

**Merchant Support Network, Inc.**  
**Referral Affiliate Program Agreement**

This Referral Affiliate Program Agreement (the “Agreement”) is made and entered into on \_\_\_\_\_, 2012 (the “Effective Date”), by and between \_\_\_\_\_ (the “Affiliate”), a \_\_\_\_\_ [corporation/LLC/individual] located at \_\_\_\_\_, and Merchant Support Network, Inc. (“MSNI”), a California corporation located at 1633 Bayshore Highway, Suite 327, Burlingame, CA 94010. The parties agree to the following terms and conditions relating to MSNI’s Referral Affiliate Program (the “RAP”).

1. **Merchant Services.** MSNI (and its vendors) will provide merchant services to any customer account referred by Affiliate, provided MSNI approves such account. Such merchant services will include all sales, servicing and ongoing support, a 24-hour help desk, and personalized support and service for all hardware and software utilized for the purpose of processing credit card transactions (collectively, the “Merchant Services”). Affiliate agrees to use reasonable efforts to refer its customers to MSNI’s Merchant Services on a non-exclusive basis.

2. **Promotion and Training.**

(a) MSNI shall provide sales and marketing training and support to Affiliate as reasonably necessary to assist in the marketing and promotion of the Merchant Services. All sales representatives of MSNI shall be assigned by MSNI and shall provide prompt and reasonable response on all sales and service requests.

(b) MSNI shall supply to Affiliate, without cost, from time to time, at Affiliate’s place of business, reasonable quantities of MSNI’s advertising and selling literature, as designed and made available by MSNI, which would be helpful in procuring orders for the Merchant Services. MSNI shall strive diligently to maintain and enhance the reputation, usefulness, and acceptance of the Merchant Services, and in all reasonable and proper ways to assist Affiliate in promoting the Merchant Services.

3. **Software and Equipment.** MSNI shall provide to each customer referred by Affiliate hereunder an appropriate credit card processing program that best meets the customer’s requirements. MSNI shall have the absolute right to establish the terms and conditions of the Merchant Services that MSNI furnishes to its customers. In the unlikely event that MSNI is unable to approve a customer account, such customer may seek Merchant Services from any other third party processor, and is under no obligation to MSNI.

4. **Referral Fees & Connector Fees.**

(a) **Definitions.**

(i) “Net Monthly Residual Income” shall mean the monthly income received by MSNI from all Referral Accounts minus any refunds, chargebacks, credits, discounts, or any other adjustments issued to any Referral Account.

(ii) “Referral Account” is defined as a customer referred by Affiliate that becomes a client of MSNI for Merchant Services.

(b) Referral Fees. MSNI shall pay to Affiliate a referral fee (the “Referral Fees”) for any Referral Account for Merchant Services (MasterCard/Visa only) that Affiliate refers to MSNI pursuant to the RAP. The Referral Fees shall equal twenty five (25%) of the Net Monthly Residual Income.

(c) Connector Fees. In addition to the Referral Fees for referring a Referral Account to MSNI, Affiliate is also eligible to receive a “Connector Fee” when Affiliate refers another affiliate (whether an individual or an entity separate from Affiliate) who agrees to refer clients to MSNI by joining the RAP and executing a similar written RAP agreement with MSNI. Affiliate shall be designated as the “Connector” in MSNI’s RAP agreement with that new affiliate referred by Affiliate (the “Newly Connected Affiliate”). As a Connector, Affiliate shall receive a Connector Fee equal to ten percent (10%) of the Net Monthly Residual Income from any referral accounts referred or introduced by the Newly Connected Affiliate. Affiliate cannot be both a Connector and Referral Affiliate on the same account, and therefore is not eligible to receive both a Referral Fee and Connector Fee on the same Referral Account.

(d) Time of Payment. MSNI shall pay the Referral Fee and Connector Fee on a monthly basis.

5. Liability & Indemnity. MSNI shall assume all liability for all Merchant Services placed and serviced for any Referral Account hereunder. Affiliate shall not incur any liability from such Merchant Services referred to and furnished by MSNI.

(a) Indemnity by MSNI. Unless caused by the willful misconduct or gross negligence of Affiliate, MSNI shall indemnify the Affiliate and hold the Affiliate, its agents, employees, and officers harmless from any liability, damage, loss, or cause of action arising out of or resulting, directly or indirectly, from (a) any breach of this Agreement by MSNI; (b) any actual or alleged violation of any applicable local, state, or federal law for which MSNI has responsibility hereunder; and (c) any act or omission by MSNI, its agents, or employees in the course of providing services under this agreement.

(b) Indemnity by Affiliate. Unless caused by the willful misconduct or gross negligence of MSNI, the Affiliate will indemnify and hold harmless MSNI, its agents, employees, and officers from every liability, damage, loss or cause of action arising out of or resulting, directly or indirectly, from (a) any breach of this agreement by Affiliate; (b) any actual or alleged violation of any applicable, local, state or federal law for which Affiliate has responsibility hereunder; and (c) any negligent act or omission by Affiliate, its agents or employees.

6. Term and Termination. This initial term of this Agreement shall be for one year, commencing from the Effective Date, and shall then continue indefinitely thereafter until terminated by either party following thirty (30) days written notice to the other party.

