

IMPORTANT – READ CAREFULLY

BY USING THE GATEWAY, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT, INCLUDING THE WARRANTY DISCLAIMERS, LIMITATIONS OF LIABILITY AND TERMINATION PROVISIONS BELOW. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT USE THE GATEWAY AND CONTACT YOUR MERCHANT SERVICES PROVIDER.

**GATEWAY TERMS OF USAGE AGREEMENT**

THIS GATEWAY TERMS OF USAGE AGREEMENT (the “Agreement”) shall govern the legal relationship among the referenced parties and are made and entered into by and among the entities referenced below (collectively the “Providers”), who maintain the website gateway (the “Gateway”) as a service to merchant service providers and their merchant customers and all users of the Gateway, (hereinafter referred to as the “Company” and/or “You”).

**1. ACCEPTANCE OF TERMS OF USAGE AGREEMENT.**

Your use of the Gateway or any current or future service(s) provided to You by the Providers (collectively the “Services”) in accordance with any applicable service agreement (“Service Agreement(s)”), shall constitute Your agreement to be bound by these Terms Of Usage and any operating rules, regulations, policies, and procedures that may be modified from time-to-time on the Gateway (collectively, the “Terms”). Your right to access and use the Gateway, the Services, and any information, products, software, integrations, portals, and/or features made available to You are expressly conditioned on Your acceptance of and compliance with the Terms. Accordingly, the Providers may immediately terminate or suspend access to and use of the Gateway upon a violation of the Terms, irrespective of the magnitude or duration of the violation, as well as avail itself of any other legal and/or equitable remedies. The Terms apply to all past, current and future visits to the Gateway and use of the Services.

**2. RULES AND REGULATIONS.**

The Providers wish to prohibit business conduct that may result in any diminution in the value of their brand, goodwill, reputation, and stature. In that regard, the Providers require that You comply with the Rules and Regulations attached hereto as Exhibit A and made a part hereof.

**3. PROVIDERS’ RIGHTS AND REMEDIES.**

Upon any breach of the Terms Of Usage by You, including the Rules and Regulations, the Providers may exercise any right or remedy available pursuant to the Terms, at law, or in equity, including the right to report any activity (including the disclosure of appropriate data or merchant information) that it suspects may violate any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. Providers also may cooperate with appropriate law enforcement agencies to assist in the investigation and prosecution of any illegal conduct.

#### **4. MODIFICATIONS TO THE PROVIDERS' SERVICES.**

Providers may at any time, in their sole and unlimited discretion, amend, supplement, or modify the Terms, the Gateway, and the Services. Accordingly, Providers may discontinue all or part of the Gateway, temporarily or permanently, with or without notice. Providers are not obligated to continue, support, repair, improve, correct, or update the Gateway. Any modification of the Terms or Services shall automatically become effective immediately after they are initially posted on the Gateway. If You continue use of the Gateway and Services after the posting of the amended Terms on the Gateway, You shall have agreed to abide and be bound by the amended Terms. If You do not accept any modifications of the Terms Of Usage, Gateway, or other Services, Your only remedy is to immediately terminate use of the Gateway by proper notification to Providers.

#### **5. USE OF GATEWAY.**

Because the Gateway is proprietary to certain entities of the Providers and all the text, images, marks, logos, and other content of the Gateway ("Gateway Content") is proprietary to the Providers or to parties from whom the Providers have obtained permission, Your rights to use the Gateway are limited by the Providers' intellectual property rights. Only in a manner consistent with the Providers' rights may You view, download, and print the Gateway Content. You may not copy, publish, redistribute, modify (including remove any trademark, copyright, or other proprietary notices), the Gateway Content.

#### **6. INTELLECTUAL PROPERTY.**

All Provider and product names constitute the trade names, marks, trademarks, or registered trademarks belonging to their respective holders. The protected items may be modified from time to time in the Providers' discretion. Recognizing the intellectual property of the Providers and acknowledging the protection afforded this property by federal and state law, You shall not register or attempt to register any of the Providers' marks or trademarks that would reasonably be deemed to be confusingly similar to any of the Providers' marks or trademarks. You shall comply with all standards with respect to the Providers' marks and all uses of the marks shall be consistent with the Providers' standards.

