

## INTERPAYMENTS AFFILIATE PARTNER PROGRAM AGREEMENT

This Agreement ("Agreement") is between InterPayments LLC ("InterPayments") and partner as named in signature block of this Agreement ("Affiliate Partner") (and together with InterPayments, the "Parties" and each a "Party") and is effective on the date you indicate acceptance of this Agreement ("Effective Date"). If you are an individual accepting these terms on behalf of an entity, you represent that (i) you have the legal authority to enter into this Agreement on that entity's behalf, (ii) you have read and understand the terms of this Agreement and (iii) you agree, on behalf of the entity that you represent, to the terms of this Agreement. This Agreement consists of the following terms and conditions:

1. **Definitions.** Capitalized terms used and not otherwise defined in this Agreement shall have the meanings set forth Merchant Agreement.

(a) **"Affiliate"** means any legal entity that owns, is owned by, or that is under common ownership with Affiliate Partner. Ownership means control of more than a 50% interest.

(b) **"Calculation Period"** means the applicable periods set forth on Schedule A hereto with respect to Joint Customers and on Schedule B hereto with respect to Specified Joint Customers. The Calculation Period shall be calculated separately for each Joint Customer and Specified Joint Customer and shall begin on the date the first Collected Fees accrue from such Joint Customer or Specified Joint Customer.

(c) **"Collected Fees"** means the amount of Fees (as defined in the Merchant Agreement) actually collected by InterPayments with respect to transactions by Joint Customers and Specified Joint Customers for the Term (or time period) specified in this Agreement or in the Affiliate Partner Form; provided such transactions were effected using the Affiliate Partner's proprietary products, services or technology (or any combination thereof) and which are not subject to refund, a bona fide dispute or reserve. For clarity, Fees shall exclude late payment interest/charges, sales tax as applicable, discounts, refunds, and chargebacks.

(d) **"Customer"** means any legal entity (other than Affiliate Partner or its Affiliates) that has entered into a Merchant Agreement with InterPayments, for so long as the term of that Merchant Agreement is continuing.

(e) **"Excluded Persons"** means any person or business (i) identified by InterPayments in writing (including by email) from time to time as being part of InterPayments' sales pipeline prior to Affiliate Partner having established a documented direct customer relationship with that person or business; or (ii) who ceases to be a customer of Affiliate Partner.

(f) **"Joint Customer"** means a Customer that has established a documented direct customer relationship with the Affiliate Partner; provided, that the term "Joint Customer" does not include any Excluded Persons and a Customer shall cease to be a Joint Customer upon the termination or lapse of such direct customer relationship.

(g) “**Merchant Agreement**” means the InterPayments agreement with a Customer that grants a right to the applicable InterPayments Technology to that Customer.

(h) “**Affiliate Partner**” means the company identified on the signature page of this Agreement.

(i) “**Affiliate Partner Fees**” means the amount of fees calculated pursuant to Section 2(a).

(j) “**Restricted Period**” means the period beginning on the date of this Agreement and ending on the date that is five (5) years after the date of the last Affiliate Partner Fees is due under this Agreement.

(k) “**Specified Joint Customers**” means the Joint Customers identified on Schedule B attached hereto.

## **2. Payments and Expenses.**

(a) Compensation of Affiliate Partner. InterPayments shall pay Affiliate Partner the percentage of the Collected Fees that is set forth in the Affiliate Order Form (if not in Affiliate Order Form, in Schedule A in the case of Joint Customers and on Schedule B in the case of Specified Joint Customers).

(b) Invoicing. InterPayments will be responsible for invoicing Customers in accordance with each Customer’s Merchant Agreement.

(c) Payments. InterPayments shall pay to Affiliate Partner the Affiliate Partner Fees not later than the 30th day of each month following the first full month of Collected Fees after this Agreement is executed by the parties. Notwithstanding the above, InterPayments may, at its discretion, withhold Affiliate Partner Fees payment until Affiliate Partner has accumulated a minimum of \$100.00 of Affiliate Partner Fees.

(d) Expenses. Each Party shall be solely responsible for the costs and expenses of performing its obligations under this Agreement, unless otherwise expressly provided herein.

