

LinkPoint End User Agreement

You, as the end user person or entity (“You” or “Your”) agree and consent to the terms and conditions of this End User Agreement (the “Agreement”) for processing payment transactions on the LinkPoint Secure Payment Gateway operated and owned by LinkPoint International, Inc., a Nevada corporation (“LinkPoint”). No payment transactions may be processed without prior acceptance of the terms of this Agreement. If You do not agree to all of the terms of this Agreement, do not use this product.

1. **Right to Use LinkPoint Secure Payment Gateway.** Upon payment of the appropriate fees, LinkPoint hereby grants You a limited, non-exclusive, non-transferable, non-assignable, revocable right, under intellectual property rights owned or licensed by LinkPoint, to access and use the LinkPoint Secure Payment Gateway solely for viewing and managing electronic payment transactions, sending payment transaction data, and viewing responses subject to the terms and conditions of this Agreement. Except as expressly provided above, no license for any patents, copyrights, trademarks, trade secrets or any other intellectual property rights, express or implied, are granted hereunder.
2. **Conditional Grant of License.** In addition to Your right to use the LinkPoint Secure Payment Gateway, LinkPoint, in conjunction with its authorized sales agents, may make available to You certain software product(s), including written instructions and software in machine executable code, which will enable You to build custom functionality around Your web site (the “Software”). Upon Your election to utilize the Software and payment of the appropriate fees, if any, LinkPoint hereby grants to You a limited, non-exclusive, non-transferable, non-assignable, revocable license, under intellectual property rights owned or licensed by LinkPoint, to install, execute and/or use the Software subject to the terms and conditions set forth below. Such license extends only to You, Your employees, and Your contractors subject to a written agreement that is at least as protective of LinkPoint and LinkPoint’s products and Software as the terms contained herein and only to the extent that the Software is used solely for the purposes authorized herein. You may copy the Software only for archival purposes, provided any copy must contain all of the original Software’s proprietary notices. Except as expressly provided in this Agreement, You shall not, and shall not knowingly cause or permit any non-party to this Agreement to use or reproduce the Software. You shall not, and shall not knowingly cause or permit any non-party to this Agreement to disassemble, decompile, decrypt, extract, reverse engineer, prepare a derivative work of, or modify the Software, or otherwise apply any procedure or process to the Software in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the Software or any algorithm, process, procedure or other information contained in the Software. Except as expressly authorized herein, You shall not, and shall not knowingly cause or permit any non-party to this Agreement to rent, lease, assign, sublicense, transfer, distribute, allow access to, or time share the Software. This license does not grant You any right to any enhancement or update to or new release of the Software. You may obtain such updates, if available, at LinkPoint’s then-current terms and conditions. You agree to use only the latest version of the Software and agree to any automated upgrades thereof. You understand that LinkPoint is not responsible or liable for Your use of any outdated product version and acknowledge and agree that no technical support will be available to You for outdated product versions. The license granted to You hereunder is subject to other licenses currently held by Linkpoint. Should any license held by Linkpoint to certain technology or software be terminated or suspended, the corresponding license granted to You hereunder may also be terminated or suspended in the sole and absolute discretion of LinkPoint. You acknowledge and agree to such potential termination or suspension and hereby waive all damages, whether actual, incidental or consequential resulting therefrom.
3. **Services.** LinkPoint agrees to perform payment processing services including, but not limited to, authorization of transactions, transmission of transactions to the appropriate payment processing network, transaction responses (approved/declined), and the detailed reporting of those transactions.
4. **Pricing.** You will be charged fees for using the LinkPoint Secure Payment Gateway by Your authorized LinkPoint sales agent as agreed to by You in writing. LinkPoint reserves the right to

change its fees at any time and for any reason upon providing You with at least thirty (30) days' prior written notice. A separate LinkPoint account shall be required for each separate Merchant Account held by You. "Merchant Account" shall mean an account set up for a merchant that requires a card processor, bank, merchant i.d., terminal i.d., merchant account number, or otherwise named unique merchant number. Multiple physical or virtual storefronts that process transactions under the same unique merchant number shall be deemed as one (1) Merchant Account.

