



# PaymentsGateway Application and Agreement

## MERCHANT INFORMATION

DBA NAME/OUTLET NAME:		PRIMARY OWNER/OFFICER NAME:		% OWNERSHIP:	
PHYSICAL STREET ADDRESS (NO P.O. BOX):			SOCIAL SECURITY #:		TELEPHONE #:
CITY, STATE, ZIP:			ADDRESS:		CITY:
DBA PHONE:		FAX:		STATE:	ZIP: YEARS THERE: OWN/RENT:
CONTACT NAME AT THIS ADDRESS:			E-MAIL:		DRIVER'S LICENSE #: DATE OF BIRTH:
CUSTOMER SERVICE PHONE # (REQUIRED FOR ALL MERCHANTS):				E-MAIL ADDRESS:	

## BUSINESS PROFILE (PLEASE INCLUDE BUSINESS FORMATION DOCUMENTS WITH APPLICATION)

TYPE OF OWNERSHIP:		SOLE PROPRIETORSHIP	PARTNERSHIP GENERAL/LIMITED	LIMITED LIABILITY CORP.	TAX EXEMPT/NON-PROFIT
		CLOSELY HELD CORP.	PUBLICLY HELD CORP.	GOVERNMENT (FED/STATE/LOCAL)	OTHER:
YEARS IN BUSINESS:	# OF LOCATIONS:	LENGTH OF CURRENT OWNERSHIP:	FEDERAL TAX ID/SSN:		
LOCATION OF BUSINESS:		OFFICE SUITE	RETAIL STOREFRONT	PRIVATE RESIDENCE	OTHER (SPECIFY):
TYPE OF GOODS/SERVICE(S) YOU SELL:			INTENDED USE OF SERVICE(S):		
HAS BUSINESS OR ANY PRINCIPAL BEEN TERMINATED AS A VISA/MC MERCHANT (TMF)? YES NO					
HAS MERCHANT OR ANY PRINCIPAL DISCLOSED HEREIN FILED BANKRUPTCY OR BEEN SUBJECT TO INVOLUNTARY BANKRUPTCY? YES NO IF YES, EXPLAIN:					

## BUSINESS BANK INFORMATION (ATTACH VOIDED CHECK)

<b>BANK ACCOUNT FOR BILLING</b>	
TRANSIT ROUTING/ABA NUMBER (NINE DIGITS):	DDA/CHECKING ACCOUNT #:

## CREDIT CARD PROCESSING (CHECK ALL THAT APPLY)

<b>MASTERCARD/VISA:</b> EXISTING PROVIDER:	TSYS	NOVA	FIRST DATA	GLOBAL
IF NOVA, FIRST DATA OR GLOBAL:	BIN#:	TERMINAL ID (TID) #:	MID #:	
IF TSYS:	BIN#:	TERMINAL ID (TID) #:	AGENT #:	CHAIN #: STORE #: TERMINAL #:

## PRODUCTS UTILIZED (CHECK ALL THAT APPLY)

VIRTUAL TERMINAL	TRANSPORTER	WEBPAY
DIRECT INTERFACE/API	OTHER - SPECIFY _____	

## OTHER FEES (COMPLETE IF APPLICABLE)

GATEWAY MONTHLY: \$ _____	GATEWAY PER TRANSACTION: \$ _____	ONE-TIME SETUP FEE: \$ _____
MONTHLY MINIMUM: \$ _____		

## MERCHANT AUTHORIZATION AND ACCEPTANCE OF TERMS AND CONDITIONS

This Gateway Services Application and Agreement ("GSA"), along with the Terms and Conditions attached hereto, serves as the Merchant Agreement by and between PaymentsGateway ("PayGate") and the Merchant named above ("Merchant"/"you"). A copy of the Terms and Conditions, version number \_\_\_\_\_, has been provided to you. As a duly authorized signatory of Merchant, the undersigned certifies the following: 1) You have received a copy of the Terms & Conditions and that Merchant agrees to be bound by all terms and conditions contained therein and as may be modified or amended in compliance with those terms; 2) You understand that IF MERCHANT SUBMITS A TRANSACTION TO PAYMENTSGATEWAY HEREUNDER, MERCHANT WILL BE DEEMED TO HAVE ACCEPTED THE MERCHANT SERVICES TERMS & CONDITIONS; 3) All information provided in this GSA and supporting documents is true and accurate; 4) Merchant authorizes PayGate to debit and/or credit the account(s) listed above, or other accounts maintained by Merchant, for any amounts owed in accordance with the GSA and the Terms and Conditions; and 5) Merchant authorizes PayGate to order a credit report on Merchant and/or any affiliate that is listed on the GSA or any supporting document.

