder.
- 4.12 Notwithstanding Section 3.1.1, OPI shall have the right to limit or cease processing Pre-authorized Debit Transaction requests (i) should in OPI's sole determination the Client's Reserve Amount and Security Deposit not be adequately funded; or (ii) if OPI has a concern about the volume of activity in the account; or (iii) if the Client is in overdraft with OPI; or (iv) for any other valid reason.
- 4.13 OPI 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 OPI reserves the right to increase the Reserve Amount withheld from Remittances under Section 4.4 should OPI 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 OPI against and in respect to any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties and reasonable legal fees (in Quebec, including but not limited to judicial and extra-judicial costs and fees) that OPI 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 or from any fault, negligence or willful misconduct by the Client or its employees or agents.
- 5.2 OPI's liability to Client with respect to any Pre-authorized Debit Transaction shall not exceed the amount represented by the transaction record in connection with such Pre-authorized Debit Transaction, less the applicable fees payable to OPI hereunder.
- 5.3 ALL WARRANTIES AND CONDITIONS EXPRESSED OR IMPLIED INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY QUALITY AND FITNESS FOR ANY PARTICULAR PURPOSE OF THE PROCESSING SERVICES OR OF ANY SOFTWARE, HARDWARE OR SERVICES PROVIDED BY OPI HEREUNDER ARE HEREBY DISCLAIMED BY OPI, ITS AFFILIATES, ACQUIRER FIs, AGENTS AND LICENSORS. IN ADDITION, OPI, ITS AFFILIATES, ACQUIRER FIs, 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 OPI HEREUNDER.
- 5.4 OPI shall use commercially reasonable efforts to perform the Processing Services provided however, OPI, its affiliates, agents or licensors shall not be liable for any loss resulting from the activities of OPI'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 OPI's reasonable control including, without limitation, acts of god, force majeure, 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. OPI'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, OPI 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; or,
- 6.2.5 the ACSS Rules or any applicable law do not permit provision of the Processing Services; or
- 6.2.6 an Acquirer FI discontinues the provision of acquirer services to OPI for any reason.
- 6.3 OPI 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 OPI.
- 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 that are intended by their terms to survive the expiration or termination of this Agreement, including, without limitation, 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. Termination of this Agreement shall not relieve the Client of its obligations to pay accrued fees.