#### **7. NO PROVIDERS' WARRANTIES.**

THE GATEWAY IS PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS. THE PROVIDERS MAKE NO REPRESENTATION OR WARRANTY THAT (a) THE GATEWAY WILL BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, ERROR-FREE, OR VIRUS-FREE, (b) ANY RESULT WILL BE OBTAINED FROM THE USE OF THE GATEWAY; (c) ACCURATE OR RELIABLE CONTENT OR ANY INFORMATION OR PRODUCTS MAY BE OBTAINED THROUGH THE GATEWAY; OR (d) THAT DEFECTS IN THE GATEWAY WILL BE CORRECTED. BY USING GATEWAY, YOU ACKNOWLEDGE THAT THIS GATEWAY AND THE SERVICES ARE COMPUTER NETWORK-BASED SERVICES, WHICH MAY BE SUBJECT TO OUTAGES, INTERRUPTIONS, ATTACKS BY THIRD PARTIES, DELAY OCCURRENCES, AND FORCE MAJEURE. IN ANY SUCH EVENT AND SUBJECT TO THE TERMS HEREOF, THE PROVIDERS SHALL USE EFFORTS, WHICH ARE REASONABLE IN THEIR DISCRETION TO REMEDY MATERIAL INTERRUPTIONS AND ADDRESS SERVICE DEFICIENCIES. YOU ACKNOWLEDGE THAT THE PROVIDERS DO NOT WARRANT THAT SUCH EFFORTS WILL BE SUCCESSFUL. IF THE PROVIDERS' EFFORTS ARE NOT SUCCESSFUL, PROVIDERS SHALL HAVE NO RESPONSIBILITY TO COMPENSATE YOU FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO LOST REVENUES AND LOST PROFITS. YOUR ONLY REMEDY IN THE CASE OF ANY FAILURE BY THE PROVIDERS SHALL BE TO CEASE USING GATEWAY. YOU WAIVE, AND COVENANT NOT TO ASSERT, ANY CLAIMS OR ALLEGATIONS OF ANY NATURE ARISING FROM OR RE-

LATING TO YOUR USE OF THE GATEWAY, INCLUDING, WITHOUT LIMITATION, ALL CLAIMS RELATING TO ANY ALLEGED INFRINGEMENT OF PROPRIETARY RIGHTS, OR THE ALLEGED INACCURACY OF CONTENT. YOU AFFIRM THAT PROVIDERS POSSESS NO DUTY TO INDEMNIFY, DEFEND, OR HOLD YOU HARMLESS FROM ANY CLAIM OR ALLEGATION ARISING FROM YOUR USE, REPUBLICATION, OR OTHER EXPLOITATION OF THE GATEWAY. YOU USE THE GATEWAY AT YOUR OWN RISK AND NEITHER THE PROVIDERS NOR THE PARTIES WHO PROVIDE INFORMATION AND MATERIALS FOR PUBLICATION WITHIN THE GATEWAY WILL BE LIABLE FOR ANY DAMAGES ARISING FROM YOUR USE OF THIS GATEWAY. YOU UNDERSTAND AND AGREE THAT ANY MATERIAL OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE GATEWAY OR THE SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM, LOSS OF SERVICE, OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR USE OF SUCH MATERIAL OR DATA.

#### **DISCLAIMERS.**

EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 7, THE PROVIDERS SPECIFICALLY DISCLAIM ALL REPRESENTATIONS, WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARISING BY STATUTE, OPERATION OF LAW, USAGE OF TRADE, COURSE OF DEALING, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR TITLE WITH RESPECT TO THE GATEWAY OR SERVICES, OR OTHER SERVICES OR GOODS PROVIDED THROUGH THIS GATEWAY. FOR THE AVOIDANCE OF DOUBT, YOU AGREE THAT THE PROVIDERS DO NOT REPRESENT OR WARRANT THAT THE GATEWAY WILL BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ENTIRELY ERROR-FREE.

