



## Appendix: "CEA"

### Industrial Payment Services Commercial Entity Agreements

Last Update: February 8, 2019

#### Commercial Entity Agreement with JP Morgan Chase

##### JP MORGAN CHASE BANK COMMERCIAL ENTITY USER AGREEMENT

This Commercial Entity User Agreement ("**Commercial Entity Agreement**" or "**CEA**") is provided to Industrial Payment Services Users that are Commercial Entities (as defined by Visa and MasterCard), who open a Business Account and who use Industrial Payment Services' to accept Association (defined below) branded payment cards and Industrial Payment Services payments from customers through their Industrial Payment Services account (**the "Industrial Payment Services Services"**). Each such entity or person receiving this CEA is hereby referred to as "**Industrial Payment Services Customer**." In this CEA, "**you**," and/or "**your**" also refer to Industrial Payment Services Customer. This CEA constitutes your separate legally binding contract between (1) you, as a Commercial Entity, and (2) JP Morgan Chase Bank N.A. ("**Member**"). In this CEA "**we**", "**us**" and "**our**" also refer to Member. Industrial Payment Services Customer has agreed to the online Industrial Payment Services User Agreement found on the Industrial Payment Services website (**the "UA"**) and, in certain cases, the online Website Payments Pro/Virtual Terminal Agreement or other online agreement related to your direct acceptance of cards ("**Pro Agreement**") and/or signed the Industrial Payment Services Payment Processing Agreement ("**PPA**") with Industrial Payment Services, each of which set forth requirements regarding the Industrial Payment Services's Services and are incorporated into this CEA by reference. Member may terminate its provision of credit and debit card processing services provided by Member to Industrial Payment Services and you in connection with payments made to you through the Industrial Payment Services Service and enforce any of the provisions of the UA and, if applicable, the Pro Agreement and/or the PPA that relate to the credit and debit card processing services provided by the Member.

**By signing the PPA or otherwise agreeing to this CEA (by "click through" agreement or otherwise) you agree to the terms and conditions of this CEA and any documents incorporated by reference.** Industrial Payment Services Customer further agrees that this CEA forms a legally binding contract between Industrial Payment Services Customer and Member. Any rights not expressly granted herein are reserved by Member.

1. **Purpose of this CEA.** When your customer pays you through Industrial Payment Services, they have the option of paying you through a funding source offered on the Industrial Payment Services website including a credit or debit card funded payment. Since you may be the recipient of a credit or debit card funded payment, Visa U.S.A., Inc. and Visa International ("**Visa**") and MasterCard International Incorporated ("**MasterCard**") (**collectively the "Associations"**) require that you enter into a direct contractual relationship with a bank who is a member of the Associations. By entering into the CEA, you are fulfilling the Association rule of entering into a direct contractual relationship with a member bank, and you are agreeing to comply with Association rules as they pertain to payments you receive through the Industrial Payment Services Service.
2. **Association Rules.** You agree to follow all requirements of this Agreement in connection with each Card transaction and to comply with the Visa USA Inc. Operating Regulations, the MasterCard Bylaws, and all other applicable Association Rules.

- a. **Deposit Transactions.** You agree to only accept payments through Industrial Payment Services Services for transactions between you and your customer for the sale of goods or services. You shall not submit a transaction for the refinance or transfer of an existing obligation that was uncollectible. You acknowledge that for Visa and MasterCard payments, Industrial Payment Services shall obtain an authorization for transaction amounts prior to completing the transaction. You shall not request or use a cardholder's account number for any purpose other than to support payment for your goods and services.
- b. **Split Transactions.** You agree to submit a single transaction for the full amount of each sale, except to the extent you and your customer agree on a partial shipment of a product, or where the transaction qualifies for delayed delivery or special order deposits (such as partial shipments based on inventory on hand), in which cases a sale may be split into multiple transactions.
- c. **Minimum or Maximum/Surcharges.** You agree that you shall not set minimum or maximum transaction amounts or impose surcharges as a condition of honoring Visa and MasterCard cards.
- d. **Visa and MasterCard Marks.** You shall use the Visa and MasterCard logos or marks only on your promotional materials and website to indicate that Visa and MasterCard cards are accepted as funding sources for Industrial Payment Services transactions.
- e. **Cash Disbursements.** You agree that if you sell travelers cheques or foreign currency that transactions shall be limited to the value of cheques, Visa TravelMoney, or currency sold in a single transaction, plus any applicable commissions.
- f. **Discrimination.** You agree that you shall not engage in any acceptance practice that discriminates against or discourages the use of Visa or MasterCard in favor of any other card brand.
- g. **Access to Cardholder Data.** You acknowledge that with respect to Industrial Payment Services payments: (i) you do not have access to Cardholder Data (defined as a cardholder's account number, expiration date, and CVV2) for payments received by you through the Industrial Payment Services Services; and (ii) you agree you shall not request access to Cardholder Data from either Industrial Payment Services or any customer making a Industrial Payment Services payment through the Industrial Payment Services Services. In the event that you receive Cardholder Data in connection with the Industrial Payment Services Services, you agree that you will not (x) use the Cardholder Data for any purpose other than to support payment for your goods and services, (y) use the Cardholder Data for any purpose that you know or should know to be fraudulent or in violation of any Association Rules, (iii) sell, purchase, provide or exchange in any manner or disclose Cardholder Data to anyone other than your acquirer, Visa or MasterCard (as applicable) or in response to a government request. In the event that you receive Cardholder Data in connection with the Industrial Payment Services Service, you agree (x) to promptly notify Member (or another Member if so appropriate) and Industrial Payment Services of such and (y) at all times to be compliant with the Payment Card Industry Data Security Standards with respect to such Cardholder Data.
- h. **Industrial Payment Services Customer Identification.** You agree to prominently and unequivocally inform your customers of your identity at all points of interaction.

- i. **Chargebacks.** You shall use all reasonable methods to resolve disputes with your customers. Should a chargeback dispute occur, you shall promptly comply with all requests for information from Industrial Payment Services. You shall not attempt to recharge a customer for an item that has been charged back, unless the customer has authorized such actions.
  - j. **Refund Policy must be on Industrial Payment Services Customer's Website.** If you limit refund/exchange terms or other specific conditions for sales, your policy must be clearly provided to your customers prior to the sale, as part of the sale confirmation process. Proper disclosure would include wording that is prominently displayed and states "NO REFUND, EXCHANGE ONLY" or something substantially similar and includes any special terms. NOTE: Qualifying your refund or exchange terms does not completely eliminate your liability for a refund because consumer protection laws and Association rules frequently allow the cardholder to still dispute these items.
  - k. **Compliance with Law; Privacy Policy Display.** You will not access and/or utilize the Industrial Payment Services Services for illegal purposes and will not interfere or disrupt networks connected with the Industrial Payment Services Services. You agree to display your consumer privacy policy on its website as well as its security method for transmission of payment data.
3. **Payment Instructions:** You authorize and direct us to pay all amounts due from us to you hereunder to Industrial Payment Services, who shall serve as your agent for purposes of receiving the proceeds of credit and debit card funded processing services from us and shall be responsible for disbursing such amounts to you.
4. **Term and Termination.** This CEA is effective upon the date you signed the PPA or otherwise agreed to this CEA (by "click-through" or otherwise), and continues so long as you use the Service. This CEA will terminate automatically upon any termination or expiration of your UA or, if applicable, your PPA, provided that those terms which by their nature are intended to survive termination (including indemnification obligations and limitations of liability) shall survive. This CEA may be terminated by Member at any time based on (i) a breach of any of your obligations under this CEA, the UA or, if applicable, the PPA, or (ii) the termination of the payment processing relationship between Industrial Payment Services and Member.
5. **Indemnification.** You agree to indemnify and hold Member harmless from and against all losses, liabilities, damages and expense resulting from and/or arising out of: (a) any breach of any warranty, covenant or agreement or any misrepresentation by you under this Agreement; (b) Your or your employees' negligence or willful misconduct, in connection with card-funded Industrial Payment Services transactions or otherwise arising from your provision of goods and services to customers paying for such goods or services through the Industrial Payment Services Service; (c) arising out of any third party indemnifications Member is obligated to make as a result of Industrial Payment Services Customer's actions (including indemnification of any Association or card issuing bank).