(e) Other. InterPayments reserves the right to withhold and retain or pro-rate compensation payable to Affiliate Partner against all Collected Fees due to non-payment by customers, including, without limitation, failure to pay at the time of the last day of the prior month or remittance of a check to InterPayments with insufficient funds to cover amounts due. InterPayments shall be obligated to remit past due commissions or a pro-rated portion thereof to Affiliate Partner only upon and to the extent of collection of such amounts due from Joint Customers, less the amount of any collection costs. In the event that a Joint Customer does not pay InterPayments Fees due on or before the due date, InterPayments will notify Affiliate Partner in writing (email acceptable) of the default

and, upon the written request by InterPayments, Affiliate Partner will use all commercially reasonable efforts to collect past due amounts on behalf of InterPayments and if any such amounts are collected by Affiliate Partner, Affiliate Partner will remit collected funds to InterPayments with five (5) business days. Nothing herein shall limit InterPayments' right to pursue unpaid Fees due to InterPayments under any Merchant Agreement.

### **3. Warranties and Indemnification Obligations.**

(a) Warranties. InterPayments warrants that it shall make commercially reasonable efforts to make the InterPayments Technology available to Joint Customers pursuant to the terms of the applicable Merchant Agreement. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 3 AND SECTION 4, INTERPAYMENTS DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS, STATUTORY AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND ACCURACY (OF DATA OR ANY OTHER INFORMATION OR CONTENT), AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE AND INTERPAYMENTS SHALL NOT BE A THIRD PARTY BENEFICIARY OF ANY INTERPAYMENTS REPRESENTATION, WARRANTY OR COVENANT CONTAINED IN, A MERCHANT AGREEMENT.

(b) Limitations. InterPayments will not be liable for any claim to the extent that the claim or adverse final judgment is based on Affiliate Partner's: (i) distribution or use of any InterPayments Technology or Mark after InterPayments notifies Affiliate Partner to stop distribution or use of the any InterPayments Technology or Mark due to such a claim; (ii) combination of any InterPayments Technology with any non- InterPayments product, data or business process; (iii) damages attributable to the value of the use of a non-InterPayments product, data or business process; (iv) alteration of any InterPayments Technology; (v) use of InterPayments' Mark(s) without InterPayments' written consent to do so; or (vi) for any trade secret claim, Affiliate Partner's acquiring a trade secret (1) through improper means, (2) under circumstances giving rise to a duty to maintain its secrecy or limit its use, or (3) from a person who had a duty to maintain its secrecy or limit its use. Affiliate Partner will reimburse InterPayments for any costs or damages that result from these actions.

**4. Mutual Representations and Warranties.** Each Party represents and warrants to the other Party that (i) it has all necessary right, power and authority to enter into this Agreement and to perform its obligations hereunder; (ii) the execution and delivery of this Agreement, and the performance of its obligations hereunder, do not conflict with and will not result in a breach of any other agreements to which it is a Party or by which its assets are bound; and (iii) this Agreement constitutes the legally valid and binding obligation of such Party enforceable against it in accordance with its terms, except as such enforcement may be limited by applicable law or equitable principles.

### **5. Limitation of Liability.**

EXCEPT WITH RESPECT TO INDEMNIFICATION OBLIGATIONS, AND CLAIMS ARISING FROM A PARTY'S FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR BREACH OF SECTION 7(C) (CONFIDENTIALITY), NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT,

INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOST DATA, BUSINESS INTERRUPTION, LOST PROFITS, LOST REVENUE OR LOST BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS WILL APPLY (A) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND (B) EVEN IF AN EXCLUSIVE OR LIMITED REMEDY STATED HEREIN FAILS OF ITS ESSENTIAL PURPOSE. EACH PARTY'S LIABILITY TO THE OTHER PARTY OR ITS AFFILIATES FOR LOSS OR DAMAGE OF ANY KIND SHALL BE REDUCED TO THE EXTENT THAT THE OTHER PARTY, ANY AFFILIATE THEREOF OR ANY OF ITS OR THEIR OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS OR AGENTS CONTRIBUTED TO THAT LOSS OR DAMAGE.

