



## Company Agreement

**THIS AGREEMENT** ("Agreement") is between Debt Pay Gateway, Inc., ([www.DebtPayGateway.com](http://www.DebtPayGateway.com)) ("DPG") and \_\_\_\_\_ ("Company").

**WHEREAS**, DPG is in the business of providing the services described in Section 1 of this Agreement (collectively, the "Services"), which services relate to establishing FDIC-insured trust bank accounts ("Accounts") that are owned, controlled and used by clients of debt management companies ("Clients") to accumulate and disburse funds in connection with the repayment of their debts. Company shall receive, written and signed permission, authorization from its Clients to debit and credit Accounts for activities related to services outlined herein this document and any Debt Settlement Agreement between Company and Clients; and

**WHEREAS**, the Company desires to make Services available to its Clients and DPG desires to provide the Services, all in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, for and in consideration of the promises and undertakings set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DPG and the Company agree as follows:

### SECTION I – SERVICES

**1(a) ACH Application and Agreement** Company is required to complete, sign and return ACH Processing Application and its accompanying Merchant ACH Agreement – Data Processing and Collection Agreement to DPG. Said documents are incorporated by reference. All documents shall be reviewed by DPG, its processing Bank and any service provider. Additionally, approval of this **Company Agreement** is conditioned upon Company being approved and accepted by the underwriters of DPG, its processing Bank and any service provider chosen.

**1(b) Establishing Client Accounts** DPG acknowledges it is an independent contractor and not a partner, joint venturer or agent of Company and Company shall not incur any liability for actions or non-actions taken by DPG. DPG will arrange for a financial institution of its choosing ("Bank") to provide an Account for each Client of Company who submits an **AUTHORIZATION FOR RECURRING DIRECT PAYMENTS**, substantially in the form attached to this Agreement as Exhibit A, and such other or revised documentation as the Bank may request from time to time ("Application"). The Account will be owned by and under the control of the Client at all times. All transactions involving the Account will be initiated by or otherwise authorized, in writing, by the Client; and the Client may withdraw funds from the Account and/or close the Account at anytime. Company will deliver an Application to each Client, along with an Account Holder agreement and Disclosure Statement, substantially in the form attached to the Agreement as Exhibit A-2 (collectively, "Bank Documents"). Company will also either register the Client directly on the DPG system or provide DPG with an electronic registration file. Company will then confirm the establishment of the Account directly with the Client via email or a letter (in either case, "Confirmation Letter"), and the Account will be opened with the Bank.

**1(c) Deposits to Accounts** Each Client will provide Company with instructions designating the amount that the Client elects to deposit into his Account on a monthly basis. The initial instructions will be set forth in the Application and the Confirmation Letter. Thereafter, the Client may make changes to the instructions at any time by contacting Company customer service. Company will initiate the transfer of funds from the Client's existing primary bank account to his or her Account at the Bank pursuant to the instructions and authorizations in effect from time to time. Company will also initiate the transfer of funds from the Client's existing primary bank account to Company's Fee Account at the Bank pursuant to the instructions and authorizations in effect from time to time. An electronic transfer from Client's primary bank account is the preferred way for a Client to make a deposit. However, a deposit may also be made into an Account by sending funds to Company for deposit into Client's account. Client shall, at all times, have login access to view the balance of the Account and access and control over the Account(s) established by Company using DPGs Services.

**1(d) Returned Deposit Items** Any item deposited into an Account that is dishonored or otherwise returned for any reason will be charged back against the Account, and or other account(s) as authorized by Client, along with a fee for

processing the returned item. Company will pay for any resulting deficiency in an Account in consideration for DPG providing the Services to its Clients at the prices set forth in the Application.

**1(e) Disbursements from Accounts** All disbursements from the Accounts will be initiated or otherwise authorized in writing by the Clients. Each Client will provide Company with instructions from time to time designating the amounts that the Client elects to disburse from his or her Account and the manner in which such disbursement should be made. As provided for and authorized by the Clients in the Applications, and subject to the provisions of Section 6(c), DPG will provide Company, and Company's Third Party Service Provider access to the DPG system via the internet to originate and update certain Client information, to initiate credits to the Client's Accounts, pursuant to written authorization by Clients, to send monthly account activity reports to the Clients and other information as may be requested by Clients. Each Client will be given access to his or her Account via the internet for the purpose of managing the Account, including, without limitation, checking his or her Account balance and activities and initiating deposits to and disbursements from the Account. Only DPG, and not Company, pursuant to the Client's written instructions, will cause funds to be disbursed from the Account to a designated payee provided the Account contains sufficient "Good" funds to cover the requested disbursement. DPG shall not be responsible for determining when a payment is due or for any late payment fee, penalty or charge or any other action taken or non-action by Company. Company shall be responsible for determining whether a payment is for the correct amount or otherwise proper. The sole obligation of DPG is the proper functioning of its "System".

