

# PaymentWorks Standard Terms and Conditions

## 1. USE OF THE SERVICE

**1.1. Grant.** Subject to Customer's compliance with the terms of this Agreement, PaymentWorks hereby grants Customer a non-exclusive, non-transferable, limited right to access and use the Site and the Service. Such access and use shall be exercised only by users authorized by Customer to access and use the Service on behalf of Customer who have agreed to these Terms of Service (collectively, "Authorized Users"). Customer may access and use the Service to share information about Customer ("Customer Data") and about transactions, invoices, invoice payment status, and related information (collectively, "Transaction Data") with Customer Authorized Users and/or Customer payees ("Payees"). Customer will decide which Authorized Users and/or Payees have access to specific Customer Data and Transaction Data through elections and criteria established by Customer through the Service. PaymentWorks may from time to time modify the Service, features of the Service, or the Site in its sole discretion.

**1.2. User Names and Passwords.** PaymentWorks shall provide Customer Authorized Users unique login credentials ("User Name" and "Password") to be used to access the Service. Customer and its Authorized Users are responsible for maintaining the confidentiality of the User Names and Passwords. Customer and its Authorized Users shall immediately notify PaymentWorks of any unauthorized use of a Customer issued User Name or Password and PaymentWorks shall issue a new User Name and/or Password. Customer will be solely responsible and liable for all activities that occur under Customer's associated User Names and Passwords. Customer shall be liable for any participation in the Service for any persons who accesses the Site and the Services using the User Name and Password of an Authorized User.

**1.3 Customer Responsibilities.** Customer will (a) be responsible for Authorized Users' compliance with these Terms of Service, (b) be responsible for the accuracy, completeness, quality and legality of Customer Data and Transaction Data provided by Customer, including the means by which Customer Data and Transaction Data were acquired, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Service and any Transaction Data, and notify PaymentWorks promptly of any such unauthorized access or use, and (d) use the Service and Transaction Data only in accordance with any applicable documentation provided by PaymentWorks and all applicable laws and regulations, including, but not limited to, the rules and regulations of any payment network or other electronic payment processing entity (collectively, "Applicable Laws and Regulations") and (e) comply with the terms applicable to data validation services referenced in Section 6.4. Customer makes, with respect to each payment instruction submitted to Payees utilizing the Site or the Service initiated hereunder ("Payment Instruction"), the representations and warranties, and agrees to assume the responsibilities, of an "Originator" under the Applicable Laws and Regulations. Customer acknowledges that Payment Instructions that violate any Applicable Laws and Regulations shall not be initiated and that it is the Customer's responsibility to ensure that the original Payment Instructions and retention of the related records complies with all Applicable Laws and Regulations. PaymentWorks shall have no liability for the accuracy, completeness, quality or legality of any Customer Data or Transaction Data provided through the Service, whether provided by Customer, Third-Party Service Providers, or any Authorized User or Payee. Authorized Users, and Customer agree to access the Site and Services in a secure manner in compliance with PaymentWorks' reasonable standards established from time to time. PaymentWorks, in its sole discretion, may specify connectivity standards to access the Site and the Services from time to time. If Customer wishes to submit Payment Instructions through the Service, Customer must agree to designate PaymentWorks as its Agent for submitting payment instructions in accordance with the requirements of Customer's designated bank. For transactions that Customer has elected to submit Payment Instructions through the Service, Customer will transmit the Payment Instructions to PaymentWorks. Customer is solely responsible for the content of the Payment Instructions, including the accuracy and completeness of the payment amount and the intended recipient entity.

