



Quern House, Mill Court, Hinton Way  
Great Shelford, Cambridge. CB22 5LD  
Telephone: 866.826.8003  
Email: sales@optimalpayments.com

## MERCHANT PROCESSING APPLICATION AND AGREEMENT

**Please read this entire document. Complete every section that applies to you based on the instructions provided. This application must be signed and dated.**

- ☐ Merchant application and agreement signed and dated
- ☐ Articles of incorporation (a copy of the certificate, and articles of association of the business)
  - If the corporation is owned by another corporation, then articles must be obtained for that organization as well; i.e., articles of incorporation are required for the ultimate beneficiaries (does not apply to publicly traded companies)
- ☐ Two pieces of ID for each ultimate beneficiary
- ☐ Void check showing legal name and company address/letter from financial institution confirming bank details
- ☐ Most recent audited or reviewed financials (P&L and balance sheet) or corporate tax returns
- ☐ Three (3) months of most recent processing statements, if available
- ☐ If applying for an e-commerce account, Web site(s) must be fully functional and must contain, at a minimum: Secure Payment Page, Return/Refund Policy, Terms and Conditions, Privacy Policy, Shipping Policy, Currency of Transaction, Contact Information and a complete description of goods/services sold. A list of all Web site URLs that will be accepting credit cards must be provided and you must also include a non-expiring user name and password for each site.
- ☐ If applying for MOTO, copies of any brochures, ads, or catalogs, as applicable, and a complete description of your business model, including but not limited to target market, advertising, description of goods and services being sold, return policy, and a description of how orders are placed, processed, and fulfilled
- ☐ If applicable:
  - Copies of any legal agreements between your business and vendors providing content, products, and other fulfillment and shipping services.
  - Copies of any scripts used by call centers or verification departments as well as call center training materials, including procedural manuals and operational flows.

**PLEASE NOTE THAT EACH ITEM LISTED ABOVE IS REQUIRED BEFORE YOUR APPLICATION CAN BE ACCEPTED.**

Once the application has been completed and signed and the required documentation gathered, please email or fax the complete package to:

- 
- 

**NOTES/EXCEPTIONS:** This section is reserved for Sales Representative use only.



Quern House, Mill Court, Hinton Way  
Great Shelford, Cambridge. CB22 5LD  
Telephone: 866.826.8003  
Email: sales@optimalpayments.com

## MERCHANT PROCESSING APPLICATION AND AGREEMENT

### BUSINESS INFORMATION

Merchant Name (DBA or Trade Name) _____		Corporate Legal Name (If different) _____	
Location Address _____		Corporate Address (If different) _____	
City _____ State _____ Country _____ Zip _____		City _____ State _____ Country _____ Zip _____	
Contact Name _____		Contact Email _____	
Contact Telephone # _____		Contact Fax # _____	Customer Service # _____
Federal Tax # _____	Information to Appear on Cardholder's Statement (Max. 25 characters, including phone number and spaces) Business Name _____ Phone # _____		Company Web Site _____ (If applicable)
Monthly Payment Card Volume \$ _____	Average Ticket Amount \$ _____ Highest Ticket Amount \$ _____	Does This Location Currently Take Payment Cards? <input type="checkbox"/> No <input type="checkbox"/> Yes Will You Be Keeping Your Account? <input type="checkbox"/> No <input type="checkbox"/> Yes Reason for Leaving Current Processor? _____ _____	
Do You Need the Ability to Process Recurring Transactions? <input type="checkbox"/> No <input type="checkbox"/> Yes		Fully Describe the Product or Service Being Offered. _____ _____	
Years in Business _____ Years Processing (If different) _____			
<b>Ownership</b> <input type="checkbox"/> Corporation <input type="checkbox"/> Individual/Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Publicly Traded <input type="checkbox"/> Government <input type="checkbox"/> Non-Profit (Must provide 501-C, or other proof) <input type="checkbox"/> LLC State: _____			
<b>Principals (Must equal at least 51% of ownership)</b>			
Principal Name First _____ Middle _____ Last _____ % Ownership _____ SSN _____ Driver's License _____ Title _____ Date of Birth (dd/mm/yy) _____ Home Address _____ City _____ State _____ Country _____ Zip _____ Home Phone _____ Cell Phone _____ Email Address _____			
Principal Name First _____ Middle _____ Last _____ % Ownership _____ SSN _____ Driver's License _____ Title _____ Date of Birth (dd/mm/yy) _____ Home Address _____ City _____ State _____ Country _____ Zip _____ Home Phone _____ Cell Phone _____ Email Address _____			
Have Merchant or Owners/Principals Ever Had a Processing Agreement Terminated by a Bank? <input type="checkbox"/> No <input type="checkbox"/> Yes Reason for Termination _____			
Have Merchant or Owners/Principals Ever Filed For <input type="checkbox"/> Business Bankruptcy <input type="checkbox"/> Personal Bankruptcy If Yes, Indicate Year _____			
Key Supplier References (List two contacts below) Trade _____ Name _____ Contact # _____ Trade _____ Name _____ Contact # _____		Method of Card Acceptance (Total must equal 100%) Credit Card Swiped _____% MOTO _____% Internet _____% If MOTO or Internet, will you be using a non-Optimal Payments Gateway? If so, please name: _____	



