

FACTORING TERMS OF USE

These Simetria factoring terms of use are an agreement between the merchant identified on acceptance hereof (the “Merchant”) and SIMETRIA PAYMENTS CORP/ Simetria (SIMETRIA), a British Columbia company having its address at 4720 Kingway, Suite 2600, Burnaby, BC, V5H4N2, Canada and operating under the name Simetria (“Simetria”) and owner and operator of the web site at simetria (the “Site”). These are important and legally binding terms and conditions that apply to your use of the services offered through this Site, which are referred to here as the “**Factoring Services**”.

CLAIM

Merchant states that it has sold or provided (the “**Sale**”) products or services to a client of Merchant (such client, the “**Customer**”) identified to Simetria through the Simetria Platform. Merchant states that upon the Sale, Merchant has issued, through the Simetria Platform or otherwise, an invoice for the Sale that represents a claim of the Merchant versus the Customer (the “**Claim**”) in the amount of the Sale price.

INVOICE DELIVERY

Merchant hereby instructs Simetria to use information related to the Sale and the Claim from Merchant and from its Customer, obtained via the Simetria Platform, to create and deliver an invoice for each Sale to the Customer. Merchant appoints Simetria as its agent to present such invoices to its Customers.

PURCHASE AND SALE OF CLAIM

Following Merchant making invoices for the Sales available to its Customers, Merchant hereby sells and assigns to Simetria the related Claims and Simetria hereby purchases and takes assignment of the Claim (the “**Assignment of Claim**”). The Assignment of Claim is without recourse versus the Merchant, in so far as the Merchant has not made a fraudulent Sale or intentionally provided false or misleading information to Simetria in respect of the Customer, the Sale, the Claim or the Assignment of Claim. Except in the event of fraud or breach thereof on the part of the Merchant or a third party, as determined by Simetria, Merchant shall have no liability to Simetria if the Customer does not pay on the Claim. Merchant shall not allow any Claim to be subject to an Assignment of Claim that is not concerning a good faith sale of goods or services by the Merchant to the Customer identified in the Claim and related invoice.

In consideration of the Assignment of Claim from Merchant to Simetria, Simetria shall pay Merchant the purchase price indicated in the Simetria Platform (the “**Claim Purchase Price**”), which is the amount of the Claim less a fee charged by Simetria to purchase the Claim, such fee being a Fee.

Merchant is selling the Claim to Simetria at a discount, not borrowing money from Simetria, therefore there is no interest rate or payment schedule and no time period during which the Claim must be paid to Simetria.

Simetria shall pay the Claim Purchase Price to the Merchant immediately of acceptance of the Transaction by Merchant through the Simetria Platform. The Claim Purchase Price shall be paid to Merchant by settlement of the amount thereof to the Merchant Simetria Receiving Account.

LIMITATIONS

If the Customer pays Claim to Merchant, despite the Assignment of Claim, then Merchant shall remit the amount of such Claim to Simetria on receipt thereof. Merchant shall not dispose of any of its rights in the Claim other than to Simetria hereunder.

INDEMNIFICATION

Merchant shall indemnify and hold harmless Simetria, and its affiliates against all losses, damages, claims, liabilities, and expenses (including reasonable attorney’s fees) incurred by Simetria resulting from (i) claims asserted by Simetria for monies owed to Simetria from Merchant and

(ii) actions taken by Simetria in reliance upon any fraudulent, misleading, or deceptive information or instructions provided by Simetria.

LIMITATIONS OF LIABILITY

In no event will Simetria be liable for any claims asserted by Merchant under any legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is waived by Merchant. In the event these claims are nonetheless raised, Merchant will be jointly liable for all Simetria’s attorney’s fees and expenses resulting therefrom. Simetria’s maximum liability under this Agreement shall be the amount of Fees charged and collected hereunder.

REPRESENTATIONS AND WARRANTIES

Merchant states and covenants the following as of the date hereof and during the term of this Agreement:

- **Accurate Business Information.** All information (financial and other) provided by or on behalf of the Merchant to Simetria in connection with the execution of or pursuant to

this Agreement is true, accurate and complete in all respects. Merchant shall furnish Simetria such information as Simetria may request from time to time.

- **Reliance on Information.** Merchant acknowledges and agrees that all information provided by or on behalf of Merchant has been relied upon by Simetria in connection with its decision to purchase the Claim from Merchant.
- **Compliance.** Merchant is in compliance with any and all applicable federal, state and local laws and regulations and rules. Merchant possesses and is in compliance with all permits, licenses, approvals, consents, registrations and other authorizations necessary to own, operate and lease its properties and to conduct the business in which it is presently engaged.
- **Authorization.** Merchant and the person(s) signing this Agreement on behalf of Merchant have full power and authority to enter and perform the obligations under this Agreement and the Processing Agreement, all of which have been duly authorized by all necessary and proper actions.
- **Merchant not Indebted to Simetria.** Merchant is not a debtor of Simetria as of the date of this Agreement.
- **Good Faith Claim.** All amounts received by Simetria attributable to the Claim purchased by Simetria hereunder shall arise from bona fide sales by Merchant of its goods and services to a client of Merchant.
- **Business Purpose.** Merchant is a valid business in good standing under the laws of each jurisdiction in which it is organized or operates, and Merchant is entering into this Agreement solely for business purposes and not as a consumer for personal, family or household purposes. Merchants shall not use the Claim Purchase Price for personal expenses but shall instead use the Claim Purchase Price for business purposes.

EVENTS OF DEFAULT AND REMEDIES

The occurrence of any of the following events shall constitute an “**Event of Default**” hereunder:

- Merchant shall violate any term or covenant in this Agreement or any other agreement with Simetria or any of its Affiliates;
- Any representation or warranty by Merchant in this Agreement shall prove to have been incorrect, false or misleading in any material respect when made;
- the sending of notice of termination by Merchant or otherwise notifying Simetria of its intent to breach this Agreement;
- Merchant transfers or sells all or substantially all of its assets;
- Merchant delivers any notice of any intended bulk sale or transfer by Merchant; or
- Merchant changes its depositing account for Customer settlements without the prior written consent of Simetria.

REMEDIES

In case any Event of Default occurs Simetria may, at its discretion, proceed to protect and enforce its rights or remedies by suit in equity or by action at law, or both, whether for the specific performance of any covenant, agreement or other provision contained herein, or to enforce the discharge of Merchant's obligations hereunder (including the Guaranty) or any other legal or equitable right or remedy. All rights, powers, and remedies of Simetria in connection with this Agreement may be exercised at any time by Simetria after the occurrence of an Event of Default, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity.

Merchant shall pay to Simetria all reasonable costs associated with

- (i) an Event or Default,
- (ii) breach by Merchant of the Covenants in this Agreement and the enforcement thereof, and
- (iii) the enforcement of Simetria 's remedies set forth in this Agreement, including but not limited to court costs and attorneys' fees.

GENERAL

- **Notices.**

Any notice, demand, request or other communication required or permitted to be given under this Agreement shall be in writing and delivered personally, or sent by prepaid registered mail, return receipt requested: to Simetria at the postal address provided therefore on the Site; to Merchant at the address provided therefore upon registration with the Site; or to such other address as either party may have previously indicated to the other in writing in accordance with the foregoing. Any such notice, request, demand or communication shall be deemed to have been received on the day it was delivered personally on the fifth (5th) day following mailing, unless there is a disruption of any kind of postal service.

- **Independent Contractor.**

Neither party has any right to create any obligations on the part of the other party, without the other's prior written consent. Nothing in this Agreement or the course of dealing of the parties shall be construed to constitute the parties hereto as partners, joint ventures or agents or employees of one another or as authorizing either party to obligate the other in any manner.

- **Amendments to this Agreement.**

From time-to-time Simetria will post amendments or revisions to this Agreement, including, without limitation, amendments to Fees, on the Site. Simetria will provide notice of these amendments or revisions to Merchant through the Site. If the amendment or revision is required in order for Simetria and/or the Factoring Services to remain in compliance with applicable laws or payment processor regulations or is required by Simetria financial institution or Applicable Law, then the amendment or revision shall take effect as of when it is posted to the Site. If, on the other hand, the amendment or revision is not required under Applicable Law or for the Factoring

Services to remain in compliance with requirements of a payment processor or financial institution, then the amendment shall take effect as of the date stated in the Site notice and, provided Merchant does not close its Account prior to that date, then Merchant shall be deemed to have accepted the amendment or revision. Other than as provided in this section, this Agreement may not be amended except by express consent of both parties through the Site or by such other means as Simetria may reasonably prescribe.

- **Confidentiality.**

The terms of this Agreement and the information exchanged hereunder are confidential and shall not be disclosed by Merchant without permission of Simetria. Simetria has the express right to use all information obtained hereunder to provide the services contemplated herein.

- **Assignment.**

None of Merchant or any of its successors may assign this Agreement, or any rights hereunder, directly or by operation of law, without the prior written consent of Simetria which consent may be withheld for any reason, at Simetria sole discretion. Simetria may assign any of its rights or obligations hereunder without prior notice or consent of the Merchant.

- **Successors.**

This Agreement and the provisions hereof shall ensure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. Merchant shall not assign any of its rights or obligations under this Agreement to any third party without the prior written consent of Simetria and any assignment without such consent shall be void and of no effect.

- **Missing Merchants.**

If, for whatever reason, Simetria is unable to contact a Merchant to complete an Assignment of Claim, then after ten (10) months, Simetria reserves the right to remit the amount thereof to government authorities responsible for taking possession of lost property in the jurisdiction of the Merchant or that of Simetria.

- **Enforcement.**

The Merchant shall be liable for and shall indemnify and reimburse Simetria for all reasonable attorneys' fees and other costs and expenses paid or incurred by Simetria in the enforcement of this Agreement, or in collecting any amounts due from Merchant hereunder, or resulting from any breach of any of the terms or conditions of this Agreement by Merchant.

- **Remedies.**

All remedies of either party hereunder are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed to be an election of such remedy and shall not preclude the exercise of any other remedy. No failure on the part of either party to exercise and no delay in exercising any right or remedy hereunder shall operate as a waiver of such right or remedy.

- **Severability.**

If any provision of this Agreement is held invalid or unenforceable by any court of

final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable, and binding on the parties.

- **Governing Law and Choice of Forum.**

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the Canadian Arbitration Association, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, Canada, and the venue of any arbitration commenced under this section shall be in Vancouver, British Columbia, Canada. Arbitration shall take place in English before a single arbitrator who is a practicing commercial lawyer licensed in the Province of British Columbia.

- **Whole Agreement.**

References to "this Agreement" include any Account, Fees, schedules, supplementary agreements, addendum, appendixes and amendments and any other agreements, schedules appendixes and amendments promulgated by Simetria and furnished to Merchant from time to time. This Agreement replaces any earlier versions hereof appearing on the Site or otherwise.

- **Survival.**

The following provisions hereof shall survive termination hereof: 4 Limitations, 5 Indemnification, 6 Limitation of Liability, 7 Representations and Warranties, 8 Events of Default, 9 Remedies, 10 General and 11 Glossary.

GLOSSARY - SIMETRIA FACTORING TERMS OF USE

The following terms have the definitions set out below in this Agreement:

- **"Affiliate"** means, in relation to a Person, another Person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or common control with the Person, or a Person's principal partners, shareholders, or owners of some other ownership interest;
- **"Simetria Platform"** means cloud-based system for the communication of data between the Merchant and Simetria or Merchant and third parties all pursuant to separate terms of use posted at the Site.
- **"Person"** is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;