Member agrees to indemnify and hold you harmless from and against all losses, liabilities, damages and expenses resulting from and/or arising out of: (a) any breach of any warranty, covenant, or agreement or any misrepresentation by each of us under this Agreement; or (b) our or our employee's gross negligence or willful misconduct in connection with this Agreement.

6. **Warranty Disclaimer.** This CEA is a service agreement. We disclaim all representations or warranties, express or implied, made to you or any other person, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose or otherwise of any

services or any goods provided incidental to the services provided under this CEA to the extent permitted by law.

7. **Limitation of Liability.** Notwithstanding anything in this CEA to the contrary, in no event shall the parties hereunder, or their affiliates or any of their respective directors, officers, employees, agents or subcontractors, be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is hereby excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether any party or any entity has been advised of the possibility of such damages. Notwithstanding anything in this CEA to the contrary, in no event shall we be liable or responsible for any delays or errors in our performance of the services caused by our service providers or other parties or events outside of our reasonable control, including Industrial Payment Services. Notwithstanding anything in this CEA to the contrary, the parties' cumulative liability for all losses, claims, suits, controversies, breaches or damages for any cause whatsoever (including those arising out of or related to this CEA) and regardless of the form of action or legal theory and whether or not arising in contract or tort (excluding negligence and willful misconduct) shall not exceed the total volume of all transactions, expressed as a U.S. dollar amount, processed under this CEA. Nothing in this CEA shall exclude or limit any liability of any party for death or personal injury caused by negligence or fraud, deceit or fraudulent misrepresentation, howsoever caused.
8. **Governing Law; Arbitration.** Governing law with respect to this CEA shall be determined in accordance with the laws of the State of New York Any dispute with respect to this CEA between Merchant and Member, including a dispute as to the validity or existence of this CEA and/or this clause, shall be resolved by binding arbitration in accordance with the rules of the American Arbitration Association.
9. **Assignment; Amendments.** This CEA may only be assigned in connection with a permitted assignment under the UA or, if applicable, the PPA. The Member may assign their rights under this CEA without your consent. This CEA may be amended by you only upon mutual written agreement. Member may amend this CEA at any time via Industrial Payment Services posting a revised version on the Industrial Payment Services website(s). The revised version will be effective at the time Industrial Payment Services posts it. In addition, if the revised version includes a substantial change, Member will provide you with 30 days' prior notice of such change via Industrial Payment Services posting a notice on the "Policy Updates" page of the Industrial Payment Services website(s). After this 30-day notice, you will be considered as having expressly consented to all changes to the CEA if you continue to use the Industrial Payment Services Service. For the purpose of this CEA, a "substantial change" will be any change that involves a reduction to your rights or increases your responsibilities.
10. **Waiver.** The failure of a party to assert any of its rights under this CEA, including the right to terminate this CEA in the event of breach or default by the other party, will not be deemed to constitute a waiver by that party of its right to enforce each and every provision of this CEA in accordance with its terms.
11. **Relationship between the Parties.** No agency, partnership, joint venture or employment relationship is created between Industrial Payment Services Customer and Member by way of this CEA. In the performance of their respective obligations hereunder, the parties are, and will be, independent contractors. Neither party will bind, or attempt to bind, the other party to any contract or the performance of any obligation, and neither party will represent to any third party that it has any right to enter into any binding obligation on the other party's behalf.
12. **Severability.** Whenever possible, each provision of this CEA will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision hereof will be prohibited by or determined to be invalid by a court of competent jurisdiction, such provision will be ineffective to the

extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this CEA.

## Commercial Entity Agreement with HSBC

### HSBC BANK COMMERCIAL ENTITY AGREEMENT FOR CREDIT CARD PROCESSING SERVICES

#### Commercial Entity Agreements: Processing of Card Transactions Through Industrial Payment Services

The following terms pertain to card transactions used to fund a Industrial Payment Services Account, which in turn can be used to pay the Merchant. Card transactions by the Merchant that do not fund an Industrial Payment Services Account are not affected by the terms below.

This Commercial Entity User Agreement for Credit Card Processing Services ("**Commercial Entity Agreement**" or "**CEA**") is provided to all Industrial Payment Services Users that meet the definition of "**Commercial Entities**" or the equivalent under Association Rules (defined below) and that open and use a Premier or Business Account (such use of such Accounts collectively termed the "**Premier/Business Service**"). (Each such entity or person receiving this document is hereby referred to as "**Merchant**"). This CEA constitutes Merchant's separate legally binding contract for credit card processing between

1. Merchant, as a Commercial Entity
2. Member (which is HSBC Bank plc)
3. GPUK LLP, trading as Global Payments ("**Processor**").

The CEA is also for the benefit of any of the HSBC group of companies other than the Member that provide access to a Bank Identification Number ("**BIN**") for MasterCard and Visa transactions acquired for the Merchant ("**HSBC Company**"), to the extent that the CEA relates to use of that BIN. Member or Processor may terminate its provision of credit card processing services and enforce or rely on any term or provision of the Merchant's Industrial Payment Services User Agreement ("**PUA**"), all of which Member or Processor considers relevant are incorporated in this CEA by reference. In this CEA "**we**", "**us**" and "**our**" refer to Member and Processor together unless, for the purpose of Association Rules or membership, it must mean Member alone. For the avoidance of doubt, Processor is not a subsidiary or affiliate or member of the HSBC Group. For the purposes of this CEA and the performance of it by the Processor:

1. The Processor is the exclusive agent of Member
2. Member is responsible for the Processor performance of the CEA
3. Member must approve, in advance, any fee payable by, or obligation of, the Merchant under the CEA; and
4. The Processor may not have access, directly or indirectly, to any account for funds or funds due to a Merchant and/or funds withheld from a Merchant for chargebacks arising from, or related to, performance of this CEA.

Any reference to the PUA shall mean the Industrial Payment Services User Agreement made between Merchant and Industrial Payment Services.

By accepting the Commercial Entity Agreement, Merchant agrees to the terms and conditions of this CEA and any documents incorporated by reference. Merchant further agrees that this CEA forms a legally binding contract between Merchant, Processor and Member. Any rights not expressly granted herein are reserved by Member and Processor. Descriptions of material amendments to this CEA will be provided as applicable. Any capitalized terms used in this CEA and not otherwise defined shall have the meanings set forth in the PUA.

#### 1. Association Rules

- A. **Deposit Transactions.** Merchant agrees that it shall only submit card transactions that directly results from bona fide cardholder transactions with that Merchant. Merchant agrees that it will not submit a transaction until Merchant: (i) obtains an authorization, (ii) completes the transaction, and either: (iii) ships or provides goods, (iv) performs the purchased service, or (v) obtains the cardholder's consent for a recurring transaction.

