



This Agreement (the "Agreement") sets forth the terms under which the merchant ("Merchant") agrees to participate in the account receivable management program offered by Varidi, Inc. ("Company"). This Agreement shall be effective on the date that this Agreement is electronically accepted by Merchant (the "Effective Date").

**1. ACCOUNT RECEIVABLE MANAGEMENT PROGRAM.** In consideration of the fees paid by Merchant provided herein, Company or its affiliates shall provide account receivable management services ("Services") for various designated account receivables of Merchant, including related transaction processing, data capture, payment facilitation and other functions related to the collection of Merchant account receivables in accordance with specific instructions received from Merchant with regard to each such account receivable (each such individual account receivable being referred to as an "Account" and each person or entity which owes Merchant an account receivable being referred to as a "Customer"). In connection with such Services, Merchant shall receive access and the right to use Company's online service ("Online Service") during the Term of this Agreement. Such Online Service includes functionalities allowing storage, searches and retrieval of data submitted from Merchant to Company. Part of the Services provided by Company shall be a proposed contract between the Merchant and its Customers (the EZ Pay Plan Agreement), the terms of which and the compliance of such terms with applicable law being Merchant's sole responsibility. In order to allow Company to provide such Services, Merchant hereby appoints Company as its agent in order to manage the Accounts and Company consents and accepts such agency appointment and agrees to act solely under the control of and pursuant to instructions received from Merchant with regard to the management of such Accounts. Merchant authorizes Company to directly contact each Customer in accord with the instructions provided Company by Merchant in the Online Service.

Merchant acknowledges that Company does not operate as a collections agent, money transmitter, lender, loan broker, loan servicer or financial lending institution. Merchant agrees that Company may refer collections actions to Company's authorized designee in cases of payment default or where Merchant may desire collections services provided by Company's authorized designee. After such referral, any expenses incurred by Merchant in connection with such matter shall be its own responsibility. Company's authorized designee for collection services is a separate business to Company. Merchant agrees not to refer any Account to any collection agent other than as designated by Company.

**2. ACCOUNT DESIGNATIONS.** From time to time during the Term of this Agreement, Merchant may designate one or more specific Accounts which shall become subject to the terms of this Agreement. Each such account designation shall be made by Merchant pursuant to the Online Service. Merchant is not under any obligation to designate any minimum number of Accounts pursuant to this Agreement and is not limited to any maximum number of Accounts.

**3. ONLINE SERVICE SUPPORT.** Merchant will have access to telephone support for the Online Service between 8:00 AM and 5:00 PM Pacific Local Time Monday through Friday except for holidays. Merchant shall also receive a 24-hour telephone number for reporting interruptions in Online Service. Company reserves the right to bill for assistance, in accordance with the fee schedule in Exhibit B, when service interruptions originate with Merchant's equipment or Merchant's Internet service provider or when Merchant requests assistance outside of the covered hours of support.

**4. ONLINE SERVICE FIXES, UPDATES AND UPGRADES.** From time to time, and without prior notice, Company may implement minor problem fixes, implement updates, or upgrade versions of the Online Service that are intended to modify or replace existing functionalities with new design. Merchant is required to accept all fixes, updates and upgrades. Company shall not be required to provide its Online Service using software versions other than its current operating version. Fixes, updates and upgrades as described above shall be provided to Merchant at no extra charge.