5. Term. This Agreement and all licenses granted hereunder shall commence when You click the "I Agree" button at the end of this Agreement and shall remain in effect until terminated by either party as provided in paragraph 17 or 18 herein.
6. Indemnification. BY ACCEPTING THIS AGREEMENT, YOU AGREE BOTH AS A COMPANY AND AS AN INDIVIDUAL TO INDEMNIFY, PROTECT, DEFEND AND HOLD LINKPOINT AND ITS PARENT, AFFILIATES, LICENSORS AND/OR SUBSIDIARIES AND ALL OF ITS OFFICERS, AGENTS, AND/OR EMPLOYEES, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DEMANDS, ACTIONS, EXPENSES, DAMAGES, LIABILITIES AND/OR CAUSES OF ACTION (AND ALL LEGAL COSTS INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, EXPENSES AND SETTLEMENTS RESULTING FROM ANY ACTION OR CLAIM, OTHER COSTS OF DEFENSE AND/OR COLLECTION FEES) WHICH IN ANY WAY RESULT DIRECTLY OR INDIRECTLY FROM: (i) YOUR BREACH OF THIS AGREEMENT OR OF ANY WARRANTY OR REPRESENTATION MADE TO LINKPOINT; (ii) NEGLIGENCE, FRAUD, DISHONESTY, OR WILLFUL BEHAVIOR BY YOU OR ANY OF YOUR EMPLOYEES OR AGENTS; (iii) ANY CONTENTION, WHETHER WELL-FOUNDED, BASELESS, OR OTHERWISE, THAT YOU VIOLATED THE LAW OR ANY APPLICABLE RULE OR REGULATION; (iv) THE UNAUTHORIZED USE OF OR ACCESS TO YOUR DATA OR PROGRAMS BY A THIRD PARTY; (v) YOUR USE OF THE SOFTWARE AS MODIFIED BY YOU OR A THIRD PARTY; (vi) THE COMBINATION OF THE SOFTWARE WITH ANY OTHER SOFTWARE, HARDWARE OR OTHER ITEMS NOT PROVIDED BY LINKPOINT; (vii) ANY FAILURE OR DELAY OF LINKPOINT IN PROVIDING PAYMENT PROCESSING SERVICES UNDER THIS AGREEMENT; OR (viii) YOUR USE OF ANY PRODUCTS OR SERVICES CONTEMPLATED UNDER THIS AGREEMENT OTHER THAN AS AUTHORIZED HEREIN.
7. Warranties & Representations. You warrant all of the following: (i) All representations and statements made in this Agreement and any other related document, by You or on Your behalf are true, accurate, and complete in all respects. You hereby authorize LinkPoint to verify and confirm all information provided herein by any means at its disposal; (ii) That You are engaged in a lawful business, which includes the sale of merchandise and/or services and are duly licensed to conduct such business under the laws of the state(s), county(s), city(s), and country(s) in which You operate; (iii) That You shall comply with all applicable laws and regulations in connection with Your obligations under this Agreement; and (iv) That there are no outstanding or contemplated assignments, grants, licenses, encumbrances, security interests, liens, obligations or agreements (whether written, oral or implied) that are inconsistent with this Agreement and the rights and obligations herein.
8. Limitations on Liability. LINKPOINT IS NOT LIABLE FOR THE MERIT AND LEGITIMACY OF ORDERS FORWARDED BY YOU. ALL LIABILITY FOR VALIDITY OF ORDERS REMAINS WITH YOU. LINKPOINT IS NOT RESPONSIBLE FOR ANY DATA ENTRY ERRORS, CUSTOMER MISREPRESENTATIONS, OR REPORTING ERRORS RESULTING FROM YOUR ACTIONS. LINKPOINT SHALL NOT BE LIABLE TO YOU OR THE CONSUMER WHO ELECTS TO PURCHASE YOUR GOODS OR SERVICES FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING FROM OR RELATED TO THIS AGREEMENT, THE PERFORMANCE OR BREACH THEREOF, OR THE ACCURACY OF THE INFORMATION PROVIDED BY THE LINKPOINT SECURE PAYMENT GATEWAY. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF LINKPOINT (AND ITS NON-PARTY LICENSORS) TO YOU, YOUR OFFICERS, DIRECTORS, EMPLOYEES OR ANY THIRD PARTIES FOR DAMAGES HEREUNDER EXCEED \$10,000 IN THE AGGREGATE, IRRESPECTIVE OF THEORY OF

LIABILITY, AND IRRESPECTIVE OF TYPE OF ACTION, FOR ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT.