**1.4. Restrictions on Use.** Customer and its Authorized User's shall not: (a) make the Service or any Transaction Data obtained through the Service from any Authorized User or Payee available to, or use the Service or any Transaction Data obtained through the Service from any Authorized User or Payee for the benefit of, anyone other than Customer, (b) sell, resell, license, sublicense, distribute, rent or lease the Service or any Transaction Data obtained through the Service from any Authorized User or Payee, or include the Service or any Transaction Data obtained through the Service from any Authorized User or Payee in a service bureau or outsourcing offering, (c) use the Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy or confidentiality rights, (d) use the Service to store or transmit Trojan horses, worms, time bombs, cancel bots or other similar harmful or deleterious programming routines, (e) interfere with or disrupt the integrity or performance of the Service or third-party data contained therein, (f) attempt to gain unauthorized access to the Service or any Transaction Data or its related systems or networks, (g) permit direct or

indirect access to or use of the Service or any Transaction Data in a way that circumvents a contractual usage limit, (h) copy the Service or any part, feature, function or user interface thereof, (i) copy any Transaction Data obtained through the Service from any Authorized User or Payee except as permitted herein, (j) frame or mirror any part of any Service or Transaction Data, other than framing on Customer's own intranets or otherwise for Customer's own internal business purposes, (k) access the Service or any Transaction Data obtained through the Service from any Authorized User or Payee in order to build a competitive product or service, or (l) reverse engineer the Service or any element thereof (to the extent such restriction is permitted by Applicable Laws and Regulations), or (m) access or use the Service or any Transaction Data obtained through the Service from any Authorized User or Payee in violation of any Applicable Laws and Regulations.

**1.5. Reservation of Rights.** All rights in and to the Site and the Service, including without limitation proprietary schema, tools, methodologies, methods of the Services and software; and any patent rights, copyrights, trade secrets, trade names, service marks, trademarks, moral rights, know-how related to the Site or the Service (collectively, "PaymentWorks Intellectual Property Rights"), not expressly granted to Customer hereunder are reserved by PaymentWorks.

## **2. PAYMENTWORKS RESPONSIBILITIES**

**2.1. Service and Support.** PaymentWorks will, subject to Customer's payment of applicable fees and compliance with these Terms of Service, use commercially reasonable efforts to: (a) make the Services and Transaction Data (to the extent authorized by the applicable Authorized User or Payee) available to Customer pursuant to these Terms of Service, (b) provide standard support for the Service, at no additional charge, and/or upgraded support if purchased, and (c) make the Service available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which we shall give at least 8 hours electronic notice and which we shall schedule to the extent practicable during the weekend hours between 6:00 p.m. Friday and 3:00 a.m. Monday Eastern time), and (ii) any unavailability caused by circumstances beyond our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, pandemic, civil unrest, act of terror, strike or other labor problem, Internet service provider failure or delay, or denial of service attack. For transactions that Customer has elected to submit for electronic (EFT) payment, PaymentWorks will transmit Customer's Payment Instruction to the Customer's designated bank for processing; provided, however, that PaymentWorks reserves the right to refuse to transmit any Payment Instructions submitted through the Service with respect to a transaction for a specific Payee in its sole discretion, in which case the warranty set forth in Section 6.2 (ii) will not apply to such transaction. In the event that any information supplied by PaymentWorks is changed after submission to Customer's designated bank, the warranty set forth in Section 6.2 (ii) will not apply. In the event that Customer changes Payment Instructions after submission by PaymentWorks, Customer must notify PaymentWorks in writing of such change within two business days or the warranty set forth in Section 6.2(ii) will not apply.

**2.2. Protection of Customer Data and Transaction Data.** PaymentWorks will use commercially reasonable efforts to maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data and Transaction Data provided by the Customer. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Customer Data and Transaction Data by PaymentWorks personnel except (a) to address service or technical problems, (b) as compelled by Applicable Laws and Regulations, (c) as Customer designates through elections made through the service or (d) as Customer expressly permits in writing. Customer expressly acknowledges and agrees that Customer Data and Transaction Data will be made available to Authorized Users and processors, including without limitation the Customer's bank, and Payees through the Service in accordance with elections and criteria established by Customer Authorized Users.