## 5. PAYMENT.

- (a) Merchant shall pay Company an Enrollment Fee as described in Exhibit B upon execution of this Agreement, plus any applicable sales or use taxes, all of which is nonrefundable.
- (b) Merchant shall pay Company a monthly Subscription Fee as described in Exhibit B, plus any applicable sales or use taxes, all of which is nonrefundable.
- (c) Payments received by Company as agent for Merchant pursuant to this Agreement from each Customer with regard to the designated Accounts shall be referred to as "Account Payments". As payment for Company Services, Company shall charge Merchant a fee equal to a percentage of the amount of Account Payments, as set forth in Exhibit B (such fee being referred to as a "Merchant Transaction Fee"). Company shall arrange for payment to be remitted to Merchant after deducting the Merchant Transaction Fee and any other applicable fees, plus any applicable sales or use taxes that may be due from or assessed against Merchant or the Company thereon from Accounts Payments.
- (d) Account Payments will be transacted as outlined in Exhibit B – Account Payment Process. As Merchant's agent, the Company shall have no liability whatsoever to make Account Payments or pay for Accounts, except that the Company shall remit Account Payments received from Customers on Merchant's behalf as and to the extent required by this Agreement.
- (e) Solely on a prospective basis with regard to new Accounts, Company may revise the percentage amount of Account Payments which constitutes its Merchant Transaction Fee (as referenced in Exhibit B) upon ninety (90) days prior written notice to Merchant.
- (f) Unless otherwise mutually agreed in writing, the Merchant Transaction Fees and any other supplemental fees during the Term of this Agreement shall be as stated on Exhibit B hereto, plus any applicable State or local sales or use tax that may be due or assessed thereon. Merchant agrees to indemnify the Company against any sales or use taxes that may be assessed on the Company's services by government agencies subsequent to the periods in which such services were rendered. To the extent that the parties may agree for Merchant to obtain additional products or services from Company, a price for such additional products or services shall be mutually agreed in writing. Any sum owed by Merchant to Company under this Agreement shall accrue interest at the rate of 1.5% per month from its due date until the date when payment is made.

## 6. TERM, TERMINATION AND SUSPENSION.

- (a) **Term.** This Agreement shall remain in force for a period of one (1) year from the Effective Date (the "Initial Term"). This Agreement will renew automatically for successive periods of one (1) year until terminated by either party in accordance with the terms hereof (the "Renewal Term(s)" and, together with the Initial Term, the "Term") unless either party provides the other with notice of termination at least ninety (90) days prior to the end of any term.
- (b) **Suspension.** Company may suspend access to any Service or Account for any of the following reasons: (i) Company reasonably believes that a Service or Account is being used by Participant in violation of this Agreement; (ii) Participant fails to cooperate with Company's reasonable investigation of any suspected violation of law or this Agreement; (iii) Company believes there is a threat to the security or technical integrity of a Service or Account; (iv) Company is required by law, or a regulatory or government body to suspend access to a Service or Account; (v) there is another event for which Company reasonably believes that suspension is necessary to protect Company's Online Service or Company's other Customers; (vi) Company reasonably believes that suspension is necessary due to fraud or excessive Customer defaults; (vii) any amount due under this Agreement is not received by Company within fifteen (15) days after it was due.
- (c) **Termination for Material Breach or Default.** If either party commits a material breach or default in the performance of any obligation under this Agreement, the other party may give the defaulting party written notice of the material breach or default and of its intent to



terminate the Agreement if the breach or default is not cured within thirty (30) days following the defaulting party's receipt of such notice.

- (d) **Termination for Convenience.** Either party may terminate this Agreement at any time for any reason upon ninety (90) days prior written notice.
- (e) **Effects of Termination.** If the Agreement expires or is terminated for any reason noted above, (a) all liabilities accrued thereunder prior to the effective date of the termination will survive; (b) Company may continue to collect Payment Amounts and retain Fee Payments with regard to Accounts which have been designated by Participant prior to the date of such termination for the duration of the collection and payment of each such Account, and (c) the parties' obligations under Sections 4 through 9 of Exhibit A shall survive expiration or termination of this Agreement.

**7. ADDITIONAL TERMS.** Additional terms as set forth in Exhibit A and Exhibit B, attached hereto, are included in and constitute a part of this Agreement.



