

PAYJUNCTION GATEWAY AGREEMENT

TERMS AND CONDITIONS

This PayJunction Gateway Agreement ("Agreement") is entered into by and between the merchant ("Merchant") as identified on (a) on the PayJunction Merchant Application ("Merchant Application"), (b) the PayJunction Gateway Application, ("Gateway Application), or (c) this PayJunction Gateway Agreement, and Messiahic Inc., a California corporation doing business as PayJunction ("PayJunction"). Merchant and PayJunction are hereinafter referred to individually as "Party" and jointly as "Parties."

RECITALS

WHEREAS, PayJunction is in the business of providing credit card processing solutions, credit card gateway processing, Transaction Services, and other related services; and

WHEREAS, Merchant desires to receive the Transaction Services PayJunction provides in the form of:

- A. PayJunction Merchant Account ("PJMA") which includes PayJunction full-service features and PayJunction Gateway Account services (the PayJunction Merchant Account shall be with PayJunction as an ISO of the Member Bank or referred to an ISO for which PayJunction is an authorized reseller and Merchant pays all fees associated with such credit card processing; or
- B. PayJunction Gateway Only ("PJGWO") account where the Merchant provides Merchant's Third Party Service Provider ("MTPSP") without the assistance of PayJunction and Merchant pays only Gateway Services fees; or
- C. PayJunction Gateway Reseller ("PJGWR") account where an ISO, acting as a reseller for PayJunction, refers Merchant to PayJunction for Gateway Services and the ISO pays the Gateway fees and where the Merchant provides Merchant's Third Party Service Provider ("MTPSP").
- D. All merchants receiving any of the above described services shall be referred to as "Merchant."

NOW, THEREFORE, PayJunction and Merchant hereby agree as follows:

1. Definitions. All capitalized terms not otherwise defined in these terms and conditions shall have the meaning set forth in Exhibit 1, attached hereto and incorporated by reference as though fully set forth herein.

2. Term and Termination.

2.1. Acceptance. This Agreement shall commence on the earlier of the date Merchant accepts this Agreement by clicking on the "I Agree" button associated with this Agreement, or Merchant executes a Merchant Application or Gateway Application ("Effective Date"). By clicking on the "I Agree" button, executing a Merchant Application or Gateway Application, and/or by continuing to use any PayJunction Services, Merchant acknowledges and agrees that: (i) Merchant has read this Agreement, understands the Agreement, and agrees to be bound by all terms and conditions herein; and (ii) Merchant has the legal authority to accept the terms and conditions of this Agreement.

2.2. Initial and Renewal Terms. The initial term of this Agreement shall commence on the Effective Date and shall continue until the end of the calendar month following the Effective Date ("Initial Term") and shall thereafter automatically renew for additional one-month terms ("Renewal Term"), unless either Party provides a minimum of (30) days' written notice of termination prior to expiration of the then current Renewal Term, or as may be sooner terminated in accordance with the provisions of this Agreement.

2.3. No Early Termination Fee. PayJunction has a zero dollar (\$0.00) early termination fee. If at any time Merchant is not satisfied for any reason, Merchant may cancel this Agreement without penalty by providing notice as described herein.

2.4. Termination and/or Suspension. Either party may terminate this agreement at any time and for any reason, with or without cause, upon (30) days' written notice to the other Party. PayJunction may immediately suspend or terminate this Agreement if PayJunction reasonably believes that Merchant is in violation of laws, regulations, or Association Rules, or Merchant's conduct poses a risk to PayJunction, Member Bank, or Servicers.

2.4.1. If Merchant is subscribing to the PJGWR services, Merchant hereby authorizes MTPSP to terminate this Agreement on Merchant's behalf and without liability to PayJunction. In addition, PayJunction may suspend and/or terminate this Agreement without notice and without liability upon receipt of notice from MTPSP that Merchant is no longer entitled to Transaction Services.

2.5. Effects of Termination. Upon termination of this Agreement, all rights and obligations of the Parties under this Agreement shall be extinguished, except that: (a) all accrued payment obligations hereunder shall survive such termination; and (b) the rights and obligations of the Parties under this Section 2.5 and Sections 3 (Relationship of the Parties), 4.3 (Data), 6 (Fees, Billing, Payments and Failed Payments), 7 (Warranty), 8 (Indemnity), 9 (Disclaimer), 10.1 (Incorporation of Recitals), 10.3 (Captions), 10.4 (Interpretation), 10.6, (Waiver), 10.7 (Invalidity), 10.10 (Notice), 10.11 (Governing Law), 10.12 (Export Control), 10.13 (Ownership), 11 (Entire Agreement), and 12 (Execution and Commencement) shall survive such termination.