9. Unauthorized Access. LinkPoint is not responsible or liable for unauthorized access to Your data or programs by any means or device.
10. Lawful Use. You agree to use the Software, the LinkPoint Secure Payment Gateway and any software used to access the LinkPoint Secure Payment Gateway for lawful purposes only. Any payment transactions that violate any laws of any related state, county, city, or country or any bankcard association rules are strictly prohibited.
11. Use of Transaction Data. As permitted by applicable law and regulations, LinkPoint reserves the right to copy and distribute to third parties any information associated with Your activities on the LinkPoint Secure Payment Gateway.
12. Permitted Use. You are prohibited from processing payments for or on behalf of any other individual or business. Use of the LinkPoint Secure Payment Gateway to process payments is provided for a single Merchant Account only. You may not transfer or sell Your rights under this Agreement to any other individual or business.
13. Export Law Assurances. You agree not to download or otherwise export or re-export the Software or any underlying information or technology except in full compliance with all applicable laws and regulations. In particular, but without limitation, none of the Software or underlying information or technology may be downloaded or otherwise exported or re-exported to any country to which the United States has embargoed goods (or any national or resident thereof), or to anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Department's Table of Deny Orders. If You have rightfully obtained the Software outside of the United States, You agree not to re-export the Software except as permitted by the laws and regulations of the United States and the laws and regulations of the jurisdiction in which You obtained the Software. By downloading or using the Software, You are agreeing to the foregoing and representing and warranting that You are not located in, under the control of, or a national or resident of any such country or on any such list.
14. Government Restricted Rights Legend. If You are acquiring the Software on behalf of any part of the United States Government, the following provisions apply. Use, duplication, or disclosure by the Government is subject to the restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer-Restricted Rights clause at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and in similar clauses in the NASA FAR Supplement. Contractor/manufacturer is LinkPoint International, Inc., 6101 Condor Drive, Moorpark, California 93021. Any use, modification, reproduction, release, performance, display or disclosure of the Software and/or the accompanying documentation by the U.S. Government or any of its agencies shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.
15. Amendments. This Agreement may be changed or amended at any time by LinkPoint. In such circumstance, LinkPoint agrees to notify You in writing or electronic transmission at least thirty (30) days prior to the effective date of the change or amendment.
16. Prior Notice of Changes. You agree to notify LinkPoint of any change in Your name, type of business, or any other information required on the Merchant Application at least thirty (30) business days prior to the effective date of change.
17. Suspension and Termination By LinkPoint. LinkPoint reserves the right to immediately suspend or terminate Your access and use of the LinkPoint Secure Payment Gateway with or without cause. You shall be responsible for the payment of all fees due up to and including the date of actual

termination. In the event this Agreement is suspended or terminated by LinkPoint, you should immediately cease use of the software and return the software to LinkPoint or destroy the software and certify in writing to LinkPoint that all copies of the software have been destroyed.