## EXHIBIT A

### GENERAL TERMS

**1. COMPANY'S RESPONSIBILITIES.** Company shall be excused from providing Online Service to the extent that such service is prevented or interrupted by fire, power outage, act of God, civil disturbance, or other event not reasonably within Company's control. Except when one or more such events occurs, Company warrants the following:

- (a) The Online Service will be available at least 99% of the time measured on a monthly basis, excluding scheduled downtime;
- (b) Company shall conduct all routine maintenance during scheduled maintenance windows. Company shall give at least 48 hours advanced written notice of any scheduled downtime; and
- (c) Company shall respond diligently and reasonably to restore the Online Service whenever it has been interrupted for reasons that Company is able to correct.

The limited warranties set forth above shall be null and void if Merchant misuses the Online Service in any way. EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION, THE ONLINE SERVICE IS PROVIDED BY COMPANY ON AN "AS IS" AND "AS AVAILABLE" BASIS AND "WITH ALL FAULTS, ERRORS, BUGS AND DEFECTS". TO THE MAXIMUM EXTENT PERMITTED BY LAW, COMPANY DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES WITH RESPECT TO THE SERVICES AND ONLINE SERVICE, INCLUDING, (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, OR (C) ANY WARRANTY THAT THE SERVICES OR ONLINE SERVICE WILL MEET MERCHANT'S REQUIREMENTS, WILL CONTAIN ANY PARTICULAR FEATURE OR FUNCTION, WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY OR SECURE, OR OPERATE WITHOUT ERROR. COMPANY DOES NOT GUARANTEE ANY PAYMENT OF ANY ACCOUNT BY ANY CUSTOMER AND COMPANY DOES NOT ASSUME PAYMENT RESPONSIBILITY OF ANY ACCOUNT.

**2. MERCHANT RESPONSIBILITIES.** Merchant shall be solely responsible for:

- (a) compliance with this Agreement by its personnel, including compliance with laws and regulations applicable to establishing an Account with any Customer (including, without limitation, the Equal Credit Opportunity Act, Truth in Lending Act, Fair Credit Reporting Act, State Retail Installment Sales Acts, State Consumer Loan Acts, and State Usury Laws);
- (b) the security and confidentiality of Merchant's Online Service password and user account and any and all activities that occur under Merchant's Online Service account;
- (c) the content, accuracy and integrity of all data submitted to Company;
- (d) submitting data to Company in one of the electronic formats accepted by Company;
- (e) the purchase, maintenance and operation of all computer hardware and software needed to utilize Merchant's access to Company's Online Service;
- (f) arranging and maintaining Merchant's access to the Internet (including without limitation all modems, Internet service provider fees, firewalls, routers, NAT translators, servers, and browser software); and
- (g) any failure of a Customer to pay its Account, it being understood that Company is not agreeing to assume or guaranty payment of any Account of any Customer, unless Payment Guarantee was selected at the time the Account was created.
- (h) not disclosing the existence of the Payment Guarantee program in any form to any Customer or potential Customer. Violation will be considered a fraudulent act and result in immediate termination of the Payment Guarantee program on each Account and suspension of this Merchant Agreement.



- (i) Accurate and timely recording of all transactions related to Account Payments or other Account activities into the Company's Online Service platform.

**3. MUTUAL RESPONSIBILITIES.** Each party shall be responsible for each of the following:

- (a) to honor all reasonable restrictions that the other party requests with respect to disclosing its confidential information to third parties; and
- (b) not to violate the intellectual property or other rights of any third party.

