

Terms of Use

This is a legal agreement between SIMETRIA PAYMENTS CORP / Simetria Payments Corp, a Vancouver company having its address at 4720 Kingway, Suite 2600, Burnaby, BC, V5H4N2, Canada and operating under the name 4720 Kingway, Suite 2600, Burnaby, BC, V5H4N2, Canada (“**Simetria**”) and the entity accepting this agreement through the Site (as defined below) (“**User**”). User’s use of the Platform Services, as defined below, is subject to these terms of use (the “**Agreement**”). Capitalized terms in this Agreement are defined in the Glossary at the end of this Agreement if not otherwise defined in the provisions below.

Platform Services are a data transfer and storage service only and do not include any financial transaction processing. All financial transactions, if any, between User and Simetria, shall be governed pursuant to separate terms of use posted at the Site.

Platform Services

Simetria will provide the Platform Services to the User for the Term of this Agreement subject to User’s payment of applicable Platform Service Fees and the terms and conditions of this Agreement. As an element of the Platform Services, Simetria hereby grants to User, during the Term hereof, a non-exclusive, non-transferable right to use the Simetria System, upon the terms and conditions hereinafter set forth. The Simetria System shall be used by User solely for its internal business purposes.

Users shall not decompile, reverse engineer, or otherwise seek or utilize any expression of the Platform Services in other than object code form. Users shall not alter or otherwise modify the Platform Services. Users may not transfer or assign its right to use the Simetria System or any other part of the Platform Services under this Agreement.

As a condition of User’s right to use the Simetria System hereunder, User hereby:

- (i) agrees to provide Simetria with access, at reasonable times and upon reasonable notice, to all computer equipment used to access the Simetria System, including, without limitation, any server that supports the Simetria System; and
- (ii) grants to Simetria the right to audit, inspect and review all of User’s books and records regarding the Simetria System during ordinary business hours and upon reasonable notice.

User’s right to use the Simetria System shall terminate on any termination of this Agreement or any suspension of the supply of the Platform Services.

Intellectual Property Rights in Platform Services

The Platform Services (which include without limitation the Simetria System) are protected by copyright, trade secret and other Intellectual Property Rights. Simetria owns the title, copyright and other worldwide Intellectual Property Rights in the Platform Services. Neither this Agreement nor User's access to or use of the Platform Services, or any part thereof, grants or confers to User any right, title or interest in the Platform Services or other software of Simetria other than the limited right of use for the Simetria System granted herein. All Intellectual Property Rights relating to the Platform Services shall be and shall remain the property of Simetria.

The Platform Services, including related source and object codes, documentation (including all descriptive material concerning the functions and technical specifications of the Simetria System, user manuals, technical manuals, and other materials issued to User in connection with its use of the Simetria System), appearance, structure, and organization, are a proprietary product of Simetria. Title to the Platform Services, and any copy, update, modification, or merged portion thereof, shall always remain with Simetria. User acknowledges that Simetria retains the exclusive right to reproduce, publish, sell, modify, distribute, prepare derivative programs of grant to other users the right to use, and license the Platform Services, including without limitation the Simetria System. Users shall not remove any trademarks, proprietary legends, or copyright notices from the Platform Services, or reproduce, publish, sell, modify, distribute, prepare derivative programs of, or grant to any third party the right to use the Platform Services in any manner.

Users shall make no copies of the Simetria System, or any component thereof, or any Simetria System documentation, for any purpose whatsoever without the prior written consent of Simetria (which consent may be given or withheld in Simetria sole and absolute discretion).

Simetria reserves all rights not expressly granted to User in this Agreement.

Account

So long as User is not in breach of this Agreement, User shall be granted a unique and private Account accessible through the Platform Services. The Account shall be a record of User Data Transactions and Platform Service Fees. Simetria shall provide Users with access codes for the Account. Users may not disclose such codes or permit any third party to use them on penalty of forfeiting the Account. User assumes full responsibility for the use of its Account and the access codes thereto and shall indemnify the Simetria and their respective owners, directors, officers, employees, agents, licensors, suppliers, assigns and successors in interest (the "Simetria Indemnified Parties") for all claims, losses or other liabilities arising therefrom. From time to time, users will be invited to enter certain preferences and

specifications within the Account that will apply to the Platform Services. User assumes exclusive responsibility for such selections even if they contain errors on the part of the User or cause losses to the User. Except as required to deliver the Platform Services or as otherwise required by law, Simetria shall not grant any third-party access to the Account of User.