- B. **Anti-Money Laundering.** Merchant agrees that it shall not submit a transaction that does not result from a purchase of goods or services between the cardholder and Merchant.
- C. **Split Transactions.** Split sales transactions are not allowed. Specifically, Merchant agrees that it will not use two or more sales transaction receipts for a single transaction to avoid or circumvent authorization limits, or monitoring programs.
- D. **Minimum or Maximum.** Merchant agrees that it shall not set minimum or maximum transaction amounts as a condition of honoring Visa and MasterCard cards.
- E. **Surcharges.** Merchant agrees that it will not impose surcharges on debit card transactions. Subject to any express variations by local law.
- F. **Visa and MasterCard Marks.** Merchant is authorized to use the Visa and MasterCard logos or marks only on Merchant's promotional materials and website to indicate that Visa and MasterCard cards are accepted as payment for the business goods and services. Merchant agrees that it shall not use the logos and marks either directly or indirectly, to imply that Visa or MasterCard endorses Merchant's goods or services; nor may Merchant refer to Visa or MasterCard when stating eligibility requirements for purchasing its products, services, or memberships.
- G. **Credit Vouchers.** Credit vouchers may not be submitted for non-credit transactions. Merchant agrees that it shall not: (i) accept a payment from a card holder for the purpose of depositing funds to the cardholder's Account, or (ii) process a credit transaction without having completed a previous debit transaction with the same cardholder.
- H. **Cash Disbursements.** Merchant agrees that if it sells travellers cheques or foreign currency that Disbursements shall be limited to the value of cheques, Visa TravelMoney, or currency sold in a single transaction, plus any applicable commissions. Merchant agrees that under no circumstances shall a Visa or MasterCard transaction represent collection of a dishonored cheque.
- I. **Authorization Requirements.** Merchant agrees to obtain an authorization for all transaction amounts.
- J. **Discrimination.** Merchant agrees that it shall not engage in any acceptance practice that discriminates against or discourages the use of Visa or MasterCard in favor of any other acceptance brand.
- K. **Present Transactions within 30 Business Days.** Merchant agrees that a debit transaction shall not be presented until after the goods are shipped, or services



provided, unless, at the time of the transaction, the cardholder agrees to a properly disclosed delayed delivery of the goods or services. Merchant agrees that when it receives authorization for delayed presentment, the words "Delayed Presentment" or something substantially similar must be disclosed to the cardholder.

- L. **Fraudulent or Unauthorized Use of Account Information Prohibited.** Merchant agrees that it shall not request or use Visa or MasterCard Account number information for any purpose that it knows or should have known to be fraudulent or in violation of Visa and MasterCard standards, Association Rules, the PUA, or this CEA, or for any purpose that the cardholder did not authorize.
  - M. **Merchant Identification.** Merchant agrees to prominently and unequivocally inform the cardholder of the identity of the Merchant at all points of interaction so that the cardholder readily can identify the transaction.
- 2. **Card Associations.** Visa Europe Ltd, Visa U.S.A., Inc. and Visa International ("**Visa**") and MasterCard International Incorporated ("**MasterCard**") (the "**Associations**") have developed rules and regulations (the "**Association Rules**") that govern their member banks and merchants in the procedures, responsibilities and allocation of risk for payments made through the Associations. By accepting this CEA, Merchant is agreeing to comply with all such Association Rules.
  - 3. **Merchant's Refund Policy must be on Merchant's Website.** If Merchant limits refund/exchange terms or other specific conditions for Card sales, Merchant's POLICY MUST BE CLEARLY PROVIDED TO THE CARDHOLDER PRIOR TO THE SALE AND AS PART OF YOUR SALE CONFIRMATION PROCESS. PROPER DISCLOSURE WOULD INCLUDE WORDING THAT IS PROMINANTLY DISPLAYED AND STATES "NO REFUND, EXCHANGE ONLY", OR SOMETHING SUBSTANTIALLY SIMILAR AND INCLUDES ANY SPECIAL TERMS. NOTE: QUALIFYING YOUR REFUND OR EXCHANGE TERMS DOES NOT COMPLETELY ELIMINATE YOUR liability for a refund because consumer protection laws and Association Rules frequently allow the cardholder to still dispute these items. In particular, by implementing Directive 97/7/EC many European Union member states will have distance selling regulations which allow a consumer to cancel its contract with the Merchant within a defined period and receive a refund.
  - 4. **Term and Termination.** This CEA is effective upon the date Merchant accepts the terms and conditions set out herein and continues so long as Merchant uses the Industrial Payment Services Service ("Services") or until terminated by Merchant, Processor or Member, provided that those terms which by their nature are intended to survive termination (including without limitation, indemnification and chargeback obligations and limitations of liability) shall so survive termination. This CEA may be terminated by Member or Processor at any time based on a breach of any of Merchant's obligations hereunder or for any other reason that Member or Processor deem exceptional.

This CEA will terminate automatically upon any termination of Merchant's PUA.

- 5. **Indemnification.** Merchant agrees to indemnify, defend, and hold Member and Processor harmless from and against all losses, liabilities, damages and expenses (including legal fees and



collection costs) which the Member, Processor and/or their affiliates or agents may suffer or incur arising from any breach of any warranty, covenant or misrepresentation by Merchant under this CEA, or arising as a result of any tortious conduct by Merchant or Merchant's employees or agents, in connection with Card transactions or otherwise arising from Merchant's provision of goods and services to cardholders or from any contravention of any legal requirements.

6. **Arbitration.** Any dispute with respect to this CEA between Merchant, Processor and/or Member, including a dispute as to the validity or existence of this CEA and/or this clause, shall be resolved by arbitration in London, England, conducted in English by a single arbitrator in accordance with the ICC Rules. The parties agree to waive any right of appeal against the arbitration award. In the event of a failure by the parties to agree on the sole arbitrator within 30 days of one party calling upon the other to do so, one shall be appointed by the ICC.
7. **Assignment/Amendments.** This CEA may not be assigned by Merchant without the prior written consent of Member and Processor. Member may assign their rights under this CEA without Merchant's consent and subject to the Association Rules. The Processor may not subcontract, sublicense, assign, license, franchise, or in any manner extend or transfer to any third party, any right or obligation of the Processor set forth in the CEA.

This CEA may be amended by Member as provided under the PUA, and otherwise shall not be modified in any respect without the express written agreement of the Member.

8. **Warranty disclaimer.** This CEA is a service agreement. We disclaim all representations or warranties, express or implied, made to merchant or any other person, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose or otherwise of any services or any goods provided incidental to the services provided under this CEA to the extent permitted by law.
9. **Logo usage.** In using each other's logos and other trademarks, each agrees to follow the guidelines prescribed by the other, as notified by the parties to each other from time to time.
10. **Limitation of Liability.** Notwithstanding anything in this CEA to the contrary, in no event shall the parties hereunder, or their affiliates or any of their respective directors, officers, employees, agents or subcontractors, be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is hereby excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether any party or any entity has been advised of the possibility of such damages. Notwithstanding anything in this CEA to the contrary, in no event shall we be liable or responsible for any delays or errors in our performance of the services caused by our service providers or other parties or events outside of our reasonable control, including Industrial Payment Services. Notwithstanding anything in this CEA to the contrary, the parties' cumulative liability for all losses, claims, suits, controversies, breaches or damages for any cause whatsoever (including, but not limited to, those arising out of or related to this CEA) and regardless of the form of action or legal theory and whether or not arising in contract or tort (excluding negligence and willful misconduct) shall not exceed the total volume of all transactions, expressed as a U.S.

dollar amount, processed under this CEA. Nothing in this CEA shall exclude or limit any liability of any party for death or personal injury caused by negligence or fraud, deceit or fraudulent misrepresentation, howsoever caused.