**4. PROPRIETARY RIGHTS AND CONFIDENTIALITY.**

- (a) Company asserts, and Merchant agrees that the Services, Online Service software, screen layouts, instructions, trademarks and trade names constitute valuable property of Company. Company grants Merchant a non-exclusive, non-transferable, non-sublicensable right and license to use the Online Service only during the Term of this Agreement for the purposes contemplated hereunder. No rights to rent or lease the software underlying the Online Service are granted. Merchant shall not disassemble, decompile or reverse engineer such software. All derivative works from Company's products or software (whether developed by Company or Merchant) shall be the exclusive property of Company. Merchant shall not access the Online Service to (i) systematically access the Online Service using "bots" or "spiders", or attempt to gain unauthorized access to the Online Service or its related systems or networks, (ii) build a competitive commercial product or service, (iii) build a product using similar ideas, features, functions or graphics as the Online Service, or (iv) copy any ideas, features, functions or graphics of the Online Service. All rights not expressly granted hereunder belong to Company. Notwithstanding, all Account data of Merchant submitted to Company or the Online Service is owned and belongs to Merchant. Merchant grants Company a non-exclusive license to use, distribute and reproduce such Account data for the purposes of providing and operating the Services and Online Service. Such license may also be exercised by third parties acting on Company's behalf (e.g., technology partners, service providers and independent contractors).
- (b) In connection with the Company performing its Services under this Agreement, each party may furnish, or caused to be furnished, to the other party information regarding its business, financial condition, operations, policies, procedures, practices and information systems (all such information concerning a party being referred to herein as the "Confidential Information", the disclosing party being referred to as the "Disclosing Party" and the receiving party being referred to as the "Receiving Party"). In addition, during the course of performing Services Company may develop and provide Merchant with reports and information relating to the operation of Merchant's business (all such information and reports being considered Confidential Information of Merchant, with Merchant being considered the Disclosing Party and Company being considered the Receiving Party).
- (c) The Receiving Party shall exercise the same degree of care, but no less than a reasonable degree of care, to keep confidential the Disclosing Party's Confidential Information as the Receiving Party uses to protect its own confidential information of a like nature and to use such information only for the purpose set forth in this Agreement.
- (d) In the event any of Receiving Party or its directors, officers, employees or agents are required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or other process) to disclose any of Disclosing Party's Confidential Information, Receiving Party may comply with such subpoena or compulsory process, but shall provide Disclosing Party with prompt notice of such request or requirement so that Disclosing Party may assert any privileges restricting the disclosure of such Disclosing Party's Confidential Information or seek an appropriate protective order or waive compliance by Receiving Party or such persons with the provisions of this Agreement relating thereto. In any event, neither Receiving Party nor any such person will oppose an action by Disclosing Party to assert any privileges restricting the disclosure of Disclosing Party's Confidential Information or obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded Disclosing Party's Confidential Information.



- (e) Notwithstanding anything to the contrary contained herein, the Receiving Party shall have no obligation under this Agreement to hold Disclosing Party's Confidential Information in confidence which has been or is:
- (i) lawfully obtained by the Receiving Party from a third party without restriction;
  - (ii) publicly available without breach of this Agreement or from information readily ascertainable in the marketplace by proper means;
  - (iii) disclosed without restriction by the Disclosing Party to a third party;
  - (iv) known to the Receiving Party prior to its receipt from the Disclosing Party; or
  - (v) developed by the Receiving Party independently and without the benefit of information disclosed hereunder by the Disclosing Party.

## **5. LIMITATION OF LIABILITY.**

MERCHANT ACKNOWLEDGES AND AGREES THAT ACTIONS OR INACTIONS OF THIRD PARTIES MAY RESULT IN SITUATIONS IN WHICH MERCHANT'S INTERNET CONNECTION, OR USE OF THE ONLINE SERVICE, MAY BE IMPAIRED, DISRUPTED OR DAMAGED. COMPANY DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE INTERNET AND SO DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH ACTIONS OR INACTIONS. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, EITHER IN CONTRACT OR IN TORT, FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING UNDER THIS AGREEMENT, FROM ANY NEGLIGENCE OR DEFECT OR INTERRUPTION IN ONLINE SERVICE, OR FOR ANY OTHER BREACH OF THIS AGREEMENT OR ANY AMENDMENT THERETO (INCLUDING, WITHOUT LIMITATION, ANY FAILURE OF A PARTY TO COMPLY WITH ANY STATUTE, REGULATION OR COURT ORDER APPLICABLE TO ITS BUSINESS). THIS DISCLAIMER OF LIABILITY APPLIES TO ANY DAMAGES OR INJURY CAUSED BY ANY ERROR, OMISSION, INTERRUPTION, DELETION, DELAY, COMPUTER VIRUS, THEFT OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF THE SERVICES, THE ONLINE SERVICE OR OF ANY DATA THEREIN. ANY DAMAGES THAT COMPANY IS REQUIRED TO PAY MERCHANT FOR ANY REASON WHATSOEVER SHALL BE LIMITED TO THE AMOUNTS OF ACCOUNT FEES PAID TO COMPANY UNDER THIS AGREEMENT. THE PARTIES AGREE TO THE ALLOCATION OF LIABILITY SET FORTH IN THIS SECTION ENTITLED "LIMITATION OF LIABILITY" EVEN IF THERE IS A FAILURE OF ESSENTIAL PURPOSE OF A REMEDY, A MATERIAL BREACH BY A PARTY OR OTHER EVENT.