3. Relationship of the Parties. Merchant and PayJunction are independent contractors and nothing in this Agreement shall make the Parties joint venturers, partners, employees, agents or other representatives of the other Party. Neither Party shall make any representation that suggests otherwise. By entering into this Agreement Merchant is receiving a right to use PayJunction products and services in accordance with all terms and conditions.

3.1. For PJMA Merchants, PayJunction will have provided Merchant with an agreement identifying PayJunction's Member Bank for the purposes of establishing a Merchant Account and that PayJunction is an authorized reseller or ISO of such Member Bank and is not a joint venturer, or partner of said Member Bank.

3.2. For PJGWO or PJGWR Merchants, such Merchant shall have secured a Merchant Account from a TSP separate from PayJunction's Member Bank. PayJunction shall not be responsible or liable for any TSP services or fees. In addition to Merchant's agreement with the TSP, the terms and conditions of this Agreement govern Merchant's use and PayJunction's provision of the PayJunction Gateway Services to Merchant.

3.3. Third Parties. Merchant's use of third party products and services shall be governed by and subject to separate third party agreements. **Member Banks are not a party to this PayJunction Gateway Agreement and are not responsible for the PayJunction Gateway Services.**

4. PayJunction Responsibilities.

4.1. Provide the PayJunction Services. PayJunction shall provide the selected PayJunction Gateway Services to Merchant in accordance with the applicable documentation made available to Merchant by PayJunction and the terms and conditions of this Agreement. In its sole discretion, PayJunction may enhance, modify or discontinue PayJunction Services described in the applicable documentation made available to Merchant by PayJunction. PayJunction shall notify Merchant as specified herein in the event that PayJunction discontinues or materially modifies any of the PayJunction Services. During the term of this Agreement, PayJunction shall maintain compliance with the Payment Card Industry Data Security Standard (PCI DSS) applicable laws and Rules. PayJunction shall not support or provide any features to Merchant that are not contained within the standard applicable documentation made available to Merchant by PayJunction. Merchant understands and agrees that PayJunction shall not and will not export any Payment Data from its systems. PayJunction shall not be responsible for exporting or transferring Payment Data from PayJunction to Merchant or any other third party.

4.2. Customer Support. During the Term, providing Merchant is current in payment of all fees owing to PayJunction (and/or MTPSP where applicable), and is otherwise not in default under this Agreement, PayJunction shall provide Merchant with basic customer and technical support regarding PayJunction Services configuration and integration. PayJunction shall not be responsible for the integration of PayJunction products

into Merchant's website, software, or applications or the creation of any aspect thereof. PayJunction shall defer customer support calls to the appropriate MTPSP or other third party in the event an issue arises that is the responsibility of a third party. PayJunction shall not support or provide any features to Merchant that are not contained within the standard applicable documentation made available to Merchant by PayJunction.

4.3. Data. PayJunction shall use data provided by Merchant and End Users in accordance with the PayJunction documentation and Privacy Policy for the purposes of providing the PayJunction Services to Merchant; as such PayJunction may store, process, and/or transmit data to those Servicers that assist PayJunction in providing the PayJunction Services. In addition, PayJunction, Servicers, and /or their agents may transfer data amongst themselves as necessary for the purposes of providing the Transaction Services. Merchant agrees and understands that PayJunction shall not and will not export any Payment Data from its systems. PayJunction shall not be responsible for exporting or transferring Payment Data from PayJunction to Merchant or any other third party.

5. Merchant Responsibilities.

5.1. Merchant Shall Abide by Rules and Comply with All Laws. Merchant shall comply with all Rules at Merchant's sole expense and is solely responsible for the security of all Cardholder Data and Payment Data residing on or transmitted through systems owned, rented, or operated by Merchant.

5.2. Merchant Consent. Merchant hereby consents to PayJunction's storage, collection, use, processing, and transmission of data, whether private or public, to Servicers or Merchant's MTPSP in connection with PayJunction's obligations to provide Merchant with PayJunction Services and support.

5.3. Merchant Safeguards and Configuration. Merchant shall be responsible for maintaining adequate security and restricting access to all logins, ID's, and passwords issued to Merchant for the PayJunction Services and associated systems. PayJunction shall be entitled to deem that all transactions submitted to PayJunction with Merchant's logins, ID's, and passwords are transmitted by Merchant. Merchant is responsible for account configuration and integration of PayJunction Gateway Services into Merchant's website, software, or applications. Merchant is responsible for account settings and configurations to meet Merchant's processing needs.