SIGNATURE:	DATE:	SIGNATURE:	DATE:
PRINTED NAME:	TITLE:	PRINTED NAME:	TITLE:

## PLEASE REMIT APPLICATION TO: (OVERNIGHT DELIVERY RECOMMENDED)

PaymentsGateway  
500 West Bethany Drive, Suite 200  
Allen, TX 75013  
Fax: 469-675-8733

<b>FOR OFFICE USE ONLY</b>	ISO ID: _____	SIC: _____	SALES REP: _____
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# **GATEWAY SERVICES AGREEMENT TERMS AND CONDITIONS**

## **1. SERVICES, USE, LICENSE.**

PaymentsGateway ("PGate" "Party") shall provide the company ("Merchant" "Party") indicated on the Gateway Services Agreement ("GSA") with PaymentsGateway Services (the "Services"). These Services shall include processing/channeling any or all of the following Transactions: authorizations, verifications, authentications, settlement transactions or funds capturing. Merchant may use the Services in conjunction with other products and services provided by PGate or Merchant may elect to use the Services in conjunction with its own or a third party's products and services. No license or right to use, reproduce, translate, rearrange, modify, enhance, display, sell, lease, sublicense or otherwise distribute, transfer or dispose of any of PGate's Proprietary Property, as defined in Section 2 below, in whole or in part, is granted except as expressly provided by these Terms and Conditions. Neither Merchant nor any business entity effectively controlling or controlled by Merchant or associated with others under common ownership or control ("Affiliates") shall reverse engineer, decompile or disassemble the Proprietary Property. Additionally, nothing in the GSA or specifically, these Terms and Conditions shall be construed to provide Merchant with a license of any third-party proprietary information or property.

## **2. OWNERSHIP.**

All computer programs, trademarks, service marks, patents, copyrights, trade secrets, know-how, and other proprietary rights in or related to PGate's products and services (the "Proprietary Property"), are and will remain the sole and exclusive property of PGate, whether or not specifically recognized or perfected under applicable law. PGate shall own all rights, title and interest, including all intellectual property rights, in and to any improvements to the existing PGate products or services and/or any new programs, upgrades, modifications or enhancements developed by PGate in connection with rendering any services to Merchant (or any of its affiliates), even when refinements and improvements result from Merchant's request. To the extent, if any, that ownership in such refinements and improvements does not automatically vest in PGate by virtue of Merchant's agreement to these Terms and Conditions or otherwise, Merchant hereby transfers and assigns (and, if applicable, shall cause its affiliates to transfer and assign) to PGate all rights, title, and interest which Merchant or any of its affiliates may have in and to such refinements and improvements.

**3. TRANSACTION PROCESSING.** PGate shall accept transactions on a 24-hour basis. PGate is responsible only for processing transactions that are received by PGate in the proper format, pre-approved by PGate. Merchant is solely responsible for communicating with the System for processing transactions.

## **4. PRICING AND PAYMENT.**

Merchant shall pay for all products and services according to the GSA and as those fees may be amended by PGate from time to time in accordance with these Terms and Conditions. Said fees shall be due and payable by Merchant immediately upon receipt of invoice from PGate. Fees will differ depending on type of services and/or level of services Merchant has requested and may be modified by PGate upon a minimum of ten (10) days' written notice to Merchant. PGate is authorized to obtain payment for these fees and any other amounts due under the GSA, including late fees, by directly debiting Merchant's specified bank account(s). A \$25.00 fee shall be assessed for any return of a debit processed to Merchant's account. Failure to pay any amount due to PGate within the time period or on the terms set forth in this section shall constitute a material breach of the GSA by Merchant. PGate shall assess a late fee of one and one-half percent (1½%) per month on all amounts past due. In addition to imposing such late fees, PGate may elect to terminate Merchant's access to the Services in accordance with Section 17 below.

## **5. TAXES.**

Merchant is solely responsible for payment of any taxes (including sales or use taxes, transfer taxes, excise taxes, intangible taxes, property taxes, and similar taxes and duties) resulting from Merchant's acceptance of the license granted hereunder and use of PGate's products and services, excluding, however, any taxes payable by PGate as a result of income earned by PGate hereunder. Merchant shall reimburse PGate should PGate be charged for any tax obligation of Merchant. Merchant shall hold PGate harmless from all claims and liability arising from Merchant's failure to report or pay such taxes.