**1(f) Conversion of Existing Clients** As soon as practical after the execution of this Agreement, in addition to making the Services available to all of Company's new Clients, DPG will make the Services available to all of Company's existing Clients, and Company may, in its sole discretion, convert some or all such existing Clients from the account management system currently being used by Company to the DPG account management system.

**1(g) Rules and Regulations** All transactions involving the Accounts shall be subject to terms and conditions that are established by the Bank from time to time, including, without limitation, those set forth in the Bank Documents, and to the rules and regulations of the Board of Governors of the Federal Reserve System and any other regulatory or governmental authority or agency having jurisdiction over the Accounts or any of the transaction contemplated by this Agreement.

## SECTION II – LIABILITY

**2(a) LIMIT ON DPG LIABILITY** DPG will exercise reasonable care in providing the Services, consistent with industry practices; provided, however, in addition to the limitations on DPG's liability provided for elsewhere in this Agreement, neither DPG, the Bank nor any service provider to DPG shall be liable to the Company, a Client or any other party for any reason other than their respective willful misconduct, bad faith or gross negligence; and provided further, however, without limiting the foregoing, neither DPG, the Bank nor any such service provider shall be liable for any damage, loss, cost or expense to the Company, a Client or any other party arising out of the act or omission of any third party, including, but not limited to, those of ACH check and other processors, the National Automated Clearing House Association, the Federal Reserve System or any other bank, financial institution, or the directive of any regulatory authority. Moreover, neither DPG, the Bank nor any service provider to DPG or the Bank makes any representation or warranty that the Services meet the regulatory requirements of any particular jurisdiction that may be applicable to the Company's debt management programs ("Program"), or that the use of the Services will result in a determination by any regulatory authority that a particular licensing or regulatory scheme will not be applicable to the Program.

**2(b) Uncollected Funds of Company** If a financial instrument received by DPG or an electronic funds transfer is rejected for any reason, at any time, and if DPG has paid to or on behalf of the Company or Company's Client, DPG shall attempt to reverse the transaction for those funds paid. Company authorizes DPG to electronically debit Company's accounts in order to recover the funds. In the event that DPG has disbursed the funds on behalf of Company, and DPG is not able to reverse the transaction, Company shall be liable and agrees to immediately reimburse DPG for those funds paid. Company is liable to DPG for all costs incurred by DPG in the recovery of funds.

**2(c) Uncollected Funds of Company's Client** If a financial instrument received by DPG or an electronic funds transfer is rejected for any reason, at any time, and if DPG has paid to or on behalf of the Company's Client, DPG shall attempt to reverse the transaction for those funds paid. DPG will attempt to collect all uncollected amounts, first from the Client's Account. Company authorizes DPG to electronically debit Company's accounts in order to recover the funds. In the event that DPG has disbursed the funds on behalf of Company's Client, and DPG is not able to reverse the transaction, Company shall be liable and agrees to immediately reimburse DPG for those funds paid. Company is liable to DPG for all costs incurred by DPG in the recovery of funds.

## SECTION III – FEES AND CHARGES

**3(a) Account Fees and Charges** A schedule of the fees and charges for the Services is attached to this Agreement as Exhibit B. DPG shall be entitled to increase such fees and charges for any increases in the third-party cost of providing the Services, but DPG shall not otherwise increase the fees and charges for the term of this Agreement. Any increase in the fees and charges shall be effective thirty days after the date DPG notifies the Company and the Clients of such increases.

**3(b) DPG Fees and Charges** The fees and charges provided for in Section 3(a) shall be deducted from the Accounts as they are earned. Monthly fees for the first calendar month in which an Account is open shall not be prorated and shall be deemed earned in full on the day the Account is opened. Thereafter, monthly fees shall be deemed earned in full on the first day of each calendar month. Other fees, costs and charges shall be deemed earned and are collectible by DPG at the time of the transaction or the event that gives rise to the fee.