Security

Users shall use commercially reasonable efforts to operate its business in a manner that provides security for Data. Users shall immediately notify Simetria of any actual or suspected breaches in the security of Data, whether in User systems or third-party systems. Users shall use commercially reasonable efforts to maintain User's System in a manner that adheres to customary security standards including, but not limited to, applicable Payment Card Industry Data Security Standards ("PCI DSS"), such as they are from time to time. User will not operate its user system in a manner that does not meet the security requirements of its Payment Services Providers. Simetria is not liable for the operation or failure of User or any third party, such as, for example, Payment Services Provider, including but not limited to User's banks, processors, issuers, hosting services, internet service providers.

Prohibited Activities

It is forbidden for a User to use the Platform Services to, directly or indirectly, knowingly, or unknowingly assist in any illegal activity or any Prohibited Activity (all of which are listed below in the Glossary). Users who breach this clause shall, at the discretion of Simetria, be subject to Account termination with cause.

Prohibited Users

The following Persons are prohibited from using the Platform Services:

- (i) Persons who appear on the United States ("U.S.") Department of the Treasury, Office of Foreign Assets Control (OFAC), Specially Designated Nationals List (SDN);
- (ii) Persons who appear on any of the lists reflected on the U.S. Department of Commerce Bureau of Industry and Security Lists of Parties of Concern (<http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>);
- (iii) Persons who appear on the United Nations Consolidated Sanctions List;
- (iv) United Kingdom Financial Conduct Authority List of Prohibited Individuals;
- (v) Canadian Anti-Terrorism Act, Listed Entities;
- (vi) Persons who are less than 18 years of age; and
- (vii) Persons, or their Affiliates who have been subject to an Account termination with cause.

User Data Transactions

Users shall use the Simetria System for only good faith User Data Transactions and not for transactions for or on behalf of third parties. User shall review User Data Transactions and its Account frequently and shall promptly notify Simetria of any irregularities or actual or suspected unauthorized activity. To carry out User Data Transactions, User shall collect only such data as is necessary for such User Data Transactions, as determined by User's Payment Services Provider, and shall only collect, store or disclose such information in accordance with Applicable Laws.

Under these terms of use related to the Platform Services, Simetria offers no guarantee as to the financial or other results of any User Data Transaction, all of which are the sole and exclusive responsibility of User under its agreements with Payment Services Providers or other third parties. Simetria makes no representation or warranty as to the accuracy or completeness of any User Data Transaction all of which is the responsibility of User. Simetria is under no obligation to monitor the content of User Data Transaction to, for example, detect fraud by Users, their customers, User's Payment Services Providers or any other third party.

User Relationships

Simetria is not party to the commercial relationships that necessitate User Data Transactions, nor is Simetria a party to User's Product transactions. User shall indemnify and hold harmless the Simetria Indemnified Parties from all claims, losses or other liabilities, including without limitation any and all costs associated with the legal defense, arising from or in relation to the User's relationship and transactions with any Payment Services Provider, or any other third party including, without limitation, User's customers and the Product supplied by User.

Platform Service Fees

Users shall pay Platform Service Fees for use of the Platform Services. All Platform Service Fees are due immediately and are non-refundable, except as otherwise agreed by Simetria. The Platform Service Fees are subject to change as per the terms of this Agreement. Platform Service Fees that are not paid when due, following a notice requesting payment, will accrue interest of 1% per month or the maximum amount allowed by Law, whichever is less, starting on the day after they were due.

Users are liable for all federal, provincial and local taxes that may apply to the Platform Services, and they are in addition to the Platform Service Fees.

Platform Service Fees shall be paid as per the payment methods that are acceptable to Simetria in the Simetria System and integrated with the Account by User and Simetria.