18. Termination by You. You may terminate monthly service only upon providing at least thirty (30) days' prior written notice to both LinkPoint and Your bankcard processing provider. You shall be responsible for the payment of all fees due up to and including the date of actual termination.
19. Prohibited Activities. You agree to be held liable for the following actions made by You or any of Your partners, agents, employees, or any person acting on Your behalf: (i) Attempts to circumvent any security measure of the LinkPoint Secure Payment Gateway; (ii) Attempts to access or actual access to portions of the LinkPoint Secure Payment Gateway not authorized for Your use; or (iii) Modification, reproduction or distribution of the Software, any LinkPoint Web page, software code, or documentation of any kind except as expressly provided in this Agreement or otherwise in writing by LinkPoint.
20. IP Ownership. LinkPoint and its licensors shall have and retain all worldwide right, title and interest in and to the Software, and all LinkPoint products, Web pages, and documentation provided under the terms of this Agreement, including any upgrades and any modifications or derivative works made to the foregoing. The Software, and all LinkPoint products, Web pages, and documentation provided under the terms of this Agreement are the protectable intellectual property of LinkPoint and its licensors. You shall not (and shall not knowingly cause or permit any non-party to this Agreement to) remove, alter, deface, obscure or destroy any proprietary or confidential notices or markings (including but not limited to trademarks, service marks, trade names, patent or copyright notices) on any originals or copies of the Software, Web pages and documentation provided herein and You shall reproduce all such notices and markings on all permitted copies of such.
21. Severability / Waiver. If, but only to the extent that, any provision of this Agreement is declared or found in a final decision to be illegal, unenforceable or void by a court of competent jurisdiction, then both parties shall be relieved of all obligations arising under such provision, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent. A waiver by any of the parties of any covenants, conditions or agreements to be performed by the other party or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement therein herein contained.
22. Disclaimer of Warranties. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE SOFTWARE AND THE LINKPOINT SECURE PAYMENT GATEWAY IS AT YOUR SOLE RISK. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE LINKPOINT PRODUCTS ARE PROVIDED ON AN "AS IS" BASIS, AND THERE ARE NO OTHER WARRANTIES OF ANY KIND. LINKPOINT EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, IRRESPECTIVE OF WHETHER EXPRESS, IMPLIED, STATUTORY, ARISING BY CUSTOM OR USAGE OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, (i) WARRANTIES OF ACCURACY OF DATA; (ii) IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, AND NON-INFRINGEMENT; AND (iii) WARRANTIES THAT ANY PRODUCT OR SERVICE (INCLUDING, BUT NOT LIMITED TO, THE SOFTWARE) WILL (a) MEET YOUR REQUIREMENTS; (b) OPERATE ACCORDING TO YOUR EXPECTATIONS; OR (c) OPERATE UNINTERRUPTED OR ERROR FREE. LINKPOINT DOES NOT WARRANT THAT ALL ERRORS WILL BE CORRECTED. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE LINKPOINT PRODUCTS AND SERVICES IS BORNE BY YOU. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THE AGREEMENT.
23. Governing Law & Venue. This Agreement shall be construed in accordance with, and governed by, California law as applied to contracts that are executed and performed entirely in California but excluding laws that direct the application of another jurisdiction's laws. The parties agree that any

suit, action, or proceeding arising out of or relating to this Agreement, or the interpretation, performance or breach of this Agreement, shall be instituted in any court of the State of California located in Ventura County. Each party irrevocably submits to the jurisdiction of those courts and waives all objections to jurisdiction or venue that it may have under the laws of the State of California or otherwise in those courts in any suit, action, or proceeding. The parties expressly stipulate, consent to and agree that the specific geographic location as the place of performance of this Agreement, in its entirety, shall be within the county of Ventura in the State of California. By this special contract, the exclusive venue for any action between them shall be within the county of Ventura in the State of California.