## **6. Term and Termination.**

(a) Term. The term of this Agreement shall commence on the date it is executed by both parties and shall remain in effect until terminated as set forth below.

(b) Termination Without Cause. Either Party can terminate this Agreement at any time without cause and without intervention of the courts by giving the other Party not less than thirty (30) days' written notice. Neither Party will have to pay the other Party any costs or damages resulting from termination of this Agreement in accordance with the terms hereof. Notwithstanding sections 6(a) and 6(b), InterPayments shall continue to compensate Affiliate Partner on revenues generated by Customers under the terms of this Agreement and the Affiliate Partner Form.

## **7. Miscellaneous Provisions.**

(a) Force Majeure. Neither Party shall be deemed in default or otherwise liable for any delay in or failure of its performance under this Agreement by reason of any act of God, fire, natural disaster, accident, riot, terrorism, act of government, strike or labor dispute, shortage of materials or supplies, pandemic, or any other cause beyond the reasonable control of such Party.

(b) Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all previous or contemporaneous agreements, proposals, understandings, and representations, written or oral, with respect to the terms and conditions hereof. This Agreement may not be modified or amended except in a writing signed by both Parties.

(c) Confidentiality. The parties agree to not disclose (i) each other's Confidential Information or (ii) the terms of this Agreement during the Term of this Agreement and throughout the Restricted Period.

(d) Governing Law and Dispute Resolution. If there is any dispute between the Parties arising out of this Agreement (each, a "Dispute"), then authorized representatives of each Party will negotiate in good faith to resolve the Dispute. If such representatives cannot resolve the Dispute after thirty (30) days of good faith negotiations or if a Party fails to participate in good faith efforts to resolve the Dispute, then the Dispute shall be determined by binding arbitration in San Francisco, CA. The arbitration shall be

conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") in effect at the time of the Dispute, subject to any modifications contained in this Agreement. The Dispute shall be determined by one arbitrator. The award shall be in writing and include the findings of fact and conclusions of law upon which it is based. Unless the parties agree otherwise, discovery will be limited to an exchange of directly relevant documents. Depositions will not be taken except as needed in lieu of a live appearance or upon mutual agreement of the parties. The arbitrator shall resolve any discovery disputes. The arbitrator and counsel of record will have the power of subpoena process as provided by law. The parties knowingly and voluntarily waive their rights to have any Dispute tried and adjudicated by a judge or a jury. The arbitration shall be governed by the substantive laws of the State of Delaware, without regard to conflicts-of-law rules, and by the arbitration law of the Federal Arbitration Act (Title 9, U.S. Code). Judgment upon the award rendered may be entered in any court having jurisdiction. Notwithstanding the foregoing, upon the application by either party to a court for an order confirming, modifying or vacating the award, the court shall have the power to review whether, as a matter of law based on the findings of fact determined by the arbitrator(s), the award should be confirmed, modified or vacated in order to correct any errors of law made by the arbitrator(s). In order to effectuate such judicial review limited to issues of law, the parties agree (and shall stipulate to the court) that the findings of fact made by the arbitrator(s) shall be final and binding on the parties and shall serve as the facts to be submitted to and relied upon by the court in determining the extent to which the award should be confirmed, modified or vacated. Except as otherwise required by law, the parties and the arbitrator(s) agree to keep confidential and not disclose to third parties any information or documents obtained in connection with the arbitration process, including the resolution of the Dispute. The prevailing party shall be entitled to be awarded costs, including reasonable attorney's fees, paid or incurred in successfully compelling and/or participating in such arbitration and/or successfully defending or enforcing the award. Customer may bring claims only on its own behalf and agrees that it shall not participate in any class action or class-wide arbitration or any consolidated claims arising from or related to this Agreement or which name InterPayments as a party to the proceeding. Any provision of applicable law notwithstanding, the arbitrator will not have authority to award damages, remedies or awards that conflict with this Agreement. Notwithstanding any contrary provisions of this Agreement, the Parties agree that the dispute resolution procedures and monetary damages may be inadequate to address the breach or threatened breach and the aggrieved party shall, in the event of any such breach or threatened breach, be entitled to seek equitable relief, including without limitation, injunctive relief and specific performance, in addition to any other remedies provided hereunder or available at law and without the requirement to post bond.