Quern House, Mill Court, Hinton Way  
Great Shelford, Cambridge, CB22 5LD  
Telephone: 866.826.8003  
Email: sales@optimalpayments.com

## MERCHANT PROCESSING APPLICATION AND AGREEMENT

### MERCHANT APPLICATION ACCEPTANCE

By executing this Merchant Application on behalf of the merchant described above ("Merchant"), the undersigned individual(s) represent(s), warrant(s), and acknowledge(s) that: (i) All information contained in this Merchant Application ("Application") is true, correct and complete as of the date of this Application; (ii) If the Merchant is a corporation, limited liability company, or partnership, the individual(s) executing this Application has/have the requisite legal power and authority to complete and submit this Application on behalf of the Merchant and to make and provide the acknowledgements, authorizations and agreements set forth herein on behalf of the Merchant and individually; (iii) The information contained in this Application is provided for the purpose of obtaining, or maintaining, a merchant account for the Merchant with the Sponsor Bank ("BANK") and BANK shall rely on the information provided herein in its approval process and in settling the applicable Discount Rate, Approved Average Ticket, and Approved Monthly Card Volume; (iv) BANK is authorized to investigate, either through its own agents or through credit bureaus/agencies, the credit of the Merchant and each person listed on this Application; (v) BANK will determine all rates, fees and charges and notify Merchant of the approved fees and by Merchant's submission and acceptance of Merchant's first settled transaction, Merchant agrees to pay such approved fees; (vi) The Merchant Agreement shall not take effect until Merchant has been approved by BANK and a merchant number has been issued to merchant; and (vii) The undersigned has received, read, and understood the Merchant Agreement, which is incorporated herein by reference thereto, and agrees on behalf of the Merchant to be bound by the terms of such Merchant Agreement.

*As provided in Section 6.1, the term of this Agreement shall be two (2) years; Merchant may terminate this agreement, in accordance with the procedures of Section 6, without cause or penalty within 45 days after the Agreement becomes effective, after which time termination or abandonment of the Agreement without cause may result in assessment of Early Termination Fees.*

The Merchant on whose behalf this Application is being submitted acknowledges that this Application is being submitted to Optimal Payments Ltd., a company incorporated under the laws of England and Wales, having a place of business at Quern House, Mill Court, Hinton Way, Great Shelford, Cambridge, CB22 5LD (hereinafter referred to as the "OPL")

\*In the event that an individual listed on this application is a Canadian resident, Optimal Payments Inc. shall have the authority to make any inquiries with any third party we consider necessary to confirm your registration with us. This includes your authorization to order a credit report and verifying the information you provide against third-party databases. In the case of US residents, Optimal Payments Corp. shall have this same authority, including your authorization to order a credit report. In the case of EU residents, Optimal Payments Ltd. shall have this same authority, including your authorization to order a credit report"

**Merchant** (hereinafter referred to as the "Client")

**Principal #1** \_\_\_\_\_ Title \_\_\_\_\_

Print Name \_\_\_\_\_ **Date** \_\_\_\_\_

**Principal #2** \_\_\_\_\_ Title \_\_\_\_\_

Print Name \_\_\_\_\_ **Date** \_\_\_\_\_

**OPL**  
By \_\_\_\_\_

\_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ Name and Title \_\_\_\_\_

By signing above Merchant further acknowledges that they have read, understand and agree to be bound by the terms of PCI Compliance as described on this site:  
[www.visa.com/cisp](http://www.visa.com/cisp).

### INTERVENTION BY GUARANTOR

The Guarantor hereby intervenes and agrees, by signing this Schedule, to guarantee jointly and severally, unconditionally and irrevocably, the continuing full and faithful performance and payment by Client of each of its duties and obligations to OPL pursuant to the Agreement, whether or not Guarantor has a current direct affiliation with the Client or has accurate knowledge of the Client's activities with respect to the Processing Services, whether or not before or after termination or expiration and whether or not Guarantor has received notice of any amendment. If Client breaches the Agreement, OPL may proceed directly against the Guarantor or any other persons or entity responsible for the performance of the Agreement without first exhausting its remedies against any other person or entity responsible therefore to it, or any security held by OPL. (Capitalized terms in this Schedule that are not herein defined shall have the meanings ascribed to them in the Agreement. Guarantor acknowledges that OPL has provided Guarantor with a copy of the Agreement for its reference.)

Guarantor agrees that any liability will not be limited or cancelled on the basis that (i) the Agreement cannot be enforced against the Client; (ii) the Client or OPL agree to changes in the terms of the Agreement; (iii) OPL releases the Client, or any other guarantor, from any of their obligations; (iv) any Regulatory Authority or law, regulation, or order affects Client's or OPL's rights under the Agreement; and/or (5) anything else happens that may affect OPL's rights against the Client or any other guarantor; and, in each case, whether or not Guarantor is so advised or notified.

Guarantor further agrees that (i) OPL can delay enforcing any of its rights under this guaranty without losing them; (ii) OPL can demand payment from Guarantor without first seeking payment from the Client or any other guarantor; and (iii) Guarantor will pay all court costs, attorneys' fees and collection costs incurred by OPL in connection with enforcement of the Agreement and this Schedule, whether or not there is a lawsuit, and such additional fees and costs as may be directed by a court.

Client and Guarantor agree that, if and when either Client or Guarantor fails to pay any amount as provided in the Agreement or in any other agreement between OPL and Client (or any principal of Client), or fails to satisfy any liability or to fulfill any obligation thereunder promptly when required (collectively, an "Unpaid Obligation"), OPL shall have the right, at any time and following notice to Client and Guarantor, at OPL's sole discretion either (1) to set-off and apply against the Unpaid Obligation any sums at any time credited by or owing from OPL to Guarantor sufficient to satisfy the Unpaid Obligation or any portion thereof; or (2) to make demand upon Guarantor for immediate payment of the Unpaid Obligation or portion thereof, with which demand Guarantor immediately shall comply. The rights and remedies of OPL hereunder are in addition to other rights and remedies (including, without limitation, other rights of set-off) that OPL may have, and Guarantor agrees that the terms of this Intervention by Guarantor shall take precedence in the event of any conflict between the terms of this Intervention by Guarantor and the terms of any other agreement, including any agreement between OPL and Guarantor.

If Guarantor is a corporation, limited liability company or any other entity other than an individual, the individual signing this Schedule on behalf of Guarantor represents and warrants that he or she has authority and hereby intends to bind the Guarantor to the obligations set forth herein and shall be personally liable for such obligations in the event he or she subsequently is alleged or determined not to have such authority or intent.

**GUARANTOR** \_\_\_\_\_

**NAME** \_\_\_\_\_

**DATE** \_\_\_\_\_

### SPECIFIC REPRESENTATIONS AND WARRANTIES

You represent and warrant to us at the time of this document and during the Term of this Agreement the following: You are not engaged in or affiliated with any businesses, products, or methods of selling other than those listed in this Application.

No owner with voting control of the company, or with more than 5% of the shares, nor any signer of this agreement or senior officer of your organization, has been charged, arrested, or convicted within the last five years of criminal activity for which the potential penalty involves more than one year of imprisonment. This Agreement violates no law, nor is it in conflict with any other agreement to which you are subject. The products or services you will sell and submit for processing under this Agreement are not illegal services within your jurisdiction.

There is no action, litigation, or proceeding pending, or to your knowledge threatened which, if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations.

You have never entered into an agreement with a third party to perform credit or debit card processing services, which has been terminated by that third party, other than as identified in the Application. All intended transactions are bona fide. No transaction involves the use of a card for any purpose other than the purchase of goods or services from you and does not involve a cardholder obtaining cash from you unless allowed by the Rules and agreed in writing with Bank.

You have provided all information accurately and without omissions or misleading statements and you have not withheld any information that, if known to us, would influence our decision to enter this Agreement.

**SIGNATURE** \_\_\_\_\_

**NAME** \_\_\_\_\_

**DATE** \_\_\_\_\_



Quern House, Mill Court, Hinton Way  
Great Shelford, Cambridge. CB22 5LD  
Telephone: 866.826.8003  
Email: sales@optimalpayments.com

## MERCHANT PROCESSING APPLICATION AND AGREEMENT

### SCHEDULE A – PRICING

Discount and Transaction Fees	US Dollar \$ (USD)
Blended Discount Rates (Visa/MC)	%
Per-Transaction Fees (these fees are for all submitted authorizations)	\$
<b>Set-up Fees</b>	Rate
Application (Non-refundable)	\$
Recurring Billing Setup	\$
<b>Monthly Fees</b>	Rate
Account Maintenance	\$
Online Reporting	\$
Minimum Processing	\$
Secure Gateway	\$
Recurring Billing	\$
HRMP Monthly Fee	\$
<b>Other Fees (If Applicable)</b>	Rate
Per Chargeback	\$
Per Wire	\$
Per Failed Wire	\$
Per Transaction Address Verification Service	\$
Per Secure Gateway Transaction	\$
Per 3D Secure Transaction	\$
Annual Membership	\$
High Risk Registration	\$
Chargeback Reduction Advisory Fee	\$
Late Payment Fee	
Other, Specify:	\$
<b>Special Terms</b>	\$

### SCHEDULE B – AUTHORIZATION FOR FUNDS TRANSFER

Beneficiary Information	Beneficiary Bank	Intermediary Bank
Name	Bank Name	Bank Name
Address	Branch Address	Branch Address
City	City	City
Prov./State	Prov./State	Prov./State
Country	Country	Country
Account Number	Swift Code	Swift Code
	Bank Code (ABA/Sort Code)	Bank Code (ABA/Sort Code)
	IBAN	

This Authorization is to remain in full force and effect until Bank or ISO has received written notification from Merchant or an authorized Agent of its termination in such time and manner as to provide Bank a reasonable opportunity to act on it. **PLEASE ATTACH A VOIDED BUSINESS CHECK FOR EACH ACCOUNT.**

### SCHEDULE C – RESERVES, SECURITY DEPOSIT, AND TRANSACTION SETTLEMENT

#### RESERVES

Following the \_\_\_\_\_ (\_\_\_\_\_) month of operation (and every month thereafter) the reserves generated from the first (1st) month of operation (and every month thereafter) will be forwarded to the Merchant.

Unless otherwise required by Bank, the amount of the Reserve Account shall be \_\_\_\_\_% of the total of all approved and settled Transactions, over the previous \_\_\_\_\_ (\_\_\_\_\_) month period, unless increased in accordance with Section 24 and this Schedule. In the event of termination, all reserves shall be held until the beginning of the \_\_\_\_\_ (\_\_\_\_\_) month, rather than repaid each month.

#### SECURITY DEPOSIT

In addition to the foregoing reserves, merchant shall provide, as a condition of entering into the Agreement, a static Reserve of \_\_\_\_\_, which shall be held throughout the term of the Agreement, and until the beginning of the \_\_\_\_\_ (\_\_\_\_\_) month following termination of the Agreement, unless otherwise amended by Bank or Optimal.

#### TRANSACTION SETTLEMENT

Transactions will be settled \_\_\_\_\_ (e.g., X times per week) and \_\_\_\_\_ days (business ☐ or calendar ☐ – check one) in arrears.



Quern House, Mill Court, Hinton Way  
Great Shelford, Cambridge. CB22 5LD  
Telephone: 866.826.8003  
Email: sales@optimalpayments.com

## MERCHANT PROCESSING APPLICATION AND AGREEMENT

### MOTO/INTERNET QUESTIONNAIRE

1. Will you accept payment for products/services on your Web site? ☐ Yes ☐ No ☐ I do not have a Web site.  
If No, go to 2. Otherwise, provide the name of your SSL provider (e.g., Verisign, Thawte, Entrust, Other – specify) \_\_\_\_\_
2. What % of your products/services will be sold/delivered in the following markets (total must equal 100%)?  
North America \_\_\_\_\_% Europe \_\_\_\_\_% Other Markets \_\_\_\_\_%
3. What percentage do you sell to Business \_\_\_\_\_% Consumers \_\_\_\_\_%
4. Briefly outline your return policy. ☐ Greater than 30 Days ☐ Less than 30 Days ☐ No Returns ☐ Other (Please Specify) \_\_\_\_\_  
If No Returns, why are refunds not provided? \_\_\_\_\_ (If no refunds, go to 9)
5. What percentage of refunds (to your total monthly sales) is usual? \_\_\_\_\_. How many days does a refund usually take? \_\_\_\_\_ days
6. Do you refund 100% of the purchase price? ☐ Yes ☐ No If No, please provide further details. \_\_\_\_\_
7. Describe in detail products/services sold, including pricing. Use separate sheet if necessary. \_\_\_\_\_
8. When do you charge the customer? ☐ Shipment/Completion of Service ☐ Order
9. In the case where a product is shipped, is the shipment traceable? ☐ Yes ☐ No Is a delivery receipt requested? ☐ Yes ☐ No
10. Please state the normal "turnaround time" from when you receive the order to the customer receiving the goods/services. \_\_\_\_\_ days.
11. Do you take advance deposits (a percentage of the full value or a fixed part-payment paid in advance)? ☐ Yes ☐ No  
If Yes, what % of the final price is paid as a deposit? \_\_\_\_\_% What fixed deposit is taken? \$ \_\_\_\_\_
12. Where is your product warehoused? Address \_\_\_\_\_ City \_\_\_\_\_ State/Zip \_\_\_\_\_
13. Do you own the product/inventory at the time of sale? ☐ Yes ☐ No
14. Are there any other companies involved in accepting, shipping, or fulfilling the service or product or the billing of the customer?  
☐ Yes ☐ No If Yes, who are they and what do they do? Use separate sheet if necessary. \_\_\_\_\_
15. How do you advertise? (Catalogs, magazines, TV, Internet, etc. List all that apply. \_\_\_\_\_
16. Who enters credit card information into the processing system? ☐ Consumer ☐ Fulfillment Center ☐ Merchant ☐ Other \_\_\_\_\_
17. Is your processing seasonal (mild fluctuations can be answered as "No")? ☐ Yes ☐ No If Yes, please check the busiest months.  
Jan ☐ Feb ☐ Mar ☐ Apr ☐ May ☐ June ☐ July ☐ Aug ☐ Sept ☐ Oct ☐ Nov ☐ Dec ☐
18. Do you take payments for memberships, subscriptions, or packages? ☐ Yes ☐ No If Yes, please provide the usual breakdown of transactions (by % of total sales) and their respective price points.

Membership/Subscription Period	Package (e.g., 10 credits or 5 passes)	Price Point	Percentage of Sales
Weekly <input type="checkbox"/>			
Monthly <input type="checkbox"/>			
Quarterly <input type="checkbox"/>			
Six-Monthly <input type="checkbox"/>			
Annually <input type="checkbox"/>			
Other <input type="checkbox"/>			

19. If packages or memberships are sold, what is the average amount of time it takes a customer to use up their package? \_\_\_\_\_
20. If memberships or subscriptions are sold, how do you manage the recurring payments? ☐ Optimal's RB Module ☐ Other \_\_\_\_\_
21. Do you capture the Consumer Billing Address (AVS) on any of your transactions? ☐ Yes ☐ No
22. If Yes, in the case where there is no AVS match, would you like us to decline the transaction or send you the response so that you can make the appropriate decision? ☐ Decline ☐ Send Response
23. Do you capture the Card Validation Value (CVV) from the back of the card on any of your transactions? ☐ Yes ☐ No
24. If Yes, in the case where there is no CVV match, would you like us to decline the transaction or send you the response so that you can make the appropriate decision? ☐ Decline ☐ Send Response
25. Do you perform VBV/MCSC (Verify by Visa/MasterCard Secure Code) with any of your transactions? ☐ Yes ☐ No
26. If No, are you interested in implementing this fraud mitigation tool through Optimal Payments? ☐ Yes ☐ No

## MERCHANT PROCESSING APPLICATION AND AGREEMENT

### TERMS AND CONDITIONS

#### 1. PREAMBLE

- 1.1 WHEREAS the Client wishes to engage the services of OPL to process, verify, settle, confirm, report and perform related payment Processing Services relating to the business operations of the Client;
- 1.2 WHEREAS the Client has completed an Application and OPL in reliance on the Information furnished therein has approved the opening of an account by the Client with OPL;
- 1.3 WHEREAS OPL 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 "Application" means information supplied by Client (either online or in writing), including, but not limited to, all forms and documents and information provided in an application to open an account with OPL, as well as all other OPL supplied forms, questions or inquiries, which the Client has responded to orally, by fax, mail or email and which responses have been relied upon by OPL to determine the acceptability and terms for this Agreement.
- 2.2 "Cardholder" means the holder of a Credit Card;
- 2.3 "Chargebacks" means all approved and settled Credit Card Transactions which are at any time refused, debited or charged back by the Financial Institution.
- 2.4 "Clearing Houses" means a member or members of Credit Card or Debit Card associations designated by OPL to process and settle Credit Card Transactions.
- 2.5 "Confidential Information" shall mean OPL's business practices, pricing terms, programs, procedures, proprietary or other software, (including transaction software) and other intellectual property.
- 2.6 "Credit Card(s)" means (i) a valid card issued by a Financial Institution that is processed by OPL; and (ii) Debit Cards.
- 2.7 "Credit Card Transaction(s)" means payment transactions involving Credit Cards or Debit Cards that have been approved based on positive information and positive credit or funds balance availability and where available, positive address verification, as more fully described in paragraphs 3.2 and 3.3.
- 2.8 "Debit Card(s)" means any device whose primary function is to access or permit access to a demand deposit account of the Debit Card holder.
- 2.9 "Financial Institution(s)" means the financial institution(s) issuing Credit Cards.
- 2.10 "Fines" means (i) any fine imposed on OPL by any party as a result of any activity related directly or indirectly to Client; (ii) any amount which may be imposed as a fine by a third party as a result of any activity related directly or indirectly to Client; (iii) any fines which may be imposed by OPL for excessive Chargebacks in accordance with section 4.2.2.
- 2.11 "Information" means all the information supplied by the Client to OPL in the Application.
- 2.12 "Regulatory Authority" means: (i) any government, governmental agency or regulatory authority; (ii) credit card associations, including, but not limited to Visa, MasterCard, American Express or Discover; or (iii) entities that govern the Processing Services directly, or through Financial Institutions and processors.

#### 3. PROCESSING SERVICES

- 3.1 Subject to the terms and conditions set forth in this Agreement, OPL hereby agrees to provide the following processing services to the Client (the "Processing Services"):
- 3.2 processing of on-line authentication and authorization requests based on the Credit Card number, expiration date and, in cases where the Financial Institutions do perform address verification, the address, being comprised of the receipt and, after positive verification of the negative database, transmission of such information to the Clearing Houses for on-line confirmations and approvals from the Clearing Houses;
- 3.3 processing of refund requests ("Credits") transmitted to OPL by the Client; being comprised of the transmission of Credit requests to the Financial Institution via the Clearing Houses and the processing of on-line approvals from the Client's banks;
- 3.4 settlements of the Credit Card Transactions ("Remittances") in accordance with the timetable established by Schedule B;
- 3.5 monthly written confirmations (on a calendar basis) to the Client regarding the status of the Credit Card Transactions including the total credit card deposits, returns, Chargebacks pending and Chargebacks processed; and
- 3.6 daily reporting with respect to deposits and returns for the preceding twenty-four (24) hours.
- 3.7 Nothing herein grants the Client any rights whatsoever in any of OPL's intellectual property, such as payment transaction software or techniques, or other software other than a limited, non-exclusive, non-transferable license, and any use thereof by the Client beyond the requirements of the Processing Services shall be subject to a separate written agreement.

#### 4. FEES, RESERVES AND OTHER MATTERS

- 4.1 In consideration for Processing Services the Client agrees to pay to OPL the following non-refundable fees:
  - 4.1.1 upon execution of this Agreement, an initial set-up fee in the amount specified in Schedule A;
  - 4.1.2 a percentage of all approved and settled Credit Card Transactions as specified in Schedule A. Should the total amount of the fees generated under this paragraph be less than the minimum monthly fee specified in Schedule A the Client shall be charged for any shortfall up to the minimum monthly fee so specified;
  - 4.1.3 A per transaction fee as identified in Schedule A and any modifications thereto;
  - 4.1.4 for each wire transfer received from OPL the amount specified in Schedule A;
  - 4.1.5 a monthly recurring non-refundable fee as specified in Schedule A; and
  - 4.1.6 any other charges or fees imposed from time to time by the Clearing Houses or banks for handling Credit Cards or transactions; and
- 4.2 The Client shall also be obliged to:





Quern House, Mill Court, Hinton Way  
Great Shelford, Cambridge. CB22 5LD  
Telephone: 866.826.8003  
Email: sales@optimalpayments.com

## MERCHANT PROCESSING APPLICATION AND AGREEMENT

- 4.2.1 reimburse OPL for all Credits issued by OPL on behalf of the Client including, but not limited to, all associated interest, penalties and fees;
- 4.2.2 reimburse OPL for all Chargebacks and all Fines and penalties related to Chargebacks;
- 4.2.3 pay a fee, as well as any incremental fees and expenses charged or debited by the banks or credit card companies, for each Chargeback in accordance with the Fee specified in Schedule A;
- 4.2.4 pay the late payment fees specified in Schedule A for amounts due to OPL under this Agreement and in arrears for more than seven (7) days from their due date;
- 4.2.5 upon agreement by Client, pay a fee for OPL to provide consulting services to reduce Client's Chargebacks to conform to regulatory requirements as specified in Schedule A;
- 4.2.6 pay a fee when the Client's settlement account goes into an overdraft position or is closed as specified in Schedule A;
- 4.2.7 upon agreement by Client, pay a fee as specified in Schedule A for investigations by OPL into potential Client problems like Chargebacks that need to be dealt with in a timely manner;
- 4.2.8 pay to OPL any other amounts or charges specified in Schedule A or elsewhere in this Agreement.
- 4.2.9 Client hereby authorizes OPL to deduct from the Remittances the amounts owing under subsections 4.1 and 4.2 above. In the event that the Remittances are insufficient to pay the amounts owing by the Client to OPL, the Client shall pay the balance thereof within seven (7) business days following receipt of OPL's written invoice for such amount including a late payment fee specified in Schedule A. In the event that the Remittances are insufficient to pay the amounts owing by the Client to OPL, the Client shall pay the balance via direct debit, by way of prior authorization granted by Client to OPL under Schedule B.
- 4.3 Client hereby further authorizes OPL to deduct from the Remittances and establish a reserve account or reserve accounts (the "Reserve Account") to ensure OPL'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 liabilities in respect of actual and/or potential post-termination Chargebacks, Fines, post-termination fees, and charges, indemnifications and expenses due or anticipated to be due to OPL from Client. The Reserve Account shall be funded and/or replenished by OPL's withholding from the Remittances, unless otherwise provided in Schedule C. The amount of the Reserve Account shall be maintained in amounts consistent with the provisions set forth in Schedule C.
- 4.4 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 OPL by the Client or for the satisfaction of any amounts disbursed by OPL on behalf of the Client including, but not limited to, Credits, Chargebacks, 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 OPL, with effect as of and from this date, all right, title and interest of the Client in and to the Remittances, and Reserve Account 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 OPL's in the Remittances or Reserve Account and all funds therein comprised. The Client further undertakes, upon notice by OPL and at its expense, to execute and register such documents as may be necessary or desirable to perfect OPL's first-ranking security interest therein.
- 4.5 OPL shall have the right to withdraw from Client's account any and all amounts owed to it hereunder without notice or demand. OPL shall have the additional right to withdraw from Client's account any and all amounts owed to it hereunder should the Client fail to pay such amounts within five (5) business days of written default of payment notice to the Client. OPL'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 Account. OPL's rights with respect to the Reserve Account shall survive the termination of this Agreement.
- 4.6 All interest which may accrue in respect of the Reserve Account shall be for the sole account of OPL.
- 4.7 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.
- 4.8 Either party may change or modify its pre-designated account(s). Should the Client desire to change or modify the pre-designated account(s) it shall do so in writing and in a manner and form acceptable to OPL at its sole discretion.
- 4.9 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 Credit Card Transactions and the fees hereunder.
- 4.10 Notwithstanding Section 3.3, OPL shall have the right to limit or cease processing Credit requests should in OPL's sole determination: (i) the Client's Reserve Account not be adequately funded; or (ii) OPL has a concern about the volume of activity in the account; or (iii) the Client is in overdraft with OPL; or (iv) for any other valid reason.
- 4.11 OPL reserves the right to amend (i) the fees charged under Sections 4.1.1, 4.1.2, 4.1.3, and 4.1.4; and (ii) the percentage amount of the Reserve Account under Section 4.3 at its sole discretion and at any time following the six (6) month anniversary of the execution of this Agreement. The new rates will take effect upon a simple notice to the Client in accordance with Section 11.
- 4.12 OPL may audit, from time to time, Client's compliance with the terms of this Agreement. Client shall provide all information requested by OPL to complete its audit. Client authorizes parties contacted by OPL to release the credit information requested by OPL and Client agrees to provide OPL a separate authorization for release of credit information if requested. Client shall deliver to OPL such information as OPL may reasonably request from time to time, including without limitation, financial statements and information pertaining to Client's financial condition. Such information shall be true, complete and accurate in all material respects and shall be signed by Client's chief financial officer or equivalent. Client shall reimburse OPL for any reasonable costs that OPL may incur in the course of investigations and auditing. OPL will advise Client when it anticipates that the cost of an investigation or audit will exceed \$5,000 in the aggregate.
- 4.13 The parties hereto acknowledge that OPL is subject to the rules, regulations, orders and requirements, which may be imposed by any Regulatory Authority ("Rules"). In the event of any requirements imposed by those entities or agencies the parties agree that this Agreement shall be deemed modified to conform to such requirements and the Client acknowledges that it is its responsibility to obtain and observe the Rules.
- 4.14 OPL reserves the right to increase the rates and fees set forth in Schedule A as it pertains to the cost of individual Credit Card Transactions if the Credit Card Transactions submitted by the Client are such as to cause an increase in OPL's costs.
- 4.15 The Client agrees that it shall fully comply with the additional rules provided for in Schedule 8.1.3.
5. INDEMNIFICATION AND LIMITATION OF LIABILITY
- 5.1 The Client and the Guarantor (as hereinafter defined) shall jointly and severally defend and hold harmless OPL 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 OPL 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 OPL's liability to Client with respect to any Credit Card Transaction shall not exceed the amount represented by the transaction record in connection with such Credit Card Transaction, less the applicable fees payable to OPL 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 SERVICES PROVIDED BY OPL HEREUNDER ARE

## MERCHANT PROCESSING APPLICATION AND AGREEMENT

HEREBY DISCLAIMED BY OPL, ITS AFFILIATES, AGENTS AND LICENSORS. IN ADDITION, OPL, ITS AFFILIATES, AGENTS AND LICENSORS SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES, LOSSES OR CLAIMS IN ANY WAY CONNECTED WITH OR ARISING OUT OF THE USE OF THE PROCESSING SERVICES OR ANY OTHER SERVICES PROVIDED BY OPL HEREUNDER.

- 5.4 OPL shall use its best efforts to perform the Processing Services provided however, OPL, its affiliates, agents or licensors shall not be liable for any loss resulting from the activities of OPL's service providers, the Client or the Client's customers, 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 OPL'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. OPL'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 date first mentioned above (the "Effective Date") until the second anniversary of the Effective Date, and thereafter shall be renewed automatically for additional consecutive two (2) year periods, unless earlier terminated in accordance with the terms of subsections 6.2 to 6.6 hereof.
- 6.2 Notwithstanding subsection 6.1, OPL shall have the right to terminate this Agreement immediately in the event:
- 6.2.1 of breach by the Client of its representation, 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 12.4;
  - 6.2.4 OPL is requested to do so by an Financial Institution or any other such party; or
  - 6.2.5 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 OPL may also terminate this Agreement without cause upon twenty (20) days' written notice to Client.
- Notwithstanding subsection 6.1, Client may terminate this Agreement, with or without cause, upon thirty (30) days' written notice to OPL, but shall pay an Early Termination Fee equal to the greater of: i) the number of remaining months in the term or subsequent renewal terms of the Agreement after notice of termination or discontinuation of processing by Merchant, times \$50.00 per month; or ii) the number of remaining months in the term or subsequent renewal terms of the Agreement multiplied by 0.25% times the average Visa USA and MasterCard International monthly amounts settled during the prior six months (or, if less than six full months have elapsed, then all previous months' amounts settled; or iii) a flat termination fee of \$2500.00. Merchant agrees that these damages are not a penalty but are a reasonable computation of the financial harm caused by the termination of this Agreement. Bank's rights of termination are non-cumulative.
- 6.4 Upon any termination of this Agreement, the Client shall immediately discontinue the use of all of the Processing Services and the license granted under subsection 3.7 shall terminate. All provisions regarding Fees and Reserves (Section 4), Indemnification and Limitation of Liability (Section 5) and applicable paragraphs of Representations, Warranties (Section 8) 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.
- 6.5 Upon any termination of this Agreement, OPL shall retain, as security for the payment of the Obligations, the Reserve Account as well as any other amounts in the Client's account for a full seven (7) month period from the date of termination.
- 6.6 Notwithstanding any provision of this Agreement the Reserve Account as well as any other amounts in the Client's account or due to Client by OPL or part thereof may be held if, in the sole reasonable determination of OPL as a result of:
- 6.6.1 information about the Client; or
  - 6.6.2 the Client's business practices;

OPL believes further Chargebacks or Credits or Fines and penalties may be assessed Client by a Regulatory Authority.

### 7. CONFIDENTIALITY

- 7.1 The Client agrees that it will:
- 7.1.1 not use for purposes other than this Agreement;
  - 7.1.2 not disclose to any third party; and
  - 7.1.3 will retain in strictest confidence;
- any or 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 OPL 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 OPL agrees that it will retain in strictest confidence the names and other personal information about the Client's customers unless such disclosure is required by competent authority.
- 7.5 Termination of this Agreement shall not release OPL from its obligations under Section 7.4

### 8. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CLIENT

- 8.1 The Client hereby covenants to OPL that it will:
- 8.1.1 offer for sale through its Web site, offline operations or through its marketing materials, 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 as represented in section 2.1;
  - 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 Financial Institutions from time to time and as currently specified in Schedule 8.1.3.;