- (a) Effect of Termination. MSNI's obligation to pay the Referral Fees and Connector Fees shall survive the termination of the Agreement, provided that the Referral Account is still active, and such referred customers continues to use the Merchant Services furnished by MSNI. Affiliate acknowledges that MSNI's customers have a right to terminate any Merchant Account, at which time a processor's exit fee may be incurred by such customer.

7. Representations.

- (a) Authority. Each of the undersigned has necessary authority to enter into this Agreement on behalf of MSNI and Affiliate.
- (b) Compliance with Law. MSNI shall comply with all applicable regulations of VISA U.S.A., Inc. and MasterCard International Incorporated as well as federal, state, and local laws in connection with the performance of its Merchant Services hereunder.

8. Confidentiality. The parties agree that during the term of this Agreement and thereafter, Confidential Information, including financial terms of this Agreement, is to be used solely in connection with satisfying obligations pursuant to this Agreement, and that the parties shall receive such Confidential Information in confidence and not disclose such Confidential Information to any third party or use such information to its own benefit. Confidential Information is to be broadly defined, and includes all information that has or could have commercial value or other utility in the businesses that the parties are engaged, and all information of which the unauthorized disclosure could be detrimental to the interests of either party.

Confidential Information does not include information:

- (i) that enters into the public domain other than through the unauthorized disclosure by the receiving party;
- (ii) that was, or is, known to the receiving party at the time of disclosure; or
- (iii) that was, is, or becomes, legally available to the receiving party by a third party having the lawful right to disclose such information, and owing no obligation of confidentiality of the information to the disclosing party.

9. Non-Interference with Business. Affiliate shall not cause or permit any of its employees, agents, subsidiaries, or any other person or entity to solicit or otherwise cause any of MSNI's customers, including any customers of the Referral Accounts, to terminate its relationship with MSNI, and to engage another provider for the furnishing of Merchant Services.

10. Limitation on Liability. NEITHER PARTY SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) ARISING FROM THIS AGREEMENT. IN ADDITION, THE

PARTIES AGREE THAT IN NO EVENT SHALL THE TOTAL LIABILITY OF EITHER PARTY BE GREATER THAN THE AGGREGATE DOLLAR AMOUNT THAT MSNI PAID TO BANK UNDER THIS AGREEMENT, INCLUDING ANY REASONABLE ATTORNEYS' FEES AND COURT COSTS.

11. Miscellaneous Terms.

(a) No Third Party Beneficiary Rights. Affiliate acknowledges and agrees that it has not rights as a third party beneficiary to any Merchant Agreements between MSNI and its customers. Affiliate's sole compensation are the Referral Fees and Connector Fees set forth in section 4 hereinabove.

(b) Severability. The invalidity of any section or subsection hereof shall not affect the validity of any other section or subsection hereof.

(c) Counterparts. This Agreement and any amendment hereto or any other agreement (or document) delivered pursuant hereto may be executed in one or more counterparts and by different parties in separate counterparts. All of such counterparts shall constitute one and the same agreement (or other document).

(d) Section Headings. The section headings contained in this Agreement are for convenient reference only and shall not in any way affect the meaning or interpretation of this Agreement.

(e) Waiver of Breach. The failure of any party hereto at any time or from time to time to require performance of any obligation under this Agreement shall in no manner affect the right to enforce any provision of this Agreement at a subsequent time, and the waiver of any right arising out of any breach shall not be construed as a waiver of any right arising out of any subsequent breach.

(f) Amendments. This Agreement may not be amended orally but only by subsequent agreements in writing executed by Affiliate and a duly authorized officer of MSNI.

(g) Assignment. This Agreement may not be assigned by Affiliate, without the written consent of MSNI, which shall not be unreasonably withheld. MSNI may assign this Agreement upon thirty (30) days written notice to Affiliate and with Affiliate's written consent not reasonably withheld.

(h) Notices. All notices, requests, demands, consents, and other communications required or permitted hereunder shall be in writing, and shall be deemed to have been duly given when delivered or when deposited in a United States postal service letter box for mailing by first class mail, postage prepaid, certified mail, with return receipt requested (regardless of whether the return receipt is subsequently received), and addressed by the sender as follows:

If to MSNI:  
Merchant Support Network, Inc.  
1633 Bayshore Highway, Suite 327  
Burlingame, CA 94010  
Attention: General Counsel

If to Affiliate:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

(i) Jurisdiction and Venue; Governing Law. Jurisdiction and venue for any claim or cause of action arising under this Agreement shall be exclusively in the state courts located in San Mateo County, California. This Agreement shall be governed and construed in accordance with the laws of the State of California.

(j) Entire Agreement; Binding Effect. This Agreement embodies the entire understanding and agreement of the parties with respect to the subject matter hereof. This Agreement shall be binding upon and shall inure only to the benefit of the parties hereto and any permitted successors and assigns.

(k) Electronic Signatures. Each party agrees that (i) any signed document transmitted by facsimile transmission or electronically (e.g. in .pdf format) (a “E-Document”) shall be treated in all manner and respects as an original document, (ii) the signature of any party on such E-Document shall be considered an original for all purposes under this Agreement, and (iii) any E-Document shall be considered to have the same binding and legal effect as an original document.

This Agreement is executed as of the date stated on the first page hereof.

**MSNI**

**AFFILIATE**

By: \_\_\_\_\_  
Paul Coleman  
President and CEO  
Merchant Support Network, Inc.

By: \_\_\_\_\_  
[Name\_\_\_\_\_]  
[Title\_\_\_\_\_]  
[Name of Entity if applicable]