ALTHOUGH THE GATEWAY, AS PART OF ITS FUNCTIONALITY AND SERVICES, MAY CONTAIN LINKS TO THIRD-PARTY WEB SITES, SUCH LINKED SITES ARE NOT UNDER THE CONTROL OF PROVIDERS, AND PROVIDERS DISCLAIM ANY RESPONSIBILITY FOR THE CONTENTS OR POLICIES OF ANY LINKED SITE. AS THE PROVIDERS PROVIDE THESE LINKS AS A CONVENIENCE ONLY, PROVIDERS DO NOT ENDORSE, SPONSOR, OR AFFILIATE WITH THE LINKED SITES. LINKS TO MERCHANTS OR ADVERTISERS ARE OWNED AND OPERATED BY INDEPENDENT RETAILERS OR SERVICE PROVIDERS; AND, THEREFORE, THE PROVIDERS CANNOT ENSURE THAT YOU WILL BE SATISFIED WITH THEIR PRODUCTS, SERVICES OR PRACTICES. YOU SHOULD MAKE WHATEVER INVESTIGATION YOU FEEL NECESSARY OR APPROPRIATE BEFORE PROCEEDING WITH ANY TRANSACTION WITH ANY OF THESE THIRD PARTIES.

THE PROVIDERS SHALL HAVE NO RESPONSIBILITY, UNDER ANY CIRCUMSTANCES, TO INITIATE OR CAUSE THE INITIATION OF ANY INVESTIGATION OR OTHER FORENSIC RESEARCH REGARDING THE USE OR MISUSE OF YOUR GATEWAY ACCOUNT.

#### **8. RELIANCE/LIMITATION OF PROVIDERS' LIABILITY.**

IN THE ABSENCE OF YOUR AGREEMENT TO LIMIT PROVIDERS' LIABILITY, PROVIDERS WOULD NOT PERMIT YOUR ACCESS TO AND USE OF THE GATEWAY. THE PROVIDERS ARE RELYING ON YOUR AGREEMENT STATED IN THIS PARAGRAPH. THE PROVIDERS EXPRESSLY DISCLAIM ANY LIABILITY OR LOSS ARISING FROM OR RELATED TO THE GATEWAY (HOWEVER ARISING, INCLUDING NEGLIGENCE), INCLUDING, WITHOUT LIMITATION, LIABILITY OR LOSS ASSOCIATED WITH UNAUTHORIZED ACCESS TO ANY SERVER, INTEGRATIONS, INTERFACES, WEBSITES, FACILITIES, OR YOUR DATA OR YOUR CUSTOMER DATA

(INCLUDING CREDIT CARD NUMBERS AND OTHER PERSONALLY IDENTIFIABLE INFORMATION) DUE TO ACCIDENT, ILLEGAL OR FRAUDULENT MEANS, INCLUDING HACKING, OR DEVICES USED BY ANY THIRD PARTY, OR OTHER CAUSES BEYOND THE PROVIDERS' REASONABLE CONTROL. YOU EXPRESSLY AGREE THAT THE PROVIDERS SHALL NOT BE LIABLE FOR ANY LOSS ARISING FROM INFILTRATION OF THE GATEWAY BY MEANS OF SOFTWARE VIRUSES, TROJAN HORSES, WORMS, TIME BOMBS, OR ANY OTHER SOFTWARE PROGRAMS, OR TECHNOLOGY DESIGNED OR INTENDED TO DISRUPT, DAMAGE, INTERCEPT OR EXPROPRIATE DATA FROM THE GATEWAY.