**6. DISPUTES.** If a dispute arises in connection with this Agreement, the parties shall attempt to resolve it through good faith negotiation. If the dispute cannot be resolved, either party may make a written demand for formal dispute resolution and specify therein the scope of the dispute. Within fifteen (15) days after such written notification, the CEOs of each party agree to meet in person in Seattle, Washington for one (1) day and consider dispute resolution alternatives, other than litigation. If an alternative method of dispute resolution is not agreed upon within fifteen (15) days after such meeting, either party may resort to such legal remedies as may be available to them.

## **7. NOTICES.**

- (a) All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or (i) upon personal delivery to the party to be notified; (ii) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iii) one (1) business day after the business day of deposit with a nationally recognized overnight courier, freight prepaid, specifying next-day delivery. All communications shall be sent to Merchant at the last known address entered in the Company's Merchant Online Service and to Company at:

Varidi, Inc.  
Attn: CEO  
PO Box 2482  
Woodinville, WA 98072





- (b) If notice is given to the Company for any reason, a copy shall also be sent to Davis Wright Tremaine, 1201 Third Avenue, Suite 2200, Seattle, WA 98101, Attn: Joseph P. Whitford.
- (c) Either party may change its address or other contact information for notice by providing written notice to the other party.

## 8. HIPAA DECLARATIONS

The parties acknowledge that from time to time Merchant's protected health information (as defined in 45 CFR 160.103; hereinafter referred to as "PHI") will be placed on Company's system. When this occurs, the Company may be a business associate of Merchant under HIPAA if Merchant is a covered entity. This Section 8 applies to the extent that Merchant is a covered entity and Company is a business associate. Terms used in this Section 8 have the meanings given them in the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, as modified from time to time (the "Privacy Rule"), and the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C, as modified from time to time (the "Security Rule").

Company and Merchant agree to the following terms and conditions:

(a) Permitted Purposes:

- (i) Company may use or disclose Merchant's PHI for purposes reasonably related to providing the Online Services to Merchant, provided that such use or disclosure would not violate the Privacy Rule, and then only to the minimum extent necessary to accomplish the purpose of the use or disclosure.
- (ii) Company may use or disclose Merchant's PHI as reasonably necessary for Company's proper management and administration and to carry out Company's legal responsibilities, so long as any such disclosure is required by law or Company obtains written assurances from the recipient that the information will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the recipient and that the recipient will notify Company of any instances of which the recipient becomes aware in which the confidentiality of the information has been breached.

(b) In performing its duties hereunder, Company will:

- (i) Not use or further disclose PHI other than as permitted or required by this Agreement or as required by law.
- (ii) Implement and use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement.
- (iii) Comply with the applicable requirements of the Security Rule.
- (iv) Report to Merchant any use or disclosure of PHI not provided for by this Agreement (including breaches of unsecured PHI as required by 45 CFR 164.410) or any security incident of which Company becomes aware.
- (v) Ensure that Company's subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of Company agree to the same restrictions and conditions that apply to Company with respect to such information, including compliance with the applicable requirements of the Security Rule.
- (vi) Make available PHI in a designated record set maintained by Company within the time frame and in the manner reasonably requested by Merchant to allow Merchant to comply with 45 CFR 164.524 (relating to individuals' access to PHI).
- (vii) Make available PHI for amendment and incorporate any amendments to PHI within the time frame and in the manner reasonably requested by Merchant to allow Merchant to comply with 45 CFR 164.526.