5.4. Merchant is Responsible for Retaining Records and Maintain Compliance with PCI. Merchant will comply, at Merchant's own expense, with all applicable laws, Rules, and terms and conditions of this Agreement. Merchant understands and acknowledges that it is required to and shall at all times comply with the PCI Data Security Standard located at <https://www.pcisecuritystandards.org>. Merchant acknowledges and agrees that it is responsible for securing Payment Data that is in its possession while being transmitted, processed, or stored. Merchant acknowledges that individual Cardholder Data are owned by the respective payment card company brand and acknowledges that Cardholder Data may only be used for assisting in completing a card transaction, for fraud control services, for loyalty programs, or as specifically agreed to by the payment card company or as required by applicable law. In the event of an unauthorized access to Payment Data stored at Merchant's location, Merchant shall fully cooperate with the appropriate federal authorities and/or financial institutions (i.e., Visa, MasterCard, etc.) to provide access to Merchant's facilities and all pertinent records to conduct a review of compliance with the PCI Requirements. Merchant shall maintain business continuity procedures to ensure commercially reasonable security of Payment Data in the event of a disruption or disaster at Merchant's facilities. At all times, Merchant and its authorized successors and assigns shall comply with all PayJunction security requirements and updates as specified in the PayJunction support document entitled "PayJunction Security Requirements and Best Practices for Merchants and Developers" located at <http://support.payjunction.com>. In its sole discretion, and for the security of Payment Data, PayJunction may update these security requirements from time to time, and Merchants shall comply with all updates and shall review the PayJunction Security Requirements and Best Practices for Merchants and Developers no less than once per year. Merchant and its successors and assigns shall comply with the PCI DSS requirements after termination of this Agreement. Merchant understands and agrees that the Rules specified by the card Associations may be updated at any time at the sole discretion of the card Associations and that Merchant is responsible for obtaining, reviewing, and complying with the Rules at all times. Merchant is solely responsible for compiling and retaining permanent records of all transactions and end user data for

Merchant's reference as Merchant sees fit and the security of said data; except as otherwise provided herein, PayJunction shall not have an obligation to store, retain, report, export, transfer, or otherwise provide any copies of or access to any records of transactions or End User data collected or processed by PayJunction.

6. Fees, Billing, Payments and Failed Payments.

6.1. Fees. PJMA Merchant shall pay to PayJunction the fees as set forth in the PayJunction Merchant Application fee schedule, and PJGWO Merchant shall pay to PayJunction the fees as set forth in the PayJunction Gateway Application fee schedule ("Fees"). Invoices shall be available from within the PayJunction account. If the amount(s) of one or more of the Fees is more than zero, PayJunction shall bill and collect such Fees from Merchant. PayJunction may adjust the Fees in its sole discretion and PayJunction shall provide Merchant with thirty (30) days prior written notice of any changes pursuant to the terms of this Agreement. PJGWR Merchant shall submit payment of fees to their MTPSP in accordance with the terms and conditions of the agreement between Merchant and Merchant's MTPSP.

6.2. Billing. PJMA Merchants and PJGWO Merchants shall remit any and all amounts that are payable to PayJunction under this Agreement on a monthly basis. The first fee payment for products, subscriptions, licenses, and/or setup fees shall be due prior to account activation. The first fee payment for account services rendered shall be due on the first day of the month immediately following the Effective Date of this Agreement. The first fee payment for annual account fees shall be billed on first day of the second month following the Effective Date of this Agreement. Unless otherwise specified herein, Fees and payments for any subsequent time periods shall be due on the first day of the month.

6.3. Payments. Merchant hereby authorizes PayJunction to effect settlement of credits and debits from Merchant's checking account, as provided on the PayJunction Gateway Application or PayJunction Merchant Application ("Designated Account") by means of ACH and/or wire transfer for all amounts owing and in conjunction with the terms of this Agreement. In some instances, certain fees may be payable by credit card. Credit card and/or checking account numbers are to be provided to PayJunction, directly by Merchant on or before the Effective Date. Checking account entries initiated to or from Merchant's Designated Account will be in accordance with the Rules of the National Automated Clearing House Association ("NACHA"). This authorization is to remain in full force and effect until PayJunction has received written notification from Merchant of Merchant's termination in such time and manner as to afford PayJunction and Merchant's depository institution a reasonable opportunity to act on it. If Merchant's Designated Account changes, Merchant shall promptly provide PayJunction with written notice of the change and the new number(s). Merchant acknowledges that any change in account information may not be effective until the billing month following the second month in which PayJunction receives such notice. If PJGWR Merchant is to be billed by a MTPSP, Merchant shall pay MTPSP in accordance with the terms mutually agreed upon between Merchant and such MTPSP. Merchant unconditionally and specifically authorizes PayJunction and/or TSP and/or applicable collections service agency to debit any amounts for obligations due under the Merchant Transaction Processing Agreement and/or this Gateway Agreement from any banking account provided to PayJunction and/or TSP for billing or other account owned or controlled by Merchant, and further to report any default hereof on any relevant business credit bureau reports whether directly or indirectly through means of a collections service agency. Merchant hereby releases any information and/or documentation provided or submitted to PayJunction by Merchant, including the Merchant Application, Merchant Transaction Processing Agreement, this Gateway Agreement and supporting documentation, and authorizes PayJunction to utilize the provided or submitted information and/or documentation to aid PayJunction in the collection of all sums due to PayJunction including transmission of provided or submitted information or documentation to PayJunction and/or TSP's collections service agencies where applicable. Merchant agrees to pay all costs and expenses of whatever nature, including reasonable attorney's fees and other legal expenses, collections service fees, ACH reject fees, or any other fee incurred by or on behalf of PayJunction and/or TSP in connection with the enforcement of this Agreement. If authorized in the Merchant Application, the Merchant hereby authorizes PayJunction and/or TSP: (i) to obtain from third parties financial and credit information relating to the business and individual signing owners listed on the Merchant Application and hereby grants to PayJunction and/or TSP continuing authority to conduct credit checks and background investigations and inquiries concerning such business and individuals; this includes authorizing PayJunction and/or TSP to request and obtain from consumer reporting agencies consumer and business reports and if Merchant is approved to transact business utilizing the PayJunction