## **6. INVESTIGATIVE REPORT.**

Merchant is on notice that an investigative or Consumer Report may be made in connection with the GSA. Merchant authorizes PGate or any Credit Bureau or any Reporting Agency employed by PGate or any of its agents to investigate the references given or any other statements or data obtained from Merchant, or any of its principals, in connection with the GSA or for the purpose of obtaining services from PGate. Subsequent Consumer Reports and inquiries may be required or used in conjunction with an update, renewal or extension of the GSA.

## **7. CONFIDENTIALITY.**

Merchant acknowledges that the products, services and information relating to PGate's products and services (including without limitation the GSA) contain confidential and proprietary information developed by, acquired by, or licensed to PGate (the "Confidential Information"). Merchant will take (and will cause its affiliates to take) all reasonable precautions necessary to safeguard the confidentiality of the Confidential Information. Neither Merchant nor any of its affiliates will make any unauthorized use of the Confidential Information or disclose, in whole or in part, the Confidential Information to any individual or entity,

except to those of Merchant's employees or affiliates who require access for Merchant's authorized use of the products or services and agree to comply with the use and nondisclosure restrictions applicable to the Confidential Information. This Section will not apply to Confidential Information that (i) was already available to the public at the time of disclosure, (ii) becomes generally known to the public after disclosure to the other party, through no fault of the other party, or (iii) is disclosed under force of law, governmental regulation or court order. Merchant acknowledges that any unauthorized use or disclosure by it or any of its affiliates of the Confidential Information may cause irreparable damage to PGate. As such, if PGate becomes aware of Merchant's breach or threatened breach of this Section 8, PGate may suspend any and all rights granted to Merchant under the GSA and shall be entitled to injunctive relief, without the need of posting a bond, in addition to all legal or equitable relief that may be available to PGate.

## **8. REPRESENTATIONS AND WARRANTIES.**

**a. Mutual Representations and Warranties.** Both parties to this Agreement represent and warrant that:

1) Performance under this Agreement will not violate any applicable international, federal, state, or local law or regulation, including but not limited to the Regulations listed in Section 10 below and on Appendix A attached hereto;

2) When executed and delivered, this Agreement will constitute the legal, valid, and binding obligation of that party under the Agreement, enforceable in accordance with its terms;

3) Performance under this Agreement does not violate any agreement or obligation between that Party and any third party.

### **b. Merchant's Representations and Warranties.**

Merchant represents and warrants to PGate that:

1) **To the best of Merchant's knowledge,** neither any information delivered by Merchant to PGate in support of the GSA nor Merchant's performance of its obligations hereunder will infringe on any copyright, patent, trade secret or other proprietary right held by any third party.

2) Neither Merchant nor any of its affiliates will use the PGate products and/or services for (i) any unlawful, fraudulent, libelous, defamatory, threatening, abusive or otherwise objectionable usage of any kind, including without limitation any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any local, state, national or foreign law.

## **9. INDEMNIFICATION.**

Merchant bears all responsibility for its own employees' actions while in Merchant's employ. Merchant shall indemnify and hold harmless PGate and its officers, directors, employees, and agents, from and against any and all claims, demands, actions, losses, damages, liabilities, expenses, expenditures, and costs including but not limited to attorneys' fees and other costs of defense, including settlement costs, that relate to or result from (i) any material breach of

Merchant's representations and warranties contained herein, (ii) any alleged violation by Merchant of any applicable law, Rule or Regulation, or (iii) any action of Merchant, its agents or employees in connection with any Transaction subject to the GSA. All disputes between Merchant and its customer(s) relating to any Transaction will be settled by and between Merchant and customer. Merchant agrees that PGate bears no responsibility or involvement in any such dispute.

## **10. LEGAL AND REGULATORY COMPLIANCE.**

Merchant agrees to comply with all operating rules and regulations issued from time to time by NACHA, MasterCard, Visa, Discover, American Express or any other applicable network (**the "Rules"**). Such Rules are incorporated into this Agreement by reference as if they were fully set forth herein. Merchant further agrees to comply with all applicable federal, state local laws, rules and regulations ("Regulations"), as amended from time to time affecting acceptance of the Transactions. Merchant will assist PGate in complying in a complete and timely manner with all Rules and Regulations now or hereafter applicable to any Card transaction or this Agreement. Merchant will execute and deliver to PGate all related documentation PGate may from time to time reasonably deem necessary. Merchant is solely responsible for ensuring that Merchant's policies and procedures meet the requirements of the Rules and Regulations. PGate bears no responsibility for any lack of compliance by Merchant with any applicable Rules or Regulations. PGate directs Merchant to seek the counsel of outside legal assistance should Merchant have questions or concerns regarding compliance with such.