11. **Enforceability.** No term of this CEA shall be enforceable by a third party (other than the HSBC Companies) and in particular a person who is not a party to this CEA has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy any of the benefits of this CEA (being a person other than the parties, the HSBC Companies and their permitted successors and assignees).
12. **Governing Law.** Governing law with respect to this CEA shall be the laws of England and Wales. Each party hereby submits to the non-exclusive jurisdiction of the courts of England and Wales.
13. **Waiver.** The failure of a party to assert any of its rights under this CEA, including, but not limited to, the right to terminate this CEA in the event of breach or default by the other party, will not be deemed to constitute a waiver by that party of its right to enforce each and every provision of this CEA in accordance with its terms.
14. **Relationship between the Parties; No Partnership or Agency; Independent Contractors.** No agency, partnership, joint venture or employment relationship is created between Merchant, Processor and/or Member by way of this CEA. In the performance of their respective obligations hereunder, the parties are, and will be, independent contractors. Nothing in this CEA will be construed to constitute either party as the agent for the other for any purpose whatsoever. Neither party will bind, or attempt to bind, the other party to any contract or the performance of any obligation, and neither party will represent to any third party that it has any right to enter into any binding obligation on the other party's behalf.
15. **No Illegal Use of Services.** Merchant will not access and/or utilize the Services for illegal purposes and will not interfere or disrupt networks connected with the Services.
16. **Severability.** Whenever possible, each provision of this CEA will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision hereof will be prohibited by or determined to be invalid by a court of competent jurisdiction, such provision will be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this CEA.

## Commercial Entity Agreement with Wells Fargo

### WELLS FARGO COMMERCIAL ENTITY USER AGREEMENT

#### Commercial Entity Agreements: Processing of Card Transactions Through Industrial Payment Services

This Commercial Entity User Agreement ("**Commercial Entity Agreement**" or "**CEA**") is provided to Industrial Payment Services Users that are Commercial Entities (as defined by Visa and MasterCard), who open a Business Account and who use Industrial Payment Services' to accept Industrial Payment Services payments on their website from customers through their Industrial Payment Services account (the "**Industrial Payment Services Services**"). Each such entity or person receiving this CEA is hereby referred to as "**Industrial Payment Services Customer**." In this CEA, "**you**," and/or "**your**" also refer to Industrial Payment Services Customer. This CEA constitutes your separate legally binding contract between (1) you, as a Commercial Entity, and (2) Wells Fargo Bank, N.A. and Wells Fargo Merchant Services, L.L.C. (**collectively, "Member"**). In this CEA "**we**", "**us**" and "**our**" also refer to Member. Industrial Payment Services Customer has agreed to the online Industrial Payment Services User Agreement found on the Industrial Payment Services website (**the "UA"**) and, in certain cases, signed the Industrial Payment Services Payment Processing Agreement ("**PPA**") with Industrial Payment Services, each of which set forth requirements regarding the Industrial Payment Services Services and are incorporated into this CEA by reference. Member may terminate its provision of credit and debit card processing services provided by Member to Industrial Payment Services and you in connection with payments made to you through the Industrial Payment Services Service and enforce any of the provisions of the UA and, if applicable, the PPA that relate to the credit and debit card processing services provided by the Member.

**By signing the PPA or otherwise agreeing to this CEA (by "click through" agreement or otherwise) you agree to the terms and conditions of this CEA and any documents incorporated by reference.** Industrial Payment Services Customer further agrees that this CEA forms a legally binding contract between Industrial Payment Services Customer and Member. Any rights not expressly granted herein are reserved by Member.

1. **Purpose of this CEA.** When your customer pays you through Industrial Payment Services, they have the option of paying you through a funding source offered on the Industrial Payment Services website including a credit or debit card funded payment. Since you may be the recipient of a credit or debit card funded payment, Visa U.S.A., Inc. and Visa International ("Visa") and MasterCard International Incorporated ("MasterCard") (collectively the "Associations") require that you enter into a direct contractual relationship with a bank who is a member of the Associations. By entering into the CEA, you are fulfilling the Association rule of entering into a direct contractual relationship with a member bank, and you are agreeing to comply with Association rules as they pertain to payments you receive through the Industrial Payment Services Service.
2. **Association Rules.** You agree to follow all requirements of this Agreement in connection with each Card transaction and to comply with the Visa USA Inc. Operating Regulations, the MasterCard Bylaws, and all other applicable Association Rules.
  - A. **Deposit Transactions.** You agree to only accept payments through Industrial Payment Services Services for transactions between you and your customer for the sale of goods or services. You shall not submit a transaction for the refinance or transfer of an existing obligation that was uncollectible. You acknowledge that for Visa and MasterCard payments, Industrial Payment Services shall obtain an authorization for transaction amounts prior to completing the transaction. You shall not request or use a cardholder's account number for any purpose other than to support payment for your goods and services.

- B. **Split Transactions.** You agree to submit a single transaction for the full amount of each sale, except to the extent you and your customer agree on a partial shipment of a product, or where the transaction qualifies for delayed delivery or special order deposits (such as partial shipments based on inventory on hand), in which cases a sale may be split into multiple transactions.
- C. **Minimum or Maximum/Surcharges; Taxes.** You agree that you shall not set minimum or maximum transaction amounts or impose surcharges as a condition of honoring Visa and MasterCard cards. You may not add tax to any transaction unless so permitted by applicable law, and in such case, only if included in the transaction amount and not collected separately.
- D. **Visa and MasterCard Marks.** You shall use the Visa and MasterCard logos or marks only on your promotional materials and website to indicate that Visa and MasterCard cards are accepted as funding sources for Industrial Payment Services transactions.
- E. **Cash Disbursements; Scripts.** You agree that if you sell travelers cheques or foreign currency that transactions shall be limited to the value of cheques, Visa TravelMoney, or currency sold in a single transaction, plus any applicable commissions. Further you agree that you shall not accept a credit card payment for the purchase of a Scrip (a two-part paper receipt that is redeemable by you for goods, services, or cash).
- F. **Discrimination.** You agree that you shall not engage in any acceptance practice that discriminates against or discourages the use of Visa or MasterCard in favor of any other card brand.
- G. **Access to Cardholder Data.** You acknowledge that you do not have access to Cardholder Data (defined as a cardholder's account number, expiration date, and CVV2) for payments received by you through the Industrial Payment Services Services. You agree you shall not request access to Cardholder Data from either Industrial Payment Services or any customer making payment through the Industrial Payment Services Services. In the event that you receive Cardholder Data in connection with the Industrial Payment Services Services, you agree that you will not (i) use the Cardholder Data for any purpose other than to support payment for your goods and services, (ii) use the Cardholder Data for any purpose that you know or should know to be fraudulent or in violation of any Association Rules, (iii) sell, purchase, provide or exchange in any manner or disclose Cardholder Data to anyone other than your acquirer, Visa or MasterCard (as applicable) or in response to a government request. In the event that you receive Cardholder Data in connection with the Industrial Payment Services Service, you agree (x) to promptly notify Wells Fargo (or another Member if so appropriate) and Industrial Payment Services of such and (y) at all times to be compliant with the Payment Card Industry Data Security Standards with respect to such Cardholder Data.
- H. **Industrial Payment Services Customer Identification.** You agree to prominently and unequivocally inform your customers of your identity at all points of interaction. You must include the address of your permanent establishment on your Web site.