Services, to obtain subsequent consumer and business credit reports in connection with the maintenance, updating, renewal or extension of this Agreement; and (ii) Merchant agrees that all references, including banks and consumer reporting agencies, may release any and all personal and business credit and financial information to PayJunction and/or TSP and that PayJunction may share this information with TSP in furtherance of continuing to provide PayJunction Services to Merchant.

6.4. Failed Payments. Merchant shall pay to PayJunction a reject fee of \$25 for any and failed payments that PayJunction attempts to collect but fails to do so. Any amounts due to PayJunction under this Agreement and not paid when due may be subject to a finance charge equal to one and one-half percent (1.5%) or the highest rate allowable by law, whichever is less, determined and compounded daily from the date due until the date paid. PayJunction may accept any check or payment from Merchant without prejudice to its rights to recover the balance due or to pursue any other right or remedy. If Merchant has not paid all owing amounts on or before the last business day of the month in which they were due, PayJunction may, in its sole discretion, suspend its performance of PayJunction Services for Merchant and/or terminate this Agreement. Merchant agrees to pay all costs and expenses of whatever nature, including attorneys' fees, incurred by or on behalf of PayJunction in connection with the collection of any unpaid charges and fees.

7. Warranty.

7.1. Mutual Warranty. Each Party represents and warrants to the other that: (i) they have the authority, right, power and ability to execute this Agreement and to perform its obligations as herein set forth; (ii) this Agreement constitutes a legal, valid and binding obligation, and shall be enforceable against the Parties in accordance with its terms; (iii) each Party's obligations under this Agreement do not violate any law or breach any other agreement to which such Party is bound; and (iv) it has all right, title or interest, or valid license to use, its respective Marks, and that its grant of rights associated therewith do not violate any Intellectual Property or other proprietary rights of any third-party.

7.2. PayJunction Warranty. PayJunction represents and warrants that the PayJunction Services will conform in all material respects to the applicable documentation made available to Merchant by PayJunction. Merchant may not rely upon any representation or warranty regarding the PayJunction Services by any third party in contravention of the foregoing statements, including representations or warranties of any TSP. In the event of PayJunction's breach of the foregoing warranty Merchant may terminate this Agreement; or PayJunction may engage in commercially reasonable efforts to repair, or at its option replace, the PayJunction Services. Merchant acknowledges that PayJunction does not warrant that such efforts will be successful. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PAYJUNCTION SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS WHETHER EXPRESS OR IMPLIED, ARISING BY STATUTE, OPERATION OF LAW, USAGE OF TRADE, COURSE OF DEALING, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR TITLE WITH RESPECT TO THE PAYJUNCTION SERVICES, OR OTHER SERVICES OR GOODS PROVIDED UNDER THIS AGREEMENT. WHILE PAYJUNCTION WILL OPERATE TO THE STANDARDS PREVAILING IN THE INDUSTRY PAYJUNCTION DOES NOT REPRESENT OR WARRANT THAT THE PAYJUNCTION SERVICES WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ENTIRELY ERROR-FREE.

7.3. Merchant Warranty. Merchant represents and warrants that all representations and statements made by Merchant in this Agreement, or in any other document relating hereto by Merchant or on Merchant's behalf, are true, accurate and complete in all material respects. Merchant warrants that it is engaged in a lawful business that includes the sale of products and/or services and is duly authorized and/or licensed to conduct such business under the laws of all jurisdictions in which Merchant conducts business. Merchant acknowledges that PayJunction Services are designed for use with certain third-party programs, including, without limitation, certain Internet browser software programs, operating systems, wireless devices, and internet service providers. Merchant will look solely to the developers and manufacturers of such programs with regard to warranty, maintenance or other support regarding the same. PayJunction makes no representation or warranty, express or implied, with regard to any such third-party software or services.