If User has provided credit card information to Simetria, then Simetria is authorized to debit Platform Service Fees and all other amounts owing hereunder to such card.

User Representations

User hereby warrants and covenants to Simetria that:

- **Duly Constituted.** The User is a business or carries on an organized economic activity for profit or otherwise and, if it is not an individual acting in a business capacity, it is duly constituted under the laws of its constituting jurisdiction. Further, the User has legal capacity to enter into this Agreement and perform its obligations hereunder. The User is registered as a business in every jurisdiction where it carries on business and such registration is required;
- **Duly authorized.** User has the necessary corporate power and authority to execute this Agreement and to perform its or his obligations hereunder. Such execution and performance by the User does not require any action or consent of, any registration with, or notification to, any person, or any action or consent under any laws or regulations which the User is subject;
- **Notice of Defects.** User will immediately advise Simetria and User's customers in writing of defects in the Product or any claim or threatened claim against it in relation to the Product;
- **Compliance with Applicable Laws.** The Product conforms to all Applicable Laws in the jurisdictions where Simetria, User and its customers are located. Users will conduct its business affairs in an ethical manner and in accordance with the terms and intent of this Agreement, and in compliance with all Applicable Laws and regulations, including but not limited to all laws and regulations applicable in each jurisdiction where the Product is sold. Users shall not use the Platform Services to sell or promote or otherwise facilitate any Prohibited Activities. User will not use the Platform Services to assist in the illegal import or export of goods or services;
- **Solely for Business Purposes.** User shall use the Platform Services exclusively for business purposes or in the course of carrying on an organized economic activity, whether for profit or otherwise;
- **Opportunity to Consult Counsel.** User has had the opportunity to consult legal counsel for the purpose of reviewing and obtaining advice as to the terms hereof;
- **Taxes on Product.** To the extent that User is responsible for collecting taxes from its customers for the sale of Product, then such responsibility shall be solely that of the User and User shall indemnify and hold the Simetria Indemnified Parties harmless from and against any and all liabilities that they may incur in respect of taxes on Product;
- **Simetria Not Liable for Product.** User assumes all responsibilities and liabilities associated with its Product. Simetria assumes no liability for any Product and User shall indemnify and hold the Simetria Indemnified Parties harmless in respect of all claims, liabilities or other losses arising from or on account of any Product; and

- **U.S. Users – Business Only.** U.S. Users are permitted only if they are using the Platform Services as a business and not as individual consumers. U.S. individuals (i.e. non-businesses Persons) are not permitted to use the Platform Services.

Indemnification

In addition to the other indemnifications included herein, User shall defend, indemnify, and hold harmless the Simetria Indemnified Parties, their assigns, and successors-in-interest from and against any and all third-party liability, damages, losses, claims, demands, actions, causes of action and costs (including attorneys' fees and expenses) arising out of or resulting from

- (i) User's failure to comply with its obligations under this Agreement;
- (ii) User's performance under this Agreement including, without limitation, performance, non-performance, or defect in performance, any statement, misstatement, representation or misrepresentation made by User or any representative of User;
- (iii) the alleged or actual negligent or willful acts or omissions of User, User's agents and/or employees;
- (iv) any statements, claims, representations or warranties made by User or User's agents and/or employees, relating to the Products or any other matter;
- (v) User's operation of its business including, without limitation, User's Site; and
- (vi) any claim by any Payment Services Providers or other third party with respect to User or its Product.