- (viii) Make available information required to provide an accounting of disclosures within the time frame and in the manner reasonably requested by Merchant to allow Merchant to comply with 45 CFR 164.528.
  - (ix) Make Company's internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Company on behalf of, Merchant available to the Secretary of the United States Department of Health and Human Services (or his or her designee) for purposes of determining Merchant's compliance with the Privacy Rule.
  - (x) Upon termination of this Agreement, if feasible, return to Merchant (or its designee) or destroy all PHI received from, or created or received by Company on behalf of, Merchant that Company still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of this Section 8 to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible.
  - (xi) Take any other action which, from time to time, Company believes is reasonably required, permitted, or authorized due to changes in HIPAA or other applicable law or regulation, and/or to modify its duties as set forth above in this Section 8 to reflect ongoing revised provisions of HIPAA or other applicable laws or regulations.
- (c) In performing its duties hereunder, Merchant will:
- (i) Notify Company of any limitation(s) in Merchant's notice of privacy practices under 45 CFR 164.520, to the extent that such limitation may affect Company's use or disclosure of PHI.
  - (ii) Notify Company of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Company's use or disclosure of PHI.
  - (iii) Notify Company of any restriction on the use or disclosure of PHI that Merchant has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Company's use or disclosure of PHI.
  - (iv) Not request Company to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Merchant, except management, administration, and legal responsibilities of Company, if applicable.
- (d) Merchant may immediately terminate this Agreement without penalty to Merchant or recourse to Company if Merchant determines that Company has violated a material term of this Section 8 and, after ten (10) days written notice, Company is not able to cure such breach.
- (e) Nothing expressed or implied in this Agreement is intended to, or does, confer, upon any other person or entity any rights, remedies, obligations, or liabilities whatsoever.

## 9. MISCELLANEOUS.

- (a) **Entire Agreement.** This Agreement (including all Exhibits hereto) constitutes the full and entire understanding and agreement among the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties is expressly canceled. In the event of any conflict between this Agreement and the Exhibits, the provisions of this Agreement shall control.
- (b) **Relationship of Parties.** This Agreement will not be deemed to create a partnership, joint venture, employment or any other relationship between Company and Merchant, except that Merchant is appointing Company its agent for the limited purposes of managing the Accounts.
- (c) **Severability.** In case any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and such invalid, illegal, or unenforceable provision shall be reformed and construed so that it will be valid, legal, and enforceable to the maximum extent permitted by law.





- (d) **Amendments and Waivers.** Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance, and either retroactively or prospectively) only with the written consent of both parties.
- (e) **Successors and Assigns.** This Agreement, and any and all rights, duties and obligations hereunder, shall not be assigned, transferred, delegated or sublicensed by Merchant without the prior written consent of the Company. Any attempt by Merchant without such permission to assign, transfer, delegate or sublicense any rights, duties or obligations that arise under this Agreement shall be void. Subject to the foregoing and except as otherwise provided herein, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.
- (f) **Governing Law.** This Agreement and any controversy arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the state of Washington, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Washington.
- (g) **Consent to Jurisdiction; Fees.** The parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of the federal and state courts located within the geographic boundaries of the United States District Court for the Western District of Washington for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the federal and state courts located within the geographic boundaries of the United States District Court for the Western District of Washington, and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court. In any proceeding arising out of or based upon this Agreement the prevailing party in any such action shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.
- (h) **Delays or Omissions.** No delay or omission to exercise any right, power, or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power, or remedy of such nonbreaching or nondefaulting party, nor shall it be construed to be a waiver of or acquiescence to any such breach or default, or to any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. All remedies, whether under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.