24. Consideration. You recognize and hereby agree that the warranty disclaimers and liability and remedy limitations in this Agreement are material and bargained-for bases of this Agreement and have been taken into account and reflected in determining the consideration to be given by each party under this Agreement and in the decision by each party to enter into this Agreement.
25. Your Responsibilities. You will be solely responsible for the development, operation and maintenance of your on-line store, if any and all software that you integrate with the Software. You will also be solely responsible for accepting, processing, and filling any customer orders, and for handling any customer inquiries or complaints arising there from. You shall use the highest standards in the industry in responding to customer complaints. You hereby agree to pay all taxes levied upon services provided based upon Your use of the LinkPoint Secure Payment Gateway and related Software
26. Release Of Information. Unless required by law, Visa and MasterCard rules, or by the means of this Agreement, You shall not, under any circumstances, sell, purchase, provide, or otherwise disclose any customer's account information, transaction information, or other personal information to any third party. You shall store all data securely. LinkPoint may advise potential users of the services that LinkPoint has a relationship with You.
27. UCITA. THE PARTIES HEREBY AGREE THAT GENERAL CONTRACT LAW SHALL GOVERN THIS AGREEMENT, AND EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, THE UNIFORM COMPUTER INFORMATION TRANSACTION ACT AS ADOPTED IN ANY FORM IN ANY STATE SHALL NOT APPLY TO THIS AGREEMENT.
28. Legal Relationship. Each party is an independent contractor and not an agent or representative of the other party. No party shall have any right or authority to create any obligation or make any representation or warranty in the name or on behalf of any other party. This agreement shall not be interpreted or construed to create an association, joint venture or partnership between the parties or to impose any partnership obligation or liability upon any party.
29. No Unauthorized Publicity. You shall not use the name, marks or refer to the identity of LinkPoint in advertisements, publicity releases, promotional materials or marketing correspondence without first securing the written consent of LinkPoint.
30. No Third Party Beneficiaries. This Agreement is made solely for the benefit of the parties to this Agreement and their respective successors and assigns, and, except for ClearCommerce Corporation, no other person or entity shall have or acquire any right by virtue of this Agreement.
31. VirtualCheck Adverse Action Notice. The Fair Credit Reporting Act mandates that consumers be provided explanatory information at the point of sale about VirtualCheck transactions, which were declined because of credit risk factors. For all declined VirtualCheck transactions initiated via LinkPoint products where LinkPoint has a direct Web browser interface with the consumer, such as LinkPoint Basic, LinkPoint will provide the consumer with the requisite explanatory information. For all declined Virtual Check transactions initiated via LinkPoint products where LinkPoint does not have a direct Web browser interface with the consumer, such as LinkPoint Select API, or if you choose to

bypass a LinkPoint Web interface, You must provide the consumer with the following adverse action notice language: "We are sorry that we cannot accept your check at this time. Our decision is based, in whole or in part, on information provided to us by TeleCheck. We encourage you to call TeleCheck at 1-877-678-5898 or write TeleCheck Customer Care at P.O. Box 4513, Houston, TX 77210-4513. Please provide TeleCheck your driver's license number and the state where it was issued, and the complete banking numbers printed on the bottom of your check. Under the Fair Credit Reporting Act, you have the right to a free copy of your information held in TeleCheck's files within 60 days from today. You may also dispute the accuracy or completeness of any information in TeleCheck's consumer report. TeleCheck did not make the adverse decision to not accept your check and is unable to explain why this decision was made."

32. VirtualCheck Authorization Requirements. For all VirtualCheck transactions submitted by consumers via e-mail or the Internet, You shall require the consumer to click-to-agree to the ACH authorization language provided in the LinkPoint manual posted on www.linkpoint.com. For all VirtualCheck transactions submitted by consumers via the telephone, You shall either i) tape record the consumer's oral authorization or ii) within 5 calendar days from receiving the consumer's oral authorization, generate an e-mail or facsimile confirmation of the oral authorization to the consumer. Both the oral authorization and the e-mail or facsimile confirmation must be stored for a period of at least 2 years from the date they are generated and must include the following: i) the date on which the consumer's account will be debited; ii) the amount of the debit; iii) the consumer's full first and last name; iv) a merchant telephone number for consumer inquiries regarding the transaction; v) the date of the consumer's oral authorization; and vi) a statement that the consumer's oral authorization will be used to generate the debit. For all VirtualCheck transactions submitted by consumers via mail order or in a face-to-face retail environment, You shall require each consumer to sign an ACH authorization form which is substantially similar to the authorization form posted on LinkPoint Central and in the LinkPoint manual posted on www.linkpoint.com. The signed authorization form must be stored for a period of at least 2 years from the date it is signed by the consumer.
33. Entire Agreement. This Agreement constitutes the sole and exclusive terms and conditions between the parties relating to the subject matter hereof, and supersedes all prior discussions, writings, negotiations, understandings and agreements with respect thereto.