8. Indemnity. Merchant agrees to indemnify, defend, and hold harmless PayJunction, PayJunction Affiliates, and their respective officers, directors, employees, agents and permitted assigns, from and against any loss, liability, action, proceeding, damage, penalty, claim or expense (including reasonable attorney's fees) suffered or incurred, directly or indirectly, by any of them as a result of: a) any damage or loss caused by negligence or fraud by Merchant, b) the legitimacy of the transaction data submitted by Merchant to PayJunction, c) any alleged infringement of an intellectual property right, or d) any warranty or representation made by Merchant to PayJunction being false or misleading.

9. Disclaimer.

9.1. Disclaimer. PAYJUNCTION EXPRESSLY DISCLAIMS ANY LIABILITY ARISING FROM UNAUTHORIZED ACCESS TO FACILITIES OR TO MERCHANT'S DATA OR PROGRAMS DUE TO ACCIDENT, ILLEGAL OR FRAUDULENT MEANS OR DEVICES USED BY ANY THIRD PARTY, OR OTHER CAUSES BEYOND PAYJUNCTION'S REASONABLE CONTROL. PAYJUNCTION ALSO EXPRESSLY DISCLAIMS ANY LIABILITY FOR THE INDIVIDUAL MERIT AND LEGITIMACY OF ORDERS FORWARDED BY MERCHANT TO PAYJUNCTION. EXCEPT FOR ANY CLAIMS ARISING FROM CRIMINAL OR WILLFUL MISCONDUCT BY A PARTY, IN NO EVENT SHALL EITHER PARTY OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR AFFILIATES BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES WHETHER ARISING IN TORT, CONTRACT OR OTHERWISE AND NOTWITHSTANDING ANY FAULT, NEGLIGENCE (WHETHER ACTIVE, PASSIVE OR IMPUTED), PRODUCT LIABILITY OR STRICT LIABILITY OF EITHER PARTY INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE, ANTICIPATED PROFITS, LOST BUSINESS OR INJURY TO BUSINESS REPUTATION EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING FROM OR RELATED TO ANY PROVISION OF THIS AGREEMENT. THE TOTAL LIABILITY OF PAYJUNCTION TO MERCHANT (WHETHER ARISING IN TORT, CONTRACT OR OTHERWISE) UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE AGGREGATE COMPENSATION PAYJUNCTION RECEIVED FOR PROVIDING THE PAYJUNCTION SERVICES TO MERCHANT DURING THE SIX (6) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM AROSE.

9.2. Third-Party Products and Services. PAYJUNCTION MAKES NO REPRESENTATION, WARRANTY OR GUARANTEE WHATSOEVER IN RELATION TO THIRD-PARTY PRODUCTS OR SERVICES. MERCHANT'S USE OF THIRD-PARTY PRODUCTS AND SERVICES IS AT MERCHANT'S OWN RISK. PAYJUNCTION ASSUMES NO RESPONSIBILITY AND EXPRESSLY DISCLAIMS ANY LIABILITY FOR CLAIMS OF LOSS AND/OR FRAUD INCURRED RESULTING FROM THE USE OF OR CONCLUSIONS DRAWN FROM ANY THIRD-PARTY PRODUCT OR SERVICE, REGARDLESS OF WHETHER OR NOT PAYJUNCTION A RESELLER OF OR REFERRAL AGENT FOR SUCH PRODUCT OR SERVICE.

10. Miscellaneous.

10.1. Incorporation of Recitals. The "Recitals" set out at the beginning of this Agreement are hereby incorporated by reference as though fully set forth herein.

10.2. Marks and Intellectual Property. Either Party is permitted to use the other Party's Marks, so long as the other Party has not revoked this permission in writing. Merchant shall not use marks from Associations or Member Banks without prior written approval from such Association or Member Bank. The Parties agree that Merchant owns all of the Intellectual Property rights in Merchant's products and services and PayJunction owns all of the Intellectual Property rights in the PayJunction Services. Each Party agrees not to do anything inconsistent with such ownership.

10.3. Captions. The captions and headings in this Agreement are for convenience only and shall not be considered a part hereof or affect the construction or interpretation of any provision hereof.

10.4. Interpretation. The connectives "and" and "or" shall be construed both conjunctively and disjunctively; the term "including" shall mean including without limitation; words in the singular include the plural, and words in the plural include the singular.