## EXHIBIT B

### PROGRAM DESCRIPTION AND FEE STRUCTURE

#### 1. Guaranteed EZPay™ Plan (GEP)

(a) **Customer Set Up Fees.** A contract Set Up Fee set forth in each EZPay™ Plan Agreement between Merchant and each Customer must be paid by the Account Holder of the contract to Company or its designee prior to the effective date of each such EZ Pay Plan Agreement.

(b) **EZPay™ Plan Payment Guarantee.**

(i) **Payment Guarantee.** Company will provide a Payment Guarantee if Merchant selects Payment Guarantee during the EZPay™ Plan setup process.

(ii) **Payment Application.** All payments, adjustments and credit to Customer's account shall first be applied to reduce the Guarantee Amount and then applied to the non-guarantee amount.

(iii) **Invoking Payment Guarantee.** Company will notify Merchant when an eligible Customer has defaulted on their required payment. Merchant may elect to invoke the Payment Guarantee by notifying Company at least five (5) days prior to the next payment due date. Merchant will have one additional opportunity to elect to invoke the Payment Guarantee by notifying Company at least five (5) days prior to the following payment due date. If Merchant invokes the Payment Guarantee, Company's authorized designee will provide funds for the monthly payment on the next due date and Merchant authorizes Company's authorized designee to pursue collections from Customer. If Merchant fails to invoke the Payment Guarantee by the second deadline, the Payment Guarantee will be waived, and the Merchant will be responsible for collecting directly from Customer. Once invoked, a Payment Guarantee may not be revoked by Merchant.

(iv) **Payment Coverage.** If the Payment Guarantee is invoked by Merchant, Company's authorized designee will provide funds for the monthly payment to Merchant on behalf of Customer until the account is paid in full or the Maximum Guarantee Amount is paid in full, whichever comes first. To invoke Payment Guarantee, merchant shall provide the following:

1. Copy of Customer or Account Holder's signature on contract.
  2. Copy of Customer or Account Holder's valid government issued identification.
- The name on the identification and Customer payment method must match.

Company may, at times, adjust the terms of Guarantee payments to merchant. Company will not honor Guarantee payments in the event of fraud on the part of the Merchant.

(v) **Customer Disputes.** If a Customer dispute arises on a covered Merchant service, Payment Guarantee payments from Company are suspended until the dispute is resolved.

(c) **Additional Set Up Fees.**

(i) **Additional Set Up Fee.** Any additional Set Up Fee in an amount determined by the Company as a result of an increase to the total plan amount or number of payments will be paid by Customer to Company.

(ii) **Change Effective Date.** The additional Set Up Fee must be paid prior to any change being effective.

#### 2. Collection Referrals

(a) **Referral Process.** Merchant shall refer to the Company or its designee for collection of any Account for which the Merchant has elected to invoke the Payment Guarantee, and may refer to the Company or its designee other delinquent Accounts not subject to the Payment Guarantee. In both situations, Company will assign the delinquent Account to its network of authorized collection service providers to meet Merchant needs. Merchant agrees to accept the terms and conditions of the assigned collection service provider which will work directly with Merchant. Merchant agrees that it shall not receive any funds resulting from collection efforts of Accounts for which it has activated a Payment Guarantee, and that it shall receive 65% of any funds resulting from collection efforts of



Accounts for which it has not activated a Payment Guarantee. Collected funds will be remitted by the authorized collection service provider.

### 3. Other Customer Charges

- (a) **Late Fees.** A charge of up to \$35.00 may be assessed to Customer by Company for any required Account Payment that is past the due date.
- (b) **Exception Processing Fee.** A charge of up to \$35.00 may be assessed to Customer by Company for any Account Payment exception ("Exception Processing Fee"). Examples of exceptions include, without limitation, non-sufficient funds for an ACH transaction and rejected credit card (such as expired) for a credit card payment.