AS A CONDITION OF USE OF THE GATEWAY, YOU AGREE THAT NEITHER THE PROVIDERS, NOR ANY OFFICER, AFFILIATE, DIRECTOR, SHAREHOLDER, AGENT, CONTRACTOR, OR EMPLOYEE OF THE PROVIDERS WILL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL LOSS OF PROFITS, LOSS OF EARNINGS, LOSS OF BUSINESS OPPORTUNITIES, DAMAGES, EXPENSES, OR COSTS RESULTING DIRECTLY OR INDIRECTLY FROM, OR OTHERWISE ARISING IN CONNECTION WITH THE GATEWAY. THE LIMITATIONS SET FORTH IN THIS SECTION APPLY TO ANY ACTS OR OMISSIONS OF THE PROVIDERS AND AFFILIATES, PARENTS, SUBSIDIARIES, CONTRACTORS, SUBCONTRACTORS, OFFICERS, DIRECTORS, SHAREHOLDERS, MANAGERS, EMPLOYEES, AND AGENTS.

THE PROVIDERS SHALL INCUR NO LIABILITY FOR THE MISAPPROPRIATION OR MISUSE OF THE COMPANIES LOGIN CREDENTIALS. THE COMPANY SHALL POSSESS SOLE RESPONSIBILITY FOR THE MAINTENANCE, PROTECTION AND SECURITY OF THE COMPANY'S LOGIN CREDENTIALS. ACCORDING, THE COMPANY SHALL BE REQUIRED TO ENACT AND ADOPT METHODS AND PROCEDURES TO SAFEGUARD THE COMPANY'S LOGIN CREDENTIALS AND AGREES THAT THE PROVIDERS HAVE NO DUTY IN SUCH RESPECTS. THE COMPANY'S RESPONSIBILITIES SHALL INCLUDE (BUT ARE NOT LIMITED TO) THE ESTABLISHMENT OF SPYWARE/VIRUS DETECTION, FIREWALL AND INTRUSION DETECTION MEASURES, AND ESTABLISHING SECURITY POLICIES AND PROCEDURES FOR YOUR COMPANY.

## **LIMITATION**

EXCEPT AS OTHERWISE LIMITED, THE PROVIDERS' COMBINED LIABILITY AND THE LIABILITY SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS TO YOU OR ANY THIRD PARTIES IN ANY CIRCUMSTANCES UNDER THESE TERMS SHALL BE LIMITED TO \$100 IN ANY CALENDAR YEAR MEASURED AS THE TIME BETWEEN JANUARY 1ST AND DECEMBER 31ST.

## **9. INDEMNIFICATION OF PROVIDERS.**

The Company agrees to indemnify, defend and hold harmless the Providers, the parents, subsidiaries, affiliates, directors, officers, shareholders, agents, contractors, and employees, from any claim or demand, including reasonable attorneys' fees and court costs, made by any third party due to, arising from or out of: (a) Your use of the Gateway; (b) Your breach or alleged breach of any representation, warranty or other obligation; (c) Your violation or alleged violation of any federal, state, international, or local law and any and all regulations, rules, or ordinances; (d) the negligence or willful misconduct by You or Your employees or agents; (e) any violation of the Terms Of Usage; (f) your infringement of any intellectual property or other legal right of any person or entity; or (g) Your advertising, marketing, promotion, sale, or distribution of any products or services. In the event You cause fines and/or penalties to be charged to the Providers by the Credit Card Associations or any other entity, You agree to reimburse the Providers immediately for said fines and/or penalties.

## **10. LIMITED ACCESS.**

Only authorized users may have Access to and use of password protected and/or secure areas of the Gateway. Prosecution of unauthorized individuals attempting to access these areas of the Gateway may occur. You should change passwords frequently for Your protection. Providers may require You to change Your password on a periodic basis.

## **11. ADDITIONAL SERVICES.**

The Terms Of Usage, in particular the limitations on the Providers' liability, disclaimers, and absence of warranties, apply to any Services for which You enroll. The Services Agreement applicable to such Services shall apply except to the extent inconsistent with these Terms, which shall control in such instances.

## **12. GATEWAY CESSATION OF SERVICES.**

The Providers may terminate access to the Gateway, with or without cause, with no liability to the Company at any time. Such termination may be effective upon notification. Termination may occur by a written or electronic notice to You. As previously stated, if You are dissatisfied with any aspect of the Gateway or these Terms Of Usage, Your only right is immediately to terminate by proper notice use of the Gateway. Upon termination of access to the Gateway, Your right to use the Gateway shall immediately cease.