10.5. Force Majeure. If either Party is prevented from performing, or is unable to perform, any of its obligations under this Agreement (except payment obligations) due to a Force Majeure event, the affected Party must use commercially reasonable efforts to give written notice thereof to the other Party and its performance will be extended for the period of delay or inability to perform due to such Force Majeure Event.

10.6. Waiver. The failure of either Party in any one or more instance(s) to insist upon strict performance of any of the terms of this Agreement shall not be construed as a waiver or relinquishment of the right to assert or rely upon any such term(s) on any prior, concurrent or future occasion(s).

10.7. Invalidity. Should any portion of this Agreement be held unenforceable such holding shall not have the effect of invalidating the remainder of this Agreement and the Parties hereby agree that the portion held unenforceable shall be deemed stricken from the Agreement, to the extent required for the purpose of the validity and enforcement hereof.

10.8. Assignment. No interest or right of Merchant under this Agreement shall be assigned or transferred in any manner by Merchant without prior written consent from PayJunction which shall not be unreasonably withheld. PayJunction may assign this Agreement and PayJunction has the right to sell or transfer this Agreement and/or compensation rights due to PayJunction from Servicers at any time without prior written notice to Merchant. Subject to the provisions of this Agreement, any such sale or transfer by PayJunction shall not affect any rights of Merchant to otherwise continue to receive PayJunction Services as provided herein. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties and their authorized successors and assigns. This Section shall survive termination of this Agreement.

10.9. Amendments. No amendment, modification, or change to any provision of this Agreement, shall be effective unless such amendment, modification or change is memorialized in writing and signed by the Parties hereto. Notwithstanding the foregoing, PayJunction may amend, modify or change this Agreement at any time upon 10 days' written notice to Merchant; provided that if such amendment, modification or change relates to service fees, such change will become effective upon at least thirty (30) days' notice thereof. If Merchant does not agree to such amendments, modification or change Merchant's sole remedy is to immediately terminate this Agreement upon written notice to PayJunction.

10.10. Notice. All notices to Merchant shall be given electronically, sent to the electronic mail address provided by or for Merchant during the application or registration for the PayJunction Services and/or posted in the PayJunction electronic customer relationship management tool application ("AMS"). Should Merchant wish to terminate PayJunction Gateway Services, Merchant shall send an email to support@payjunction.com. All other notices to PayJunction must be in writing and sent to PayJunction, 1903 State Street, Santa Barbara California, 93101, Attention: General Counsel. Notices are deemed duly given: (i) when received, if personally delivered, including via courier; (ii) when receipt is electronically confirmed, if transmitted by facsimile, or email; (iii) the day after being sent, if sent for next day delivery by recognized overnight delivery service; or (iv) upon receipt, if sent by certified or registered mail, return receipt requested.

10.11. Governing Law. This Agreement will be deemed entered into in State of California, USA and will be governed by and interpreted in accordance with the laws of the State of California, USA excluding that body of law known as conflicts of.

10.12. Export Control. Merchant understands and acknowledges that PayJunction is subject to regulation by agencies of the U.S. government which prohibits export or diversion of certain products and technology to certain countries, persons, or other entities. Any and all obligations of PayJunction to provide the PayJunction Services shall be subject to all applicable export laws and restrictions and regulations. Merchant agrees to comply with all applicable export laws and restrictions and regulations and not to export or re-export any PayJunction Intellectual Property (i) into (or to a national or resident of) any country to which the U.S. has embargoed; or (ii) to any person on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Denied Person's List.

10.13. Ownership. This Agreement shall not constitute a sale or transfer of ownership of any systems created by PayJunction, proprietary technology innovations, or software in whole or in part to Merchant.

Merchant shall not reverse engineer, disassemble, decompile, emulate or otherwise attempt to discover the source code or trade secrets for any of the PayJunction Services or related technology.

11. Entire Agreement. This Agreement, together with all the Rules and PayJunction's policies, embodies the entire understanding and agreement of the Parties hereto with respect to the subject matter hereof, and supersedes any prior agreements (oral or written) between the Parties for the PayJunction Gateway Services. This Agreement shall be binding upon and shall inure only to benefit the Parties hereto and their respective permitted successors and assigns. Nothing in this Agreement, express or implied, is intended to confer or shall be deemed to confer upon any persons or entities not party to this Agreement any rights or remedies under or by reason of this Agreement. Merchant acknowledges that this Agreement reflects an informed, voluntary allocation between PayJunction and Merchant of all risks (both known and unknown) associated with the PayJunction Services.