## **3. [RESERVED]**

## **4. PROPRIETARY RIGHTS**

**4.1. Title to Technology.** All interest, title and right in and to PaymentWorks Intellectual Property, including without limitation, all computer software programs or applications, or programs or applications of PaymentWorks' third party licensors, utilized by PaymentWorks in the establishment, operation, and/or the provision of Service, in whole or in part, shall be, vest with and remain the exclusive property of PaymentWorks and its third party licensors.

**4.2. Title to Customer Data and Transaction Data.** All Customer Data is and shall remain the property of Customer. All Transaction Data is and shall remain the property of its lawful owner. PaymentWorks makes no claims, warranties or

representations with regard to the ownership of Transaction Data or Customer Data. PaymentWorks may share Transaction Data, in the singular or aggregate, by providing reports or otherwise, to Authorized Users and Payees involved in a transaction and may identify the parties as being involved in the transaction in connection therewith, all in accordance with elections and criteria established by Customer Authorized Users through the Service; and Customer hereby grants PaymentWorks a world-wide license to host, copy, transmit, display and otherwise use Customer Data and Transaction Data as necessary to do so. In addition, Customer hereby grants PaymentWorks a perpetual, world-wide, limited license to de-personalize (remove any Customer identifying information) and aggregate any and all Transaction Data to determine usage trends, perform analytics, improve the Service, promote and market the effectiveness of the Service, sell such aggregated de-personalized Transaction Data to any third party, or for any other internal-business purpose.

**4.3. Customer's license to PaymentWorks.** Customer hereby grants a limited, non-transferable license to PaymentWorks for PaymentWorks to use Customer's name and logos to identify Customer as a user of the Site, during the Term of this Agreement, in accordance with elections and criteria established by Customer, including without limitation to display Customer Data and Transaction Data on the Site and to display Transaction Data and Payment Instructions to processors. PaymentWorks shall obtain Customer's prior written consent for any other uses of Customer's name, logos, and trademarks.

## **5. TERMINATION**

**5.1. Effect of Termination.** Upon termination of this Agreement, Customer shall immediately discontinue use of the Site and the Service.

**5.2. Survival.** Notwithstanding any termination of this Agreement, Section 4 ("Proprietary Rights"), Section 6 ("Warranties"), Section 7 ("Indemnification"), Section 8 ("Disclaimer and Limitation of Liability") and Section 9 ("Additional Terms and Conditions") shall survive termination of this Agreement. All other rights and licenses granted hereunder will cease upon termination.

## **6. WARRANTIES.**

**6.1. Mutual Warranty.** Each Party represents that it has the authority to enter into this Agreement.

**6.2. PaymentWorks Warranty.** PaymentWorks represents and warrants that: (i) the Service will be provided in accordance with the terms and conditions of Section 2; and (ii) with respect to any transaction processed through the Service that Customer has both elected to submit through the Service for EFT payment to a U.S. Bank account and provided Payment Instructions in accordance with Section 1.3, and for which the EFT credentials have been collected from the recipient entity through the Service, except as set forth below, the bank account to which the funds are transferred will be owned by the entity associated with the Tax ID provided to Customer by PaymentWorks. In the event of a breach of the warranty set forth in Section 6.2 (ii), PaymentWorks will either remedy the breach or reimburse Customer for the amount of the payment directed to the incorrect account, up to \$2,000,000 per occurrence notwithstanding any limitation on liability set forth in Section 8 of this Agreement. Customer acknowledges that the Warranty set forth in Section 6.2 (ii) will not apply to any transaction in which the Customer or any employee or agent of the Customer has engaged in fraud. Customer acknowledges that the Warranty set forth in Section 6.2 (ii) will not apply, and no EFT credential verification will be attempted, for any transaction made through the Service to an EFT credential and associated Tax ID collected by Customer outside of the Service and uploaded to the Service by the Customer.