- I. **Chargebacks.** You shall use all reasonable methods to resolve disputes with your customers. Should a chargeback dispute occur, you shall promptly comply with all requests for information from Industrial Payment Services. You shall not attempt to recharge a customer for an item that has been charged back, unless the customer has authorized such actions.
  - J. **Refund Policy must be on Industrial Payment Services Customer's Website.** If you limit refund/exchange terms or other specific conditions for sales, your policy must be clearly provided to your customers prior to the sale, as part of the sale confirmation process. Proper disclosure would include wording that is prominently displayed and states "NO REFUND, EXCHANGE ONLY" or something substantially similar and includes any special terms. NOTE: Qualifying your refund or exchange terms does not completely eliminate your liability for a refund because consumer protection laws and Association rules frequently allow the cardholder to still dispute these items. You agree to display your consumer privacy policy on your website as well as the security method used for transmission of payment data.
  - K. **Compliance with Law; Privacy Policy Display.** You will not access and/or utilize the Industrial Payment Services for illegal purposes and will not interfere or disrupt networks connected with the Industrial Payment Services. You agree to display your consumer privacy policy on its website as well as its security method for transmission of payment data.
3. **Payment Instructions:** You authorize and direct us to pay all amounts due from us to you hereunder to Industrial Payment Services, who shall serve as your agent for purposes of receiving the proceeds of credit and debit card funded processing services from us and shall be responsible for disbursing such amounts to you.
4. **Term and Termination.** This CEA is effective upon the date you signed the PPA or otherwise agreed to this CEA (by "click-through" or otherwise), and continues so long as you use the Service. This CEA will terminate automatically upon any termination or expiration of your UA or, if applicable, your PPA, provided that those terms which by their nature are intended to survive termination (including indemnification obligations and limitations of liability) shall survive. This CEA may be terminated by Member at any time based on (i) a breach of any of your obligations under this CEA, the UA or, if applicable, the PPA, or (ii) the termination of the payment processing relationship between Industrial Payment Services and Member.
5. **Indemnification.** You agree to indemnify and hold Member harmless from and against all losses, liabilities, damages and expense resulting from and/or arising out of: (a) any breach of any warranty, covenant or agreement or any misrepresentation by you under this Agreement; (b) Your or your employees' negligence or willful misconduct, in connection with card-funded Industrial Payment Services transactions or otherwise arising from your provision of goods and services to customers paying for such goods or services through the Industrial Payment Services Service; (c) arising out of any third party indemnifications Member is obligated to make as a result of Industrial Payment Services Customer's actions (including indemnification of any

Association or card issuing bank).

Member agrees to indemnify and hold you harmless from and against all losses, liabilities, damages and expenses resulting from and/or arising out of: (a) any breach of any warranty, covenant, or agreement or any misrepresentation by each of us under this Agreement; or (b) our or our employee's gross negligence or willful misconduct in connection with this Agreement.

6. **Warranty Disclaimer.** This CEA is a service agreement. We disclaim all representations or warranties, express or implied, made to you or any other person, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose or otherwise of any services or any goods provided incidental to the services provided under this CEA to the extent permitted by law.
7. **Limitation of Liability.** Notwithstanding anything in this CEA to the contrary, in no event shall the parties hereunder, or their affiliates or any of their respective directors, officers, employees, agents or subcontractors, be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is hereby excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether any party or any entity has been advised of the possibility of such damages. Notwithstanding anything in this CEA to the contrary, in no event shall we be liable or responsible for any delays or errors in our performance of the services caused by our service providers or other parties or events outside of our reasonable control, including Industrial Payment Services. Notwithstanding anything in this CEA to the contrary, the parties' cumulative liability for all losses, claims, suits, controversies, breaches or damages for any cause whatsoever (including those arising out of or related to this CEA) and regardless of the form of action or legal theory and whether or not arising in contract or tort (excluding negligence and willful misconduct) shall not exceed the total volume of all transactions, expressed as a U.S. dollar amount, processed under this CEA. Nothing in this CEA shall exclude or limit any liability of any party for death or personal injury caused by negligence or fraud, deceit or fraudulent misrepresentation, howsoever caused.
8. **Governing Law; Arbitration.** Governing law with respect to this CEA shall be California, U.S. Any dispute with respect to this CEA between you and Wells Fargo Bank, N.A as Member, including a dispute as to the validity or existence of this CEA and/or this clause, shall be resolved by binding arbitration in accordance with the rules of the American Arbitration Association. Venue for any such arbitration shall be Santa Clara County, California.
9. **Assignment; Amendments.** This CEA may only be assigned in connection with a permitted assignment under the UA or, if applicable, the PPA. The Member may assign their rights under this CEA without your consent. This CEA may be amended by you only upon mutual written agreement. Member may amend this CEA at any time via Industrial Payment Services posting a revised version on the Industrial Payment Services website(s). The revised version will be effective at the time Industrial Payment Services posts it. In addition, if the revised version includes a substantial change, Member will provide you with 30 days' prior notice of such change via Industrial Payment Services posting a notice on the "Policy Updates" page of the Industrial Payment Services website(s). After this 30 day notice, you will be considered as having

expressly consented to all changes to the CEA if you continue to use the Industrial Payment Services Service. For the purpose of this CEA, a “substantial change” will be any change that involves a reduction to your rights or increases your responsibilities.

10. **Waiver.** The failure of a party to assert any of its rights under this CEA, including the right to terminate this CEA in the event of breach or default by the other party, will not be deemed to constitute a waiver by that party of its right to enforce each and every provision of this CEA in accordance with its terms.
11. **Relationship between the Parties.** No agency, partnership, joint venture or employment relationship is created between Industrial Payment Services Customer and Member by way of this CEA. In the performance of their respective obligations hereunder, the parties are, and will be, independent contractors. Neither party will bind, or attempt to bind, the other party to any contract or the performance of any obligation, and neither party will represent to any third party that it has any right to enter into any binding obligation on the other party’s behalf.
12. **Severability.** Whenever possible, each provision of this CEA will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision hereof will be prohibited by or determined to be invalid by a court of competent jurisdiction, such provision will be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this CEA.
13. **Member Bank Information:** Member, **Wells Fargo Bank, N.A.**, is responsible for the credit and debit card processing services provided hereunder and may be contacted at: 1200 Montego Way, Walnut Creek, CA 94598 and 1-800-451-5817.



## Commercial Entity Agreement with Wells Fargo - Pro

### COMMERCIAL ENTITY USER AGREEMENT

#### Commercial Entity Agreements: Processing of Card Transactions Through Industrial Payment Services

This Commercial Entity User Agreement ("**Commercial Entity Agreement**" or "**CEA**") is provided to Industrial Payment Services Users that are Commercial Entities (as defined by Visa and MasterCard), who open a Business Account and who use Industrial Payment Services' to (i) accept Association (defined below) branded payment card on their website from customers and (ii) accept Industrial Payment Services payments on their website from customers through their Industrial Payment Services account (**the "Industrial Payment Services Services"**). Each such entity or person receiving this CEA is hereby referred to as "**Industrial Payment Services Customer**." In this CEA, "**you**," and/or "**your**" also refer to Industrial Payment Services Customer. This CEA constitutes your separate legally binding contract between (1) you, as a Commercial Entity, and (2) Wells Fargo Bank, N.A. and Wells Fargo Merchant Services, L.L.C. (**collectively, "Wells Fargo"**). In this CEA "**we**", "**us**" and "**our**" also refers to Wells Fargo. Industrial Payment Services Customer has agreed to the online Website Payments Pro\Virtual Terminal Agreement ("**Pro Agreement**") and the online Industrial Payment Services User Agreement (**the "UA"**), each found on the Industrial Payment Services website, and, in certain cases, signed the Industrial Payment Services Payment Processing Agreement ("**PPA**") with Industrial Payment Services, each of which set forth requirements regarding the Industrial Payment Services and are incorporated into this CEA by reference. Wells Fargo may terminate provision of credit and debit card processing services provided by Wells Fargo to Industrial Payment Services and you in connection with payments made to you through the Industrial Payment Services Service and enforce any of the provisions of the Pro Agreement, the UA and, if applicable, the PPA that relate to the credit and debit card processing services provided by Wells Fargo. This CE agreement replaces any other CEA you may have already agreed to with Industrial Payment Services and Wells Fargo.

