

RESELLER AGREEMENT

This Agreement is made and entered into in as of this ____ day of _____, 2018 by and between **TX DIRECT, LLC**, DBA ePaymentAmerica a New York limited liability company ("**TXD**") and _____ (the "**Reseller**").

RECITALS

TXD is engaged in the business of selling products and services related to credit card processing (the "**Products**"). Reseller from time to time may come in contact with parties who may be potential users of the Products and this Agreement will describe the terms upon which Reseller shall be able to sell the Products.

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto to the other, it is agreed as follows:

AGREEMENT

1. Provision of Services.

Reseller agrees to and shall solicit sales of the Products in the United States to those accounts which may be designated by TXD from time to time and those accounts identified by Reseller (collectively "**Customers**") who are or which may be interested in acquiring the Products.

All orders for sales of the Products shall be effective only upon acceptance by TXD at its office in Memphis, Tennessee. All credit approvals, billings and orders of the Products shall be handled by TXD directly. The Reseller shall have no authority to make any credit approvals or collections on behalf of the accounts of TXD. TXD reserves the right to decline any submitted merchant accounts delivered by Reseller.

2. Performance. Reseller shall maintain its own schedule and shall determine in its sole discretion the manner of performance and the amount of time to devote to the solicitation of sales of the Products. Reseller is free to hire his own helpers and employees provided that Reseller shall be solely responsible for the compensation and supervision of any such helpers or employees of Reseller.

3. Remuneration.

A. TXD shall pay Reseller, as his sole compensation, commission as set forth in the chart attached hereto as Exhibit A and incorporated herein by reference. There is no cap on commission, which may be earned by Reseller under the terms of this Agreement, except that all commissions shall cease forever upon the expiration of the term of the initial merchant contract for each merchant secured by Reseller and accepted by TXD. However, in the event that Reseller is solely responsible for renewing an account opened by Reseller, TXD shall pay Reseller commission on said account again during the renewal term. As set out more fully in Exhibit A, a commission shall be earned only upon receipt by TXD of full payment from TXD's customer. In the event that TXD transfers ownership of any of Reseller's accounts to a third party, Reseller shall remain entitled to his commissions as set forth in Exhibit A for the duration of the initial term of this Agreement.

B. Price discounts other than as set forth in TXD's price schedules shall only be made with prior written approval of TXD. In such event approval is given, commissions earned by Reseller shall be as mutually agreed in writing between Reseller and TXD.

C. While TXD typically will not revise Exhibit A more than once per calendar year; TXD may request a modification to Exhibit A at any time during the year. Any such agreed upon changes will become effective immediately. Reseller will then be paid based on the revised Exhibit A on orders submitted and accepted by TXD after the date of revision.

4. Sale Price of Products. TXD shall determine all prices and terms of sale for its Products as set forth in the pricing grid attached hereto as Exhibit B. TXD will notify Reseller of price changes to the pricing grid.

5. TXD's Assistance to Reseller. TXD may in its sole discretion supply the Reseller with appropriate sample Products, catalogs and advertising data which shall be reasonably necessary to assist the Reseller in making and promoting sales of Products.

6. Warranties. The Reseller shall not make any warranties with respect to the Products of TXD. Reseller understands and agrees that TXD MAKES NO EXPRESS OR IMPLIED WARRANTY, REPRESENTATION OR INDEMNITY, WITH RESPECT TO PRODUCTS. TXD DISCLAIMS ALL SUCH WARRANTIES, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, SYSTEM INTEGRATION AND DATA ACCURACY.

7. Conditions; Exclusivity. Reseller hereby agrees that during the initial term of this Agreement he shall not sell or offer for sale services or products (credit and debit card processing, gift cards and check guarantee/conversion) related to the Products for any party other than TXD.

8. **Term.** The term of this Agreement shall be thirty six (36) months from the date of this Agreement and shall renew automatically for additional one (1) year terms unless written notice of termination is given by either party no less than thirty (30) days prior to any renewal date. Reseller may opt out of this Agreement after the first six (6) months with no further obligation.

9. **Relationship of Parties.** Reseller is and at all times shall be an independent Reseller of TXD and not a partner or employee of TXD. Reseller shall represent itself to all Customers and all other persons only as an independent representative and not as an employee or partner of TXD. Remuneration to Reseller shall not be subject to withholding or other employment taxes as required for compensation paid to employees. Reseller shall timely file all required United States federal, state and local income, self-employment, unemployment and other tax, labor, information and all other returns and shall pay when due all taxes on account of its remuneration hereunder. The provisions of the preceding sentence shall survive the termination of this Agreement. Under no circumstances shall Reseller have the authority to bind or otherwise obligate TXD without the express written consent of TXD. No workers compensation insurance has been or will be obtained by TXD on account of Reseller or its employees. Reseller shall comply with the workers' compensation laws with respect to its employees.