Term and Termination

- **Term.** This Agreement shall begin on the Effective Date and shall end thirty (30) days thereafter (the "Initial Term"). After the Initial Term, this Agreement shall be renewed automatically for additional consecutive thirty (30) day terms (each a "Renewal Term"), unless earlier terminated in accordance with the terms hereof. The Initial Term and any Renewal Terms shall hereinafter be referred to as the "Term".)
- **Termination.** Either party may terminate this Agreement at any time on notice to the other party, if User shall be liable to Simetria for all Platform Service Fees or other liabilities that accrued prior to or following termination notwithstanding any termination hereof. Simetria can terminate or suspend performance hereunder at any time for no reason or for any reason without prior notice to or consent of the User. At the discretion of Simetria, any termination of this Agreement shall also terminate agreements of User with any Simetria Entity.
- **Procedure upon Termination.** Upon any termination of this Agreement, User shall no longer be entitled to use the Account or any other part of the Platform Services. All provisions regarding indemnification, representations, warranties, liability and limits thereon and confidential information shall survive termination, and termination of this Agreement shall not relieve the User of its obligations to pay accrued Platform

Service Fees or other liabilities to Simetria hereunder. Users shall bear the whole of its costs associated with any termination, including but not limited to finding a substitute supplier of services like those of Simetria. Simetria reserves the right to permanently delete all data related to User Transaction Data and other User information in Simetria systems on any termination of this Agreement.

- **Discontinuance.** Simetria reserves the right to discontinue the Platform Service at any time.

Confidentiality

Each party acknowledges that it may directly or indirectly disclose Confidential Information to the other party during negotiation of and performance of this Agreement. All such Confidential Information disclosed hereunder shall remain the sole property of the disclosing party (or other third party), and the receiving party shall have no interest in, or rights with respect thereto, except as set forth herein. Each party agrees to treat such Confidential Information with the same degree of care and security as it treats its most confidential information, but in no event with less than a reasonable degree of care. Each party may disclose such Confidential Information to employees and agents who require such knowledge to perform services under this Agreement provided such employees and agents have agreed to abide by the confidentiality provisions set forth herein. Simetria may, at its discretion, share any User Confidential Information with any Simetria Entity in order that they can fulfill their obligations under Simetria Payment Service Terms. Except as otherwise contemplated by this Agreement, neither party shall disclose the Confidential Information of the other party to any third party without the prior written consent of the disclosing party, and the duty of confidentiality created by this section shall survive any termination of the Agreement.

For the purposes of this Agreement, “Confidential Information” means all proprietary, secret, or confidential information or data relating to either party and its Affiliates, operations, employees, products or services, clients or customers. Confidential Information, to be such, must be of a nature that it is reasonably expected to be kept confidential. Confidential Information shall include customer lists, cardholder account numbers, pricing information, computer access codes, instruction and/or procedural manuals, software, APIs, Data, and the terms and conditions of this Agreement. Information shall not be considered Confidential Information to the extent, but only to the extent, that such information is:

- (i) already known to the receiving party free of any restriction at the time it is obtained;
- (ii) subsequently learned from an independent third party free of any restriction and without breach of this Agreement;
- (iii) or becomes publicly available through no wrongful act of the receiving party;
- (iv) independently developed by the receiving party without reference to any Confidential Information of the other; or
- (v) required to be disclosed by law. Without limitation, Simetria Data shall be Confidential Information of Simetria.

LIMITATION OF LIABILITY

THE PLATFORM SERVICES ARE PROVIDED ON AN "AS-IS", "AS AVAILABLE" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SIMETRIA EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES AND CONDITIONS, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AS WELL AS ANY WARRANTIES THAT THE PLATFORM SERVICES PROVIDED BY SIMETRIA OR THAT THE OPERATION OF THE PLATFORM SERVICES WILL BE INTERRUPTION OR ERROR FREE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, SIMETRIA, ITS SUPPLIERS, AGENTS, AND LICENSORS, SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TO USER OR ANY THIRD PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES, EVEN IF SIMETRIA HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. EXCEPT AS REQUIRED BY LAW, IN NO EVENT SHALL SIMETRIA'S LIABILITY (WHETHER BASED ON AN ACTION OR CLAIM IN CONTRACT, TORT OR OTHERWISE) TO THE USER, OR ANY THIRD PARTY, IN ANY WAY CONNECTED WITH OR ARISING OUT OF THIS AGREEMENT (AND ALL OTHER AGREEMENTS BETWEEN USER AND ANY SIMETRIA ENTITY) EXCEED THE FEES ACTUALLY PAID TO SIMETRIA BY USER DURING THE THREE (3) MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

Simetria shall use its commercially reasonable efforts to perform its obligations hereunder, however, Simetria, its Affiliates, agents or licensors shall not be liable for any loss resulting from the activities of User, nor from any erroneous statements or errors in transmission, nor for any loss resulting from any delay, interruption or failure to perform hereunder due to any circumstances beyond Simetria reasonable control including, without limitation, acts of god, fire, explosion, earthquake, riot, terrorism, war, sabotage, accident, embargo, storms, strikes, lockouts, any interruption, failure or defects in Internet, telephone, or other interconnect services or in electronic or mechanical equipment. Simetria obligations hereunder shall be suspended during any of the foregoing circumstances, which suspension shall not be a cause for termination of this Agreement by User.

None of the Simetria Payment Services are provided pursuant to these terms of use. All claims or other matters related to Simetria Payment Services shall be addressed pursuant to the applicable Simetria Payment Services Terms, if any. Certain Simetria Payment Services are not available to the U.S. Persons.

General

- **Notices.** All notices to User hereunder shall be delivered to User to the e-mail address provided on establishment of the Account. Any notice given by User to Simetria under this Agreement shall be in writing and delivered personally, or sent by prepaid registered mail, return receipt requested to Simetria at the address indicated on the Site and addressed to the 'Legal Department'.
- **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 as agents or employees of one another or as authorizing either party to obligate the other in any manner. User shall not (i) bind Simetria to any contract or agreement, (ii) incur any obligation on behalf of Simetria, (iii) release, assign or transfer any agreement, claim, security, or any other asset of Simetria, (iv) borrow or lend any money in the name of Simetria, (v) submit to any claim or liability related to the Platform Services, or (vi) allow judgment to be taken or confessed against Simetria. User, being an independent contractor, shall not receive as compensation, or be reimbursed, for any of the following: (i) work materials that User may use in performing hereunder, (ii) business facilities, telephone, automobile, or any other equipment, (iii) any User employee benefit, or (iv) reimbursement for any other cost or expense incurred by User in its promotion of the Platform Services hereunder.
- **On-Line or Written Formation of Contract.** By acceptance of the terms hereof on-line by User or by execution of a written acceptance of the terms hereof by User, this Agreement together with any supplemental agreements and appendixes constitute the entire validly legally binding agreement between the parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No waiver of any of the provisions in this Agreement shall be deemed or shall constitute a waiver of any other provision, whether similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- **Amendments to this Agreement.** From time-to-time Simetria will post amendments or revisions to this Agreement, including, without limitation, amendments to Platform Service Fees, on the Site, by e-mail or through the Account. Simetria will provide notice of these amendments or revisions to User through the Site, by e-mail or through the Account. If the amendment or revision is required for Simetria and the Platform Services to remain in compliance with applicable Laws or Rules, then the amendment or revision shall take effect as of when it is posted to the Site, by e-mail or through the Account. If, on the other hand, the amendment or revision is not required under Applicable Law or by the Rules, and User does not close its Account within thirty (30) days of notice, as provided above, then the User shall be deemed to have accepted the amendment or revision and it shall be effective upon any further use of the Platform Services by User. 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. Notwithstanding the foregoing, Simetria reserves the right, without any prior notice or consent, to change the

method of access to Platform Services or the Account. In the event of an emergency, Simetria reserves the right to suspend access to the Platform Services.

- **Simetria.** Each of the Simetria Entities shall be third party beneficiaries hereunder but shall not have any obligations hereunder.
- **Non-Disparagement.** Neither party will publish negative statements concerning the other party during the Term of this Agreement. Users shall not use the names, logos, or marks of Simetria other than as expressly permitted by Simetria in writing.
- **Assignment.** None of User or any of its successors may assign this Agreement, or any rights hereunder, directly or by operation of Applicable 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 to or consent of the User.
- **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.
- **Enforcement.** The User shall be liable for and shall 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 User hereunder, or resulting from any breach of any of the terms or conditions of this Agreement by User. Users shall also be responsible for all costs, fees or expenses of Simetria in relation to or arising from responding to third party requests for Data or User information by third parties including but not limited to subpoenas or court orders for the same.
- **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 an arbitrator, 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 resolved by binding 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 Montreal, Canada. Arbitration shall take place in English before a single arbitrator who is a practicing commercial lawyer licensed in the Province of British Columbia. User agrees to waive any right User may have to commencement of or participation in any class action against Simetria related to the Platform Services. User also agrees to opt out of any class proceedings against Simetria or its licensors.

- **Language.** The parties hereto agree that this agreement is drafted and executed in the English language. Les party's aux presents sentiment pour que la presented convention so it redeye en langue anglaise.
- **Whole Agreement.** References to "this Agreement" include any Account Platform Service Fees, schedules, supplementary agreements, addendum, appendixes and amendments and any other agreements, schedules appendixes and amendments promulgated by Simetria and furnished to User from time to time. This Agreement replaces any earlier versions hereof appearing on the Site or otherwise.
- **Interpretation.** The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. In this Agreement, words importing the singular number include the plural and vice versa; words importing gender include all genders; and words importing persons include individuals, sole proprietors, partnerships, corporations, trusts, other entities, and unincorporated associations.

Survival

The following Sections shall survive termination of this Agreement: Definitions, 2 – Intellectual Property Rights in Service, 8 –User Relationships, 9 – Platform Service Fees, 11 – Indemnification, 12 – Term and Termination, 13 – Confidentiality, 14 – Limitation of Liability, 15 – General, 16 – Survival and 17 – Glossary.

Glossary – Simetria Platform Services Terms of Use

The following defined terms are used in this Agreement:

- **"Account"** means an account made available to a User through which User can transmit instructions or receive information in relation to the Platform Services;
- **"ACH"** means Automated Clearing House payment transaction;
- **"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.
- **"API"** means application programming interface;
- **"Applicable Laws"** shall mean laws, statutes, codes, ordinances, orders, decrees, rules, regulations, and municipal bylaws, whether domestic, or foreign, all judgments, orders, writs, injunctions, decisions, rulings, decrees, and awards of any government authority having jurisdiction;

- **“Application”** means the paper or online application completed by User when applying for the Platform Services all of which is incorporated herein by reference;
- **“Data”** means data related to User Data Transactions or Simetria Data;
- **“Effective Date”** means the date on which User electronically accepts this Agreement online or executes a written acceptance of the terms hereof.
- **“Intellectual Property Rights”** means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction.
- **“Simetria”** has the meaning set out in the preamble of this Agreement;
- **“Simetria Data”** means information concerning Simetria System or provided to User by Simetria through the Account or otherwise;
- **“Simetria Entity”** means any one of the Simetria;
- **“Simetria”** means any one of Simetria Payments Corp., or any of their Affiliates;
- **“Simetria Payment Services”** means any service by which Simetria takes possession or control of User funds as an Payments Account, payment processor, factor or other form of service provider;
- **“Simetria Payment Service Terms”** means a Payment Services Provider Agreement between User and a Simetria Entity;
- **“Simetria System”** means a cloud-based system operated by Simetria that allows User to access their Account and initiate User Data Transactions;
- **“Payment Network”** means Visa U.S.A., Inc., Visa International, Inc., MasterCard International, Inc., and any other credit or debit card issuing company;
- **“Payment Services”** means the services of Payment Services Providers pursuant to Payment Services Provider Agreements, which might, at the discretion of User and the Payment Services Provider, include payment processing, money issuing, cash advance services or other payment and related services;
- **“Payment Services Provider”** means Simetria or a third party, which, in each case, is also party to a Payment Services Provider Agreement with User and is acting in that capacity;
- **“Payment Services Provider Agreement”** means an agreement between User and a Payment Services Provider concerning the supply of Payment Services. The Simetria Payment Services Terms of Use, Simetria Payment Processing Merchant Terms of Use and Simetria U.S. Payor Prepayment Terms of Use are all, without limitation, Payment Services Provider Agreements;
- **“Person”** is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, other forms of entity, 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 thereof, acting in such capacity;