**3(c) Program Fees** If authorized by the Clients, Program fees payable to Company by its Clients may also be deducted from Clients, existing third party bank accounts and deposited into an account established for the Company (Company Fee Account) or its existing bank account(s). The Client Account established under this Agreement may not be used to pay Company any fee or cost, including Program fees. Alternatively, Program fees can be settled directly between the Company and the Clients with proper authorization from the Clients and at the Company's expense, Company may use the DPG system to facilitate collection of its fees, costs and charges. In any event, all Program fees processed by the DPG system shall be transferred to Company without any recourse to DPG or the Bank with respect to items that may be dishonored, otherwise returned or contested by the Clients, and the processing of such fees is subject to the limitation of Global liability that are provided for in this Agreement. Additionally, any Account deficiency resulting from the payment of a Program fee is subject to the provisions of Sections 1(c) and 4(d). The percentages of certain Program Fees that are payable to Company's Third Party Providers, if any, for their services on behalf of Company are separate and distinct from this Agreement. Any such fees, costs and charges will be settled between the respective companies.

#### **SECTION IV – RELATIONSHIP, INDEMNIFICATION AND DISPUTE RESOLUTION**

**4(a) Relationship** DPG, its financial institutions, banks and other third party contracting parties are independent contractors, and not partnership, joint venture or similar relationship with Company is intended to be, or is, created as a result of the execution, delivery or performance of this Agreement.

**4(b) Indemnifications** Subject to the limitations on DPGs liability provided for elsewhere in this Agreement, including, without limitation is Sections 1(d) and II and the limitation on each party's liability provided for below in this Section 4(b), DPG and Company each hereby agree to indemnify the other, as well as the other's principals, directors, managers, officers, employees and agents (collectively, "Related Parties" and including, in DPGs case the Bank), and shall defend and hold the other and its respective Related Parties harmless, from and against any and all liabilities, claims, suits, other legal actions and proceedings, demands, damages, losses costs and expenses of any kind or nature, including without limitation, reasonable legal fees and expenses, Collectively, "Claims and Damages"), arising out of or otherwise relating to (i) the conduct of the indemnifying party's business and affairs and (ii) a material breach or violation of any representation, warranty, covenant or other provision of this Agreement by the indemnifying party; provide, however, any liability of DPG or Company hereunder shall be limited to actual Claims and Damages and, in no event, shall either of them ever be liable to the other for any incidental, consequential, punitive, special, exemplary, indirect or other damages of any kind or nature. Without limiting the generality of the foregoing, the indemnification provided to DPG by Company is expressly intended to cover any claim, demand, suit or other action whereby any regulatory or governmental authority, any Client or any group of Clients seeks rescission or cancellation, the refund of fees, charges or other amounts paid, restitution for damages sustained and/or any other form of compensation, penalty, fine or other payment with respect to any aspect of the Program, including, without limitation, any aspect of the Program that involves the Services and/or any practice, process or procedure provided for in this Agreement.

**4(c) Dispute Resolution** If any dispute arising out of or relating to this Agreement, including, without limitation, any dispute regarding the breach or violation hereof or any dispute regarding the conduct of business pursuant to this Agreement, cannot be settled through direct negotiations between the parties, such dispute shall be settled by binding arbitration. Any such arbitration shall take place in San Diego, California by an arbitrator who is mutually selected by the parties or, if the parties cannot agree upon the arbitrator, by an arbitrator appointed by the American Arbitration Association. The decisions and awards determined in any such arbitration shall be final, non-appealable and expressly subject to the limitations on liability provided for in this Agreement. Judgment on any such decision or award may be entered in and enforced by any court of competent jurisdiction.

**4(d) Right of Offset** Without limiting any other rights or remedies of DPG, any amounts owed by Company to DPG may be offset against any funds that are collected / collectable by DPG on Company's behalf or that are otherwise in the possession of DPG.

## SECTION V – TERM AND TERMINATION

**5(a) Term** The term of this Agreement shall commence on the effective date set forth on the signature page and continue for so long as Company uses DPGs system to process Client Accounts.

**5(b) Early Termination** Notwithstanding the term set forth in Section 5(a), DPG or Company, may terminate this Agreement for cause upon 30 days prior written notice if the other party (i) becomes the subject of a voluntary bankruptcy petition or any other voluntary proceeding relating to insolvency, (ii) becomes the subject of an involuntary bankruptcy petition or any other involuntary proceeding relating to insolvency, and such involuntary petition or proceeding is not dismissed within such 30-day period, and (iii) materially breaches or violates any representation, warranty, covenant or other provision of the Agreement and the breach or violation is not remedied in all material respects within such 30-day notice period, provided, however, a breach of any representation, warranty or covenant contained in Section VI shall be grounds for an immediate termination of this Agreement. In addition, DPG may terminate this Agreement immediately (i) if any regulatory or governmental authority or any court of competent jurisdiction ever determines that any aspect of the Program, the Services and/or any practice, process or procedure of Company or as provided for in this Agreement violates any applicable rule, regulation, ordinance or law, (ii) if DPG reasonable believes that any such determination can or may be made, (iii) if DPG determines that Company is not properly managing any aspect of the Program, (iv) if any matter described in Section 6(e) occurs and (v) as provided in Sections 7(i). Any default notice shall describe the nature of the breach or violation with specificity and in reasonable detail.

**5(c) Survival** The rights and obligations of the parties set forth in Sections 1(c), II, 4(b), 4(c) & (d), 6(a) – (c), 7(a) & (b) and any other provision of this Agreement that would by their nature continue beyond its termination shall survive the expiration or any other termination of this Agreement.

## SECTION VI – CERTAIN REPRESENTATIONS, WARRANTIES AND COVENANTS

**6(a) Bona Fide Clients** Company represents and warrants to DPG that (i) each Client will be a bona fide customer of Company, will be enrolled in the Program and will provide written authorization all transactions in connection therewith that involve the Account established for the Client; (ii) Company has requested and obtained documentation verifying the identity of each Client and (iii) each Client is the person that he or she claims to be in the Application. In this regard, Company shall provide DPG with copies of any and all documents DPG and/or its bank or other contracting party may request from time to time at Company's expense.

**6(b) Program Materials** Company represents and warrants to DPG that (i) Company has provided DPG with true accurate and complete copies of all marketing, enrollment and other materials Company or any other party uses in connection with the Program, including, without limitation, any and all materials which describe or mention the Services or which name or otherwise refer to DPG or its bank or contracting parties, and (ii) Company will promptly provide DPG with copies of any and all revised and/or additional materials as they become available. DPG has the right to approve any and all materials which, directly or indirectly, describe or mention the Service or which, directly or indirectly, name or otherwise refer to DPG, its bank or other contracting parties.

**6(c) Other Information** Company represents and warrants to DPG that all other information provided to DPG, its bank or other contracting parties from time to time, will be true, accurate and complete in all respects.

**6(d) Privacy and Other Laws** It is necessary for Company to have access to information regarding the Accounts to fulfill its duties and obligations relating to the Program that have been authorized by the Clients. Accordingly, Company represents and warrants to DPG that Company will comply with all applicable privacy laws, and with any and all other laws, ordinances, rules and regulations that are applicable to any aspect of the Company's business, including, without limitation, the Program.

**6(e) Governmental Actions, Suits, Etc.** Company represents and warrants to DPG that neither it nor any of its principals, directors, managers, officers, employees or agents (i) has ever been the subject of any federal, state or local governmental action, or any civil lawsuit relating to fraud or misrepresentation, (ii) has ever had a license or bond of any kind refused, revoked or cancelled or (iii) has ever been convicted of a felony. In addition, Company represents and warrants to DPG that it shall promptly notify DPG in writing if any such matter should ever occur in the future.

**6(f) Authority** Each party hereby represents and warrants to the other that (i) its execution, delivery and performance of this Agreement has been duly authorized and approved in every respect and (ii) neither its execution or delivery of this Agreement, nor its performance hereunder, will violate or conflict with any term or condition of its organizational or other governing documents, or any other agreement or directive of any kind or nature to which it is a party or by which it is otherwise bound.

## SECTION VII – GENERAL PROVISIONS

**7(a) Confidentiality** DPG and Company shall each hold the proprietary and confidential information of the other in strict confidence by exercising at least the same degree of diligence and care that the party receiving such information uses to avoid disclosure or dissemination of its own highly confidential information, but in no event less than a reasonable standard of diligence and care. Without limiting the generality of the foregoing, DPG and Company agree that non-public personal information of the Clients shall be held in strict confidence and securely as required by applicable law, and that the transfer of non-public personal information shall only be accomplished as permitted by applicable law or authorized in writing by Client.

**7(b) Advertising and Publicity** Neither party shall use the name, trade names, trademarks, logos, service marks or other forms of unique identification of the other or DPGs Bank or other contracting parties, in connection with any representation, solicitation, advertisement, promotion or press release, or for any other purpose, without the prior written consent of the other.