- 6.6 Upon any termination of this Agreement, OPI 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 to the extent necessary 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 OPI 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 OPI 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. Each Party shall comply with applicable laws relating to the collection, use, storage and disclosure of personal information of Client's consumers. In addition, the Client will take all necessary security measures to ensure the security of personal information of Client's consumers.
- 7.5 Termination of this Agreement shall not release OPI from its obligations under Section 7.4.
- 8. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CLIENT**
- 8.1 The Client hereby covenants to OPI 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 OPI 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 Acquiring FI, the CPA or OPI from time to time and as currently specified in Schedule A, which may be updated from time to time upon 30 days written notice by OPI;
- 8.1.4 submit to OPI in writing, for OPI'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 agreement for the Pre-authorized Debit Transaction from the consumer for such transaction in accordance with the requirements set out in Schedule A; including full express and proper authorization and consent from the consumer for OPI 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, if such credit checks are required by OPI or otherwise for the type of Pre-authorized Debit Transaction submitted. In order to obtain such consents, Client will require each consumer to agree to the following text: *"You hereby authorize Optimal Payments, Inc, our supplier, to make any inquiries with any third party we and they consider necessary to confirm your transaction with us. This may include ordering a credit report and/or verifying the information you provide against third party databases."*
- 8.1.6 Client shall provide records of authorizations from consumers for Pre-authorized Debit Transactions and/or consumer consents related to credit reports, to OPI upon request. Client shall retain each consent to obtain a credit report for a minimum period of two (2) years from the date of the transaction
- 8.1.7 only use the Processing Services for transactions that are in compliance with all applicable laws and regulations, and so as to permit OPI and the Acquirer FI to comply with all requirements of **ACSS Rules**; and
- 8.1.8 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 OPI that:
- 8.2.1 it will maintain the value and reputation of OPI to the best of its reasonable ability;
- 8.2.2 it will advise OPI 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, as applicable compliance with provincial consumer protection legislation, Canadian legislation relating to marketing and promotions of goods and services, *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Cda), US Federal Trade Commission Telemarketing Sales Rule (16 C.F.R. Part 310) and the US Telephone Consumer Protection Act, and regulations or other rules or guidelines as set out by OPI 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 OPI should the balance fall below acceptable levels as determined by OPI;
- 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 OPI;
- 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 Pre-authorized Debit Transaction ;
- 8.2.11 the date of the Pre-authorized Debit Transaction shall accurately coincide with the date of the submission of the transaction to OPI for processing and the date the transaction actually occurred;
- 8.2.12 the amount of the Pre-authorized Debit Transaction entered into the OPI system for processing and the Pre-authorized Debit Transaction 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 Pre-authorized Debit Transaction; each Pre-authorized Debit transaction must be drawn on accounts for which the consumer has signing authority at the Consumer's bank; and
- 8.2.14 each Pre-authorized Debit Transaction 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 OPI 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 OPI 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 OPI services, OPI shall have the right to post or to require posting of, without any charge, a banner, graphic or logo of OPI on the application/deposit page of internet Web site(s) incorporating the Processing Services, advertising OPI's and its affiliates' businesses. OPI'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 OPI with the Data in a timely manner and as requested by OPI from time to time;
- 8.4.3 Co-operate with OPI to permit OPI to provide the Processing Services;
- 8.4.4 Follow procedures, written or oral, as provided to Client by OPI from time to time;
- 8.4.5 Adhere to all applicable laws and regulations;
- 8.4.6 Review all statements issued to Client by OPI and inform OPI 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 OPI to:
- 8.5.1 issue debits for payment from any Client Designated Account to OPI for any amount due from Client to OPI 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 OPI to undertake the appropriate credit and risk assessments on Client.
- 9. GUARANTORS**
- 9.1 As a primary inducement to OPI 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 OPI 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, OPI 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 OPI.
- 10. AMENDMENTS**
- 10.1 Except as otherwise expressly stated to the contrary, OPI 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 OPI unless OPI 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 OPI at [2 Place Alexis-Nihon, 3500 de Maisonneuve Blvd. W., Suite 700, Montreal, Quebec, Canada, H3Z 3C1](#) 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 PRE-AUTHORIZED DEBIT TRANSACTION AUTHORIZATION RECORDS**
- 12.1 Client shall cause the consumer to provide a verbal authorization for each Pre-authorized Debit Transaction conducted by telephone ("Telephone Transaction") and an electronic authorization for each transaction conducted over the Internet ("Internet Transaction") submitted to OPI 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 OPI's required format within three (3) days of the Pre-authorized Debit Transaction.
- 12.2 Client shall maintain a copy of each authorization for a pre-authorized Debit Transaction for a minimum period of two (2) years from the date of the transaction or for the period specified by the **ACSS Rules**, whichever is longer, including, without limitation, (i) each 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 **ACSS Rules**, whichever is longer (collectively the "Authorization Documentation").
- 12.3 Within 7 days of OPI's request therefor, Client shall deliver to OPI a physical or electronic copy of the Authorization Documentation for any Telephone Transaction and/or Internet Transaction.
- 12.4 Client, upon reasonable notice and during normal business hours, shall permit OPI to audit Client for its compliance with this Section 12.
- 12.5 Notwithstanding anything to the contrary herein, if OPI 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 direct business need in connection with a transaction initiated by or with the consumer for the information from any consumer reporting agency provided by OPI under this Agreement regarding such consumer; and (ii) the information provided by OPI will only be used for permissible purposes as defined in applicable consumer reporting legislation and other applicable provincial 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 OPI for processing. Except as required by applicable law, neither Client, nor its agents or employees, shall disclose the results of any inquiry made to OPI except to the consumer about whom such inquiry is made and in not to any other person outside Client's organization. If Client decides to reject any transaction, in whole or in part, because of consumer credit information obtained from OPI, Client agrees to provide the consumer with all information required by law and OPI.



**14. MISCELLANEOUS**

- 14.1 Subject to the payment of the minimum monthly fee as indicated in the Application, Client's use of OPI'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 OPI which consent may be withheld for any reason in OPI'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 OPI for any and all legal fees (in Quebec, including but not limited to judicial and extra-judicial costs and fees) and other costs and expenses paid or incurred by OPI 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 Province of Ontario and the federal laws of Canada applicable therein (save and except for the movable hypothec created in section 4.6 which will be governed by the laws of the Province of Quebec), without regard to principles of conflict or choice of law of the Province of Ontario or any other jurisdiction.
- 14.9 All amounts referred to in this Agreement are in Canadian funds.
- 14.10 It is the express wish of the parties that this agreement and all related documents be drawn up in English. C'est la volonté expresse des parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigé en anglais.



**Schedules or Addenda included upon execution:**

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



**OPTIMAL PAYMENTS INC.**

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 OPI, as may be required by OPI, at the time of settlement through OPI's API. Failure to provide tracking numbers will result in payments being held or Fines being imposed by OPI.

Per: