



VENDOR AGREEMENT

This Vendor Agreement (“*Agreement*”) is made effective by and between PAYCO ENTERPRISES INC., located at 520 E Wilson Ave Suite 210, Glendale Ca 91206 (“*Payco*”) and the individual or entity who seeks payment from Payco for goods or services (hereinafter referred to as “*VENDOR*”).

RECITALS

WHEREAS, Payco generates customers for credit card, debit card, gift card, loyalty card, ACH, POS and other payment processing services (collectively, the “*Payco Services*”) for contracted Credit Card Processing companies (“*Clients*”); and

WHEREAS, VENDOR has relationships with potential customers and special expertise related to the marketing, servicing, maintenance and sale of products and services useful in the payment processing industry; and

WHEREAS, Payco VENDOR engages vendors to provide goods and services needed to promote the sale of the Payco Services.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

AGREEMENT

ARTICLE I– MARKETING AND SALE OF PAYCO SERVICES

Section 1.1. Conditions For Payment: Vendor acknowledges and accepts that payment to Vendor is contingent on Vendor compliance with the terms of this Agreement.

Section 1.4. Independent Contractors. The relationship of Payco and VENDOR is that of independent contractors. Neither VENDOR nor VENDOR’s employees, consultants, contractors or agents are agents, employees, or joint venturers of Payco, nor do they have any authority to bind Payco by contract or otherwise to any obligation. Neither VENDOR nor VENDOR’s employees, consultants, contractors or agents will represent to the contrary, either expressly, implicitly, by appearance or otherwise. VENDOR acknowledges and agrees that VENDOR and its employees, consultants, contractors or agents (i) will not be eligible to participate in any retirement, welfare, or other employee benefit plan or arrangement maintained by Payco or its Affiliates and (ii) will not claim any such benefits.

VENDOR

Section 1.5. Direct Sales. Notwithstanding anything to the contrary in this Agreement, Payco hereby reserves the right to directly solicit and/or sell Payco Services (a) to Merchants, (b) Merchant Affiliates, (c) merchants referred by other VENDORS, (d) any other merchants that do not already use Payco Services and (e) to any merchants that are already customers of Payco and/or Client.

ARTICLE II– PAYMENT OF FEES

Section 2.1. Fees. Subject to the terms of this Article II, and contingent on full compliance by VENDOR of the terms and conditions of this Agreement, Payco shall pay to VENDOR,

Section 2.2. Payment of Fees.

(a) Referral fees payable pursuant to Section 2.1 shall be calculated and paid monthly, on or before the twenty-fifth (25th) day following Payco's receipt of its report from acquirer for the calendar month for which such referral fees are calculated and collected. VENDOR authorizes Payco to deposit fees payable pursuant to this Article II directly into VENDOR's designated deposit account. Amounts due to VENDOR under this Agreement with respect to a Merchant shall be payable by Payco only if and to the extent that Payco receives amounts due to Payco from the applicable Merchant, and/or Client and/or vendors. If Payco is not paid any amounts due by a Merchant, Client or vendor, it has no duty or obligation to pay any corresponding monies to VENDOR. Payco shall have the right to change the compensation plan as set forth in Schedule A at any time in its sole discretion by providing thirty (30) days' notice to VENDOR.

(b) Offset Rights, Security Interests. Payco shall have the right to offset against any funds owing from Payco to VENDOR any amount owing from VENDOR to Payco under this Agreement and any other agreement with VENDOR. This right of offset may be exercised by Payco at any time and without notice to VENDOR whether or not the obligations of VENDOR to Payco are then due. Any funds held back in error by Payco shall be paid to the VENDOR within forty (40) days of discovery of the error. VENDOR acknowledges and agrees that Payco shall have full recourse against VENDOR for: (A) monies owed by VENDOR to Payco for any reason whatsoever, including but not limited to equipment, sales, supplies, and/or marketing material, (B) any errors or inaccuracies in amounts previously paid to VENDOR under this Agreement, and (C) any amounts incurred or advanced by a sponsor bank and/or Payco on VENDOR's behalf. VENDOR further agrees such recourse shall not be limited to offsetting such amounts against amounts due to VENDOR pursuant to this Agreement or debiting VENDOR's designated deposit account and Payco may initiate other action to recover such monies.

(c) Within thirty (30) days from the receipt of any fees pursuant to this Article II, VENDOR shall notify Payco of any alleged errors in the calculation or payment of such fees. If VENDOR does not notify Payco of an alleged error within said thirty (30) day period, VENDOR shall be deemed to have accepted such fees and may not in the future contest the amount of such fees paid to VENDOR or seek reimbursement for such alleged error. Upon resolution of any alleged error, Payco shall pay VENDOR any fees owed

to VENDOR as a result of such error within thirty (30) days of such resolution.

(d) VENDOR acknowledges and agrees to maintain “Active VENDOR Status” to receive the compensation outlined in Schedule A. Active VENDOR Status is defined as submitting, installing, processing, and activating three new deals per month. This is calculated by dividing the total number of deals submitted in a quarter by three (the number of months in a quarter). If the VENDOR fails to achieve Active VENDOR Status for two consecutive quarters, the compensation specified in Schedule A will be reduced by 50%.

Section 2.3. Chargeback Risk. It is understood and agreed by VENDOR that Payco shall bear no liability to VENDOR for the value of, or residual payments relating to, any merchant chargebacks.

ARTICLE III - TERM AND TERMINATION

Section 3.1. Term and Termination.

The initial term of this Agreement shall be for a period of three (3) years, commencing on the date first set forth below. This Agreement shall thereafter be automatically renewed for additional terms of one (1) year each, unless either party notifies the other no later than thirty (30) days prior to the end of the then-current term that it does not wish to renew this Agreement. Notwithstanding the foregoing, Payco shall not be required to provide VENDOR with an opportunity to cure any breach as contemplated by Section 3.2(a) in the event that such breach (i) is material, as determined in Payco’s sole discretion, (ii) was knowingly or intentionally committed by VENDOR, or (iii) is of such a serious nature, as determined in Payco’s sole discretion, that an opportunity to cure such default is not practical or warranted.

Section 3.3. Regulatory Demand. If Visa, MasterCard, any other applicable card association, NACHA or any federal, state or other regulatory agency having jurisdiction over the subject matter of, or parties to, this Agreement makes a demand that either Payco or any of its vendors discontinue or substantially modify any of the Payco Services, either party in its sole discretion may terminate this Agreement upon written notice to the other, in which case neither party shall be deemed to be in default by reason of such termination.

Section 3.4. Compensation to VENDOR Following Termination. (a) In the event (before or after any termination or expiration of this Agreement) of (i) fraudulent conduct by VENDOR, or any of its employees, agents or other representatives, or (ii) VENDOR commits a Material Breach (as defined below) of any of the card association rules, or (iii) VENDOR or any of its employees, agents, VENDORS or other representatives violates the provisions of Article V, or (iv) VENDOR commits an event of default under Section 3.2, then Payco shall be under no obligation to make any further payments to VENDOR hereunder following the effective date of such termination. A Material Breach is defined as a breach of this Agreement which (a) involves a substantial failure to perform a term that is an essential element of this Agreement; or (b) the circumstances, including the language of this Agreement, the reasonable expectations of the parties, the standards and practices of the business, trade, or industry, and the character of the breach, indicate that: (i) the breach caused or is likely to cause substantial harm to the aggrieved party; or (ii) the

breach substantially deprived or is likely to substantially to deprive the aggrieved party of a significant benefit it reasonably expected under this Agreement.

(b) If VENDOR or its representatives engage in practices that involve elements of fraud, if the fraud or other conduct is determined to be the act of an individual who is not an owner or officer of VENDOR, or an individual acting in collusion with an owner or officer of VENDOR, in order to cure said breach VENDOR may cure the breach by, within 30 days of receipt of written notice of such breach, terminating its relationship with the individual or individuals who have committed the fraud and indemnifying Payco for all costs, losses, damages, claims and expenses (including reasonable attorney's fees) arising from such fraud.

(c) In the event of a breach of the non-solicitation provisions in Section 5.9, if the Merchant in question has terminated its relationship with Payco as a consequence of the solicitation, VENDOR may cure the breach by, within fifteen (15) days of written notice of such breach by Payco, either (i) causing the Merchant to move its processing back to Payco and paying Payco any amounts VENDOR has collected in residuals for said Merchant while Merchant's relationship with Payco was terminated or (ii) paying Payco forty (40) times the highest average monthly residual received by Payco prior to the date Merchant terminated its relationship with Payco. The remedy set forth in this paragraph (d) may be exercised with respect to a maximum of three (3) Merchants per calendar year.

(d) In the event VENDOR fails to board any new accounts for a period of 90 days then Payco may, in its option, terminate this agreement. Upon a termination of this Agreement VENDOR will continue to receive residuals for 180 days. After 180 days of any termination of this agreement, agents right to receive residuals shall terminate. This section shall supersede any other section of this Agreement to the contrary.

ARTICLE IV– REPRESENTATIONS AND WARRANTIES

VENDOR represents and warrants to Payco as follows:

Section 4.1. Authority. VENDOR has the full power and authority to execute, deliver and perform this Agreement. This Agreement is valid, binding and enforceable against VENDOR in accordance with its terms, and no provision requiring VENDOR's performance is in conflict with VENDOR's obligations under any charter or any other agreement (of whatever form or subject) to which VENDOR is a party or by which it is bound.

Section 4.2. Organization. If other than a sole proprietorship, VENDOR is duly organized, authorized and in good standing under the laws of the state of its organization and is duly authorized to do business in all other states in which VENDOR's business makes such authorization necessary or required.

Section 4.3. Proceedings. Neither VENDOR nor any principal thereof has been subject to any (i) criminal conviction (excluding traffic misdemeanors or other petty offenses), (ii) bankruptcy filings, (iii) Internal Revenue Service liens, (iv) federal or state regulatory administrative or enforcement proceedings, or (v) restraining order, decree, injunction or judgment in any proceeding or lawsuit alleging fraud or deceptive practices.

ARTICLE V – OBLIGATIONS

Section 5.1. Compliance with Laws/Rules. In performing its duties hereunder and in any of its dealings with respect to the Payco Services, VENDOR agrees to comply with all applicable international, national, state, regional and local laws and regulations, as the same may be amended from time to time, and the rules and regulations of Visa, MasterCard, Discover, American Express and all other such associations, and the rules and regulations of any debit network, as the same may be amended from time to time (collectively, the “**Rules**”), including by using only those marketing and promotional materials that comply with the Rules. In the event of any inconsistency between a provision of this Agreement and the Rules, the Rules shall govern. VENDOR hereby agrees to accept and abide by any amendments and revisions to the Rules. VENDOR shall use only those marketing and promotional materials that comply with the Rules and all United States, state, local and any other applicable laws or regulations. VENDOR acknowledges and agrees that MasterCard, Visa and each other card association each have the right to enforce any provision of the Rules against such VENDOR, and to prohibit VENDOR’s conduct to the extent that it creates a risk of injury to MasterCard or Visa or that may adversely affect the integrity of MasterCard, Visa or other card association systems, information, or both. VENDOR further agrees to refrain from taking any action that would have the effect of interfering with or preventing the exercise of any such enforcement right by MasterCard, Visa or other card association.

Section 5.2. VENDOR agrees to comply with privacy and security requirements under the Payment Card Industry Data Security Standard (“Association Requirements”) with regards to VENDOR’s use, access, and storage of credit card non-public personal information (“Cardholder Information”) on behalf of Payco. Visa, MasterCard, Discover, American Express, any ATM or Debit Networks, and the other financial service card organizations shall be collectively known herein as “Associations.” VENDOR shall comply with its obligations under any applicable state or federal law, or regulations as may be in effect or as may be enacted, adopted or determined regarding the confidentiality, use, and disclosure of Cardholder Information. VENDOR agrees that it shall protect the privacy of Cardholder Information to at least the same extent that Payco must maintain that confidentiality under the Association Requirements or applicable law. VENDOR agrees to ensure that any agent, including a subcontractor to whom it provides Cardholder Information received from, or created or received by VENDOR on behalf of Payco, agrees to the same restrictions and conditions that apply through this Agreement to VENDOR with respect to such information. Upon five (5) business days’ notice or immediately upon any unauthorized access to, use or disclosure of any Cardholder Information, Payco may, at its discretion, conduct an on-site audit and review of VENDOR’s procedures and systems.

Section 5.3. Indemnification. Each party agrees to indemnify, defend, and hold harmless the other party, its employees, members, directors, managers, officers or agents from and against any loss, liability, damage, penalty or expense (including attorneys’ fees, expert witness fees and cost of defense) they may suffer or incur as a result of (i) any failure by the party or any employee, agent or affiliate of the party to comply with the terms of this Agreement; (ii) any warranty or representation made by the party being false or misleading; (iii) any representation or warranty made by the party or any employee or agent of the party to any third person other than as specifically authorized by this Agreement, (iv) the manner or method in which the party

performs its services and discharges its obligations under and pursuant to this Agreement, (v) negligence of the party or its subcontractors, agents or employees, or (vi) any alleged or actual violations by the party or its subcontractors, employees or agents of any card association rules, Association Requirements, governmental laws, regulations or rules.

Section. 5.5. Taxes and Other Fees.

(a) VENDOR acknowledges that no federal, state or local taxes of any kind will be withheld or paid by Payco on behalf of VENDOR, its Affiliates, or their respective employees, consultants, contractors or agents. VENDOR is solely responsible for all federal, state, and local tax withholding or payments and agrees to file any and all required returns and forms in connection with any such withholdings or payments.

(b) VENDOR further acknowledges that Payco shall bear no responsibility for any expenses incurred or fees charged by VENDOR in connection with any services provided by VENDOR to a Merchant, except those approved in writing, in advance, by Payco. Payco is not required to provide reimbursement of any expense, including an approved expense, if Payco does not receive an itemized report with attached receipts, and proof that the expense was used in furtherance of this Agreement, within thirty (30) days after VENDOR incurs the expense. VENDOR waives any claim for reimbursement if it fails to submit a timely report.

Section 5.6. Non-Solicitation of Merchants. Without Payco's prior written consent (which consent may be withheld in Payco's sole and absolute discretion), VENDOR shall not cause or permit, nor shall it cause or permit any of its employees, agents, principals, or Affiliates, to (i) solicit customers for individuals or entities that provide services which compete with those services provided by Payco, (ii) to solicit or provide services that compete with the Payco Services to any Merchant referred by VENDOR to Payco, (iii) to solicit or otherwise cause any Merchant to terminate its participation in any of the Payco Services, or (iv) to solicit or market any services to a Merchant to which Payco is already providing any of the Payco Services, whether directly or indirectly, and whether or not such services are provided under the terms of a Merchant Agreement. This section shall apply during the term of this Agreement and for five (5) years after any termination, cancellation or expiration of this Agreement. VENDOR will remain responsible for damages to Payco resulting from such prohibited solicitation.

Section 5.7. Non-Solicitation of Employees and Others.

(a) During the term of this Agreement and for the five (5) year period following expiration or termination of this Agreement, VENDOR shall not, directly or indirectly through a third party (i) induce or attempt to induce any employee of, or consultant to, Payco or its Affiliates to leave the employ of, or consultancy to, Payco or its Affiliates, or in any way interfere with the relationship between Payco or its Affiliates and any employee or consultant thereof, (ii) employ any person who was an employee of, or consultant to, Payco or its Affiliates at any time during the twelve (12) month period immediately preceding the effective date of such employment, without the written consent of Payco, (iii) call on, solicit or service any customer, third party engaged to provide business referrals or leads to Payco, Affiliate, agent, supplier, licensee, licensor, consultant, contractor or other business relation of Payco or its Affiliates in order to induce or attempt