10. **Expenses.** Reseller shall be responsible for and shall pay, and hereby indemnifies TXD against, all expenses incurred in connection with soliciting the sale of the Products.

11. **Confidentiality.**

A. Reseller agrees that it will not, at any time during the term of this Agreement or thereafter, in any form or manner, directly or indirectly, voluntarily or involuntarily, disclose, furnish or make accessible to any person or other entity or use for its own benefit, other than in furtherance of the business and interests of TXD, any Confidential Information (hereinafter defined) which it may obtain or have access to, receive, contribute to, originate, discover or relating to Trade Secrets (as that term is defined under all applicable laws), products, customers, bona fide sales leads, services and pricing/sales information. Confidential Information shall include, without limitation, any of the following types of information outside of the public domain:

(i) Any and all forms of raw and other data relating to TXD's business, the Products or processes, whether or not marked "**confidential**", derived from any and all sources, including without limitation: meetings; information from correspondence or otherwise analyzed data; computer printouts; computer programs; flow charts; graphs and graphic materials.

(ii) Any and all materials, documents, information, systems, processes and techniques relating to the Products, its computer software, market or other research techniques, and any and all materials, documents, information, systems, processes obtained from or on behalf of or at the direction of TXD, or any current or prospective customer of TXD.

(iii) Any and all information, computer printouts, materials, documents,

processes, schematics, compilations or reports relating to the sales history of any current or prospective customer, customer files, pricing structure, rebates, marketing information, customer base or business forms of TXD.

B. Reseller confirms, acknowledges and agrees that any and all tangible and intangible records, tapes, notes, pictures, video tapes, printouts and documents which it may use, create, utilize or possess during the term of this Agreement, including but not limited to those written, produced or created by Reseller, are the sole and exclusive property of TXD and may not be duplicated for Reseller's own benefit without the express written consent of TXD. All such items in Reseller's possession or control will be immediately delivered to TXD upon request and, if not earlier requested, upon the termination of this Agreement.

C. The provisions of this Section 11 shall survive termination of this Agreement, and shall survive the Term of this Agreement for a period of four (4) years following termination of the Agreement.

12. Restrictive Covenant. In view of Reseller's access to Confidential Information and Trade Secrets of TXD and in consideration of the value of such property to TXD, during the term of this Agreement and for a period of two years after termination of this Agreement for any reason, Reseller shall not, without the prior written consent of TXD, in any manner, directly or indirectly:

A. Contact or solicit the trade or patronage of any of the customers of TXD for itself or any other person or entity, with respect to services or products competitive to the Products. The term "**customers**" shall for purposes hereof be deemed to include, without limitation, the officers, directors, agents, employees, parents, subsidiaries and affiliates of such customers, and all persons or organizations with whom TXD has done business, within the twelve (12) month period preceding Reseller's termination of this Agreement and shall also include specific bona fide sales leads provided to the Reseller by TXD.

B. Solicit, induce or attempt to induce any employee of TXD to leave TXD's employ to become connected in any way with, or employ or utilize any such employee in, any other business engaged in the sale or distribution of products similar to TXD's.

13. Remedies.

A. In view of Reseller's access to Confidential Information and Trade Secrets of TXD and in consideration of the value of such property to TXD, Reseller agrees that the covenants contained herein are necessary to protect the interests of TXD in Confidential Information and Trade Secrets, and to protect and maintain customer relationships and other legitimate, proprietary interests of TXD, both actual and potential, which Reseller would not have had access to or any involvement in but for the independent Reseller relationship with TXD.

B. Reseller confirms, acknowledges and agrees that enforcement of the covenants herein would not prevent Reseller from earning a livelihood. Reseller further agrees that in the event of an actual or threatened breach by Reseller of any of the covenants set forth herein, TXD would be irreparably harmed and the full extent of injury resulting therefrom would be impossible to calculate and TXD therefore will not have an adequate remedy at law. Accordingly, Reseller agrees that temporary and permanent injunctive relief would be appropriate remedies against such breach, without bond or security; provided, however, that nothing herein shall be construed as limiting any other legal or equitable remedies available to TXD.

C. Reseller shall pay all costs and expenses, including without limitation, court costs, investigation costs, expert witness fees, and attorneys' fees, incurred by TXD in connection with the successful enforcement by TXD of its rights under this Agreement. TXD shall have the right to disclose the contents of this Agreement or to deliver a copy of this Agreement bearing Reseller's signature to any person to whom or for which or for whose or which benefit TXD reasonably believes the Reseller has solicited, or has or may disclose or use any Confidential Information or Trade Secrets in violation of this Agreement.