12. Execution and Commencement. The Parties hereto acknowledge and agree that this Agreement shall become a legally binding contract on the Effective stated in this Agreement. Merchant acknowledges and agrees that by clicking on the "I Agree" button, executing a Merchant Application or PayJunction Gateway Application, and/or by continuing to use any PayJunction Services, Merchant: (i) has read this Agreement, understands the Agreement, and agrees to be bound by all terms and conditions herein; (ii) has the legal authority to accept the terms and conditions of this Agreement; and (iii) is entering into a binding contract with PayJunction; and (iv) will be bound to the preceding terms and conditions in the same manner as if Merchant has affixed their signature(s) to a contract in writing.

Exhibit 1 to PayJunction Gateway Agreement

DEFINITIONS

ACH shall mean Automated Clearing House which is an electronic network for transactions informally known as check processing or direct deposit; these include Prearranged Payment and Deposits (“PPD”), Corporate Credit or Debits (CCD), and other payment types as defined by NACHA Rules.

Association shall mean either Visa, Inc. (“VISA”), MasterCard International, Inc. (“MasterCard”), Discover Network (“Discover”), Diners Club International (“Diners Club”), American Express (“American Express” or “Amex”), National Automated Clearing House Association (“NACHA”), or any other payment processing association or organization used by PayJunction and its Servicers to facilitate payments.

Cardholder Data shall mean the number assigned by a credit card issuer that identifies the End User’s account or other cardholder personal information.

Designated Account shall have the meaning ascribed in Section 6. of the PayJunction Gateway Agreement Terms and Conditions.

Effective Date shall have the meaning ascribed in Section 2.1 of the PayJunction Gateway Agreement Terms and Conditions.

End User shall mean any person that purchases, leases, rents any of Merchant’s goods or services, whose information (including Payment Data) Merchant will submit to PayJunction during the course of Merchant’s use of the Transaction Services.

Fees shall have the meaning ascribed in Section 6.1 of the PayJunction Gateway Agreement Terms and Conditions.

Force Majeure shall mean any delay or interruption of a Party’s performance of obligations under the Agreement due to any acts of God, acts of civil or military authorities, civil disturbances, wars, strikes or other labor disputes, fires, pandemics, transportation contingencies, server errors, hackers, viruses, interruptions in telecommunications, interruptions in utilities, interruptions in internet services or network provider services, or other catastrophes or any other occurrences which are beyond such Parties’ reasonable control.

Initial Term shall have the meaning ascribed in Section 2.2 of PayJunction Gateway Agreement Terms and Conditions.

Intellectual Property shall mean all (i) copyrights (including, without limitation, the right to reproduce, distribute copies of, display and perform the copyrighted work and to prepare derivative works), copyright registrations and applications, trademark rights (including, without limitation, registrations and applications), patent rights, trade names, mask-work rights, trade secrets, moral rights, author’s rights, privacy rights, publicity rights, algorithms, rights in packaging, goodwill and other proprietary rights, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of any state, country or jurisdiction; (ii) intangible legal rights or interests evidenced by or embodied in any idea, design, concept, technique, invention, discovery, enhancement or improvement, regardless of patentability, but including patents, patent applications, trade secrets, and know-how; and (iii) all derivatives of any of the foregoing.

ISO shall mean an organization or individual that is not a direct member of Visa and/or MasterCard but is registered and sponsored by a Visa and/or a MasterCard member. An ISO performs sales, solicitation, service, merchant transaction processing, cardholder solicitation, and/or card application processing services. MasterCard classifies ISOs as member service providers (MSP). Also called MLS (merchant level salesperson), MSP (merchant salesperson), and MSP (merchant sales provider).

Mark shall mean the trademarks, service marks, logos, copyright, Intellectual Property, and/or other distinctive identifiers of either Party as designated with the symbol “TM”, ®, ©, or as appropriate.

Member Bank shall mean the bank or financial institution that is a member of certain Associations that offer Merchants the ability to process credit and debit card transactions. PayJunction is a registered ISO/MSP of Member Bank Wells Fargo Bank, N.A., PO Box 6079, Concord, CA 94524 – Member FDIC which registrations and agreements may be amended or transferred to different entities at any time as PayJunction sees fit.

Merchant shall mean a sole-proprietor, partnership, corporation, limited liability company, or non-profit entity that sells various products and services into the marketplace which has entered into one of the following PayJunction agreements:

- A. PayJunction Merchant Account (“PJMA”) which includes PayJunction full-service features and PayJunction Gateway Account services (the PayJunction Merchant Account shall be with PayJunction as an ISO of the Member Bank or referred to an ISO for which PayJunction is an authorized reseller and Merchant pays all fees associated with such credit card processing; or
- B. PayJunction Gateway Only (“PJGWO”) account where the Merchant provides Merchant’s Third-Party Service Provider (“MTPSP”) without the assistance of PayJunction and Merchant pays only Gateway Services fees; or
- C. PayJunction Gateway Reseller (“PJGWR”) account where an ISO, acting as a reseller for PayJunction, refers Merchant to PayJunction for Gateway Services and the ISO pays the Gateway fees and where the Merchant provides Merchant’s Third-Party Service Provider (“MTPSP”).