to induce such person or entity to cease doing business with Payco or its Affiliates, or in any way interfere with the relationship between any such person or entity and Payco or its Affiliates (including, without limitation, making any negative statements or communications about Payco or its Affiliates), or (iv) call on, solicit, or take away or attempt to call on, solicit, or take away any of Payco's customers, third parties engages to provide business referrals to leads to Payco, Affiliates, agents and vendors on whom VENDOR called or with whom VENDOR became acquainted during the term of this Agreement. VENDOR agrees that the foregoing restrictions (the "**Protective Covenants**") are reasonable in terms of scope and duration and necessary to protect the goodwill of Payco's businesses and agrees not to challenge the validity or enforceability of said Protective Covenants.

ARTICLE VI - INTELLECTUAL PROPERTY

Section 6.1. Definitions. "**Intellectual Property**" means all of the following owned by a party: (i) trademarks and service marks (registered and unregistered) and trade names, and goodwill associated therewith, (ii) patents, patentable inventions, computer programs, and software, (iii) databases, (iv) trade secrets and the right to limit the use or disclosure thereof, (v) copyrights in all works, including software programs, and (vi) domain names. The rights owned by a party in its Intellectual Property shall be defined, collectively, as "**Intellectual Property Rights.**"

Section 6.2. Grant of Right to Use Payco Marks. Payco hereby grants to VENDOR a limited, non-exclusive, non-transferable, revocable right and license, during the term of this Agreement, to use the Payco trademarks, service marks and trade names set (each, a "**Mark**"), in its marketing materials and for the sole purpose of performing its obligations under this Agreement. VENDOR may not alter or modify any of the Marks and may not combine a Mark with any other mark, without the advance written consent of Payco. VENDOR acknowledges that Payco owns all right, title and interest in the Marks and that any goodwill associated with use of the Marks by VENDOR shall inure solely to the benefit of Payco, its successors and assigns. VENDOR shall comply with such quality control standards as Payco may promulgate and communicate to VENDOR from time to time regarding use of the Marks. VENDOR agrees to defend, indemnify and hold Payco harmless from and against all suits, actions, claims losses, damages and expenses (including reasonable attorneys' fees) arising out of use of a Mark by VENDOR in breach of this Agreement. Upon the expiration or termination of this Agreement, VENDOR shall immediately cease all use of the Marks. VENDOR shall not, at any time, during or subsequent to the term of this Agreement, do or cause to be done, any act or thing contesting or in any way impairing or intending to impair any part of the right, title and interest of Payco in, and the goodwill represented by, the Marks or impug in any fashion the reputation of Payco or attack the validity of the Marks.

Section 6.3. Infringement Proceedings.

(a) VENDOR shall promptly notify Payco of any known, threatened or suspected infringement, imitation or unauthorized use of the Marks by any third party. Payco, in its sole discretion, shall determine what action, if any, should be taken in response to any infringement, imitation or unauthorized use of the Marks by such third party, and VENDOR shall not take any such action without the prior written consent of

Payco, which may be withheld in Payco's absolute discretion.

(b) **VENDOR** shall promptly notify Payco of any known, threatened, or suspected trademark infringement litigation against either party involving the use of the Marks. Payco shall have the sole right, at its expense, to defend and settle, for monetary and/or other damages, any claim made against Payco or **VENDOR** by a third party alleging that the use of the Marks infringes upon any rights of others; provided, however, that if Payco decides not to defend against any such claim against **VENDOR**, **VENDOR** shall have the right, at its expense, to defend and settle such claim. If Payco decides to defend against any such claim, **VENDOR** shall cooperate with, and provide assistance to, Payco at the expense of Payco.

Section 6.4. Rights in Other Payco Intellectual Property. Except as expressly set forth in this agreement, Payco grants no right or license to **VENDOR**, by implication, estoppel or otherwise to the Payco Services or to any other Intellectual Property Rights of Payco.

Section 6.5. Right to Use **VENDOR** Marks. Payco reserves the right to use trademarks, service marks and trade names belonging to **VENDOR**, in the exercise of its rights and performance of its obligations under this Agreement.