## MERCHANT PROCESSING APPLICATION AND AGREEMENT

- 8.1.4 submit to OPL in writing, for OPL's written consent, any changes or modifications to the Information; and review the client Processing Services activity statement provided to it by OPL and provide OPL with a written objection specifying the particular item in dispute within fifteen (15) days of the date of the client statement failing which all information appearing thereon shall be deemed accurate and affirmed by Client.
- 8.2 The Client hereby represents and warrants to OPL that:
- 8.2.1 it will not conduct its business in any manner that harms the value and reputation of OPL or the Financial Institutions;
  - 8.2.2 it will advise OPL in writing of any material errors in the Processing Services;
  - 8.2.3 it will conduct its business affairs in an ethical manner and in accordance with the terms and intent of this Agreement, and in compliance with all applicable government laws and regulations;
  - 8.2.4 it will manage its business in such a way as to ensure that Chargebacks and Credits do not exceed a reasonable amount of the total value of its business or the requirements of any Regulatory Authority;
  - 8.2.5 it will, within two (2) business days, replenish its accounts at OPL, including, but not limited to, the Security Account and Reserve Account, should the balance fall below acceptable levels as determined by OPL;
  - 8.2.6 it shall not use the Processing Services in connection with any illegal or fraudulent business activities as determined by an applicable jurisdiction;
  - 8.2.7 it shall not permit nor authorize any other person or business to use the Processing Services;
  - 8.2.8 the Information provided herein will not be changed or modified in any way without the prior written consent of OPL;
  - 8.2.9 it shall respond promptly to inquiries from Cardholders and shall resolve any disputes amicably.
  - 8.2.10 It shall offer to its customers within the first 30 days a full money back policy which will be strictly enforced.
- 8.3 The Client acknowledges to OPL that they are independent contractors and that nothing herein shall be construed so as to constitute the Client and OPL partners, representatives or joint venturers or so as to create any other form of legal association which imposes liability upon OPL for the acts or omissions of the Client. The Client shall not have any right, power or authority to enter into any agreement for or on behalf of or incur any obligation or liability of, or to otherwise bind, OPL. For greater certainty, the Client acknowledges that OPL is not involved in the Client's business.
9. GUARANTORS
- 9.1 As a primary inducement to OPL to enter into this Agreement, the undersigned (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 OPL pursuant to this Agreement, whether Guarantor has a current direct affiliation with the Client or has accurate knowledge of the Client's activities with respect to the Processing Services, 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, OPL 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 therefore to it, or any security held by OPL.
- 9.2 The Guarantor also agrees to all the terms specified in the section "Intervention by Guarantor".
10. AMENDMENTS
- 10.1 OPL may amend this Agreement at any time by informing the Client through any one of the following channels: (i) by mail; (ii) by email; (iii) by posting a notice on the Web page or (iv) by verbal notice. Unless specified otherwise herein including, but not limited to Section 4, the amendment will take effect after a reasonable delay following such notice.
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 to OPL at Quern House, Mill Court, Hinton Way, Great Shelford, Cambridge, CB22 5LD, and to Client at \_\_\_\_\_, 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 fifth (5<sup>th</sup>) day following mailing, unless there is a disruption of any kind of postal service.



Quern House, Mill Court, Hinton Way  
Great Shelford, Cambridge. CB22 5LD  
Telephone: 866.826.8003  
Email: sales@optimalpayments.com

## MERCHANT PROCESSING APPLICATION AND AGREEMENT

### 12. MISCELLANEOUS

- 12.1 Subject to the payment of the minimum monthly fee in paragraphs 4.1.1 and 4.1.4 Client's use of OPL's services hereunder are non-exclusive.
- 12.2 This Agreement together with its Schedules and any supplemental agreements 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 whether written or oral.
- 12.3 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.
- 12.4 The Client may not assign this Agreement, or any rights hereunder, directly or by operation of law, without the prior written consent of OPL which consent may be withheld for any reason in OPL'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.
- 12.5 The Client shall be liable for and shall indemnify and reimburse OPL for any and all attorneys' fees and other costs and expenses paid or incurred by OPL 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.
- 12.6 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.
- 12.7 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.
- 12.8 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.
- 12.9 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and whose courts will have sole jurisdiction.
- 12.10 References to "this Agreement" include any schedules, supplementary agreements, addendum, appendixes and amendments and any other agreements, schedules appendixes and amendments promulgated by OPL and furnished to the Client from time to time.
- 12.11 All amounts referred to in this Agreement are in United States funds.



Quern House, Mill Court, Hinton Way  
Great Shelford, Cambridge. CB22 5LD  
Telephone: 866.826.8003  
Email: sales@optimalpayments.com

## MERCHANT PROCESSING APPLICATION AND AGREEMENT

### SCHEDULE 8.1.3 – RULES OF VARIOUS FINANCIAL INSTITUTIONS AND CARD ASSOCIATIONS

Among other requirements for compliance Financial Institutions and Regulatory Authority, Client shall ensure that the following information is clearly communicated to and received by its customers:

- Complete and accurate description of the goods or services offered.
- Clear notification of its transaction cancellation policies.
- Return/refund policy clearly posted.
- Customer service contact, including electronic mail address or telephone number.
- Transaction currency (e.g., US dollars, Canadian dollars).
- Export restrictions (if known).
- Product delivery policy.
- Display of authorized card logos in accordance with your signed merchant agreements.

Client agrees to maintain the following information in writing with respect to each claim or defense asserted by a Cardholder for which Client has received notice:

- (a) The Cardholder's name;
- (b) The Card account number;
- (c) The date and time the Cardholder asserted the claim or defense;
- (d) The nature of the claim or defense; and
- (e) The action that Client took in an attempt to resolve the dispute.

Upon request, Client shall furnish OPL with this information in writing within ten (10) days of such request.