### 4. Account Payment Process.

- (a) **Account Payments.** Account Payments are paid by Customer and Company shall arrange for collection. Account Payments will first be distributed to Company to pay any fees, including the Merchant Transaction Fee, and then the balance to Merchant. Company may directly deduct funds from a Merchant account for payments such as fees, subscriptions, or over-payments.
- (b) **Direct Payments.** Merchant shall record in the Online Service any Account Payments made in any form directly to Merchant by Customer within 5 days of payment; by the due date of the payment; or on the date of payment if payment is past due, whichever is earliest.

### 5. Merchant Subscription Program

- (a) **Enrollment Fee.** Merchant is assessed a \$99.95 Enrollment Fee by Company upon execution of this Agreement. The Company may, at its own discretion, run promotions that reduce or waive the Enrollment Fee.
- (b) **Subscription Fee.** Merchant is assessed a monthly Subscription Fee by Company based on the level of service selected. Merchant may upgrade, downgrade or cancel their Merchant Subscription at any time, but Subscription Fees paid are not refundable. The Company may, at its own discretion, run promotions that reduce or waive the Subscription Fee.
  - (i) **Lite Subscription.** The Lite Subscription allows Merchant to access the Company's Online Service including EZPay™ Plans without the Payment Guarantee, E-Invoices, PayNow and the Merchant's Dashboard from one location with up to 5 users. Merchant is assessed a Lite Subscription Fee by Company of \$29.00 per month.
  - (ii) **Basic Subscription.** The Basic Subscription allows Merchant to access the Company's Online Service including EZPay™ Plans that include the Payment Guarantee feature, E-Invoices, PayNow, Collection Referral and the Merchant's Dashboard from one location with up to 5 users. There is no monthly Subscription Fee for the Basic Subscription.
  - (iii) **Premium Subscription.** The Premium Subscription allows Merchant to access the Company's Online Service including EZPay™ Plans that include the Payment Guarantee feature, E-Invoices, PayNow, Collection Referral, ReConnect, Resolve and the Merchant's Dashboard from one location with up to 5 users. Merchant is assessed a Premium Subscription Fee by Company of \$59.00 per month.
  - (iv) **Enterprise Subscription.** The Enterprise Subscription allows Merchant to access the Company's Online Service including EZPay™ Plans that include the Payment Guarantee feature, E-Invoices, PayNow, Collection Referral, ReConnect, Resolve and the Merchant's Dashboard from two locations with unlimited users. Merchant is assessed an Enterprise Subscription Fee by Company of \$199.00 per month plus \$89.00 per month for the third and each additional location.
- (c) **Sales and Use Taxes.** Program fees may also be subject to sales and/or use taxes, and are in addition to amounts stated.
- (d) **Payment Failure.** If Merchant's payment of the assessed Subscription Fee fails, Merchants will be moved to the Basic Subscription level and any amount due may be deducted from future Customer payments.



**6. Merchant Transaction Fee.** Merchant is assessed a Merchant Transaction Fee by Company on all EZPay™ Plans, E-Invoices and PayNow Account Payment paid by a Customer based on the Subscription level selected.

- (a) Merchant is assessed a 3% Merchant Transaction Fee on all EZPay™ Plans, E-Invoices and PayNow Account Payment paid by a Customer when the Merchant is enrolled in the Lite, Premium or Enterprise Subscription levels.
- (b) Merchant is assessed a 5% Merchant Transaction Fee on all EZPay™ Plans, E-Invoices and PayNow Account Payment paid by a Customer when the Merchant is enrolled in the Basic Subscription levels.

## **7. Merchant Support**

- (a) **Online Access.** Merchants will have unlimited 24/7 online access.
- (b) **Telephone Support.**
  - (i) **Normal Business Hours.** Merchant will have access to toll-free telephone support during Normal Business Hours, which are between 8:00 AM and 5:00 PM Pacific Standard Time Monday through Friday except holidays.
  - (ii) **After Hours.** The Company may charge the Merchant a fee of up to \$150 per hour for support outside of normal business hours.
  - (iii) **Excessive Use.** The Company retains the right to charge a fee of up to \$150 per hour for excessive use of the support line by Merchant. Written notice will be provided prior to any excessive use charges being levied.