14. No Employee Benefits. Reseller acknowledges and agrees that he shall not be eligible for any benefits payable to employees of TXD.

15. Assignment. This Agreement may not be assigned by either party in whole or in part without the prior written consent of the other party hereto, except as specifically provided herein. This Agreement may be assigned by TXD, in its sole discretion, to any subsidiary or affiliate of TXD or to any successor of TXD either by merger or acquisition of substantially all of the assets or the business of TXD as a going concern.

16. Applicable Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Tennessee, without reference to any conflicts of law provisions of the State of Tennessee. The parties hereby consent irrevocably to the personal jurisdiction of any court sitting in Shelby County, Tennessee as the exclusive forum to resolve any dispute related to this Agreement and/or the relationship between the parties.

17. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal or personal representatives, successors and assigns.

18. Notice. All notices required hereunder shall be in writing and shall be deemed to have been given if delivered personally or by United States certified or registered mail, postage prepaid, return receipt requested, or by a recognized overnight delivery service to the parties at their respective addresses set forth below their signatures to this Agreement, or to such other address as shall be specified in writing by either party to the other in like fashion.

19. Entire Agreement. This Agreement sets forth and constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof. This Agreement supersedes any and all prior agreements, negotiations, correspondence, undertakings, promises, covenants, arrangements, communications, representations and warranties, whether oral or written (together the "**Prior Communications**") of any party to this Agreement and no party to this Agreement may rely or shall be deemed to have relied upon any Prior Communications.

20. Indemnity. Reseller for itself and its successors and assigns hereby indemnifies TXD and agrees to and shall hold TXD harmless of, from and against, and agrees to and shall pay on demand, any and all claims, costs, damages, demands, expenses, payments, charges, fees, executions, suits, sums of money, repayments, penalties, reimbursements and judgments whatsoever, including without limitation court costs and attorneys' fees, whether known or unknown or suspected or unsuspected, for, upon or by reason of any manner, cause or thing whatsoever in any way or to any extent directly or indirectly arising from or out of, related to, as a consequence of, or connected with Reseller's negligent act or omissions and/or breach of this Agreement.

21. Severability. If any provision of this Agreement shall be declared by any court of competent jurisdiction to be illegal, void or unenforceable, the other provisions hereof shall not be affected thereby but shall remain in full force and effect. Furthermore, if any of the restrictions regarding post-termination activities is found to be unreasonable or invalid, the court before which the matter is pending shall enforce the restriction to the maximum extent it deems to be valid and enforceable. Such restrictions shall be considered divisible both as to time and as to geographical scope.

22. Waiver. Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of such terms, covenants and conditions or of any similar right or power hereunder at any subsequent time.

23. Amendment. This Agreement may not be amended except by a writing executed by both parties hereto.

24. Construction. Whenever applicable in this Agreement, the singular and the plural, and the masculine, feminine and neuter shall be freely interchangeable, as the context requires. The Section headings or titles shall not in any way control the construction of the language herein, such headings or titles having been inserted solely for the purpose of simplified reference. Words such as "herein", "hereof", "hereinafter", "hereby", and "hereinabove" when used in this Agreement refer to this Agreement as a whole, unless otherwise required by the context. The Recitals constitute an integral part of this Agreement and are fully incorporated herein. All Section and subsection references set forth herein refer to the corresponding Sections and subsections of this Agreement.

25. Further Assurances. Reseller agrees to and shall execute and deliver such further instruments and perform such further acts as may be requested by TXD or which are otherwise required to carry out the intent and purposes of this Agreement.

26. Merchant Agreements. Reseller acknowledges that throughout the course of this agreement, TXD has exclusive right, title, and interest to merchant agreements.

27. Counterpart Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day, month and year first above written.

TX DIRECT, LLC DBA ePaymentAmerica

By: _____

RESELLER:

JOINDER*

The undersigned, the sole shareholder, officer and employee of Reseller, and as a material inducement for TXD to execute and deliver this Agreement, hereby joins in this Agreement for purposes of acknowledging and agreeing to the terms and conditions of this Agreement and intending to be legally bound as if a party thereto.

DATED: _____

[*Applicable if Reseller is a Corporation or an LLC]

EXHIBIT A

- **50/50 Revenue Split for Merchant Net Processing Income**

Reseller receives 50% of all net processing income generated from customers

- **Payments of Residual**

Reseller will receive the monthly payout of their customers' net income around the 20th of each month for prior's month's processing

Buy Out

ePaymentAmerica reserves the right to buy out Reseller's residual upon Reseller's approval. Residual buy out is capped at 10 months total.