Merchant Account shall mean the depositories account used to facilitate the services for a Merchant pursuant to the applicable Merchant Agreement.

Merchant Account Services shall mean the Merchant Account services as described by the applicable Merchant Agreement.

Merchant Agreement shall mean the agreement (together with applicable Merchant Application and the associated terms and conditions) entered into between Merchant and PayJunction and its Servicers for the PJMA, PJGWO, or PJGWR services.

Merchant Application shall mean the documents and forms a Merchant must provide and fill out in order to apply for a Merchant Account for the purposes of entering into a Merchant Agreement.

Merchant Transaction Processing Agreement shall mean the agreement signed by Merchant subscribing to the PJMA full-service offering. (The Merchant Transaction Processing Agreement is not applicable to Merchant subscribing to the PJGWO or PJGWR services.)

Merchant’s Third-Party Service Provider (“MTPSP”) shall mean the Member Bank designated by a Merchant subscribing to either the PJGWO or PJGWR services.

MSP shall mean a Member Service Provider which is a title granted to an entity by MasterCard as the result of the entity qualifying with MasterCard to solicit Merchants on behalf of one or more financial institutions for the collection and processing of credit card drafts. Visa classifies MSPs as independent sales organizations (ISO).

NACHA shall mean the National Automated Clearing House Association (sometimes referred to as North American Clearing House Association) which governs the ACH network used by PayJunction and its Servicers to facilitate ACH payments such as the debit and credits made to checking accounts.

PayJunction Affiliate shall mean any business or organization that PayJunction conducts business with to facilitate the sale of PayJunction products and services to a Merchant. This includes any ISO, MSP, processor, bank, and/or card issuer/Association(s) that PayJunction conducts business with.

PayJunction Gateway Application shall mean the application a PayJunction Gateway Merchant must complete in order to apply for the PJGWO or PJGWR products and services for the purposes of entering into a PayJunction Gateway Merchant Agreement.

PayJunction Gateway Merchant Agreement shall mean that PayJunction Gateway Application and Gateway Agreement (<http://payjunction.com/terms>) entered into between Merchant and PayJunction for the PJMA, PJGWO, or PJGWR services, as selected by Merchant.

PayJunction Gateway Services shall mean the PayJunction products and services that provide the means to electronically transfer transaction information from a merchant terminal to the Merchant specified Merchant Account processor in order to settle the transfer of money between the Merchant and End User.

PayJunction Merchant Account shall mean the PayJunction Merchant Account products and services subscribed to by Merchant as indicated by Merchant completing and submitting a Merchant Application which includes a Merchant Account provided by PayJunction’s designated Member Bank(s) in which PayJunction is a

registered ISO thereof. The PayJunction Merchant Account services include the PayJunction Gateway Services.

PayJunction Services shall mean any product and/or services provided by PayJunction and/or its Servicers to Merchant to facilitate Transaction Services processed by PayJunction for the benefit of Merchant.

Payment Data shall mean the Cardholder Data, ACH account numbers and other payment information assigned by a credit card issuer and/or bank that identifies an End User's mode of payment.

PJGWO shall have the meaning ascribed in the Recitals of the PayJunction Gateway Agreement Terms and Conditions.

PJGWR shall have the meaning ascribed in the Recitals of the PayJunction Gateway Agreement Terms and Conditions.

PJMA shall have the meaning ascribed in the Recitals of the PayJunction Gateway Agreement Terms and Conditions.

Renewal Term shall have the meaning ascribed in Section 2.2 of the PayJunction Gateway Agreement Terms and Conditions.

Rules shall mean all bylaws, rules, operational and/or security regulations, procedures and requirements of Servicers, Associations, or networks which govern or affect any PayJunction Services and all state and federal laws, rules and regulations which govern or otherwise affect the activities of PayJunction, as any or all of the foregoing may be amended and in effect from time to time.

Servicers shall mean Member Banks, Associations, Processors, ISO's, MSP's and PayJunction service provider.

Term shall mean an Initial Term or any following Renewal Term.

Transaction Services shall mean any interaction between Merchant and End User(s), which utilizes any of the PayJunction Services to facilitate the transfer of funds via credit card. This includes charges, refunds, authorizations, or chargebacks, whether approved, declined, captured, held, or voided from any Visa, MasterCard, American Express, Discover or other valid card brand or type or ACH transactions.

TSP shall mean the PayJunction Member Bank if Merchant is subscribing to the PJMA services or Merchant's Third-Party Service Provider if Merchant is subscribing to the PJGWO or PJGWR services.