(e) Class Action Waiver. IN ANY DISPUTE, NEITHER INTERPAYMENTS NOR AFFILIATE PARTNER SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST EACH OTHER, OR ARBITRATE ANY CLAIM AS A REPRESENTATIVE OR CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. EACH OF AFFILIATE PARTNER AND INTERPAYMENTS ACKNOWLEDGE THAT IT IS GIVING UP ITS RIGHT TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO ANY SUCH CLAIM.

(f) Notices. Any notice, request, demand or other communication required or

permitted hereunder shall be in writing, shall reference this Agreement and shall be deemed to be properly given: (a) when delivered personally; (b) seven (7) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (c) two (2) business days after deposit with an express courier, with written confirmation of receipt. All notices shall be sent to the address set forth below (or to such other address as a Party may specify in writing pursuant to this Section):

If to InterPayments:  
InterPayments LLC  
Attention: Brandon Bentley, General Counsel  
145 Forest Ave.  
Palo Alto, CA 94301  
Email: [support@interpayments.com](mailto:support@interpayments.com)

(g) Severability; Waiver. In the event that any one or more of the provisions of this Agreement is held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected, or if any one or more of the provisions contained herein shall be held to be excessively broad as to duration, activity or subject, such provision shall be construed by limiting and reducing such provisions so as to be enforceable to the maximum extent compatible with applicable law. The waiver by either Party of any default or breach of this Agreement shall not be effective unless given in a signed writing and shall not constitute a continuing waiver or waiver of any other or subsequent default or breach.

(h) Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.

(i) Further Assurances. Each Party agrees to execute and deliver such other and further documents and instruments as may be necessary to effectuate the intent and purposes of this Agreement upon request by the other Party.

(j) Third Parties. Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any person not an express Party to this Agreement; or (c) give any person not an express Party to this Agreement any right of subrogation or action against any Party to this Agreement.

(k) Contract Interpretation. No provision of this Agreement shall be construed for or against either Party because of the authorship of that provision.

(l) Counterparts; Electronic Copies. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall be taken together and deemed to be one instrument. For purposes of executing this Agreement, transmitted copies by facsimile or other electronic means of this Agreement (including any signature pages) are hereby deemed to be equivalent of the original documents until such time as original documents are completely executed and delivered.

(m) Relationship between Affiliate Partner and InterPayments. Even though Affiliate Partner and InterPayments may call each other a 'partner', Affiliate Partner and InterPayments are independent contractors for all purposes regarding this Agreement. Affiliate Partner does not have the power to bind InterPayments. Affiliate Partner does not have the power to change any terms, conditions, warranties, or covenants made by InterPayments. Affiliate Partner does not have the power to give any person any rights that InterPayments has not previously authorized in writing. Affiliate Partner and InterPayments are not a partnership (as the term is used in applicable partnership laws to refer to a legal partnership entity) or joint venture. Affiliate Partner and InterPayments do not have any agency, franchise, or fiduciary relationship.

**IN WITNESS WHEREOF**, each Party has caused this Agreement to be executed by its authorized representative as of the date set forth below.

# InterPayments

[www.interpayments.com](http://www.interpayments.com)

[sales@interpayments.com](mailto:sales@interpayments.com)

145 Forest Ave. Palo Alto, CA 94301

## **SCHEDULE A**

### **Joint Customers**

Share of Collected Fees Accruing to InterPayments	Share of Collected Fees Accruing to Affiliate Partner
<i>Described in the Affiliate Partner Form</i>	<i>Described in the Affiliate Partner Form</i>



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## SCHEDULE B

### Specified Joint Customers

Specified Joint Customer Name	Share of Collected Fees Accruing to InterPayments	Share of Collected Fees Accruing to Affiliate Partner
	<i>Described in the Affiliate Partner Form</i>	<i>Described in the Affiliate Partner Form</i>