ARTICLE VII – GENERAL PROVISIONS

Section 7.1. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable for any reason, the remaining provisions shall continue in full force and effect and shall be construed so as to effectuate the intent of this Agreement as a whole, notwithstanding such stricken provision or provisions.

Section 7.2. Drafting. No provision of this Agreement shall be construed against any party merely because that party or its counsel drafted or revised the provision in question. All parties have been advised and have had an opportunity to consult with legal counsel of their choosing regarding the force and effect of the terms set forth herein. This Agreement shall be deemed to be jointly prepared by the parties and therefore any ambiguity or uncertainty shall be interpreted accordingly.

Section 7.3. Waiver. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other party, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any different or subsequent breach.

Section 7.4. Assignment. (a) Neither party shall assign, delegate, subcontract, license, franchise, or in any manner attempt to extend to any third party any right or obligation under this Agreement, except as otherwise permitted herein, without the prior written consent of the other party, such consent not to be unreasonably withheld; *provided, however*, that Payco may assign this Agreement and its rights hereunder to an Affiliate or to a purchaser of all or substantially all of its assets or equity, or in the event of a merger, consolidation, reorganization or change in control.

(b) Notwithstanding any other provisions in this Agreement, VENDOR may assign or sell any part or all of its rights to its compensation under this Agreement to a third party; provided however, Payco shall first have the right to purchase such compensation rights from VENDOR. In the event VENDOR seeks to sell any part or all of its right to compensation to a third party, it shall provide Payco with written notice of the material terms of the third-party offer, and Payco shall have fifteen (15) days within which to notify VENDOR as to whether it will match said third party offer. If Payco elects to match the third-party offer, VENDOR shall sell its rights to compensation to Payco. In the event Payco does not elect to exercise this right of first refusal, VENDOR may sell VENDOR's compensation to the third-party offeror on the same terms and conditions as set forth in the written notice to Payco. Notwithstanding any other provisions in this Agreement, VENDOR, if an individual, upon the occurrence of his/her death may pass on his/her rights to residuals under this Agreement by will, trust or any other method to anyone she/he chooses in his/her sole and absolute discretion.

Section 7.5. Amendments. Except as otherwise provided in this Agreement, no provision of this Agreement may be amended, modified or waived except by a written agreement signed by both parties.

Section 7.6. Notices. All notices and other communications required or permitted under this Agreement shall be in writing and given by personal delivery, telecopy (confirmed by a mailed copy), or first-class mail, postage prepaid, sent to the addresses set forth herein.

Section 7.7. Section Headings. The section headings contained in this Agreement are for convenient reference only and shall not in any way affect the meaning or interpretation of this Agreement.

Section 7.8. Counterparts/Facsimile Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and such counterpart shall together constitute one and the same instrument. The signatures to this Agreement may be evidenced by facsimile copies reflecting the party's signature hereto, and any such facsimile copy shall be sufficient to evidence the signature of such party as if it were an original signature.

Section 7.9. Entire Agreement; Binding Effect. This Agreement, including all schedules, exhibits and attachments thereto, sets forth the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein, and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, VENDOR, employee or representative of any party hereto. This Agreement shall be binding upon and shall inure only to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended to confer or shall be deemed to confer upon any persons or entities not parties to this Agreement, any rights or remedies under or by reason of this Agreement.

Section 7.10. Dispute Resolution. All disputes arising under or in connection with the Agreement will initially be referred to the senior executives of each party. The senior executives will use their best efforts to resolve the dispute informally and amicably.

Section 7.11. Survival. All representations, warranties and covenants in this

Agreement, and Article II, Section 3.4, Section 5.2, Section 5.3, Section 5.4, Section 5.5, Section 5.6, Section 5.7, Section 7.1, Section 7.2, Section 7.3, Section 7.4, Section 7.5, Section 7.6, Section 7.7, Section 7.9 and Section 7.10 shall survive expiration or termination of this Agreement.

IN WITNESS THEREOF, this agreement has been duly executed by the parties hereto, effective as of the date VENDOR accepts deposit or payment for services.