**By signing the PPA or otherwise agreeing to this CEA (by "click through" agreement or otherwise) you agree to the terms and conditions of this CEA and any documents incorporated by reference.** Industrial Payment Services Customer further agrees that this CEA forms a legally binding contract between Industrial Payment Services Customer and Wells Fargo. Any rights not expressly granted herein are reserved by Wells Fargo.

1. **Purpose of this CEA.** When your customer pays you through Industrial Payment Services, they have the option of paying you through a funding source offered on the Industrial Payment Services website including a credit or debit card funded payment. Since you may be the recipient of a credit or debit card funded payment, Visa U.S.A., Inc. and Visa International ("Visa") and MasterCard International Incorporated ("MasterCard") (collectively the "Associations") require that you enter into a direct contractual relationship with a bank who is a member of the Associations. By entering into the CEA, you are fulfilling the Association rule of entering into a direct contractual relationship with a member bank, and you are agreeing to comply with Association rules as they pertain to payments you receive through the Industrial Payment Services Service.
2. **Association Rules.** MasterCard and Visa have established guidelines, merchant monitoring programs and reports to track merchant activity such as excessive credits and Chargebacks, and increased deposit activity. In the event you exceed the guidelines or submit suspicious transactions as identified by an Association or any related program or reports, you may be subject to: (i) incremental Chargebacks and/or fees; (ii) settlement delay or withholding; (iii) termination of your Agreement; or (iv) audit and imposition of fines. You agree to follow all requirements of this Agreement in connection with each Card transaction and to comply with all applicable Association rules, which rules are located at

[http://www.mastercard.com/us/merchant/how\\_works/merchant\\_rules.html](http://www.mastercard.com/us/merchant/how_works/merchant_rules.html) and [http://usa.visa.com/merchants/operations/op\\_regulations.html?it=c\[/merchants/|Visa%20Operating%20Regulations](http://usa.visa.com/merchants/operations/op_regulations.html?it=c[/merchants/|Visa%20Operating%20Regulations).

- A. **Deposit Transactions.** You agree to only accept payments through Industrial Payment Services for transactions between you and your customer for the sale of goods or services. You shall not submit a transaction for the refinance or transfer of an existing obligation that was uncollectible. You acknowledge that for Visa and MasterCard payments, Industrial Payment Services shall obtain an authorization for transaction amounts prior to completing the transaction. You shall not request or use a cardholder's account number for any purpose other than to support payment for your goods and services.
- B. **Split Transactions.** You agree to submit a single transaction for the full amount of each sale, except to the extent you and your customer agree on a partial shipment of a product, or where the transaction qualifies for delayed delivery or special order deposits (such as partial shipments based on inventory on hand), in which cases a sale may be split into multiple transactions.
- C. **Minimum or Maximum/Surcharges; Taxes.** You agree that you shall not set minimum or maximum transaction amounts or impose surcharges as a condition of honoring Visa and MasterCard cards. You may not add tax to any transaction unless so permitted by applicable law, and in such case, only if included in the transaction amount and not collected separately.
- D. **Visa and MasterCard Marks.** You shall use the Visa and MasterCard logos or marks on your promotional materials and website to indicate that Visa and MasterCard cards are accepted both as funding sources for Industrial Payment Services transactions as a direct method of payment.
- E. **Cash Disbursements; Scripts.** You agree that if you sell travelers cheques or foreign currency that transactions shall be limited to the value of cheques, Visa TravelMoney, or currency sold in a single transaction, plus any applicable commissions. Further you agree that you shall not accept a credit card payment for the purchase of a Scrip (a two-part paper receipt that is redeemable by you for goods, services, or cash).
- F. **Discrimination.** You agree that you shall not engage in any acceptance practice that discriminates against or discourages the use of Visa or MasterCard in favor of any other card brand.
- G. **Access to Cardholder Data and Card Data Security.** You agree that at all times you shall be compliant with the Payment Card Industry Data Security Standards (PCIDSS) and that you shall certify such compliance in accordance with Association rules, or when asked by Industrial Payment Services to do so. You also agree that you will use only PCI compliant service providers in connection with the storage, or transmission of

Cardholder Data (defined as a cardholder's account number, expiration date, and CVV2). You must not store CVV2 data at any time. When you receive Cardholder Data in connection with the Industrial Payment Services, you agree that you will not (i) use the Cardholder Data for any purpose other than to support payment for your goods and services, (ii) use the Cardholder Data for any purpose that you know or should know to be fraudulent or in violation of any Association rules, (iii) sell, purchase, provide or exchange in any manner or disclose Cardholder Data to anyone other than your acquirer (in this case Wells Fargo Bank, N.A.), Visa or MasterCard (as applicable) or in response to a government request.

- H. **Industrial Payment Services Customer Identification.** You agree to prominently and unequivocally inform your customers of your identity at all points of interaction. You must include the address of your permanent establishment on your Web site.
  - I. **Chargebacks.** You shall use all reasonable methods to resolve disputes with your customers. Should a chargeback dispute occur, you shall promptly comply with all requests for information from Industrial Payment Services. You shall not attempt to recharge a customer for an item that has been charged back, unless the customer has authorized such actions.
  - J. **Refund Policy must be on Industrial Payment Services Customer's Website.** If you limit refund/exchange terms or other specific conditions for sales, your policy must be clearly provided to your customers prior to the sale, as part of the sale confirmation process. Proper disclosure would include wording that is prominently displayed and states "NO REFUND, EXCHANGE ONLY" or something substantially similar and includes any special terms. NOTE: Qualifying your refund or exchange terms does not completely eliminate your liability for a refund because consumer protection laws and Association rules frequently allow the cardholder to still dispute these items.
  - K. **Compliance with Law; Privacy Policy Display.** You will not access and/or utilize the Industrial Payment Services for illegal purposes and will not interfere or disrupt networks connected with the Industrial Payment Services. You agree to display your consumer privacy policy on your website as well as your security method for transmission of payment data.
  - L. **Limited Acceptance.** Pursuant to the Association Rules, you understand that you are allowed to limit your acceptance to either (i) only accept Non-PIN Debit transactions; or (ii) only accept Credit Card transactions; however, by using Industrial Payment Services you are electing full acceptance.
3. **Payment Instructions:** You authorize and direct us to pay all amounts due from Wells Fargo to you hereunder to Industrial Payment Services, who shall serve as your agent for purposes of receiving the proceeds of credit and debit card funded processing services from Wells Fargo and shall be responsible for disbursing such amounts to you.

4. **Term and Termination.** This CEA is effective upon the date you signed the PPA or otherwise agreed to this CEA (by “click-through” or otherwise), and continues so long as you use the Service. This CEA will terminate automatically upon any termination or expiration of your UA or, if applicable, your PPA, provided that those terms which by their nature are intended to survive termination (including indemnification obligations and limitations of liability) shall survive. This CEA may be terminated by Wells Fargo at any time based on (i) a breach of any of your obligations under this CEA, the Pro Agreement, the UA or, if applicable, the PPA, or (ii) the termination of the payment processing relationship between Industrial Payment Services and Wells Fargo.

5. **Indemnification.** You agree to indemnify and hold Wells Fargo harmless from and against all losses, liabilities, damages and expense resulting from and/or arising out of: (a) any breach of any warranty, covenant or agreement or any misrepresentation by you under this Agreement; (b) your or your employees’ negligence or willful misconduct, in connection with card-funded Industrial Payment Services transactions or otherwise arising from your provision of goods and services to customers paying for such goods or services through the Industrial Payment Services Service; (c) arising out of any third party indemnifications Wells Fargo is obligated to make as a result of Industrial Payment Services Customer’s actions (including indemnification of any Association or card issuing bank).