## **11. RULES AND REGULATIONS VIOLATIONS.**

Merchant shall reimburse PGate for any fines or loss of funds imposed on PGate for any violation of the Rules or any Regulation by Merchant. PGate shall provide Merchant written notice of any such fine upon receipt of notice from the fining authority.

## **12. USAGE.**

**a. Use Restricted to Lawful Purpose.** Merchant agrees to use PGate's the Services solely for lawful purposes. Merchant agrees that it will not transmit any material in violation of any Federal, State or foreign law, including but not limited to, copyrighted material, material legally judged to be threatening, obscene, or material protected by trade secret laws. PGate reserves the right to use all means necessary to **monitor Merchant's actions in the event of a real or perceived security breach.** Merchant agrees that PGate, at its discretion, may remove objectionable materials residing on PGate's servers. PGate shall use its discretion to define what constitutes objectionable material. PGate reserves the right to terminate Services to Merchant should PGate **deem Merchant's** use of the Services are for an unlawful purpose. In the event of such an occurrence, PGate shall make reasonable effort to notify Merchant of such action, but is not bound by the terms of the GSA in doing so.

**b. Proper Usage.** Merchant agrees to comply with the reasonable and acceptable use policies, rules,

regulations, terms and conditions of any networks accessed by Merchant through PGate's Services. PGate reserves the right to deny Merchant access to the Services should PGate determine, in its sole opinion, that Merchant's actions are or may negatively impact PGate or applicable third party network. In the event of such an occurrence, PGate shall make reasonable effort to notify Merchant of such action, but is not bound by the terms of the GSA in doing so.

### **13. LIMITS OF LIABILITY.**

**a. Errors of Others** - PGate shall not be held responsible for errors, acts or failures to act of others, including, and among other entities, banks, communications carriers or clearing houses through which Transactions may be originated or through which PGate may receive or transmit information, and no such entity shall be deemed an agent of PGate.

**b. Damages Waiver** - PGate shall not be liable to Merchant or any third party for any special, consequential, incidental or punitive damages of any kind or nature incurred in relation to the GSA, whether or not (i) any claim for these damages is based on tort or contract; or (ii) PGate knew or should have known the likelihood of such damages occurring under the circumstances. Merchant shall not assert any such claim against PGate or its subsidiaries or affiliated companies or their respective officers, directors, or employees. PGate's maximum liability hereunder for any claims whatsoever shall not exceed the total amount of all fees paid by Merchant to PGate during the three-month period preceding the origination of the claim giving rise to liability. No claim may be brought by Merchant or any of its affiliates more than one (1) year after the accrual of the claim. The limitations of liability contained in this section shall apply without regard to whether other provisions of the Terms and Conditions have been breached or have proven ineffective.

**c. Force Majeure.** Neither party shall be liable for, or be considered in breach of or default under the GSA on account of any delay or failure to perform its obligations hereunder as a result of any causes or conditions that are beyond such party's reasonable control and that such party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected party shall give prompt written notice to the other party and shall use all commercially reasonable efforts to minimize the impact of the event.

### **14. PGate SERVICE POLICY.**

**a. Outages.** Merchant acknowledges and understands that PGate does not warrant that the Services will be uninterrupted or error free and that PGate may occasionally experience delays or outages due to disruptions that are not within PGate's control. Any such interruption shall not be considered a breach of the GSA by PGate. PGate shall use its best efforts to remedy any such interruption in service as quickly as possible.

**b. Changes to Services.** PGate may modify the Services from time to time in PGate's reasonable discretion and upon reasonable electronic or written notice to Merchant, provided that such modifications

shall not materially diminish the functionality of the Services.

### **15. DISCLAIMER OF WARRANTIES.**

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, PGATE'S PRODUCTS AND SERVICES ARE PROVIDED HEREUNDER "AS IS" WITHOUT WARRANTY OF ANY KIND. Except as otherwise specifically provided herein, to the maximum extent permitted by law, PGate expressly disclaims any and all warranties, conditions, representations, and guarantees with respect to the PGate products and services, whether express or implied, arising by law, custom, prior oral or written statements, or otherwise, including without limitation, any warranty of merchantability, fitness for a particular purpose or non-infringement. No representation or other affirmation of fact, including, without limitation, statements regarding capacity, suitability for use or performance of the PGate products or services, whether made by employees of PGate or otherwise, which is not contained in these Terms and Conditions, shall be deemed to be a warranty by PGate for any purpose, or give rise to any liability of PGate whatsoever.