**6.3. Customer's Warranty.** Customer is responsible for ensuring that (i) its Authorized Users have authority to act on behalf of Customer; and (ii) all Customer Data, Transaction Data and other materials submitted by Customer to or through the Site or the Service will not (A) infringe on any third party's rights, including any intellectual property or proprietary rights, (B) violate any obligation of confidentiality, (C) violate any Applicable Laws and Regulations, statute, ordinance or regulation; or (D) contain viruses, Trojan horses, worms, time bombs, cancel bots or other similar harmful or deleterious programming routines.

**6.4. DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6, THE SERVICE AND THE SITE AND ANY OTHER SERVICES OFFERED ON OR THROUGH THE SITE AND ANY REFERENCED THIRD-PARTY SITES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6, AND TO THE EXTENT PERMITTED BY

THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, PAYMENTWORKS DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES TO THE FULLEST EXTENT OF THE APPLICABLE LAWS AND REGULATIONS, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. PAYMENTWORKS DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SITE OR SERVICES, CUSTOMER DATA, TRANSACTION DATA OR MATERIAL ON THE SITE OR THE SERVICE IN TERMS OF THEIR CORRECTNESS, ACCURACY, COMPLETENESS, QUALITY, LEGALITY, TIMELINESS, RELIABILITY OR OTHERWISE.

PAYMENTWORKS PROVIDES NO WARRANTY OF ANY KIND RELATED TO ANY THIRD-PARTY DATA OR SOFTWARE THAT MAY BE INCORPORATED, DISPLAYED OR INCLUDED IN THE SERVICE, INCLUDING WITHOUT LIMITATION ANY DATA VALIDATION PROVIDED BY OR THROUGH THE SERVICE.

CUSTOMER SHALL BE BOUND BY THE TERMS APPLICABLE TO DATA VALIDATION, SUPPORT, AND FCRA RESTRICTIONS which are attached hereto.

## **7. INDEMNIFICATION.**

**7.1. Infringement.** PaymentWorks agrees to defend or, at its option, to settle, any claim brought against Customer for infringement of any United States patent, copyright, trade secret or trademark by the Service as delivered, but excluding any such claim to the extent it is based on the content of any Customer Data or Transaction Data, and to indemnify Customer against all damages and costs finally assessed by a court of competent jurisdiction against Customer under any such claim or action. Customer agrees that PaymentWorks shall be released from the foregoing obligation unless Customer has taken reasonable steps to mitigate any potential expenses and provides PaymentWorks with: (i) prompt written notice of any such claim or action, or possibility thereof; (ii) sole control and authority over the defense or settlement of such claim or action; and (iii) proper and full information and assistance to settle and/or defend any such claim or action. Customer shall have the right to employ separate counsel and participate in the defense at its own expense; provided that PaymentWorks shall remain in control of the defense. In addition, PaymentWorks may, at its sole option and expense, either: (a) procure for Customer the right to use the allegedly infringing elements of the Service; (b) replace the allegedly infringing elements of the Service with non-infringing, functionally equivalent services; (c) modify the allegedly infringing elements of the Service so that they are not infringing; or (d) cease to provide the allegedly infringing elements of the Service, refund any fees paid by Customer covering any future period of time during which such allegedly infringing elements Services were to be provided. Upon exercise of option (d) in the previous sentence, PaymentWorks shall have no further obligations or liability to Customer with respect to the allegedly infringing elements of the Service. Except as specified above, PaymentWorks will not be liable for any costs or expenses incurred without its prior written authorization. THE FOREGOING PROVISIONS OF THIS SECTION 7 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF PAYMENTWORKS TO CUSTOMER WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT BY THE SITE, THE SERVICE, OR ANY PART THEREOF.

**7.2.** To the extent permitted by the Constitution and the laws of the State of Texas, Customer shall be responsible for all claims, actions, liabilities, losses, expenses, damages and costs (including reasonable attorneys' fees), that may at any time be incurred by reason of a third party claim directly arising out of or directly relating to Customer Data or Transaction Data provided by the Customer in violation of Customer Responsibilities under this contract. PaymentWorks shall have the right to employ separate counsel and participate in the defense at its own expense.