Wells Fargo agrees to indemnify and hold you harmless from and against all losses, liabilities, damages and expenses resulting from and/or arising out of: (a) any breach of any warranty, covenant, or agreement or any misrepresentation by Wells Fargo under this Agreement; or (b) the gross negligence or willful misconduct of Wells Fargo or Wells Fargo’s employee(s) in connection with this Agreement.

6. **Warranty Disclaimer.** This CEA is a service agreement. Wells Fargo disclaims all representations or warranties, express or implied, made to you or any other person, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose or otherwise of any services or any goods provided incidental to the services provided under this CEA to the extent permitted by law.

7. **Limitation of Liability.** Notwithstanding anything in this CEA to the contrary, in no event shall the parties hereunder, or their affiliates or any of their respective directors, officers, employees, agents or subcontractors, be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is hereby excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether any party or any entity has been advised of the possibility of such damages. Notwithstanding anything in this CEA to the contrary, in no event shall Wells Fargo be liable or responsible for any delays or errors in our performance of the services caused by our service providers or other parties or events outside of our reasonable control, including Industrial Payment Services. Notwithstanding anything in this CEA to the contrary, the parties’ cumulative liability for all losses, claims, suits, controversies, breaches or damages for any cause whatsoever (including those arising out of or related to this CEA) and regardless of the form of action or legal theory and whether or not arising in contract or tort (excluding negligence and willful misconduct) shall not exceed the total volume of all transactions, expressed as a U.S. dollar amount, processed under this CEA. The foregoing sentence shall not exclude or limit any liability of any party for

death or personal injury caused by negligence or fraud, deceit or fraudulent misrepresentation, howsoever caused.

8. **Governing Law; Arbitration.** Governing law with respect to this CEA shall be California, U.S. Any dispute with respect to this CEA between you and Wells Fargo, including a dispute as to the validity or existence of this CEA and/or this clause, shall be resolved by binding arbitration in accordance with the rules of the American Arbitration Association. Venue for any such arbitration shall be Santa Clara County, California.
9. **Assignment; Amendments.** This CEA may only be assigned in connection with a permitted assignment under the Pro Agreement, the UA or, if applicable, the PPA. Wells Fargo may assign its rights under this CEA without your consent. This CEA may be amended by you only upon mutual written agreement. Wells Fargo may amend this CEA at any time via Industrial Payment Services posting a revised version on the Industrial Payment Services website(s). The revised version will be effective at the time Industrial Payment Services posts it. In addition, if the revised version includes a substantial change, Wells Fargo will provide you with 30 days' prior notice of such change via Industrial Payment Services posting a notice on the "Policy Updates" page of the Industrial Payment Services website(s). After this 30 day notice, you will be considered as having expressly consented to all changes to the CEA if you continue to use the Industrial Payment Services Service. For the purpose of this CEA, a "substantial change" will be any change that involves a reduction to your rights or increases your responsibilities.
10. **Waiver.** The failure of a party to assert any of its rights under this CEA, including the right to terminate this CEA in the event of breach or default by the other party, will not be deemed to constitute a waiver by that party of its right to enforce each and every provision of this CEA in accordance with its terms.
11. **Relationship between the Parties.** No agency, partnership, joint venture or employment relationship is created between Industrial Payment Services Customer and Wells Fargo by way of this CEA. In the performance of their respective obligations hereunder, the parties are, and will be, independent contractors. Neither party will bind, or attempt to bind, the other party to any contract or the performance of any obligation, and neither party will represent to any third party that it has any right to enter into any binding obligation on the other party's behalf.
12. **Severability.** Whenever possible, each provision of this CEA will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision hereof will be prohibited by or determined to be invalid by a court of competent jurisdiction, such provision will be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this CEA.
13. **Association Disclosure; Member Bank Information:** Member, **Wells Fargo Bank, N.A.**, may be contacted by mail at: 1200 Montego Way, Walnut Creek, CA 94598; and by phone at 1-800-451-5817.



**Important Member Bank Responsibilities:**

- (a) Member, and not Industrial Payment Services, is the entity approved to extend acceptance of Association products directly to you.
- (b) Member must be a principal (signer) to this CEA.
- (c) Member is responsible for educating you on pertinent Visa and MasterCard Rules with which you must comply; but this information may be provided to you by Industrial Payment Services.
- (d) Subject to Section 3 of this CEA, Member is responsible for and must provide settlement funds to you.
- (e) Member is responsible for all settlement funds prior to funding you (or your agent).

**Important Merchant Responsibilities:**

- (a) Ensure compliance with cardholder data security and storage requirements.
- (b) Maintain fraud and chargebacks below Association thresholds.
- (c) Review and understand the terms of this CEA.
- (d) Comply with Visa and MasterCard rules.



## Commercial Entity Agreement with WorldPay

### COMMERCIAL ENTITY AGREEMENT FOR INDUSTRIAL PAYMENT SERVICES PAYMENT CARD FUNDED PROCESSING SERVICES

#### Agreed Form of Commercial Entity User Agreement

This Commercial Entity User Agreement for Industrial Payment Services Payment Card Funded Processing Services ("**Commercial Entity Agreement**" or "**CEA**") is provided to all Industrial Payment Services Users that are Commercial Entities (as defined by Visa Europe, Visa Inc, Visa International, MasterCard Worldwide, UK Maestro, Solo and/or International Maestro (together the "**Associations**")) and open a Premier or Business Account (such use of such accounts collectively termed the "**Premier/Business Service**"). Each such Industrial Payment Services User is hereby referred to as "**Merchant**" and may be referred to herein as "**you**" and/or "**your**". This CEA constitutes your separate legally binding contract for credit and debit card processing for Industrial Payment Services transactions between you and the WorldPay Entity (as defined below) and its Affiliate(s) (collectively, the "**Acquirer**").

For the purpose of this CEA, "**WorldPay Entity**" shall mean (a) WorldPay (UK) Limited if Merchant is based in Europe; and/or (b) The Royal Bank of Scotland N.V. if Merchant is based in Singapore and/or Hong Kong; and/or (c) The Royal Bank of Scotland PLC if Merchant is based in the United States.

For the purpose of this CEA, "**Affiliate(s)**" shall mean the financial institution(s) domiciled in the same Association region as you are domiciled in for Association purposes and which Acquirer has formed a relationship with in accordance with Association requirements to allow the processing of card transactions the identity of which you can obtain on contacting Industrial Payment Services. In accordance with the provisions of this CEA, the Acquirer may terminate its provision of credit and debit card processing services and enforce any of the provisions of Merchant's Industrial Payment Services Payment Processing Agreement (also known as the "**Industrial Payment Services User Agreement**") ("**PPA**"), agreed by and between Merchant and Industrial Payment Services. In this CEA "**we**", "**us**" and "**our**" refer to Acquirer.

Merchant agrees to the terms and conditions of this CEA. Merchant further agrees that this CEA forms a legally binding contract between Merchant and Acquirer. This Commercial Entity Agreement may be amended at any time by us via Industrial Payment Services posting a revised version of the CEA on the Industrial Payment Services website(s). The revised version will be effective at the time Industrial Payment Services posts it. If we propose to change this CEA in a substantial manner, we will provide you with at least 30 days' prior notice of such a change by posting notice on the "**Policy Updates**" page of Industrial Payment Services's web site(s). After this 30 days' notice, you will be considered as having expressly consented to all amendments to the CEA. If you disagree with those proposed amendments, you may close your account before the expiry of such 30 day period in accordance with the terms of the PPA and this CEA will terminate on the closure of your account. For the purpose of the CEA a change to this CEA will be considered to be made in a "**substantial manner**" if the change involves a reduction to your rights or increases your responsibilities.