### **16. TERM AND TERMINATION.**

The term of the GSA shall be month to month, effective on the date the Merchant accepts this Agreement ("Effective Date"). Either party may terminate the GSA without cause on thirty (30) days' written notice to the other party. In the event of a breach of any provision of the GSA by either party, other than a failure by Merchant to remit timely payment, the other party must provide the breaching party written notice of breach. Should the breaching party fail to cure the breach within ten (10) days of notice, the non-breaching party may terminate this Agreement and seek legal remedy under the terms herein. Termination of the GSA shall in no way affect either parties' rights or obligations relating to services rendered prior to the termination.

### **17. AMENDMENT OR MODIFICATION OF TERMS.**

Unless otherwise provided for in these Terms and Conditions, PGate reserves the right to amend the terms of its agreement with Merchant upon at least ten (10) days written notice to Merchant. Merchant's continued use of the Services after receipt of such notice shall indicate Merchant's acceptance of the new terms. These Terms and Conditions are subject to such modifications, changes, and additions as may be required, or deemed to be required by PGate, by reason of any applicable Rule or Regulation.

### **18. ASSIGNMENT.**

The rights granted under the GSA are and shall be personal to Merchant and shall not be assigned by any act of Merchant or by operation of law, without the prior consent of PGate, which shall not be unreasonably withheld. Any attempt on the part of Merchant to sub-license or assign to third parties its rights or obligations hereunder without such consent shall constitute a material breach of its agreement

with PGate and grounds for termination of the GSA. PGate may assign its rights and obligations under the GSA without the approval of Merchant, but shall provide notice of such assignment to Merchant.

**19. NOTICE.**

Any notice required to be given by either party hereunder, excluding notice of changes in fees, shall be in writing and sent by any commercially reasonable means of delivery, addressed, to that party at the street address or electronic mail address most recently provided in writing. Either party may change the address to which notice is to be sent by written notice to the other under any provision of this paragraph.

**20. LEGAL FEES.**

In the event of any dispute arising out of or related to the GSA, the prevailing party shall be entitled to recover its reasonable attorney's fees, court costs and collection expenses in addition to any other recovery.

**21. GENERAL PROVISIONS.**

The GSA shall be binding on the parties effective on the date the Merchant accepts this Agreement. The GSA shall be governed by and construed in accordance with the internal laws of the state of Texas, and the parties consent to the jurisdiction and venue of the federal and state courts sitting in Collin County, Texas. No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of the GSA. Should any term, clause or provision hereof be found invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be construed to most closely reflect the original intent of the parties. The GSA constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties and is intended as a final expression of their agreement. Except as otherwise provided for herein, the GSA shall not be modified or amended except in writing.

APPENDIX A  
DEFINITIONS

ACH Network - Automated Clearing House Network is a batch processing, store-and-forward system that accumulates and distributes ACH transactions that are received from ODFI (defined below) and are forwarded to the specified RDFI (defined below) according to the specific schedules established by the participants.

ACH Transactions - All Entries, including but not limited to Debit and Credit Entries (defined below) that are transmitted through the ACH Network.

Affiliate - a business entity effectively controlling or controlled by another or associated with others under common ownership or control.

Business Banking Day - Monday through Friday, normal operating hours, excluding Federal holidays.

NACHA - National Automated Clearing House Association responsible for establishing, revising and enforcing the Operating Rules for the ACH Network.

Operating Rules (the "Rules") - the operational rules established by NACHA which govern all transactions and parties utilizing the ACH Network.

Regulations - All federal, state and local regulations that govern Internet business, consumer information and Transactions (as defined below), including but not limited to the FCRA, federal Regulation E and Title 31 of the Code of Federal Regulations Part 210, Gramm-Leach-Bliley Act, **Driver's Privacy Protection Act**, Fair Credit Reporting Act 15 U.S.C. § 1681 et seq. ("FCRA"); (b) the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq. (including the United States Federal Trade Commission rules promulgated thereunder) ("GLBA"), (c) the Driver's Privacy Protection Act, 18 U.S.C §2721, et. seq. ("DPPA")

Returned Entries - Any Transaction returned or rejected by ACHD or a third party.

Transactions - Any transfer of data or information from Merchant to ACHD in a format pre-approved by ACHD, including but not limited to ACH Transactions, Debit Entries, Credit Entries, Verification Entries and Authentication Entries.