**7.3.** PaymentWorks agrees to indemnify and hold harmless and defend Customer from and against all claims and suits by third parties for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and reasonable attorney's fees, arising out of, or resulting from, PaymentWorks' negligence or willful misconduct in the performance of this Agreement. Parties found liable shall pay their proportionate share of damages as agreed by the parties or as ordered by a court of competent jurisdiction over the case.

## **8. LIMITATION OF LIABILITY.**

**8.1. Limitation of Liability.** TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, PAYMENTWORKS' LIABILITY TO CUSTOMER FOR DAMAGES WITH RESPECT TO THE SITE OR THE SERVICE SHALL NOT EXCEED THREE TIMES (3X) THE FEES ACTUALLY PAID BY CUSTOMER TO PAYMENTWORKS FOR THE SERVICE DURING THE TWELVE (12) MONTHS PRIOR TO THE OCCURRENCE OF THE BREACH OR INCIDENT ASSERTED AS CAUSING HARM. THE PAYMENTWORKS WARRANTY SET FORTH IN SECTION 6.2(ii), THE PAYMENTWORKS INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 7.1, AND DAMAGES FOR PERSONAL INJURY OR PROPERTY DAMAGE CAUSED BY PAYMENTWORKS ARE SPECIFICALLY EXCLUDED FROM THIS LIMITATION OF LIABILITY.

**8.2. No Consequential Damages.** TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AND IRRESPECTIVE OF ANY FAULT OR NEGLIGENCE, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SALES, LOST SAVINGS, LOST PROFITS (ANTICIPATED OR ACTUAL), LOSS OF USE, DOWNTIME, INJURY TO PERSONS OR DAMAGE TO PROPERTY AND CLAIMS OF THIRD PARTIES), HOWSOEVER CAUSED, ARISING OUT OF OR RELATED TO THIS SITE OR THE SERVICE, WHETHER OR NOT SUCH PARTY HAS BEEN APPRISED OR NOTIFIED THAT ANY SUCH DAMAGES OR LOSSES ARE POSSIBLE OR LIKELY, AND WHETHER OR NOT ANY PERMITTED REMEDY HAS FAILED ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAWS AND REGULATIONS.

**8.3. Conditions.** The Parties agree that the above limitations of liability of Section 8 shall apply regardless of the form of action, whether in contract, warranty, strict liability or tort (including, without limitation, negligence of any kind, whether active or passive) or any other legal or equitable theory, but shall not apply to fees owed to PaymentWorks by Customer.

## **9. ADDITIONAL TERMS AND CONDITIONS.**

**9.1. U.S. Government Licenses.** PaymentWorks provides the Service, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data - Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with PaymentWorks to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

**9.2. Export Restrictions.** The Site, the Service, other technology PaymentWorks makes available, and derivatives thereof may be subject to export laws and regulations of the United States. Each party represents that it is not named on any U.S. government denied-party list. Customer shall not permit Authorized Users to access or use the Service or any content in a U.S.-embargoed country or in violation of any U.S. export law or regulation.

**9.3. Terms and Conditions.** Customer acknowledges and agrees that its use of the Services and the Transaction Data, and any use of Transaction Data by its Authorized Users or Payees, shall not modify or supersede the terms and conditions of any purchase agreements, invoices, or other negotiated terms agreed to by and between Customer and any Authorized User or Payee.

**9.4. Future Functionality.** Customer acknowledges and agrees that its subscription to the Service is not contingent on the delivery of any future functionality or features, or dependent on any oral or written public or private statements made by PaymentWorks regarding future functionality or features.

**9.5. Assignment.** Neither this agreement nor any rights under this agreement may be transferred or assigned by Customer without the prior written consent of PaymentWorks.