- **“Platform Service Fees”** means those amounts for which Users are liable to pay in consideration of the Platform Services as set out on the Site, such as they are from time to time;
- **“Platform Services”** means the service of real-time, secure data transmission and data processing for multiple business-to-business payment methods;
- **“Product”** means any product or service for sale or provided by User;
- **“Prohibited Activity”** means the operation of or the direct or indirect facilitation of any of the following: any act that is illegal in the United States or in the jurisdiction where the person carrying out the activity is resident, domiciled or located; bath salts and herbals; betting, including lottery tickets, casino gaming chips, off-track betting, memberships on gambling-related internet sites and wagers at races; buyers or discount clubs; cigarettes, tobacco or e-cigarettes; credit counseling or repair agencies; credit protection or identity theft protection services; digital currencies; direct marketing; inbound or outbound telemarketing businesses; internet, mail or telephone order pharmacies or pharmacy referral services; items that encourage, promote, facilitate or instruct others to engage in illegal activity; items that may be counterfeit including, but not limited to: designer handbags, clothing and accessories, and consumer electronics; items that may infringe or violate any copyright, trademark, right of publicity or privacy or any other proprietary right under the laws of any jurisdiction; items that promote hate, violence, racial intolerance, or the financial exploitation of a crime; items that promote, support or glorify acts of violence or harm towards self or others; legal fees including bankruptcy attorneys; live animals; medical equipment; payment aggregators; prepaid phone cards or phone services; purchase, sale or promotion of drugs, alcohol, or drug paraphernalia, or items that may represent these uses; real estate or motor vehicles; rebate based businesses; sales of money-orders or foreign currency; up-sell merchants; using the Platform Services as a means to transfer funds between bank accounts held in the same name; using the Platform Services for any illegal purpose, or in violation of any local, state, national, or international law, including, without limitation, laws governing intellectual property, taxation and other proprietary rights and data collection and privacy; using the Platform Services in a manner that Simetria or any Payment Network reasonably believes to be an abuse of the payment card system or a violation of Rules; using the Platform Services in any manner that could damage, disable, overburden, or impair Simetria including without limitation, using the services in an automated manner; using the Platform Services in violation of the terms of this Agreement, as reasonably determined by Simetria; using the Platform Services that in any way assists User or others in the violation of any law, statute or ordinance; using the Platform Services to collect payments that support pyramid or ponzi schemes, matrix programs, other “business opportunity” schemes or certain multi-level marketing programs; using the Platform Services to control an account that is linked to another account that has engaged in any of the foregoing activities; using the Platform Services to defame, harass, abuse, threaten or defraud others, or collect, or attempt to collect, personal information about users, registered recipients, or third parties without their consent; using the Platform Services to intentionally interfere

with another user's enjoyment of it, by any means, including uploading or otherwise disseminating viruses, adware, spyware, worms or other malicious code; using the Platform Services to make unsolicited offers, advertisements, proposals, or to send junk mail or spam to others; using the Platform Services to provide User or User's customer with a cash advance from User's or customer's own credit card or to help others to do so; using the Platform Services to send or receive what Simetria considers to be funds for something that may have resulted from fraud or other illegal behavior; using the Platform Services while impersonating any person or entity or falsely claiming an affiliation with any person or entity; or weapons including replicas and collectible items; weight loss programs; wire transfer money orders;

- **“Rules”** means the rules and regulations of Payment Networks, such as they may be from time to time;
- **“Site”** means [Simetria](#) or such other site as Simetria may use to supply the Platform Services;
- **“User”** means a Person that has accepted this Agreement with Simetria for Platform Services;
- **“User Data Transaction”** means information transmitted or attempted to be transmitted by way of the Platform Services and includes authorization, delayed capture, sale, void, voice authorization, inquiry, verification, reference transaction, non-reference credit, or credit data transmission between User, Simetria and a Payment Services Provider.
- **“User Deposit Account”** means a bank account of the User designated by the User as the account from which Platform Service Fees can be debited, which may be an account with a Payment Services Provider;
- **“User Site”** means the web site(s) used by the User to solicit customers or accepts User Data Transactions;