**7(c) Exercise of Rights and Waivers** All rights, powers and privileges of the parties under this Agreement are separate, cumulative and exercisable concurrently or successively at the exercising party's discretion. Any waiver of any such right, power or privilege must be in a writing to be effective and shall not be construed as a continuity waiver unless expressly stated in such writing. No delay or failure to insist upon the strict adherence to and performance of the terms of this Agreement, nor any delay or failure in the exercise of any other right, power or privilege hereunder, shall operate as a waiver of the right to subsequently compel such adherence or performance, or to subsequently exercise any such other right, power or privilege, with respect to the matter in question or any other matter, including, without limitation, any continuing or subsequent breach or violation hereof.

**7(d) Notices** All notices must be in writing to be effective and may be personally delivered, sent by facsimile transmission or sent by US mail or recognized courier (e.g. FedEx) to the applicable address noted on the signature page, in which event any such notice shall be deemed received if and when delivered to such address. Either party may change its physical address or facsimile number for notice purposes by providing written notice of such change to the other party in the manner set forth in this Section 7(d).

**7(e) Governing Law** This Agreement shall be governed and construed in accordance with the laws of the State of California without reference to choice of law rules.

**7(f) Binding Effect and Assignment** This Agreement shall inure to the benefit of and be binding upon the parties hereto, and each of their respective successors and permitted assigns. Neither this Agreement, nor any of the rights or obligations of Company hereunder, may be transferred or assigned without the prior written consent of DPG, which consent shall not be unreasonably withheld or delayed.

**7(g) Due Diligence** Company hereby authorizes DPG, its Bank and its contracting parties, to conduct initial and ongoing due diligence with respect to Company, as well as its principals, directors, managers, officers, employees and agents, and the Program, and in connection therewith, to investigate the background, business and financial affairs of Company and any such other party utilizing whatever means DPG, its Bank or other contracting parties may determine appropriate. If permitted by law, DPG will advise Company of any objectionable matter that arises during any such due diligence, and DPG and Company will then work in good faith to resolve such matter(s). However, if such matter is not resolved to DPGs reasonable satisfaction, DPG may elect to terminate this Agreement immediately and without recourse by Company.

**7(h) Entire Agreement and Modifications** This Agreement constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior or contemporaneous understandings or agreements relating thereto, whether written or oral. Modifications to this Agreement must be in writing and signed by each party to be effective; provided, however, if any provision of this Agreement is found to be invalid or unenforceable, to the extent permitted by law, such provision may be reduced in scope or otherwise modified to render the subject provision reasonable and enforceable. Otherwise, if any such invalid or unenforceable provision shall be deemed severed from this Agreement and all of the other provisions hereof shall remain in full force and effect as if such provision had never been included herein.

**7(i) Counterparts and Electronic Copies** This Agreement may be executed in counterparts and delivered electronically by email, facsimile (FAX) or scanner, and all such counterparts and electronic copies shall constitute one and the same document.

**IN WITNESS WHEREOF**, the parties have caused their duly authorized representatives to execute this Agreement to be effective as of \_\_\_\_\_.

Debt Pay Gateway, Inc.

**AGENT** \_\_\_\_\_

By:

By:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Title:

**To be completed by Company:**

Company Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State \_\_\_\_\_ Zip code \_\_\_\_\_ FEIN: \_\_\_\_\_

Phone: \_\_\_\_\_ FAX: \_\_\_\_\_

E-mail: \_\_\_\_\_

**Primary Bank Name:** \_\_\_\_\_

Branch (City, State, Zip): \_\_\_\_\_

Account Number: \_\_\_\_\_ Routing Number: \_\_\_\_\_

Checking  Savings

**Exhibit B**  
**Account Fees and Charges**

I acknowledge and authorize DPG to charge my Primary Bank Account in accordance with the following fees for services rendered:

**Services rendered to Company**

- Company Payment Gateway access \$75 Monthly Fee

**Services rendered to Company's Clients**

- Monthly Trust Account Fee: \$9.75
  
- Return Item Fee: \$-0-
- Monthly Transaction Fee: \$3.00
- Settlement Disbursement Fee using ACH or Check by Phone: \$5.00
- Per occurrence fee for any other appropriate service which includes but is not limited to:
  - \$25 Wire Transfer Fee, Certified Check, Cashiers Check Depository Fee
  - \$10 Paper Check, Money Order