## **13. LEGAL DISPUTES.**

Users located in all 50 states and other countries may access the Gateway. Each of these places has laws that may differ from each other. To assure a predictable legal environment in which to publish, access and use the Gateway, by publishing, accessing, and/or using this Gateway, You and the Providers agree that all disputes arising from or relating to the use and operation of this Gateway will be governed by the laws of the State of Kansas. You hereby waive the different governing law that might be dictated by conflicts of laws principles. You agree that all claims it may have arising from or relating to the operation or use of this Gateway will be heard and resolved in the courts of Johnson County, Kansas. You consent to the personal jurisdiction of such courts over it, stipulate to the fairness and convenience of proceeding in such courts, and covenant not to assert any objections to proceeding in such courts.

## **14. SEVERABILITY.**

In the event that any provision of the Terms shall, in whole or in part, be determined to be invalid, unenforceable or void for any reason, such determination shall affect only the portion of such provision determined to be invalid, unenforceable or void, and shall not affect in any way the remainder of such provision or any other provision of these Terms Of Usage. The Providers' failure to act with respect to a breach by You or others does not waive its right to act with respect to subsequent or similar breaches.

**COMMENCEMENT DATE:** First and every subsequent use of Gateway and Services.

**PROVIDERS:** (Listed below)

Your Gateway Merchant Service Provider  
Your Gateway Hosting Provider  
Your Gateway Programming Group and its Affiliates

## **Exhibit A - RULES AND REGULATIONS**

You agree You will comply with the following rules and regulations pertaining to the conduct of Your business and that no products, services, information, documents, media, advertising, or other print is used, sold, read, licensed, displayed, shown, promoted, or made available which:

- i)** are prurient, obscene, violent, and/or sexually exploitative, including books, photos, magazines, videos, x-rated material;
- ii)** involve the sale of firearms or ammunition;
- iii)** involve gambling or lottery services except lottery services authorized and managed by a governmental entity;
- iv)** involve participation in a fraudulent or deceptive sale or distribution of goods or services;
- v)** violate any applicable local, state, federal, national, or international law, statute, ordinance, or regulation;
- vi)** violate any person's known private rights, such as any infringement of any patent, trademark, trade secret, copyright, right of publicity, or other proprietary rights;
- vii)** involve impersonation of, ridicule of, degradation of, abuse of, false information or statements about, or threats to a person or group, whether or not based on sex, race, color, religion, national origin, age, disability, physical appearance, sexual preference, or political affiliation;
- viii)** involve any transmission or dissemination of any content in any form which might disrupt, limit, damage, intercept, or expropriate any hardware, software, or equipment, or the Servers or any system, program, data, or personal information or allow damage to or unauthorized access to any data or information of any third party;
- ix)** involve, directly or indirectly, sale of (a) electronic cigarettes or similar products; (b) any controlled drug that requires a prescription from a licensed practitioner unless You are authorized by the National Association of Boards of Pharmacy to offer such products as a Verified Internet Pharmacy Practice Site and only if such a prescription has been issued by the practitioner after a bona fide examination of the patient; (c) any over-the-counter drug, unless the sale of such product, without a prescription, has been approved by the Food & Drug Administration; (d) non-prescription drugs that make false or misleading treatment claims or treatment claims that require FDA approval; or (e) any imported prescription drugs; or (f) any drug or controlled substance that the Providers believe to be or may become harmful, unlawful, or prohibited. Providers require sellers of prescription drugs to abide by all laws applicable to both the buyer and seller and we may require You to provide evidence of compliance with these requirements. In addition, due to the complexities of current laws regulating the importation of controlled drugs into the United States.
- x.** involve any form of Internet abuse such as distribution of spam or junk mail or mass posting of articles;  
or
- xi.** involve such other goods and services as the Provider may add to these Rules and Regulations, which do not represent a complete list of prohibited business practices.