1. **Purpose of this CEA.** When your customers pay you through Industrial Payment Services, they have the option of paying you through a funding source offered on the Industrial Payment Services website including a card funded payment. In most instances, you will not know the funding source that your customer selected. Since you may be the recipient of a card funded payment, the Associations require that you enter into a direct contractual relationship with a bank who is a member of the Associations. By entering into this CEA, you are fulfilling such Association requirement and you are agreeing to comply with Association rules as they pertain to payments you receive through the Industrial Payment Services service.

## 2. Association Rules.

- A. **Deposit Transactions.** Merchant agrees that it shall only accept payments through Industrial Payment Services Processing Services for bona fide transactions between the Merchant and its customer for the sale of goods or services. Merchant shall not submit a transaction for the refinance or transfer of an existing obligation that was uncollectible. Merchant acknowledges that for Visa and MasterCard payments, Industrial Payment Services shall obtain an authorization for transaction amounts prior to completing the transaction.
- B. **Split Transactions.** Merchant agrees to submit a single transaction for the full amount of each sale. Except, however in an instance where the Merchant and cardholder agree on a partial shipment of product, or where the transaction qualifies for delayed delivery or special order deposits (such as partial shipments based on inventory on hand), a sale may be split into multiple transactions.
- C. **Minimum or Maximum/Surcharges.** Merchant agrees that it shall not set minimum or maximum transaction amounts or impose surcharges as a condition of honoring Visa and MasterCard cards, unless otherwise permitted in the particular jurisdiction of a transaction.
- D. **Visa and MasterCard Marks.** Merchant is authorized to use the Visa and MasterCard logos or marks only on Merchant's promotional materials and website to indicate that Visa and MasterCard cards are accepted as funding sources for Industrial Payment Services transactions.
- E. **Credit Vouchers.** Credit vouchers may only be submitted for the purpose of refunding a prior transaction from the same card.
- F. **Cash Disbursements.** Merchant agrees that if it sells travelers cheques or foreign currency that disbursements shall be limited to the value of cheques, Visa TravelMoney, or currency sold in a single transaction, plus any applicable commissions.
- G. **Discrimination.** Merchant agrees that it shall not engage in any acceptance practice that discriminates against or discourages the use of Visa or MasterCard in favor of any other card brand.
- H. **Access to Cardholder Data.** Merchant acknowledges that it does not have access to Cardholder Data (**defined as the cardholder's account number, expiration date, and CVV2**) and will not request access to Cardholder Data from either Industrial Payment Services or the cardholder. In the event that Merchant receives Cardholder Data in connection with the Industrial Payment Services Processing Services provided under this Agreement, Merchant agrees that it will not use the Cardholder Data for any purpose that it knows or should know to be fraudulent or in violation of any Association Rules.

Merchant also agrees that it will not sell, purchase, provide or exchange in any manner or disclose Cardholder Data to anyone other than its acquirer, Visa or MasterCard (as applicable) or in response to a government request. In the event that Merchant receives Cardholder Data, it will promptly notify Acquirer and Industrial Payment Services of such.

- I. **Merchant Identification.** Merchant agrees to prominently and unequivocally inform the cardholder of the identity of the Merchant at all points of interaction.
  - J. **Chargebacks.** Merchant shall use all reasonable methods to resolve disputes with the cardholder. Should a chargeback dispute occur, Merchant shall promptly comply with all requests for information from Industrial Payment Services. Merchant shall not attempt to recharge a cardholder for an item that has been charged back to the cardholder, unless the cardholder has authorized such actions.
3. **Merchant's Refund Policy must be on Merchant's Website.** If Merchant limits refund/exchange terms or other specific conditions for Card sales, Merchant's policy must be clearly provided to the cardholder prior to the sale and Merchant must conform with all applicable laws and the Association Rules.
  4. **Term and Termination.** This CEA is effective upon the date Merchant agrees to the CEA and continues so long as the PPA remains in force between Merchant and Industrial Payment Services but shall automatically terminate without notice on termination of such PPA for any reason, provided that those terms which by their nature are intended to survive termination (including without limitation, indemnification obligations and limitations of liability) shall survive. This CEA may be terminated by Acquirer at any time based on a breach of any of Merchant's obligations under this CEA or the PPA, or by Merchant based on a breach of any of Acquirer's obligations under this CEA, or by the Acquirer based on the termination of the acquiring services agreement entered into between Industrial Payment Services (or its applicable group company) and Acquirer as notified to the Merchant.
  5. **Indemnification.** Merchant agrees to indemnify and hold Acquirer harmless from and against all losses, liabilities, damages and expense: (a) resulting from any breach of any warranty, covenant or agreement or any misrepresentation by Merchant under this CEA; (b) arising out of Merchant's or its employees' negligence or willful misconduct, (c) arising in connection with Card transactions or otherwise arising from Merchant's provision of goods and services to Cardholders or customers; (d) arising out of Merchant's use of the Industrial Payment Services Service; or (e) resulting from any Fines or arising out of any third party indemnifications Acquirer is obligated to make as a result of Merchant's actions (including indemnification of any Association or Issuing Bank).
  6. **Assignment/Amendments.** This CEA may not be assigned by Merchant without the prior written consent of Acquirer. Acquirer may assign its rights under this CEA without Merchant's consent.

7. **Warranty Disclaimer.** This CEA is a service agreement. Acquirer disclaims all representations or warranties, express or implied, made to Merchant or any other person, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose or otherwise of any services or any goods provided incidental to the services provided under this CEA to the extent permitted by law.
8. **Limitation of Liability.** Notwithstanding anything in this CEA to the contrary, in no event shall Acquirer, or its Affiliate(s) or any of its directors, officers, employees, agents or subcontractors, be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is hereby excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether Acquirer has been advised of the possibility of such damages. Notwithstanding anything in this CEA to the contrary, in no event shall Acquirer be liable or responsible for any delays or errors in its performance of the services caused by our service providers or other parties or events outside of Acquirer's reasonable control, including Industrial Payment Services. Notwithstanding anything in this CEA to the contrary, Acquirer's cumulative liability for all losses, claims, suits, controversies, breaches or damages for any cause whatsoever arising out of or related to this CEA and regardless of the form of action or legal theory and whether or not arising in contract or tort (including negligence shall not exceed the total volume of all transactions, expressed as a U.S. dollar amount processed by the Merchant under this CEA via Industrial Payment Services. Nothing in this CEA shall exclude or limit any liability of any party for death or personal injury caused by negligence or fraud, deceit or fraudulent misrepresentation, howsoever caused.
9. **Waiver.** The failure of a party to assert any of its rights under this CEA, including, but not limited to, the right to terminate this CEA in the event of breach or default by the other party, will not be deemed to constitute a waiver by that party of its right to enforce each and every provision of this CEA in accordance with its terms.
10. **Relationship between the Parties.** No agency, partnership, joint venture or employment relationship is created between Merchant and Acquirer by way of this CEA. In the performance of their respective obligations hereunder, the parties are, and will be, independent contractors. Nothing in this CEA will be construed to constitute either party as the agent for the other for any purpose whatsoever. Neither party will bind, or attempt to bind, the other party to any contract or the performance of any obligation, and neither party will represent to any third party that it has any right to enter into any binding obligation on the other party's behalf.
11. **No Illegal Use of Services.** Merchant will not access and/or utilize the Services for illegal purposes and will not interfere or disrupt networks connected with the Services.
12. **Severability.** Whenever possible, each provision of this CEA will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision hereof will be prohibited by or determined to be invalid by a court of competent jurisdiction, such provision will be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this CEA.

13. **Governing Law.** This CEA (and the relationships referred to or contemplated by it) shall be governed and construed in accordance with the laws as set out as the governing laws of the PPA which the Merchant has agreed to.

**Authorized Signer:**

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_